

Before the Building Practitioners Board

	BPB Complaint No. CB25958
Licensed Building Practitioner:	Alex Smith (the Respondent)
Licence Number:	BP 125503
Licence(s) Held:	Carpentry

Draft 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 Type:	On the Papers
Hearing and Draft Decision Date:	28 July 2022
Final Decision date:	16 September 2022

Board Members Present:

Mr M Orange, Deputy Chair, Barrister (Presiding)
Mr D Fabish, LBP, Carpentry and Site AOP 2
Mrs F Pearson-Green, LBP, Design AOP 2
Ms K Reynolds, Construction Manager

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.

Draft Disciplinary Finding:

The Respondent **has** committed disciplinary offences under sections 317(1)(da)(ii) and 317(1)(i) of the Act.

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Summary of the Board’s Decision

[1] The Respondent failed to provide a record of work on completion of restricted building work and brought the licensing regime into disrepute. He is fined \$3,500 and ordered to pay costs of \$500. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

The Board

[2] The Board is a statutory body established under the Building Act.¹ Its functions include receiving, investigating, and hearing complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2 of the Act. It does not have any power to deal with or resolve disputes.

¹ Section 341 of the Act.

The Charges

- [3] On 28 July 2022, the Board received a Registrar's Report in respect of a complaint about the conduct of the Respondent.
- [4] Under regulation 10 of the Complaints Regulations, the Board must, on receipt of the Registrar's Report, decide whether to proceed no further with the complaint because regulation 9 of the Complaints Regulations applies.
- [5] Having received the report, the Board decided that regulation 9 did not apply. Under regulation 10 the Board is required to hold a hearing.
- [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 is necessary prior to it making a decision. In this respect, the Act provides that the Board may regulate its own procedures². It has what is described as a summary jurisdiction in that the Board has a degree of flexibility in how it deals with matters; it retains an inherent jurisdiction beyond that set out in the enabling legislation³. As such, it may 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.
- [7] 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.
- [8] The Board does, however, note that there may be further evidence in the possession of persons involved in the matter or that the Board may not have interpreted the evidence correctly. To that end, this decision is a draft Board decision. The Respondent and the Complainant will be provided with an opportunity to comment on the Board's draft findings and to present further evidence prior to the Board making a final decision. If the Board directs or the Respondent requests an in-person hearing, then one will be scheduled.

Disciplinary Offences Under Consideration

- [9] On the basis of the Registrar's Report, the Respondent's conduct that the Board resolved to investigate was that the Respondent had:
- (a) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act); and

² Clause 27 of Schedule 3

³ *Castles v Standards Committee No. [2013] NZHC 2289, Orlov v National Standards Committee 1 [2013] NZHC 1955*

- (b) 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 (s 317(1)(i) of the Act).

Function of Disciplinary Action

[10] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*⁴ and in New Zealand in *Dentice v Valuers Registration Board*⁵.

[11] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,⁶ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

[12] In a similar vein, the Board’s investigation and hearing process is not designed to address every issue that is raised in a complaint or by a complainant. The disciplinary scheme under the Act and Complaint’s Regulations focuses on serious conduct that warrants investigation and, if upheld, disciplinary action. Focusing on serious conduct is consistent with decisions made in the New Zealand courts in relation to the conduct of licensed persons⁷:

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

[13] Finally, the Board can only inquire into “the conduct of a licensed building practitioner” with respect to the grounds for discipline set out in section 317 of the Act. Those grounds do not include contractual breaches other than when the conduct reaches the high threshold for consideration under section 317(1)(i) of the Act, which deals with disrepute.

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

⁴ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

⁵ [1992] 1 NZLR 720 at p 724

⁶ [2016] HZHC 2276 at para 164

⁷ *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

Jurisdiction

[15] At the time of hearing the matter, the Respondent's licence had been suspended. Under section 297 of the Act, a person ceases to be a Licensed Building Practitioner when their license is suspended:

297 Effect of licensing suspension

- (1) *A person is not a licensed building practitioner, for the purposes of this Act, for the period for which his or her licensing is suspended.*
- (2) *At the end of the period of suspension, the person's licensing is immediately revived (unless there is some other ground to suspend or cancel that person's licensing under this subpart).*

[16] However, under section 315(2) of the Act, a complaint, and any decision on the complaint, may relate to a person who is no longer a Licensed Building Practitioner, provided that he was a licensed building practitioner at the time of the relevant conduct. The matters complained about occurred between 28 September 2020 and 21 January 2022. The Respondent was licensed between 10 November 2020 and 10 May 2022. As such, during that period, he came within the Board's jurisdiction and, as the conduct complained partly occurred during that period the Board can proceed with the matter.

