

On The Record . . .

Official Newsletter of BERTOLINO LLP

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What Licenses and Certifications does the Texas Medical Board Issue and Regulate?

by Tony Bertolino, Esq.

The Texas Medical Board (TMB) licenses and regulates physicians and other medical professionals. As part of its regulatory duties, the TMB receives complaints about these medical professionals and investigates those complaints against them. The TMB also brings formal disciplinary action against those professionals if there is evidence that they violated the rules or laws that govern their professions.



Licenses and Certifications Issued by the TMB

Aside from medical licenses for physicians, the TMB also licenses and regulates other medical professionals. These professionals include the following:

- Medical Radiological Technologists (General and Limited)
- Non-Certified Radiologist Technicians
- Surgical Assistants
- Medical Physicists
- Perfusionists
- Respiratory Care Practitioners
- Acupuncturists
- Acudetox Specialists

Just as the TMB regulates physicians, it regulates these other medical professionals for compliance with the

laws and rules that govern their professions. As a result, the TMB receives and processes all complaints within 45 days of their receipt. The agency will then determine whether disciplinary action is warranted and initiate formal action as needed.

Disciplinary Authority of the TMB

Under Texas law, the TMB has the legal authority to take disciplinary action against any license holder under its jurisdiction who has violated a law or rule that governs their profession. Potential sanctions that may result from disciplinary action can include suspending or revoking a license, placing a person whose license is suspended on probation, or reprimanding a license holder. Furthermore, for certain types of actions, the following sanctions are permissible:

- Denial of a license or certification application;
- Administration of a public reprimand;
- Placement of limitations or restrictions on the person's license or certificate, including:
 - Limitations on the practice of the person to or the exclusion of one or more specified activities; or
 - Stipulations requiring periodic TMB review;
 - Revocation of the person's license or certification;
 - Mandatory submission to the care, counseling, or treatment of a health care practitioner designated by the TMB as a condition for:
 - the issuance or renewal of a license or certificate; or
 - continued practice under a license or certificate;
 - Required participation in an educational or counseling program prescribed by the TMB;
 - Supervised practice under the direction of a health care practitioner designated by the TMB for a specified period;
- Mandatory performance of public

service considered appropriate by the TMB; or

- Assessment of an administrative penalty against the person.

Nonetheless, if a license holder's actions are so severe that the TMB determines that their continued practice would pose a continuing threat to the public welfare, the TMB shall revoke, suspend, or deny the individual's license.

Disciplinary Proceedings Before the TMB

The TMB's disciplinary proceedings operate in much the same manner for all medical professionals. However, separate sets of rules and laws govern each type of medical professional. Therefore, whether a medical professional has committed a violation that justifies the commencement of formal disciplinary proceedings depends on whether the professional has violated a rule or law that applies to their profession.

When the TMB receives a complaint, an investigator will conduct a preliminary investigation to ensure that the complaint concerns a medical professional that the TMB regulates and whether there is evidence to support a violation of a relevant rule or law. During the preliminary investigation, TMB staff may contact the complainant and the medical professional to obtain additional information.

If there is insufficient evidence that a violation has occurred, TMB will not open a formal investigation. If there is sufficient evidence of a violation, TMB will open a formal investigation into the matter. Based on the results of that investigation, the case may be referred for dismissal, for a non-disciplinary action such as a remedial plan, or for disciplinary proceedings.

If the TMB chooses to pursue disciplinary proceedings, it typically will set up an Informal Settlement Conference or Show Compliance proceeding with the license holder to try to resolve the complaint

informally. TMB staff and the license holder each present evidence to a panel, which consists of two representatives of the appropriate Board, such as the Medical, Physician Assistant, or Acupuncture Board. The license holder's objective is to show compliance with all laws and rules that govern their profession. Ultimately, the TMB will determine whether to recommend dismissal of the case or pursue some sanction for a violation that has occurred. In the case of some minor violations, the TMB may offer a remedial plan, but for most violations, the TMB will offer an agreed order. This agreement sets forth the violation(s) that the license holder has committed, as well as the sanctions that the TMB is proposing for those violations. The license holder either can accept the agreed order or proceed to a contested disciplinary hearing.

