

On The Record . . .

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How the Texas Department of Licensing and Regulation Decides the Sanctions to Impose in an Occupational License Disciplinary Case

by Tony Bertolino, Esq.

You will or have likely put in a substantial amount of time and effort to earn your occupational or professional license. So, suppose the Texas Department of Licensing and Regulation (TDLR) receives a complaint against you. In that case, losing your license or ability to work and support you and your family, even temporarily, can be devastating.



Enforcement Plans and Sanctions

TDLR licenses and regulates a wide variety of occupations in Texas. As part of its regulatory duties, TDLR also receives complaints about licensed individuals in the occupations it regulates, investigates those complaints, and takes enforcement action for noncompliance with the rules and laws that govern that occupation. For each occupation, TDLR has developed a comprehensive enforcement plan.

The purpose of the enforcement plan is to provide a structure for consistent decision-making in enforcement cases within each occupation. More specifically, Texas Occupations Code Section 51.302(c) states that “[t]he commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license

holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.”

However, the sanctions outlined in each enforcement plan are not binding upon TDLR when determining the appropriate sanctions in disciplinary. The only legal limits to TDLR’s authority come from Chapter 51 of the Texas Occupations Code and any statutes governing a particular occupation. The TDLR’s prosecuting attorneys generally will seek sanctions as provided within each occupational enforcement plan. Seeking a sanction outside the provided range requires a finding of exceptional circumstances and the express approval of the TDLR Director of Enforcement.

Likewise, the plan is not an exhaustive list of all potential violations. Therefore, TDLR can pursue violations of rules or laws not provided for in the enforcement plan as long as they are enforceable violations.

Content of the Enforcement Plans

Persons/Entities Regulated

Each plan contains a section for each type of individual and/or entity that TDLR regulates. While some rules and laws apply to all regulated individuals and/or entities, different rules and/or laws may apply only to some regulated individuals and/or entities.

Individual Rule/Law Violations and Citations

Each enforcement plan lists and briefly describes violations regulated individuals and/or entities may commit, along with the citation to the relevant rule and/or statute. Typically, the violations are arranged into three to five classes, with an increasing level of severity.

Administrative Penalties and Sanctions

Each plan also sets forth specific ranges of penalties and sanctions for the different violations of the laws and rules according to class. Furthermore, within each class, the plan designates the recommended penalties and sanctions for first, second, and third or subsequent violations. A previous complaint typically constitutes a violation only if formal disciplinary action by TDLR led to an Agreed Order, a Final Order, or a Reprimand.

TDLR also assesses penalties and sanctions on a “per violation” basis. In other words, if an individual commits three violations, they would receive a maximum of three times the prescribed administrative penalty at the top end of the range.

Some violations call for a penalty and/or sanction, whereas others call for both. These connecting terms are to be interpreted with their traditional meanings: "and/or" means either a penalty, a sanction, or both. On the other hand, "and" means that a penalty and a sanction are generally appropriate.

Criteria TDLR Considers in Assessing Administrative Penalties and Sanctions

TDLR also considers several general factors in determining the amount of an administrative penalty or the severity of a sanction to impose in a particular situation. These factors include the following:

- The severity of serious of the violation;
- Whether the violation was willful or intentional;
- Whether the individual or entity acted in good faith to avoid or mitigate the violation or to correct the violation after it occurred;
- Whether the individual or entity has engaged in similar violations in the past;

- The level of penalty or sanction necessary to deter future violations; and,
- Any other matter that justice may require.

Conclusion

The Texas Department of Licensing and Regulation (TDLR) implements a structured and comprehensive approach to enforce compliance within regulated occupations. TDLR ensures consistent and fair decision-making when addressing complaints and disciplinary cases by developing detailed enforcement plans. These plans provide clear guidelines for penalties and sanctions, which helps license holders understand the potential consequences of violations.

