

The Bertolino Broadcast

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Our Firm

Tony R. Bertolino, Esq.
Managing Partner

Christopher G. Henderson, Esq.
Senior Associate Attorney

Jesus "Jesse" N. Joslin, Esq.
Associate Attorney

John W. Greenway, Esq.
Of Counsel

Yurbin E. Velasquez, Esq.
Of Counsel

Rachel L. Messer, Esq.
Of Counsel

Christopher S. Cummings, Esq.
Of Counsel

Tyler Cota
Paralegal

London de la Teja
Office Administrator

Felina Vasquez
Administrative Assistant

Firm Announcements

BERTOLINO LLP to be Honored at Law Firm 500's Annual Gala

Law Firm 500 is an annual conference at which leaders from the worlds of business and law provide educational sessions and speeches aimed at helping law firm owners grow their business. This year's conference will take place in Las Vegas from October 18-20 and the Keynote Speaker is the formidable Erin Brockovich.

In addition to educational sessions and presentations, Law Firm 500 provides networking opportunities for law firm owners and recognizes the fastest growing law firms in the country at an awards gala and ceremony.

We at BERTOLINO LLP are proud to announce that the firm is being honored at this year's Law Firm 500 Awards Gala! This marks the second year in a row that BERTOLINO LLP will receive the prestigious award. Upward and onward!

Live from the "BLAWG": What do Licensing Boards Do?

Our practice is focused on defending licensed professionals who are facing allegations by a state licensing board that they engaged in professional misconduct or violated rules related to their profession and otherwise helping individuals obtain their professional licenses from state licensing boards.

What is a licensing board and what do they



do, you ask? [Read more](#) at our "BLAWG" to find out!

Board and Agency Updates



State Audit of Texas Education Agency Results in "F" Grade

Usually the one to dole out grades, particularly to school districts, the Texas Education Agency ("TEA") found itself the recipient of a failing "F" grade from the State Auditor's Office ("SAO").

The [SAO](#) is responsible for conducting "audits, reviews, and investigations of any entity receiving state funds, including state agencies" for the Texas legislature.

On September 5th, the SAO released a [report](#) detailing its findings after performing an audit of several major contracts entered into by TEA.

In its report, the SAO found that TEA mishandled the procurement of two major contracts, including failing to follow the required steps before offering a \$4.4 million no-bid contract to special education technology company, [SPEDx](#) and when hiring a web-design company to handle TEA's website.

Additionally, the report stated that TEA also failed to discover that the person making the ultimate decision on the SPEDx contract, [Penny Schwinn](#), had a preexisting professional relationship with a SPEDx subcontractor.

After the SAO released the report, TEA Commissioner Mike Morath acknowledged the SAO's work and recommendations and stated that the agency had already conducted a "top-to-bottom review of contract processes[,] which "resulted in a massive set of process changes, personnel actions, and steps to address proper documentation."



Team Bertolino Highlights

Mr. Bertolino, along with Office Manager, London de la Teja, and Paralegal, Tyler Cota, traveled to Miami, Florida in September to attend a conference covering issues related to client relations, client consultations, and other aspects of law firm management.

But it wasn't all work and no play. Tony, London, and Tyler also found time to enjoy themselves: they dined at a famed Cuban restaurant, walked the historic streets of Coconut Grove, and even went parasailing on the beach!





A Word from the Managing Partner

I had an amazing time at the 2018 Komen Austin Race for the Cure, which was held at 7:30 A.M. on Sunday, September 30, 2018 along Congress Avenue.

At race time, this Komen event had raised over \$260,000 for breast cancer research, awareness, and treatment. I was so moved by the many cancer survivors—I mean warriors—who were participating in this run.

Please consider donating to this worthy cause at www.komenaustin.org





Hallmark Achievements - September 2018

Texas State Board of Pharmacy v. E.B.

Under substantial stress and pressure from work, our client, E.B., illegally issued prescriptions to themselves. E.B. responded to their conscience and self-reported to the Board. The Board notified the police, and criminal prosecution began. E.B. enrolled in the Peer Recovery Network and went to drug treatment for ninety days. After completing treatment, E.B. secured a very favorable plea deal in their criminal case.

After defending E.B. at an informal conference, the Board proposed that E.B. be placed under probated suspension, to settle the matter. E.B. faced revocation at the outset of the case, so they were elated to resolve the case with a settlement that permits them to continue working.

Texas Medical Board v. F.G.

The Texas Medical Board ("TMB") assumed jurisdiction over Medical Radiologic Technologists ("MRTs") on September 1, 2017. Previously, MRTs were under the jurisdiction of the Texas Department of State Health Services ("DSHS"). As part of that transfer of jurisdiction, the TMB ran a dragnet background search on all licensed MRTs and set informal settlement conferences ("ISCs") for those who had criminal history, even if the same was disclosed to DSHS.