Notice of the Complaint

[17] The complaint was sent to the Respondent using the contact details the Respondent provided for licensing purposes, and he was asked to provide a response to it. No response was received. The Board was satisfied that the Respondent had been given notice of the complaint and that it could proceed to consider it. In this respect Register of Licensed Building Practitioners must contain certain information including under section 301(1)(d) of the Act an "address for communications under this Act". Under section 302 the licensed building practitioner must keep their details up to date:

302 Obligation to notify Registrar of change in circumstances

- (1) *Each [person applying to become licensed], and each licensed building practitioner, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.*
- (2) *Change of circumstances—*
 - (a) *means any change in the information that the person has provided to the Registrar under this subpart; and*
 - (b) *includes any change that may be prescribed (if any).*

[18] As the Respondent has not provided any updated details, the address to be used for communications with him is that contained in the Register.

[19] The Act also provides for the service of notices in section 394. It provides that:

394 Service of notices

- (1) *Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—*
- (a) *delivered personally to the person; or*
 - (b) *delivered to the person at the person's usual or last known place of residence or business; or*
 - (c) *sent by fax or email to the person's fax number or email address; or*
 - (d) *posted in a letter addressed to the person at the person's usual or last known place of residence or business.*
- (5) *A notice or other document sent by post to a person in accordance with subsection (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.*

[20] Given the above provisions the Board finds that the required notices under the Regulations have been provided to the Respondent.

[21] The Board also notes that the purposes of the disciplinary provisions in the Act would be defeated if licensed building practitioners were able to avoid complaints by not maintaining up-to-date contact details as per the requirements of the Act.

Evidence

[22] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁸. Under section 322 of the Act, the Board has relaxed rules of evidence that allow it to receive evidence that may not be admissible in a court of law.

Record of Work

[23] The Respondent was engaged to carry out building work on an alteration to an existing dwelling under a building consent. The building work included restricted building work for which a record of work must be provided on completion. The Respondent's building work started on or about 28 September 2020 and came to an end at some time between 17 and 21 January 2022 when the contractual relationship came to an end. A record of work has not been provided by the Respondent for the restricted building work that he had completed prior to the relationship ending, despite requests for one being made.

Disrepute

[24] The allegations of disrepute related to the Respondent's conduct with respect to financial matters. In particular, the Complainant noted that the Respondent had been paid for the services and supplies provided by subcontractors but that those contractors had not, in turn, been paid or only paid nominal amounts to them. The

⁸ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Complainant noted that the Respondent had made frequent promises as regards payment to subcontractors and had made multiple statements as regards progress and completion that were false.

- [25] Included in the evidence that was provided was a letter from the Complainant, which set out a timeline of payment promises that had been made and broken and of misleading or untruthful statements that the Respondent had made in respect of various sub-trades and suppliers.

Conclusion and Reasoning

[26] The Board has decided that the Respondent **has**:

- (a) failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out (other than as an owner-builder) or supervise, or has carried out (other than as an owner-builder) or supervised, (as the case may be), to provide the persons specified in section 88(2) with a record of work, on completion of the restricted building work, in accordance with section 88(1) (s 317(1)(da)(ii) of the Act); and
- (b) 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 (s 317(1)(i) of the Act)

and **should** be disciplined.

[27] The reasons for the Board's decisions follow.

Record of Work

- [28] There is a statutory requirement under section 88(1) of the Building Act 2004 for a licensed building practitioner to provide a record of work to the owner and the territorial authority on completion of restricted building work⁹.
- [29] Failing to provide a record of work is a ground for discipline under section 317(1)(da)(ii) of the Act. In order to find that ground for discipline proven, the Board need only consider whether the Respondent had "good reason" for not providing a record of work on "completion" of the restricted building work.
- [30] The Board discussed issues with regard to records of work in its decision C2-01170¹⁰ and gave guidelines to the profession as to who must provide a record of work, what a record of work is for, when it is to be provided, the level of detail that must be provided, who a record of work must be provided to and what might constitute a good reason for not providing a record of work.
- [31] The starting point with a record of work is that it is a mandatory statutory requirement whenever restricted building work under a building consent is carried out or supervised by a licensed building practitioner (other than as an owner-

⁹ Restricted Building Work is defined by the Building (Definition of Restricted Building Work) Order 2011

¹⁰ *Licensed Building Practitioners Board Case Decision C2-01170* 15 December 2015

builder). Each and every licensed building practitioner who carries out restricted building work must provide a record of work.

