

Before the Building Practitioners Board

	BPB Complaint No. CB25328
Licensed Building Practitioner:	Nicholas Mavroyannis (the Respondent)
Licence Number:	BP 114527
Licence(s) Held:	Design AOP 1

Decision of the Board in Respect of the Conduct of a Licensed Building Practitioner Under section 315 of the Building Act 2004

Complaint or Board Inquiry	Complaint
Hearing Location	Auckland
Hearing Type:	In Person
Hearing Date:	23 June 2020
Decision Date:	4 July 2020

Board Members Present:

Mel Orange, Deputy Chair, Legal Member (Presiding)
David Fabish, LBP, Carpentry and Site AOP 2
Bob Monteith, LBP, Carpentry and Site AOP 2
Faye Pearson-Green, LBP, Design AOP 2

Appearances:

Don MacRae, Morgan Coakle

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)(b) of the Act.

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Introduction

- [1] The hearing resulted from a complaint into the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations¹ to hold a hearing in relation to building work. The alleged disciplinary offences the Board resolved to investigate were that the Respondent may have carried out or supervised building work or building inspection work in a negligent or incompetent manner (s 317(1)(b) of the Act).
- [2] The Board advised the Respondent that the hearing, and the Board’s further investigations, would focus on the multiple requests for information (RFI) documents issued by the Building Consent Authority in respect of Consent Number 10290602.

Function of Disciplinary Action

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

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

² *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

³ [1992] 1 NZLR 720 at p 724

- [4] 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.”

- [5] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁵:

... the statutory test is not met by mere professional incompetence or by deficiencies in the practice of the profession. Something more is required. It includes a deliberate departure from accepted standards or such serious negligence as, although not deliberate, to portray indifference and an abuse.

- [6] Finally, 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. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act which deals with disrepute.

- [7] The above commentary on the limitations of the disciplinary process is important to note as, on the basis of it, the Board’s inquiries, and this decision, focuses on and deals with the serious conduct complained about.

Inquiry Process

- [8] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar’s Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

- [9] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

⁴ [2016] HZHC 2276 at para 164

⁵ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

Evidence

- [10] 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 which allow it to receive evidence that may not be admissible in a court of law.
- [11] 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.
- [12] In addition to the documentary evidence before the Board heard evidence at the hearing from:
- | | |
|----------------------|---|
| Nicholas Mavroyannis | Respondent |
| <i>[Omitted]</i> | Complainant, <i>[Omitted]</i> |
| <i>[Omitted]</i> | Contractor to the Respondent |
| <i>[Omitted]</i> | Engineer |
| <i>[Omitted]</i> | <i>[Omitted]</i> , witness for the Respondent |
- [13] The matter before the Board related to a design submitted by the Respondent for a building consent.
- [14] The Complainant, *[Omitted]*, a licensed building practitioner with a Carpentry and Design AOP 1 licence, was assisting the owners of the property to which the design related.
- [15] *[Omitted]* developed the design under the supervision of the Respondent. He was an independent contractor that the Respondent had engaged with over a two year period. *[Omitted]* was not a licensed person. He had been carrying out design work under supervision since 2016 in the residential sector.
- [16] The history of the matter was that the owners had, in conjunction with the Complainant, approached *[Omitted]*, who was known to the owners, to assist them to obtain a resource consent for a dwelling. A design was developed by *[Omitted]* to enable a resource consent to be obtained. The Respondent was not involved in the resource consent application, which was granted. There is no legal requirement to engage a licensed building practitioner for a resource consent application.
- [17] Following the issue of the resource consent, *[Omitted]* was engaged to develop the design for a building consent application. The Complainant stated that neither he nor the owners were aware, at the time of the engagement, that *[Omitted]* was not a licensed building practitioner.

