

Before the Building Practitioners Board

	BPB Complaint No. 26647
Licensed Building Practitioner:	Keagan Peters (the Respondent)
Licence Number:	BP 159633
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 Type:	On the Papers
Hearing and Decision Date:	24 July 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Ms S Chetwin CNZM, Barrister and Solicitor, Professional Director
Mr C Lang, Building Surveyor and Quantity Surveyor

Appearances:

E Hoogerbrug for the Respondent

Procedure:

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

Disciplinary Finding

The Respondent has committed a disciplinary offence under section 317(1)(b) and (d) of the Act.

The Respondent is fined \$2,000 and ordered to pay costs of \$1,700 . A record of the disciplinary offending will be recorded on the Public Register for three years.

Contents

Summary	2
The Charges	2
Procedure	3
Evidence	3
Negligence or Incompetence	4
Has the Respondent departed from an acceptable standard of conduct	4
Was the conduct serious enough	5
Has the Respondent been negligent or incompetent.....	5
Misrepresentation or Outside of Competence – Design Work	5
Board Decisions	6
Penalty, Costs and Publication	6
Penalty	6
Costs.....	8
Publication	8
Section 318 Order	9
Right of Appeal	9

Summary

- [1] The Respondent constructed two decks. They were substandard and did not meet Building Code compliance standards. The Respondent accepted that he had been negligent and that he had carried out design work that he was not competent to carry out. The Board fined the Respondent \$2,000 and ordered that he pay costs of \$1,700. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charges the Board resolved to further investigate² were that the Respondent may, in relation to building work at [OMITTED], Auckland, have:

¹ Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law. The evidentiary standard is the balance of probabilities, *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1.

² The resolution was made following the Board's consideration of a report prepared by the Registrar in accordance with regulation 10 of the Complaints Regulations.

- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have carried out building work that did not meet acceptable quality standards and which may not have complied with the New Zealand Building Code contrary to section 17 of the Act and, in particular, that he may, in relation to the construction of decks, have:
1. used incorrectly sized and/or treated timber;
 2. used incorrect structural fixings which may also have failed to meet durability requirements;
 3. provided insufficient structural support and/or bracing; and/or
 4. failed to ensure sufficient clearance from the ground and other structures.
- (b) breached section 314B(b) of the Act contrary to section 317(1)(h) of the Act, IN THAT, he may have carried out design work that he was not competent to carry out in relation to the design of decks.

Procedure

- [4] The matter was set down to be heard as an in-person hearing. Counsel for the Respondent asked that the matter be dealt with on the papers. The Board granted the request.

Evidence

- [5] The Board proceeded on the basis of the Respondent's acceptance that he had committed the disciplinary alleged offences set out above. In this respect, Counsel's written submissions set out:

9. *Mr Peters requested an "on the papers" decision, acknowledging that his work was subpar. He does not dispute the charges.*

And

41. *Mr Peters acknowledges that the work on the top deck was incomplete, and that the side deck did not meet acceptable quality standards. He accepts responsibility for these issues. He offered to return to the site to complete the top deck and remedy the side deck and no additional cost but was not permitted to do so.*
42. *Mr Peters sincerely apologises for his negligence and incompetence in relation to this work. He recognises that the issues with the top deck and side deck fell below what is expected of a licensed building practitioner and regrets the impact this has had on Ms [OMITTED].*
43. *Mr Peters is committed to conducting proper due diligence on all future projects and will take all necessary steps to verify advice and ensure compliance with legal and regulatory obligations.*

44. *At the time the work was carried out, Mr Peters was just over a year into his licensed building practitioner certification and was still relatively new to the role. He has learned significantly from this experience and recognises the importance of ensuring full compliance and quality in all aspects of his work.*

[6] Counsel's submissions also traversed the background to the complaint and the Respondent's efforts to resolve the issues with the Complainant. The Board has taken those submissions into consideration.

Negligence or Incompetence

[7] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,³ that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*⁴ test of negligence.⁵ To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.⁶ A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.⁷ If it does not, then a disciplinary finding cannot be made.

