Before the Building Practitioners Board

	BPB Complaint No. 26482
Licensed Building Practitioner:	Rodney Gibson (the Respondent)
Licence Number:	BP 119149
Licence(s) Held:	Design AoP 2

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

Complaint or Board Inquiry:	Complaint
Hearing Location:	Wellington
Hearing Type:	In Person
Hearing Date:	8 April 2025
Decision Date:	13 May 2025

Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)
Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2
Mr T Tran, Barrister– Legal Member
Mr G Anderson, LBP, Carpentry and Site AoP 2
Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor
Ms E Harvey McDouall, Registered Architect
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 **has not** committed disciplinary offences under sections 317(1)(c), (d), (da)(i) or (i) of the Act.

The Respondent is fined $2,500 and ordered to pay costs of $2,950. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

Contents

Summary

[1] The Respondent submitted a Building Consent application for what was purported to be a building to be constructed in accordance with a MultiProof Approval. The application should have disclosed that a building manufactured in China was going to be installed on new foundations. The Board found that the Respondent's Building Consent application was misleading and that he had conducted himself in a negligent manner. The Board fined the respondent $2,500 and ordered that he pay costs of $2,950.

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 charges the Board resolved to further investigate[2] were that the Respondent may, in relation to building work at [OMITTED], have:

(a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act;

(b) carried out or supervised restricted building work of a type that he is not licensed to carry out or supervise contrary to section 317(1)(c) of the Act, IN THAT, he may have carried out or supervised restricted building work when assembling the Habode unit consented under a MultiProof Certificate, on site;

(c) carried out or supervised restricted building work that does not comply with a Building Consent as set out in the Carterton District Council Notice to Fix dated 31 May 2023 (Page 875 of the Board's file) contrary to section 317(1)(d) of the Act;

(d) failed, without good reason, in respect of a Building Consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be), to provide a certificate of work about any plans and specifications required to accompany the Building Consent application (as referred to by the Council at pages 755 and 757 of the Board's file), contrary to section 317(1)(da)(i) of the Act; and

(e) conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute contrary to section 317(1)(i) of the Act, IN THAT, he may have misrepresented to the Carterton District Council that the building placed on site was in compliance with the MultiProof certificate.

[4] The Board gave notice that, in further investigating the Respondent's conduct under section 317(1)(b) of the Act, it would be inquiring into whether the Respondent lodged the Building Consent application in reliance on the MultiProof certificate dated 13 January 2011, knowing that:

(a) the MultiProof certificate supplied with the application was out of date; and

(b) the building proposed for the site differed from that covered by the MultiProof certificate, in that:

[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.

i. the building was originally built in 2006 and refurbished therefore it may not have been a new build for the purposes of a Building Consent application;

ii. the building was originally built in 2006 prior to the issue of the MultiProof certificate and prior to the issue of the approved Building Consent;

iii. the building had components which did not meet the current Building Code and approved Building Consent based on the MultiProof certificate; and

iv. the building's foundations were changed from timber pile design to Surefoot foundation piles system.

[5] At the commencement of the hearing, the Board advised that it would not be pursuing the allegation under section 317(1)(da)(i) of the Act on the basis that it had been established, from evidence received after the Notice of Proceeding was issued, which established that an authorised person had submitted a Certificate of Design Work.[3]

Evidence

[6] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed[4]. 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.

Background

[7] The complaint was made by the owner of the dwelling under investigation. He had purchased a modular-type building from the Respondent, which was sold under the brand Habode. The Habode building is based on a modular concept. The concept involves the building being manufactured in a factory in China. The various components to create a complete building are then packed into the building's core structure for shipping. Site-specific foundations are constructed for the building to be connected to. It is then opened up and put together on-site. The building comes complete with internal electrical and plumbing fit-out.

[8] The Habode building purchased had been constructed in 2006 as a demonstration or concept building by the Respondent and had, for some time, been in storage. After the Complainant purchased it, it was shipped back to China to be refurbished before it was returned to New Zealand and constructed on the Complainant's site.

