Before the Building Practitioners Board

	BPB Complaint No. C2-01828
Licensed Building Practitioner:	Ryan Irving (the Respondent)
Licence Number:	BP 130519
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	Whangarei
Hearing Type:	In Person
Hearing Date:	17 July 2018
Decision Date:	30 July 2018

Board Members Present:

Chris Preston (Presiding)
Mel Orange, Legal Member
Robin Dunlop, Retired Professional Engineer
Bob Monteith, LBP Carpentry and Site AOP 2

Procedure:

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

Board Decision:

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

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Introduction

[1] The hearing resulted from a Complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations[1] 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); and

(b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act).

Function of Disciplinary Action

[2] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*[2] and in New Zealand in *Dentice v Valuers Registration Board*[3].

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

[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.

Procedure

[5] The matter was set down by way of a Notice of Hearing dated 30 May 2018. The Respondent took part in a prehearing telephone conference on 18 June 2018 the purpose of which was to ensure he was ready for the hearing. At the prehearing conference the Respondent advised that he would be not be attending the hearing as he was going to be on holiday. He advised that his employer [Omitted] would attend. He stated he considered there was enough evidence before the Board and that he did not have anything to add. He was informed that [Omitted] could not give evidence on his behalf.

Evidence

[6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[5]. 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.

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

Gavin Spaabeck	Complainant, Kaipara District Council
[Omitted]	License Building Practitioner, Respondent's Employer
[Omitted]	Homeowner
Jamie Nikora	Kaipara District Council
[Omitted]	[Omitted]

[8] The Respondent was the on-site licensed building practitioner for the construction of a moderately complex multiple level residential dwelling that was to be developed in two stages. Stage one involved foundations and retaining walls. Phase two was the balance of the building work. On 1 November 2017 a building consent was obtained from Kaipara District Council (the Council) for phase one.

[4] [2016] HZHC 2276 at para 164
[5] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[9] The consented plans for phase one, which ran to 11 pages, were annotated on three of the pages with the following notation:

> *Floor system not part of this BC*
> *BC for Pole Foundations and retaining walls only*

[10] All of the pages of the consented plans were stamped with:

> *BC 170617 FDNS & RTN Only Plans*

[11] At the hearing it was clarified that this meant foundation and retaining only.

[12] The phase one consented plans included basic un-dimensioned elevations. No construction detail for phase two was included.

[13] The Complainant set out that it was a requirement of the phase one building consent that pre-pour, drainage, retaining wall and final Council inspections were required and the engineering reports were to be submitted. The Complainant noted that as of 18 December 2017 no inspections had been called for and that no engineer reports had been received. Enquiries of the Engineer showed that an engineer's observation of the foundations had occurred on 1 December 2017.

[14] The building consent for phase two was being processed when phase one was being carried out.

[15] On 18 December 2017 the Complainant, a Senior Building Consent Officer, gained access to the property which was in a gated community and noted that building work had progressed beyond phase one (the foundations were complete and the retaining walls mostly complete) and that phase two was well underway with subfloors and the bulk of the framing had been constructed. He stated in his Complaint that he was able to observe from the driveway that:

> *Three levels of timber floor were built on top of the consented SEO piles. The three floors encompassed the full footprint of the house. All the frames for these areas were standing. The work was getting close to the next level of floor being built.*

[16] The Complainant also noted that the building consent issued required H6 poles to be used for the retaining wall whereas steel beams had been installed and that no request for an amendment or minor variation to the building consent had been requested.

[17] The Council issued a Notice to Fix on 19 December 2017 requiring that a Certificate of Acceptance for unconsented building work be applied for.

[18] The Respondent provided a written response to the Complaint. He stated that the building consent was given to him by the Homeowner and that:

> *It shows stamped plans with foundations, floor layouts and elevations of a multi- level house, from which to build.*

[19] The Respondent provided photocopies of the consented phase one plans with his response which showed the approval stamp which included the short hand notation "FDNS and RTN Only Plans" but which omitted the notation stating that the floor system was not part of the building consent which was for "BC for Pole Foundations and retaining walls only".

[20] The Respondent stated he was aware that there were two building consents but did not know the extent of each, that the plans he had contained details of the house, and that the Homeowner who was dealing with consenting issues had told him the phase two consent was imminent. The Respondent further stated it was not his intention to work without a building consent or to attempt to bypass the Council and that he considered his work (including that which related to phase two) was carried out in accordance with the stamped plans and in accordance with NZS 3604.

[21] The Respondent's Employer, as a licensed building practitioner, accepted that the Licensed Building Practitioner on site is responsible for ensuring the required council inspections are called for and are carried out. He did not know why the inspections for the build had not been called for.

