

## Before the Building Practitioners Board

	BPB Complaint No. 26579
Licensed Building Practitioner:	Wayne Tupaea
Licence Number:	BP 131732
Licence(s) Held:	Carpentry

---

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

---

Complaint or Board Inquiry:	Board Inquiry
Hearing Location:	Wellington
Hearing Type:	In Person
Hearing and Decision Date:	13 August 2025

#### Board Members Present:

Mr M Orange, Chair, Barrister (Presiding)  
Mr G Anderson, LBP, Carpentry and Site AoP 2  
Mr C Lang, Building Surveyor and Quantity Surveyor

#### Appearances:

Mr Laidlow for the Respondent

#### 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)(d) of the Act.

The Respondent is censured and ordered to pay costs of \$2,100. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

## Contents

<b>Summary</b> .....	2
<b>The Charges</b> .....	2
<b>Evidence</b> .....	3
<b>Negligence or Incompetence</b> .....	5
Has the Respondent departed from an acceptable standard of conduct .....	5
Was the conduct serious enough .....	7
Has the Respondent been negligent or incompetent.....	7
<b>Contrary to a Building Consent</b> .....	8
Was there building work that differed from the building consent.....	8
Was the conduct serious enough .....	10
Has the Respondent breached section 317(1)(d) of the Act .....	10
<b>Board Decisions</b> .....	10
<b>Penalty, Costs and Publication</b> .....	10
Penalty .....	10
Costs.....	11
Publication .....	12
<b>Section 318 Order</b> .....	12
<b>Right of Appeal</b> .....	13

## Summary

- [1] The Respondent carried out building work that did not comply with the building consent issued. Because of extenuating circumstances, the Respondent was censured and ordered to pay the cost of \$2,100. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

## The Charges

- [2] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. The Board sets the charges and decides what evidence is required.<sup>1</sup>

---

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

- [3] In this matter, the disciplinary charges the Board resolved to further investigate<sup>2</sup> were that the Respondent may, in relation to building work at [Omitted], have:
- (a) carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act; and
  - (b) carried out or supervised building work that does not comply with a building consent contrary to section 317(1)(d) of the Act.
- [4] In further investigating the Respondent's conduct under section 317(1)(b) and (d) of the Act, the Board will be inquiring into:
- (a) roofing issues raised in a report written by [Omitted], Registered Building Surveyor (starting at page 65 of the Board's file); and
  - (b) whether a building consent change (minor variation or amendment) should have been in place prior to a different roofing product to that which was consented was installed.

#### **Evidence**

- [5] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.<sup>3</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.
- [6] The Board Inquiry arose as a result of a complaint about [Omitted], a former Licensed Building Practitioner (LBP). The complaint involved matters that had previously been determined by the Board. The issues under investigation were, however, new allegations.
- [7] The hearing focused on two issues. The quality and compliance of roofing work and a change of roofing product from that which was consented.
- [8] The roof was installed in late 2019 and early 2020. When it was installed, the consented product, RT7 Trapezoidal profile aluminium roofing, was not immediately available. A delay of some months would have resulted if it had been used, and there was concern about the deterioration of timber building products if the building was not closed in.
- [9] [Omitted], the main contractor, made a decision to change the product to Euramax premium colour-coated aluminium roofing product, a more expensive product. The Euramax product used the same substrate as the RTZ. The method of joining sheets was different. The RTZ used a lap join, whereas the Euramax used a double standing seam, which required specialist tools, skills and knowledge at sheet junctions. [Omitted] stated he had discussed the change with the owners but that he did not

---

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

<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

have any contact with the designer during the build. A change to the building consent for the roofing product change was not processed until 16 January 2024. Neither [Omitted] nor the Respondent were involved in the building work at that point.

