

## Before the Building Practitioners Board

	BPB Complaint No. C2-01751
Licensed Building Practitioner:	Jonathan Greer (the Respondent)
Licence Number:	BP 122747
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:	Christchurch
Hearing Type:	In Person
Hearing Date:	11 April 2018
Decision Date:	8 May 2018

#### Board Members Present:

Chris Preston (Presiding)  
Mel Orange, Legal Member  
David Fabish, LBP, Carpentry Site AOP 2  
Catherine Taylor, Lay Member

#### 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 317(1)(b) and 317(1)(d) of the Act.

The Respondent **has not** committed a disciplinary offence under sections 317(1)(da)(ii) of the Act.

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## 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); and
- (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).

## 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

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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.

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.

#### Evidence

- [5] 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.

- [6] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Jonathan Greer	Respondent
[Omitted]	Engineer, by telephone

- [7] The Respondent’s business, Foundations Builders Limited, was engaged to complete the foundations for a new build residential dwelling. The associated building work was carried out between February 2017 and March 2017.

- [8] The Complainant provided a Construction Note dated 22 March 2017 from the [Engineering Company] with the Complaint. This formed the basis of the Complaint. It stated:

*Note: Due to the poor placement of the foundation footings and reinforcing steel well below industry good practise, additional work is required to satisfy bearing requirements of masonry block footings above and to correctly place reinforcing starters ensuring correct concrete cover and lap. Due to the low risk of theses shallow foundations as a structural system [the Engineering Company] believe that the foundations will perform satisfactory given the*

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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

*below items are used as a basis for the additional corrective work. The contractor is responsible for set-out and constructability of the structure, contractor to contact [the Engineering Company] if further details are required for structural elements.*

[9] The Construction Note included the following table:

Item	Description
1	Poor bearing surface for masonry block: Contractor to place new cast in-situ concrete over footing surface to ensure level surface for block work above. Depth of concrete TBC from contractor. For footings which have insufficient concrete for bearing i.e. masonry blocks bearing on 'dirt', contractor to dig out 100mm min down to existing footing depth and place new concrete. Reinforce with 2/HD16 bars.
2	Foundation Starter Reinforcement: Contractor to remove misplaced placed reinforcement and set out as required for construction works above. Use Epcon C6 chemical resin with 190mm min embedment. Check lap lengths and ensure slab starter reinforcement is also placed correctly.
3	Masonry wall reinforcement: all 20 series masonry in the main dwelling garage area to have to HD16 reinforcing steel @400crs each way (typical lap 1150mm). Masonry block layer to inform [the Engineering Company] of intended construction joint locations – check with client on intended finish for garage wall, (plastered or not).

[10] The Respondent did not provide any form of response to the Complaint as part of the Registrar's Report phase.

[11] At the hearing the Respondent laid out that, at the time of the events which led to the Complaint, his wife had suffered an injury that meant he had to spend time at home caring for her and their young children. He had been approached by a local builder, [Omitted], who was working for another company and who was seeking employment. He engaged [Omitted] on the understanding that he was a licensed building practitioner. He did not check the Register of Licensed Building Practitioners, ask for or view [Omitted]'s licence card or carry out any background checks on him. [Omitted] was not licensed. The Respondent accepted that not carrying out any checks on [Omitted] and taking him at his word was his main failing and that this led to the issues that resulted in the Complaint. He stated he had learnt from this.

[12] The Respondent proceeded with the construction of the foundation on the basis that [Omitted] was licensed and did not, therefore, have to be supervised. He supplied a hammer hand to assist [Omitted]. The Respondent did not check on the work as it progressed. He stated that he also relied on the Engineer to carry out construction monitoring and he considered approval should not have been given for the pour of the foundation by the Engineer. The Respondent stated that, had he known [Omitted] was not licensed, he would have attended the site and actively supervised the building work.