[22] At the hearing evidence was heard from the Homeowner as regards the process for the issue of the second phase building consent and his frustrations with delays in its issue.

[23] Both the Homeowner and the Respondent's Employer gave evidence that they had contacted building consent officers in the Auckland region who had advised them that it would be okay to proceed with phase two of the build without a building consent provided what was built was visible. No inquiries of the same nature were made of the Kaipara District Council notwithstanding that the Homeowner was in contact with it as regards the issue of the phase two building consent. Both the Homeowner and the Respondent's Employer stated that they relied on the advice and assurances they had received from Auckland City Council and that it was acceptable to rely on the advice from another territorial authority.

[24] The Homeowner also gave evidence that the H6 poles were substituted for steel without a building consent amendment or a minor variation being sought as the change had to made as a matter of urgency when H6 poles were not available for the purpose of saving or protecting life or health or preventing serious damage to property and that section 41(1)(c)(i) of the Act was relied on. In questioning he submitted that there was no requirement to bring the change to the Council's attention until the work was complete at which time a Certificate of Acceptance for it would be sought and that at the time the Complainant attended the site on 18 December 2017 the building work was not complete. The Homeowner, when questioned about why the retaining wall, which he had stated had to be installed to protect persons from a 3.2 metre cut in a bank, had not been completed (most of the retaining boards between the piles had not been installed) he stated that the piles themselves provided sufficient protection.

[25] The Board was provided with evidence that the product substitution had been considered and approved by an engineer. The piling was carried out by independent contractors.

Board's Conclusion and Reasoning

[26] The Board has decided that the Respondent **has**

(a) carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act); and

(b) carried out or supervised building work or building inspection work that does not comply with a building consent (s 317(1)(d) of the Act);

and should be disciplined.

[27] The reasons for the Board's decisions follow.

Negligence

[28] The Board's considerations in relation to negligence and/or incompetence relate to the failure to ensure a building consent had issued for phase two prior to the associated building work being carried out.

[29] 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.

[30] The onus is on the person carrying out the building work to show that one of the exemptions applies.

[31] The Board has found in previous decisions[6] that a licenced person 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 C2-01068[7].

[32] 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.*

[33] 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.

[34] 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 and if so whether the Respondent has, as a result of the failing being negligent or incompetent.

[35] Negligence and incompetence are not the same. In *Beattie v Far North Council*[9] Judge McElrea noted:

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

[36] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*[10] test of negligence which has been adopted by the New Zealand Courts[11].

[37] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level".* In *Ali v Kumar and Others*[12] it was stated as *"an inability to do the job"*.

[38] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test[13]. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[39] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act[14]. The test is an objective one and in this respect it has been noted that the purpose of

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[9] Judge McElrea, DC Whangarei, CIV-2011-088-313
[10] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[11] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[12] Ali v Kumar and Others [2017] NZDC 23582 at [30]
[13] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[14] *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner[15].

[40] The Board notes that the purposes of the Act are:

> ***3 Purposes***
> *This Act has the following purposes:*
> *(a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
> *(i) people who use buildings can do so safely and without endangering their health; and*
> *(ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
> *(iii) people who use a building can escape from the building if it is on fire; and*
> *(iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
> *(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.*

[41] The Board also notes, as regards acceptable standards, that all building work must comply with the Building Code[16] and be carried out in accordance with a building consent[17]. As such, when considering what is and is not an acceptable standard, the Building Code and any building consent issued must be taken into account.

[42] Turning to seriousness in *Collie v Nursing Council of New Zealand*[18] the Court's noted, as regards the threshold for disciplinary matters, that:

> *[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

[43] When looking at the evidence before it was clear the building consent for phase two had not been issued. The Respondent's response was somewhat contradictory. He both stated that he relied on the phase one consent as being the consent for aspects of phase two and that he had been told by the Homeowner that the phase two

[15] *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71
[16] Section 17 of the Building Act 2004
[17] Section 40(1) of the Building Act 2004
[18] [2001] NZAR 74

consent was imminent. The two positions are not reconcilable. The later shows that he was aware of a second consent that had not yet been issued.

[44] Moreover, even if the Respondent had relied on the phase one building consent as authorising building work beyond the foundations and retaining walls the notations on it were clear. The phase one building consent did not apply to any building work beyond the foundations and retaining walls. Furthermore, as a licensed building practitioner, the Respondent would have or at least should have known that the plans he had before him were not sufficient for the construction of the full dwelling. This is especially the case seeing as it was a reasonably complex build. Put simply critical details and information were missing and this would have been overtly apparent to a person holding a carpentry licence.