If the license holder rejects the agreed order, the TMB refers the case to the State Office of Administrative Hearings (SOAH) for a contested administrative hearing. An administrative law judge (ALJ) assigned to the case will conduct an administrative hearing and, following the hearing, issue a proposal for decision (PFD) to the TMB. Ultimately, the TMB will determine whether to accept, modify, or reject the ALJ's proposed decision.

Conclusion

The Texas Medical Board (TMB) plays a critical role in ensuring that physicians and other medical professionals maintain the highest standards of professional conduct and compliance with applicable laws. Through its licensing, complaint investigation, and disciplinary processes, the TMB safeguards public health and welfare by addressing violations and imposing sanctions when necessary. By adhering to rigorous procedures and offering opportunities for professionals to demonstrate compliance, the TMB strikes a balance between accountability and fairness in regulating medical practitioners. Whether through remedial plans, agreed orders, or formal

disciplinary hearings, the TMB remains committed to upholding the integrity of the medical professions it governs.

Celebrating Excellence: Honoring Our Paralegal Professionals on National Paralegal Day

This month, we proudly celebrate National Paralegal Day by recognizing the dedication, expertise, and invaluable contributions of our paralegal team. Their unwavering support, meticulous attention to detail, and commitment to client success form the backbone of our law firm. Join us in expressing our gratitude to these outstanding professionals who play a vital role in our legal achievements every day!



MELISSA "MJ" HOOPER

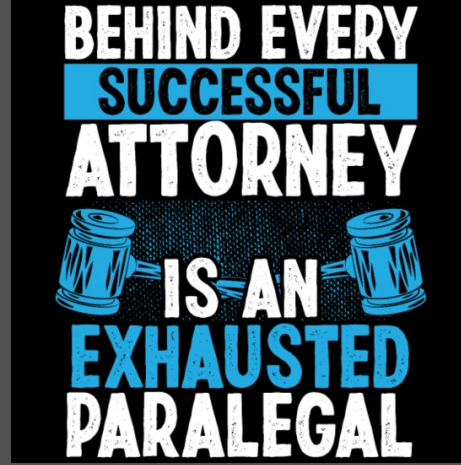
Congratulations to Paralegal Team Lead Melissa Hooper who is celebrating her two-year anniversary with Bertolino LLP. Melissa joined the firm in October 2022 and immediately hit the ground running by learning her role and then some. She is always hungry to learn more and offers to help others with projects and additional work. She has been a dynamic addition to the Bertolino team who has been instrumental in helping us ramp up the firm's Know Your Regulator Project that features regularized bulletins and podcasts featuring helpful insights about the regulatory world. Recently promoted to a team lead role, Melissa continues to be a huge asset to the Bertolino LLP team. We are



LESA SURBER

Happy October birthday to our newest team member, Paralegal Lesa Surber. Lesa joined the Bertolino LLP team in April 2024 and has helped take up the slack with the firm's legal support needs. We're excited to celebrate Lesa's birthday and appreciate having her as valued part of the Bertolino LLP team. Enjoy your special day, Lesa!

so happy to celebrate her two-year anniversary and express how thankful we are to have her as a key part of this team!



Hallmark Achievements

Texas Department of Insurance v. ER



Facts: ER hired Bertolino LLP to defend him against a complaint filed with the Texas Department of Insurance. An insurance company made groundless allegations that ER had committed fraud in connection with providing information and documentation to the insurance company connected to an internal program. The baseless complaint threatened ER's professional reputation and his insurance agency, exposing him to potential discipline from the Department and harm his livelihood and his business.