[13] The Engineer gave evidence including that the owner, who was [the Engineering Company]'s client, was difficult to deal with and had been accusing them of delaying the project. Because of this they did not issue site or construction notes when they carried out early observations but issued verbal instructions to [Omitted]. The effect of the advice outlined on a timeline provided by the Engineer was, as regards Site Inspection 1 (SV1) carried out on 9 March 2017, that:

*\*SV1- Site inspection completed day of first concrete pour -reinforcing not placed on chairs, reinforcing inspected was however correct size and initially observed as correct spacing (for reinforcing placed). No site report issued, email sent indicating pour could go ahead, at contractors risk, assuming the rest of reinforcing placed correctly and evidence would be provided to [the Engineering Company] (note this evidence was never provided). No measurements taken on-site by [the Engineering Company] to assure reinforcement aligned correctly or spacing to fit within block-work above.*

[14] The Board queried the site instruction and whether any written advice was issued by email. Subsequent to the hearing the Engineer provided a revised timeline which removed the SV1 note above. He also provided a copy of an email to Foundation Builders which was sent on the same day as the SV1 site visit which stated:

*To whom it may concern,*

*FYI, regarding the foundation construction at [Omitted], I dropped by the site this morning and everything looks good. No site report is needed however I've documented the visit and the photos are on our file.*

*Feel free to contact us if anything else is required. Thanks,*

*[Omitted]*

[15] The Engineer further clarified in post hearing submissions that:

*SV1 - 09/03/2017 – This site visit DID NOT have an email which was sent to the contractor and client as discussed in the hearing by myself. We prepared the attached site visit report and were prepared to allow the Garage 2 footings to be poured without a further site visit (using photographic evidence) but not the house footings. This was advised on site to the contractor present.*

*We expected to be called back to the site prior to pouring these House footings and to receive photos before the Garage 2 footings were poured. Following this inspection (approximately 10:45am), phone calls we made by various members of this office to various people to inform them of the situation. This included the client ([Omitted]).*

*Neither of the requests were fulfilled and we had no contact from any parties.*

*We then continued to have no contact from any party until SV2 - 13/03/2017 when [Omitted] and [Omitted] contacted us directly to resolve the problems.*

- [16] At the hearing the Engineer noted that they were relying on a competent licensed building practitioner in allowing work to progress.
- [17] The Respondent set out that he has successfully completed hundreds of foundations in the region without any issues. He also outlined the costs that he has incurred as a result of the approach taken to remediation by the owner and the impact that it has had on him personally and on his business.
- [18] With regard to the record of work the Respondent stated the he had not been asked for one and did not know what, of the original restricted building work that was carried out, remained. He was not involved in remediation and believed that the work was mostly redone. [Omitted] was dismissed from his employ soon after the issues came to light.
- [19] The Respondent also outlined that he did not respond to the Complaint when it was brought to his attention as he was struggling to deal with multiple issues that were impacting on the continued viability of his business and that he is not good at putting pen to paper.

#### **Board's Conclusion and Reasoning**

- [20] 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); and
  - (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).
- and should be disciplined.
- [21] The Board has decided that the Respondent **has not** 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).
- [22] The reasons for the Board's decision follow.

Negligence and/or Incompetence

- [23] Negligence and incompetence are not the same. In *Beattie v Far North Council*<sup>6</sup> Judge McElrea noted:

*[43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.*

- [24] 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>7</sup> test of negligence which has been adopted by the New Zealand Courts<sup>8</sup>.
- [25] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*<sup>9</sup> it was stated as "*an inability to do the job*".
- [26] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>10</sup>. The first stage 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.
- [27] 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>11</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 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>12</sup>.
- [28] The Board notes that the purposes of the Act are set out in section 3:

**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—*

<sup>6</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<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> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>10</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>11</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

<sup>12</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (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.*

[29] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code<sup>13</sup> and be carried out in accordance with a building consent<sup>14</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.

[30] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>15</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.*

[31] Turning to the conduct in question the Respondent hired a person that he believed to be licensed. It transpired that he was not. No checks were made to verify the Respondent's claim. It was in failing to carry out such checks that the Respondent was negligent. Had a simple check of the Register been carried out then what followed would most likely not have occurred.

[32] It needs to also be borne in mind that as the person who carried out the building work was not licensed and because the building work was restricted building work which had to be carried out or supervised by a licensed person<sup>16</sup> responsibility for it falls to the Respondent as the supervisor.

