

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 November 28, 2018

Approved on January 16, 2019

Prepared by: Beverly Coles-Roby, Esq.

Meeting Location:

**MassDEP Boston
One Winter Street
Boston, MA 02108**

1. List of Documents Used at the Meeting:

- Agenda
- Draft Minutes of Meeting on October 17, 2018
- Active Disciplinary Cases Table
- Docket Nos.: 05C-07; 08C-03; 10C-01; 11C-04; 12C-01; 18C-01; 18C-02; and 18C-03

2. Call to Order: Committee co-chairperson, James N. Smith, called the meeting to order at approximately 1:34 p.m. The Board members in attendance were, Maria Pinaud, Dr. Gail Batchelder, David Austin, Debra Listernick, Marc J. Richards, Kirk Franklin, Kathleen Campbell, and Gregg McBride. Board member Farooq Siddique was absent. Staff members Beverly Coles-Roby, Richard Friend, and Richard Johnson were present. Wendy Rundle, Executive Director of the LSP Association (“LSPA”) and Wes Stimpson of WES Associates, were also present.

3. Previous Minutes: The draft minutes of the meeting held on October 17, 2018, were approved as amended. Marc J. Richards, Kirk Franklin, Kathleen Campbell, and Gregg McBride abstained from voting to approve the minutes.

4. Old Business: None

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5. Status of Complaint Review Teams and Active Case List

Ms. Coles-Roby reported on progress made since the October 17, 2018 meeting, giving reports on the status of each case as reflected in the Active Discipline Case List. She prefaced her comments by stating that all recent developments were catalogued in the Active Case List.

Ms. Coles-Roby reported that 05C-07 and 08C-03 would be discussed during the Quasi-Judicial Session at the end of today's Board meeting.

She reiterated that an agreement for settlement had been reached in 10C-01, and the documents were forwarded to the LSP's attorney by the Assistant Attorney General assigned to the case on November 12, 2018.

She also reported that legal counsel for the LSP in 11C-04 forwarded the executed Administrative Consent Order with attachments detailed Notices of Withdrawal. Nonrecused Board members will sign the document today making the ACO effective on November 28, 2018. As a next step, Ms. Coles-Roby will prepare a draft press release for review at the January 2019 meeting.

Ms. Coles-Roby indicated that she had begun drafting the Order to Show Cause in 12C-01 and will present it for review at the January 2019 meeting.

In 18C-01, Ms. Coles-Roby told the Committee that the investigation by the Complaint Review Team is ongoing and that the members will set a meeting date after today's meeting.

In 18C-02, Ms. Coles-Roby reported that the CRT continues to review documents and will set a date for its initial CRT conference.

With respect to 18C-03 the Committee reviewed and approved the dismissal letter.

The Committee reviewed a draft Cease and Desist letter to a former LSP who violated G. L. c. 21A, §§ 19-19J and 309 CMR 7.02(6). Ms. Pinaud said that the Board should not title the letter an "order," because the letter does not contain all the elements that an order should include, there is no right to appeal afforded the former LSP. Ms. Coles-Roby stated that the person is not entitled to due process where the Board is not taking away any constitutionally protected right or privilege. She added that the order clearly falls within the Board's statutory powers of enforcement. While not disputing the Board's authority to issue an order, Ms. Pinaud asserted that an order comes with its own connotations, and MassDEP does not issue orders in this fashion. Mr. Smith said that the draft order is very clear that it is within the Board's authority. Ms. Coles-Roby indicated that she had followed past practice and used a template from the Board's archival files. Dr. Batchelder said that if the Committee issued an order she wondered if the Committee could fine the person. Dr. Batchelder added

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that the Committee will deal with an appeal if one is filed, but she wanted the order to be as strongly worded as possible. The letter was approved as amended.

6. Future Meetings: January 16, 2019—MassDEP SERO

7. Adjournment: The meeting was adjourned at approximately 2:04 p.m.