

Minutes of Professional Conduct Meeting—September 21, 2016



COMMONWEALTH OF MASSACHUSETTS
Board of Registration
of
Hazardous Waste Site Cleanup Professionals
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PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on September 21, 2016

Approved on October 19, 2016

Prepared by: Beverly Coles-Roby

Meeting Location: MassDEP Boston
One Winter Street
Boston, MA 02108

List of Documents Used at the Meeting:

1. Agenda
2. Draft Minutes of Meeting on August 17, 2016
3. Active Case List

- 1. Call to Order:** Co-chairperson Kirk Franklin called the meeting to order at approximately 1:01 p.m. The Board members in attendance were Maria Pinaud, Robert Rein, Debra Listernick, David Austin, James N. Smith, Dr. John Guswa, and Dr. Gail Batchelder. Board members Farooq Siddique and Kathleen Campbell were absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Also present were Wendy Rundle, Executive Director of the LSP Association (“LSPA”); and Lisa Alexander, MassDEP Bureau of Waste Site Cleanup, Audits and Enforcement Coordinator; and Jennie Wharff of MassDEP who arrived at 1:03 p.m.
- 2. Previous Minutes:** The draft minutes of the meeting held on August 17, 2016, were approved as amended. Dr. Guswa and Mr. Smith abstained from voting to approve the minutes.
- 3. Old Business:**

Status of Complaint Review Teams and Active Case Table

At Mr. Franklin’s request, the Complaint Review Teams (“CRT”) reported on progress made since the August 2016 meeting. Ms. Coles-Roby gave the reports on the status of each case as reflected in the Active Discipline Case List.

Minutes of Professional Conduct Meeting—September 21, 2016

Ms. Coles-Roby reported on 05C-07 stating that the non-recused Board members voted to grant the LSP, who is now pro se, a one-time extension to file his opposition brief on October 21, 2016. Ms. Coles-Roby reiterated that the LSP's attorney withdrew from the case and that the LSP telephoned to say that he would represent himself going forward. Dr. Guswa asked about next steps. Ms. Coles-Roby replied that pursuant to the Board's regulations, once filed, the LSP's brief would be disseminated to the Board. She indicated that she may file a brief responding to or opposing issues raised by the LSP. Then the matter would be scheduled for oral argument. Dr. Batchelder indicated that the Board would need time to review the brief; therefore, oral argument cannot take place until the November Board meeting. The LSP will argue on his own behalf.

Ms. Coles-Roby further reported that 08C-03 remains on the trial list for October 12-13, 2016. She also noted that the LSP has moved to strike the Complaint Review Team's ("CRT") Report from the proceedings. She filed a memorandum of law on the issue, and the Presiding Officer took the matter under advisement. Ms. Rundle asked if the proceeding before the Office of Appeals and Dispute Resolution is open to the public. Dr. Batchelder said that the CRT members could attend since they are recused from participating in any further votes on the matter.

With regard to 10C-01, the status of the case remains unchanged as set out in the Active Discipline Case List, with a date for finalization set by the Massachusetts Superior Court of April 16, 2018.

Ms. Coles-Roby informed the committee that the CRT will present its report in 11C-04 at the November 2016 Board meeting.

In the matter of 12C-01, Ms. Coles-Roby reminded the committee that this is the same LSP as in 05C-07. She said that she and Ms. Williamson are looking at dates to schedule the LSP's interview once oral argument in 05C-07 has taken place. There was some discussion of why the two cases had not been consolidated. Ms. Listernick remarked that 05C-07 was too far along in the adjudicatory process for that to occur. Mr. Rein wondered if the LSP would represent himself in 12C-01 too.

The CRT is set in 16C-01, and the team is reviewing documents forwarded by Ms. Williamson. There was a discussion of what documents should be reviewed.

4. New Business:

No new business was discussed.

5. Future Meetings: October 19, 2016--MassDEP CERO.

6. Adjournment: The meeting was adjourned at approximately 1:28 p.m.