

Before the Building Practitioners Board

	BPB Complaint No. CB25329
Licensed Building Practitioner:	Lauchlan MacMillan (the Respondent)
Licence Number:	BP 106440
Licence(s) Held:	Carpentry and Site AoP 2

Final 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 Type:	On the Papers
Draft Decision Date:	22 June 2021
Final Decision Date:	5 August 2021

Board Members Present:

Mr M Orange, Deputy Chair, Legal Member (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mrs F Pearson-Green, LBP, Design AOP 2
Mr R Shao, LBP, Carpentry and Site AOP 1

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 disciplinary offences under sections 317(1)(a) and 317(1)(i) of the Act.

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Summary of the Board’s Decision

[1] The Respondent has committed serious criminal offences (class A drug offences) for which he was imprisoned and which reflect his fitness to carry out or supervise building work (section 317(1)(a) of the Act). He has also brought the regime into disrepute (section 317(1)(i) of the Act). His licence is cancelled for one year. He is ordered to pay costs of \$500. The Board’s decision will be published.

The Charges

- [2] On 2 December 2019, the Board received a Registrar’s Report in respect of a Board Inquiry into the conduct of the Respondent.
- [3] The Board initially decided to defer its decision on the Registrar’s Report so as to allow it to obtain a copy of the District Court sentencing notes in respect of the Respondent’s conviction on criminal charges. The Board has not, however, been able to obtain a copy of those notes. It has, however, obtained a Criminal and Traffic History from the Ministry of Justice in respect of the Respondent, and it has decided to proceed with the matter.
- [4] Under regulation 22 of the Complaints Regulations, the Board must, on receipt of the Registrar’s Report, decide whether to proceed no further with the complaint because regulation 21 of the Complaints Regulations applies.
- [5] Having received the report, the Board decided that regulation 21 did not apply. Under regulation 22, the Board is required to hold a hearing.

- [6] The Board's jurisdiction is that of an inquiry. Board Inquiries are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers is necessary prior to it making a decision. In this respect, the Act provides that the Board may regulate its own procedures¹. It has what is described as a summary jurisdiction in that the Board has a degree of flexibility in how it deals with matters; it retains an inherent jurisdiction beyond that set out in the enabling legislation². As such, it may depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.
- [7] In this instance, the Board has decided that a formal hearing is not necessary. The Board considers that there is sufficient evidence before it to allow it to make a decision on the papers.
- [8] The Board does, however, note that there may be further evidence in the possession of persons involved in the matter or that the Board may not have interpreted the evidence correctly. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the Board's draft findings and to present further evidence prior to the Board making a final decision. If the Board directs or the Respondent requests an in-person hearing, then one will be scheduled.

Disciplinary Offences Under Consideration

- [9] On the basis of the Registrar's Report, the Respondent's conduct that the Board resolved to investigate was that the Respondent had:
- (a) been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work; and
 - (b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

Function of Disciplinary Action

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

¹ Clause 27 of Schedule 3

² *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.

- [11] 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*,⁵ 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.”

Evidence

- [12] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.
- [13] The Respondent was, on 14 February 2020, convicted in the New Plymouth District Court of the following charges:

Offence Date	Offence	Outcome Detail	Sentence Detail
22/10/2018	Possess For Supply - Methamphetamine And Amphetamine	Convicted and Sentenced	Imprisonment (Concurrent) - 14/02/2020 - 1 Year
22/10/2018	Sell/Give/Supply/ Administer/Deal Methamphetamine And Amphetamine	Convicted and Sentenced	Imprisonment (Concurrent) - 14/02/2020 - 1 Year
05/10/2018	Sell/Give/Supply/ Administer/Deal Methamphetamine And Amphetamine	Convicted and Sentenced	Imprisonment (Concurrent) - 14/02/2020 - 1 Year
23/08/2018	Possess For Supply - Methamphetamine And Amphetamine	Convicted and Sentenced	Imprisonment (Concurrent) - 14/02/2020 - 1 Year
19/07/2018	Sell/Give/Supply/ Administer/Deal	Convicted and Sentenced	Imprisonment (Concurrent) -

³ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁴ [1992] 1 NZLR 720 at p 724

⁵ [2016] HZHC 2276 at para 164

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Offence Date	Offence	Outcome Detail	Sentence Detail
	Methamphetamine And Amphetamine		14/02/2020 – 10 Months, 2 Years

- [14] The sentencing occurred after he pleaded guilty to the five charges, having previously pleaded not guilty. He was found to have supplied around \$105,000 of the drug between July and October 2018.
- [15] Media articles noted that, prior to the Respondent’s arrest for the offending, he operated a Fowler Homes franchise in Taranaki and that, following his arrest, his business was put into liquidation, owing creditors more than \$1.2 million. More recent articles noted that in August 2020 the Respondent was recalled to prison after he was arrested for receiving stolen goods and for a breach of probation release conditions. The charges were later dismissed, and the media articles noted that the Respondent would remain in prison, having been recalled to prison following the arrests.
- [16] When the Board decided to initiate a Board Inquiry, the Respondent was provided with an opportunity to respond to the matters the Board had stated it would investigate.
- [17] When the matter was originally brought to the Respondent’s attention, he noted he was, at that stage, pleading not guilty and that he was “shocked that you are considering taking my LBP from me when I have done so much good for the industry in helping out where I could and winning so many awards”. He also stated his addiction was an illness and that he would want to use his licence once he was rehabilitated.

Further Evidence Received

- [18] Following the Board issuing a Draft Decision, it received the sentencing notes from the prosecution of the Respondent⁷. The sentencing judge noted that “methamphetamine is a drug which causes significant harm.” He also noted that the Respondent’s role was as a financier and supplier to those around him. His Honour accepted that the offending may have been motivated, in part, to feed an addiction but also found that there was also a commercial element to it. The Judge adopted a starting point of six years imprisonment, which reflected the totality of the offending and that the lead offence was a representative charge of methamphetamine for supply. After taking into account aggravating and mitigating factors, His Honour settled on the sentencing noted above.
- [19] The Board took the further evidence into account when making this Final Decision.

⁷ *The Queen v Lauchlan James MacMillan* [2020] NZDC 2543

Board Conclusion and Reasoning

[20] The Board has decided that the Respondent **has**:

- (a) been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or
- (b) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute (s 317(1)(i) of the Act).

and **should** be disciplined.

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

317(1)(a)

[22] The disciplinary provision in section 317(1)(a) of the Act requires two matters to be satisfied. The first is whether the Respondent been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more.

[23] The class A drug offences that the Respondent was convicted of carry terms of imprisonment well in excess of six months. The first element of the disciplinary provision is therefore satisfied.

[24] The second element of the disciplinary charge is whether the commission of that offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work.

[25] This element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.

[26] Unlike other licensing regimes, the licensed building practitioner regime does not contain any provisions which require an assessment of an applicant's character or fitness to hold a licence at the time they apply⁸. Rather, in the Building Act, there is an ability to assess this subsequent to a person being licensed by way of section 317(1)(a) of the Act, and it does not matter that the criminal offending predated the person being licensed.

[27] Other licensing regimes have similar post-licensing provisions as regards fitness to be a licensee. For example, the misconduct provisions in section 73(d) of the Real Estate Agents Act under which a ground of misconduct is where conduct "*constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee*" and section 100(1)(c) of the

⁸ Compare with the licensing provisions in section 91(d) of the Electricity Act 1992 and section 36(d) of the Plumbers, Gasfitters, and Drainlayers Act 2006 both of which have a requirement to be a fit and proper person for registration

Health Practitioners Competence Assurance Act 2003 where “*the practitioner has been convicted of an offence that reflects adversely on his or her fitness to practise*”.

