

**Minutes of Professional Conduct Meeting—August 17, 2016**



COMMONWEALTH OF MASSACHUSETTS  
**Board of Registration  
of  
Hazardous Waste Site Cleanup Professionals**

ONE WINTER STREET, 3<sup>rd</sup> Floor  
BOSTON, MA 02108

PHONE: (617) 556-1091 FAX: (617) 292-5872

**PROFESSIONAL CONDUCT COMMITTEE**

Minutes of Meeting on August 17, 2016

Approved on September 21, 2016

**Prepared by:** Beverly Coles-Roby

**Meeting Location:** MassDEP NERO  
205 Lowell Street  
Wilmington, MA 01887

**List of Documents Used at the Meeting:**

1. Agenda
  2. Draft Minutes of Meeting on June 16, 2016
  3. Active Case List
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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, Farooq Siddique, Robert Rein, Debra Listernick, Kathleen Campbell, and Dr. Gail Batchelder. Board members Dr. John Guswa, Kirk Franklin, and David Austin were absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (“LSPA”); Wes Stimpson of WES Associates; Michael Toomey, and Michael Penzo, who arrived at 1:10 p.m.
  2. **Previous Minutes:** The draft minutes of the meeting held on June 16, 2016, were approved as amended.
  3. **Old Business:**

**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 2016 meeting. Ms. Coles-Roby gave the reports on the status of each case as reflected in the Active Discipline Case List.

Ms. Coles-Roby reported that 05C-07 she was in contact with the LSP’s attorney who had reviewed the LSP Board’s Final Decision and the Prosecutor’s Memorandum on Recommended Discipline. The attorney was informed by Ms. Coles-Roby that the evidence

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would not be reviewed “de novo” or for a second time. He was also told that the only matter before the Board at oral argument would be discipline. Ms. Coles-Roby indicated that pursuant to the Board’s regulations, she might file an opposition or rebuttal to the LSP’s memorandum and that she would have to wait and see what he filed. Dr. Batchelder asked whether the Board members were under any obligation to change their minds about the decision. Ms. Coles-Roby asked her to be more specific. Dr. Batchelder clarified her remarks stating that the attorney would likely argue against the nature of the recommended discipline. Thus, she wanted to know if the Board members were obligated to reevaluate the disciplinary recommendation. Ms. Coles-Roby told her that the oral argument would not involve witnesses, and that the initial disciplinary report was prepared by former General Counsel, Terry Wood, and was therefore longstanding, and no, the Board members were under no obligation to change their minds. Mr. Siddique reminded the Committee that the LSP was offered a settlement. Ms. Coles-Roby agreed saying that offer of settlement which involved two cases, 05C-07 as well as 12C-01, was still on the table. Dr. Batchelder said that the LSP must have considered the possibility that the second case may affect the Board’s discipline decision. Ms. Coles-Roby assured her that the LSP’s attorney likely knew that was a possibility.

With respect to 08C-03, as the Active Dicipinary Cases table shows the matter is still set for trial in October 2016. Ms. Coles-Roby reported that all exhibits were compiled for all parties by Ms. Williamson and filed with the Presiding Officer. However, the LSP, who is acting pro se, did not file any witness testimony whatsoever. The LSP plans to cross examine the Board’s witnesses. Mr. Smith wanted to know the process for imposing discipline in this case. Ms. Coles-Roby stated that it is a joint procedure that includes non-recused Board members, the Board’s investigator, and a detailed examination of comparables, that is, similarly situated violators, which all culminate in a Board vote. Ms. Coles-Roby discussed the telephone conference that the parties had with the Presiding Officer on August 10, 2016. She said that the LSP objects to the Complaint Review Team (“CRT”) Report being admitted into evidence. Specifically, the LSP argued that the report was prepared some time ago; that the Board members who sat on the CRT are no longer on the Board, which is untrue. One original member of the CRT, Kirk Franklin, still sits on the Board. The Presiding Officer ordered Ms. Coles-Roby to produce the original CRT Report. Dr. Batchelder wondered if the Board could call former Board members as witnesses to testify about the CRT Report. Ms. Williamson responded that it is too late. Ms. Coles-Roby agreed referring to the Scheduling Order that the Presiding Officer set long ago.

The status of 10C-01 remains unchanged.

Ms. Coles-Roby reiterated that 11C-04 is a very complex case with a number of sites. She also noted that Ms. Williamson is working very hard to synthesize all of the investigatory materials. The Complaint Review Team will present its report to the Committee at the November 2016 Board meeting.

Ms. Coles-Roby informed the Committee that she hoped to move on 12C-01 this fall. She again noted that is the same LSP as in 05C-07.

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The matter of 16C-01 was the subject of a conference call conducted by the Screening Team on July 14, 2016. Ms. Listernick reported that the team struggled with the vapor intrusion issue and TCE toxicity values because there were multiple versions of applicable guidance in existence at the time. She went on to state that this case will involve looking at the many documents in place at the time as well as exactly what MassDEP's concerns were. While the Screening Team did not delve into the fifty documents involved in the matter, she asserted that she did conduct some research on Vapor Intrusion Guidance documents. She concluded by saying that the guidance documents were too numerous for the Screening Team to include in its evaluation, but there are also too many questions for dismissal. Dr. Batchelder commented that the Screening team's job is to determine whether the matter needs further investigation. Mr. Siddique asked if the Screening Team now becomes the CRT. To which Dr. Batchelder responded, "Not necessarily." The Committee then voted to appoint a CRT to the matter. Ms. Pinaud, who is recused, abstained from voting. Ms. Coles-Roby said that she would confirm with the Screening Team members whether they wanted to remain on the case as part of the CRT.

Ms. Coles-Roby raised the issue of a LSP who asked that his 2002 history of discipline, public censure be deleted from the Board's website. He made the request because of the number of years that have passed since the disciplinary action occurred. Ms. Coles-Roby said that she had canvassed other agencies. In particular, the Division of Public Licensure, which licenses fifty trades and professions and twenty-eight Boards of Registration, maintains records of discipline dating back to January 1, 1993 on its website. She added that the Board of Registration of Medicine has disciplinary records from 2002 through 2009 on its website. Further, the Board of Bar Overseers, which disciplines lawyers, has records from 1999 through 2016 on its website. Dr. Batchelder told the Committee that this is not the first time this issue has been raised. She suggested calling other states to see how they handle the issue. Ms. Campbell asked what happened when the issue came up in the past. Dr. Batchelder responded that the records have always been available. The Board made a conscious decision to maintain the records, she said. Ms. Rundle commented that since the issue has been raised before, it might be worth writing it down somewhere. Dr. Batchelder thought that it might be memorialized in past meeting minutes. The Committee voted to recommend that the past practice of not deleting a LSP's disciplinary history remain as is. There was some discussion of private versus public censure. Mr. Penza stated that the name and license number should be redacted.

#### **4. New Business:**

No new business was discussed.

#### **5. Future Meetings: September 21, 2016--MassDEP Boston.**

#### **6. Adjournment:** The meeting was adjourned at approximately 1:55 p.m.

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