- [32] The statutory provisions do not stipulate a timeframe for the licenced person to provide a record of work. The provisions in section 88(1) simply states “on completion of the restricted building work ...”. As was noted by Justice Muir in *Ministry of Business Innovation and Employment v Bell*¹¹ “... the only relevant precondition to the obligations of a licenced building practitioner under s 88 is that he/she has completed their work”.
- [33] As to when completion will have occurred is a question of fact in each case.
- [34] In most situations, issues with the provision of a record of work do not arise. The work progresses, and records of work are provided in a timely fashion. Completion occurred on or about 21 January 2022. A record of work has not been provided. On this basis, the Board finds that the record of work was not provided on completion as required, and the disciplinary offence has been committed.
- [35] Section 317(1)(da)(ii) of the Act provides for a defence of the licenced building practitioner having a “good reason” for failing to provide a record of work. If they can, on the balance of probabilities, prove to the Board that one exists, then it is open to the Board to find that a disciplinary offence has not been committed. Each case will be decided by the Board on its own merits, but the threshold for a good reason is high. No good reasons have been advanced and none are found.

Disrepute

- [36] The disrepute disciplinary provision in the Act is similar to legislation in other occupations including medical professionals, teachers, lawyers and conveyancers, chartered accountants, financial advisors, veterinarians and real estate agents. The Board considered the disrepute provisions in Board Decision C2-01111¹² and discussed the legal principles that apply.
- [37] The Board, in C2-01111, considered whether the conduct complained of needs to be conduct carried out in the capacity of a licensed building practitioner. The Board notes that in the professions listed above there is no requirement for the conduct to have been in the course of carrying out that person’s trade or profession. For example, in the High Court held in *Davidson v Auckland Standards Committee No 3*,¹³ a company director, who, in the course of his duties as a director, was charged with offences under the Securities Act 1978, had brought the legal profession into disrepute. He held a lawyer’s practising certificate at the time. However, he was not providing legal services. It was submitted in the case that when the acts are outside of the legal practice, only acts which exhibit a quality incompatible with the duties of the legal profession, for example, dishonesty or lack of integrity, could bring the legal profession into disrepute. This was rejected by the court.

¹¹ [2018] NZHC 1662 at para 50

¹² Board decision dated 2 July 2015.

¹³ [2013] NZAR 1519

[38] Similarly, in a determination of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants¹⁴, convictions for indecent assault and being found without reasonable cause in a building were found to bring the profession into disrepute as it was inconsistent with the required judgment, character and integrity.

[39] Turning to the conduct which brings or is likely to bring the regime into disrepute the Act does not provide guidance as to what is “disrepute”. The Oxford Dictionary defines disrepute as “the state of being held in low esteem by the public”,¹⁵ and the courts have consistently applied an objective test when considering such conduct. In *W v Auckland Standards Committee 3 of the New Zealand Law Society*¹⁶ the Court of Appeal held that:

*the issue of whether conduct was of such a degree that it tended to bring the profession into disrepute must be determined objectively, taking into account the context in which the relevant conduct occurred. The subjective views of the practitioner, or other parties involved, were irrelevant.*¹⁷

[40] As to what conduct will or will not be considered to bring the regime into disrepute, it will be for the Board to determine on the facts of each case. The Board will, however, be guided by finding in other occupational regimes. In this respect, it is noted disrepute was upheld in circumstances involving:

- criminal convictions¹⁸;
- honest mistakes without deliberate wrongdoing¹⁹;
- provision of false undertakings²⁰; and
- conduct resulting in an unethical financial gain²¹.

[41] It is also noted that there are a number of cases where the conduct related to specific or important tasks a licensed building practitioner is required to complete within their occupations. Often such behaviour is measured within the context of a code of conduct or ethics. A code is yet to be established within the Building Act, although provision for one is made. What is clear from the cases, though, is that unethical or unprofessional conduct can amount to disreputable conduct.

[42] In matter C2-01688, the Board found that the Respondent had brought the regime into disrepute in respect of his conduct. It was also in relation to financial transactions.

[43] The Board makes the same finding in this case. The Respondent has taken money and has not applied it to the purposes for which it was received. He has made

¹⁴ 24 September 2014

¹⁵ Online edition, compilation of latest editions of *Oxford Dictionary of English, New Oxford American Dictionary, Oxford Thesaurus of English and Oxford American Writer's Thesaurus*, search settings UK English, accessed 12/05/15

¹⁶ [2012] NZCA 401

¹⁷ [2012] NZAR 1071 page 1072

¹⁸ *Davidson v Auckland Standards Committee No 3* [2013] NZAR 1519

¹⁹ *W v Auckland Standards Committee 3 of the New Zealand Law Society* [2012] NZCA 401

²⁰ *Slack, Re* [2012] NZLCDT 40

²¹ *Colliev Nursing Council of New Zealand* [2000] NZAR 7

repeated false statements and has not kept to the promises that he made. It was clear to the Board that the conduct went beyond civil debt matters. The pattern of behaviour with regard to financial matters and the deceitful conduct engaged in has elevated the conduct to disreputable behaviour.