Outcome: Bertolino LLP met with the client and evaluated the client's case. We gathered the documentation and witness information necessary to fight back against the meritless complaint and show the Department why the allegations lacked any basis and needed to be dismissed immediately. We developed a well-written response to the Department's initial and follow-on questions to show the investigator how these claims lacked any merit. We leveraged important information and documentation to support our argument. We communicated repeatedly with the investigator to advocate aggressively on the client's behalf to demonstrate the complaint was baseless and needed to be dismissed. The Department evaluated the responses we provided, and the arguments made and ultimately agreed the complaint had to be dismissed completely. The Department took no disciplinary action against our client's license as an insurance agent. This allowed him to return his focus to operating his insurance agency, helping his clients, and keeping his professional reputation, his business and his livelihood intact.

Texas Board of Nursing v. JA



Facts: Our client, JA hired us to assist in protecting her Texas nursing license. JA was offered disciplinary action prior to engaging our services.

Outcome: The firm analyzed the relevant documentation and enabling Statute and Board rules. After presenting the client's position based on the facts and law, the Board vacated the disciplinary action and issued a

dismissal. Client can now pursue her career passion in nursing.

Texas Department of Licensing and Regulation v. DE

Facts: Our client, DE hired us to assist in defending his electrician license. DE was accused of overcharging for inaccurate electrical work.



Outcome: The firm analyzed the relevant documentation and enabling Statute and Department rules. After presenting the client's position based on the facts and law, the Department issued a dismissal due to insufficient evidence. Client can now continue doing what he loves.

What Role Does Your Regulatory / Licensing Agency Play and How Does It Impact Your License?

by Troy Beaulieu, Esq.



In today's legal environment, it seems like you cannot hardly do anything without obtaining a license, permit, registration or certificate from the government that authorizes you to engage in a business, trade, occupation or profession. People work hard to obtain the credentials they need to operate in their chosen field, profession, occupation or industry and it can be expensive, time consuming and require a great deal of education and training to obtain the required credentials. Once people acquire those credentials, most forget about their regulator until the next time they need to renew the license or when they receive a complaint accusing them of misconduct. But what role does your regulatory licensing agency exactly play in your career and the operation of your business? Taking a more proactive approach to understanding your regulator's role and knowing how that intersects with your career, business or profession can make a huge difference in keeping you out of legal trouble, extensive legal expenses and threats to your career, reputation, business and livelihood. This article will provide you with some basic information about the role regulatory / licensing agencies play and what you need to know in general about the agency and its connection to your activity as a licensed person. We will discuss four main points that touch on government regulation and how it interacts with your chosen career so you can be informed and reduce your risk of legal trouble.

Regulatory / Licensing Agencies Are Created to Protect the Public and not License Holders

The first important thing to recognize is the whole reason these regulatory agencies exist. They are created to protect consumers and the public and not to protect you as a license holder. When laws are passed authorizing creation of a regulatory / licensing agency it's based on the public policy notion that your industry, profession, occupation or career poses some risk or danger to the consuming public if things are not done correctly, ethically and in accordance with recognized standards. As a result, the legislature passes laws creating the

regulatory agency and charging it with the duty to protect the public through its regulatory function. This regulatory duty is achieved through several different mechanisms.

Regulatory / Licensing Agencies Protect the Public by Requiring Licensure Before You Can Engage in Regulated Activity

The first way the government protects the public from potential misconduct by a licensed professional, regulated occupation or regulated industry is by requiring someone who wants to engage in the regulated activity to obtain a license, certificate, permit or registration before they are allowed to engage in the prescribed activity. For example, if you want to treat patients as a physician, you must obtain a license as a physician from the Texas Medical Board. Without that license if you practice medicine you are engaging in the unlawful and illegal practice of medicine, which is a violation of the law, a crime and the government will pursue you for that unlicensed activity. By requiring a license, permit, registration or certification, the agency sets minimum standards for things like education, training or experience that the applicant must satisfy before they are allowed to obtain the credential and practice their chosen career. This helps ensure that anyone practicing in a particular regulated field has achieved certain minimum standards of training, education, knowledge and skill, which helps protect the public from harm.

