Before the Building Practitioners Board

	BPB Complaint No. 26724
Licensed Building Practitioner:	Albert van Vliet (the Respondent)
Licence Number:	BP 116769
Licence(s) Held:	Design AoP 2

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 Location:	Auckland
Hearing Type:	In Person
Hearing and Decision Date:	5 November 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr C Lang, Building Surveyor and Quantity Surveyor
Mr S Hammond, LBP, Carpentry, Regulatory Operations Manager

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 a disciplinary offence under sections 317(1)(b) and (g) of the Act.

The Respondent **has not** committed a disciplinary offence under section 317(1)(i) of the Act.

The Respondent is censured and ordered to pay costs of $2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary

[1] The Board found that the Respondent had, in relation to design work, conducted himself in a negligent manner and had breached the Code of Ethics. The Respondent was censured for his conduct and ordered to pay costs of $2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

The Charges

[2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.[1]

[3] In this matter, the disciplinary charges the Board resolved to further investigate[2] were that the Respondent may, in relation to building work at [OMITTED], have:

(a) carried out or supervised building work (design work) in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;

(b) breached clauses 15, 16 and/or 20 of the code of ethics prescribed under section 314A of the Act contrary to section 317(1)(g) of the Act; and/or

(c) 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 contrary to section 317(1)(i) of the Act.

[4] The Board gave notice that in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into whether the Respondent adequately considered and provided all the necessary information required for a Building Consent application for a second-hand relocatable 3 bedroom dwelling and, in particular, the matters raised within the Request for Information (RFI)s from the Kaipara District Council, who requested that the Respondent provide:

(a) ground and floor levels;

(b) evidence to confirm the existing house originates from a wind zone equal to or higher than the wind zone of the proposed location, as well as evidence of the current bracing of the building, including walls, rafter tie downs and purlins;

(c) a building condition report that clearly identifies the current condition of the structure and its suitability for relocation;

(d) details of the proposed woodburner, installation and maintenance details;

(e) wetback schematic, including HWC details and manufacturer;

(f) building envelope penetration details to comply with E2/AS1;

(g) E1 surface water compliance information for water storage tanks, including how overflow will be dispersed;

(h) G12 water supply compliance information;

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[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. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

[2] 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.

(i) G7, G8 & G9 information to determine if/how electricity will be installed and provided to the building;

(j) details for wall cladding repairs as noted on the plans, provide manufacturers' information, specification of the timber and air barrier systems to be used; and

(k) H1 information for modifications to external walls.

[5] In further investigating the Respondent's conduct under section 317(1)(g) of the Act and clauses 15, 16 and/or 20 of the Code of Ethics, the Board gave notice that it would be inquiring into the Respondent's interactions with the Complainant, including:

(a) representations that the building consent had been lodged, when it had not, which may have been misleading or deceptive;

(b) charging additional amounts for the work of persons whom he subcontracted;

(c) failure to keep the Complainant informed regarding the progress of the building consent application and to respond to matters in a timely manner; and

(d) failure to comply with a Disputes Tribunal order.

[6] With respect to the same matters, the Board notified the Respondent that it would investigate whether, if upheld, the conduct reaches the disciplinary threshold for a finding of disreputable conduct under section 317(1)(i) of the Act.

Evidence

[7] The Board must be satisfied on the balance of probabilities that the alleged disciplinary offences have been committed[3]. 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 building work involved relocating a dwelling to a new site. The Complainant was managing the project and subcontractors. Some preparatory work on the intended site was completed prior to the building consent being issued. The relocated dwelling was not, however, placed onto its pile foundation until after the consent had been issued.

[9] The Respondent provided a fee proposal for the design work required to obtain a building consent. On 5 May 2023, a quote was issued. It included contractual terms and conditions. The deposit of 50% was paid at quote acceptance with the balance paid on completion 22 June 2023.

[10] The Respondent's design practice had two other employees, neither of whom was a design licensed practitioner, but who did do some work under the Respondent's

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

supervision. The design work under investigation had been carried out by the Respondent, not by his staff.

[11] On 18 May 2023, the Complainant appointed [OMITTED] as the agent for the building consent process. Ms [OMITTED], who is not a design licensed practitioner or building professional but had previously been in the employ of a Building Consent Authority (BCA) contractor. She now operates a business specialising in relocatable buildings.

