

# On The Record . . .

Official Newsletter of BERTOLINO LLP

November 2024



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Tony R. Bertolino, Esq.  
*Managing Partner*

Sheri L. Middlemas  
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Troy Beaulieu, Esq.  
*Director of Legal Services*

LaJuana Acklin, Esq.  
*Senior Associate Attorney*

Kerry Bloodsaw, Esq.  
*Associate Attorney*

London de la Teja  
*Accounts Receivable Manager*

Melissa Hooper  
*Team Lead, Paralegal [Certificated]*

Lesa Surber  
*Paralegal [Certificated]*

Cimone Murphree  
*Project Liaison*

Jasen Dalus  
*Client Success Liaison*

## What Happens if I Fail to Respond to a Professional Disciplinary Complaint Filed Against Me?

by Tony Bertolino, Esq.

Navigating the rules and laws related to your profession can be complex, especially when you have received notice of a complaint against your license.



Failing to respond to a licensing complaint can be highly detrimental to the outcome of your disciplinary proceedings. As a result, formulating a timely, informed, and effective response to the complaint is critical.

### Disciplinary Proceedings for Failure to Respond or Cooperate

Most licensing boards or agencies require that professionals respond to notices of complaints within a certain timeframe. This timeframe is often as little as 30 days from the date of the notice or the date that the professional receives it. Failure to meet this deadline can have various implications.

One potential consequence of failing to respond to a disciplinary complaint is additional disciplinary charges. Under the rules and laws that govern many professions, failing to cooperate with a licensing board or respond to a complaint can be an independent basis for disciplinary action. As a result, you could face disciplinary action and sanctions based on your failure to respond to the

original complaint in addition to any disciplinary action and sanctions based on the allegations that led to the original complaint. These circumstances could cause you to face even greater sanctions against your license than you originally faced.

For example, if the Texas Medical Board (TMB) requests a licensee to produce medical records in the course of a disciplinary investigation, the licensee must do so within a reasonable time. This law defines a reasonable time as no more than 14 calendar days or a shorter time if the urgency of the situation requires it or the possibility exists that records may be lost, destroyed, or stolen.

Similarly, Texas law requires that licensees respond to written TMB requests for information related to disciplinary complaints within 10 days of the day of the request. Failure to comply with either of these laws can result in additional disciplinary charges and sanctions against licensees.

Texas law further states that the Texas Real Estate Commission (TREC) can take disciplinary action, including suspending or revoking a license, if the licensee “fails or refuses to produce on request, within a reasonable time, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder’s possession and relates to a real estate transaction conducted by the license holder.” TREC also may suspend or revoke a real estate license if the licensee fails to provide information within a reasonable time that the agency requests relating to a formal or informal complaint alleging a violation of an applicable rule or law.

Finally, the State Bar of Texas handles complaints about licensed attorneys and Texas law states that “a lawyer shall not: fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas

Rules of Disciplinary Procedure unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so." Therefore, failure to respond to the State Bar is an independent ground for disciplinary action for attorneys.

### **Default Orders**

Failing to respond to a disciplinary complaint also can result in your licensing board or agency entering a default order against you. Under the laws and rules that govern many professions, professional licensing agencies or boards have the authority to enter an order finding that you have violated the law(s) or rule(s) alleged in the complaint and imposing sanctions against you. The board or agency will issue this default order without further notice to you, input or evidence from you, or a disciplinary hearing being held.

For instance, the Texas Department of Licensing & Regulation licenses, regulates, and monitors various professions, including speech-language pathologists, veterinarians, podiatrists, electricians, and cosmetologists. If TDLR finds evidence to believe that a licensed professional has violated a rule or law that it enforces, it issues a Notice of Alleged Violation (NOAV) to them. A licensee has 20 days to respond to the NOAV by admitting to the alleged violations and accepting any sanctions proposed by TDLR or requesting a contested hearing. Failure to respond to by accepting TDLR's proposal or asking for a hearing will result in TDLR issuing a default order.