However, TDLR retains the discretion to adjust sanctions based on specific circumstances, emphasizing the importance of context in each case. Individuals facing allegations can benefit significantly from the expertise of an occupational license defense attorney to navigate this complex process and mitigate the impact on their professional lives. The TDLR's methodical yet flexible approach underscores its commitment to maintaining high standards while ensuring fair treatment of licensed professionals.

Hallmark Achievements

Texas Department of Licensing and Regulation v. PS

Facts: PS hired the firm after his application for licensure was denied by TDLR due to his current criminal probation. PS received probation several years ago after he was convicted of aggravated assault. The facts of the assault on record were that he shot the victim in the head with a firearm and the victim was obviously seriously injured. TDLR denied the application based on the ongoing probation and seriousness of the conviction.

Outcome: The firm submitted a response to the denial and provided evidence detailing the facts of the incident which led to the conviction. Evidence was provided to show that PS was only 18 years old at the time, still in high school



and that the victim of the shooting was actually PS's friend. The incident was an accident that occurred in the early hours of the morning on the way to school due to the mishandling of a pellet gun from the night prior. A mishandling that PS was not present for. Further evidence in mitigation was provided regarding PS's lack of any prior criminal activity, his current compliance with probation and his supervision and support by his current employer who championed him into applying for licensure in the first place.

After review of the evidence TDLR retracted their denial and approved the application without restrictions or conditions.

Texas Medical Board v. CC



Facts: CC was arrested and charged with possession prior to his graduation from physician assistant school. After his arrest he still needed to apply for licensure with TMB.

Outcome: CC hired the firm to help submit his application and disclose his arrest. The firm submitted CC's arrest records along with a supplemental response regarding the arrest. The firm provided argument as to why the arrest occurred, rationale for why it will be dismissed and other mitigative evidence surrounding CC's criminal-free background.

After review of the evidence and application TMB issued CC a license without any restrictions.

Texas Department of Insurance v. GI



Facts: GI hired the firm after receiving a complaint from TDI referred by her former employer. The former employer conducted an investigation into GI's and her supervisor's activities while working as sale agents and processing incoming customer applications. It was discovered that GI was including a discount on several customer applications that reduced their quotes. Thereby signing on with their company. However, the discount was false and therefore fraudulent. IG admitted to the conduct and advised that her supervisor directed her to make the changes on the customer applications.

Outcome: GI hired firm prior to receiving a complaint from TDI. However, once TDI submitted a complaint notice to the firm, the firm responded to the allegations. The firm provided argument and evidence that GI was directed by her supervisor to include the changes to the application. Based on the change itself, the firm argued that GI had reason to believe the change was valid and not false. The firm also provided a witness statement that corroborated GI's admissions and agreed with her statements that the change did not seem, on its face, to be false. The firm also provided mitigative evidence regarding GI's admissions to her former employer and acknowledged that she was forthcoming and honest from the very beginning of the investigation. Again proving that she did not know her actions were wrong.

After reviewing the firm's response and evidence provided, TDI dismissed the case with a warning and no public disciplinary action.

How May My State-Issued License Be Impacted and How Can Bertolino LLP Help?

by Troy Beaulieu, Esq.



Texas professional and occupational license holders' most common legal issue involves defending against regulatory complaints alleging misconduct. However, this is just one type of legal matter that revolves around and impacts your state-issued license needed for your chosen career. There are many other common legal issues that frequently require the knowledge and skill of a license defense and administrative law attorney. Before you hire an attorney, consider carefully these additional matters which require qualified and knowledgeable legal counsel with regulatory and industry-oriented knowledge to protect you.

