

Before the Building Practitioners Board

	BPB Complaint No. CB25871
Licensed Building Practitioner:	Justin Rankin (the Respondent)
Licence Number:	BP134335
Licence(s) Held:	Carpentry (Suspended)

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

Complaint or Board Inquiry	Board Inquiry
Hearing Type:	On the Papers
Hearing and Draft Decision Date:	1 March 2023
Finalised Draft Decision Date:	20 April 2024

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, 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 disciplinary offences under sections 317(1)(a) of the Act.

The Respondent's licence is cancelled. He may not apply to be relicensed for a period of two years.

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Summary of the Board’s Decision

- [1] The Respondent was convicted of serious criminal offending and was sentenced to a period of imprisonment. The nature of the criminal charges and the penalties imposed meant that the Respondent had breached section 317(1)(a) of the Act, which relates to committing criminal charges that reflect adversely on a person’s fitness to carry out or supervise Restricted Building Work. The Board decided that it would be appropriate that the Respondent, who is not currently licensed, not be able to be licensed for a period of two years so that he can work under supervision or on building work that is not restricted and establish that he is a fit person to be licensed.

The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.¹
- [3] In this matter, the disciplinary charge the Board resolved to further investigate² was whether:
- (a) been convicted, whether before or after he is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more, and the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work contrary to section 317(1)(a) of the Act; and
 - (b) the Respondent may have conducted himself in a manner that brings, or is likely to bring, the regime under this Act for Licensed Building Practitioners into disrepute contrary to section 317(1)(i) of the Act.
- [4] The Respondent, by way of a support person, has queried how the investigation came about. This matter is a board-initiated inquiry. It was initiated on the basis of media reports about the Respondent's offending. The Board can initiate its own inquiries because its jurisdiction under the Act is inquisitorial. Section 317 of the Act provides:

317 Grounds for discipline of Licensed Building Practitioners

- (1) *The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 318 if it is satisfied that—*
- [5] Part 2 of the Complaints Regulations deals with Board Inquiries. Regulation 17(1), in Part 2 states:
- (1) *This Part applies to an inquiry into a matter about the conduct of a building practitioner raised by the Board's own inquiries.*
- [6] The combination of section 317 and regulation 17 makes it clear that the Board can investigate matters without a complaint about a Licensed Building Practitioner being made.

Draft Decision Process

- [7] As noted, 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 making a decision.

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

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

- [8] Ordinarily, the Board makes a decision having held a hearing.³ The Board may, however, depart from its normal procedures if it considers doing so would achieve the purposes of the Act, and it is not contrary to the interests of natural justice to do so.⁴
- [9] 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 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

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁵. 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 Board became aware that the Respondent had been convicted of and sentenced for five charges involving the importation and supply of drugs. The Board obtained the District Court sentencing notes.⁶ They outlined that the Respondent had pleaded guilty to:
- a representative charge that between 19 May 2017 and 13 November 2020, the Respondent supplied a Class B controlled drug, GBL, contrary to the Misuse of Drugs Act 1975, the maximum penalty being 14 years imprisonment;
 - a representative charge that between 22 November 2019 and 13 November 2020 at Wellington, the Respondent possessed a class B controlled drug, GBL, for the purposes of supply, contrary again to the Misuse of Drugs Act, the maximum penalty is 14 years imprisonment;
 - that on or about 13 November 2020, the Respondent possessed equipment for the manufacture of a Class A drug, methamphetamine, contrary to the Misuse of Drugs Act, with a maximum penalty of imprisonment of five years;

³ Regulation 10 of the Complaints Regulations.

⁴ 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

⁵ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁶ *R v Justin Rankin CRI-2019-085-002793* [2022] NZDC 23510

- that on 4 June 2020, the Respondent drove while disqualified, being a third and subsequent offence, under s 32 of the Land Transport Act 1998, with a maximum penalty of two years imprisonment; and
- that on 4 June 2020, the Respondent possessed a Class A drug methamphetamine for supply contrary to the Misuse of Drugs Act, where the maximum penalty is life imprisonment.

[12] The GBL supplied and possessed for the purposes of supply, was the largest amount, by some margin, of GBL ever uncovered in New Zealand. The sentencing Judge noted the harm that the drug can cause and went on to state:

[35] ... I need to make clear that what you did is not acceptable; it is called denunciation. I need to send a clear deterrent message to the community that trade in a drug such as this and the supply of it is utterly unacceptable. But I also need to provide, as far as the Court can, the best chance for your rehabilitation, so that when you leave prison you leave as a reformed and rehabilitated and non-drug dependent man.

