

Before the Building Practitioners Board
At Auckland

BPB Complaint No. C2-01428

IN THE MATTER OF

Under the Building Act 2004 (the Act)

A complaint to the Building Practitioners Board under section 315 of the Act

AGAINST

Vijay Raj, Licensed Building Practitioner No. BP 104489

DECISION OF THE BUILDING PRACTITIONERS' BOARD

Introduction

- [1] [Omitted] (the Complainant) lodged a complaint with the Building Practitioners' Board (the Board) on 14 June 2016 in respect of Vijay Raj, Licensed Building Practitioner (the Respondent).
- [2] The complaint alleged that the Respondent has, in relation to building work at [Omitted] carried out or supervised building work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [3] The Respondent is a Licensed Building Practitioner with Carpentry and Site Area of Practice One Licences issued 10 March 2011.
- [4] The Board has considered the complaint under the provisions of Part 4 of the Act and the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Regulations).
- [5] The following Board Members were present at the hearing:
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|--------------------|-----------------------------|--|
| Richard Merrifield | Deputy Chair
(Presiding) | Licensed in Carpentry and Site Area
of Practice 2 |
| Mel Orange | Board Member | Legal Member appointed under s
345(3) of the Act |
| Robin Dunlop | Board Member | Retired Professional Engineer |
| Bob Monteith | Board Member | Licensed in Carpentry and Site Area
of Practice 2 |
- [6] The matter was considered by the Board in Auckland on 8 March 2017 in accordance with the Act, the Regulations and the Board's Complaints Procedures.
- [7] The following other persons were also present during the course of the hearing:
- | | |
|--------------|-----------------|
| Gemma Lawson | Board Secretary |
|--------------|-----------------|

Vijay Raj	Respondent
[Omitted]	Complainant, by telephone
William Hursthouse	Technical Assessor to the Board

- [8] No Board Member declared any conflict of interest in relation to the matters under consideration.

Board Procedure

- [9] The “form of complaint” provided by the Complainant satisfied the requirements of the Regulations.
- [10] On 11 October 2016 the Registrar of the Board prepared a report in accordance with reg 7 and 8 of the Regulations. The purpose of the report is to assist the Board to decide whether or not it wishes to proceed with the complaint.
- [11] On 3 November 2016 the Board considered the Registrar’s report and in accordance with reg 10 it resolved to proceed with the complaint that the Respondent carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [12] The Board requested a Technical Assessor be appointed to prepare a report. William Hursthouse’s report dated 14 January 2017 was received and circulated to the Respondent and Complainant.
- [13] On 23 February 2017 a pre-hearing teleconference was convened by Richard Merrifield. The Respondent was present, the hearing procedures were explained and his attendance at the substantive hearing was confirmed.

Function of Disciplinary Action

- [14] 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 Kingdom¹.

- [15] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*²:

Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist 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 practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

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

² [1992] 1 NZLR 720 at p 724

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- [16] In *McLanahan and Tan v The New Zealand Registered Architects Board*³ Collins J. noted that:

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

- [17] The same applies as regards the disciplinary provisions in the Building Act.
- [18] It must also be noted that the Board has jurisdiction with regard to “the conduct of a licensed building practitioner” and with respect to the grounds for discipline set out in s 317 of the Act. It cannot investigate matters outside of those grounds, does not have any jurisdiction over contractual matters and cannot deal with or resolve disputes between a complainant and the person who is the subject of the complaint.

The Hearing

- [19] The hearing commenced at 9.30 am.
- [20] Persons giving evidence were sworn in, their evidence was presented and they answered questions from the Board.

Substance of the Complaint

- [21] The Complainant raised various issues of a commercial nature as well as issues with non-completed items or poorly completed items including:
- (a) tiles cracked and unlevelled;
 - (b) grout missing at places;
 - (c) silicone missing at places;
 - (d) internal garage door does not slide properly;
 - (e) paint missing in places;
 - (f) windows not fixed properly, water leaking through it and latches are broken and some are the wrong way around; and
 - (g) master bedroom has no lock.

