

Before the Building Practitioners Board

	BPB Complaint No. CB 24389
Licensed Building Practitioner:	Alim Ali (the Respondent)
Licence Number:	BP 107359
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	Board Inquiry
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	7 March 2019
Decision Date:	1 April 2019

Board Members Present:

Richard Merrifield, LBP, Carpentry Site AOP 2 (Presiding)
Mel Orange, Legal Member
Bob Monteith, LBP Carpentry and Site AOP 2
Faye Pearson-Green, LBP Design 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 a disciplinary offence under section 317(1)(da)(ii) of the Act.

The Respondent **has not** committed disciplinary offences under section 317(1)(b) or (d) of the Act.

Contents

Introduction..... 2

Function of Disciplinary Action..... 2

Background to the Complaint..... 3

Evidence..... 3

Board’s Conclusion and Reasoning..... 9

 Negligence and/or Incompetence and Contrary to a Consent 9

 Record of Work 10

Penalty, Costs and Publication..... 11

 Penalty 11

 Costs..... 12

 Publication 12

Section 318 Order..... 13

Submissions on Penalty, Costs and Publication 14

Right of Appeal..... 14

Introduction

[1] The hearing resulted from a Board Inquiry 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) 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); ADN
- (c) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) 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

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

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.

- [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.

Background to the Complaint

- [5] The Board Inquiry resulted from evidence heard in Complaint Number C2-01592 where the Respondent appeared as a witness.

Evidence

- [6] 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.

- [7] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

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

Alim Ali	Respondent
John Rennie	Technical Assessor to the Board
[Omitted]	Witness summonsed by the Board

- [9] [Omitted] protested the summons for him to give evidence. He submitted that as he had appealed a decision of the Board in relation to the same address, and which resulted in the Board Inquiry being initiated, it may be prejudicial to his appeal if he

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

were to give evidence at the hearing. The Board considered the submission and decided that he would not be prejudiced in his appeal if he was required to give evidence. The Board noted that it is not a party to the Appeal made to the District Court. The contradictor to the Appeal, to the best of the Board's knowledge, is the Auckland Council, the District Court having issued a direction that it was to be the responder. The Board received evidence from the Respondent and the Technical Assessor but did not require evidence from [Omitted]. He was not sworn in as a witness.

- [10] In the evidence heard at that hearing the Respondent stated that he had carried out framing and roofing work on the dwelling. The Technical Assessor who provided a report in respect of the dwelling noted:

The complainant has provided details of the number of inspections undertaken on site. A total of 34 inspections were booked, of which 19 resulted in failed inspections requiring re-inspection.

- [11] Council inspection records showed that the Respondent was present for a number of the inspections and that he was recorded on the Council files as the Licensed Building Practitioner for the build. Specifically, he was present for inspections on 16 January 2015, 24 September 2015 and 21 October 2015. The Council summarised its inspections as follows:

	Date	Type	Result	Summary – Refer Attachment 3 for full notes
1.	16/01/15	ICB	Fail	<ul style="list-style-type: none"> • Alim Ali on site <p>SI 56596</p> <ol style="list-style-type: none"> 1. Control joints to be installed in all wall lengths greater than 6m 2. All starters to be long enough to extend 600m into slab 3. Site notes from foundation inspection required
2.	03/03/15	IFG	Partial Pass	<ul style="list-style-type: none"> • [Omitted]on site <ol style="list-style-type: none"> 1. Partial only up to Bed 2/dining only 2. Complete nogging to roof/wall junctions and along rafters at front of Bed 1 3. Complete straps to C1 BL1 2.8 top storey 4. Check brace calcs and ensure enough bracing, as 3x braces lower floor are too short. Either add more bracing or rework calcs 5. Items to be checked at cavity/wrap
3.	12/03/15	ICA	Pass	<ul style="list-style-type: none"> • Wrap not completed everywhere • Framing issues still to resolve
4.	20/03/15	IFG	Fail	<ul style="list-style-type: none"> • [Omitted]on site <p>SI 66777</p> <ul style="list-style-type: none"> • 2^o to deck fall required • Outlet to overflow to view

