

## Before the Building Practitioners Board

	BPB Complaint No. 26408
Licensed Building Practitioner:	Michal Edward Konik (the Respondent)
Licence Number:	BP 136812
Licence(s) Held:	Design AoP 1

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

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Complaint or Board Inquiry	Complaint
Hearing Location	By audio-visual link
Hearing Type:	In Person
Hearing Date:	1 April 2025
Decision Date:	14 April 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2  
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor  
Ms E Harvey McDouall, Registered Architect

#### Appearances:

H Smith, Barrister, 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) of the Act.

The Respondent is fined \$2,500 and ordered to pay costs of \$2,150. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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## Summary

- [1] A complaint was made about the Respondent's design work by the Building Consent Authority (BCA). The complaint covered five separate building consent applications that encompassed a high number of Requests for Information (RFIs). The Board decided that the Respondent had carried out design work in an incompetent manner and that he had supervised RFIs in a negligent manner.
- [2] The Board decided that it would fine the Respondent \$2,500 and order that he pay costs of \$2,150. The Board had considered the suspension of the Respondent's licence or the imposition of a training order but accepted that there were mitigating factors, including that the Respondent's design work had improved over time. A record of the disciplinary decision will be recorded on the public Register for a period of three years.

## The Charges

- [3] 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.<sup>1</sup>
- [4] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work (design work) at

<sup>1</sup> 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.

<sup>2</sup> 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.

[OMITTED], [OMITTED], [OMITTED], [OMITTED] and [OMITTED], have carried out or supervised building work (design work) in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.

[5] In further investigating the Respondent's conduct under section 317(1)(b) of the Act, the Board gave notice that it would be inquiring into the matters raised in the Vetting and Processing Request for Further Information (RFI) letters issued by the Westland District Council regarding the five Building Consent Applications that were lodged for Building Consents from 30 March 2022 to 20 September 2023, focusing on:

- (a) Incomplete documentation submitted, for example:-
  - i. Specification
  - ii. Truss design and roof bracing
  - iii. Wall bracing
  - iv. SED for foundation, structure and structural cavity battens
  - v. Alternative Solution documentation for durapanel system and structural cavity battens
  - vi. Correct risk matrix, durability zone and other site-specific requirements
  - vii. H1 calculations
  - viii. Adequate information to show compliance with E2/AS1
- (b) Conflicting and/or irrelevant information in submitted documentation:
  - i. Conflicting information within the architectural plans between materials specified.
  - ii. Conflicting information between the architectural plans and specifications.
  - iii. Conflicting details within the architectural plans
- (c) Has the Respondent adequately and appropriately responded to and/or supervised the responses to, the matters raised in the RFI's, leading to:
  - i. A large number of RFI letters for each building consent application.
  - ii. RFI letters repeatedly listing the same RFI questions due to lack of response or inadequate response.
  - iii. [OMITTED], BC230215 Building Consent being refused on 13 November due to inadequate responses to the multiple RFI letters.

### **Evidence**

[6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>3</sup>. Under section 322 of the Act, the Board has

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

- [7] The Respondent, an Australian resident, obtained his New Zealand Design Area of Practice 1 Licence on 15 January 2020 through the Trans Tasman Mutual Recognition Act 1997, under which people who are registered to practise an occupation in Australia can register to practise an equivalent occupation in New Zealand. He did not carry out any design work in New Zealand until applications for building consents were made on 30 March 2022 for [OMITTED], on behalf of Kumar Junction Developments Limited, who were developing multiple lots. Building consents for those applications were issued on 23 June and 7 November 2022.
- [8] The applications were made by the Respondent on behalf of his employer, who undertook developments in Australia and New Zealand. The Respondent and Mr Sean Bissett, his employer, outlined that the Respondent had a heavy workload in Australian design work when the building consent applications were made.
- [9] Kumar Junction Developments had previously engaged the services of a New Zealand based architect to design and apply for a building consent for the first dwelling developed on its site. The Respondent based his design work and building consent applications on the Architect's application, using it as a template.
- [10] Prior to the Respondent applying for the building consents, he stated he had maintained the currency of his New Zealand licence by completing the compulsory Licensed Building Practitioner (LBP) professional development.
- [11] Following on from the [OMITTED] and [OMITTED] building consent applications, the following applications were made:
  - (a) [OMITTED] on 9 June 2023, which was granted on 13 September 2023;
  - (b) [OMITTED] on 1 September 2023, which was withdrawn on 26 September 2023; and
  - (c) [OMITTED] on 20 September 2023, which was refused on 13 November 2023.
- [12] The complaint was made by the Westland District Council in its capacity as the Building Consent Authority (BCA), the recipient of the building consent applications under investigation. It was made on 6 November 2023, just before the final building consent application lodged by the Respondent was refused. The complaint set out that three Building Control Officers (BCOs) reviewing the building consents had raised concerns regarding the number of Requests for Information (RFI) letters that had been issued against the five consents, noting that RFI responses were, in the main, not from the Respondent and that they were incomplete and inaccurate. An internal BCA email dated 19 July 2022 regarding [OMITTED], one of the earliest applications noted:

