

Before the Building Practitioners Board

	BPB Complaint No. C2-01738
Licensed Building Practitioner:	Timothy McLeod (the Respondent)
Licence Number:	BP 106026
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 Location:	Blenheim
Hearing Type:	In Person
Hearing Date:	6 March 2018
Decision Date:	21 March 2018

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Catherine Taylor, Lay Member

Procedure:

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

Board Decision:

The Respondent **has** committed disciplinary offences under sections 317(1)(b) and 317(1)(h) of the Act.

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

Contents

Introduction	2
Function of Disciplinary Action	2
Evidence	3
Board’s Conclusion and Reasoning	7
Negligence and/or Incompetence	7
Misrepresentation or Outside of Competence.....	8
Disrepute.....	9
Penalty, Costs and Publication	11
Penalty	11
Costs.....	12
Publication	13
Section 318 Order	13
Submissions on Penalty, Costs and Publication	14
Right of Appeal	14

Introduction

[1] The hearing resulted from a Complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ 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) breached section 314B of the Act (s 317(1)(h) of the Act); and
- (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 (s 317(1)(i) of the Act).

Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by

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

the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*² and in New Zealand in *Dentice v Valuers Registration Board*³.

- [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*⁴ Collins J. noted that:

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

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

Evidence

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. Under section 322 of the Act the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

- [6] The Board heard evidence from:

Timothy McLeod	Respondent
Craig Balaam	Marlborough District Council
Jeff Atkinson	Marlborough District Council

- [7] The complaint was made by the Marlborough District Council. The Complaint noted a series of non-consented building projects constructed by the Respondent on a property he owned. It also alleged that a large amount of the un-consented work did not meet the minimum requirements of the New Zealand Building Code and that the Respondent had carried out drainage work without the appropriate licence to do such work. A Notice to Fix was provided to the Board in support of the Complaint.

- [8] The Notice to Fix stated that, contrary to section 40 of the Act, the following building works had been carried out without building consent having first been obtained:

- (a) construction of a free standing timber dwelling larger than 10 m² placed on timber skid foundations;
- (b) addition of a single leaf timber door and a glass bi fold door to a 40 foot steel shipping container and construction of foundations for it;

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

³ [1992] 1 NZLR 720 at p 724

⁴ [2016] HZHC 2276 at para 164

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- (c) addition of a single leaf timber door to a 20 foot steel shipping container, addition of sanitary fixtures with associated plumbing and drainage and construction of foundations for it;
- (d) construction of a timber garage complex/dwelling larger than 10m², including office space and a kitchen with sink and associated plumbing and drainage;
- (e) construction of a timber ablution block including four individual rooms, all of which include sanitary fixtures with associated plumbing and drainage;
- (f) construction of a pump station to pump waste into the in-ground waste water system with associated drainage;
- (g) construction of a dwelling larger than 10m², including associated plumbing and drainage, located on top of a drip line effluent field. This includes a kitchen sink and a bathroom shower, toilet and hand basin, all with associated plumbing and drainage;
- (h) construction of a building/stage larger than 10m² located on top of a drip line effluent field;
- (i) conversion of an implement shed of approximately 81m² into a dwelling with kitchen sink, bathroom hand basin, shower and toilet all with associated plumbing and drainage;
- (j) construction of a single tin garage of approximately 30m² and construction of foundations for the garage;
- (k) construction of a 'greenhouse' larger than 10m² with a timber frame and translucent roofing sheets attached to the walls and roof;
- (l) construction of two attached timber sheds each larger than 10m²;
- (m) construction of a swimming pool barrier out of timber and metal (the pool is located on top of an effluent field).