The same outcome is true for nurses facing a disciplinary complaint from the Texas Board of Nursing (BON). If BON cannot reach a nurse during the informal settlement process for a complaint, it will automatically file formal disciplinary charges against the nurse. Formal disciplinary charges require a response from a nurse within 20 days. If the nurse fails to respond promptly, BON may proceed with an order finding that

misconduct has occurred and may even revoke a nurse's license without further notice or hearing.

## Conclusion

Failing to respond to a professional disciplinary complaint can have severe consequences across various licensed professions in Texas. Many licensing boards, such as the Texas Medical Board (TMB), Texas Real Estate Commission (TREC), State Bar of Texas, Texas Department of Licensing & Regulation (TDLR), and Texas Board of Nursing (BON), mandate timely responses to complaints within set deadlines. Ignoring these complaints can result in additional disciplinary charges, even if the original complaint would not have warranted severe sanctions. For instance, professionals who fail to cooperate by not producing requested records or information within a "reasonable time" may face disciplinary action based on both the initial complaint and the failure to respond. Additionally, if a professional does not respond, many boards are authorized to issue a default order, which imposes sanctions or revokes a license without further notice or input from the license holder. This process can result in substantial penalties or loss of licensure, reinforcing the importance of prompt and complete responses to avoid compounded disciplinary issues and adverse outcomes.

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## Uncovering the Texas Teacher Certification Scandal with Legal Experts from Bertolino Law Firm

by Sheri L. Middlemas



A startling revelation has shaken the Texas educational landscape: a certification scandal that has cast a shadow over the trust we place in our educators. At Bertolino Law Firm, we understand the profound implications such events have not just on individuals but on the entire system of professional licensure. That's why we're proud to present a special podcast, *Uncovering the Texas Teacher Certification*

*Scandal with Legal Experts from Bertolino Law Firm.*

**The Scandal at a Glance**

What if the very people entrusted with educating our children were themselves embroiled in deceit and fraud? This is the unsettling reality behind the Texas Teacher Certification Cheating Ring, an incident that has disrupted the credibility of teacher certification across the state. In the face of a severe teacher shortage, some prospective educators turned to extreme measures, hiring impersonators to take certification exams on their behalf.

### **Insights from Our Legal Experts**

Join attorneys Troy Beaulieu, LaJuana Acklin, and Kerry Bloodsaw as they delve deep into the intricate details of this case. With decades of experience in professional license defense, our experts analyze how desperation and systemic gaps led to a breakdown in ethical standards. They guide listeners through the complex web of legal consequences that those implicated may face – from potential revocation of teaching licenses to felony charges involving tampering with government records.

### **The Broader Impact and Legal Pursuits**

Our discussion highlights the roles played by the Texas Education Agency and the Harris County District Attorney's Office in pursuing justice and reestablishing trust in the state's education system. The scandal's ripple effect has raised serious concerns about how these breaches of integrity erode public confidence and why robust, preventive measures are necessary.

### **A Call for Systemic Change**

As our experts point out, this scandal is a clarion call for reform. Enhanced ID verification, stricter auditing processes, and systemic oversight are urgently needed to safeguard the integrity of teacher certification. Bertolino Law Firm is committed to advocating for such changes while continuing to defend the rights of professionals facing license challenges.

### **Listen Now for In-Depth Analysis**

Tune in to *Uncovering the Texas Teacher Certification Scandal* to hear from Troy Beaulieu, LaJuana Acklin, and Kerry Bloodsaw as they provide a sobering exploration of this case and discuss the path forward. This podcast is essential listening for educators, policy-makers, and anyone invested in the future of Texas education.

At Bertolino Law Firm, we remain dedicated to bringing clarity to complex issues and supporting professionals navigating the toughest of legal landscapes. For questions, legal assistance, or more insights, please reach out to us.

Together, let's uphold the integrity of our educational institutions and professional standards.