*The designer originally had direct fix vertical asymmetrical trapezoidal wall cladding (T Rib); this is outside the scope of E2/AS1.*

*The designer did not understand the limitations of E2/AS1 (Table 3).*

*I had identified to him that the direct fix cladding is not an acceptable means of compliance due to condensation issues behind the flats of the cladding profile causing problems historically.*

*I have identified to him that the proposal for the wall cladding is an alternative solution (He also does not comprehend what an alternative solution is).*

*Based on the discussions a revised design was submitted with the cladding on 40 mm horizontal castellated cavity battens. (There are no supporting items provided to support his design).*

*Unfortunately this version still had many flaws in regards to flashings, drainage paths etc. It was interesting to see the building wrap behind the cladding on the battens with no building wrap on the wall framing between the frame and cavity battens where it should have been; luckily that has been corrected in the latest edition of the drawings; though the lower edge of the building wrap still sits on top of the concrete slab!!....*

*In the latest version the cavity system still sits on top of the slab (Not overhanging) so the cladding look like a direct fix application with the cavity draining onto the slab (The issues with this were explained to him on the telephone), has no drainage paths at internal and external corners, no back flashings at external and internal corners, no closures to cladding profile at top of cladding at negative soffit junction, head flashing not extending past base of cladding over the joinery head, no vermin strips anywhere and no fixings specified or supporting information for the 45 m thick timber castellated horizontal cavity battens. Appropriate flashing details for the meter box are yet to be supplied.*

*I did advise that he contacts BRANZ and MBIE for advice in regards to E2 compliance. Also that acceptable solutions are available on-line from the MBIE building performance website and manufacturers such as Metalcraft have a solution for this type of cladding installation on residential buildings he could refer to.*

*Unfortunately he still has not done so based on the latest information received.*

*Effectively the designer has been adjusting the plans etc in response to RFI letters without adequate consideration or comprehension of what is required for compliance with E2.3.2 (a brief look at the drawings received will show the extent of knowledge).*

*He could have just changed construction details and put in the Metalcraft documents for the alternative solution to easily resolve the issues but has not done so.*

- [13] Each of the building consent applications was accompanied by a Certificate of Design Work (CoDW) completed by the Respondent. He stated that he used the Architect's CoDW as a template.
- [14] At the hearing, the Respondent set out, and Mr Bissett confirmed, that he was not the first point of contact for RFIs. Mr Bissett stated that he was the primary contact, was taking the pressure off the Respondent, and that he had, when required, engaged other industry consultants to assist. The Respondent confirmed that he did not receive all of the RFIs and was unaware that they were part of his responsibilities.
- [15] Prior to the hearing, the Respondent engaged an expert to review the Respondent's design work and building consent applications. The expert, Mr Ron Pynenburg, a Registered Architect, reviewed one of the building consents on the basis that it would be indicative of the Respondent's work on all of the building consents. The building consent selected was [OMITTED]. It was chosen on the mistaken understanding that it was the first building consent applied for, whereas it was the last. Mr Pynenburg's initial opinion was that the issues were not serious and could easily be addressed.
- [16] The Board offered Counsel and the Respondent the opportunity to further consider their defence to the allegations, which was based on the mistaken understanding that the building consent reviewed was the first application of the five submitted. The Respondent accepted, following an adjournment, that the disciplinary offence alleged had been committed. Counsel was invited to file a closing statement. She submitted:

*It is submitted that the finding should be that the deficiencies in the design documentation submitted for building consent reach the seriousness threshold and, on that basis, Mr Konik committed a disciplinary offence. Mr Konik maintains his view that the complaint that there were a high number of RFI letters issued and slow and inaccurate responses cannot be upheld based on the information before the Board. That does not apply, however, to the adequacy of the designs and documentation given that the designs are before the Board and Mr Konik's acknowledgement. He accepts that to some extent the RFIs issued by the Council will inevitably arise because of deficiencies in the design work undertaken. However, as is evident from Mr Pynenburg's RFI report, not all the requests were valid or were requests asked in a way that was clear about the information being sought.*

## Negligence or Incompetence

[17] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>4</sup> 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*<sup>5</sup> test of negligence.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> If it does not, then a disciplinary finding cannot be made.

### Has the Respondent departed from an acceptable standard of conduct

[18] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>i</sup> as well as the requirement that all building work must comply with the Building Code.<sup>9</sup> When looking at design work, the requirement is that what has been designed will, when built, meet the Building Code. The test is an objective one.<sup>10</sup>

[19] The above is reinforced by 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.*

<sup>4</sup> *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.

<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</sup> 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)

<sup>7</sup> 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”

<sup>8</sup> *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”.

<sup>9</sup> Section 17 of the Building Act 2004

<sup>10</sup> *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.

- [20] The Respondent has accepted that his design work was not completed to an acceptable standard. The Board agrees. The Respondent's design work was substandard, and it was evident that he was not familiar with New Zealand Building Code requirements. It appeared to be a case of learning on the job, with the BCA assisting the Respondent to get to compliance.
- [21] A designer should not rely on others to identify their mistakes or shortcomings. The introduction of the LBP regime aimed to improve the skills and knowledge of those involved in residential construction. The following was stated as the intention of the enabling legislation:<sup>11</sup>

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

- [22] Turning to the RFI process, whilst the Board accepts that the Respondent was not dealing with or even aware of all of the RFI's, the reality is that he should have been. On that basis, it does not accept the submission that he should not be held accountable for the failures relating to RFI responses. The Respondent was the LBP responsible for the design and the design process. The BCA issues an RFI for more information and clarification regarding the consent application. The purpose of the RFI process is to ensure that the application is complete, accurate, and that it adequately demonstrates compliance with the NZ Building Code. The Respondent's design work was not complete until a building consent was issued. If others were dealing with the RFIs, then the Respondent had to supervise them on the basis that only a licensed person can carry out or supervise restricted building work (design work on a residential dwelling is restricted building work under clause 6 of the Building (Definition of Restricted Building Work) Order 2011). As an LBP, the Respondent should have known that and put processes in place to ensure that he

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<sup>11</sup> Hansard volume 669: Page 16053



was providing adequate supervision. He did not. Instead, he abdicated the responsibility to his employer. What occurred shows the Respondent's lack of understanding of the roles and responsibilities of an LBP within the New Zealand licensing regime.

- [23] Standing back and looking at the conduct, the Board considers the Respondent conducted himself in an incompetent manner (a lack of knowledge and skill) regarding the building consent applications and in a negligent manner regarding the responses to the RFIs in that he failed to provide adequate supervision, as defined in section 7 of the Act as:

*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.*

Was the conduct serious enough?

- [24] The conduct was sustained over five building consents, and whilst the design work improved over that period, albeit with the assistance of the BCA, it was, on the whole, serious and it meets the threshold for disciplinary action to be taken. The Respondent repeated the same errors over the building consents, and it was apparent that he was not learning from the feedback the BCA was giving and adapting his designs accordingly.

Has the Respondent been negligent or incompetent?

- [25] The Respondent has carried out design work in an incompetent manner and has supervised design work (RFI responses) in a negligent manner.