[12] The Respondent and Ms [OMITTED] had established a working relationship whereby the Respondent would carry out design work and Ms [OMITTED] would manage the consenting process. Ms [OMITTED] stated that she was the Respondent's subcontractor. She invoiced him for her services in relation to the project. Regarding Ms [OMITTED] invoices, there was one invoice, along with an outstanding invoice reminder, that was issued directly to the Complainant. Ms [OMITTED] stated that it occurred at a time when she required assistance due to a medical issue, and that the person assisting her incorrectly issued the invoice. That invoice has not been paid.

[13] At the hearing, the Respondent, when asked why he had given the complainant an assurance on 22 June 2023 that the building consent had been lodged when it had not, stated that he had made an assumption. The evidence showed that the Respondent's Certificate of Design Work was dated 22 June 2023, project Specification was dated 9 August 2023, he had uploaded the design documents for the consent application on 9 August 2023, the consent had been lodged on 10 August 2023, and the required deposit had been paid on 25 August 2025, after a second reminder to pay had been sent to the Complainant. The Respondent accepted that what had transpired was "not good enough". He also accepted that he had not kept the client informed.

[14] The Respondent has, as a consequence of the events that transpired, refunded all his design fee. The refund came after a Disputes Tribunal finding against him and this complaint was made to the Board. There were delays in complying with the Disputes Tribunal orders. The Respondent stated that those delays were due to cash flow issues. The Respondent has now paid more than the Disputes Tribunal order required by refunding the full design fee.

[15] The Respondent was questioned about the process used for RFI's. He stated that RFI's went to Ms [OMITTED], the building consent agent, but that not all of them were passed on to him, notwithstanding that he was the Licensed Building Practitioner who was responsible for the design work, which was restricted building work that can only be carried out or supervised by an appropriately authorised Licensed Building Practitioner. The Respondent accepted that he should have dealt with RFI's that were rolled over from the 2nd to the third RFI sooner than he did.

[16] The Respondent did not agree with all of the RFI's that had been issued, but it was accepted that not all of the information required for a building consent application had been transferred to the BCA when the application was lodged. The Respondent

also stated that if something was obvious, he did not include it in his design work, and that some aspects, such as a wood burner, a wet-back, and a hot water cylinder were not included in the design package as product choices had not been made.

[17] The Respondent was asked why he did not wait until all the required decisions had been made so that a complete design package could be submitted. He noted there was some time pressure and that he has now changed his design practices because of the complaint.

[18] The Respondent also accepted that he had not dealt adequately with wind zone design issues, stating that he was "a little green in that aspect", and that the roof penetration and fire issues raised at the RFI stage were oversights by him. In terms of E1 surface water issues, he assumed those issues had been or would be dealt with by others. Regarding those and other design deficiencies, he stated that he now adds more detail to his designs to ensure there is no uncertainty but submitted that there was "no such thing as a perfect plan".

[19] The Respondent did express his regret for the design process, and he apologised to the complainant. He acknowledged that he should have adhered to a higher standard and noted that he had provided good trade references, which included design work on award-winning homes.

Negligence or Incompetence

[20] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,[4] 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*[5] test of negligence.[6] 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.[7] A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.[8] If it does not, then a disciplinary finding cannot be made.

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[4] *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.

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

[6] 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)

[7] 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"

[8] *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".

<u>Has the Respondent departed from an acceptable standard of conduct</u>

[21] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act[i] as well as the requirement that all building work must comply with the Building Code[9] and any building consent issued.[10] The test is an objective one.[11]

[22] Looking at the Respondent's design work, there was clear evidence of deficiencies in it. The design package that was submitted for a building consent was not complete, and critical Building Code compliance requirements with respect to clauses B1, E1, E2, and various clauses in G. In this respect, the Respondent submitted a Certificate of Design Work with the building consent and, under section 45(3) of the Act, a certificate includes an undertaking that the design complies with the Building Code. That was not the case.

[23] The Respondent should note that he should not be relying on others to identify his design failures or deficiencies. The introduction of the Licensed Building Practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention of the enabling legislation[12]:

> *The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.*
>
> *We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.*

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[9] Section 17 of the Building Act 2004
[10] Section 40(1) of the Building Act 2004
[11] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.
[12] Hansard volume 669: Page 16053

[24] Given those factors, the Board finds that the Respondent's conduct has fallen below the standards expected of a competent LBP with a Design AoP 2 licence, and that he has conducted himself in a negligent manner.

