

## Before the Building Practitioners Board

	BPB Complaint No. CB24064
Licensed Building Practitioner:	Samuel Chandra (the Respondent)
Licence Number:	BP 110064
Licence(s) Held:	Carpentry

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### Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner

#### Under section 315 of the Building Act 2004

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Complaint or Board Inquiry	Complaint
Hearing Location	Tauranga
Hearing Type:	On the Papers
Hearing Date:	27 March 2019
Decision Date:	18 April 2019

#### Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)  
Mel Orange, Legal Member  
Bob Monteith, LBP Carpentry and Site AOP 2  
Faye Pearson-Green, LBP Design AOP 2

#### Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Board Decision:

The Respondent **has** committed disciplinary offences under sections 3317(1)(b), 317(1)(d), 317(1)(da)(ii) and 317(1)(i) of the Act.

## Contents

<b>Introduction</b> .....	2
<b>Function of Disciplinary Action</b> .....	3
<b>Procedure</b> .....	3
<b>Evidence</b> .....	3
<b>Board’s Conclusion and Reasoning</b> .....	5
Negligence and/or Incompetence .....	5
Contrary to a Building Consent .....	7
Record of Work.....	7
Disrepute.....	8
<b>Penalty, Costs and Publication</b> .....	10
Penalty .....	10
Costs.....	11
Publication .....	11
<b>Section 318 Order</b> .....	12
<b>Submissions</b> .....	12
<b>Right of Appeal</b> .....	13

## Introduction

- [1] The hearing resulted from a Complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [Omitted]. The alleged disciplinary offences the Board resolved to investigate were that the Respondent:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act);
  - (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
  - (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act); and

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<sup>1</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

- (d) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

### Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

[3] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*<sup>4</sup> Collins J. noted that:

*“... the disciplinary process does not exist to appease those who are dissatisfied ... . The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”*

[4] The Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. It does not have any jurisdiction over contractual matters.

### Procedure

[5] The Respondent was served in person with the complaint on 1 October 2018. He signed acknowledging service. The Respondent did not provide a response to the complaint.

[6] The Respondent was served with a Notice of Hearing. He did not respond to it.

[7] The Board also notes that the purposes of the disciplinary provisions in the Act would be defeated if licensed building practitioners were able to avoid complaints by not engaging in the process. As such the Board finds that it is appropriate that it considers the complaint and that it holds a hearing.

### Evidence

[8] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>5</sup>. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

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<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [9] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses.
- [10] In this case the Board decided that no further evidence was required. If a Respondent provides further evidence or submissions the Board takes them into account. If they request an in-person hearing this is given consideration.
- [11] The Respondent contracted by way of his company Axcel Construction Limited (in liquidation) to build a new residential dwelling for the Complainant. The Master Build contract stated the Respondent was the person who would both carry out and supervise the building work. Clause 39 of the contract stated that the whole of the works could not be assigned or sublet without the written consent of the owner.
- [12] Building work commenced on 14 January 2017 but progress was slow. Foundations were completed in April. The roof was installed in November. A council inspection noted the frames were no longer compliant as a result of high levels of moisture resulting from prolonged exposure to the elements. The issue was raised by the Complainant with the Respondent. He took no action.
- [13] During the build the Complainant alleged the Respondent subcontracted the works without consent or notice. The Complainant stated the person the Respondent gave the project to was working from the wrong plans. The build then substantially departed from what had been consented. The Complainant noted the front entry looked different to that which was consented. The Complainant provided a copy of the consented plans which he obtained from the Council.
- [14] The Complainant stated that the Respondent was paid \$469,000.00 for the project but that he ignored phone calls and texts. The only contact from him was the Respondent forwarding stage payment invoices. The Complainant went to the Respondent's residence to discuss matters. The Respondent denied recognising the Complainant, and the Complainant said he was very abusive.
- [15] The Complainant alleged that the Respondent had made a fake contract for the build of the house and had sold it to his subcontractors for \$100,000.00 less than what the Complainant had paid. The Respondent's company then went into liquidation. The subcontractors have refused to complete the house and are demanding additional payments for sums they claim they are owed by the Respondent. Suppliers and contractors are threatening to repossess materials as a result of non-payment by the Respondent.
- [16] The Complainant also noted that the Respondent had not provided a record of work for the restricted building work he carried out.