## Hallmark Achievements

### Texas Public School District v. TD

**Facts:** TD was allowed to resign from their position with an ISD here in Texas. The ISD placed TD on administrative leave and notified him that they had received a complaint that he was having a sexual relationship with a former student. TD denied the allegations.

**Outcome:** TD retained counsel and the firm submitted argument to the ISD's counsel denying the allegations. The firm provided evidence that the report was not credible and that the events never took place. The firm provided evidence that the report was made by a former coworker and was only initiated based on the coworkers bias and motive to retaliate against TD. After several months of silence, the ISD advised that they did not issue any findings and no report to TEA was initiated.

### Texas Medical Board v. TR

**Facts:** TR received a complaint from TMB and a notice for ISC. The allegations against TR were submitted to TMB by her former employer. TR was terminated from their employer after they appeared intoxicated during work hours. Witnesses attested to the fact that they saw TR slurring their words after interacting with a patient. TR refused an alcohol test and was asked to leave the facility. Prior to retaining counsel TR provided TMB with several records regarding her prior alcohol addiction/treatment.



**Outcome:** TR retained counsel after receiving the ISC notice. The firm was able to meet the pending deadline and provided a rebuttal response to the allegations. During the ISC the firm provided argument as to TR's current sobriety regiment and their past inpatient and outpatient treatments. The firm argued in mitigation of the allegations, provided character evidence and evidence that TR was already in compliance. Based on this the firm argued that TR no longer needed monitoring or disciplinary action by TMB. TMB agreed to dismiss the case and referred TR to a private monitoring program.



**Facts:** Our client, FD hired us to assist in obtaining his Texas nursing license. Our client passed but his eligibility exam after four year period established by the Board, and as a result the Board denied his nursing license.

**Outcome:** The firm analyzed the relevant documentation, enabling Statute and Board rules. The Statute and Board rules did not inhibit the Board's discretion to issue a license due to Board error. After presenting the client's position based on the facts and law, the Board granted a license to our client. Client can now pursue his career passion in nursing.

## Why a "Little White Lie" on a License Application is Significant

by Troy Beaulieu, Esq.



### License Applications Submitted to Government Agencies

People often forget just how important your application to become licensed with a government regulatory agency is. Often, I see situations where people have made what they thought were "white lies" about their background information, educational information, experience or some other aspect of the application, which can have profound consequences for your ability to become licensed or retain a license already issued. Not only can false statements ruin your professional life, but people are also often unaware that it can lead to felony criminal charges. This article will discuss the impact of making false statements in connection with your application to obtain or renew a government-issued license.

### Knowing Misrepresentations in Application Materials Threaten Your Chances of Getting Licensed

When you submit an initial application for a license or to renew your current license, the application documentation will have some sort of statement contained in it where the person signing it affirms that the statements contained in it are true, and correct. State agencies have legal provisions that treat false statements made by the applicant when the person knows the statements are untrue as a basis for denying their application. Tex. Gov't. Code § 2005.052. This certainly covers the application itself, but may also cover misrepresentations connected to other aspects of the entire application, such as falsifying the required information about the person's experience needed for license eligibility, lying about one's educational background, or misrepresentations about whether you yourself took the licensing examination or otherwise cheated on it.

### Knowing Misrepresentations May Lead to Felony Criminal Charges

What can be even more harmful is that if an applicant makes statements the person knows are not true as part of the application process, the person may

also be prosecuted for criminal offenses. You may not realize it, but Tex. Gov't. Code § 2005.053 provides a connection between the regulatory world and the criminal world by making it a crime to make statements you know are not true in connection with an application for licensure by the government. An applicant who makes such misstatements can be charged with tampering with a government record under Tex. Penal Code § 37.10, which in many cases is a felony level offense. In addition, many state regulatory agencies require applicants to submit affidavits in connection with their application. When an affidavit is submitted as part of this process and the person signing it knows the statements are false, they may face an additional charge of aggravated perjury under Tex. Penal Code § 37.03. This is also a felony offense because the Penal Code treats these statements as ones made "during or in connection with an official proceeding" which includes "any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant." Tex. Penal Code § 1.07(a)(33). This includes your application for licensure submitted to a government licensing / regulatory agency.

