

On The Record . . .

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What are the Implications of Signing an Agreed Board Order in Your Professional Disciplinary Proceedings?

by Tony Bertolino, Esq.

In disciplinary proceedings before most professional licensing boards, you typically can informally resolve your complaint by agreeing with the board. If you reach an agreed informal resolution, often called an Agreed Board Order, you waive your right to proceed to a contested hearing and appeal your case. Instead, you and the Board agree to certain sanctions to resolve the outstanding disciplinary complaint.



As a practical matter, Texas licensing boards and agencies resolve most disciplinary complaints through the Agreed Board Order process. Comparatively speaking, very few complaints proceed to the formal disciplinary complaint process and a contested hearing before the State Office of Administrative Hearings for resolution. Typically, those cases involve severe allegations of misconduct in which a licensing board seeks severe sanctions such as suspension or revocation of a license.

Contents of an Agreed Board Order

When you receive a disciplinary complaint, the licensing board or agency performs an initial investigation, and it finds some cause to believe that you have violated a board rule or law, an Agreed

Board Order may be an option for resolution. In these cases, the licensing board may provide you with an Agreed Board Order by email, mail, or during an in-person settlement conference to resolve the complaint informally. The contents of the Agreed Board Order will depend on the severity of the violation of the rule or law that governs your profession and the nature of the violation. Still, it will contain some disciplinary action in response to the perceived violation. An Agreed Board Order could contain one sanction or a combination of various sanctions. For example, it could contain any of the following sanctions:

- Restrictions on practice or performance of your professional duties;
- Completion of additional continuing education or training in specific subject areas;
- Implementation of a monitoring or supervision requirement by a professional in your field;
- Payment of administrative fees;
- Mandatory periodic appearances before the licensing board or agency;
- Participation in substance abuse rehabilitation or behavioral health programs;
- Submission to mandatory drug and/or alcohol testing;
- Issuance of a public reprimand; and/or
- License suspension, which may or may not be probated.

You can negotiate the terms of an Agreed Board Order with licensing board staff or members. An experienced attorney can be invaluable in assisting you through the negotiation process. Together, you may be able to arrive at a mutually acceptable Agreed Board Order that has the least impact on your professional and personal life.

The Agreed Board Order Process

When you sign an Agreed Board Order, board staff typically must present it to the entire licensing board and/or board director for approval. Once the Agreed Board Order is approved, it becomes a final and enforceable order. At that point, you are bound by the terms and conditions outlined in the Agreed Board Order. If you violate the terms, then you could face further disciplinary action by the board.

However, the board could also reject or accept the Agreed Board Order with some modifications. If you cannot reach an agreement on the modified Agreed Board Order, or if the board rejects it altogether, then proceeding to a contested administrative hearing to resolve the matter is your only remaining option.

Consequences of an Agreed Board Order

An Agreed Board Order generally is a disciplinary action that becomes a permanent part of your records with the professional licensing board or agency. Many licensing boards publish notice of disciplinary proceedings, including approved Agreed Orders, on their websites and in their newsletters. As a result, once you sign an Agreed Board Order, you should assume that the public will be aware of your disciplinary case and free to view the terms of your Order.

Furthermore, as noted above, if you fail to follow the terms and conditions, you can be subject to more severe disciplinary action in the future. As a result, signing an Agreed Board Order could lead to more serious sanctions than you would have faced in the first place. Therefore, it may not be wise to sign it under some circumstances, as the consequences can be significant.

Due to the potential repercussions of signing an Agreed Board Order, you should carefully consider if it is your best option. While it is an easy and efficient

option for a licensing agency to resolve a disciplinary complaint, and signing an Agreed Board Order may resolve your complaint more quickly, it may not always be in your best interest. You should consult an experienced professional license defense lawyer and consider all your options before signing an Agreed Order. Allowing an attorney to evaluate your situation can help determine whether signing an Agreed Order is right for you.

Conclusion

While an Agreed Board Order can offer a swift and informal resolution to disciplinary complaints before most professional licensing boards, it is essential to carefully weigh its potential consequences. Signing an Agreed Board Order means accepting certain sanctions and waiving your right to a contested hearing and further appeal, which can have lasting impacts on your professional record and career. Given the complexity and significance of this decision, consulting with an experienced attorney is crucial. A skilled attorney can help you navigate the negotiation process, ensuring that the terms of the Agreed Board Order are as favorable as possible and that you fully understand the implications. By seeking expert legal advice, you can make an informed decision that best protects your professional interests and future.

Celebrating a Decade of Dedication: Honoring London de la Teja

As we celebrate a decade of success, I also find it fitting to honor one of our most dedicated and loyal employees, London de la Teja. This year marks her 10th anniversary with us, a milestone that deserves special recognition and heartfelt gratitude.

London began her journey with us at a staffing agency, where her diligence, work ethic, and commitment quickly stood out. It wasn't long before I knew she was a perfect fit at our law firm, and I was fortunate to bring her on board as a full-time employee.

