

## Before the Building Practitioners Board

	BPB Complaint No. C2-01807
Licensed Building Practitioner:	Grant Maitland (the Respondent)
Licence Number:	BP 123204
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 or On the Papers
Hearing Date:	27 June 2018
Decision Date:	6 July 2018

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

The Respondent **has not** committed disciplinary offences under sections 317(1)(c) or section 317(1)(i) 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 (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act);
  - (c) breached section 314B of the Act (s 317(1)(h) of the Act);
  - (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).

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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.

### 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.

### Background to the Complaint

[5] The Respondent did not respond to the Complaint when it was brought to his attention as part of the Registrar’s Report phase. Once the matter was set down he provided limited information as regards other tradespersons and the work they carried out. He also provided a Response Sheet which stated he would not be appearing and a short submission.

[6] Following Counsel for the Registrar filing the opening the Respondent sent a version of it with some mark ups for the Board to consider.

### Evidence

[7] 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.

[8] The Respondent was engaged to carry out renovations to a dwelling house. The building work was not carried out under a building consent. The Respondent had other persons working with him on the job. The Complainant set out that the Respondent:

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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

*... told me that he and his team were qualified to do the plumbing work although did not specifically state anyone was a registered plumber. After works had started and I raised concerns, GM explicitly stated to me that he personally did all the plumbing and electrical work each time we discussed my concerns.*

- [9] The Complainant provided photographs of what she alleged was non-compliant building work including:
- (a) *The shower liner was not installed correctly to the wall. It bubbled out from the wall in places both on the wall and at the junction between the liner and the bath edge. The liner would "warp out" further when the shower was on.*
  - (b) *Inappropriate materials were used in the bathroom - a thin board was used on the wall to the right of the shower and the MDF skirting board.*
  - (c) *The shower door was loose and easily struck the vanity unit. It was also a swing door and they had agreed the sliding door would be reinstalled.*
  - (d) *The extractor/light/heath unit was not wired correctly.*
  - (e) *The vanity unit basin had a kitchen tap (not a hand basin tap). This means the tap extends a greater distance over the basin and does not function correctly.*
  - (f) *The waste pipe from the vanity basin unit leaked. A cable tie had been used to alter the angle of the waste pipe and it sat tensioned at an odd angle.*
  - (g) *There was a high pitched sounding noise from the shower when the water was turned on. Water also dripped from the shower head when the bath tap was turned on.*
  - (h) *The bath water outlet was of sink diameter. This mean when showering, water would back up in the bath due to slow emptying.*
  - (i) *The shower over the bath tapware was a discontinued Methven model that was past the warranty period.*
- [10] The Registrar made enquiries with the Respondent as regards whether he had any evidence that a registered electrician or plumber undertook the work at the property. His response was that he never said a registered plumber or electrician did the work. He said a man working for him did the work, and some of his friends were supposed to check the work but that did not happen. The Respondent advised this man had since moved to Australia. No details of who the person was were provided.

- [11] The Complainant lodged complaints with the Master Builders Association, the Plumbers Gasfitters and Drain Layers Board (PGDB) and the Electrical Workers Registration Board (EWRB), as well as engaging a legal representative to resolve a commercial dispute between the parties.
- [12] The Respondent did not appear on either the register of authorised person maintained under the Electricity Act 1992 or the Plumbers, Gasfitters, and Drainlayers Act 2006.
- [13] In the submissions the Respondent provided for the hearing he set out that he was not allowed to fix item (a) in paragraph [9] above and generally denied or disputed the other allegations.

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

- [14] 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) breached section 314B of the Act (s 317(1)(h) of the Act) in that he has carried out building work outside of his competence;
- and should be disciplined.
- [15] The Board has decided that the Respondent **has not**:
- (a) carried out (other than as an owner-builder) or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise (s 317(c) of the Act); or
  - (b) 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).
- [16] The reasons for the Board's decisions follow.

### Negligence and/or Incompetence

- [17] The Respondent's negligence is firstly in respect of how the building work was carried out and secondly in his failure to engage appropriately licensed persons to carry out plumbing and electrical work both of which are regulated trades.
- [18] 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.*
- [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

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

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>.

- [20] 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*”.
- [21] 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 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.
- [22] 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>.
- [23] 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:*

<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

(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.*

[24] 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.

[25] It is also to be noted that under section 17 of the Act all building work must comply with the building code, even if it is carried out without a building consent.

[26] 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.*

[27] The matters outlined in paragraph [9] (a) to (c) and (e) are items which all fell below acceptable standards. Items (a) and (b) relate to water tightness in a wet area and are, as such, serious matters. Each individually would be sufficient for a finding of negligence. Given this 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.

[28] Turning to the electrical and plumbing work both trades are regulated under the Electricity Act 1992 and the Plumbers, Gasfitters, and Drainlayers Act 2006 respectively. Work in those areas can only be undertaken by appropriately licensed and authorised persons. It is an offence under each of the Acts for any person who is not authorised to carry out such work<sup>16</sup>. There is also a requirement to obtain certification from the authorised person on completion of the work.

[29] It is important to note that electrical and plumbing work has to be carried out by or supervised by an authorised person. Getting someone who is authorised to check it after its completion does not satisfy the requirements of either Act. Supervision requires knowledge that the work is being carried out, who is carrying it out and

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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> Refer to the Electricity Act 1992 and the Plumbers, Gasfitters, and Drainlayers Act 2006

provision of instructions. As was stated in <sup>1</sup> *Electrical Workers Registration Board v Gallagher*<sup>17</sup> in the context of the Electricity Act:

*As is made apparent by the definition of "supervision" in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations."*

[30] Turing to the Respondent's conduct the competencies for a carpenter, as set out in the Licensed Building Practitioner Rules 2007 include:

1.3	Describe the roles and responsibilities of key parties involved in the design and building process.  Roles may include but not limited to - licensed building practitioners (Design, Site, Specialist, Trade), engineers, other trades (e.g. electrical, plumbing, tiling), building consent authorities (BCAs) and clients.
2.4	Describe the process of integration with other trades.  Other trades may include but not limited to – electrical, plumbing, roofing, tiling, drainlaying, gasfitting, excavating, brick and blocklaying, plastering.