[25] The Board is also of the view that the Respondent, as the lead between himself and Ms [OMITTED], should have ensured that there was better coordination between them and should have taken primary responsibility for building consent issues. Again, because he has not, his conduct has fallen below an acceptable standard.

Was the conduct serious enough

[26] The Board has decided that the conduct meets the threshold for a disciplinary finding. The Respondent, as a design AoP 2 licence holder, should have performed his design work in a more thorough and diligent manner. He should not have made assumptions and should have ensured that all aspects of the required design had been completed to an acceptable standard.

Has the Respondent been negligent or incompetent

[27] The Respondent has carried out building work (design work) in a negligent manner.

Code of Ethics

[28] The Code of Ethics for Licensed Building Practitioners was introduced by Order in Council.[13] It was introduced in October 2021 and came into force on 25 October 2022. The obligations are new, but there was a transition period of one year to allow practitioners to become familiar with the new obligations. Whilst the Code of Ethics is new, ethics have been a part of other regulatory regimes[14] for some time, and the Board has taken guidance from decisions made in other regimes.

[29] The Code also differentiates between Licensed Building Practitioners who are in business and those who are employed in that some of the ethical obligations only apply to those who are in business. In this matter, the Respondent was in business.

[30] The disciplinary provision in the Act simply states, "has breached the code of ethics". Most disciplinary regimes frame the charge as some form of malpractice or misconduct, and the Board has considered the allegations within such a framework and with reference to superior court decisions. Within this context, in *Dentice v Valuers Registration Board,*[15] Chief Justice Eichelbaum stated the purposes of disciplinary processes are to:

> *Enforce a high standard of propriety and professional conduct; to ensure that no person unfitted because of his or her conduct should be allowed to practice the profession in question; to protect both the public, and the profession itself, against persons unfit to practice; and to enable the professional calling,*

[13] Building (Code of Ethics for Licensed Building Practitioners) Order 2021
[14] Lawyers, Engineers, Architects and Accountants, for example
[15] [1992] 1 NZLR 720 at 724

> *as a body, to ensure that the conduct of members conforms to the standards generally expected of them.*

[31] The Board also notes that the courts have applied a threshold test to disciplinary matters, and it has applied those tests. In *Collie v Nursing Council of New Zealand,*[16] the test was stated as:

> *[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.*

[32] Finally, when considering alleged breaches of the Code of Ethics, the Board needs to consider whether the conduct, if upheld as a breach of the Code, reaches the threshold for a disciplinary finding of disrepute, which is a more serious disciplinary finding.

<u>The conduct complained about</u>

[33] There were three Code of Ethics clauses that the Board was investigating in relation to four issues. They were:

(a) representations that the building consent had been lodged, when it had not, which may have been misleading or deceptive;

(b) charging additional amounts for the work of persons whom he subcontracted;

(c) failure to keep the Complainant informed regarding the progress of the building consent application and to respond to matters in a timely manner; and

(d) failure to comply with a Disputes Tribunal order.

[34] The Board accepted that there had not been any breaches of the Code in relation to (b) and (d). The subcontractor's invoice was issued directly by the subcontractor without the Respondent's knowledge, and the Respondent has now complied with the Disputes Tribunal order, albeit with some delay.

[35] Looking at the two other issues (a) and (c), the three Code clauses under investigation were

15 You must be accountable

16 You must advise clients of any delays as soon as they become apparent

20 You must act in good faith during dispute resolution

[36] The Board did not consider, in light of the circumstances of this matter and the additional evidence presented at the hearing, that clause 20 was applicable.

[16] [2001] NZAR 74

[37] The same cannot be said for clauses 15 and 16. The Board's view is that the Respondent's conduct breached those clauses, which state, in full:

> ***15 You must be accountable***
>
> *If building work carried out by you, or someone under your supervision, is or could be defective you must—*
>
> *(a) take all reasonable steps to communicate with your client about the problem in a way that—*
>
> *(i) is honest; and*
>
> *(ii) is responsive; and*
>
> *(b) act with integrity in relation to the resolution of the problem.*
>
> ***16 You must advise clients of any delays as soon as they become apparent***
>
> *You must, in relation to any building work you are carrying out or supervising, take all reasonable steps to—*
>
> *(a) give your client regular reports on progress; and*
>
> *(b) ensure that your time frame estimates to clients are realistic; and*
>
> *(c) promptly notify your client when time frames for completing work change, particularly in the event of delays; and*
>
> *(d) ensure that delays in completing the building work are prevented wherever possible.*

[38] The evidence clearly established that the Respondent did represent that a building consent had been lodged when it had not, and that he had failed to keep the Complainant informed. In doing so, the Board finds that he breached clauses 15 and 16 of the Code.