	Date	Type	Result	Summary – Refer Attachment 3 for full notes
5.	15/04/15	ICA	Fail	<ul style="list-style-type: none"> • [Omitted]onsite SI 70711 <ol style="list-style-type: none"> 1. Brick rebate west elevation to be clean/tidy and sealed 2. All roof wall junctions to be completed 3. All roof to soffit flashings to be installed a per plan pg 14 and 15 4. Jams to garage door to run past bottom of bottom plate 5. Overflow to deck to be as per plan 200x75 6. Check brace bolt fixings in garage
6.	05/05/15	ICA	Fail	<ul style="list-style-type: none"> • [Omitted]on site • Not ready for cavity wrap SI 56972 <ol style="list-style-type: none"> 1. Backflashing required 2. Cut back fascia/barge weatherboard to go behind 3. Battens to complete 4. Tape all penetrations 5. Stop end to flashings 6. Ground level to high <ul style="list-style-type: none"> • Too many issues. Not a complete list
7.	23/05/15	IPB	Fail	<ul style="list-style-type: none"> • [Omitted]on site SI 66297 - Plumbing <ol style="list-style-type: none"> 1. Complete terminal vents and top plate stiffener SI 66296 – Building <ol style="list-style-type: none"> 1. Complete all cladding 100% including safety barrier to deck and all scribes and extractor penetrations, as water is evident on some framing 2. Marked on plan 28 in green are braces that have issues – either too short, bulk head in way, “holdways” exceeding 80mm from edge of braces. Check both levels 3. Top level windows require restrictions by final 4. Nog out for shower bases 5. Moisture too high
8.	20/06/15	IDT	Fail	SI 59165 <ul style="list-style-type: none"> • Basement area leaking full of water. Remove backfill and rectify at block wall
9.	25/06/15	ITK	Fail	<ul style="list-style-type: none"> • Membrane for wet areas ok • Instructions from SI 59165 not completed. More area to be covered

	Date	Type	Result	Summary – Refer Attachment 3 for full notes
10.	28/08/15	IF1	Fail	<ul style="list-style-type: none"> • [Omitted]on site • Note: this was not a complete inspection. No inside inspection took place • Also not everything on exterior or deck as list is extensive <p>SI 78475 (page 1 of 2)</p> <ol style="list-style-type: none"> 1. Roof/wall junctions at rear of building to be property finished/backflashed etc. – weatherboard is to go behind fascia with backflashing in place 2. Top storey w.board – brick external corners to be completed/flashed e.g. box corners or similar 3. Top storey external vents to be flashed up under weatherboard above 4. Sheet barge flashings at rear/over roof to be turned down over fascia and weatherboard 5. Completed weatherproofing to right of bathroom window top storey rear 6. Seal all sides of infill cladding above windows 7. Fit graspable handrail to external stairs 8. Infill gap at bottom of weatherboard vent strip 9. No gaps under windows to be greater than 5mm – please seal/infill fillet 10. Extra haunching required to ORG 11. Brick veneer gap/soffit junction at rear of stairwell too great, please fit moulding to reduce gap to max 5mm 12. Complete mouldings around top of posts supporting front deck area, ensure that junction at top of stair stringer is weatherproofed
				<p>SI 78476 (page 2 of 2)</p> <ol style="list-style-type: none"> 13. Paint bottom of garage door jambs and ensure gap to veneer cavity is sealed 14. Weepholes required to veneer around columns to front entry 15. 100x100 balusters required to deck barriers as per NZS 3604 section 7, and plan 16. Seal internal junctions of deck barrier/weatherboards 17. Seal scribes to weatherboards 18. Ensure 1° fall to membrane deck gutter 19. Ensure min 5° fall to top deck barrier parapet wall 20. Complete list in satisfactory manner in compliance with NZBC and rebook final inspection 21. Please note that this is not a complete list as the interior has not been inspected and other items may arise at the next final 22. Paperwork still to be supplied 23. Please provide evidence that the preline inspection on 29/05/15 has passed and also drainage tanking inspection from 20/06/15 and 25/06/15

