

April 2020 Legislative E-news

Case Law Updates

In recent months, there have been several legal developments impacting state boards' public protection efforts. The following summaries provide a sense of key legal issues facing Boards of Accountancy. Going forward, insights will be included in NASBA's *Legislative E-news* on legal cases impacting the profession. If you have questions or would like to request more details, please contact John Johnson, Director of Legislative and Government Affairs at jjohnson@nasba.org or Brie Allen, Esq., Regulatory Counsel at ballen@nasba.org.

South Carolina attorney general weighs in on CPA title regulation.

In a recent Opinion, the attorney general cautioned the board regarding its efforts to regulate licensees preparing tax returns while using the CPA title and not employed by a registered CPA firm. The attorney general noted several U.S. Supreme Court decisions requiring that regulation of the use of title be closely tied to a key state interest, or risk violation of the First Amendment. This case law is long-standing and has been considered by courts around the country in relation to board activities. The attorney general's Opinion is one more example of the need for careful consideration of constitutional requirements when regulating commercial speech by CPAs.

See: 2019 S.C. AG LEXIS 76

Several courts have heard appeals of board disciplinary matters.

In recent months, there have been several appeals to state courts regarding boards' efforts to discipline CPAs following violations of board acts and rules. In three of these cases, the courts fully upheld the boards' actions, rejecting various arguments by disciplined licensees that the boards' decisions were not adequately supported by the facts or the law. However, in Missouri's *Brown v. State Bd. of Accountancy*, the court determined that sanctions imposed following continuing professional education requirement violations were too stringent, given mitigating factors present in the situation.

See: *Barrett & Barrett, CPAs, APC v. State Board of Certified Public Accountants of Louisiana*; *Ramanan v. Cal. Bd. of Accountancy*; *Coughlin v. Bureau of Professional & Occupational Affairs*; *Brown v. State Bd. of Accountancy*

A court upheld the New Hampshire Board's rule-making authority.

A New Hampshire court upheld the board's discipline of a licensee, finding that the board had the authority to enact a rule requiring the retention of work papers and client records for five years following a CPA's service. The court looked to the board's statutory rulemaking authority, finding that the relevant law contemplated allowing the board to fill in details such as the exact duration of the requirement.

See: *Ron V. Beaulieu & Co. v. N.H. Board of Accountancy*

A court upheld the California Board's statutory immunity.

A California court found that statutory immunity barred a disciplined licensee's claims against the board itself, as well as against board employees. California case law provided that statutory immunity was applicable to acts undertaken during the course of an investigation or prosecution and also extended to the publication of disciplinary results.

See: *Baisden v. Bowers*

To conclude, it appears that courts have had to consider several challenges to board actions in recent months. The Baisden case is currently under appeal, and there will be other updates soon regarding appeals and legal challenges.