

## PROFESSIONAL CONDUCT MEETING MINUTES



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

### PROFESSIONAL CONDUCT COMMITTEE

Minutes of Meeting on September 20, 2017

Approved on October 25, 2017

**Prepared by:** Beverly Coles-Roby

**Meeting Location:**

**MassDEP WERO**  
**436 Dwight Street**  
**Springfield, MA 01103**

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

1. Agenda
2. Draft Minutes of Meeting on August 16, 2017
3. Active Case List

**1. Call to Order:** Co-Chairperson James N. Smith called the meeting to order at approximately 1:09 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Dr. Gail Batchelder, Farooq Siddique, David Austin, Gregg McBride, Marc J. Richards, and Kathleen Campbell. Board member Kirk Franklin was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Wendy Rundle, Executive Director of the LSP Association (“LSPA”), and John Ziegler of MassDEP were also present.

**2. Previous Minutes:** The draft minutes of the meeting held on August 16, 2017, were approved as amended. Board member James N. Smith abstained from voting to approve the minutes.

**3. Old Business:**

**4. Status of Complaint Review Teams and Active Case List**

At Mr. Smith’s request, the Complaint Review Teams (“CRT”) reported on progress made since the August 16, 2017 meeting. Ms. Coles-Roby gave the 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.

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Ms. Coles-Roby explained that due to the press of other Board matters she would need more time to prepare the reply brief in 05C-07.

In 08C-03, Ms. Coles-Roby reported that the Presiding Officer has not issued his Recommended Final Decision (“RFD”).

Ms. Coles-Roby reminded the Committee that the Massachusetts Superior Court, Roach, J., held a Status Conference on June 20, 2017 in 10C-01, and the case should be resolved by cross-motions for judgment on the pleadings by September 22, 2017, according to the court’s docket. Mr. Smith asked whether there were any developments. Ms. Coles-Roby gave a brief recitation of the facts and procedural posture of the case, in particular, that the LSP is not practicing; and that the only remaining controversy is whether the Board has the regulatory authority to issue press releases regarding disciplinary matters.

Ms. Coles-Roby reiterated that she met with the LSP’s attorney in 11C-04 to discuss the Board’s offer of settlement on July 7, 2017. He agreed to respond by September 20, 2017. In an electronic communication forwarded on September 19, 2017, the attorney indicated that he was unable to meet the September deadline due to illness in his own family. Mr. Austin asserted that the Board should set a firm deadline. Dr. Batchelder said that the LSP may be unaware of the offer. She was concerned that the LSP not be penalized for his attorney’s misfortune. Mr. Siddique wondered if Ms. Coles-Roby could communicate with the LSP directly. Ms. Coles-Roby explained that because the LSP has legal representation, she could only communicate with his counsel. Mr. Siddique asked if the situation was analogous to a landlord/tenant dispute which presented no ethical conflict. Could a letter be sent to the LSP directly and copied to his attorney, he asked? Ms. Coles-Roby explained that no Board members should contact the LSP directly, nor would she do so as long as the LSP was represented by an attorney. Ms. Pinaud opined that the LSP had a responsibility to remain informed about his or her case. Dr. Batchelder thought that if there was no mechanism in place, the LSP might not find out about the offer of settlement. Mr. McBride indicated that the LSP was taking a very passive role. Ms. Coles-Roby suggested that the Board set a firm deadline cautioning that failure to respond would result in the litigation going forward. The Committee voted to set October 24, 2017 as the date by which the LSP must respond. Ms. Coles-Roby was asked to so inform the LSP’s attorney.

In the matter of 12C-01, Ms. Coles-Roby again told the Committee that the LSP was interviewed on August 9, 2017 and has until September 25, 2017, to file any supplemental documents.

Ms. Coles-Roby said that the LSP in 16C-01 was interviewed on July 19, 2017. The LSP filed supplemental documents on September 20, 2017. She also said that those supplemental documents will be forwarded to the CRT for review.

In 17C-01, Ms. Coles-Roby told the Committee that the imposition of discipline, a written warning, would be discussed during the Quasi-Judicial Session after the Board meeting.

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Ms. Coles-Roby told the Committee that a new complaint was filed 17C-02 on September 7, 2017. The case involved a LSP whose license was revoked by the Board in 2004. The complainant alleged that the person held himself/herself out to be a LSP when hired to prepare a Phase I and Phase II report at a cost of \$12,000.00. Those reports were attached to the complaint. A retainer of \$6000.00 was paid. There is pending litigation between the parties regarding payment of the remaining amount. In support of his claims, the complainant stated that the property owner “introduced the person as a LSP.” He went to state that during a meeting on February 17, 2017, the person “represented . . . numerous times that he/she is and has been a LSP for the last 30+ years.” He also alleged that when confronted the former LSP denied representing himself/herself as a LSP. The former LSP also said that he/she worked with a licensed LSP when necessary. On September 8, 2017, Ms. Coles-Roby asked the complainant to provide any other documentation that could buttress his claims. On September 15, 2017, he forwarded a Scope of Work prepared by the former LSP. In it, the former LSP signed off with the company name. Ms. Williamson added that the complainant was neither the property owner nor the responsible party. The issue was whether the case could be dismissed for lack of jurisdiction by Board staff, or docketed because further investigation was warranted. Ms. Listernick questioned what action the Board could take given the fact that the person was no longer an LSP. Ms. Campbell noted that the case sounded like a business practice issue. Dr. Batchelder agreed that the former LSP was not providing professional services. She also said that this issue had been the subject of an Advisory Ruling. Ms. Williamson asked whether the case was subject to dismissal for lack of jurisdiction. Dr. Batchelder said that that there was no need for the Board to vote since LSP Board staff merely asked for guidance. Ms. Coles-Roby said that the complainant would be notified. Ms. Pinaud questioned what action the Board might have taken. Dr. Batchelder responded that the Board looked into the issue years ago and determined that it could send a “cease and desist” letter to the party. Conversely, it could be forwarded to the Attorney General’s Office, Ms. Campbell stated. Dr. Batchelder said that it is a Consumer Protection issue.

### **5. New Business:**

No new business was discussed.

### **6. Future Meetings: October 25, 2017—MassDEP NERO**

**7. Adjournment:** The meeting was adjourned at approximately 1:40 p.m.