- **Private certification entity complaints:** Many people who receive a complaint from their government regulator also face the same accusations before a private, professional or occupational group which provide important credentials key to industry success. Loss of or negative impact on these important, but non-government issued credentials can be equally devastating to one's career and livelihood. Having a skilled and knowledgeable attorney, familiar with the industry you operate in, can be a decisive advantage to defeating false claims levied against your good name and reputation.
- **Regulatory Application Matters:** Application-related matters can also have a critical impact on your license and legal liabilities. Sometimes you want to elevate the license level you hold so you apply for a higher-level credential. Other times, you are supervising / sponsoring / training employees who are applying for a license. Other times you are just renewing your license and questions come up as part of the renewal process about your background, criminal history or other requirements. Regardless of the situation, regulatory application matters can create legal problems before your regulator for you or your employee or your business. Handling these situations on your own creates greater risk to your license because you are not trained in the law and do not have the experience of regularly dealing with your regulatory agency. These situations require expert legal knowledge, skill and attention to respond to your regulator properly. It requires a close eye on protecting your legal interests, so you achieve positive results and do not create more problems.
- **Civil Lawsuits Related to Your License:** You may also find yourself dragged into a civil lawsuit due to professional or occupational license-related activities. Sometimes that civil lawsuit is initiated by a state regulator with the assistance of the Texas Attorney General who can seek recovery of civil penalties, fines, a court-issued injunction, recovery of attorney's fees or other remedies. Other times private parties (usually former patients, clients or customers) file a civil suit for malpractice or misconduct, claiming violations of civil laws and asking for

compensatory or punitive damages and recovery of attorney's fees. In either situation you find yourself in civil court facing accusations of misconduct in your capacity as a licensed individual or business which impact you directly, but also can have ramifications for your license before your regulator. You need knowledgeable legal counsel who understands your licensed industry and obligations so they can aggressively fight against these false accusations.

- **Criminal Investigations or Charges Connected to Your License:** Occasionally criminal accusations and law enforcement investigations arise from activity in your licensed professional or occupational role. You need a lawyer knowledgeable about your regulatory obligations as a license holder and its connection to criminal law. Many state regulatory agencies have working relationships with law enforcement or have their own certified peace officers on staff. Working with an attorney who knows the crucial space between regulatory and criminal matters is critical to reducing the risk that regulatory matters get taken up by law enforcement for criminal investigation or prosecution. You want attorneys who can fight aggressively when this happens so they can demonstrate that no criminal violations of the law have taken place.
- **Compliance Consulting and Legal Opinion Services:** Staying proactive and addressing legal issues preemptively is the key to reducing legal and compliance risks so that you can stay focused on running your business an engaging in the profession or occupation you have chosen as a career. Investing time and resources now helps you to stay ahead of competitors by knowing the legal parameters in your evolving industry. It also reduces the chances of facing a complaint because your operations have been assessed by a qualified regulatory attorney with an eye for compliance matters. Spending time to update your practices, records, forms and operating processes now, means you reduce your chances of responding to costly complaints, audits and compliance inquiries filed by regulators because something was missed or handled improperly.

Overall, there are a variety of legal matters which are connected to your regulatory license. Because these legal problems are centered around regulatory laws, your regulated industry, and your legal obligations, picking the right attorney is critical to increase your chances of a positive outcome. You must hire the right lawyers who have expertise, knowledge, skill and experience as license defense and administrative law attorneys. Bertolino LLP has that background and is committed to fighting aggressively for you, your license, your reputation and your livelihood whatever the circumstances.



Professional Recognition Days: June Calendar

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

to Your Regulated Industry

Your industry is constantly changing, and you need to be in the know to stay ahead of your competition. To help license holders meet this challenge, Bertolino LLP is excited to announce it has launched a free, educational update to keep license holders informed of the ever-changing laws, rules, regulations and legal interpretations that impact their livelihood and businesses.

[Subscribe](#) for this free, periodic, informational service to stay current on what's happening in the regulatory world impacting your industry.

June 13:

- National Nurse Assistant's Day

June 14:

- Happy Birthday, US ARMY!

June 22:

- National HVAC Tech's Day

June 26:

- National Beautician's Day



Side Bar ...

Know Your Regulator: Podcast that Inspires You to Engage is here!

Watch our first podcast with guest Tony Bertolino, Founder and Managing Partner of BERTOLINO LLP, as he discusses administrative law and professional license defense.

Know Your Regulator: Podcast that Inspires You to Engage is a free, educational podcast to keep professional license holders informed of the ever changing laws, rules, regulations, and legal interpretations that impact their livelihood and businesses.



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