### The Takeaway for White Lies in License Applications

Government license applications are serious documents that require you to represent things contained in the application packet and associated materials are true and correct. If you make false statements that you know are not accurate, this can destroy your chances of obtaining a license or if you have obtained a license, the agency can revoke it. On top of that, false statements in applications can also lead to criminal charges being brought against you for felony offenses such as tampering with a government record of aggravated perjury. Make sure what you are saying and providing in your application materials is correct. If you are not sure, check on the correct answer before submitting the information to the government. The last thing you want to do is have to worry about legal consequences from your regulator or from criminal law enforcement.



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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

### Professional Recognition Days: November Calendar

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

**November 2nd:** Broadcast Traffic Professionals Day

**November 8th:** International Day of Radiology; World Radiography Day

**November 10th:** United States Marine Corp Birthday; Nurse Practitioners Week; Perioperative Nurse Week

**November 11th:** Veterans Day



provides professionals with important agency updates, insights, and opportunities to enhance their professional license.

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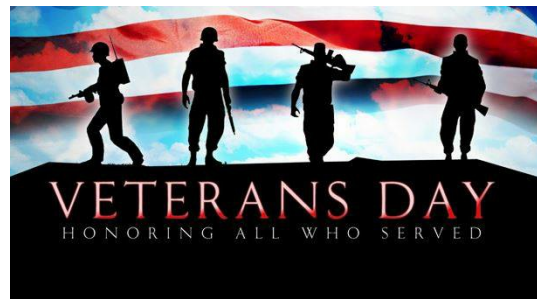
With Bertolino LLP's insights regulatory insight, suggestions, and information, we can help you minimize your compliance risk profile and stay ahead of your competition by engaging with your regulator.



**November 14th:** Operating Room Nurse Day

**November 18th:** National Education Week

**November 29th:** System Engineer Day

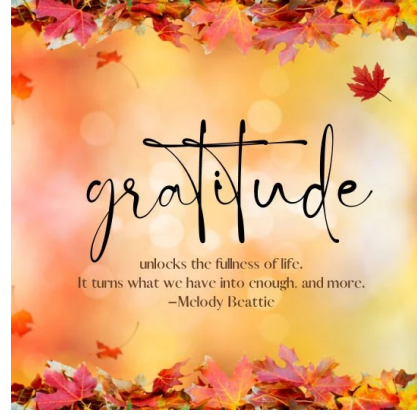


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## A Heartfelt Thanksgiving Message from Bertolino Law Firm

As Thanksgiving approaches, we find ourselves reflecting on the past year and the many blessings that have come our way. This season is a reminder of the importance of gratitude, and at Bertolino Law Firm, our gratitude begins with you.

We are deeply thankful for the trust you place in us as we walk alongside you in defending your professional journey. Your resilience, courage, and unwavering commitment to your careers inspire us every day. It is both an honor and a privilege to serve as your advocates, supporting you through challenges and triumphs alike.



This Thanksgiving, we want to express our heartfelt appreciation for the opportunity to be part of your story. Your confidence in our firm motivates us to strive for excellence in everything we do, ensuring that you receive the dedicated defense and compassionate support you deserve.

As you gather with loved ones to celebrate this season, we hope you find moments of peace, joy, and gratitude. May your Thanksgiving be filled with warmth, laughter, and cherished memories.

From all of us at Bertolino Law Firm, we wish you and your families a wonderful Thanksgiving and a holiday season full of blessings.



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BERTOLINO LLP | (512) 476-5757 | 823 Congress Avenue, Suite 300, Austin, TX 78701  
[www.bertolinolaw.com](http://www.bertolinolaw.com) | [info@bertolinolaw.com](mailto:info@bertolinolaw.com)

BERTOLINO LLP | 823 Congress Avenue Suite 300 | Austin, TX 78701 US

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