[13] The sentencing judge noted various aggravating factors, including:

- that the offending involved considerable planning and premeditation, that the Respondent was the instigator, and that he was deceitful about his link with a construction company. The Judge described the Respondent as having a “leading role”;
- the scale of the operation;
- the value of the importation and possible profit of any supply;
- the length and frequency of the offending. There were eight orders for drugs over three years; and
- the Respondent’s personal gain. The Judge did, however, accept that there was no proof of large-scale profit.

[14] A starting point of 13 years imprisonment was adopted. The Respondent continued to offend whilst on bail, and a six-month up-lift was applied. Reductions were applied for a guilty plea and assistance in other prosecutions, the link to the Respondent’s addiction, his remorse and commitment to rehabilitation. The endpoint was a sentence of seven years and five months imprisonment.

[15] The Board obtained a criminal history from the Ministry of Justice. It noted that the Respondent has previously been convicted of other offences, some of which were serious.

Section 317(1)(a) – Criminal Convictions

- [16] The disciplinary provision in section 317(1)(a) of the Act requires two matters to be satisfied. The first is whether the Respondent has been convicted, whether before or after he is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more. The second element of the disciplinary charge is whether the commission of that offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work.

The Conviction

- [17] All five charges the Respondent was convicted of meet the first criteria in that each is punishable by imprisonment for a term of more than six months. As such, the Board will consider the second element, his fitness. The Respondent's offending clearly satisfies this element.

Fitness

- [18] This element requires consideration by the Board of the interrelationship between the convictions and the Respondent's fitness to be a licensed person.
- [19] The Supreme Court decision *New Zealand Law Society v Stanley*⁷ is the leading case. It involved a person seeking to be admitted as a barrister and solicitor who had previous convictions and consideration of whether he was a fit and proper person. The decision noted:

[35] The first point to note is the obvious one. That is, the fit and proper person standard has to be interpreted in light of the purposes of the Act.

- [20] The purposes of the Building Act include providing for the establishment of a licensing regime for building practitioners, and 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.⁸ In furthering those purposes, the disciplinary regime was established, and more recently, a Code of Ethics has been introduced by Order in Council.⁹
- [21] The Supreme Court also noted that the fit and proper person evaluation is a forward-looking exercise and that it is a matter of undertaking an "evaluation as to the risks to the public or of damage to the reputation of the profession" if, in the Respondent's case, he was to retain his licence.¹⁰ The evaluation is an objective

⁷ [2020] NZSC 83

⁸ Section 3 of the Building Act 2004.

⁹ Building (Code of Ethics for Licensed Building Practitioners) Order 2021 which came into effect on 25 October 2022.

¹⁰ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [38]

exercise in that the Board should not be influenced by sympathy for the Respondent,¹¹ and it is a protective exercise, not a punitive one.¹²

[22] The Supreme Court summarised the relevant principles as follows:

[54] From this discussion, the relevant principles can be summarised in this way:

- (a) The purpose of the fit and proper person standard is to ensure that those admitted to the profession are persons who can be entrusted to meet the duties and obligations imposed on those who practise as lawyers.*
- (b) Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to maintain public confidence in the profession.*
- (c) The evaluation of whether an applicant meets the standard is a forward looking exercise. The Court must assess at the time of the application the risk of future misconduct or of harm to the profession. The evaluation is accordingly a protective one. Punishment for past conduct has no place.*
- (d) The concept of a fit and proper person in s 55 involves consideration of whether the applicant is honest, trustworthy and a person of integrity.*
- (e) When assessing past convictions, the Court must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Court must look at all of the evidence in the round and make a judgement as to the present ability of the applicant to meet his or her duties and obligations as a lawyer.*
- (f) The fit and proper person standard is necessarily a high one, although the Court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law.*
- (g) Finally, the onus of showing that the standard is met is on the applicant. Applications are unlikely to turn on fine questions of onus.*

[23] The Board also notes that, whilst the Supreme Court stated that the onus is on the applicant to show that the fitness standard has been met, the Board considers, within the context of a disciplinary matter, that it is for the Board to determine, on the balance of probabilities, whether the Respondent is or is not a fit person. Put another way, the Respondent does not carry the burden of proof.