- [28] Decisions from within those jurisdictions are of assistance in determining the matter before the Board. In *Professional Conduct Committee v Martin*⁹ the Court stated:

“Fitness’ often may well be something different to competence. Aspects of general deterrence as well as specific deterrence remain relevant. So too, is the broader consideration of the public or community’s confidence and the upholding the standards of the nursing profession

- [29] In *Hart v Auckland Standards Committee 1 of The New Zealand Law Society*,¹⁰ the High Court stated:

[185] As the Court noted in Dorbu, the ultimate issue in this context is whether the practitioner is not a fit and proper person to practise as a lawyer. Determination of that issue will always be a matter of assessment having regard to several factors.

[186] The nature and gravity of those charges that have been found proved will generally be important. They are likely to inform the decision to a significant degree because they may point to the fitness of the practitioner to remain in practice. In some cases these factors are determinative, because they will demonstrate conclusively that the practitioner is unfit to continue to practice as a lawyer. Charges involving proven or admitted dishonesty will generally fall within this category.

[187] In cases involving lesser forms of misconduct, the manner in which the practitioner has responded to the charges may also be a significant factor. Willingness to participate fully in the investigative process, and to acknowledge error or wrongdoing where it has been established, may demonstrate insight by the practitioner into the causes and effects of the wrongdoing. This, coupled with acceptance of responsibility for the misconduct, may indicate that a lesser penalty than striking off is sufficient to protect the public in the future.

[188] For the same reason, the practitioner’s previous disciplinary history may also assume considerable importance. In some cases, the fact that a practitioner has not been guilty of wrongdoing in the past may suggest that the conduct giving rise to the present charges is unlikely to be repeated in the future. This, too, may indicate that a lesser penalty will be sufficient to protect the public.

[189] On the other hand, earlier misconduct of a similar type may demonstrate that the practitioner lacks insight into the causes and effects of such behaviour, suggesting an inability to correct it. This may indicate that

⁹ High Court WN 2007

¹⁰ [2013] 3 NZLR 103

striking off is the only effective means of ensuring protection of the public in the future.

[30] Applying the tests and factors outlined above, the Board notes:

(a) Nature of the charges:

The offending was serious. The supply of class A drugs has an effect on the community. The offending had flow-on effects on the Respondent's business and its clients. The Board considers there is a correlation between the nature of the charges and fitness to be licensed.

(b) Gravity of the charges:

It is clear to the Board, given the number and seriousness of the convictions, that they are serious in nature.

(c) Acceptance of responsibility:

The Respondent initially pleaded not guilty. He changed that plea but, from the response provided to the Board, it appears there has been limited acceptance of his offending. He has, since being released on parole, been recalled to prison. The Respondent blames his addiction but appears to have little comprehension of the impact of his offending on himself and others, including those that he was building for at the time of the offending.

(d) Previous history:

The Respondent does not have a history with the Board. He does have a good history as a builder and is noted as having built award-winning homes.

(e) The effect on public confidence:

The Board considers a person with criminal convictions for class A drug possession and supply will have an effect on public confidence in the licensing regime.

[31] Given the above factors, the Board finds that the second element of section 317(1)(a) has been established in that the convictions reflect adversely on the Respondent's fitness to carry out or supervise building work or building inspection work.

Disrepute

[32] The disrepute disciplinary provision in the Act is similar to legislation in other occupations, including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111¹¹ and discussed the legal principles that apply.

¹¹ Board decision dated 2 July 2015.

