

## Before the Building Practitioners Board

	BPB Complaint No. CB25469
Licensed Building Practitioner:	Terrence Walsh (the Respondent)
Licence Number:	BP 134040
Licence(s) Held:	Carpentry and Site AOP 1

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

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Complaint or Board Inquiry	Complaint
Hearing Location	Queenstown
Hearing Type:	In Person
Hearing Date:	9 September 2020
Decision Date:	21 September 2020

#### Board Members Present:

Chris Preston, Chair (Presiding)  
Robin Dunlop, Retired Professional Engineer  
Bob Monteith, LBP, Carpentry and Site AOP 2  
Rob Shao, LBP, Carpentry and Site AOP 1

#### 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.

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### Summary of the Board’s Decision

- [1] The Respondent was negligent in failing to ensure that a building consent was in place prior to undertaking building work and for the manner in which he installed a window. The Respondent is censured and ordered to pay costs \$2,000.

### The Charges

- [2] The hearing resulted from a complaint about the conduct of the Respondent and a Board resolution under regulation 10 of the Complaints Regulations<sup>1</sup> to hold a hearing in relation to building work at [Omitted].
- [3] The alleged disciplinary offence the Board resolved to investigate was that the Respondent may have carried out or supervised building work or building inspection work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act, IN THAT, he may have:
- (a) carried out building work that required building consent without ensuring that one was in place in that the building work included closing in a porch, making changes to interior and exterior walls, installing a shower, moving sanitary fixtures and installing thermal insulation to an external wall of a building neither of which are not provided for in Schedule 1 of the Act; and/or
  - (b) installed an exterior window in a non-compliant manner.

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<sup>1</sup> The resolution was made following the Board’s consideration of a report prepared by the Registrar in accordance with the Complaints Regulations.

### Function of Disciplinary Action

[4] 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*<sup>2</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>3</sup>.

[5] 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*<sup>4</sup> 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.”*

[6] 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 persons<sup>5</sup>:

*... 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.*

[7] 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.

[8] The above commentary on the limitations of the disciplinary process are 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.

### Inquiry Process

[9] The investigation and hearing procedure under the Act and Complaints Regulations is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. Rather the Board sets the charges, and it decides what evidence is

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<sup>2</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>3</sup> [1992] 1 NZLR 720 at p 724

<sup>4</sup> [2016] HZHC 2276 at para 164

<sup>5</sup> *Pillai v Messiter (No 2)* (1989) 16 NSWLR 197 (A) at 200

required at a hearing to assist it in its investigations. In this respect, the Board reviews the available evidence when considering the Registrar’s Report and determines the witnesses that it believes will assist at a hearing. The hearing itself is not a review of all of the available evidence. Rather it is an opportunity for the Board to seek clarification and explore certain aspects of the charges in greater depth.

[10] Whilst a complainant may not be required to give evidence at a hearing, they are welcome to attend and, if a complainant does attend, the Board provides them with an opportunity to participate in the proceedings.

**Evidence**

[11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</sup>. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

[12] The procedure the Board uses is inquisitorial, not adversarial. The Board examines the documentary evidence available to it prior to the hearing. The hearing is an opportunity for the Board, as the inquirer and decision-maker, to call and question witnesses to further investigate aspects of the evidence and to take further evidence from key witnesses. The hearing is not a review of all of the available evidence.

[13] The day before the hearing, the Board received additional evidence from the Complainant. It consisted of over 31 pages containing photos and drawings and communication between the Complainant and the Respondent. Given the volume of evidence, and the short period of time for both the Board and the Respondent to review and consider it and the natural justice implications, the Board decided that it would not be accepted it on mass, but if individual pages were referred to in the course of the inquiry, they would be considered if they relevant to the issues before the Board.

