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- TONY R. BERTOLINO, MANAGING PARTNER

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Employee Spotlight

Tanios is a third-year law student at the University of Texas at Austin, and the newest Law Clerk at the Firm. He brings his sophisticated legal knowledge and intuition to bear on his robust set of duties for the Firm. His striking attention to detail makes him a particularly proficient researcher and strategist. His work ethic and aptitude will make him a formidable attorney in the not-so-distant future.

When he is not working or in school, Tanios spends much of his time with his family. His passions for foreign film and history make him a particularly engaging conversationalist. Hailing originally from Lebanon (which he lovingly refers to as the "homeland"), he injects a distinctly cosmopolitan perspective into the Firm's political discussions. We all adore him for his top-notch work and, more importantly, his positive attitude.



Tanio Bou Onk
Law Clerk

What is a Scope of Practice?

When a state grants a professional license, it typically comes with a defined scope of practice and a monopoly on using a certain credential to solicit clients. Recently, the 5th Circuit Court of Appeals struck down Texas licensing for psychologists, finding that the state had violated free speech and other constitutional protections. This decision is one of the first of its kind and has far-reaching implications for licensed professionals in Texas.

The Problem

In 2010, Mary Serafine ran for a seat in the Texas Senate. On her campaign webpage, she described herself as an "Austin attorney and psychologist." Serafine was an attorney and graduate of Yale law school. Serafine did not have a degree in psychology, although she did complete a four-year post-doctoral fellowship in psychology at Yale, published the dissertation for a Ph.D., and taught in the psychology departments at both Yale and Vassar. She was not, however, eligible for a Texas license because she did not hold a degree from a qualifying program.

In September 2010, the Texas State Board of Examiners of Psychologists sent Serafine a cease and desist letter demanding that she remove the title "psychologist" from her campaign website and refrain from offering "psychological services." Serafine sued, claiming that the Board's action not only infringed on her free speech rights but that Texas's definition of psychology was overbroad and invalid.

The Arguments

Serafine argued that using the term "psychologist" was not intended to solicit clients; in fact, there was no evidence that she had ever provided psychological services in violation of the Act. The court agreed, finding that Serafine's campaign promotions indicating that she was a psychologist were protected speech. While she may not have been licensed in Texas, the court found a strong argument that she was a psychologist by reputation and training.

Serafine further challenged a psychologist's scope of practice in Texas. In Texas, only [licensed psychologists](#) are able to provide "services to an individual or group that include the application of established principles, methods, and procedures of describing, explaining, and ameliorating behavior." Ostensibly, this means that Alcoholics Anonymous meetings, Weight Watchers, life-coaches, and even yoga teachers are engaging in the unlicensed practice of psychology when they offer help and advice for self-improvement.

In some jurisdictions, board action against this sort of behavior is not just hypothetical. In 2013, the [Kentucky Board of Examiners of Psychology](#) ordered a syndicated newspaper columnist to stop providing parenting advice in his column. In that case, the columnist held a master's degree in psychology, but was not licensed in the state. He had recommended to parents of a spoiled teenage that the parents suspend his privileges until his grades improved. The Board, operating under a statute similar to Texas's, believed this conduct to be the unlicensed practice of psychology.

The Ruling

Seeing the possibility for abuse from an over-zealous board, the Fifth Circuit found that Texas's definition of psychology was overbroad and invalid. In a unanimous decision, the court found that the "opportunity for abuse, especially where a statute has received a virtually open-ended interpretation, is self-evident."

This decision represents one of the first of its kind: rarely has an entire scope of practice been found invalid by a court. As a result of this ruling, the Texas State Board of Examiners of Psychologists is tasked with redrawing the boundaries for what constitutes psychology in Texas. The latest draft, published November 10, is available [here](#). As important, this decision opens new possibilities for practitioners to challenge their respective scopes of practice, particularly when licensure restrictions are overbroad in the area of free speech.

If you have questions about your scope of practice, you deserve an experienced attorney who knows Texas licensing law. The Bertolino firm is here to help. Our firm helps licensed professionals in Dallas, Ft. Worth, El Paso, Waco, Amarillo, Arlington, Brownsville, Corpus Christi, Plano, and Lubbock and any other major city in the State of Texas. If you have questions or need to speak with an attorney about professional license defense, click here to contact us or call 800-210-0126

Hallmark Achievements | January 2017

A Month of Strong Results which Alleviate Need for Hearings

The Firm finishes the year stronger than ever and sets sights on record year for 2017

Texas Board of Nursing v. T.N.

Our Client, a Registered Nurse, was alleged to have breached professional boundaries. To settle the matter, the Board proposed an Agreed Order which entailed language susceptible to damaging insinuations and inferences, as well as crippling restrictions on our Client's ability to practice for a full year. Through multiple rounds of negotiation, the Firm obtained significant, favorable modifications to the proposed Order. The Firm not only substantially reduced the restrictions, but also secured language amendments that dispelled the adverse insinuations and inferences.

Take-away: Through efficient negotiation, the Firm prevented potentially irreparable damage to our Client's public reputation, and diminished restrictions on our Client's capacity to earn a living.

Texas Real Estate Commission v. B.P.

Our Client, who has a non-violent felony and some misdemeanors on his record, attempted to obtain a real estate sales license without legal representation. The Commission rejected the application, and provided our Client with an opportunity to request a hearing on the rejection. The Firm was retained at this juncture. Almost immediately after submitting a request for a hearing, a Commission staff attorney contacted the Firm to negotiate an alternative. The Firm pursued this alternative, and secured a license for our Client on a probationary basis through submission of a single instrument. Our Client now has a livelihood that is more rewarding and lucrative.

Take-away: The Firm secured a license for our Client at absolute bare minimum expense, and, by extension, a new livelihood.

Q & A

Q: What sort of information should I provide to the attorney during the initial consultation?

A: In order to help maximize your time with an attorney, have the complaint or letter of investigation handy as well as your resume and your contact information. Think about people and documents the attorney might want to know about that may help you in defending your license. Any person or document who can verify what really happened is going to be helpful in your defense.

BERTOLINO LLP Earns BBB Accreditation

BERTOLINO LLP is committed to BBB's Standards for Trust

This week, **BERTOLINO LLP** announced its recent accreditation by Better Business Bureau serving Central, Coastal, Southwest Texas and the Permian Basin. As a BBB, Accredited Business, **BERTOLINO LLP** is dedicated to promoting trust in the marketplace.

For more than 100 years, BBB has helped millions of consumers find and recommend businesses, brands, and charities they can trust. BBB Accreditation is an honor, and not every business qualifies.

"We are pleased to be a BBB Accredited Law Firm because we value building trust with our clients," said *Tony R. Bertolino* "Our BBB Accreditation gives our clients confidence in our commitment to maintaining high ethical standards of conduct."

BBB Accredited Businesses must adhere to BBB's "Standards for Trust," a comprehensive set of policies, procedures and best practices representing trustworthiness in the marketplace. The standards call for building trust, embodying integrity, advertising honestly, telling the truth, being transparent, honoring promises, being responsive and safeguarding privacy.

"Our law firm helps professionals, like you, keep their licenses when those licenses are under attack by a state agency or board."

-Tony R. Bertolino, Managing Partner