

On The Record . . .

Official Newsletter of BERTOLINO LLP

December 2024



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Steps to Take – and NOT Take – When You Receive a Professional Licensing Board Complaint

By Tony Bertolino, Esq.

Receiving notice of a disciplinary complaint against your professional license can be a deeply unsettling experience, often raising concerns about the potential impact on your career, reputation, and livelihood. Whether the complaint is unexpected or based on a misunderstanding, it is crucial to approach the situation with seriousness and care. Disciplinary proceedings can result in severe consequences, including license suspension or revocation, if not handled properly. This article provides guidance on how to navigate the disciplinary process effectively, respond appropriately, and take proactive steps to protect your professional future.



Promptly Respond to the Complaint

When you receive a disciplinary complaint, stress and fear may cause you to ignore it and put off responding to it. On the other hand, you may assume that the complaint is frivolous or baseless and needs no response from you. However, disciplinary complaints are serious matters that you must take immediate action to counter, regardless of what you think of the merits of the complaint. When your licensing board gives you a deadline for a response, you should meet that deadline at all costs.

Ignoring a complaint or failing to respond to it in a timely matter can lead to even more trouble for you. In many professions, failure to respond or cooperate with your licensing board is an independent basis for a new violation, which carries the risk of additional sanctions. Simply responding to the complaint on time can go a long way toward showing your licensing board that you are taking the matter seriously.

Likewise, formulating an assertive and immediate response to a complaint against your license can critically affect the steps that your licensing board will take next. A prompt, thorough, and thoughtful response may be enough for the licensing board to sometimes dismiss the complaint against you. If you consult with an attorney at the outset of your case, they can help you craft a complaint that puts you in the best position possible to reach a successful resolution to your case. By getting legal advice early in the process, you can mount a solid defense to the allegations against you and help direct the scope of the board's investigation.

Don't Communicate with Others About Your Case

The attorney-client privilege applies when you speak with an attorney about your case. Your attorney must keep anything you discuss with them confidential. However, other people in your life are not subject to the same confidentiality rules. For instance, although you likely will want to discuss the allegations against you with your family, friends, or colleagues, you should refrain from doing so. Your licensing board could contact these individuals as witnesses or ask them to provide certain information about your case. If you have already discussed your case with these individuals, they may have important information they might otherwise not have. Even a witness who is on your side could end up inadvertently disclosing information that hurts your case.

Furthermore, you should not directly contact the investigator assigned to your case by the

licensing board or anyone else who sits on the licensing board. While it is common and understandable that you want to tell your side of the story, you might innocently divulge information that could worsen your case. You may accidentally provide evidence supporting the licensing board's case, which is the last thing you want to do. Before you speak with an investigator or any representative of your licensing board, you should speak with an attorney.

Licensed professionals sometimes make the mistake of contacting the complaining party directly in hopes of resolving the situation informally. Again, contacting a complainant or witness about an alleged license violation is unwise. The licensing board could perceive your actions as attempting to bribe or influence the complainant to withdraw the complaint. Your licensing board could find that you are impeding its investigation and acting unprofessionally, which can lead to further sanctions.

Keep a Low Profile

Extreme stress brought on by a disciplinary complaint can cause a licensed professional to act in a way they wouldn't normally act. You may be tempted to blow off steam at a local bar or post about your situation on social media. Drawing attention to yourself and acting inappropriately and unprofessionally will not help your case.

Just as you shouldn't discuss your case with your friends, family members, or colleagues, you shouldn't air your grievances on social media. Refrain from publicly attacking the complainant via social media or talking to others. It would help if you also did not criticize your licensing board, as it will likely decide what happens with your license. As mentioned above, you should only discuss your case with your attorney.

Likewise, partying, overindulging in alcohol, taking drugs, or generally behaving badly in public will not help the image that you want to portray to your licensing board. Anyone

who witnesses you behaving this way could contact your licensing board and report your behavior, which undoubtedly will not help your case.

Your best bet is to avoid social gatherings, parties, and other places that might make it seem that you are not taking the complaint against you seriously. You should limit yourself primarily to work or home and focus on what you need to do to build a strong defense in your case. Your attorney can work with you to develop the best strategy for your case and help you resolve your case as quickly and quietly as possible.

Conclusion

Facing a disciplinary complaint against your professional license is undoubtedly a challenging and stressful experience, but how you handle the situation can make all the difference. Promptly responding to the complaint, seeking experienced legal guidance, and maintaining discretion are essential steps to protect your license and career. By avoiding unnecessary discussions, steering clear of unprofessional behavior, and focusing on building a solid defense with your attorney, you can address the complaint effectively and work toward the best possible resolution. Staying proactive and composed throughout the process is key to safeguarding your professional future.