	Date	Type	Result	Summary – Refer Attachment 3 for full notes
11.	10/09/15	IF1	Fail	<ul style="list-style-type: none"> • [Omitted] on site • Site not ready. • Refer SI 78475 and SI 78476 SI 78873 (page 1 of 2) <ol style="list-style-type: none"> 1. Cut bricks at the top require more ventilation holes 2. Barge flashings to return down over timber barge 70mm 3. Very top roof special flashing required to join old and new junction, complete cladding at this area too 4. Brick w.board junctions, change box corners so that barge fascia goes over brick by at least 90mm and seal 5. Membrane deck gutter fall not 1° and is not 300mm wide 6. Saddle flashings required 7. Timber landing and deck constructed shoddy 8. Seal all penetrations to cladding, no gaps to brick greater than 13mm no gaps to 20mm drained cavity no greater than 5mm 9. Cover novacoil at rear 10. Items 1, 2, 4, 8, 9, 15, 16, 17, 18, 19, 20, 21-23 still to complete on SI 78475 and SI 78476 11. Exterior stairs to be bowmac bracketed to landings 12. Membrane laps in gutter do not comply with E2/AS1 <ul style="list-style-type: none"> • This is not a complete list and pertains to some items outside only
12.	15/09/15	IF1	Fail	<ul style="list-style-type: none"> • [Omitted] • Recheck SI 78475 & 78476, New SI 78873 & SI 78874, • Alan Perich (senior) and/or Leon Hume (team leader) to carry out next inspection. • Hold to be placed on this consent • Building work at this project is substandard

	Date	Type	Result	Summary – Refer Attachment 3 for full notes
13.	24/09/15	IF1	Fail	<ul style="list-style-type: none"> • Alim Ali • Issues last SI 78475 & 78874 transferred to new SI 77580 SI 77580 <ol style="list-style-type: none"> 1. Timber deck to have 190x45 joists at 400crs and all fixings as per NZS33604 2. Steps to have even risers with max 100mm opening 3. Steps from interior to be max 190mm 4. Membrane deck cutter to have minimum 1% fall (1:100) and clamp able outlet 5. Saddle flashings required – fix cladding 6. Cladding clearances to E2/As1 7. Brick vents to complete 8. Head flashings to be 20mm past scribe 9. Roof wall junctions and clearances gutter to cladding 10. Apron flashings to Ed/AS1 over 2 corrugations 11. Roof troughs at ends to be bent for drip edge 12. Fascia to be to top of purlin height 13. Vent strip to be 10mm above bottom of cladding 14. Paint or sleeve water pipes 15. Barge and apron flashings to have kickouts to divert water into spouting – complete fixings 16. Revised plan with AC2131 form and COW for detail old corrugated iron roof junction to new trapezoidal roof and change of bathroom layout 17. Spreaders to have even water distribution 18. Seismic restraints HWC 19. Laundry tub seal bottom protect bottom plate 20. Smoke alarms 21. Non return valve to shower, restrictor to window
14.	21/10/15	IF1	Fail	<ul style="list-style-type: none"> • [Omitted] • SI 77533 transferred to new SI 77580 SI 77580 [Not entered on this report]
15.	09/11/15	IF1	Fail	<ul style="list-style-type: none"> • [Omitted] • SI 77580 part resolved and transferred to SI 65717 SI 65717 [Not entered on this report]
16.	25/11/15	IME	Audit	<ul style="list-style-type: none"> • [Omitted]– refused to show his license, also confirmed that he is the LBP • Audit to check statues of works • NTF not complied with, too many items to list • [Omitted]will not confirm what works he has done with Alim Ali also registered against this consent • Further assessment to happen
17.	28/01/16	IF1	Fail	<ul style="list-style-type: none"> • Fail pending paperwork • Items required from Audit report by A Cargill and SI 65717 items complete. Paperwork to follow

- [12] The Council also noted that a record of work had not been received for the property.
- [13] The Respondent provided a written response to the Complaint. He stated his only involvement was to prepare foundation, floor and roof. At the hearing the Respondent stated he did not carry out or supervise any of the building work on the cladding. The Respondent also stated that he installed roofing material but that independent contractors installed the flashings and that he was not on site when they did. He did not know if the persons who installed the flashings were licensed.
- [14] The Respondent stated he should not be accountable for his work and that his [Omitted], the main contractor should be as he was only helping his [Omitted].
- [15] With regard to the record of work the Respondent stated he did not provide one to the Council but that as a Code Compliance Certificate had issued they must have received one.