[31] As is clear from the above competencies a licensed building practitioner with a carpentry licence is expected to understand the roles and responsibilities of other trades and to be able to work with them. This includes ensuring that the correctly authorised persons are used to carry out or supervise regulated trades such as electrical and plumbing.

[32] The Respondent has failed in this respect. The Complainant's evidence was that the Respondent carried out the work himself. The Respondent's evidence was that he got an unnamed person to do the work and that it would be checked post completion. There is no evidence that if the Respondent did engage another person to do the work, or that he took any steps to ensure that the person or persons were authorised, or that he had it checked post completion.

[33] The Board finds that the Respondent is responsible for the electrical and plumbing work and that, in failing to take any steps to ensure the regulated work was carried out or supervised by an authorised person, he has fallen below the standards

<sup>17</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011



expected of a licensed building practitioner and is, accordingly, found to have been negligent.

#### Not Licensed to Carry Out or Supervise Restricted Building Work

- [34] The building work was not restricted building work as it was not carried out under a building consent. As such the disciplinary offence under section 317(1)(c) has not been committed.

#### Outside of Competence

- [35] The Respondent has been found to have carried out building work that was outside of his competence under section 317(1)(h) and section 314B(b) of the Act which provides:

*A licensed building practitioner must—*

*(b) carry out or supervise building work only within his or her competence.*

- [36] In this instance the building work that has been undertaken which was outside of the Respondent's competence was the electrical and plumbing work. Both fall within the definition in the Act of building work:

***building work***

*means work—*

- (i) for, or in connection with, the construction, alteration, demolition, or removal of a building; and*
- (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and*

- [37] The Respondent has submitted that he did not carry out the work himself but that he engaged a person who told him he could do it or that it was to be checked by others. As noted above this submission has not been accepted. The Board has found that the Respondent is responsible for the electrical and plumbing work.
- [38] As set out above the building work in question had to be carried out by persons authorised under the Electricity Act 1992 and the Plumbers, Gasfitters, and Drainlayers Act 2006. Searches of the registers for both the Electrical Workers Registration Board and the Plumbers, Gasfitters and Drainlayers Board show that he is not an authorised person under either Act.
- [39] It follows that as the Respondent is not an authorised person under either Act he is not competent to carry out work that falls within the gambit of those Acts and that he has accordingly worked outside of this competence.

## Disrepute

- [40] 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>18</sup> and discussed the legal principles that apply.
- [41] 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 courts have consistently 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>
- [42] 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 findings 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>.
- [43] In this instance the conduct which could be considered as having brought the regime into disrepute is that of the Respondent carrying out regulated work that he was not authorised to carry out.
- [44] The Board notes that this has, however, been dealt with in its findings of negligence and of working outside of the Respondent’s competence and as such a finding of disrepute is not necessary.
- [45] The Board also notes that the courts have stated that the threshold for disciplinary complaints of disrepute is high and that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:

<sup>18</sup> Board decision dated 2 July 2015.

<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

<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

*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.*

- [46] Taking this into account the Board also finds that the conduct in question does not reach the seriousness threshold for a finding of disrepute.

### **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 matter was dealt with on the papers. Included was information relevant to penalty, costs and publication and 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

- [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>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.*

- [50] 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.
- [51] The matters before the Board are serious and the penalty needs to reflect this. The Respondent's building work was negligent and he has been responsible for regulated work being carried out by non-authorized persons. The Board is also concerned that the Respondent has not taken either the Complaint nor his responsibilities as a licensed person seriously.

<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

- [52] In this respect the Board notes that 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 complaints and discipline process in a belligerent way.
- [53] Based on the above the Board's penalty decision is that the Respondent's licence be suspended for a period of six months and that he pay a fine of \$2,000. The Board considers that this penalty will serve as a deterrent to others and that it will bring the Respondent to the realisation that adhering to the constraints of his licence is important.

### Costs

- [54] 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."
- [55] 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>.
- [56] 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.*
- [57] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$1,000 toward the costs of and incidental to the Board's inquiry. The Board's normal starting point for a hearing of this nature is \$2,000 but it has reduced this on the basis that no witnesses were called and the investigation was not overly complex.

### Publication

- [58] 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:

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

<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

*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.*

- [59] 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.
- [60] 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 guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*<sup>35</sup>.
- [61] 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.
- [62] Based on the above the Board will order further publication. The publication will focus on the need to ensure that appropriately authorised persons are used to complete regulated trades.

### **Section 318 Order**

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

**Penalty:** Pursuant to s 318(1)(b) of the Act, the Respondent's licence is suspended for a period of six [6] months and the Registrar is directed to record the suspension in the of Licensed Building Practitioners; and

Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,000.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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.

<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

<sup>35</sup> *ibid*

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

**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.**

- [64] 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.

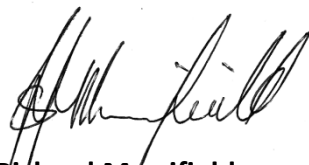
#### **Submissions on Penalty, Costs and Publication**

- [65] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **30 July 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**

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

Signed and dated this 6<sup>th</sup> day of July 2018



**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.*

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- (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.*