

Before the Building Practitioners Board

	BPB Complaint No. CB26371
Licensed Building Practitioner:	Aaron Crook (the Respondent)
Licence Number:	BP114238
Licence(s) Held:	Carpentry

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

Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Type:	On the Papers
Draft Decision Date:	4 March 2024
Final Decision Date:	6 May 2024

Board Members Present:

Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2 (Presiding)
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mrs J Clark, Barrister and Solicitor, Legal 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.

Disciplinary Finding:

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

The Respondent is fined \$2,500 and ordered to pay costs of \$875. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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Summary of the Board’s Decision

- [1] The Respondent was engaged to build a lounge room extension to an existing dwelling at [OMITTED]. The Respondent supervised this restricted building work. He accepted that aspects of his supervision were inadequate.
- [2] As a consequence of the Respondent’s poor supervision, the homeowner had to apply for a resource consent amendment and two building consent amendments, which resulted in additional delays to the construction programme. In addition, the

lounge extension was no longer the same size and shape as that which was designed and wanted by the homeowner.

- [3] The Board focussed on three aspect of building work which were not completed in accordance with the Building Code and/or consented plans. The Respondent admitted his lack of supervision in respect of two of the matters. He did not comment on the third.
- [4] The Board found, based on the Respondent’s admissions and the unchallenged evidence on the complaint file, that the Respondent had supervised building work in a negligent manner and in a manner that was contrary to the building consent issued.
- [5] The parties’ contractual arrangements came to an end in March 2023, but the Respondent did not provide a record of work until six months later. The Board found that the Respondent had failed to provide his record of work in accordance with the statutory requirement that it be provided on completion of his restricted building work.
- [6] The Board decided that the Respondent should pay a fine of \$2,500. This was reduced from a starting point of \$3,500 to take into account that the record of work was eventually provided, and the Respondent admitted some of the disciplinary offences.

The Charges

- [7] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies. Having received the report, the Board decided that regulation 9 applied to some but not to all of the allegations.

Regulation 10 Decision

- [8] In this matter, the disciplinary charges the Board resolved to further investigate¹ were that the Respondent, in relation to building work at [OMITTED], may have:
 - (a) supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.
 - (b) supervised building work that does not comply with a building consent contrary to section 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 or supervise, or has carried out 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

¹ The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

building work, in accordance with section 88(1) of the Act contrary to section 317(1)(da)(ii) of the Act.

Regulation 9 Decisions

- [9] The complaint to the Board also contained allegations that the Respondent had breached the code of ethics (principles 3 and 4) prescribed under section 314A of the Act (s 317(1)(g) of the Act).
- [10] The Complainant alleged that the Respondent failed to provide an updated schedule of work, did not work for a four month period, did not consult with the Complainant over the foundation measurements and how to resolve the issue, took 9 months to complete the build instead of the agreed 9 weeks and overcharged.
- [11] With regard to these allegations, the Board decided that regulation 9(f)(ii) of the Complaints Regulations applied. It provides:

Complaint not warranting further investigation

A complaint does not warrant further investigation if—

- (f) the investigation of it is—*
- (ii) unnecessary*

- [12] In considering whether the investigation of a complaint is necessary, the Board must consider the directions of the courts regarding the threshold for matters to be dealt with as a disciplinary matter. In short, the conduct has to fall seriously short of expected standards of conduct.²
- [13] The Board noted that the conduct complained about spanned a time period of June 2022 to March 2023 (when the contract between the parties was terminated). The code of ethics came into force on 25 October 2022 and relates only to conduct after that date. The alleged conduct took place both prior to and after the code coming into force. In the early months after the introduction of the code of ethics the Board was taking an educative approach to breaches of the code of ethics.
- [14] On this basis, the Board has decided the matters raised did not reach the seriousness threshold as outlined in the above court decisions and it is unnecessary to investigate these allegations further.
- [15] The Respondent should note that the Board's decision was a close call and that he should carefully consider his obligations under the code of ethics, particularly in respect of communication.