### Board's Conclusion and Reasoning

[17] The Board has decided that the Respondent **has**:

- (a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act);
- (b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);
- (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act); and
- (a) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act)

and should be disciplined.

[18] The reasons for the Board's decisions follow.

#### Negligence and/or Incompetence

[19] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*<sup>6</sup> test of negligence which has been adopted by the New Zealand Courts<sup>7</sup>.

[20] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test<sup>8</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[21] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act<sup>9</sup>. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional

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<sup>6</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>7</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>8</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>9</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner<sup>10</sup>.

[22] The Board notes that the purposes of the Act are:

**3 Purposes**

*This Act has the following purposes:*

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
  - (i) *people who use buildings can do so safely and without endangering their health; and*
  - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
  - (iii) *people who use a building can escape from the building if it is on fire; and*
  - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[23] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code<sup>11</sup> and be carried out in accordance with a building consent<sup>12</sup>. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

[24] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>13</sup> the Court's noted, as regards the threshold for disciplinary matters, that:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[25] There was uncontested evidence before the Board that the Respondent's delays on the build resulted in the deterioration of framing, a critical structural element. There was also uncontested evidence that the Respondent provided the incorrect plans to subcontractors who then proceeded to build in line with those plans. Neither is acceptable and both matters fall below the standards expected of a licensed person.

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<sup>10</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

<sup>11</sup> Section 17 of the Building Act 2004

<sup>12</sup> Section 40(1) of the Building Act 2004

<sup>13</sup> [2001] NZAR 74

- [26] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

#### Contrary to a Building Consent

- [27] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must be submitted as an amendment to the consent before any further work can be undertaken. It is also an offence under s 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.
- [28] In *Tan v Auckland Council*<sup>14</sup> the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

*[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.*

- [29] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.
- [30] Building work has failed inspections and building work has, as a result of the incorrect plans being supplied, departed from the consented plans. Given these factors the Board finds that the disciplinary offence has been committed.

#### Record of Work

- [31] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work<sup>15</sup>.
- [32] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [33] A record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed

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<sup>14</sup> [2015] NZHC 3299 [18 December 2015]

<sup>15</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.

- [34] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”.
- [35] The Respondent’s involvement in the project has come to an end. A record of work has not been provided. On this basis the Board finds that the record of work was not provided on completion as required and the disciplinary offence has been committed.

### Disrepute

- [36] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111<sup>16</sup> and discussed the legal principles that apply.
- [37] The Board, in C2-01111 considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example in the High Court held in *Davidson v Auckland Standards Committee No 3*<sup>17</sup> a company director, who, in the course of his duties as a director was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time, however, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.
- [38] Similarly in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants<sup>18</sup>, convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.
- [39] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is “disrepute”. The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"<sup>19</sup> and the

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<sup>16</sup> Board decision dated 2 July 2015.

<sup>17</sup> [2013] NZAR 1519

<sup>18</sup> 24 September 2014

<sup>19</sup> Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*<sup>20</sup> the Court of Appeal held that:

*the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*<sup>21</sup>

[40] As to what conduct will or will not be considered to bring the regime into disrepute it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect it is noted disrepute was upheld in circumstances involving:

- criminal convictions<sup>22</sup>;
- honest mistakes without deliberate wrongdoing<sup>23</sup>;
- provision of false undertakings<sup>24</sup>; and
- conduct resulting in an unethical financial gain<sup>25</sup>.

[41] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act although provision for one is made. What is clear from the cases though is that unethical or unprofessional conduct can amount to disreputable conduct.

