TOP LEGAL DEVELOPMENTS

What Do State Board Cases and Blockchains Have in Common?

NASBA ANNUAL MEETING
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October 31, 2017

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
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

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

- **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)
- 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