Draft Decision Process

- [16] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.

² *Collie v Nursing Council of New Zealand* [2001] NZAR 74

- [17] Ordinarily, the Board makes a decision having held a hearing.³ The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.⁴
- [18] In this instance, the Board decided that a formal hearing was not necessary. The Board considered that there was sufficient evidence before it to allow it to make a decision on the papers.
- [19] Included in the Board's decision-making process was the fact that the Respondent, in his response to the complaint, admitted to the issues which the Board relied on in reaching its decision. As such, the Board considered that a hearing might have been of limited value.
- [20] The Board did, however, note that there might be further evidence in the possession of persons involved in the matter. To that end, it issued a draft decision. The Respondent was provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Board had directed, or the Respondent had requested an in-person hearing, then the Board advised that one would have been scheduled.
- [21] The Respondent did not provide any response to the draft decision.
- [22] The Complainant provided an email dated 17 April 2024. The Board did not call for submissions from the Complainant and as such this was not taken into account by the Board in reaching this final decision.

Service

- [23] The Board also needed to consider if the Respondent had been given notice of the complaint.
- [24] The Board must afford the Respondent his right to natural justice,⁵ which includes that hearings are conducted in a manner that ensures that a Respondent is given a fair opportunity to be heard, to contradict the evidence and that the decision-making process is conducted fairly, transparently and in good faith.
- [25] In terms of a fair hearing, a Respondent should be given the opportunity to respond to an allegation which, with adequate notice, might be effectively refuted. The Complaints Regulations recognise those principles and prescribe a process that must be complied with when a complaint is made. That process includes providing the

³ Regulation 10 of the Complaints Regulations.

⁴ Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

⁵ Section 283 of the Act

Respondent with a copy of the complaint and an opportunity to respond to it⁶ and the opportunity to appear and be heard at a hearing.⁷

[26] In this matter, the Respondent has acknowledged and responded to the complaint.

Evidence

[27] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁸. 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.

[28] The Respondent was engaged to construct a lounge room extension (with two decks), to a residential dwelling under a building consent. The building work included restricted building work that must be carried out or supervised by an appropriately licensed person, and for which each licensed person must provide a record of work on completion.

[29] The Respondent advised that the work was carried out by a qualified carpenter, an apprentice builder, and a labourer under his supervision.

[30] The complaint raised issues over the quality and compliance of several aspects of the building work, including the failure to have an engineer on site for the pile driving inspection, the incorrect placement of the piles due to mismeasurement, and the lack of the required 12mm gap between the deck and the existing house.

Negligence or Incompetence

[31] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,⁹ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*¹⁰ test of negligence.¹¹ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.¹² A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if

⁶ Regulation 7(2) of the Complaints Regulations.

⁷ Regulation 12 of the Complaints Regulations.

⁸ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁹ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. 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.

¹⁰ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

¹¹ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹² In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

the conduct fell seriously short of expected standards.¹³ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct?

Engineer inspection

- [32] The Respondent was required under the building consent to have an engineer on site for the pile driving inspection. He failed to do so and accepted in his response to the Investigator that he should have arranged this. He stated that the subcontractors he used for the work usually provided the engineering input, but he did not realise they were not doing so on this occasion.
- [33] As a result of this failure the homeowner had to incur the cost of having four further piles driven so that the Engineering PS 4 could be issued.

Piles measurement and consequential issues

- [34] The piles were mismeasured and placed outside of the building line instead of inside it, making the subfloor area bigger than the approved plans. The Respondent gave these revised measurements to the project designer to action a building consent amendment to reflect the increased floor size. This first amendment to the building consent was granted.
- [35] It was brought to the attention of the homeowners by the Council that a surveyor certificate at foundation and roof framing is required under the approved Resource Consent. This had not been done.
- [36] In March, when new builders started on site, they noted that the first amendment measurement was wrong; the addition was larger again. A second building consent amendment was required.
- [37] The surveyor was engaged to confirm FFL, boundary setbacks and daylight encroachments. A Resource Consent amendment was submitted in order to achieve a surveyor certificate to meet the Resource Consent conditions.
- [38] The Respondent advised that the measurements given to the project designer for the first amendment were done by his lead builder. He accepted that, in hindsight, he ought to have done this measurement himself.

