

**Legal Update – Top 4 Cases This
Year (and More)**

2012 NASBA Regional Meetings

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Caveat

- These are limited summaries. Every case involves not only particular facts but also unique statutes and rules. Some of these cases are “unpublished” and under some rules of court may be of limited authority or citation value. Additionally, some of these cases are subject to further appeal. Finally, these summaries often represent an outsider’s view of a case that one of the other attorneys at this conference actually handled. So, when in doubt, please presume that the interpretation offered by the handling attorney is more likely the correct one! Of course, the opinions and characterizations herein are not necessarily those of NASBA or any state licensing board.

A quick review of other important cases from the past year

- *Kiplinger* (Ohio): Caution in use of enforcement manuals
- *Flattum* (California): Federal action stayed pending outcome of state administrative proceeding
- *Wunderlich* (New York): Lack of good moral character based on conviction for gambling promotion

Johnson v. Hall

- Suits alleging constitutional violations by individual South Carolina board members and staff re the use of the CPA title by an individual holding an inactive license from another state

Texas State Board of Public Accountancy v. Bass

- The latest chapter in the Enron/Andersen matter, Texas Supreme Court re alleged violation of state's open meetings law

Edwards v. Gerstein

- Missouri Court upheld \$6.3 million judgment against Board members based upon a state board's allegedly grossly negligent investigation of allegations re a Chiropractor.

In re North Carolina [State] Board of Dental Examiners

- Federal Trade Commission ruled that a state board of dentistry's
 - enforcement of a clearly articulated statute was not exempt as state action,
 - Board was an *ipso facto* antitrust conspiracy because the majority of the board's members were licensees
 - public protection was irrelevant
 - State agency was not a sovereign nor immune

Latest word from the Supreme Court on the balance of state and federal authority.

- *National Federation of Independence Businesses, et al v. Sebelius, et al*

- “The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The court has done so today.”

- “The independent power of the States also serves as a check on the power of the Federal Government: By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.”

Thank you!