Team Bertolino Welcomes Our New Marketing Specialist!

We are thrilled to share some exciting news with you! As part of our continued commitment to excellence and innovation, Bertolino Law Firm is delighted to welcome Dena Lackey as our new Marketing Specialist.

Ms. Lackey brings over 14 years of experience in marketing and a proven track record of driving growth and visibility for businesses. With a keen eye for strategy and creativity, Dena will be working to enhance how we connect with you, share our expertise, and provide value to our clients and community.

In this new role, Dena will focus on improving our communication efforts, including updating our website, creating engaging content, and ensuring our services and resources remain accessible to you.

We are confident she will play a pivotal role in advancing our mission to deliver top-tier legal services while upholding our unwavering commitment to a 100% client-centered approach.

Welcome to the team, Dena!

[Learn more about Dena Lackey](#)

Hallmark Achievements

Texas Education Agency v. HG

Facts: HG received a complaint from TEA, and after denial of an agreed order, the matter was set for trial. The allegations within TEA's petition alleged a variety of violations. The first set of violations alleged that HG was inappropriate with two students. He allegedly asked a female student out for dinner after graduation and attempted to kiss another student while employed with the school district. Further, he made inappropriate comments and jokes during his class lectures which made students feel uncomfortable. Lastly, he had a history of prior reprimands with the school, one of which resulted in a demotion in position, and he misrepresented his exit from the school on a subsequent job application.

Outcome: Once the matter was set for trial, the firm completed discovery and received all the evidence that TEA was preparing to introduce at trial. The firm also spoke to several witnesses for TEA and for HG in order to determine the best defenses and arguments against revocation. After consultation with TEA, the firm was able to have TEA agree to a suspension of HG's license. This avoided revocation, a permanent ban from teaching, and prevented registration on the Texas Do Not Hire Registry.

Texas Department of Insurance v. FA

Facts: FA received a complaint from TDI after her appointment with an agency was terminated for cause. The agency alleged that FA committed fraud. Based on those allegations, a federal credential was suspended, and FA was prevented from using such credential for a period of 3 years.



Outcome: After FA retained the firm, her counsel provided a response to the allegations. The firm argued that the evidence was insufficient to prove fraud. The firm provided evidence that FA had no intent to commit fraud and that the agency's customers lied to the agency about their understanding of their insurance in order to avoid tax fees. After reviewing the evidence, TDI

dismissed the matter due to a lack of evidence and took no disciplinary action against FA or her licensure.

Texas State Board of Public Accountancy v. CJ

Facts: CJ hired firm after he had been sued on two separate civil matters regarding a prior audit he conducted for a client several years prior. Both cases alleged that CJ committed fraud and misrepresented details in the audit, which caused damages to the plaintiffs. Both cases settled prior to trial, and one required CJ to pay monetary damages to a plaintiff.

Outcome: Both cases were reported to the Board as required by Board rules. The firm argued that although CJ was sued and did agree to pay damages for one of the matters, no determination or finding was made regarding any fraud, misrepresentation, or other misconduct. CJ did not admit to any misconduct in either settlement and therefore, the firm argued that the Board had no jurisdiction to take action. After review by the Board committee, the committee determined that no violation occurred. Both matters were dismissed.

Evaluate Your Compliance Status in 2025



Being Proactive About Compliance Saves You Time, Money and Legal Headaches

by Troy Beaulieu, Esq.

As 2024 ends and we look to new opportunities, journeys and growth in our chosen career field, regulatory compliance should be one of the items on your short list to address in the new year. In a world with constantly changing legal requirements, compliance is a critical area of your practice, business, profession or occupation that needs to be given proper attention. This article will touch on some of the important compliance elements you should consider as you start off 2025 and beyond.

Do I have Proper Records Retention and Destruction Policies in Place That Meet My Regulatory Compliance Obligations?

Most professions and occupations have compliance responsibilities tied to records retention and destruction. Have you looked lately at your practices and whether those align with your regulatory compliance obligations as a license holder? Whether you are a medical professional, accountant, insurance agent, mental health professional, attorney, real estate professional, or hold another regulated license, you likely have specific compliance obligations concerning records. How they are maintained, managed, accessed and provided to clients and how long they must be maintained are common regulatory requirements. In addition, most state agencies have requirements

about how those records are destroyed. If you are not maintaining and managing records properly that can lead to disciplinary action against your license, fines and other consequences that negatively impacts your professional reputation, your business and your livelihood. If you need help assessing your compliance posture, consider hiring a law firm to evaluate your current practices and develop recommendations to avoid the risk of a complaint and a regulatory audit where deficiencies are uncovered. An ounce of proactive effort can make a huge difference.