¹¹ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [39]

¹² *Ibid* [40]

Consideration of Fitness

- [24] The Board received a submission through a support person acting in conjunction with the Respondent's father. They noted that the Respondent was undertaking rehabilitation, that he has served a significant portion of his sentence and that he is due for parole around June 2024. The response submitted that the Respondent is a fit person. It stated:

Justin has always been a highly skilled professional builder for many years. Every job he has finished to a high standard with great communication towards happy customers. After a year of intense rehabilitation, around June 2024 when Justin is eligible for parole, it would be great for him to get back into the building industry where his passion lies in. Likely first under supervision from his father [OMITTED], and with Justin wanting to change his life I don't see him being 'unfit' to carry out or supervise building work in the future under his own LBP.

And

He has always provided excellent building skills and shown great interpersonal skills with the customers.

- [25] It is disappointing that the Respondent has not engaged himself. It is difficult to assess him and his situation without hearing directly from him. Nonetheless, the Board has taken the submission into account.
- [26] An assessment of fitness is a forward-looking assessment taking into consideration conduct that occurred in the past. It is the Respondent's future fitness that must be assessed. In *Stanley*, the Supreme Court put it as:

[45] ... the decision maker is essentially trying to assess whether the convictions remain relevant to whether the applicant meets the fit and proper person standard and, if so, to what extent the conduct remains relevant at the time of the current inquiry. The inquiry into relevance will commonly require consideration of the circumstances of the offending and of whether the applicant can be seen to have moved on in the sense of being either reformed or having undertaken steps towards rehabilitation. Alternatively, there may be other features of character which mean that the convictions should assume less relevance. That it is not always easy to draw the line emphasises the fact-specific nature of the inquiry.¹³

- [27] An assessment of fitness is not, however, an evaluation of a person's competence. The factors outlined in *Stanley* that must be considered are whether:

- (a) the Respondent can be entrusted to meet the duties and obligations imposed on a Licensed Building Practitioner;

¹³ *New Zealand Law Society v Stanley* [2020] NZSC 83 at [45]

- (b) the need to protect the public and to maintain public confidence in the Licensed Building Practitioner regime;
- (c) the risk of future misconduct or of harm to the Licensed Building Practitioner regime; and
- (d) whether the Respondent is honest, trustworthy and a person of integrity;

[28] Looking at those factors and noting the response received, the Board formed the view that the Respondent may now have an insight into his offending and, as part of his sentence, is receiving rehabilitative treatment. It is yet to be proven, however, how effective that treatment will be and whether the pattern of past offending will continue. It follows that the Board is yet to be convinced that he can be trusted to meet the duties expected of a Licensed Building Practitioner, which now includes complying with an extensive Code of Ethics. The same comment applies to whether the Respondent will be an honest, trustworthy person of integrity if he were to regain his licence.

[29] The main factors, from a licensing perspective, are the need to protect the public, maintain public confidence, and to minimise the risk of future misconduct or harm to the Licensed Building Practitioner regime. Looking at those factors and at the Respondent's criminal offending, both the extensive criminal history and the seriousness of the most recent offending, together with the aggravating factors noted by the Court in relation to that offending, the Board is of the view that there is an unacceptable risk in respect of those factors, and it has decided that the Respondent is not a fit person. Accordingly, the Board finds that the second element of section 317(1)(a) has been established in that the convictions reflect adversely on the Respondent's fitness to carry out or supervise building work or building inspection work. The disciplinary offence has been committed.

[30] The Board does, however, recognise that the Respondent may yet prove himself to be a fit person. For that reason, its penalty order will take that possibility into account.

Disrepute

[31] Conduct which brings or is likely to bring the regime into disrepute is that which may result in the regime being held in low esteem by the public. Examples include:

- criminal convictions¹⁴;
- honest mistakes without deliberate wrongdoing¹⁵;
- provision of false undertakings¹⁶; and
- conduct resulting in an unethical financial gain¹⁷.

¹⁴ *Davidson v Auckland Standards Committee* No 3 [2013] NZAR 1519

¹⁵ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹⁶ *Slack, Re* [2012] NZLCDT 40

¹⁷ *ColliervNursing CouncilofNewZealand* [2000]NZAR7

- [32] The Courts have consistently applied an objective test when considering such conduct.¹⁸ The subjective views of the practitioner, or other parties involved, are irrelevant. The conduct need not have taken place in the course of carrying out or supervising building work.¹⁹
- [33] To make a finding of disreputable conduct, the Board needs to determine, on the balance of probabilities,²⁰ that the Respondent has brought the regime into disrepute and that the conduct was sufficiently serious enough for the Board to make a disciplinary finding.²¹

The conduct under investigation

- [34] The conduct under investigation is the same as that which was considered under section 317(1)(a) of the Act. There is no doubt that the Respondent's conduct has brought the regime into disrepute. However, as it is the same conduct with respect to which the Board has already made a finding under section 317(1)(a), the question is whether it is necessary for the Board to also make an additional finding under section 317(1)(i) of the Act.
- [35] There is a general principle that specific charges should be preferred over general and it is noted that Part 8 of the Solicitor General's Prosecution Guidelines which deal with the choice of charges, states:

8.4 The prosecutor should ensure that the number of charges, whether or not arising from the same or related criminal acts, is truly necessary to properly reflect the criminality of the defendant's alleged conduct.