- [33] The Board, in C2-011111, considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above, there is no requirement for the conduct to have been in the course of carrying out that person's trade or profession. For example, in the High Court held in *Davidson v Auckland Standards Committee No 3*,¹² a company director, who, in the course of his duties as a director, was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer's practising certificate at the time. However, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example, dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the Court.
- [34] Similarly, in a determination of the Disciplinary Tribunal of the New Zealand Institute of *Chartered Accountants*¹³, convictions for indecent assault and being found without reasonable cause in a building was found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.
- [35] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is "disrepute". The Oxford Dictionary defines disrepute as "the state of being held in low esteem by the public,"¹⁴ and the courts have consistently applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*,¹⁵ the Court of Appeal held that:
- the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*¹⁶
- [36] As to what conduct will or will not be considered to bring the regime into disrepute, it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect, it is noted that disrepute has been upheld in circumstances involving criminal convictions¹⁷.
- [37] The Courts have stated that the threshold for disciplinary complaints of disrepute is high, and the Board notes that when the disciplinary provision was introduced to Parliament the accompanying Cabinet paper noted:

¹² [2013] NZAR 1519

¹³ 24 September 2014

¹⁴ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

¹⁵ [2012] NZCA 401

¹⁶ [2012] NZAR 1071 page 1072

¹⁷ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

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

- [38] Given the serious nature of the criminal offending, the Board finds that the Respondent's conduct would have lowered the licensing regime in the eyes of the public and that the Respondent has, therefore, committed the disciplinary offence.
- [39] The Board does note the commonality between the charge of disrepute and that under section 317(1)(a) of the Act. The Board will account for this by treating the two findings as a single matter when considering what the appropriate penalty should be.

Penalty, Costs and Publication

- [40] 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.
- [41] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.
- [42] No submissions were received. The Board made a final decision as follows.

Penalty

- [43] 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*¹⁸ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [44] Deterrence was also noted in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*¹⁹. The High Court, when discussing penalty, stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been

¹⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

¹⁹ [2012] NZAR 481

established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

- [45] Cancellation of a license is the equivalent of striking off within the licensed building practitioner regime.
- [46] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,²⁰ 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 a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.
- [47] The Respondent has committed serious criminal offences that reflect on his fitness to be a Licensed Building Practitioner. He has shown little appreciation of the gravity of his offending or of the impact it has had on the licensing regime or those persons who were affected by the liquidation of his business.
- [48] The licensing regime exists to ensure the public can have confidence in those who carry out restricted building work which is integral to the safe and healthy functioning of a home. The Respondent's conduct has put those objects at risk.
- [49] Taking the above factors into account, the Board considers that a cancellation of the Respondent's licence is not only warranted to punish the Respondent but also required to deter others from such conduct and to give the public confidence in the licensing regime.
- [50] The Board adopted a starting point of two years cancellation.
- [51] The Board has taken the Respondent's good record as a builder, up until his offending, into account along with the penalties imposed by the District Court. On the basis of those matters, the Board has reduced the period of cancellation to one year.
- [52] Accordingly, the Board's penalty order will be that the Respondent's licence will be cancelled, and it will order that he may not apply to be relicensed for a period of twelve (12) months.

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

Costs

- [53] 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.”
- [54] 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 case²¹.
- [55] In *Collie v Nursing Council of New Zealand*,²² 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.*
- [56] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar’s Report and in the Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such, the Board will order that costs of \$500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

Publication

- [57] 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 Act²³. The Board is also able, under section 318(5) of the Act, to order publication over and above the public register:
- In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*
- [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 1990²⁴. The Criminal Procedure Act 2011 sets out

²¹ *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.

²² [2001] NZAR 74

²³ Refer sections 298, 299 and 301 of the Act

²⁴ Section 14 of the Act

grounds for suppression within the criminal jurisdiction²⁵. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁶. 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*²⁷.

[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 interest²⁸. 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] Based on the above, the Board will order further publication. The publication is appropriate so that others learn from the matter.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled and the Registrar is directed to remove the Respondent's name from the register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of twelve [12] months.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(I)(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, in addition to the note in the Register and the Respondent being named in this decision.

[63] 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.

²⁵ Refer sections 200 and 202 of the Criminal Procedure Act

²⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350


²⁷ *ibid*

²⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

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

Signed and dated this day 6th of September 2021



Mr M Orange
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.*