

PROFESSIONAL CONDUCT MEETING MINUTES



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
ONE WINTER STREET, 3rd Floor
BOSTON, MA 02108

PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on June 21, 2017

Approved on August 16, 2017

Prepared by: Beverly Coles-Roby

Meeting Location:

MassDEP SERO
20 Riverside Drive
Lakeville, MA 02347

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on June 1, 2017
3. Active Case List

1. Call to Order: Co-chairperson James N. Smith called the meeting to order at approximately 1:00 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Dr. Gail Batchelder, Kirk Franklin, Farooq Siddique, David Austin, and Kathleen Campbell. Staff members present were Beverly Coles-Roby and Lori Williamson. Gerard Martin and Deborah Marshall of MassDEP also attended the meeting. Wendy Rundle, Executive Director of the LSP Association (“LSPA”) arrived at 1:13 p.m.

2. Previous Minutes: The draft minutes of the meeting held on June 1, 2017, were approved as amended. Mr. Franklin abstained from voting to approve the minutes.

3. Old Business:

4. Status of Complaint Review Teams and Active Case Table

At Mr. Smith’s request, the Complaint Review Teams (“CRT”) reported on progress made since the June 1, 2017 meeting. Ms. Coles-Roby gave the reports on the status of each case as reflected in the Active Discipline Case List.

Ms. Coles-Roby explained that she would have a reply brief prepared in 05C-07, by June 30, 2017.

PROFESSIONAL CONDUCT MEETING MINUTES

Ms. Coles-Roby indicated that the Board is waiting for the Presiding Officer's Recommended Final Decision ("RFD") in 08C-03.

Ms. Coles-Roby also informed the Committee the Assistant Attorney General assigned to 10C-01, Daniel Hammond, told her that the Court, Roach, J., held a Status Conference in yesterday, June 20, 2017. She reminded the Committee the matter was resolved via settlement. As a courtesy, the Board allowed the LSP to review the press release, but he/she was told beforehand that he/she would not be allowed to edit its content. Instead, the LSP's attorney filed an action in Suffolk Superior Court seeking a temporary restraining order ("TRO") and requesting that the court issue a declaratory judgment stating that the Board has neither explicit nor inherent authority to issue press releases regarding disciplinary proceedings against a LSP. According to Mr. Hammond, Judge Roach observed that the parties did not appear to have any significant factual disputes; rather, the case presented two distinct, purely legal questions:

1. Does the Board have authority to issue a press release after entering into a negotiated settlement/consent order with a LSP?
2. Did the Board have jurisdiction over the LSP, given that his/her license lapsed before the complaint against him/her was investigated?

The Court decided that the case should be resolved by cross-motions for judgment on the pleadings no later than September 22, 2017. After the hearing, the LSP's attorney told Mr. Hammond that the LSP is basically retired from LSP work, and the LSP "is currently doing missionary work in Africa." The attorney made a counter offer: the LSP might withdraw the claim, if given an assurance that the Board would publish standards governing when a press release is necessary/appropriate, rather than have a blanket policy that the Board will always issue a press release. In a discussion of the matter, Dr. Batchelder said that she would vote to reject the counter offer because of the public's right to know about discipline imposed on LSPs. She added that this LSP's company still exists despite allowing his/her LSP license to expire. Mr. Siddique commented that the expiration was not significant because the LSP was active when the discipline was imposed. Dr. Batchelder noted that the case settled before discipline was imposed. Mr. Smith said that issuing press releases is something that all other state agencies do. Mr. Siddique agreed saying that there should be inherent authority within the Board's regulations to issue press releases. Dr. Batchelder reiterated that the responsibility of notifying the public rested with the Board. Ms. Pinaud asked what would occur if the Board did not accept the LSP's counter offer. Ms. Coles-Roby responded that the parties would file briefs. The court would hold oral argument and render a decision. Ms. Marshall asked whether the TRO would be issued against the Board. Ms. Coles-Roby answered that if issued, a TRO would enjoin the Board from issuing press releases. Beyond that, she said that the standard for injunctive relief, i.e., TRO, is very high and the LSP would have to meet certain criteria, among other things, a showing that he/she would suffer

PROFESSIONAL CONDUCT MEETING MINUTES

irreparable harm if the press release was published. The Committee voted to recommend that the Board decline the counter offer. Ms. Pinaud and Dr. Batchelder abstained from voting on the motion.

Ms. Coles-Roby stated that the parties have had difficulty scheduling a time to meet in 11C-04 regarding the Board's offer of settlement. She stated that she planned to speak with the LSP's attorney before the August Board meeting.

In the matter of 12C-01, Ms. Coles-Roby indicated that the CRT was reviewing draft interview questions prepared by Ms. Williamson. She added that the CRT planned to reschedule the LSP interview for August 2017 due to the parties' unavailability in June and July.

The CRT will interview the LSP on July 19, 2017 in 16C-01.

Ms. Coles-Roby stated that the 17C-01 Screening Team would schedule a conference call to discuss the matter at the conclusion of the LSP Board meetings today.

5. New Business:

No new business was discussed.

6. Future Meetings: August 16, 2017—MassDEP CERO

7. Adjournment: The meeting was adjourned at approximately 1:25 p.m.