Evidence

- [22] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*⁴ where Justice McGrath in the Supreme Court of New Zealand stated:

[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied

³ [2016] HZHC 2276 at para 164

⁴ [2009] 1 NZLR 1

flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction of the Tribunal”. A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal’s reasonable satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.

- [23] The Complainant, in addition to the items raised in her complaint noted that a new leak around a door to the home had recently been observed. The area of this leak was identified in photographs and the Complainant noted it occurs when the rain is more severe than normal.
- [24] The Respondent did not respond to the Complaint. Given this and, as part of the Board’s inquiry, it obtained a report from William Hursthouse who was appointed as a Technical Assessor to provide an independent technical assessment of the alleged deficiencies with the window joinery. Whilst on site he noted the following:
- the tops of six facing boards are poorly protected, lacking flashings;
 - some penetrations are either poorly sealed, or entirely unsealed;
 - some weatherboards do not extend up under joinery units;
 - two internal weatherboard corner mouldings stop short at the bottom;
 - there are two holes in the garage door;
 - the front door has an excessively large gap down the latch side;
 - the access hatch into the ceiling space does not cover the hole through the plasterboard lining;
 - the quality of the stopping (plastering of gib board linings) is poor in places;
 - some sections of wall clad in tiles are not vertical;
 - some sealant is poorly installed; and
 - some of the wall tiles are broken, with bits missing.
- [25] The Complainant explained to Mr Hursthouse that water had been getting in at one place, and the carpet had been soaked. Some sealant was then applied at the end of the head flashing above the ranchslider where water was entering and thereafter no water ingress had been observed.
- [26] Mr Hursthouse noted:
- 5.2.1 *As I was not provided with a copy of the building consent I cannot comment on compliance with that. With respect to compliance with the building code, the missing flashings on top of the facing boards front and rear mean there is a risk of water getting behind the cladding in these places.*
- 5.2.2 *The other items are probably not code compliance issues.*
- 5.3.1 *Although the photos show many examples of poor quality work, they are largely aesthetic.*

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[27] Mr Hursthouse also provided a table noting three areas of potential non-compliance and supporting photographs. The Board focused its inquiry on those items which were as follows:

Item	Description	Contravention or non-compliance	Relevant Building Code Clause	Analysis	Implications
1	Water getting in at the end of a head flashing	Sections 14E (2) and 17 of the Building Act 2004 Compliance with the Building Code	E2-external moisture	One possible explanation is that the proprietary plastic stop ends now commonly stuck on to head flashings was simply left off. However, if the building wrap and cavity had been constructed properly, any water getting in here should have been able to escape freely at the bottom without coming inside, so the fact that water was coming inside suggests there may be some problems with the building wrap / air seal or cavity construction as well.	The sealant appears to be working. One implication is spelled out to the left – the distinct possibility there are issues remaining with the air seal, building wrap or cavity battens/drainage in this area.
2	Large gap at the end of a head flashing Refer to photos 5, 6	Sections 14E (2) and 17 of the Building Act 2004 Compliance with the Building Code	E2-external moisture	Gaps like this have the potential to let in sufficient water to exceed what is allowable under E2.3.2 “Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.”	Such gaps should be filled. Any water getting in should be able to escape freely down the drained and vented cavity – if this has been constructed properly – however this cavity is not designed to be subjected to water on a regular basis, which is what such large gaps make likely.
3	Missing flashings on tops of facing boards Refer to photos 7 10	Sections 14E (2) and 17 of the Building Act 2004 Compliance with the Building Code	E2-external moisture	The missing flashings have the potential to let in sufficient water to exceed what is allowable under E2.3.2 “Roofs and exterior walls must prevent the penetration of water that could cause undue dampness, damage to building elements, or both.”	Water may have been getting in here, however if the cavity was properly constructed (well fitted building wrap, properly drained and vented, treated timber) there should not have been any damage to date. Flashings should be installed that slip up behind the weatherboard above.