- [44] Finally, the Board also notes that the Courts have stated that the threshold for disciplinary complaints of disrepute is high and that when the disciplinary provision was introduced to Parliament, the accompanying Cabinet paper noted:

This power would only be exercised in the most serious of cases of poor behaviour, such as repetitive or fraudulent behaviour, rather than for minor matters.

- [45] The matters before the Board are serious, and the sums of money involved are considerable. On the basis of the above, the Board finds that the Respondent's conduct has brought the regime into disrepute.

Decision on Penalty, Costs and Publication

- [46] 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.

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

Penalty

- [48] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v Complaints Assessment Committee*²² commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [49] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,²³ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Building Act they have the advantage of simplicity and transparency. The Court recommended adopting a

²² HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

- [50] The Respondent has previously appeared before the Board. In March 2020, the Board found that the Respondent had, in February 2019, failed to provide a record of work on completion of restricted building work. He was fined \$1,000 and ordered to pay costs of \$500.²⁴ Again, in December 2021, the Board found that the Respondent had, in October 2020, failed to provide a record of work on completion of restricted building work. He was fined \$1,500 and ordered to pay costs of \$500.²⁵ The Respondent did not engage in that investigation process. He did respond to the Board's decision stating that he had learnt from the matter. As he now appears before the Board, that is doubted. The previous offending is an aggravating factor.
- [51] The Respondent has, on this occasion, committed two disciplinary offences. The first is the record of work matter. Whilst it is at the lower end of the disciplinary scale, this is the third time that the Respondent will be disciplined for a failure to provide one. The Board's normal starting point for a failure to provide a record of work is a fine of \$1,500, an amount which it considers will deter others from such behaviour. Given the aggravating factors present, a higher fine is warranted.
- [52] The second disciplinary offence, disrepute, is more serious. A harsher penalty is required. The Board considered the suspension or cancellation of the Respondent's licence. However, as it is not active, such an order would serve little purpose. As such, the Board decided to impose a fine. It is set at \$3,500.

Costs

- [53] Under section 318(4) the Board may require the Respondent "to pay the costs and expenses of, and incidental to, the inquiry by the Board."
- [54] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case²⁶.
- [55] In *Collie v Nursing Council of New Zealand*,²⁷ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:
- But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.*
- [56] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁸ the High Court noted:

²⁴ Alex Smith [2019] BPB 25253

²⁵ Alex Smith [2021] BPB 25671

²⁶ *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.

²⁷ [2001] NZAR 74

²⁸ CIV-2011-485-000227 8 August 2011

[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.

[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.

- [57] 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 based on the High Court decisions above are then made.
- [58] The Board notes the matter was dealt with on the papers. There has, however, been costs incurred investigating the matter, producing the Registrar's Report and in the Board making its decision. The costs have been less than those that would have been incurred had a full hearing been held. As such, the Board will order that costs of \$500 be paid by the Respondent. The Board considers that this is a reasonable sum for the Respondent to pay toward the costs and expenses of, and incidental to, the inquiry by the Board.

Publication

- [59] 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 Act²⁹. The Board is also able, under section 318(5) of the Act, to order publication over and above the public Register:

In addition to requiring the Registrar to notify in the Register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.

- [60] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing. This is in addition to the Respondent being named in this decision.
- [61] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990³⁰. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction³¹. Within the disciplinary

²⁹ Refer sections 298, 299 and 301 of the Act

³⁰ Section 14 of the Act

³¹ Refer sections 200 and 202 of the Criminal Procedure Act

hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³². The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*³³.

- [62] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest³⁴. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [63] Based on the above, the Board will not order further publication.

Section 318 Order

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

Penalty: Pursuant to section 318(1)(f) of the Building Act 2004, the Respondent is ordered to pay a fine of \$3,500.

Costs: Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$500 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

In terms of section 318(5) of the Act, there will not be action taken to publicly notify the Board's action, except for the note in the Register and the Respondent being named in this decision.

- [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 Draft Decision

[66] The Board invites the Respondent and the Complainant 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.

[67] Submissions and/or further evidence must be filed with the Board by no later than the close of business on **15 September 2022**.

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

³² *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³³ *ibid*

³⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [69] 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.
- [70] If no submissions or further evidence is received within the time frame specified, then this decision will become final.

Request for In-Person Hearing

- [71] 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.
- [72] A request for an in-person hearing must be made in writing to the Board Officer no later than the close of business on **15 September 2022**.
- [73] 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

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

Signed and dated this 24th day of August 2022



Mr M Orange
Presiding Member

This decision and the order herein were made final on 16 September 2022 on the basis that no further submissions were received.

Signed and dated this 22nd day of September 2022



Mr 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 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.*