- [10] The roof was installed by [Omitted] together with the Respondent and two [Omitted] staff members. [Omitted] was not an LBP at the time, but did have extensive experience as a roofer. He had not worked with the Euramax product before. He did have experience with standing seam junctions, but not with an aluminium roofing product.
- [11] [Omitted] gave evidence that he had discussed the supervision arrangements with the Respondent and that it had been agreed that the Respondent would be the supervising LBP for the roofing work, which was restricted building work that had to be carried out or supervised by an LBP. There were no other LBPs involved in the roofing work. The Respondent could not recall a discussion about him being the supervising LBP. The Respondent did not have any experience with the specific roofing product or rolled seam joints. He stated that he relied on [Omitted] knowledge and experience.
- [12] Neither [Omitted] nor the Respondent made any inquiries about the installation methodology for the Euramax product. They did not obtain copies of the manufacturer's installation instructions. Nor did they inquire about a consent change having been obtained for the change of roofing product. [Omitted] stated that he relied on [Omitted] assurances. The Respondent did not turn his mind to the question.
- [13] After the roof had been mostly completed, [Omitted] contract came to an end, and other builders carried on with the building work. Scaffolding was erected on and around the installed roof. Damage was caused to the roof by the scaffolding. A weather event also caused some damage.
- [14] [Omitted], a Registered Building Surveyor, inspected the roof in September 2023 and produced a report. He noted the differences in the roofing product used compared to that consented and that:

*No architectural details, specifications or amendments of the alternate roofing have been issued at this stage.*

- [15] [Omitted] summarised his findings in his report and provided photographs of the main areas of concern. At the hearing, the Board reviewed the photographs to ascertain those that showed mechanical damage caused by scaffolding or persons accessing building work using the roof versus photographs of substandard or non-compliant roofing work. The majority of the photographs were related to mechanical damage. [Omitted] provided his assessment that the roof, as shown in the photographs (workmanship issues aside), did not reflect the state and condition of the roof when he was last involved on-site. The Respondent accepted that aspects of

the roofing work, and in particular those relating to the installation of ridges, flashings and the crimping of seams, may not have been completed to an acceptable standard, but noted that he had left site before all of the flashings had been completed.

### **Negligence or Incompetence**

- [16] To find that the Respondent was negligent, the Board needs to determine, on the balance of probabilities,<sup>4</sup> that the Respondent departed from an accepted standard of conduct when carrying out or supervising building work as judged against those of the same class of licence. This is described as the *Bolam*<sup>5</sup> test of negligence.<sup>6</sup> To make a finding of incompetence, the Board has to determine that the Respondent has demonstrated a lack of ability, skill, or knowledge to carry out or supervise building work to an acceptable standard.<sup>7</sup> A threshold test applies to both. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>8</sup> If it does not, then a disciplinary finding cannot be made.

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

- [17] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>i</sup> as well as the requirement that all building work must comply with the Building Code<sup>9</sup> and any building consent issued.<sup>10</sup> The test is an objective one.<sup>11</sup>
- [18] In the absence of any other LBPs, the Respondent was the supervisor of the restricted building work. He was responsible for ensuring the quality and compliance of the building work.
- [19] Supervise is defined in section 7 of the Act. The definition states:

*supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—*

---

<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1. Under section 322 of the Act, the Board has relaxed rules of evidence which allow it to receive evidence that may not be admissible in a court of law.

<sup>5</sup> *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

<sup>6</sup> Adopted in New Zealand in various matters including: *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

<sup>7</sup> In *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313 it was described as “a demonstrated lack of the reasonably expected ability or skill level”. In *Ali v Kumar and Others*, [2017] NZDC 23582 at [30] as “an inability to do the job”

<sup>8</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] “Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness”.

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

<sup>10</sup> Section 40(1) of the Building Act 2004

<sup>11</sup> *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71 noted that the tribunal does not have to take into account the Respondent’s subjective considerations.

- (a) *is performed competently; and*
- (b) *complies with the building consent under which it is carried out.*

[20] When considering the adequacy of an LBP's supervision, the Board needs to look at a number of factors, but ultimately, it comes down to a question of whether the work met the requirements of the Building Code and the building consent and, if not, the level of non-compliance.