Board's Conclusion and Reasoning

- [16] The Board has also decided that the Respondent **has not**:
- (a) carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act); or
 - (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)
- [17] The Board has decided that the Respondent **has** failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act) and should be disciplined.
- [18] The reasons for the Board's decisions follow.

Negligence and/or Incompetence and Contrary to a Consent

- [19] The board decided that there was insufficient evidence on which to make findings in respect of the inquiry into the Respondent's conduct under sections 317(1)(b) and 317(1)(d) of the Act.
- [20] Whilst there was significant evidence of multiple failings with the building work there was insufficient evidence to link the Respondent to those failings.
- [21] In this respect the Board notes that disciplinary process and the Board's jurisdiction under the Act is inquisitorial. Moreover, the process leading up to a Board hearing is designed to be a limited investigation to ascertain whether further investigations should be undertaken at a hearing. In this instance the hearing did not elucidate any further evidence that the Respondent was responsible for the matters outlined in the Councils records.

Record of Work

- [22] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁶.
- [23] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had “good reason” for not providing a record of work on “completion” of the restricted building work.
- [24] The Board discussed issues with regard to records of work in its decision C2-01170⁷ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [25] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.
- [26] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”.
- [27] The Respondent was not able to produce a record of work. He had no definitive recollection of completing one. The transcript from C2-01592 in respect was also not definitive. The Board formed the impression that he did not provide a record of work but was covering himself by stating he may have. There was no record of work on the Council files.
- [28] The Respondent has submitted that the Council must have had a record of work as a Code Compliance Certificate has issued. A Code Compliance Certificate certifies compliance with a Building consent and the Building Code. A record of work is not a compliance document for the purposes of determining compliance. As was noted in Determination 2013/030, 28 May 2013 regarding the authority’s exercise of its powers of decision in respect of a refusal to amend a building consent for Restricted Building Work carried out to a relocated house:

The record of work simply records the name of the LBP who carried out or supervised the restricted building work and thus supports the licensing and restricted building work provisions of the Act that aim to ensure construction work that is critical to the integrity of a residential building is only carried out

⁶ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

⁷ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

or supervised by people who have been independently assessed as competent to carry out that work. The record of work has nothing to do with the code-compliance of the work and whether the work that has been carried out complies with the building consent.

- [29] As such the submission is rejected.
- [30] The Board has, on the basis of the evidence before it, decided that a record of work was not provided on completion as required and the disciplinary offence has been committed.
- [31] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits but the threshold for a good reason is high.
- [32] In this instance the Respondent stated his [Omitted] should be taking responsibility. His [Omitted] is also a Licensed Building Practitioner. He also had a duty to complete a record of work for restricted building work that he carried out or supervised. He could not, however, provide a record of work for the restricted building work that the Respondent carried out or supervised. As stated above each and every Licensed Building Practitioner has an obligation to provide a record of work.

Penalty, Costs and Publication

- [33] 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.
- [34] 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

- [35] 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*⁸ 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

⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [36] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁹ 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.
- [37] The Board notes that the disciplinary offending occurred in 2015. At that time the record of work provisions was relatively new and the Board was being lenient on those that transgressed the provisions. It is appropriate that the Board treat the Respondent on the same manner. On that basis the Board has decided to impose a fine of \$500.

Costs

- [38] 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.”
- [39] 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 case¹⁰.
- [40] In *Collie v Nursing Council of New Zealand*¹¹ 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.

- [41] Based on the above the Board’s costs order is that the Respondent is to pay the sum of \$1,000 toward the costs of and incidental to the Board’s inquiry. This is significantly less than 50% of actual costs.

Publication

- [42] 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 Act¹². The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:

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

¹⁰ *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.

¹¹ [2001] NZAR 74

¹² Refer sections 298, 299 and 301 of the Act

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.

- [43] 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.
- [44] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁴. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁵. 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*¹⁶.
- [45] 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 interest¹⁷. 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.
- [46] Based on the above the Board will not order further publication.

Section 318 Order

- [47] 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 \$500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,000 (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 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.

- [48] 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.

¹³ Section 14 of the Act

¹⁴ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁶ *ibid*

¹⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [49] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **29 April 2019**. 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.
- [50] In calling for submissions on penalty, costs and mitigation the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and and/or its decision that the Respondent has committed a disciplinary offence the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 1st day of April 2019



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.*