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

- [18] *[Omitted]* developed the design under the supervision of the Respondent. The evidence before the Board was that *[Omitted]* and the Respondent had worked together on a high number of designs over two years doing about 50 designs together. The Respondent stated that when *[Omitted]* brought a client to him, he would develop a fee proposal for the client using his business as the invoicing entity. The fee would include *[Omitted]* fees. *[Omitted]* would then be paid as a contractor.
- [19] The Respondent submitted the building consent application. He signed and submitted a Certificate of Work dated 26 June 2019. It stated:
- I Nicholas Mavroyannis, state that I have applied the skill and care reasonably required of a competent design professional in carrying out or supervising the Restricted Building Work (RBW) described in this form, and that based on this, I also state that the RBW:*
- *Complies with the building code, or*
 - *Complies with the building code subject to any waiver or modification of the building code recorded on this form*
- [20] The Certificate of Work stated that the Respondent had “carried out” (not supervised) all of the design aspects other than for foundations and subfloor framing (ribraft slab and foundations) where he stated he had both carried out and supervised and columns and bracing (steel beams) and damp proofing (DPM) where he stated he had supervised the work. The Certificate of Work was accompanied with one from the Engineer, which also covered foundations and columns and beams.
- [21] On 3 July 2019, the Auckland Council as the Building Consent Authority (BCA) issued a Request for Information (RFI) to the Respondent seeking wastewater detail.
- [22] On 15 July 2019, *[Omitted]* acting for the BCA issued a second RFI to the Respondent. It contained 56 items. The Respondent noted that the design was two mirrored buildings and that the RFI’s were duplicated for each building, meaning the actual number of individual items was halved. A review of the second RFI shows that it contained 56 distinct, separate items including multiple requests as regards structural elements. The Respondent also noted that 12 of the items required engineering input.
- [23] Between 6 August and 23 September 2019, City Certifying Consultants issued further RFIs. It noted items that were outstanding from the earlier RFIs. The Respondent noted that further RFIs were received prior to earlier ones being fully responded to.
- [24] *[Omitted]* was questioned about the design process that he uses with the Respondent. He stated that he has four checkpoints with the Respondent during the design process. The Respondent checks and lodges his designs for a building consent.

[Omitted] stated that he deals with RFI matters with the Respondent checking and submitting the responses.

- [25] The Respondent spoke about his supervision and quality assurance processes. He stated that he thoroughly checks all designs and specifications prior to submission for a building consent. The same applied to RFI responses. He did not accept that he simply passed on what *[Omitted]* sent him. The Respondent noted that the Building Code is prescriptive and complicated and that he relies on the BCA to identify issues.
- [26] The Respondent was questioned about the risk matrix score that was submitted with the design. He stated he develops the risk matrix when he has completed the structural design and prior to designing the cladding. He noted that the risk matrix score determined the cladding system that could be used. The Respondent accepted that the risk matrix score he had submitted was lower than it should have been.
- [27] The Respondent was also questioned about the design process and about deficiencies, inconsistencies, and errors in the design that he submitted for a consent including (but not limited to): pathways for services; the choice of a non-compliant roof cladding and conflicting details; inclusion of skylights designed for a 15-degree pitch roof in a 4-degree pitch roof; stairs with insufficient headroom and conflicting details; inconsistent design layouts and conflicting details, conflicting foundation details and floor slab thickness, concrete and timber mid floor specified; purlins at inconsistent and three differing centres; and conflicting insulation specifications.
- [28] The Respondent accepted that there were some errors and inconsistencies in his design and that, in hindsight, he should have checked more thoroughly but that this was balanced against the fact that issues can also be picked up and dealt with by the BCA and during the build process. The Respondent's legal counsel also submitted that the level of service had to be weighed against the level of fee, which was not high.
- [29] The Respondent also filed a statement of evidence with the Board for the hearing. It traversed the above matters and provided further detail on a commercial dispute between those involved in the design.

Board's Conclusion and Reasoning

- [30] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act) and **should** be disciplined.
- [31] The Board's consideration as regards negligence is in respect of the Respondent's design work.
- [32] Under the definitions in the Building Act design work forms part of the wider definition of building work and as such, in respect of section 317(1)(b) it comes within the Board's jurisdiction. In this respect, the definition of building work in

section 7 of the Act states that it “includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act”. The Building (Design Work Declared to be Building Work) Order 2007 declared:

3 Design work declared to be building work

- (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.*

- [33] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to restricted building work for the purposes of the licensing regime.
- [34] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into, in this case a licensed building practitioner with a design license. This is described as the *Bolam*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.
- [35] The New Zealand Courts have stated that assessment of negligence in a disciplinary context is a two-stage test⁹. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [36] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board’s own assessment of what is appropriate conduct, bearing in mind the purpose of the Act¹⁰. The test is an objective one and in this respect it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹¹.
- [37] The Board notes that the purposes of the Act are:

3 Purposes

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹¹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

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.*

[38] The Board also notes the provisions of section 14D of the Act which states:

14D Responsibilities of designer

- (1) *In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
- (2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[39] Given the above, when considering what is and is not an acceptable standard, the provisions of the building code need to be taken into account.

