

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 October 17, 2018

Approved on November 28, 2018

Prepared by: Beverly Coles-Roby, Esq.

Meeting Location:

**MassDEP CERO
8 New Bond Street
Worcester, MA 01606**

1. List of Documents Used at the Meeting:

- Agenda
- Draft Minutes of Meeting on September 19, 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 1:22 p.m. The Board members in attendance were, Maria Pinaud, Dr. Gail Batchelder, David Austin, Debra Listernick, and Farooq Siddique. Board members Marc J. Richards, Kirk Franklin, Kathleen Campbell, and Gregg McBride were absent. Staff members Beverly Coles-Roby and Lori Williamson were present. Wendy Rundle, Executive Director of the LSP Association ("LSPA") and Rebecca Woolley, of MassDEP, were also present.

3. Previous Minutes: The draft minutes of the meeting held on September 19, 2018, were approved as amended. James N. Smith and Maria Pinaud abstained from voting to approve the minutes.

4. Old Business: None

5. Status of Complaint Review Teams and Active Case List

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Ms. Coles-Roby reported on progress made since the September 19, 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, 08C-03, 10C-01, and 11C-04 would be discussed during Quasi-Judicial Session at the conclusion of today's Board meeting. However, she stated that an agreement for settlement had been reached in 10C-01, and that the LSP had agreed to dismiss his/her Superior Court challenge to the Board's authority to issue press releases. Mr. Smith asked why the LSP would dismiss the lawsuit prior to execution of the settlement agreement. Ms. Coles-Roby said that it could have been for monetary reasons, but she could not speculate.

Ms. Coles-Roby indicated that she had begun drafting the Order to Show Cause in 12C-01.

In 18C-01, Ms. Coles-Roby told the Committee that the investigation by the Complaint Review Team is ongoing and that the members will begin preparing questions for the LSP interview.

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

With respect to 18C-03 Ms. Listernick recommended that the Committee form a Screening Team to sort out the facts of the case. Dr. Batchelder thought that the matter was one of "he said/she said." She did not think that a Screening Team was warranted. Ms. Williamson asked what the concerns about the violations were. Ms. Williamson noted that the foreman had done all of the sampling at the site. Mr. Siddique said that he was concerned about the Board expending time and effort on this case. Dr. Batchelder asked why the Committee would not dismiss the case out of hand. Ms. Williamson answered that because the case did not constitute a fee dispute LSP Board staff lacked jurisdiction to dismiss the case on its own authority. Ms. Pinaud said that in her view, the alleged violations were not supported. Mr. Smith commented that the LSP gave a thoughtful response. Ms. Listernick said it sounded as though the Committee felt that dismissal was appropriate. Mr. Austin stated that the complainant made general statements. Ms. Williamson reminded the Committee that two other cases were filed with the Board that made allegations similar to those in 18C-03. Mr. Smith said there was quite a lot of documentation available in the complaint and response on which to make a decision without a Screening Team. Ms. Listernick stated that based on the Committee's analysis of the allegations it had to dismiss the complaint. Mr. Siddique agreed that the complaint should be dismissed.

Ms. Coles-Roby stated that she received a communication from a MassDEP employee that a LSP whose license expired on June 30, 2005, circulated a resume that listed his former

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license number and indicated that his/her license renewal was in progress. This despite the fact that in November 2017, she informed him/her that due to the length of time that had passed he/she would have to reapply, be approved by the Board, sit for the examination and achieve a passing score. Mr. Siddique said that the person should know that the regulations prohibit his/her actions. Ms. Rundle was curious about how old the resume was, whether it could have been an oversight, that the person failed to update his/her resume, or had the person continued to do LSP work since 2005. Mr. Smith asked for some follow-up from the MassDEP employee about the resume: i.e., how, when and why it was received. The Committee asked Ms. Coles-Roby to draft a cease and desist letter that would be reviewed at the next meeting. Dr. Batchelder also wanted to know if there were any other options available to the Committee. Ms. Pinaud seconded that sentiment asking whether the Board could fine the person. Ms. Listernick asked whether it mattered why the person's license expired. Ms. Coles-Roby indicated that the person failed to earn the credits required for renewal of his/her license in 2005 and failed to renew his/her license within one year of the expiration date.

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

7. Adjournment: The meeting was adjourned at approximately 1:55 p.m.