[9] The Complainant raised multiple allegations about the building, the building work and the Respondent's conduct. The Board decided it would not investigate all of

[3] A Certifcate of Design Work was issued by a Chartered Engineer on 29 December 2022.
[4] *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

those allegations. Rather, the Board's investigations focused on the consenting process, whether the Respondent may have carried out or supervised Restricted Building Work (RBW) that he was not licensed to carry out or supervise, and issues raised in a Notice to Fix issued by the Building Consent Authority (BCA).

[10] At the hearing, both the Complainant and the Respondent raised issues that were not under investigation. To the extent that their respective statements and submissions related to the matters under investigation, they were taken into consideration.

MultiProof

[11] The Ministry of Business Innovation and Employment (MBIE) has issued a MultiProof Approval for the Habode system. MBIE maintains a MultiProof Scheme Guidance document issued under section 175 of the Act.[5] Under the heading, What is MultiProof, the Guidance describes a MultiProof as follows:

> *A MultiProof approval is a statement by MBIE that a set of plans and specifications complies with the New Zealand Building Code (the Building Code). The approval may also include alternatives or allow for some small changes to the design.*
>
> *To apply for MultiProof, the applicant must have the intention and ability to reproduce buildings based on the proposed plans and specifications at least ten times in a two-year period. The application must relate to the building as a whole, but it does not need to include site-specific features, such as foundations and drainage.*

[12] The Habode system has not met the repeatability requirement of 10 buildings over two years. Notwithstanding, the MultiProof statement for Habode has not been withdrawn.

[13] A Building Consent must be obtained for any building that is to be built using a MultiProof Approval. In terms of the Building Consent process, the Guidance states:

> *MultiProof approval holders (approval holders) need to apply for a building consent each time they build.*
>
> *The building consent needs to include most of the information that would be normally required for a building*
>
> *consent, including plans and specifications.*
>
> *However, when applying for a building consent, approval holders do not need to provide things such as:*
>
> *• structural calculations*

[5] MultiProof Scheme Guidance, Guidance for Building Consent Authorities and Practitioners on National Multiple-Use Approvals, September 2024.

- *bracing schedules*
- *CodeMark certificates*
- *BRANZ appraisals*
- *certificates of work.*

The above is assessed by MBIE during the application stage to obtain a MultiProof.

Site specific components of the building, such as foundations, that are not covered by the MultiProof approval must be provided.

[14] In short, if a proposed building has a MultiProof Approval, the BCA only has to evaluate those aspects that the MultiProof does not cover, such as the foundations.

[15] A BCA can require that a building that is to be constructed in accordance with a MultiProof is assessed by it during construction to evaluate its compliance with the Building Consent issued by way of building inspections.

[16] The Habode MultiProof Approval was first issued in 2011. A revision was issued in 2021. A revision has the effect of revoking an earlier MultiProof Approval.

The Consenting Process

[17] The Habode building purchased by the Complainant was constructed in or about 2006, which was before the first MultiProof Approval was issued. When it was constructed in 2006, it was not built under a Building Consent because it was not built in New Zealand. When it was imported into New Zealand, it became a building product. The term "Building Product" is defined in section 9A of the Act. All Building Products have to meet New Zealand Building Code requirements.

[18] The Board did not receive any evidence as to how the Habode building purchased by the Complainant met Building Code requirements when it was manufactured in China, other than that it was constructed to the same specifications as those that applied to the MultiProof Approval.

[19] The same would apply to the reimportation of the building prior to it being delivered and connected to foundations on the Complainant's site. When it was reimported after refurbishment, it was a Building Product that had to meet Building Code requirements.[6]

[6] Refer section 14G of the Act:

14G Responsibilities of product manufacturer or supplier

(1) In subsection (2), product manufacturer or supplier means a person who manufactures or supplies a building product and who states that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the building code.

