

## Before the Building Practitioners Board

	BPB Complaint No. 26875
Licensed Building Practitioner:	Paul Richard Southorn (the Respondent)
Licence Number:	BP 102895
Licence(s) Held:	Carpentry

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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 Type:	On the Papers
Hearing and Draft Decision Date:	15 January 2026
Finalised Draft Decision Date:	23 February 2026

#### Board Members Present:

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

#### 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 censured and ordered to pay costs of \$700. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

## Contents

<b>Summary of the Board’s Decision</b> .....	2
<b>The Charges</b> .....	2
<b>Draft Decision Process</b> .....	3
<b>Evidence</b> .....	3
<b>Negligence or Incompetence</b> .....	4
Has the Respondent departed from an acceptable standard of conduct .....	4
Was the conduct serious enough .....	6
<b>Board’s Decision</b> .....	6
<b>Penalty, Costs and Publication</b> .....	6
Penalty .....	7
Costs .....	8
Publication .....	8
<b>Section 318 Order</b> .....	9
<b>Submissions on Draft Decision</b> .....	9
<b>Request for In-Person Hearing</b> .....	9
<b>Right of Appeal</b> .....	10
<b>This decision and the order herein were made final on Monday 23 February 2026 on the basis that no further submissions were received</b> .....	10

## Summary of the Board’s Decision

[1] The Respondent carried out building work that required a building consent without ensuring that one was in place. There were mitigating factors that the Board took into consideration when determining the appropriate penalty. Because the matter had been dealt with by way of a draft decision and there was some acknowledgement of wrongdoing, the Board decided to censure the Respondent and order that he pay \$700 in costs. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

## The Charges

[2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>

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<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.

- [3] 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 at [OMITTED], have carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.
- [4] The specific allegation that the Board decided to investigate was a possible failure to obtain a building consent prior to building work being carried out.
- [5] The complaint also alleged that the respondent had negligently or incompetently carried out building work on a tiled shower. With respect to that allegation, the Board decided that it would not further investigate on the basis that another Licensed Building Practitioner (LBP) had been carrying out or supervising the work and was therefore accountable for it. The Board also noted that the actual work complained about, the installation of a waterproofing membrane, had been carried out by a separate trade and it was not work that, legally, required supervision by an LBP.

#### **Draft Decision Process**

- [6] The Board's jurisdiction is that of an inquiry. Complaints are not prosecuted before the Board. Rather, it is for the Board to carry out any further investigation that it considers necessary prior to it making a decision.
- [7] Ordinarily, the Board makes a decision after holding a hearing.<sup>3</sup> The Board may, however, depart from its normal procedures if it considers that doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice.<sup>4</sup>
- [8] 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. There may, however, be further evidence in relation to the matter that the Board was not aware of. To that end, this decision is a draft Board decision. The Respondent will be provided with an opportunity to comment on the draft findings and to present further evidence prior to the Board making a final decision. If the Respondent requests an in-person hearing, or the Board directs that one is required, this decision will be set aside, and a hearing will be scheduled.

#### **Evidence**

- [9] The Board must be satisfied with the balance of probabilities that the alleged disciplinary offences have been committed<sup>5</sup>. Under section 322 of the Act, the Board

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<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.

<sup>3</sup> Regulation 10 of the Complaints Regulations.

<sup>4</sup> Under Clause 27 of Schedule 3 the Board may regulate its own procedure and it has summary jurisdiction, which allows for a degree of flexibility in how it deals with matters: *Castles v Standards Committee No.* [2013] NZHC 2289, *Orlov v National Standards Committee 1* [2013] NZHC 1955

<sup>5</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

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

### **Negligence or Incompetence**

[10] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>6</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>7</sup> test of negligence.<sup>8</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>9</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>10</sup> If it does not, then a disciplinary finding cannot be made.

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

[11] 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>11</sup> and any building consent issued.<sup>12</sup> The test is an objective one.<sup>13</sup>

[12] As noted, the Respondent's conduct was being investigated within the context of a failure to ensure that a building consent was in place for building work that required a consent prior to the building work being commenced.

[13] The building work was related to the renovation of a residential dwelling. There were two aspects of the building work that required a building consent. The first was the replacement of an acrylic shower with a tiled shower. The second was the removal of structural bracing and the installation of a new structural element, a lintel, to accommodate the installation of a cavity slider.

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<sup>6</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>7</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>8</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>9</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>10</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>11</sup> Section 17 of the Building Act 2004

<sup>12</sup> Section 40(1) of the Building Act 2004

<sup>13</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.

- [14] The Respondent, in his response to the complaint, acknowledged that a building consent may have been required but submitted that obtaining a building consent was the owner's responsibility.
- [15] The Building Act requires that all building work be carried out under a building consent unless an exemption available under the Act applies.<sup>14</sup> The burden is on the person carrying out the work to establish that an exemption applies. The building consent process is important as it ensures that the proposed building work is assessed by a Territorial Authority (Council) for compliance with the Building Code prior to it being undertaken<sup>15</sup> and that the consented work is then assessed against the consent issued through scheduled inspections.<sup>16</sup>
- [16] There are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those who seek to rely on an exception to show that the building work comes with that exception. Neither the tiled shower nor the work on structural elements came within the exemptions in Schedule 1.
- [17] In *Tan v Auckland Council*<sup>17</sup> the High Court noted that if a person fails to obtain a building consent, that deprives a Council of its ability to check any proposed building work. The Court also held:
- [37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.*
- [38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*
- [18] The *Tan* case related to the prosecution of the project manager of a build. The project manager did not physically carry out any building work. The High Court on appeal, however, found that his instructions to those who did physically carry out the work amounted to "carrying out" for the purposes of section 40 of the Act.
- [19] The Board's view is that the Respondent falls into the category of a person who was "in the best position to ensure unconsented work did not occur". As such, he had a duty to assess whether a building consent was required before the building work was undertaken. The evidence shows that he was aware of the need for a building consent and that he should, at a minimum, have made further enquiries with the Building Consent Authority or a design professional to obtain assurances that a building consent was not required. There is no evidence that he did so.