- [36] Given those factors and the decision that the Respondent's conduct has breached section 317(1)(a) of the Act, which is the more specific and appropriate charge, the Board has decided that it is not necessary to make a finding under section 317(1)(i) of the Act.

Board's Decision

- [37] The Respondent **has** breached section 317(1)(a) of the Act.

Penalty, Costs and Publication

- [38] 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.
- [39] The matter was dealt with on the papers. Included was information relevant to penalty, costs and publication, and the Board has decided to make indicative orders

¹⁸ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

¹⁹ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

²⁰ *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.

²¹ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

Penalty

- [40] The Board has the discretion to impose a range of penalties.ⁱⁱ 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.²² It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:²³
- (a) protection of the public and consideration of the purposes of the Act;²⁴
 - (b) deterring other Licensed Building Practitioners from similar offending;²⁵
 - (c) setting and enforcing a high standard of conduct for the industry;²⁶
 - (d) penalising wrongdoing;²⁷ and
 - (e) rehabilitation (where appropriate).²⁸
- [41] 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 cases²⁹ and applying the least restrictive penalty available for the particular offending.³⁰ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty³¹ that is consistent with other penalties imposed by the Board for comparable offending.³²
- [42] 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.³³
- [43] The Respondent is not presently licensed. He is still incarcerated. He may have the opportunity to return to the building industry when he is released, and his father has stated that he will do so under his father's supervision.

²² *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]

²³ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

²⁴ Section 3 Building Act

²⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

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

²⁸ *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

²⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

³¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

³³ 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.

- [44] The Board considers that a period of time is required following the Respondent's return to the workforce for him to establish that he is a fit person to hold a licence once again and to ensure the public is protected in the interim period. On that basis, and taking into account the seriousness of the Respondent's criminal offending, the Board has decided that the imposition of a two-year period within which the Respondent cannot be licensed is appropriate.
- [45] The Respondent should note that, over the two-year period, he will be able to work in the building industry. A licence is only required where a person is carrying out or supervising Restricted Building Work. The Respondent will, without a licence, be able to carry out building work that is not Restricted Building Work, which covers a large scope of work, and he will be able to carry out Restricted Building Work under the supervision of a licenced person.

Costs

- [46] 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.³⁴
- [47] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings³⁵. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case³⁶.
- [48] 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 simple. Adjustments are then made.
- [49] The present matter has been dealt with on the papers, and it was a simple investigation. The Board's scale costs for such a matter is \$500. That is the amount the Board will order that the Respondent to pay toward the costs of the Board's inquiry.

Publication

- [50] 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,³⁷ and he will be named in this decision. The Board is also able, under section 318(5) of the Act, to order further publication.

³⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74

³⁵ *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

³⁶ *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.

³⁷ Refer sections 298, 299 and 301 of the Act

- [51] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.³⁸ 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.³⁹
- [52] 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

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

Penalty:	Pursuant to section 318(1)(a)(i) of the Act, the Respondent's licence is cancelled, and the Registrar is directed to remove the Respondent's name from the Register of Licensed Building Practitioners and pursuant to section 318(1)(a)(ii) of the Act the Board orders that the Respondent may not apply to be relicensed before the expiry of 24 months.
Costs:	Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.
Publication:	The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(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.

- [54] 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

- [55] The Board invites the Respondent to:

- (a) provide further evidence for the Board to consider; and/or

³⁸ Section 14 of the Act

³⁹ Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

- (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.
- [56] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **19 April 2024**.
- [57] If submissions are received, then the Board will meet and consider those submissions.
- [58] 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.
- [59] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

- [60] 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.
- [61] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **19 April 2024**.
- [62] 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

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

Signed and dated this 20th day of March 2024



M Orange
Presiding Member

This decision and the order herein were made final on 20 April 2024 on the basis that no further submissions were received.

Signed and dated this 21st day of August 2024



M Orange
Presiding Member

i Section 318 of the Act

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

ii Section 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.*

iii 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.*