[14] In addition to the documentary evidence before the Board heard evidence at the hearing from:

Terrance Walsh	Respondent
[Omitted]	Complainant
[Omitted]	Witness
[Omitted]	Licensed Building Practitioner

[15] The Building work at [Omitted], involved the renovation of a two-level rental home based on plans provided by a friend of the Complainant, [Omitted], who was acting as the project manager. [Omitted] stated that she had some experience in these types of renovations but was neither a licenced designer nor architect.

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [16] The building work included the removal of a fireplace, building a new wall under a load-bearing beam, the installation of a new shower, the renovation of an existing porch including installing a new window and insulating the porch with batts.
- [17] The building work was undertaken by the Respondent under Schedule One of the Building Act being general repair and maintenance and building component replacement on a like for like basis.
- [18] In the Complainant's opening statement she outlined the considerable frustration she had had with the Respondent leaving the building site incomplete and with the window in the porch constructed in a manner that would not be weathertight or meet the Building Code.
- [19] The Respondent gave evidence that he had undertaken building work on-site, which included the demolition of a fireplace, the erection of a load-bearing wall, the framing of a new shower (where no shower had been before) and work on an existing porch including the fitting of a window.
- [20] The Respondent accepted that he had not installed the porch window in accordance with the Building Code stating that "*I had my own way of doing it which was quicker*". The following photograph depicts the manner in which it was installed:



- [21] The [Omitted] remedial licensed building practitioner who completed the work, confirmed that the window had not been installed to the Building Code and needed to be removed and refitted.
- [22] With respect to the need for a building consent for the work undertaken and planned the Respondent acknowledged that, on reflection, some of the building

work undertaken by him and planned by the Complainant may have required a building consent.

- [23] No approach to the local Council was made by him or anybody associated with the renovation to determine if a building consent may have been required.
- [24] On questioning from the Board, the remedial builder [Omitted], who completed the work, also stated that, on reflection, a building consent may have been required for the renovation.

### **Board's Conclusion and Reasoning**

[25] The Board has decided that the Respondent **has** carried out or supervised building work or building inspection work in a negligent manner (s 317(1)(b) of the Act) and **should** be disciplined.

[26] The Board's considerations relate to the failure to obtain a building consent.

[27] Under section 17 of the Act all building work must comply with the building code. The building code is contained in Schedule 1 of the Building Regulations 1992 (the Building Code).

[28] All building work must also be carried out in accordance with a building consent. Section 40 of the Act provides:

**40 Buildings not to be constructed, altered, demolished, or removed without consent**

- (1) *A person must not carry out any building work except in accordance with a building consent.*
- (2) *A person commits an offence if the person fails to comply with this section.*
- (3) *A person who commits an offence under this section is liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence has continued.*

[29] Building consents are granted under section 49 of the Act. A building consent can only be granted if the provisions of the Building Code will be satisfied. Section 49 provides:

**49 Grant of building consent**

- (1) *A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.*

[30] The process of issuing a building consent and the subsequent inspections under it ensure independent verification that the Building Code has been complied with and

that the works will meet the required performance criteria in the Building Code. In doing so, the building consent process provides protection for owners of works and the public at large. This accords with the purposes of the Act as set out in section 3:

### **3 Purposes**

*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.*

[31] In *Tan v Auckland Council*<sup>7</sup> the High Court, whilst dealing with a situation where no building consent had been obtained, stated the importance of the consenting process as follows:

*[35] The building consent application process ensures that the Council can check that any proposed building work is sufficient to meet the purposes described in s 3 (of the Act). If a person fails to obtain a building consent that deprives the Council of its ability to check any proposed building work.*

[32] The same applies to the ongoing verification of building work. A failure to notify the Council of changes to the consented documents defeats the purpose of the process. Moreover undertaking building works that vary from those that have been consented can potentially put person and property at risk of harm.