[9] The Notice to Fix stated that, contrary to section 17 of the Act, the building work did not meet the requirements of the Building Code in the following ways:

- (a) clauses B1 Structure and B2 Durability - several structures are not founded on compliant foundations:
 - i. 2 x free standing timber dwellings larger than 10m²;
 - ii. 2 x timber sheds each larger than 10m² which are also not built to a recognisable standard;
- (b) clause B1 Structure: the sleep out located on the eastern side of the garage is not founded on compliant foundations;

- (c) Clauses B1 Structure and B2 Durability - the greenhouse has not been constructed to a recognisable standard;
 - (d) Clause G13 Foul Water: - the following works have been located on top of a drip line effluent field:
 - i. A timber dwelling larger than 10m²;
 - ii. A timber building larger than 10m²; and
 - iii. A swimming pool larger than 10m².
 - (e) Clause C3 Fire affecting areas beyond the fire source - a garage complex/dwelling, an ablution block and a dwelling are closer than 1 meter to a shared boundary.
- [10] The Notice to Fix also identified that, contrary to section 114 of the Act, no written notice was received from the owners in connection with the change of use of the implement shed.
- [11] The Notice to Fix required the removal of the unauthorised building works or pursuing any other options to make the works comply with the Building Act and Building Regulations. It also required the cessation of all building works on site relating to the unconsented buildings. Compliance was required by 24 November 2017.
- [12] The Respondent provided a written response to the Complaint. In it he included a copy of his plan to address the Notice to Fix, copies of emails between his engineer and the Council regarding progress to comply with the Notice and a number of site photographs. The Respondent also noted he:
- (a) had engaged an engineer to act as his agent to see all aspects of the Notice to Fix through to a satisfactory resolution and that he had pledged full cooperation and apologised for the work he had created for the Council;
 - (b) was unable to afford to complete all the work "in a conventional manner". He stated it was always his intention to apply for consent once the house was finished and that he hoped to apply for resource consent eventually and to operate a hunting and fishing lodge on the property; and
 - (c) had various reasons for failing to gain consent for some of the building projects including that he figured his shack was relocatable, so did not bother with a permit application when he relocated it and that he had obtained consent to build a house but realised he would not have the funds to complete it so he built a 3 bedroom flat in the end of the shed as family accommodation which he believed was common practice in the area. He thought he would tidy up consents at a later date. He also stated the flat is very well constructed with drainage professionally installed and all electrical work certified.

- (d) was of the understanding that the shipping containers were "fine", the chiller "ok", and the stage was just a garden feature. He did not realise that cutting a door or window into a shipping container created a 'change of use' issue;
 - (e) had built a moveable hut (6m x 2.5m) and had rented it out to a semi-retired builder engineer who persuaded Mr McLeod to allow him to extend it. This is a mistake that he regrets;
 - (f) had constructed the bathroom and laundry block between 2014 and 2016 and that it was to code but he did not apply for consent at the time due to limited finances. It was always his intention to engage the appropriate persons to tidy up the consents but his goal was to build the house first;
 - (g) had acquired the skyline garage and bolted it to an existing concrete pad; and
 - (h) did not believe the "bunk house on wheels" built in 2015 was an issue. He acknowledges the small fire he installed is, but says it is installed properly.
- [13] The Respondent noted he was committed to rectifying the Notice to Fix and pledged not to construct any more buildings without first applying for a building consent. At the hearing he elaborated that he had not, at any time, carried out any building work for customers without a building consent.
- [14] The Marlborough District Council witnesses gave evidence at the hearing that the Respondent was being cooperative and that the Council had not taken action under section 40 of the Act as the time limit for doing so had expired. They did not consider that any of the work was dangerous or insanitary but did consider there was a significant level of non-compliance. They considered that resource consents would have been required for some of the building work and in particular in relation to the fact that more than one kitchen was now on the land.
- [15] The Respondent accepted that he had carried out one section of drainage work but had used a licensed plumber for all items bar the plumbing work on a laundry room.
- [16] The Board questioned the Respondent as to how he determined the building work would comply with the Building Code. He stated he carried everything out to NZS3604 standards. The Council witnesses noted that some of the building work did not come within NZS3604 but that an engineer may be able to verify its code compliance.
- [17] The Respondent stated that he had not carried out any research into whether or not building consents were required for the building work prior to undertaking it. He did consult with friends and neighbours but not with the Council.
- [18] The Respondent also noted in a submission filed for the hearing that he is no longer involved in the building industry. At the hearing he stated that he had learnt a lot from the complaint and was apologetic for his conduct.