Has the Respondent departed from an acceptable standard of conduct

[8] When considering what an acceptable standard is, the Board must consider the purpose of the Building Actⁱ as well as the requirement that all building work must comply with the Building Code⁸ and any building consent issued.⁹ The test is an objective one.¹⁰

[9] The Respondent has accepted that his conduct fell below an acceptable standard. It was clear from the evidence before the Board that the building work was substandard and did not meet quality or compliance requirements. In this respect, whilst the building work was not completed under a building consent, section 17 of

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

⁴ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁵ Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁶ In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as "a demonstrated lack of the reasonably expected ability or skill level". In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as "an inability to do the job"

⁷ *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] "Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness".

⁸ Section 17 of the Building Act 2004

⁹ Section 40(1) of the Building Act 2004

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent's subjective considerations.

the Building Act states that all building work must comply with the Building Code. The Respondent's building work clearly did not comply with clauses B1-Structure or B2-Durability.

Was the conduct serious enough

- [10] The conduct reached the threshold for a disciplinary finding to be made. The departures were more than minimal and were not the result of mere inadvertence, error or oversight.

Has the Respondent been negligent or incompetent

- [11] The Board considered whether the conduct met the tests for negligence or incompetence. It noted that Counsel's submissions stated the respondent accepted he had been negligent and incompetent. Negligence and incompetence are not the same. In *Beattie v Far North Council*,¹¹ 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.

- [12] As noted in paragraph [7] above, negligence is the departure by a licensed building practitioner whilst carrying out or supervising building work from an accepted standard of conduct, whereas incompetence is a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.
- [13] Looking at the conduct and applying the objective test of a competent and responsible practitioner, the Board has decided that the appropriate finding is one of negligence. The Respondent should note, however, that it was only by a fine margin that it did not make a finding of incompetence. But for the surrounding contractual circumstances, a finding of incompetence would have been warranted, given the extent of the Respondent's departure from acceptable standards and the New Zealand Building Code, both of which indicated a lack of knowledge.

Misrepresentation or Outside of Competence – Design Work

- [14] Section 314B(b) of the Act provides:

A licensed building practitioner must—

(b) carry out or supervise building work only within his or her competence.

- [15] In the context of the Act and the disciplinary charge under section 317(1)(h) and 314B(b), a Licensed Building Practitioner must only work within their individual competence. The Respondent holds a Carpentry Licence. That deems him to be competent to carry out carpentry work. He does not hold a Design Licence. A Design Licence is the class of licence that deems a practitioner to be competent to carry out design work, which is a defined term in the Act.¹²

¹¹ Judge McElrea, DC Whangarei, CIV-2011-088-313

¹² Building (Design Work Declared to be Building Work) Order 2007:

3 *Design work declared to be building work*

- [16] The evidence shows that the Respondent also carried out design work. That finding is based on the fact that aspects of the Respondent's building work did not adhere to an Acceptable Solution, such as NZS 3604, an Acceptable Solution for Timber Framed Buildings, which is a deemed method of compliance with the Building Code. In essence, the Respondent came up with his own solution, which in turn was not compliant, and in doing so, he carried out design work, which the evidence shows he was not competent to do.
- [17] Given the above, the Board finds the Respondent was working outside of his personal competence and the disciplinary charge is upheld.

Board Decisions

- [18] The Respondent has:
- (a) carried out building work in a negligent manner contrary to section 317(1)(b) of the Act; and
 - (b) carried out building work (design work) that he was not competent to carry out contrary to section 314B(b) and 317(1)(h) of the Act.

Penalty, Costs and Publication

- [19] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Actⁱⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [20] Counsel has filed submissions, which the Board has taken into account in making its decisions.

Penalty

- [21] The Board has the discretion to impose a range of penalties.ⁱⁱⁱ Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.¹³ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁴
- (a) protection of the public and consideration of the purposes of the Act;¹⁵

