

TOP LEGAL DEVELOPMENTS

What Do State Board Cases and Blockchains
Have in Common?

NASBA ANNUAL MEETING
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Overview

- ▣ Part 1: Top Cases
 - *In re Johnson*
 - *Jemsek v. N.C. Medical Board*
- ▣ Part 2: Blockchains
 - State efforts to regulate
 - Cases foreshadowing legal issues

In Re Johnson (2017)

- ▣ CPA audits nonprofit
- ▣ Rule requires peer review
- ▣ A failed peer review not a per se violation
- ▣ Comply with terms of engagement
- ▣ Failure to comply with applicable standards
- ▣ Failure to cooperate with Board inquiry

In re Johnson

- ▣ Board Hearing
- ▣ Expert testimony re audit
- ▣ Peer reviewer re engagement terms
- ▣ Staff re cooperation
- ▣ Firm suspended until proof of compliance
- ▣ \$2000 Civil penalties
- ▣ Stayed revocation of CPA's license

In re Johnson

- ▣ Petition for Judicial Review –Business Court
- ▣ Alleged Board’s actions were unlawful, ultra vires, anticompetitive, monopolistic, false, disparaging, arbitrary & capricious
- ▣ Court ruled against all claims
- ▣ Failed to comply with auditing standards
- ▣ Failed to fulfill terms of peer review contract
- ▣ Failed to timely respond

In re Johnson

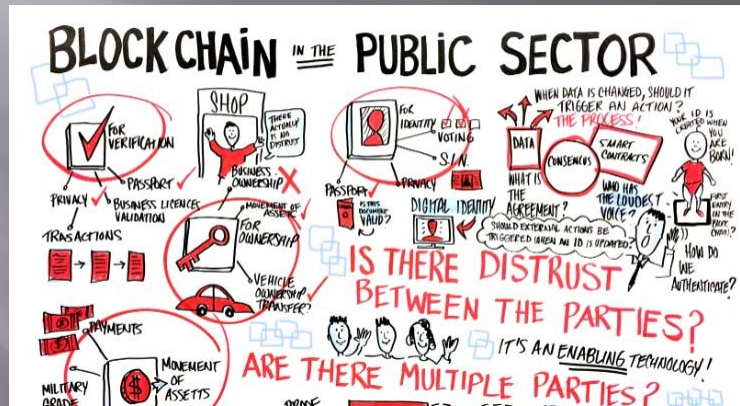
- ▣ Re antitrust claim
- ▣ Board’s disciplinary action subject to active supervision through “through the very judicial review process invoked by Petitioners”
- ▣ No proof that board’s action impacted competition among CPAs

Jemsek v. N.C. Medical Board (2017)

- ▣ Board disciplined Doctor for Lyme Disease treatment contrary to required guidelines
- ▣ Doctor sued Medical Board & board members
- ▣ Alleged board members were active market participants violating Sherman Antitrust Act
- ▣ Court ruled claims barred by 11th Amendment
- ▣ Must show restraint was unreasonable
- ▣ Only showed injury to self, not to competition

Part 2: Blockchains

- ▣ State efforts to regulate blockchain through legislation & rulemaking
- ▣ Cases foreshadowing legal issues



State Regulation

- ❑ **Vermont** “blockchain enabling” law (2015, 2016, 2017)
- ❑ **Hawaii** legislation to establish blockchain technology & digital currency working group (Feb. 2017)
- ❑ **Arizona** “Blockchain Technology” law (Mar. 2017)
- ❑ **Illinois** “Legislative Blockchain and Distributed Ledger Task Force” (Mar. 2017)
- ❑ **Maine** Study Using Blockchain Technology in Conjunction with Paper Ballots in Elections (Mar 2017)

State Regulation

- ▣ **Nevada** law re use of blockchain technology (March 2017)
- ▣ **Delaware** law to allow use of distributed ledgers or blockchain for corporate records (July 2017)
- ▣ **Arizona** law prohibiting use of “electronic firearm tracking technology” (Aug. 2017)
- ▣ **Other** legislation/rulemaking in California, North Dakota, New York, North Carolina (Money Transmitters Act)

Blockchain Cases

US v. Ulbricht (2nd Cir. 2017)

- ▣ Drug trafficking, other crimes associated with creation & operation of online marketplace known as “Silk Road”
- ▣ Bitcoins, logged in blockchain, allow sellers & buyers to maintain anonymity in the same way as cash
- ▣ Feds seized \$18 million worth of Bitcoins from the wallet on Ulbricht's laptop, analyzed their transaction history (through blockchain records) to determine that 89% came from Silk Road servers located in Iceland
- ▣ defendant had no reasonable expectation of privacy in the IP address routing information

Blockchain Cases

In re Dole Food (DE Chancery Ct 2017)

- ▣ Shareholder class action re Dole merger
- ▣ Where to send the settlement monies
- ▣ Number of shares in the class could not be resolved due to high volumes of trading, short-sales, and beneficial owners' claims
- ▣ Unintended consequence of 1970s federal policies requiring a centralized ledger
- ▣ Distributed ledger via blockchain offers solution

Public Protection Challenges

- ▣ Jurisdiction
- ▣ Legal status of decentralized autonomous organization (DAO)
- ▣ smart contract enforceability
- ▣ Anonymity vs. anti-money laundering laws
- ▣ Privacy & data-security

Alternative Approach



THANK YOU