Decades ago, F.G. entered into a plea agreement in an out-of-state criminal matter. Year's later, F.G. retained an attorney to pursue expunction, but the attorney's malpractice led to a denial of the expunction.

TMB alleged the plea agreement indicated that F.G. should not be trusted with an MRT license. We wrote to TMB on behalf of F.G. to explain the facts and circumstances underlying their case and attended the ISC with F.G. to present additional information and evidence. At the ISC, TMB dismissed the case. F.G. could not be happier.

Texas Medical Board v. P.A.

Our client, P.A., was called before the TMB for an ISC due to two misdemeanor offenses on their record, which had been properly disclosed to DSHS. P.A. endured a tough time in their marriage, which resulted in charges related to domestic disputes. TMB alleged that the criminal offenses might indicate that he should not be trusted with a license.

We submitted a written rebuttal to the allegations, explaining the story in full detail, and describing P.A.'s rehabilitation since those incidents. P.A. has ceased drinking, repaired his marriage (his spouse attended the ISC on their behalf), become intensely engaged with their local church, and done extremely valuable work as an MRT. P.A. did very well under questioning from TMB, and we conveyed to the panel members the significance of the changes P.A. has made in his life since the incidents. TMB dismissed the case.

Texas State Board of Dental Examiners v. A.G.

Our Client, A.G., was alleged to have violated their duty of fair dealing with respect to a geriatric patient with dementia ("Patient"). A.G. was sent to the nursing home where the Patient lived, conducted a full mouth assessment and x-rays, free of charge. A.G. observed severe periodontal disease, two irreparably broken teeth, and a pronounced cross bite which was causing wear on many teeth, among other issues.

A.G. developed a treatment plan and proposed procedures to resolve all the issues A.G. observed, as was their legal duty. The treatment plan was intended, per company policy, to be presented to the Patient's responsible party, so the Patient's responsible party could make informed decisions about which procedures to authorize, and which to reject. The Patient's responsible party did not bother to have that conversation and sought a second opinion from the Patient's long-time family dentist. The family dentist was asked by the Board to submit a statement of his opinion of A.G.'s treatment plan.

The family dentist claimed, in a sworn statement to the Board, that none of the procedures proposed by A.G. were warranted. Although A.G. had never met the Patient's family dentist before, A.G.'s treatment plan was essentially an indictment of the substandard care the family dentist has provided to the Patient for thirty years. The family dentist's statement that A.G.'s treatment plan was predatory was the only argument they could make to defend against the indictment of their own work made by the treatment plan.

By written submission and zealous defense at an ISC, the firm secured a dismissal for

A.G. A.G. has returned to work with the stress of this matter lifted off their shoulders, and we are very happy for them.

Texas Real Estate Commission v. M.R.

Our client, M.R., a real estate broker and corporate officer for a corporate brokerage, faced prosecution by the Texas Real Estate Commission, due to their failure to secure a license for the brokerage. M.R. had conducted real estate transactions through the corporate brokerage for more than four years – a total of nearly 200 transactions. As TREC rules authorize TREC to impose a \$5,000 penalty for each transaction, M.R. could have been required to pay nearly \$1,000,000 in penalties. However, because they were fully cooperative with TREC, and we relayed evidence that the violation was a good faith mistake, TREC imposed only a \$2,500 penalty and permitted M.R. to obtain a license for the corporate brokerage. M.R. was not even made to appear for a hearing before their matter was resolved.

IMO A.S.

Our client, A.S., M.D., was terminated from their fellowship because they left an intern to watch a patient, so A.S. could attend to a personal matter. A.S. was available by phone and responded to a question posed by the intern via text message. However, under the circumstances, A.S.'s Fellowship Director considered leaving the premises improper. Consequently, A.S. lost her VISA status because of their termination from the fellowship and thus had to move out of state. A.S.'s spouse was duty bound to stay in Texas for work, so the two had to live very far from one another for more than a year.

The Fellowship Director submitted documentation to TMB, claiming that A.S. had competency and integrity issues. By providing TMB a written explanation of exactly what happened and A.S.'s rehabilitation from the incident, we convinced TMB that A.S. had the requisite character and fitness to be trusted with a license. TMB granted their application days after we submitted the written explanation. A.S. has since begun their fellowship and is well on her way to full medical licensure.



Upcoming Dates of Interest

- Oct. 5 - World Teachers' Day
- Oct. 6 - Nat'l Physician Assistants Day
- Oct. 10 - Nat'l Emergency Nurses Day
- Oct. 16 - Nat'l Bosses Day
- Oct. 27 - U.S. Navy Day
- Oct. 31 - Halloween

Contact Us

Visit Our Website

BERTOLINO LLP | (512) 476-5757 | 823 Congress Ave. Suite 704, Austin, TX 78701 |
<http://www.bertolinolaw.com> | info@bertolinolaw.com