[45] When the above is taken into account with the fact that no building inspections were called for it leads the Board to suspect that the Respondent knew he should not have proceeded beyond the foundations and that this was being kept hidden from the Council. Unfortunately, because the Respondent chose not to appear, this could not be put to him but the evidence certainly points toward deliberate behaviour.

[46] Notwithstanding this the Board does accept that the Respondent has most likely been influenced by the Homeowner and his Employer in proceeding beyond phase one. The Respondent, does, however, have an obligation as a licensed building practitioner to comply with the legislative requirements of the Building Act and, as such, the influence can only go to mitigation.

[47] As an aside the Board does not accept the submission that the Homeowner and Respondent's Employer were relying on advice and assurances given to them by a building consent officer from the Auckland City Council. Firstly the advice was clearly wrong. The Building Act is clear. Building work can only be carried out with a building consent. Secondly if one territorial authority allows a degree of compliance latitude it does not follow that another territorial authority will similarly turn a blind eye and, in this respect, the Board doubts that the Auckland City Council would allow building work to be carried out without a building consent.

[48] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious (as noted in *Tan* above) enough to warrant a disciplinary outcome.

<u>Contrary to a Building Consent</u>

[49] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Code has been complied with and the works will meet any required performance criteria. In doing so the building consent process provides protection for owners of works and the public at large. Any departure from the consent which is not minor (as defined in s 45A of the Act) must

be submitted as an amendment to the consent before any further work can be undertaken. It is also an offence under s 40 of the Act to carry out building work other than in accordance with a building consent when one is issued.

[50] In *Tan v Auckland Council*[19] the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

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

[51] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.

[52] There are two aspects that relate to building contrary to a building consent. The first related to a product substation – steel piles for H6 timber poles. The second to a failure to obtain required inspections as the building work on phase one progressed.

[53] Dealing with the first issue the Board did not accept the submissions that an amendment or minor variation could not be arranged as it was emergency building work. There was more than sufficient time to consult with the building consent authority and that even if there had not been there was insufficient evidence to support the submission that persons or property were at risk.

[54] The Board did, however, accept that it was an appropriately engineered solution and that the change was being managed by others and as such the Board has not found that the Respondent was responsible for the change.

[55] The Respondent was, however, responsible for ensuring the mandated building inspections were carried out at the appropriate times. They were not and as the building consent was issued subject to conditions which therefore form part of the consent the Respondent is found to have carried out building work contrary to the building consent.

Penalty, Costs and Publication

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

[57] The matter was dealt with at a hearing by the Respondent did not appear. Notwithstanding the Board did have information relevant to penalty, costs and publication before it and as such it has decided to make indicative orders and give

[19] [2015] NZHC 3299 [18 December 2015]

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

Penalty

[58] 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*[20] 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.*

[59] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*[21] the court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The court recommended adopting a starting point for penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

[60] The matters before the Board are serious. The building consent process which has been circumvented is fundamental to buildings achieving the purposes of the Building Act. The Board does, however, recognise that there were mitigating factors and in particular that the Respondent was most likely influenced in his decision making by the Homeowner and by his Employer. The Board has taken this into consideration in setting the appropriate penalty.

[61] Based on the above the Board's penalty decision is that the Respondent should pay a fine of $1,500. The fine has been reduced from a starting point of $3,000 on the basis of the mitigation present.

[62] The Respondent should note that in accepting that there were mitigating factors as regards the influence of others the fundamental position is that a licensed building practitioner has a duty not to carry out building work unless a building consent is in place. The Respondent should not have allowed himself to be swayed by others and should have known of the requirement to have a building consent before starting the building work and should have refused to commence without it.

Costs

[63] 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."

[20] HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27
[21] 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

[64] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case[22].

[65] In *Collie v Nursing Council of New Zealand*[23] 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.*

[66] Based on the above the Board's costs order is that the Respondent is to pay the sum of $1,500 toward the costs of and incidental to the Board's inquiry. This is significantly less than 50% of actual costs.

Publication

[67] 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[24]. 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.*

[68] 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.

[69] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990[25]. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction[26]. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive[27]. 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*[28].

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[22] *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.
[23] [2001] NZAR 74
[24] Refer sections 298, 299 and 301 of the Act
[25] Section 14 of the Act
[26] Refer sections 200 and 202 of the Criminal Procedure Act
[27] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350
[28] ibid

[70] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest[29]. 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.

[71] Based on the above the Board will not order further publication.

Section 318 Order

[72] 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 $1,500.**
Costs:	**Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $1,500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.**
Publication:	**The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(1)(iii) of the Act.** **In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.**

[73] 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

[74] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **21 August 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

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

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

Signed and dated this 30th day of July 2018



Chris Preston
Presiding Member

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[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.