[33] Justice Brewer in *Tan* also noted:

*[37] ... those with oversight (of the building consent process) are in the best position to make sure that unconsented work does not occur.*

*[38] ... In my view making those with the closest connection to the consent process liable would reduce the amount of unconsented building work that is carried out, and in turn would ensure that more buildings achieve s 3 goals.*

[34] The *Tan* case related to the prosecution of a project manager of a build. The project manager did not physically carry out any building work. The High Court on appeal,

<sup>7</sup> [2015] NZHC 3299 [18 December 2015]

however, found that his instructions to those who did physically carry out the work amounted to “carrying out” for the purposes of section 40 of the Act.

- [35] There are limited exceptions to the requirement for a building consent. These are provided for in section 41 of the Act. The main exception is building work described in Schedule 1 of the Act, and this is further provided for in section 42A of the Act. The burden is on those that seek to rely on an exception to show that the building work comes with that exception.
- [36] The Board considers the Court in *Tan* was envisaging that those who are in an integral position as regards the building work, such as a licensed building practitioner, have a duty to ensure a building consent (or an amended building consent) is in place prior to building work being carried out. It follows that failing to do so can fall below the standards of care expected of a licensed building practitioner.
- [37] The Board also notes that section 362F of the Act imposes minimum requirements for contracts for residential building work over \$30,000 in value. It also imposes an obligation for the contract to be in writing and for the contract to comply with any regulations.
- [38] The Board heard evidence that a written contract had not been entered into. Contravention of the requirement for a contract is an infringement offence, but the Board does not have any jurisdiction over infringement offences<sup>8</sup>.
- [39] Notwithstanding the lack of a written contract, the minimum requirements for residential building contracts, which are implemented by way of the Building (Residential Consumer Rights and Remedies) Regulations 2014, are deemed to be part of an oral contract for residential building work. This is by way of Regulation 7, which states:

**7 Prescribed clauses deemed to be included in oral residential building contracts for prescribed minimum price or more**

- (1) *This regulation applies to a residential building contract where the price for the building work is not less than the prescribed minimum price if there is no written contract as required under section 362F of the Act.*
- (2) *The contract is deemed to include the terms prescribed in Schedule 3.*

- [40] Within Schedule 3 clause 1 states:

**1 Building consents**

- 1.1 *The building contractor undertakes to obtain all necessary approvals, including building consents, before commencing the building work.*

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<sup>8</sup> Infringement offences fall within the Jurisdiction of the Ministry of Business Innovation and Employment.

- [41] Given this provision, it is clear that there was, in addition to the obligations outlined in the *Tan* decision, a contractual obligation on the Respondent to obtain any required consents or at least to ensure they were obtained before the building work was started.
- [42] The question for the Board to consider is whether, at the time the building work was undertaken by the Respondent, he knew or ought to have known that a building consent was required for what was being undertaken and if so whether the Respondent has, as a result of the failing, been negligent or incompetent.
- [43] Negligence and incompetence are not the same. In *Beattie v Far North Council*<sup>9</sup> Judge McElrea noted:
- [43] Section 317 of the Act uses the phrase "in a negligent or incompetent manner", so it is clear that those adjectives cannot be treated as synonymous.*
- [44] Negligence is the departure by a licensed building practitioner, whilst carrying out or supervising building work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*<sup>10</sup> test of negligence which has been adopted by the New Zealand Courts<sup>11</sup>.
- [45] Incompetence is a lack of ability, skill or knowledge to carry out or supervise building work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*<sup>12</sup> it was stated as "*an inability to do the job*".
- [46] The New Zealand Courts have stated that assessment of negligence and/or incompetence in a disciplinary context is a two-stage test<sup>13</sup>. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [47] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purposes of the Act<sup>14</sup> which are outlined above. The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every

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<sup>9</sup> Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>10</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>11</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>12</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

<sup>13</sup> *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>14</sup> *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

case, the Board was required to take into account subjective considerations relating to the practitioner<sup>15</sup>.