[21] Supervision in the context of the Building Act has not yet been considered by the courts. It has, however, been considered in relation to the Electricity Act 1992<sup>12</sup>. The definition of supervision in that Act is consistent with the definition in the Building Act, and as such, the comments of the court are instructive. In the case, Judge Tompkins stated at paragraph 24:

*"As is made apparent by the definition of "supervision" in the Act, that requires control and direction by the supervisor so as to ensure that the electrical work is performed competently, that appropriate safety measures are adopted, and that when completed the work complies with the requisite regulations. At the very least supervision in that context requires knowledge that work is being conducted, visual and other actual inspection of the work during its completion, assessment of safety measures undertaken by the person doing the work on the site itself, and, after completion of the work, a decision as to compliance of the work with the requisite regulations."*

[22] In this instance, the Respondent was, put simply, out of his depth. He had no knowledge or experience with the type of roofing product that was being installed or with the method of installation (crimping). He was deferring to [Omitted] knowledge and experience. Errors were made, and the resulting product did not comply with Clause E2 of the Building Code, as there were areas where water could enter the roof cavity.

[23] Because the Respondent lacked the knowledge and skills to carry out or supervise building work to an acceptable standard, he was, in effect, working outside his competence or, to put it another way, was incompetent. As it was put in *Beattie*<sup>13</sup> there was "*a demonstrated lack of the reasonably expected ability or skill level*", and in *Ali v Kumar and Others*,<sup>14</sup> "*an inability to do the job*". The question, however, is whether the conduct was serious enough.

---

<sup>12</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011

<sup>13</sup> *Beattie v Far North Council* Judge McElrea, DC Whangarei, CIV-2011-088-313

<sup>14</sup> *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

Was the conduct serious enough

- [24] As discussed, it is not enough that the Board has made a finding of incompetence. More is needed. The conduct also has to reach the threshold outlined by the Courts to make a disciplinary finding. In *Collie v Nursing Council of New Zealand*,<sup>15</sup> the test was described as:

*[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.*

- [25] In *Pillai v Messiter (No 2)*,<sup>16</sup> an Australian Court of Appeal decision that has been adopted by the Superior Courts of New Zealand, stated:

*... 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.*

- [26] The Respondent was involved in the building work as an employee, and the Board considered that he did not turn his mind to the fact that he was the supervising LBP. The reality is that the Respondent should have turned his mind to the question and, because he considered he was not competent to supervise, as was shown by his deference to [Omitted], he should have informed his employer of that and ensured a competent supervisor was engaged. That said, his employer, as a former LBP, should have also been aware of the issue and taken steps to ensure a competent supervisor was in charge of the work.
- [27] The circumstances indicate that the Respondent unwittingly found himself in a situation where he was not competent to supervise the restricted building work. On that basis, the Board has decided that the conduct falls into the category of inadvertent error, oversight or carelessness, which the High Court in *Collie* stated was not the type of conduct that should result in a disciplinary outcome.

Has the Respondent been negligent or incompetent

- [28] The Respondent **has not** conducted himself in a negligent or incompetent manner.
- [29] The Respondent is, however, cautioned. In future, he should take care with the types of restricted building work he undertakes or supervises, and satisfy himself that he has the personal competence to ensure it is carried out to an acceptable standard and in a compliant manner.

---

<sup>15</sup> [2001] NZAR 74

<sup>16</sup> (1989) 16 NSWLR 197 (CA) at 200

### **Contrary to a Building Consent**

- [30] Building consents provide detailed plans and specifications for building work. They are issued by Territorial or Building Consent Authorities on the basis that the building work will meet the provisions of the Building Code.<sup>17</sup> Once issued, the building work must be carried out in accordance with the building consent.<sup>18</sup>
- [31] If building work departs from the building consent issued, the Board can find that a disciplinary offence under section 317(1)(d) of the Act has been committed. The Board does not have to find that the departure was deliberate or a result of negligent conduct.<sup>19</sup> The Board does, however, consider that the seriousness of the conduct under investigation does have to be taken into account. As such, even if the Respondent's building work departed from the building consent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>20</sup> If it does not, then a disciplinary finding cannot be made.

