

# 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 October 25, 2017

Approved on November 15, 2017

**Prepared by:** Beverly Coles-Roby

**Meeting Location:**

**MassDEP NERO**  
**205B Lowell Street**  
**Wilmington, MA 01887**

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

- Agenda
- Draft Minutes of Meeting on September 20, 2017
- Active Case List

**2. Call to Order:** Co-Chairperson James N. Smith called the meeting to order at approximately 1:07 p.m. The Board members in attendance were Maria Pinaud, Debra Listernick, Dr. Gail Batchelder, Farooq Siddique, Kirk Franklin, Gregg McBride, Marc J. Richards, and Kathleen Campbell. Board member David Austin was absent. Staff members present were Beverly Coles-Roby and Lori Williamson. Wendy Rundle, Executive Director of the LSP Association (“LSPA”), Wes Stimpson of WES Associates and Mike Toomey were also present.

**3. Previous Minutes:** Ms. Rundle said that the LSPA had a question about why the Board was not going forward with the complaint discussed at the September 2017 Board meeting, which involved a LSP whose license had been revoked holding himself out to be a LSP. Mr. Stimpson added that the Board does have jurisdiction over someone holding themselves out to be a LSP when they are not licensed. Dr. Batchelder noted that any person who holds himself/herself out to be a LSP is in violation of the Board’s regulations. Ms. Coles-Roby provided some background on the case saying that the complaint, 17C-02, was filed on September 7, 2017. It involved a LSP whose license was revoked by the Board in 2004.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

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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. Pinaud thought that under the circumstances the Board did not have jurisdiction. Ms. Campbell added that she considered the matter to be a business practice issue. Dr. Batchelder noted that there is no way to enforce the regulations in this case. Mr. Stimpson said that the party was subject to civil penalties, such as a fine. Dr. Batchelder went on to say that the Board looked into the matter and decided that it did not rise to a level that warranted further investigation. She added that the complainant had no direct evidence. Ms. Williamson reminded everyone that the matter was reviewed by the Board and it voted to dismiss the case. Ms. Pinaud said that the Board did not vote because it was not comfortable voting without having read the materials. The Board only provided guidance, she said. Mr. Smith agreed that the Board merely provided guidance to the LSP Board Staff. Mr. Stimpson asked whether the matter could be reviewed further. Ms. Pinaud responded that if more information was received the matter could be brought back before the Board. Ms. Coles-Roby informed the Committee that a dismissal letter was prepared but not mailed. Mr. McBride commented that the Board needed to step back and reopen the discussion.

The draft minutes of the meeting held on September 20, 2017, were approved as written. Board member Kirk Franklin abstained from voting to approve the minutes.

#### **4. Old Business:**

The Board will revisit the issues in 17C-02. Ms. Williamson will provide redacted copies of the complaint for the Committee’s review at its next meeting.

#### **5. Status of Complaint Review Teams and Active Case List**

At co-chairperson, Kirk Franklin’s request, the Complaint Review Teams (“CRT”) reported on progress made since the September 20, 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.

Ms. Coles-Roby explained that due to the press of other Board matters she would complete the reply brief in 05C-07 before the end of the year.

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In 08C-03, Ms. Coles-Roby reported that she contacted the Presiding Officer's administrative clerk on October 13, 2017. On October 16, 2017, she was told that he will issue the Recommended Final Decision within the next two to three weeks.

Ms. Coles-Roby indicated that 10C-01 was scheduled for hearings on the Motions for Judgment on the Pleadings on September 22, 2017. She added that she had spoken with Assistant Attorney General Daniel Hammond who said that he had continued the hearing. The LSP's attorney made an offer of settlement: the LSP has retired for all intents and purposes; and he/she moved to Africa and is not returning to the United States. He/she agreed to dismiss the complaint in Suffolk Superior Court; to not reapply for a LSP license; and to inform the Board in the event that he/she decides to renew. Ms. Campbell told the Committee that it had voted on discipline for this LSP. Dr. Batchelder said that the Board does not negotiate press releases, and it would be unwise to set a precedent here. Ms. Pinaud agreed. There was a discussion about which members were recused from the case. Ms. Coles-Roby told the Committee that recusals are noted on the Active case List. Beyond that, only those members who sat on the CRT are recused. Ms. Pinaud informed the Committee that she was recused because the complaint was filed by MassDEP. Mr. McBride asked why then was Ms. Batchelder participating in the discussion. Dr. Batchelder responded that so long as the Committee was discussing the facts of the case she could comment but not vote. Turning to the press release, Ms. Campbell commented that the point of a press release is to notify the public and agreeing to the settlement would take away the Board's discretion. Mr. McBride inquired if the court case was solely about the issue of the Board's authority to issue a press release. By way of providing some background, Ms. Coles-Roby answered that the matter was settled. The LSP's attorney asked to review the press release. He was told unequivocally that the Board would permit a review but not any edits to the press release. The attorney then filed a complaint in court requesting injunctive relief: preventing the Board from issuing the press release. As grounds, he/she asserted that the Board lacked either express or inherent authority to issue press releases. Generally speaking, the press release is a significant piece of enforcement action, Ms. Pinaud stated. Additionally, Mr. McBride stated press releases are part of the Board's obligation to inform and it's a reasonable way to implement the Board's obligation to inform the public. Mr. McBride also questioned whether the Board would know if this LSP reapplied for his/her license. Mr. Siddique said that the Board faced a similar issue when a LSP's license was revoked and he/she had to reapply and retake and pass the exam. Mr. Stimpson noted that the LSP has not yet been disciplined since he/she allowed his/her license to expire. Mr. Richardson asked whether there was a question of severity of the violations with respect to press releases. Mr. Siddique responded that the Board retains the right to issue or not issue a press release. Mr. Smith concluded the discussion by saying that the Board has both the authority and the responsibility to issue press releases. The Committee voted to recommend that the Board authorize the Attorney General's Office to refuse the LSP's offer of settlement. Dr. Batchelder, who is recused from this matter, left the room during the discussion.

Ms. Coles-Roby reiterated that the Committee voted to set October 24, 2017 as the date by which the LSP must respond in 11C-04. She also said that she reminded the LSP's attorney on September 28 and again on October 11, 2017 of the Board's approaching deadline. The attorney responded the same day each time telling Ms. Coles-Roby that his client was

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worried about his/her job and other consequences of accepting the Board's offer. The attorney forwarded a written response on October 20, 2017 a redacted version of which will be reviewed during the Quasi-Judicial Session after today's Board meeting.

In the matter of 12C-01, Ms. Coles-Roby again told the Committee that CRT received the LSP's supplemental documents and that the CRT would schedule its next meeting.

Ms. Coles-Roby said that the LSP filed supplemental documents on September 20, 2017 and the CRT would meet on October 31, 2017 to review the matter.

In 17C-01, Ms. Coles-Roby told the Committee that the written warning was mailed to the parties.

### **6. New Business:**

The LSP staff announced that the Board had received a new complaint that was under review.

No new business was discussed.

### **7. Future Meetings: November 15, 2018—MassDEP Boston**

**8. Adjournment:** The meeting was adjourned at approximately 1:53 p.m.