[42] The evidence before the Board with regard to disrepute is the unauthorised subcontracting of the building work and the Respondent's unethically obtained financial gain as a result of that sub-contracting. Additionally, the Respondent has taken funds that appear not to have been applied to the building contract. Again he has, in doing so, obtained an unethical financial gain.

[43] The Courts have stated that the threshold for disciplinary complaints of disrepute is high and the Board notes that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:

*This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.*

[44] The Board considers that the conduct was serious. A disciplinary finding of disrepute is warranted.

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<sup>20</sup> [2012] NZCA 401

<sup>21</sup> [2012] NZAR 1071 page 1072

<sup>22</sup> *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

<sup>23</sup> *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

<sup>24</sup> *Slack, Re* [2012] NZLCDT 40

<sup>25</sup> *Colliev Nursing Council of New Zealand* [2000] NZAR 7

### Penalty, Costs and Publication

- [45] Having found that one or more of the grounds in section 317 applies the Board must, under section 318 of the Act<sup>i</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [46] The matter was dealt with on the papers. The Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

### Penalty

- [47] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment, but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*<sup>26</sup> commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

*[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.*

- [48] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>27</sup> the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [49] The Board notes that the Respondent's licence is currently administratively suspended. It also notes the Respondent has not engaged in the complaint process. It considers this to be an aggravating factor. In this respect the manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*<sup>28</sup> the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the disciplinary process in a belligerent way.
- [50] Given the above factors the Board has decided that the Respondent's licence should be cancelled for a period of six months. The Board considers this is necessary to not only punish the Respondent but also to protect the public and deter other licensed building practitioners from similar conduct.

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<sup>26</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>27</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>28</sup> [2011] 3 NZLR 850.

### Costs

- [51] Under section 318(4) the Board may require the Respondent “to pay the costs and expenses of, and incidental to, the inquiry by the Board.”
- [52] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>29</sup>.
- [53] In *Collie v Nursing Council of New Zealand*<sup>30</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [54] Based on the above the Board’s costs order is that the Respondent is to pay the sum of \$2,000 toward the costs of and incidental to the Board’s inquiry.

### Publication

- [55] As a consequence of its decision the Respondent’s name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners’ scheme as is required by the Act<sup>31</sup>. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:
- In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*
- [56] As a general principle such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [57] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>32</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>33</sup>. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>34</sup>. The High Court provided

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<sup>29</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>30</sup> [2001] NZAR 74

<sup>31</sup> Refer sections 298, 299 and 301 of the Act

<sup>32</sup> Section 14 of the Act

<sup>33</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>34</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>35</sup>.

- [58] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest<sup>36</sup>. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [59] Based on the above the Board will order further publication. The publication is to focus on the disrepute aspects of this decision.

### Section 318 Order

- [60] For the reasons set out above, the Board directs that:

**Penalty:** Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of six months.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(iii) of the Act.

In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action, in addition to the note in the Register and the Respondent being named in this decision.

- [61] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

### Submissions

- [62] The Board invites the Respondent to make written submissions on the matters set out in this draft decision up until close of business on **14 May 2019**.
- [63] If no submissions are received then this decision will become final. If submissions are received then the Board will meet and consider those submissions prior to coming to a final decision.

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<sup>35</sup> *ibid*

<sup>36</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

## Right of Appeal

[64] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>ii</sup>.

Signed and dated this 18<sup>th</sup> day of April 2019



**Richard Merrifield**  
Presiding Member

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### <sup>i</sup> **Section 318 of the Act**

- (1) *In any case to which section 317 applies, the Board may*
  - (a) *do both of the following things:*
    - (i) *cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
    - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
  - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
  - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
  - (d) *order that the person be censured:*
  - (e) *order that the person undertake training specified in the order:*
  - (f) *order that the person pay a fine not exceeding \$10,000.*
- (2) *The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

### <sup>ii</sup> **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
  - (b) *to take any action referred to in section 318.*

### **Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*

- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*