<u>Was the conduct serious enough</u>

[39] The conduct was serious. It was not mere inadvertence, oversight or error. It came about because of professional failings. It was conduct that warranted disciplinary action.

<u>Has the conduct breached the Code of Ethics</u>

[40] The Respondent has breached clauses 15 and 16 of the Code of Ethics.

Disrepute

[41] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions;[17]

[17] *Davidson v Auckland Standards Committee* No 3 [2013] NZAR 1519

- honest mistakes without deliberate wrongdoing;[18]
- provision of false undertakings;[19] and
- conduct resulting in an unethical financial gain.[20]

[42] The Courts have consistently applied an objective test when considering such conduct.[21] The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.[22]

[43] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,[23] that the Respondent has brought the regime into disrepute and that conduct was sufficiently serious enough for the Board to make a disciplinary finding.[24]

<u>The conduct complained about</u>

[44] The conduct under investigation was the same as that under investigation in relation to the Code of Ethics.

<u>Was the conduct serious enough</u>

[45] The Board's view was that the conduct did not reach the threshold for a finding of disrepute and that the Code of Ethics finding was sufficient.

<u>Has the conduct brought the regime into disrepute</u>

[46] The Respondent has not brought the regime into disrepute.

Board Decisions

[47] The Respondent **has** breached sections 317(1)(b) and (g) of the Act.

[48] The Respondent **has not** breached sections 317(1)(i) of the Act.

Penalty, Costs and Publication

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

[50] The Respondent made submissions at the hearing as regards penalty, costs and publication.

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[18] *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401
[19] *Slack, Re* [2012] NZLCDT 40
[20] *Collie v Nursing Council of New Zealand* [2000] NZAR 7
[21] *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401
[22] *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519
[23] *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.
[24] *Collie v Nursing Council of New Zealand* [2001] NZAR 74

Penalty

[51] The Board has the discretion to impose a range of penalties.[iii] 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.[25] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[26]

(a) protection of the public and consideration of the purposes of the Act;[27]

(b) deterring the Respondent and other Licensed Building Practitioners from similar offending;[28]

(c) setting and enforcing a high standard of conduct for the industry;[29]

(d) penalising wrongdoing;[30] and

(e) rehabilitation (where appropriate).[31]

[52] 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 cases[32] and applying the least restrictive penalty available for the particular offending.[33] In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty[34] that is consistent with other penalties imposed by the Board for comparable offending.[35]

[53] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.[36]

[54] In this matter, the Board adopted a starting point of a fine. There were, however, mitigating factors that the Board took into account. First, the Respondent has reimbursed the design fees since the complaint was made and a Disputes Tribunal order was issued. As a result, he has suffered a loss. Second, he took a responsible approach to the hearing and accepted that there had been failings for which he was accountable and has changed his work practices. Third, the Code of Ethics occurred

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[25] 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]

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

[27] Section 3 Building Act

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

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

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

[31] *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

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

[33] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

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

[36] 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.

at a time when the Board was taking an educative approach to the code and was imposing minimal penalties.

[55] Taking the above factors into consideration, the Board has decided that the penalty will be reduced to one of a censure. A censure is a public expression of disapproval of conduct.

Costs

[56] 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.[37]

[57] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings[38]. The starting point can then be adjusted up or down with regard to the particular circumstances of each case[39].

[58] 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. The current matter was moderately complex. Adjustments are then made.

[59] Based on the above, the Board's costs order is that the Respondent is to pay the sum of $2,950 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with at an in-person hearing. It is significantly less than 50% of the actual costs.

Publication

[60] 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,[40] 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.

[61] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[41] 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.[42]

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

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

[39] *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.

[40] Refer sections 298, 299 and 301 of the Act

[41] Section 14 of the Act

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

[62] 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. 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

[63] 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 $2,950 (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(l)(iii) of the Act.**

In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.

[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.

Right of Appeal

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

Signed and dated this 15th day of December 2025.

Mr M Orange
Presiding Member

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[i] ***Section 3 of the Act***
This Act has the following purposes:
(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—

(i) *people who use buildings can do so safely and without endangering their health; and*

(ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*

(iii) *people who use a building can escape from the building if it is on fire; and*

(iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development:*

(b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

[ii] ***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."*

[iii] ***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.

[iv] ***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.