### **Was there building work that differed from the building consent**

- [32] The roofing product was changed from one product to a different product. There were significant differences in the types of roofing products and how they were installed. When the roof was installed, the Building Consent Authority (BCA) had not been informed, and no changes to the building consent had been arranged.
- [33] Once a building consent has been granted, any changes to it must be dealt with in the appropriate manner. There are two ways in which changes can be dealt with: by way of a minor variation under section 45A of the Act, or as a formal amendment to the building consent. The extent of the change to the building consent dictates the appropriate method to be used.
- [34] Regardless of whether the minor variation process is used or an amendment is filed, it is to be borne in mind that the BCA retains a discretion to refuse both.<sup>21</sup> Further, the fact that a minor variation has to be applied for and can either be granted or refused implies that, if that process is to be used, the building work that relates to it must follow rather than precede the application. The legislative framework does not allow a minor variation to be carried out and then, once complete, to be retrospectively applied for. In this respect, it must also be borne in mind the potential consequences of a minor variation that has been completed but not yet

---

<sup>17</sup> Section 49 of the Act

<sup>18</sup> Section 40 of the Act

<sup>19</sup> *Blewman v Wilkinson* [1979] 2 NZLR 208

<sup>20</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74 - [21] "Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness".

<sup>21</sup> Sections 48, 49 and 50 of the Act provide for the processing, granting and refusal of building consents



applied for being refused. The associated building work would either have to be deconstructed or an application for a Certificate of Acceptance sought.<sup>22</sup>

- [35] It must also be noted, as regards an LBP's obligations, that section 89 of the Act places a positive burden on an LBP to notify a BCA of a breach of a building consent:

**89 Licensed building practitioner must notify building consent authority of breaches of building consent**

- (1) *A licensed building practitioner must, if he or she is of the view that any building work carried out under a building consent does not comply with that consent, notify—*
- (a) *the territorial authority in whose district the building is situated; and*
  - (b) *the owner.*
- (2) *The notification must—*
- (a) *state that the licensed building practitioner is of the view that building work carried out under the building consent does not comply with that consent; and*
  - (b) *state how the building work does not so comply; and*
  - (c) *be given as soon as practicable after the licensed building practitioner forms that view.*

- [36] In *Tan v Auckland Council*,<sup>23</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.*

- [37] The same applies to the ongoing verification of building work against the requirements of the building consent. A failure to notify the Council of changes to the consented documents prior to them being carried out defeats the purpose of the process.
- [38] Given the above, it is clear that the Respondent did not ensure that the BCA was informed of the change or that a building consent change process was engaged in prior to the roofing product being installed. It follows that he has carried out and supervised building work that was contrary to the building consent.

---

<sup>22</sup> Section 96 of the Act allows a Territorial Authority to issue a certificate of acceptance for unconsented building work

<sup>23</sup> [2015] NZHC 3299 [18 December 2015]

- [39] It is important to note that, had a process been used, it is most likely that the manufacturer's instructions and design details for the installation of the new roofing product would have been available to those carrying out the work, and the issues that subsequently arose may not have occurred.

Was the conduct serious enough

- [40] In contrast to the Board's finding regarding negligence and incompetence, the Board finds that the Respondent's conduct was serious enough. As an LBP, he should have known that a significant change had been made to the building consent and that a consent change process needed to be engaged in to ensure the correct documentation was on-site and the change had been approved.

Has the Respondent breached section 317(1)(d) of the Act

- [41] The Respondent has carried out and supervised building work that was contrary to a building consent.

**Board Decisions**

- [42] The Respondent **has not** breached section 317(1)(b) of the Act but **has** breached section 317(1)(d) of the Act.