[28] The Respondent accepted the Technical Assessor's report and the findings in it.

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- [29] With regard to the first item in the table the Respondent stated the issue was caused by extreme weather and that he was sure the construction was done correctly. The Complainant stated it occurred whenever it rained. The Technical Assessor considered it was unlikely to leak if constructed correctly. When the Respondent was asked why he had not returned to fix it he stated that he was too busy.
- [30] The Respondent spoke to some of the aesthetic issues. He noted that some of the aesthetic matters such as tiling were carried out by subcontractors to the Respondent. He stated holes in the garage door were made by a supplier who had not been paid and that he was arranging for the supplier to fix it. The Complainant noted it had not been fixed. The Respondent has not arranged for other matters to be rectified.
- [31] The Respondent stated this was the first time he had gone into business, the Respondent's business has now gone into liquidation and he is looking for employment and does not intend going back into business.

Boards Conclusion and Reasoning

- [32] In considering whether the Respondent has carried out or supervised building work in a negligent or incompetent manner the Board has had regard to the case of *Beattie v Far North Council*⁵. Judge McElrea provided guidance on the interpretation of those terms:

[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.

[44] In my view a "negligent" manner of working is one that exhibits a serious lack of care judged by the standards reasonably expected of such practitioners, while an "incompetent" manner of working is one that exhibits a serious lack of competence.

[46] The approach I have adopted recognises that the terms "negligent" and "incompetent" have a considerable area of overlap in their meanings, but also have a different focus - negligence referring to a manner of working that shows a lack of reasonably expected care, and incompetence referring to a demonstrated lack of the reasonably expected ability or skill level.

- [33] The Board has also considered the comments of Justice Gendall in *Collie v Nursing Council of New Zealand*⁶ as regards the threshold for disciplinary matters:

[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.

- [34] The Respondent has accepted the Technical Assessor's report and the findings therein. The report showed clear instances of breaches of clause E2 of the building code and the Complainant has complained of leaks. Clause E2 deals with weather-tightness and compliance with the functional requirements of it is very important for the long term performance of a home. Any breach of this nature is seen as a very serious matter.

⁵ Judge McElrea, DC Whangarei, CIV-2011-088-313

⁶ [2001] NZAR 74

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- [35] The Board noted that the Respondent had little in the way of explanation as to how or why the leaks had occurred. The Board considered his conduct bordered on incompetence. The matters under inquiry did not, however, allow for a full investigation into his competence and as such, on the basis of the tests set out in *Beattie* above, a finding of negligence is made.
- [36] The Board notes that some of the aesthetic matters were the Respondent's work whilst other aspects, such as tiling which was done very poorly, were the work of subcontractors. In this respect the Board notes that the Respondent has a Site Area of Practice 1 licence. A Site Licence is granted on the basis that a person has knowledge and skills in coordinating and overseeing the entire building site and building job. The Respondent has not ensured that the tiling work in particular was carried out in a competent and tradesman like manner and in doing so he has fallen seriously short of the standards expected of a licensed building practitioner with a Site licence. Again a finding of negligence is made.
- [37] As regards the aesthetic matters for which the Respondent was responsible the Board notes that whilst disappointing they did not reach the seriousness threshold for a disciplinary outcome.

Board Decision

- [38] The Board has decided that the Respondent has carried out or supervised building work in a negligent manner (s 317(1)(b) of the Act) and should be disciplined.