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<sup>14</sup> Refer sections 40, 41 and 42A of the Act.

<sup>15</sup> Section 49 of the Act.

<sup>16</sup> Section 222 of the Act.

<sup>17</sup> [2015] NZHC 3299 [18 December 2015]

- [20] The Board does note that the Respondent submitted that it was the owner's responsibility to obtain a building consent. Whilst this is how section 44 of the Act is drafted, the *Tan* decision makes it clear that persons such as the Respondent have a duty to make sure that a building consent is in place before work that requires one is undertaken. The Board relies on *Tan* in making its decision.
- [21] The Respondent, should also note that by proceeding with the building work without a building consent he breached section 40 of the Act, which states that all building work must also be carried out in accordance with a building consent. It provides:
- 40 Buildings not to be constructed, altered, demolished, or removed without consent**
- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

Was the conduct serious enough

- [22] The penalties provided in section 40 of the Act attest to the seriousness of the conduct. Also, this was not a case where it was a marginal call as to whether a building consent was required. As an LBP it should have been clear to the Respondent that a consent would be required. Notwithstanding, the Respondent proceeded to carry out the work without one.
- [23] Given the above, the Board finds that the conduct was not a case of mere inadvertence, error or oversight. The Respondent should have known that consent was required.

**Board's Decision**

- [24] The Respondent **has** carried out building work in a negligent manner.

**Penalty, Costs and Publication**

- [25] 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.
- [26] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication. 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.

## Penalty

- [27] 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>18</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>19</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>20</sup>
  - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>21</sup>
  - (c) setting and enforcing a high standard of conduct for the industry;<sup>22</sup>
  - (d) penalising wrongdoing;<sup>23</sup> and
  - (e) rehabilitation (where appropriate).<sup>24</sup>
- [28] 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>25</sup> and applying the least restrictive penalty available for the particular offending.<sup>26</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>27</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>28</sup>
- [29] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>29</sup>
- [30] The conduct fell within the moderately serious band. Ordinarily, the Board would impose a mid-range fine for such conduct. However, since this matter has been addressed through a Draft Decision and the Respondent has, to a certain extent, acknowledged that a consent was required, the Board has decided to impose a censure rather than imposing a fine. A censure is a public expression of disapproval of conduct. In coming to that decision, the Board also took into consideration that a

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<sup>18</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>19</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>20</sup> Section 3 Building Act

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

<sup>22</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>23</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>24</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>25</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>26</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>27</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>28</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>29</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.

settlement had been reached with the Complainant, which resulted in a financial outlay for the Respondent.

### Costs

- [31] 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>30</sup>
- [32] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>31</sup> The starting point can then be adjusted up or down, depending on the particular circumstances of each case.<sup>32</sup>
- [33] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderately complex. Adjustments are then made.
- [34] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$700 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a moderately complex matter that has been dealt with by way of a Draft Decision. It is significantly less than 50% of the actual costs.

### Publication

- [35] 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>33</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.
- [36] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>34</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>35</sup>
- [37] 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,

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<sup>30</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>31</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>32</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.

<sup>33</sup> Refer sections 298, 299 and 301 of the Act

<sup>34</sup> Section 14 of the Act

<sup>35</sup> *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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**

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

**Penalty:** Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$700 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

**Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.

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

[39] 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.

### **Submissions on Draft Decision**

[40] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or
- (b) make written submissions on the Board's findings. Submissions may be on the substantive findings and/or on the findings on penalty, costs and publication.

[41] Submissions and/or further evidence must be filed with the Board by no later than the **close of business on Friday 20 February 2026**.

[42] If submissions are received, then the Board will meet and consider those submissions.

[43] The Board may, on receipt of any of the material received, give notice that an in-person hearing is required prior to it making a final decision. Alternatively, the Board may proceed to make a final decision which will be issued in writing.

[44] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

### **Request for In-Person Hearing**

[45] If the Respondent, having received and considered the Board's Draft Decision, considers that an in-person hearing is required then one will be scheduled, and a notice of hearing will be issued.

[46] A request for an in-person hearing must be made in writing to the Board Officer no later than the **close of business on Friday 20 February 2026**.

[47] If a hearing is requested, this Draft Decision, including the Board's indicative position on penalty, costs and publication, will be set aside.

### **Right of Appeal**

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

Signed and dated this 29<sup>th</sup> day of January 2026



**Mr M Orange**  
Presiding Member

**This decision and the order herein were made final on Monday 23 February 2026 on the basis that no further submissions were received**

Signed and dated this 23rd day of February 2026



**Mr 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:*

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- (b) *to promote the accountability of owners, designers, builders, and building consent authorities who have responsibilities for ensuring that building work complies with the building code.*

**ii Section 318 of the Act**

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

**iii Section 318 Disciplinary Penalties**

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

- (4) *In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.*
- (5) *In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.*

**iv Section 330 Right of appeal**

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

**Section 331 Time in which appeal must be brought**

*An appeal must be lodged—*

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