**Penalty, Costs and Publication**

- [43] Having found that one or more of the grounds in section 317 apply, the Board must, under section 318 of the Act<sup>ii</sup>, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [44] The Board heard evidence relevant to penalty, costs, and publication during the hearing and made the appropriate orders.

Penalty

- [45] The Board has the discretion to impose a range of penalties.<sup>iii</sup> Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.<sup>24</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>25</sup>
- (a) protection of the public and consideration of the purposes of the Act;<sup>26</sup>
  - (b) deterring the Respondent and other Licensed Building Practitioners from similar offending;<sup>27</sup>

---

<sup>24</sup> *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

<sup>25</sup> Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

<sup>26</sup> Section 3 Building Act

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

- (c) setting and enforcing a high standard of conduct for the industry;<sup>28</sup>
- (d) penalising wrongdoing;<sup>29</sup> and
- (e) rehabilitation (where appropriate).<sup>30</sup>

[46] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases<sup>31</sup> and applying the least restrictive penalty available for the particular offending.<sup>32</sup> In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty<sup>33</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>34</sup>

[47] 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.<sup>35</sup>

[48] In this matter, the Board decided that, because of the extenuating circumstances surrounding the disciplinary offending, it would censure the Respondent. A censure is a public expression of disapproval of conduct. In coming to that decision, the Board noted the power imbalance between the Respondent and his employer and that the decision to change the roofing product was out of his hands. The Respondent should note, however, that future infractions will not be treated so lightly.

### Costs

[49] Under section 318(4) of the Act, the Board may require the Respondent to pay the costs and expenses of, and incidental to, the inquiry by the Board. The rationale is that other Licensed Building Practitioners should not be left to carry the financial burden of an investigation and hearing.<sup>36</sup>

[50] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings.<sup>37</sup> The starting point can then be adjusted up or down, having regard to the particular circumstances of each case.<sup>38</sup>

<sup>28</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>29</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>30</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

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

<sup>32</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

<sup>33</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>34</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>35</sup> In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

<sup>36</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>37</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>38</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.

- [51] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was simple. Adjustments are then made.
- [52] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,100 toward the costs of and incidental to the Board's inquiry.

#### Publication

- [53] 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>39</sup> and he will be named in this decision, which will be available on the Board's website. The Board is also able, under section 318(5) of the Act, to order further publication.
- [54] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>40</sup> Further, as a general principle, publication may be required where the Board perceives a need for the public and/or the profession to know of the findings of a disciplinary hearing, and the courts have stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published.<sup>41</sup>
- [55] Based on the above, the Board will not order any publication over and above the record on the Register, the Respondent being named in this decision, and the publication of the decision on the Board's website. The Respondent should note, however, that as the Board has not made any form of suppression order, other entities, such as the media or the Ministry of Business Innovation and Employment, may publish under the principles of open justice reporting.

#### **Section 318 Order**

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

<b>Penalty:</b>	<b>Pursuant to section 318(1)(d) of the Building Act 2004, the Respondent is censured.</b>
<b>Costs:</b>	<b>Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,100 (GST included) towards the costs of, and incidental to, the inquiry of the Board.</b>
<b>Publication:</b>	<b>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.</b>  <b>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.</b>

---

<sup>39</sup> Refer sections 298, 299 and 301 of the Act

<sup>40</sup> Section 14 of the Act

<sup>41</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

- [57] 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.

### Right of Appeal

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

Signed and dated this 2<sup>nd</sup> day of September 2025



**Mr M Orange**  
Presiding Member

---

<sup>i</sup> **Section 3 of the Act**

*This Act has the following purposes:*

- (a) *to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings to ensure that—*
  - (i) *people who use buildings can do so safely and without endangering their health; and*
  - (ii) *buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and*
  - (iii) *people who use a building can escape from the building if it is on fire; and*
  - (iv) *buildings are designed, constructed, and able to be used in ways that promote sustainable development;*
- (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.*

<sup>ii</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."*

**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.*