Deck stringer

- [39] The remedial builder engaged by the Complainant stated that “...*the deck on the east side was not framed correctly. The ledger board was not packed 12mm off the weatherboards for the required maintenance gap...*”. It was contrary to the consented plans.

¹³ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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”.

[40] The Respondent did not comment on this matter in his response to the complaint.

Was the conduct serious enough?

[41] The departures from acceptable standards were significant and had not only cost and time consequences for the Complainant, but also the resulting lounge was not the room they had wanted. The different size and shape meant that the designed beams and panelled ceiling could not be done and the fireplace was no longer centred in the room. The conduct was serious, and the Respondent should be disciplined.

Has the Respondent been negligent or incompetent?

[42] The Respondent has been negligent with respect to his supervision of the items discussed.

Contrary to a Building Consent

[43] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.¹⁴ Once issued, there is a requirement that the building work be carried out in accordance with the building consent.¹⁵ Building consents also stipulate the number and type of inspections the issuing authority will carry out during the build.¹⁶ Inspections ensure independent verification that the building consent is being complied with.

[44] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that departure was deliberate or a result of negligent conduct.¹⁷ The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.¹⁸ If it does not, then a disciplinary finding cannot be made.

Was there building work that differed from the building consent?

[45] The piles placement, the failure to have an engineer at the pile driving inspection and the absence of the required 12mm gap between the deck and the existing house are all departures from the building consent.

¹⁴ Section 49 of the Act

¹⁵ Section 40 of the Act

¹⁶ Section 222 of the Act

¹⁷ *Blewman v Wilkinson* [1979] 2 NZLR 208

¹⁸ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [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".

Was the conduct serious enough?

[46] As with the finding of negligence, the conduct was serious enough.

Has the Respondent breached section 317(1)(d) of the Act?

[47] The Respondent has supervised building work that was contrary to the building consent issued.

Failure to Provide a Record of Work

[48] A Licensed Building Practitioner must provide a record of work for any restricted building work that they have carried out or supervised to the owner and the Territorial Authority on completion of their restricted building work.¹⁹

[49] 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 work²⁰ unless there is a good reason for it not to be provided.²¹

Did the Respondent carry out or supervise restricted building work?

[50] The Respondent was engaged to supervise the building of a lounge room extension to an existing dwelling under a building consent. This is restricted building work because it forms part of the primary structure and/or external moisture management system of a residential dwelling.²²

Was the restricted building work complete?

[51] The Respondent's contract was terminated on 8 March 2023 before the restricted building work was complete. The Complainant engaged another Licensed Building Practitioner from late March 2023 to remediate and complete the building work.

[52] As of March 2023, the Respondent's potential engagement in the building work had come to an end. As at that point in time, he would no longer be carrying out any further restricted building work, and his record of work was then due. One was not provided until September 2023, six months later. 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.

[53] The completion date applies notwithstanding that all of the intended work had not been completed as the Respondent did not return and carry out any further restricted building work.

¹⁹ Section 88(1) of the Act.

²⁰ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

²¹ Section 317(1)(da)(ii) of the Act

²² Clause 5 of the Building (Definition of Restricted Building Work) Order 2011

Has the Respondent provided a record of work?

[54] A record of work dated 20 September 2023 was on the Council file when it was obtained on 9 October 2023. Based on the evidence on the Board file, it has not been provided to the homeowner.

Was there a good reason?

[55] The Respondent did not provide any reason for not providing the record of work until approximately six months after the completion of his restricted building work.