[40] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹² the Court's noted, as regards the threshold for disciplinary matters, that:

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

[41] Turning to the design, it was seriously deficient when it was submitted for a building consent. That resulted in multiple and ongoing RFI being issued. They were dealt with in an iterative manner over a series of responses.

¹² [2001] NZAR 74

- [42] Receiving an RFI is not uncommon, and it does not follow that a designer will be negligent if they are issued. What was of concern, over and above the obvious deficiencies in the Respondent's design, was a stated reliance on the building consent authority (BCA) to identify errors. At the hearing, the Respondent stated that he also relied on the BCA to check his design.
- [43] The BCA's role is not quality assurance. Its role is to ensure the design will meet Building Code requirements. A designer should be aiming to submit a compliant design which will enable the construction of the dwelling without further reference to the designer. That was not the case with the present design. There were errors, omissions and inconsistencies in it. The Respondent clearly did not have an adequate quality assurance process in place, other than his stated reliance on the BCA.
- [44] Whilst the work was done under supervision, the Respondent submitted the design stating that he had carried it out and that it was compliant. As such, he has to take responsibility for it and the Board finds that the Respondent did not carry it out to an acceptable standard.
- [45] The Board noted the statement that the service reflected the fee. Whilst it may have been a fee at the lower end of the spectrum a design still has to meet compliance requirements, and this one did not. It should also be noted that the BCA charges for its services so other than it being an unacceptable quality assurance methodology it can be a costly one.
- [46] Licensed building practitioners should be aiming to get it right the first time. In this respect, the licensed building practitioner regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation¹³:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and building consent

¹³ Hansard volume 669: Page 16053

authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.

[47] The Board also notes the provisions of section 14D of the Act which states:

14D Responsibilities of designer

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(2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

[48] Turning to the Respondent’s supervision the Board also considered that it did not meet an acceptable standard.

[49] Supervise is defined in section 7¹⁴ of the Act. The definition states:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) *is performed competently; and*

(b) *complies with the building consent under which it is carried out.*

[50] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to Electricity Act 1992¹⁵. The definition of supervision in that Act is consistent with the definition in the Building Act and as such the comments of the court are instructive. In the case Judge Tompkins stated at paragraph 24:

“As is made apparent by the definition of “supervision” in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the

¹⁴ Section 7:

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

(a) *is performed competently; and*

(b) *complies with the building consent under which it is carried out.*

¹⁵ *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations.”

- [51] It was clear to the Board that the Respondent was not the author of the issues that were identified with the design but that, as the supervising licensed building practitioner, he was not adequately and thoroughly checking [Omitted] work prior to him submitting it in his name.
- [52] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Penalty, Costs and Publication

- [53] 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.
- [54] 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

- [55] 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*¹⁶ 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.

- [56] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁷ 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 do 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.

¹⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

- [57] The matters were serious. Competent designs are the start of the building process. A successful build project relies on the design providing an unambiguous and accurate set of instructions. The level of negligence found was at the upper end. A commensurate penalty is required.
- [58] Based on the above, the Board's penalty decision is that the Respondent pays a fine of \$3,500. The amount is consistent with fines imposed for similar matters that have come before the Board.
- [59] The Board noted that the Respondent has previously been disciplined by the Board. The Board has not, however, taken that conduct into account as the conduct in the present matter did not postdate the decision in the previous matter.

Costs

- [60] 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."
- [61] 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 case¹⁸.
- [62] In *Collie v Nursing Council of New Zealand*¹⁹ 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.*
- [63] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$3,500 toward the costs of and incidental to the Board's inquiry. The amount is less than 50% of actual costs and is the Board's scale amount for a half day hearing.

Publication

- [64] 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 Act²⁰. 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.*

¹⁸ *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.

¹⁹ [2001] NZAR 74

²⁰ Refer sections 298, 299 and 301 of the Act

- [65] 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.
- [66] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990²¹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²². Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²³. 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*²⁴.
- [67] 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 interest²⁵. 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.
- [68] Based on the above, the Board will not order further publication.

Section 318 Order

- [69] 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 \$3,500.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$3,500 (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(l)(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.**
- [70] 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.

²¹ Section 14 of the Act

²² Refer sections 200 and 202 of the Criminal Procedure Act

²³ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁴ *ibid*

²⁵ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Submissions on Penalty, Costs and Publication

- [71] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **7 August 2020**. 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.
- [72] 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/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

Right of Appeal

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

Signed and dated this 17th day of July 2020.



Mel 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.*