Do I have Appropriate Staffing Processes, Procedures and Parameters in Place to Guard Against Complaints Concerning Failure to Supervise or Unlicensed Activity?

Many license holders across a variety of industries rely upon various levels of licensed individuals and those different license types require varying levels of supervision. For example, a licensed physician must provide adequate supervision to a physician assistant employed in the medical practice. Likewise, a real estate broker must adequately supervise the real estate agents they sponsor and a licensed professional counselor supervisor must provide adequate guidance, instruction and supervision to the licensed professional counsel associates they are responsible for. In addition to those formalized relationships, many businesses or practices employ people in roles that do not require a license. It's important to make sure those unlicensed team members do not accidentally cross important compliance and regulatory boundaries that could expose you, your practice or your business to allegations of unlicensed activity or practicing in your industry without the proper license. Critical to these important compliance obligations is having appropriate process, procedures and written documentation and training in place at your business or practice so that your employees know what the expectations are for their behavior, work and interactions with clients or patients. You should consider having a lawyer familiar with regulatory compliance assess your current work environment, processes and procedures to have the peace of mind that you are not overlooking these important regulatory compliance aspects. The last thing you want to deal with as you start off the new year is a complaint or a regulatory audit questioning how you operate and how your staff works with clients, customers and the services or products your business provides.

Have I Prepared Compliant Policies to Address Client / Patient Confidentiality, Consent and Privacy Obligations in My Licensed Profession or Occupation?

Another common area that can expose license holders to compliance risks is confidentiality, consent and privacy requirements. Many professions or occupations handle sensitive health information, private financial matters, or confidential legal matters that must be handled with care and consistent with the compliance rules and laws provided for that particular industry, occupation or profession. You want to make sure you have not inadvertently overlooked aspects of this key compliance area that could expose you to a complaint or leave you vulnerable when you state regulator conducts a compliance audit.

Keep an Eye on Regulatory Compliance as You Start 2025

As you start the new year, it's recommended you take an annual assessment of your regulatory compliance risks and profile and make appropriate adjustments. Common areas of compliance risk include: (1) records retention and destruction; (2) proper supervision and policies to avoid unlicensed activity; and, (3) confidentiality, consent and privacy requirements. Consult with a legal professional trained in administrative law who knows what your regulatory obligations are so you can get solid advice and recommendations to reduce your risk profile. With the law constantly changing, you cannot afford to go without addressing this important dimension of your practice, profession or business.



Know Your Regulator: The Podcast that Inspires You to Engage

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.

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

Get Your Free eBook!

Professional Recognition Days: December Calendar

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

December Professionals Day

December 7th: International Civil Aviation Day

December 7th: National Pearl Harbor Day of Remembrance

December 9th: International Day of Veterinary Medicine



Learn how you can proactively protect your license by engaging with your regulator and staying informed about regulatory developments in your industry.

With Bertolino LLP's insights regulatory insight, suggestions, and information, we can help you minimize your compliance risk profile and stay ahead of your competition by engaging with your regulator.



Side Bar ...

A Merry Christmas Message from Bertolino Law Firm

As the holiday season unfolds, we at Bertolino Law Firm are grateful for the opportunity to celebrate together and give back to our community.

This December, our annual Christmas celebration included a joyful winery tour, where we toasted the successes of 2024 and embraced the holiday spirit as a team.

In the spirit of giving, we proudly supported two meaningful programs this holiday season. Through the Salvation Army's Children's Angel Tree program at the Eastside Paddle Club, we helped fulfill holiday gift requests to ensure children woke up to a joyful Christmas morning. Additionally, we sponsored a family through the Austin Safety Alliance, providing gifts from their wish list to bring comfort and happiness to their season. Giving back to our community is at the heart of what we do, and these opportunities allowed us to spread cheer and make a meaningful impact.

We extend our heartfelt wishes for a joyous Christmas and a prosperous New Year to our clients and community. Your trust and support inspire us daily, and we look forward to continuing to serve you excellently in 2025. Here's a season filled with warmth, giving, and the joy of shared moments.

Merry Christmas from all of us at Bertolino Law Firm!

Annual Ornament Exchange fun! Troy takes home the team's most coveted ornament this year!

London spreading cheer delivering wish list gifts to our Austin SAFE Holidays family!

Ugly Sweater Champions 2024! LuJuanna and Troy tied for the "Ugly Cutest" trophy, Lesa snagged the "Ugly Creative" award, and Sheri's sweater earned 1st Place overall as the top winner. Congratulations to all!

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