Disciplinary Penalties

- [39] The grounds upon which a Licensed Building Practitioner may be disciplined are set out in s 317 of the Act. If one or more of the grounds in s 317 applies, then the Board may apply disciplinary penalties as set out in s 318 of the Act¹.
- [40] The Board's Complaints Procedures allow the Board to either set out the Board's decision on disciplinary penalty, publication and costs or to invite the Respondent to make submissions on those matters.
- [41] As part of the materials provided to the Board for the Hearing, the Respondent provided submissions which were relevant to penalty, publication and costs and the Board has taken these into consideration. The Board also noted the Respondent's lack of willingness to return and address the issues when they were brought to his attention and it considers this to be an aggravating matter.
- [42] Given the nature of the disciplinary offending, the mitigation already heard and the level of penalty decided on, the Board has decided to dispense with calling for further submissions. The Respondent will, however, be given an opportunity to comment on the level of penalty, costs and on publication should he consider there are further matters which the Board should take into consideration.
- [43] The Board is aware that the common understanding of 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. Those purposes were recently reiterated by the Supreme Court of the United Kingdom:

*The primary purpose of professional disciplinary proceedings is not to punish, but to protect the public, to maintain the public confidence in the integrity of the profession and to uphold proper standards of behaviour.*⁷

[44] In New Zealand the High Court noted in *Dentice v Valuers Registration Board*⁸:

Although, in respect of different professions, the nature of the unprofessional or incompetent conduct which will attract disciplinary charges is variously described, there is a common thread of scope and purpose. Such provisions exist 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 practise the profession in question; to protect both the public and the profession itself against persons unfit to practise; and to enable the profession or calling, as a body, to ensure that the conduct of members conforms to the standards generally expected of them.

[45] The High Court in *Patel v Complaints Assessment Committee*⁹ has, however, commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to uphold professional standards:

[27] Such penalties may be appropriate because disciplinary proceedings inevitably involve issues of deterrence. They are designed in part to deter both the offender and others in the profession from offending in a like manner in the future.

[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.

[46] In *Lochhead v Ministry of Business Innovation and Employment*¹⁰, an appeal from a decision of the Board, the court, in respect of penalty noted:

[34] This is not a case to which the statutory principles of sentencing set out in the Sentencing Act 2002 apply. Nevertheless, the current approach adopted in criminal courts to the task of assessment of penalties to be imposed has significant advantages of simplicity and transparency compared to other approaches. Conceptual similarities between penalty assessment in this area, and the task of penalty assessment in other areas of health and safety legislation, or indeed the Building Act itself, are obvious.

[35] The modern approach to penalty assessment involves a multi stage process. Firstly, an assessment of the seriousness of the transgression is undertaken, often by reference to whether the offending conduct falls at the lower, mid-range or upper end of the scale of possible offending. That assessment will assist in the identification of an appropriate starting point on a principled basis. Secondly, aggravating features which may justify an uplift are identified and assessed. Thirdly, any mitigating features which may justify a reduction in penalty are identified and assessed. Finally, an overall assessment is made, often including the effect of the proposed penalty on the person receiving it, and such adjustments made as may be required in the

⁷ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁸ [1992] 1 NZLR 720 at p 724

⁹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁰ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288, Judge Ingram

particular circumstances of the case. See for example Department of Labour v Hanham & Philp Contractors Ltd & Ors (HC ChCh, CRI 2008-409-000002, 17 December 2008, Randerson and Pankhurst JJ).

- [47] The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*¹¹ the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way.
- [48] Whilst not belligerent the Respondent did not participate in the Registrar investigation phase of the complaint. Such behaviour is to be discouraged and it is considered to be an aggravating feature as is the Respondent's failure to address the non-compliance issues at the site.
- [49] The Board has already noted that the matter was serious and that the conduct bordered on incompetence. The Board initially considered suspension or cancellation of the Respondent's licence. The level of negligence gave rise to this consideration. Had the Board made a finding that he had also been incompetent it would have ordered a suspension or cancellation. As it has not, a fine will be sufficient penalty. The Board therefore considers, taking into account the above factors, a fine of \$2,500 is appropriate and this is in line with other similar cases.
- [50] The Board hopes that the Respondent takes note of the penalty imposed and in the future takes his responsibility to ensure compliance with the building code more seriously in the future.