**Penalty, Costs and Publication**

- [26] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act<sup>ii</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [27] Counsel for the Respondent has filed submissions, which have been taken into consideration.

Penalty

- [28] The Board has the discretion to impose a range of penalties.<sup>iii</sup> 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.<sup>12</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>13</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>14</sup>
- (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>15</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>16</sup>
- (d) penalising wrongdoing;<sup>17</sup> and
- (e) rehabilitation (where appropriate).<sup>18</sup>

[29] 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 cases<sup>19</sup> and applying the least restrictive penalty available for the particular offending.<sup>20</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>21</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>22</sup>

[30] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.<sup>23</sup>

[31] In this matter, the Board adopted a starting point of a fine. It did consider the suspension of the Respondent's licence or a training order but decided neither was necessary given the improvement of the Respondent's design work over the five building consents and because of the comments made by the Complainant, [OMITTED], who made the complaint on behalf of the BCA, noted that the Respondent's design work had improved since the complaint was made. He noted that since the refused building consent application for [OMITTED], there have been nine further applications that had minimal RFIs, and there have not been any further refusals.

<sup>12</sup> *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]

<sup>13</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>14</sup> Section 3 Building Act

<sup>15</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>16</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>17</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>18</sup> *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

<sup>19</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>20</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>21</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

<sup>23</sup> 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.

- [32] Counsel for the Respondent submitted that the conduct was at the lower end of the scale and that a starting point of \$3,000 was appropriate. The Board placed the conduct at the midpoint and adopted a starting point of \$3,500.
- [33] Counsel noted various mitigating factors. Included were the Respondent's cooperation, his acceptance that the conduct warranted disciplinary action, the improvement in his work, the learning he has taken from the complaint, and the circumstances surrounding the building consent applications and the complaint. The Board accepts that they are all mitigating factors. Counsel submitted that a reduction in the fine of two-thirds was warranted. While the Board agrees that a reduction is appropriate, it considers two-thirds to be too great a discount.
- [34] The Board has decided that it will reduce the fine by \$1,000 to recognise the mitigating factors. The first reason it has not reduced the fine by more is that the acceptance of responsibility came at a very late juncture and only after it had been pointed out that the design reviewed by the Respondent's expert was the last of a series of designs. The second is that whilst there has been an improvement in the Respondent's design work, and there was an employment relationship that made the Respondent's position difficult as regards to the RFIs, the reality is he should have known better and improved the design work sooner. Also, the Board considers the fine needs to be set at a level where there is a deterrent value. As such, the Board has decided to reduce the fine by \$1,000 to a fine of \$2,500.
- [35] The Respondent has asked for time to pay the fine. He can apply to the Registrar to enter into a payment plan.

#### Costs

- [36] 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.<sup>24</sup>
- [37] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>25</sup>. The starting point can then be adjusted up or down with regard to the particular circumstances of each case<sup>26</sup>.
- [38] 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 complex, and it was dealt with at an audio-visual hearing, the scale for which is \$3,100. Adjustments have been made to that amount on the basis

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<sup>24</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>25</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>26</sup> *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.

of the Respondent's acceptance of responsibility, which truncated the hearing process.

- [39] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,150 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderate rather than a complex matter. It is significantly less than 50% of actual costs.

#### Publication

- [40] 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,<sup>27</sup> 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.
- [41] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>28</sup> 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 stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>29</sup>
- [42] 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**

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

<b>Penalty:</b>	<b>Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$2,500.</b>
<b>Costs:</b>	<b>Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,150 (GST included) towards the costs of, and incidental to, the inquiry of the Board.</b>
<b>Publication:</b>	<b>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.</b>  <b>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.</b>

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<sup>27</sup> Refer sections 298, 299 and 301 of the Act

<sup>28</sup> Section 14 of the Act

<sup>29</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

- [44] 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

- [45] The right to appeal Board decisions is provided for in section 330(2) of the Act<sup>iv</sup>.

Signed and dated this 12<sup>th</sup> day of May 2025.



**M Orange**  
Presiding Member

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#### <sup>i</sup> **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.*

#### <sup>ii</sup> **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:*
    - (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.*

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***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.*