[20] When a Building Consent was applied for, the application did not disclose the building's history, such as the year of construction or refurbishment, or the fact that it had been constructed in China, and it was, therefore, a Building Product.

[21] The Respondent applied for the Building Consent. The application was submitted on 28 June 2022. It relied on the Habode building being covered by a MultiProof Approval certificate. The MultiProof approval submitted was the revoked 2011 Approval certificate, not the current, valid 2021 Approval certificate. The Respondent stated that he made a mistake.

[22] On 31 August 2022, the BCA issued the Building Consent on the basis that the building was to be constructed in accordance with the MultiProof. Mr [OMITTED] confirmed that the BCA was not aware that it was a refurbished imported building and that the Building Consent was issued on the basis that the proposed building would be constructed in accordance with the MultiProof Approval. The BCA did not require any inspections other than an inspection of the piles for the foundation.

[23] Mr [OMITTED] stated that had the BCA been aware of the status of the building as an imported building, it would have assessed it under section 112 of the Act, which covers an evaluation of an existing building when a Building Consent is applied for.

The Building Work

[24] The Respondent's submission was that putting a Habode building together does not involve building work. Rather, it is an assembly process using bolts that does not use traditional building tools and is not akin to NZS3604 methods and systems. As such, he submitted that, other than the construction of the foundations, the assembly of the building did not involve any RBW.

[25] The Respondent holds a Design AoP 2 Licence. His licence authorises him to carry out and supervise building work, which is design work. He cannot carry out or supervise any RBW that falls into any other license class, such as Carpentry.

[26] The Board received evidence from a Licensed Building Practitioner (LBP) who holds a Carpentry Licence. He outlined the building work that he was involved in, including the construction of the foundations. He stated that the Respondent guided him in the assembly process. He confirmed that putting the Habode building together involved fastening various components using bolts and that the windows clipped into place.

(2) A product manufacturer or supplier is responsible for ensuring that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the building code.

(3) A person who supplies a building product is responsible for ensuring that the person complies with Part 4B (building product information requirements).

Notice to Fix

[27] On 31 May 2023, the Carterton District Council issued a Notice to Fix (NTF). The NTF was issued because the building had been placed on a Surefoot foundation system that was not what had been consented. When the Surefoot system was installed, an amendment of the Building Consent had been applied for to allow for that system, but had not been granted.

[28] The Respondent described completing the foundations prior to the Building Consent Amendment being granted as an error in judgment.

Consideration of the Issues

[29] As noted, the Board did not further investigate the allegation under section 317(1)(da)(i) of the Act.

[30] Turning to the other allegations, it decided that the Respondent's conduct did not, for the following reasons, amount to a disciplinary offence under sections 317(1)(c), (d) and (i) of the Act.

Section 317(1)(c)

[31] An LBP can commit a disciplinary offence if they carry out or supervise RBW that they are not licensed to carry out or supervise. The allegation related to RBW in connection with the assembly of the Habode building. The Board's finding was that the Respondent had not committed an offence because he may have been supervised by an LBP who held a Carpentry Licence, not because the building work did not involve RBW.

[32] Whether or not building work is RBW is not dependent on what skills are employed or tools are used, but on what is set out in the Building (Definition of Restricted Building Work) Order 2011 and, in particular, the provisions of clause 5. It stipulates that any work carried out under a Building Consent associated with the primary structure or external moisture-management systems of a building is RBW.[7] It follows that connecting structural elements or inserting external joinery, regardless of how it is done, is RBW and it must be carried out or supervised by an LBP.

Section 317(1)(d)

[33] The Board received evidence that the foundations, to which the NTF related, were carried out or supervised by another LBP. As such, as per the Board's decision under section 317(1)(c), it follows that the Respondent has not committed the disciplinary offence.