Over the past decade, London has been a cornerstone of our firm. Starting from an entry-level position as a receptionist (among other positions), she has worked up to become our firm's Accounts Receivable Manager. Her role is crucial, as she is primarily in charge of receiving payments and managing collections against clients who fall behind on their payments. Her relentless follow-up and professional demeanor have significantly contributed to our firm's financial stability and revenue.



London is not just an employee; she is a cherished member of our firm family. Her loyalty and dedication have been unwavering, even during the most challenging times. She has consistently exceeded her duties, ensuring that our accounts are in order and our clients are handled with the utmost care and respect. We are incredibly proud to have London as part of our team. Her contributions over the last ten years have been invaluable, and her impact on our firm is immeasurable.

Please join us in celebrating London's 10-year anniversary with our firm. We extend our deepest appreciation for her hard work, dedication, and loyalty.

Thank you, London, for everything you do. I am truly grateful for you!

-- Tony Bertolino

Hallmark Achievements

Texas Department of Licensing and Regulation v. BW

Facts: Our client, BW hired us to defend her behavior analyst license. Our client faced damage to her reputation, career, and livelihood.



Outcome: The firm evaluated the relevant documentation and evidence and prepared a robust response based on the applicable facts and law. The response demonstrated that the Department lacked jurisdiction and authority to pursue disciplinary action. Upon conclusion of the investigation, the Department determined that there was insufficient evidence and dismissed the complaint. Our client's license and reputation were protected so she could continue to provide her clients with optimum services.

Texas Appraiser Licensing and Certification Board v. AM

Facts: Our client, AM, who is a certified real estate appraiser, hired us to defend him against a complaint filed with the Board by a government-sponsored entity asserting he violated the Uniform Standards of Professional Appraisal Practice ("USPAP"). AM was facing damage to his professional reputation, harm to his ability to obtain work from clients, the prospect of discipline from the Board and harm to his livelihood because of the complaint submitted to the



Board.

Outcome: Bertolino LLP collected and assessed AM's extensive work file material, market data, his appraisal report and his own written rebuttal to combat the false allegations levied against our client. Bertolino LLP advocated fiercely for AM to demonstrate why the complaint had to be dismissed because of legal shortcomings and because it had no merit, including conversations with Board staff to help push the matter forward to resolution. We articulated why AM had not violated USPAP and state law and why the complaint had to be dismissed without any disciplinary action. After the investigation was completed, the staff agreed the complaint did not warrant disciplinary action. The Board dismissed AM's complaint with a non-disciplinary warning letter and took no action against his license. AM's professional reputation and livelihood were saved from damage and the complaint was closed.

Texas State Board of Public Accountancy v. DK



Facts: Our client, DK, who is a certified public accountant, hired us to defend him against a complaint filed with the Board by a former client who claimed he would not communicate with him to aid in the resolution of tax issues created by DK. DK was facing a serious threat to his professional reputation, harm to his ability to obtain work from clients, the prospect of discipline from the Board as well as harm to his livelihood based on spurious claims by a former client.

Outcome: Bertolino LLP collected and assessed DK's work file and voluminous communications documentation to undercut the false allegations made against him. We also obtained affidavit testimony from necessary witnesses. Bertolino LLP advocated aggressively for DK, urging for the complaint to be dismissed because it lacked merit. We communicated to Board staff why DK had not violated state law and why the complaint had to be dismissed. After the investigation by the Board's Behavioral Enforcement Committee was completed, the Committee recommended the complaint be dismissed because there was inadequate evidence to support disciplinary action. The Board dismissed DK's complaint in full and took no discipline against him whatsoever. As a result, DK's professional reputation and livelihood were protected from a groundless complaint.

A Former Regulator's Recommendations to Reduce Your Compliance Risks

by Troy Beaulieu, Esq.



During my career as a state regulator, I saw a lot of complaints. What I now share with my clients as a defense attorney fighting against accusations helps reduce their legal risks by focusing on some key areas that regulators look at. If you follow these simple suggestions, you can decrease the chances of a complaint, and if you do get one, reduce the likelihood of being disciplined. Here is a brief

description of my top suggestions that will help you stay out of trouble with your regulator and reduce your risk profile.

Maintain Records and Thoroughly Document Your Files – When you keep good records you help mitigate risk in three ways. First, you reduce the likelihood of a complaint at all because your client documentation is organized and ready at a moment's notice. This helps you address any unexpected issues much quicker, reducing the prospect of a frustrated client filing a complaint. Second, if you do receive a complaint, your file documentation is well-maintained and ready to be delivered to the attorney you hire to protect your license and for submission to the regulatory staff looking into your complaint. Both increase your odds of a favorable outcome because having the file ready and organized for your attorney increases their effectiveness and providing a well-organized file to the regulatory investigator makes a good impression that you are a competent, professional who has their business in order. Third, by keeping a well-documented file, you can rest comfortably that critical client communications, notices and activities performed for clients or patients are detailed. It will contain the essential information, and documentation needed to establish you followed proper procedures, and satisfied the standards, obligations and ethics your regulator requires. This will immediately clue your investigator into your competence and professionalism and reinforces to your regulator the complaint allegations lack merit because your file documentation demonstrates the allegations are not true.