Costs

- [51] Under s 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [52] 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. The judgement in *Cooray v The Preliminary Proceedings Committee*¹² included the following:

"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure. In other cases, where it has considered that such an order is not justified because of the circumstances of the case, and counsel has referred me to at least two cases where the practitioner pleaded guilty and lesser orders were made, the Council has made a downward adjustment."
- [53] The judgment in *Macdonald v Professional Conduct Committee*¹³ confirmed the approach taken in *Cooray*. This was further confirmed in a complaint to the Plumbers, Gasfitters and Drainlayers' Board, *Owen v Wynyard*¹⁴ where the judgment

¹¹ [2011] 3 NZLR 850.

¹² HC, Wellington, AP23/94, 14 September 1995

¹³ HC, Auckland, CIV 2009-404-1516, 10 July 2009

¹⁴ High Court, Auckland, CIV-2009-404-005245, 25 February 2010

referred with approval to the passages from *Cooray and Macdonald* in upholding a 24% costs order made by the Board.

- [54] In *Collie v Nursing Council of New Zealand*¹⁵ 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. It is not hard to see that the award of costs may have imposed some real burden upon the appellant but it is not fixed at a level which disturbs the Court's conscience as being excessive. Accordingly it is confirmed.

- [55] The Board notes that a Technical Assessor's report was required and that this has increased the costs associated with the hearing. In all the circumstances the Board considers costs of \$2,000 is appropriate and it notes that this is still significantly less than the 50% level of actual costs.

Publication of Name

- [56] 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.
- [57] The Board is also able, under s 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.

- [58] 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.
- [59] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁷. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁸. In *N v Professional Conduct Committee of Medical Council*¹⁹ the High Court pointed to the following factors:

The tribunal must be satisfied that suppression is desirable having regard to the public and private interests and consideration can be given to factors such as:

- *issues around the identity of other persons such as family and employers;*
- *identity of persons involved and their privacy and the impact of publication on them; and*

¹⁵ [2001] NZAR 74

¹⁶ Section 14

¹⁷ Refer ss 200 and 202 of the Criminal Procedure Act

¹⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁹ *ibid*

- *the risk of unfairly impugning the name of other practitioners if the responsible person is not named.*

- [60] 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 interest²⁰. 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.
- [61] The Board considers publication is required. The misconduct of the Respondent was serious and it is important that the industry learns from his conduct and are dissuaded from such conduct themselves. It is also important that the public are informed as to the Respondent's conduct over and above their ability to ascertain the disciplinary offending from the Register.

Penalty, Costs and Publication Decision

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

- Penalty:** Pursuant to s 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,500.
- Costs:** Pursuant to s 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.
- Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with s 301(1)(iii) of the Act.
- In terms of section 318(5) of the Act, there will be action taken to publicly notify the Board's action by way of an article in code words, on the Board's website and in such other manners as the board considers as appropriate.

Submissions on Penalty Costs and Publication

- [63] The Board invites the Respondent to make written submissions on the matters of disciplinary penalties, costs and publication up until close of business on **11 April 2017**.
- [64] If no submissions are received then this decision will become final.
- [65] 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.

Non Payment of Fines or Costs

- [66] The Respondent should take note that the Board may, under s 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. Section 319 provides:

319 Non-payment of fines or costs

If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—

²⁰ Kewene v Professional Conduct Committee of the Dental Council - [2013] NZAR 1055

- (a) *cancel the person's [licensing] and direct the Registrar to remove the person's name from the register; or*
- (b) *suspend the person's [licensing] until the person pays the money and, if he or she does not do so within 12 months, cancel his or her [licensing] and direct the Registrar to remove his or her name from the register.*

Right of Appeal

[67] The right to appeal Board decisions is provided for in s 330(2) of the Actⁱⁱ.

Signed and dated this 20th day of March 2017.



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**

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- (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.*