[56] By email dated 14 March 2023, only a few days after the contract termination, the Respondent advised the Complainant, *“The record of works has been completed and will be uploaded to the TCDC consent portal upon payment of our final invoice.I will send you a copy of the record of works along with confirmation of the upload to the consent portal on receipt of payment.”*

[57] The Board has repeatedly stated that a Record of Work is a statutory requirement, not a negotiable term of a contract. The requirement for it is not affected by the terms of a contract, nor by contractual disputes. Licensed building practitioners should now be aware of their obligations to provide them, and their provision should be a matter of routine.

[58] The Respondent has not provided a “good reason” for failing to provide his record of work.

Did the Respondent fail to provide a record of work?

[59] The Respondent’s restricted building work was complete by early March 2023, and he did not provide a record of work until September 2023 and then only to the Council. As such, he has failed to meet his statutory obligation to provide a record of work.

Board’s Decision

[60] The Respondent **has**:

- (a) supervised building work in a negligent manner;
- (b) supervised building work that does not comply with a building consent; and
- (c) failed to provide a record of work on completion of his restricted building work.

Penalty, Costs and Publication

[61] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

- [62] The matter was dealt with on the papers. The Board made an indicative order in its Draft Decision and gave the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.
- [63] The Respondent did not make any submissions on the penalty, costs, or publication orders.

Penalty

- [64] The Board has the discretion to impose a range of penalties.ⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.²³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²⁴
- (a) protection of the public and consideration of the purposes of the Act;²⁵
 - (b) deterring other Licensed Building Practitioners from similar offending;²⁶
 - (c) setting and enforcing a high standard of conduct for the industry;²⁷
 - (d) penalising wrongdoing;²⁸ and
 - (e) rehabilitation (where appropriate).²⁹
- [65] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases³⁰ and applying the least restrictive penalty available for the particular offending.³¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³² that is consistent with other penalties imposed by the Board for comparable offending.³³
- [66] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.³⁴

²³ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

²⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁵ Section 3 Building Act

²⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

²⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

³⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁴ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

- [67] The Board has upheld three disciplinary offences against the Respondent. It is noted, however, that for the purposes of penalty, the offences under sections 317(1)(b) and (d) are treated as a single offence.
- [68] In this matter, the Board adopted a starting point of a fine of \$3,500 because this is consistent with penalties imposed by the Board for comparable offending. The Board has then taken into account the following mitigating factors. The Respondent admitted to his lack of supervision in two of the three aspects upon which the Board based its disciplinary decision. Further, the Respondent, albeit at a point which was far later than he should have, has provided a record of work to the Council. There were no aggravating factors. The Board considers a \$1,000 reduction is appropriate to reflect those mitigating factors.
- [69] Based on the above, the Board has decided that the Respondent is to pay a fine of \$2,500 and that this penalty meets the principle of setting and enforcing a high standard of conduct for the industry.

Costs

- [70] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.³⁵
- [71] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁶. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁷.
- [72] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate, and complex. Adjustments are then made. The current matter is moderate and is a draft decision on the papers. The Board's scale amount for a matter of this nature is \$875. The Board sees no reason to depart from that amount.

Publication

- [73] 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,³⁸ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.

³⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁷ *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.

³⁸ Refer sections 298, 299 and 301 of the Act

- [74] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁹ Further, as a general principle, publication 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, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.⁴⁰
- [75] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board’s website.
- [76] The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Act, the Respondent is ordered to pay a fine of \$2,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$875 (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(I)(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, which will be publicly available on the Board’s website.

- [78] 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.

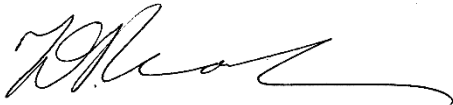
³⁹ Section 14 of the Act

⁴⁰ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

Right of Appeal

[79] The right to appeal Board decisions is provided for in section 330(2) of the Actⁱⁱⁱ.

Signed and dated this 26th day of June 2024.



Mrs F Pearson - Green
Presiding Member

ⁱ **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."*

ⁱⁱ **Section 318 Disciplinary Penalties**

- (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 1 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.*

iii 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.*