Keep Your Clients Happy – Staying on top of client matters and making sure their needs are addressed promptly keeps your client rapport in good stead. Clients who are happy with the services they receive and the level of interaction they have with you are much less inclined to file a complaint. Generally, happy clients who are pleased with you and the services or goods you provide are much less likely to file a complaint with your regulator. Keep clients pleased and happy about your work and this will greatly reduce the prospect of receiving a regulatory complaint.

Invest in Knowledge and Guidance to Stay Proactive on Compliance – Staying up to date on the ever-changing regulatory landscape is critical to the continued success of your business, your practice and your occupational and professional livelihood. Regulatory agencies are constantly changing their rules and policies to address our evolving world and ever-changing circumstances. On top of these periodic rule changes come regular court decisions interpreting and applying the law to specific situations. If that was not enough, the Legislature meets at least once every two years and passes new laws impacting the state regulatory universe. Periodic changes in federal law add to these important dynamics as well. Staying current on these essential matters impacting your license and how you operate your business is critical to avoiding complaints and negative impacts on your business and license. However, doing so is no small task. You must commit the time and resources to staying aware of compliance essentials to keep your business and livelihood flourishing. You can do this by proactively investing in compliance consulting with a qualified administrative law attorney. A skilled regulatory attorney can assess your business and give you tailored legal counsel to fulfill your compliance obligations, update your forms, revise your policies and procedures and provide legal counsel on how to achieve your business goals in a compliant manner. You can also draw upon free, educational resources such as Bertolino LLP's **Know Your Regulator** bulletins, online podcast interviews

with regulatory insiders and group presentations discussing compliance insights, upcoming laws and new developments.

Communicate With Clients and Your Regulator – Communicating effectively with clients about their matters, needs and the services or goods you provide them is critical to reducing your compliance risks. Clients who are kept informed are less likely to become upset and file a complaint against you. And if you do get a complaint, you can show your documented efforts to keep your customers informed to defeat communication-based complaints. Also essential to reducing compliance problems is staying responsive to your regulator. Regularly checking your mail and email and responding to any contact or requirements from your regulatory agency goes a long way to avoiding problems. Keep your contact information updated (usually this is required by law) so the agency can contact you about license renewals, audits, inspections, complaints or other important matters.

By applying these basic ideas to your regulated business, practice or license you can reduce your compliance risk profile and reduce your exposure to complaints. Making these key items a part of your regular operations will allow you to focus your time on operating your business instead of spending significant time and resources addressing regulatory complaints.



Engage with your regulatory agency like never before! It can be a challenge to navigate the laws that govern your license and profession. To help license holders take charge of their career, we've created a new educational resource: Know Your Regulator. Our unique resource provides professionals with important agency updates, insights, and opportunities to enhance their professional license.

License holders can confidently sharpen their practices at no cost to them, as our educational resources are completely free. Our eBook that comprehensively details the complexities that surround a regulated profession is available on our website for viewers to download. Know Your Regulator releases periodic educational bulletins that are tailored to specific agencies and provide important news updates, rule changes, public

Professional Recognition Days: July Calendar

Team Bertolino is grateful for the expertise and dedication of these professionals. Thank you for your outstanding contributions to your respective industries.

July 1:

- National Postal Workers Day

July 15:

- Developmental Disability Professionals Day

July 16:

- National Personal Chef Day

July 19:

- Flight Attendant Safety Professionals Day

July 24:

- National Thermal Engineer Day

comment opportunities, meeting notices and more. Our podcast series takes the engagement to a whole new level, featuring interviews with key staff members from state agencies and experts in various industries.



Empower your license and career and stay ahead in your industry. Take advantage of our free educational resources by visiting **Know Your Regulator**.

[Click here to listen and subscribe, Know Your Regulator: The Podcast](#)



Side Bar ...

Bertolino LLP has initiated efforts to partner with insurance companies who provide insurance coverage to our clients. Insurance companies provide valuable financial resources and complaint coverage to our clients who have legal matters where their license, livelihood and reputation are under attack by the government. By partnering with these insurance companies, we can provide greater help to clients at less cost for them during an already stressful and trying time. In a situation where the ability to fight back aggressively is so important and the costs of doing so can become expensive, it's important to have strategic insurance partnerships like these in place. Bertolino LLP remains dedicated to a 100% client-centered approach. Our Insurance Partnership Project effort is just one of the many ways we continue to help our clients achieve their goals and protect their license, livelihood, and reputation.



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