Government Regulatory Agencies Set Policy and Law Within the Boundaries Set by the Legislature to Protect the Public

Another way that government regulators protect the public is by making policy and law. By setting minimum standards, expectations, requirements and obligations, the regulator helps define what minimum expectations consumers of people's services can expect them to provide. This also provides a mechanism for holding people accountable when they fail to meet these minimum standards, which we will discuss below. Regulators create these requirements and standards this through their rulemaking function, which is the authority to create rules and policies within the boundaries granted by the Texas Legislature. For example, the Texas Behavioral Health Executive Council regulates licensed professional counselors and has developed rules that outline the proper practices when counseling a patient. Those rules set proper boundaries so that counselors do not have inappropriate or dual relationships with clients and maintain professional, ethical standards when providing counseling services. The rules regulatory agencies create have the full force and effect of law, so they can be enforced. If violated, a license holder may face consequences to their license. Monetary penalties or other legal action, which will discuss in the next section.

Licensing Agencies Take Complaints and Pursue Discipline to Protect the Public and Remediate License Holders Who Fall Short of Minimum Standards

Government regulatory agencies also accept complaints filed by the public. The regulator evaluates those complaints to determine whether the agency needs to pursue disciplinary action against a license holder who has violated the law when practicing their profession, occupation or credentialed activity. Most state agencies have an enforcement function, employ investigators and then rely on agency attorneys to pursue disciplinary action against license holders whom an investigation has revealed has committed

some sort of misconduct. This may take the form of ethical or regulatory violations of rules issued by the agency or laws passed by the legislature. The consequences for such misconduct can range from a minor reprimand or small administrative penalty all the way up to suspension of a license for a period or complete revocation of the license the agency previously granted a person. Sometimes the goal is to punish unethical or intentional misconduct and other times the goal is to provide remedial education and additional training to license holders who need to improve their performance, so they meet minimum standards. Both approaches help protect the public from harm.

Government Regulatory Agencies are Designed to Protect the Public and Use a Variety of Mechanisms to Achieve This Overarching Goal

The overall mission of regulatory agencies is to protect the consuming public who rely upon the services provided by the regulated industry, profession, occupation or career. It is not their job to protect license holders or the industry. Government regulators achieve their public protection mission through several different methods. This includes requiring certain education, training, skill, experience and examinations to obtain a license prior to engaging in the regulated conduct. Regulators also protect the public by setting industry requirements through written rules and policies. Regulators also protect the public from harm by enforcing the legal requirements they have created, or the legislature has instituted through a complaint, investigation and disciplinary process that can result in administrative penalties, reprimands, remedial education or suspension or revocation of a license holder's credentials with the regulatory agency. This serves both as punitive / deterrent purpose and a remedial purpose. Both of these help protect the public from future harm by substandard or unethical license holders who need to improve their conduct to meet minimum standards.



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.

Professional Recognition Days: October Calendar

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

October 1st: American Pharmacists Month; National Chiropractic Month

October 2nd: National Custodian Day

October 5th: World Teachers Day

October 7th: World Architecture Day

October 9th: Emergency Nurses Day

October 11th: Vet Nurse Day

October 13th: United States Navy

Take advantage of our free educational resources by visiting **Know Your Regulator**.

Know Your Regulator: The Podcast that Inspires You to Engage



Birthday ... Hooyah!

October 15th: National Esthetician Day; Pharmacy Technician Day

October 20th: National Veterinary Technician Week

October 21st: Pharmacy Week

October 23rd: Medical Assistants Day; National Paralegal Day

October 28th: National First Responders Day



Side Bar ...



Did you know that Bertolino LLP provides free trade group presentations? If you are a license holder in healthcare, real estate, insurance, accounting, education, or another industry and want to learn more about topics that impact people licensed and regulated by the government, BERTOLINO LLP can provide your group with free legal education. **Contact us** to speak with a team member about this free opportunity to get educated on the regulatory world that impacts your industry and license.

[Learn more about our free presentations!](#)

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