[33] The work was not carried out to an acceptable standard. Had the Respondent supervised then it is doubted that the issues would have arisen. In this respect it is to be noted that supervise under section 7 of the Act means:

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<sup>13</sup> Section 17 of the Building Act 2004

<sup>14</sup> Section 40(1) of the Building Act 2004

<sup>15</sup> [2001] NZAR 74

<sup>16</sup> Section 84 of the Building Act 2004



*supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—*

*(a) is performed competently; and*

*(b) complies with the building consent under which it is carried out.*

[34] There were contributing factors including a lack of clear instructions from the Engineer. These are, however, factors that the Board considers should be taken into account in considering penalty.

[35] 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, as a result of the issues that followed, the conduct was sufficiently serious enough to warrant a disciplinary outcome.

#### Contrary to a Building Consent

[36] Under section 40 of the Act all building work must be carried out in accordance with the building consent issued. This ensures that there is independent verification that the Building Code has been complied with and the building work will meet any required performance criteria. A failure to adhere to a building consent is also an offence under section 40.

[37] In *Tan v Auckland Council*<sup>17</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.*

[38] The evidence received from the Engineer in the Construction Note at paragraph [9] shows clear departures from the building consent. As such, and given the Respondent was the supervising licensed building practitioner, the disciplinary charge is upheld.

#### Record of Work

[39] 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>18</sup>.

[40] 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

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<sup>17</sup> [2015] NZHC 3299 [18 December 2015]

<sup>18</sup> Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.

- [41] The Board discussed issues with regard to records of work in its decision C2-01170<sup>19</sup> and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [42] The starting point with 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 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.
- [43] 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 ...”.
- [44] In most situations issues with the provision of a record of work do not arise. The work progresses and records of work are provided in a timely fashion. Contractual disputes or intervening events can, however, lead to situations where the licensed building practitioner will have to provide a record of work even though all of the intended restricted building work has not been completed.
- [45] This is what has occurred in the present case. The contractual relationship came to an end, a commercial dispute ensued and other contractors remediated the restricted building work. The evidence was not clear as to the extend to which the Respondent’s work was replaced but he considered it was most if not all of it.
- [46] The Board has previously held that, in such circumstances, a record of work may not be required<sup>20</sup>. Given this, and the provisons of section 317(1)(da)(ii) of the Act which provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work, the Board finds that the disciplinary offence has not been committed in that the Respondent did have a good reason.

### **Penalty, Costs and Publication**

- [47] 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.
- [48] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an

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<sup>19</sup> *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

<sup>20</sup> Refer Board Decisions C2-01204 and C2-01441.

opportunity to provide further evidence or submissions relevant to the indicative orders.

### Penalty

[49] 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>21</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.*

[50] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>22</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.

[51] The Board notes the Respondent's personal circumstances at the time, the losses incurred and the contributing factors. Given these the Board considers the imposition of a minimal penalty is warranted. As such the Respondent is censured. A censure is a formal expression of disapproval.

### Costs

[52] 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."

[53] 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>23</sup>.

[54] In *Collie v Nursing Council of New Zealand*<sup>24</sup> where the order for costs in the tribunal was 50% of actual costs and expenses the High Court noted that:

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<sup>21</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>22</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

<sup>23</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>24</sup> [2001] NZAR 74

*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.*

- [55] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$500 toward the costs of and incidental to the Board's inquiry. The Respondent should note that the Board's normal costs order for hearing of this nature is \$2,000 but that, given the mitigation heard, it has been significantly reduced.

#### Publication

- [56] 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>25</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.*

- [57] 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.
- [58] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990<sup>26</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>27</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>28</sup>. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>29</sup>.
- [59] 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>30</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.
- [60] Based on the above the Board will not order further publication. The Board will, however, look to publish an article on the importance of checking a person's licence when engaging them as an employee to carry out restricted building work.

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<sup>25</sup> Refer sections 298, 299 and 301 of the Act

<sup>26</sup> Section 14 of the Act

<sup>27</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>28</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>29</sup> *ibid*

<sup>30</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

### Section 318 Order

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

**Penalty:** Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (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 not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.**

[62] 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 on Penalty, Costs and Publication

[63] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **29 May 2018**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. 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 on penalty, costs and publication.

### 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 8<sup>th</sup> day of May 2018

  
**Chris Preston**  
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:*

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- (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."*

***ii 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.*