FOR IMMEDIATE RELEASE

November 27, 2013

Contact: Beth Ryan
Phone: (304) 558-2021

W.Va. Leads 10 States in Brief Asking U.S. Supreme Court to Uphold States’ Right to Protect Citizens

CHARLESTON — Attorney General Patrick Morrisey announced today that West Virginia and attorneys general from nine other states have filed an amicus, or friend of the court, brief in the U.S. Supreme Court asking it to accept a case that will determine how states choose to protect citizens’ health and safety.

“This case is incredibly important to licensing boards in West Virginia because the Fourth Circuit’s ruling would force the state to review practically every decision a board makes,” Attorney General Morrisey said. “This issue is just another example of federal overreach, this time by the Federal Trade Commission, which I have pledged to fight. If West Virginia chooses in state code to establish boards made up of professionals in specific areas to regulate and license their peers, the state should be able to do so without fearing the federal government will come in and tell us we are doing it wrong or violating antitrust laws.

The amicus brief asking for a writ of certiorari was filed in support of the North Carolina State Board of Dental Examiners in its lawsuit against the FTC. The Board seeks to reverse a Fourth Circuit Court of Appeals decision that said the Board’s regulatory activities violated antitrust laws by dictating who may provide certain dental services in the state. The Court also ruled the state of North Carolina should have actively regulated and reviewed board decisions once made. The appellate court decision was based in part on the fact that the Board was predominantly made up of practicing dentists despite the fact North Carolina’s laws dictated how the Board should be composed.

West Virginia and a bipartisan group of attorneys general representing the states of Alabama, Colorado, Delaware, Florida, Kansas, Maryland, North Carolina, Ohio and South Carolina support the North Carolina Board’s brief on two grounds. First, the brief argues that the Fourth Circuit’s ruling conflicts with rulings issued by other appellate courts and creates an uneven playing field between states. Second, the states contend this ruling will force them to create more levels of bureaucracy, which will add costs and unnecessary delays.

Dr. Richard “Duff” Smith, executive secretary of the West Virginia Board of Dentistry, said he supports the Office of the West Virginia Attorney General’s brief.

“It’s great that our Attorney General is standing up for the Board,” Dr. Smith said. “Our Board members are unified that their primary duty is to protect the public. It is important that professionals who understand the practice serve on boards in order that the duties can be handled in an expeditious manner. The North Carolina case has far reaching implications that could disrupt all boards in West Virginia and throughout the country for that matter.”

Morrisey said several regulatory boards within the State of West Virginia, including the Dental Board, Board of Psychologists, the Massage Therapy Licensure Board, the Board of Osteopathic Medicine, and the Board of Optometry, support the Office’s efforts to challenge the Fourth Circuit’s decision.
It is a common practice for states to rely on regulatory boards to provide important state regulatory functions, including protecting the public from unqualified or unsavory individuals, Morrisey said. It is natural that these boards, in fulfilling their duty to protect public health and safety, may have to take actions that prevent certain individuals from engaging in regulated practices. Since these boards are acting on behalf of a state, they should be afforded antitrust protections commensurate with their status as agents of the state.