[7] Refer caluse 5 of the Building (Definition of Restricted Building Work) Order 2011 for the definition of Restricted Building Work

Section 317(1)(i)

[34] The allegation under 317(1)(i) was that the Respondent may have brought the licensing regime into disrepute by misrepresenting to the Carterton District Council that the building placed on site was compliant with the MultiProof Approval.

[35] There is a high threshold that applies to allegations under section 317(1)(i) of the Act. To make a finding that the Respondent conducted himself in a disreputable manner, the Board must establish that the conduct fell seriously short of acceptable standards.

[36] In this matter, the Respondent submitted a misleading Building Consent application. It was misleading because it stated the building would be constructed in accordance with a MultiProof Approval when it should have disclosed that an already constructed imported dwelling was going to be placed on the site.

[37] The Board's view was that the Respondent had not intended to submit a misleading application. Rather, it came about because of the Respondent's misunderstanding of what was to be undertaken on the site. In short, the Respondent was focused on the MultiProof aspect of the Habode building and did not turn his mind to what was actually being done. Because of that, the Board did not consider that the conduct was deliberate and, as such, that it did not reach the threshold for a finding of disreputable conduct.

Section 317(1)(b)

[38] Additionally, the Board's view was that the conduct was more appropriately considered under the allegation of negligent or incompetent conduct. Regarding that allegation, the Board decided that the conduct that did amount to a disciplinary offence was that in relation to section 317(1)(b) of the Act, with respect to which the Board decided that the Respondent had been negligent. The reasons follow.

Negligence

[39] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,[8] 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*[9] test of negligence.[10] A threshold test applies. Even if the Respondent has been negligent, the Board must also decide if the conduct fell seriously short of expected standards.[11] If it does not, then a disciplinary finding cannot be made.

[8] *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.
[9] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[10] 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)
[11] *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,

Has the Respondent departed from an acceptable standard of conduct

[40] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act[i] as well as the requirement that all building work must comply with the Building Code[12] and any Building Consent issued.[13] The test is an objective one.[14]

[41] The conduct under investigation related to the Building Consent application. The application was, as noted, based on a MultiProof Approval. It represented that the building was to be constructed. It did not disclose that the building had been constructed in 2006, refurbished in China and re-imported. As a result, the Building Consent was evaluated using incorrect parameters. The BCA witness noted that had the Building Consent application disclosed the true nature of what was to be done, the imported building would have been assessed under section 112 of the Act.

[42] It was with respect to the failure to disclose the true nature of the building in the Building Consent application that the Board decided that the Respondent's conduct had fallen below an acceptable standard. The Board considered that the Respondent, who holds a Design AoP 2 Licence, should have turned his mind to what was actually being done on the site and applied for the Building Consent on that basis. Because he did not, the Board decided that he had conducted himself in a negligent manner.

Was the conduct serious enough

[43] The conduct was serious. The Respondent's Building Consent application, in essence, misled the BCA, which resulted in the Building Consent being evaluated and processed on an incorrect basis. As previously noted, the Board accepts that the Respondent did not set out to mislead the BCA. A finding of negligence does not require intentional conduct. Within the context of seriousness, however, the Board does have to consider whether the conduct came about as a result of inadvertence or mere error. The Board's view and finding was that the misleading Building Consent application came about because of a lack of care and attention, and because the Respondent did not turn his mind to the true nature of what was going to happen on the site.

[44] The Board also notes that whilst the BCA indicated that the Building Consent application had of disclosed that a previously constructed dwelling was to be installed on the site it would have assessed the building under section 112 of the Act, the Board's view is that, because the building had been imported, it would have had to of been assessed for compliance with the Building Code as an imported building

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".

[12] Section 17 of the Building Act 2004

[13] Section 40(1) of the Building Act 2004

[14] *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.

product. The MultiProof Approval may well have assisted with that assessment. The point, however, is that, regardless of whether it was assessed under section 112 or as an imported product, a different process from what was used in assessing the application would have been adopted by the BCA.