(1) *Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*

(2) *Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*

¹³ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

¹⁴ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁵ Section 3 Building Act

- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;¹⁶
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁷
 - (d) penalising wrongdoing;¹⁸ and
 - (e) rehabilitation (where appropriate).¹⁹
- [22] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases²⁰ and applying the least restrictive penalty available for the particular offending.²¹ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²² that is consistent with other penalties imposed by the Board for comparable offending.²³
- [23] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²⁴
- [24] Counsel submitted:
54. *Considering Mr Peters' acceptance of responsibility, his proposed solution, the relatively minor nature of the breaches, and the absence of aggravating factors, a fine of \$1,500 is appropriate. Given his clean disciplinary record and willingness to resolve the matter properly, no further penalties are warranted. A fine family reflects the circumstances of this complaint and investigation.*
- [25] Counsel submitted that the Board should take guidance from *Mace* [2025] BPB 26495 and *Taylor* [2024] BPB 26416. In both, a reduction of one-third from the starting point was applied in recognition of the practitioners' acceptance of the charges.
- [26] The Board adopted a starting point of a fine of \$3,000. It considered the amount to be consistent with fines imposed for similar disciplinary offending. It also considered that the conduct was not as minor as Counsel had submitted and, in this respect, it applied the Board's penalty findings in *Taylor* [2024] BPB 26416 when determining its starting point. The Board has accepted that a one-third reduction from the starting point as outlined by Counsel is appropriate. The fine is set at \$2,000.

¹⁶ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁷ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁸ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²¹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

- [27] The Board did note Counsel's submission that the Respondent had only recently been licensed and was new to his role. The Respondent should note that the expected standards of conduct for new practitioners are the same as for those who have held their licences for a longer period. The Board does not consider that to be a mitigating factor.
- [28] The Board recommends that the Respondent take care with the types of work that he takes on to ensure he works within his competence and that he seek professional advice and assistance in relation to work he is not familiar with and with regard to design work and compliance standards.

Costs

- [29] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.²⁵
- [30] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings²⁶. The starting point can then be adjusted up or down with regard to the particular circumstances of each case²⁷.
- [31] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderately complex. The scale amount for a moderately complex matter dealt with on the papers is \$1,700, which is the amount the Respondent is to pay toward the costs of and incidental to the Board's inquiry. It is significantly less than 50% of actual costs.

Publication

- [32] 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,²⁸ and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [33] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.²⁹ Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have

²⁵ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

²⁶ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

²⁷ *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.

²⁸ Refer sections 298, 299 and 301 of the Act

²⁹ Section 14 of the Act

stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.³⁰

- [34] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

Section 318 Order

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

Penalty: Pursuant to section 318(1)f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,000.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$1,700 (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(I)(iii) of the Act.

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

- [36] The Respondent should note that the Board may, under section 319 of the Act, suspend or cancel a licensed building practitioner's licence if fines or costs imposed as a result of disciplinary action are not paid.

Right of Appeal

- [37] The right to appeal Board decisions is provided for in section 330(2) of the Act^{iv}.

Signed and dated this 12th day of August 2025



Mr M Orange
Presiding Member

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

ⁱ Section 3 of the Act

This Act has the following purposes:

- (a) to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
 - (i) people who use buildings can do so safely and without endangering their health; and*
 - (ii) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
 - (iii) people who use a building can escape from the building if it is on fire; and*
 - (iv) buildings are designed, constructed, and able to be used in ways that promote sustainable development:*
- (b) to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

ⁱⁱ Section 318 of the Act

- (1) In any case to which section 317 applies, the Board may*
 - (a) do both of the following things:*
 - (i) cancel the person's licensing, and direct the Registrar to remove the person's name from the register; and*
 - (ii) order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) order that the person be censured:*
 - (e) order that the person undertake training specified in the order:*
 - (f) order that the person pay a fine not exceeding \$10,000.*
- (2) The Board may take only one type of action in subsection 1(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
- (3) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
- (4) In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit."*

ⁱⁱⁱ Section 318 Disciplinary Penalties

- (1) In any case to which section 317 applies, the Board may—*
 - (a) do both of the following things:*

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- (i) *cancel the person's licensing and direct the Registrar to remove the person's name from the register; and*
 - (ii) *order that the person may not apply to be relicensed before the expiry of a specified period:*
 - (b) *suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:*
 - (c) *restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:*
 - (d) *order that the person be censured:*
 - (e) *order that the person undertake training specified in the order:*
 - (f) *order that the person pay a fine not exceeding \$10,000.*
 - (2) *The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).*
 - (3) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.*
 - (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
 - (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

^{iv} **Section 330 Right of appeal**

- (2) *A person may appeal to a District Court against any decision of the Board—*
 - (b) *to take any action referred to in section 318.*

Section 331 Time in which appeal must be brought

An appeal must be lodged—

- (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
- (b) *within any further time that the appeal authority allows on application made before or after the period expires.*