- [48] Turning to seriousness in *Collie v Nursing Council of New Zealand*<sup>16</sup> the Court's noted, as regards the threshold for disciplinary matters, that:

*[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.*

- [49] In this case the Board was of the view that a Building Consent would have been required for the renovation given the demolition of a fireplace, the construction of a new shower where none existed before, the building of a load bearing wall and the planned insulation of the porch. In essence, various aspects of the building work fell outside of the exemptions allowed for in Schedule One of the Building Act. Accordingly, a building consent would have been required. At the very least inquiries of the appropriate authorities should have been made before the work was undertaken.
- [50] The Respondent made no effort to enquire with the Council as to the need for a building consent. Rather, he accepted the advice and direction from the Complainant and [Omitted] that this renovation was "like for like" and was thus covered by Schedule One of the Building Act.
- [51] As stated above, there is a positive obligation on the Respondent to at least satisfy himself that a building consent was not required especially given the type of building work to be undertaken.
- [52] In regard to the incorrectly installed porch window, the Respondent accepted that for convenience and speed, he undertook the installation of the porch window in a way that did not meet the Building Code.
- [53] Given the above factors the Board, which includes persons with extensive experience and expertise in the building industry, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

### **Penalty, Costs and Publication**

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

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<sup>15</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

<sup>16</sup> [2001] NZAR 74

[55] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make indicative orders and give the Respondent an opportunity to provide further evidence or submissions relevant to the indicative orders.

### Penalty

[56] 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*<sup>17</sup> 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.*

[57] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*<sup>18</sup> 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 do have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors.

[58] The Board noted that the Respondent had received advice from the owner and the person who developed the design to the effect that it was Schedule One building work. Whilst he should not have relied on that advice and should have made his own assessment and inquiries, the Board has taken it into account as a mitigating factor. The Board also noted that another licensed building practitioner had carried on with the work under the same circumstances and that the Respondent did accept aspects of the allegations.

[59] Based on the above, the Board decided that a significant penalty was not warranted and that a censure would suffice. A censure is a public expression of disapproval of the conduct in question.

### Costs

[60] 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."

[61] 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

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<sup>17</sup> HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>18</sup> 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

that the percentage can then be adjusted up or down having regard to the particular circumstances of each case<sup>19</sup>.

- [62] In *Collie v Nursing Council of New Zealand*<sup>20</sup> 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.*

- [63] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$2,000 toward the costs of and incidental to the Board's inquiry. The Board reduced the costs from its normal scale of \$3,500 for a half-day matter on the basis that the matter was not overly complex, and the Respondent was cooperative.

### Publication

- [64] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register maintained as part of the Licensed Building Practitioners' scheme as is required by the Act<sup>21</sup>. 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.*

- [65] 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.
- [66] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990<sup>22</sup>. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction<sup>23</sup>. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive<sup>24</sup>. 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*<sup>25</sup>.

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<sup>19</sup> *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

<sup>20</sup> [2001] NZAR 74

<sup>21</sup> Refer sections 298, 299 and 301 of the Act

<sup>22</sup> Section 14 of the Act

<sup>23</sup> Refer sections 200 and 202 of the Criminal Procedure Act

<sup>24</sup> *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

<sup>25</sup> *ibid*

- [67] 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 interest<sup>26</sup>. 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.
- [68] Based on the above, the Board will not order further publication.

### **Section 318 Order**

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

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

**Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,000 (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.**

- [70] 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**

- [71] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until close of business on **19 October 2020**. 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.
- [72] In calling for submissions on penalty, costs and mitigation, the Board is not inviting the Respondent to offer new evidence or to express an opinion on the findings set out in this decision. If the Respondent disagrees with the Board's findings of fact and/or its decision that the Respondent has committed a disciplinary offence, the Respondent can appeal the Board's decision.

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<sup>26</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

## Right of Appeal

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

Signed and dated this 25<sup>th</sup> day of September 2020



**Chris Preston**  
Presiding Member

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### <sup>i</sup> **Section 318 of the Act**

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

### <sup>ii</sup> **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*

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(b) *within any further time that the appeal authority allows on application made before or after the period expires.*