[45] The Building Consent application process is important, and accuracy within an application matters. The process ensures that buildings comply with the New Zealand Building Code and that they will be safe and healthy. If an application is made and processed on an incorrect basis, those purposes can be jeopardised. Within that process, BCAs place reliance on those who apply for consents and, in particular, Design LBPs. As such, it is important that what is presented is true and accurate.

Board Decisions

[46] The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act in that he has conducted himself in a negligent manner.

[47] The Respondent **has not** committed a disciplinary offence under sections 317(1)(c), (d), (da)(i) or (i) of the Act.

Penalty, Costs and Publication

[48] Having found that one or more of the grounds in section 317 applies, the Board must, under section 318 of the Act[ii], consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[49] The Board has not yet heard submissions addressing penalty, costs, and publication. Before making any determination on these matters, the Board invites the Respondent to provide submissions. To assist the Respondent in preparing those submissions, the Board sets out below its preliminary considerations regarding potential penalty, costs, and publication orders.

<u>Penalty</u>

[50] The Board has the discretion to impose a range of penalties.[iii] 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.[15] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[16]

(a) protection of the public and consideration of the purposes of the Act;[17]

[15] 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]
[16] Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]
[17] Section 3 Building Act

(b) deterring the Respondent and other Licensed Building Practitioners from similar offending;[18]

(c) setting and enforcing a high standard of conduct for the industry;[19]

(d) penalising wrongdoing;[20] and

(e) rehabilitation (where appropriate).[21]

[51] 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[22] and applying the least restrictive penalty available for the particular offending.[23] In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty [24] that is consistent with other penalties imposed by the Board for comparable offending.[25]

[52] 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.[26]

[53] In this matter, the Board is considering a starting point of a fine of $2,500. The Board considered that a fine was the appropriate form of penalty given the nature of the offending. The starting point adopted is consistent with other fines imposed by the Board for similar offending.

[54] Since the hearing, the Respondent has advised that he is relinquishing his licence by way of voluntary cancellation. He stated:

> *After sitting through a long winded two hours of debate it was clear that the Building Practitioners Scheme has failed to evolve and understand new methods of building outside 3604. We manufacture products. Not every building has to be built from timber using a hammer and a saw.*

[55] It is apparent from the above that the voluntary cancellation has not been prompted by a recognition of wrongdoing. As such, it is not a mitigating factor. Also, whilst the Respondent will no longer be an LBP, his voluntary cancellation does not stop him from applying to become an LBP in the future.

[56] The Board is not aware of any other possible mitigating factors, and it does not consider that there are any aggravating factors.

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[18] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[19] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724
[20] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27
[21] *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
[22] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[23] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818
[24] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[25] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354
[26] 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.

Costs

[57] 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.[27]

[58] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings[28]. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case[29].

[59] 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.

[60] Based on the above, the Board's considers that the Respondent should pay the sum of $2,950 toward the costs of and incidental to the Board's inquiry. This is the Board's scale amount for a half-day hearing. It is considerably less than 50% of the actual costs incurred.

Publication

[61] 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,[30] 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. However, because the Respondent has voluntarily cancelled his license, his name will no longer be on the Register. If he applies to be relicensed, then the register record will include a note of the disciplinary finding.

[62] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[31] 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.[32]

[63] Based on the above, a summary of the decision will be published. The Respondent will not be named in that publication.

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

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

[29] *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.

[30] Refer sections 298, 299 and 301 of the Act

[31] Section 14 of the Act

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

Section 318 Order

[64] For the reasons set out above, unless penalty, costs and publication submissions are made, the Board directs that:

Penalty: **Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of $2,500.**

Costs: **Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of $2,950 (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(1)(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.

[65] 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 Penalty, Costs and Publication

[66] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **Thursday 19 June 2025**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

Right of Appeal

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

Signed and dated this 28th day of May 2025.

Mr M Orange
Presiding Member

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[i] ***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.

[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.