Board's Conclusion and Reasoning

- [19] 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(b) of the Act (s 317(1)(h) of the Act).
- and should be disciplined.
- [20] The Board has decided that the Respondent **has not** 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).
- [21] The Board notes that the Respondent was licensed on 1 April 2011 and as such its findings only relate to the building work carried out after that date.
- [22] The reasons for the Board's decision follow.

Negligence and/or Incompetence

- [23] The Respondent's negligence relates to his failure to obtain building consents.
- [24] Section 40 of the Act states that building work must not be carried out except in accordance with a building consent. Section 41 of Act provides for limited exceptions from the requirement for a building consent and in particular it states a building consent is not required for any building work described in Schedule 1 of the Act.
- [25] The onus is on the person carrying out the building work to show that one of the exemptions applies.
- [26] The Board has found in previous decisions⁶ that a licensed building practitioner who commences or undertakes building work without a building consent, when one was required, can be found to have been negligent under section 317(1)(b) of the Act. Full reasoning was provided by the Board in decision C2-01068⁷.
- [27] More recently the High Court in *Tan v Auckland Council*⁸ the Justice Brewer in the High Court stated, in relation to a prosecution under s 40 of the Act:

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

[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.

⁶ Refer for example to Board Decision C1030 dated 21 July 2014

⁷ Board Decision C2-01068 dated 31 August 2015

⁸ [2015] NZHC 3299 [18 December 2015]

[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.

- [28] The Board considers the Court was envisaging that those who are in an integral position as regards the building work, such as a licensed building practitioner, have a duty to ensure a building consent is obtained (if required). It follows that failing to do so can fall below the standards of care expected of a licensed building practitioner.
- [29] The question for the Board to consider is whether, at the time the building work was undertaken by the Respondent, he knew or ought to have known that a building consent was required for what was being undertaken.
- [30] The Respondent has accepted that he should not have commenced the work without a building consent and the Board notes that there was a pattern of carrying out building work without consents with little thought or consideration given to consenting requirements. Furthermore the Board considers that a reasonable licensed building practitioner would have turned their mind to building consents and ensured they were in place prior to undertaking the work.
- [31] Given the above the Board, which includes persons with extensive experience and expertise in the building industry, finds that the Respondent has been negligent in carrying out building work that required a building consent and that given the number of transgressions the conduct was sufficiently serious to make a disciplinary finding.

Misrepresentation or Outside of Competence

- [32] There are two types of disciplinary offence under s 314B. The first relates to representations as to competence (314(a)). The second relates to carrying out or supervising building work outside of a licensed person's competence (s 314(b)). It is the second that the Board is inquiring into.
- [33] Section 314B(b) of the Act provides:
- A licensed building practitioner must—*
- (b) carry out or supervise building work only within his or her competence.*
- [34] In the context of the Act and the disciplinary charge under s 317(1)(h) and 314B(b) a licensed building practitioner must only work within their individual competence. If a licensed building practitioner undertakes work outside of their licence class⁹ then they can be found to have worked outside of their competence if they do not have the requisite skill set, knowledge base or experience especially if the building work is noncompliant or is in some way deficient.

⁹ Note that to carry out restricted building work outside of a licensed building practitioners licence class is a disciplinary offence under s 317(1)(c) of the Act.

- [35] In this instance the Respondent has undertaken design work and plumbing work. Design work is restricted building work and can only be carried out or supervised by a licensed building practitioner with a design licence. Plumbing work requires a licence under the Plumbers Gasfitters and Drainlayers Act 2010. The Respondent holds neither licence but has carried out building work that falls within them and as such the Board finds that he has worked outside of this competence.

Disrepute

- [36] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111¹⁰ and discussed the legal principles that apply.
- [37] The Board, in C2-01111 considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example in the High Court held in *Davidson v Auckland Standards Committee No 3*¹¹ a company director, who, in the course of his duties as a director was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time, however, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.
- [38] Similarly in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants¹², convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.
- [39] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is "disrepute". The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public"¹³ and the courts have consistency applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*¹⁴ the Court of Appeal held that:

¹⁰ Board decision dated 2 July 2015.

¹¹ [2013] NZAR 1519

¹² 24 September 2014

¹³ 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

¹⁴ [2012] NZCA 401

*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.*¹⁵

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

- criminal convictions¹⁶;
- honest mistakes without deliberate wrongdoing¹⁷;
- provision of false undertakings¹⁸; and
- conduct resulting in an unethical financial gain¹⁹.

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

[42] The Board considered similar conduct in C2-01516 as regards disrepute. The Board noted that obtaining and complying with building consents is fundamental to the operation of the Act and its purposes²⁰ which include ensuring that:

- (a) people who use buildings can do so safely and without endangering their health;
- (b) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them;
- (c) people who use a building can escape from the building if it is on fire; and
- (d) buildings are designed, constructed, and able to be used in ways that promote sustainable development:

[43] The Board also noted:

[38] Circumventing the building consenting process puts the achievement of those purposes at jeopardy. Ordinarily such conduct of itself, and without a conviction under section 40 of the Act, might not warrant a finding of disrepute. In the present case the number of buildings involved and the extended period of time over which the building work

¹⁵ [2012] NZAR 1071 page 1072

¹⁶ *Davidson v Auckland Standards Committee* No 3 [2013] NZAR 1519

¹⁷ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹⁸ *Slack, Re* [2012] NZLCDT 40

¹⁹ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

²⁰ Refer section 3 of the Building Act 2004

took place distinguishes it to the point where a finding of disrepute is warranted, irrespective of the District Court conviction.

- [44] There are, however, distinguishing features in this case. The extent of the transgressions have not been as extensive or as serious and in this context the Board notes the Courts have stated that the threshold for disciplinary complaints of disrepute is high and the Board notes that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:

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

- [45] Given this, and by a narrow margin, the Board finds that the conduct has not brought the regime into disrepute. The Respondent should note that had the conduct been in relation to work carried out for remuneration or on land not owned by him then the Board's decision may well have been that he had brought the regime into disrepute.

Penalty, Costs and Publication

- [46] 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.
- [47] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [48] 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*²¹ 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.

- [49] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*²² the court noted that whilst the statutory principles of sentencing set

²¹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²² 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

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.

- [50] The matters before the Board are serious and the Board notes that, unlike the Respondent in C2-01516, the Respondent has not been prosecuted under section 40 of the Act. Based on the above principles the Board's starting point was a fine of \$4,000.
- [51] Mitigating factors must be taken into account and in this respect the Board notes the Respondent's acceptance of responsibility and his cooperation during the investigation. It also notes his cooperation with the Council and intention to attend to matters although this later point is tempered by the fact that it is only that he has been caught that he is now seeking to comply.
- [52] The Board also notes the Respondent is not intending to continue in the industry. This has not been taken into consideration as circumstances can change and with it the Respondent's intentions as regards building work.
- [53] Taking all of the factors into consideration the Board has decided to reduce the penalty to a fine of \$2,500.

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 case²³.
- [56] In *Collie v Nursing Council of New Zealand*²⁴ 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 \$2,000 toward the costs of and incidental to the Board's inquiry. This is significantly less than 50% of actual costs.

²³ *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.

²⁴ [2001] NZAR 74

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 Act²⁵. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.

[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 1990²⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁷. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁸. 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*²⁹.

[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 interest³⁰. 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 not order further publication.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, 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 \$2,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

²⁵ Refer sections 298, 299 and 301 of the Act

²⁶ Section 14 of the Act

²⁷ Refer sections 200 and 202 of the Criminal Procedure Act

²⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁹ *ibid*

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

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

In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.

- [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 **16 April 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 Actⁱⁱ.

Signed and dated this 21st day of March 2018



Richard Merrifield
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 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.*