

## Before the Building Practitioners Board

|                                 |                                 |
|---------------------------------|---------------------------------|
|                                 | BPB Complaint No. CB26169       |
| Licensed Building Practitioner: | Lukas Bravenec (the Respondent) |
| Licence Number:                 | BP138633                        |
| Licence(s) Held:                | Design AoP 2                    |

---

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

---

|                            |   |
|----------------------------|---|
| Complaint or Board Inquiry | Complaint   |
| Hearing Location           | by audio-visual link  |
| Hearing Type:              | In Person   |
| Hearing Date:              | 7 March 2024  |
| Decision Date:             | 24 March 2024   |
| Board Members Present:     |   |
|                            | Mr M Orange, Chair, Barrister (Presiding)                       |
|                            | Mrs F Pearson-Green, Deputy Chair, LBP, Design AoP 2            |
|                            | Mr P Thompson, LBP, Carpentry and Site AoP 3, Quantity Surveyor |

#### Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008 (the Complaints Regulations) and the Board's Complaints and Inquiry Procedures.

#### Disciplinary Finding:

The Respondent **has** committed a disciplinary offence under section 317(1)(b) of the Act.

The Respondent is fined \$3,000 and ordered to pay costs of \$2,625. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

**Contents**

**Summary**..... 2

**The Charges** ..... 3

**Evidence**..... 3

**Negligence or Incompetence** ..... 4

    Has the Respondent departed from an acceptable standard of conduct? ..... 5

    Was the conduct serious enough?..... 8

    Has the Respondent been negligent or incompetent? ..... 9

**Penalty, Costs and Publication**..... 9

    Penalty ..... 9

    Costs..... 10

    Publication ..... 11

**Section 318 Order**..... 11

**Submissions on Penalty, Costs and Publication** ..... 12

**Right of Appeal**..... 12

**Summary**

- [1] The Respondent supervised the development and submission of a Building Consent application for a new residential dwelling in Auckland. He had not previously completed a consent in Auckland. An extensive list of issues was identified by the Council. Those issues, and others identified by the Board, were significant, and there were fundamental flaws with the design, such as the failure to provide for a brick veneer throughout the plans, including within the foundation and structure design. The Respondent maintained that he had reviewed the Building Consent application before it was submitted and that the design would have been considered acceptable at other Building Consent Authority locations.
- [2] The Board found that the Respondent’s supervision of the design work was substandard and that he had negligently supervised building work (design work). The Board considered that the Respondent should have identified and dealt with the design issues prior to the submission of the Building Consent and that his reliance on the Auckland Council to identify the issues was not acceptable.
- [3] The Board decided that it would fine the Respondent \$3,000 and order that he pay costs. The fine was reduced to recognise some mitigating factors that were present.

## The Charges

- [4] The prescribed investigation and hearing procedure is inquisitorial, not adversarial. There is no requirement for a complainant to prove the allegations. The Board sets the charges and decides what evidence is required.<sup>1</sup>
- [5] 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], Auckland, have carried out or supervised building work in a negligent or incompetent manner contrary to section 317(1)(b) of the Act.
- [6] The Board gave notice that the matters to be investigated at the hearing would be the matters raised in a Request for Further Information (RFI) dated 5 August 2022 issued by the Auckland Council (pages 3799 to 3811 of the Board's file) and whether, given the RFIs and the standard of documentation the Building Consent application was to an acceptable standard, was buildable and per building code requirements.

## Evidence

- [7] 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.
- [8] The Respondent, who is based in Wanaka, was contracted to develop Building Consent documentation for the design of a complex residential dwelling in Auckland. The dwelling had been designed by an Auckland designer, [OMITTED], who maintained involvement with the Auckland-based client and liaised with the Respondent. He normally carried out design work in the central Otago region. It was the first design brief he had undertaken in the Auckland region. The design work was carried out under the Respondent's supervision by his staff members. The Respondent stated that he quality-checked the documentation that was submitted for a Building Consent prior to its submission.
- [9] The design was submitted to the Auckland Council. A Request for Information (RFI) was issued. It contained 40 items that needed to be addressed. The Building Control Officer (BCO) who vetted the Building Consent application noted that the initial review that was completed was only preliminary and that it may not have captured all of the items that needed to be addressed. In particular, the plans, dimensions, floor plans, sections and foundation design had not provisioned for a brick veneer, and the engineer who developed the structural design for the foundation, bracing and structure gave evidence that he was not aware that the architectural design included a brick veneer. That and other design issues were put to the Respondent at the hearing, and the Respondent, who had not addressed the RFI issues in detail in

---

<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.

<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

his response to the complaint, was provided with an opportunity to file written submissions addressing those and other design issues identified at the hearing.

- [10] The Complainant, who was looking to develop the residential dwelling using the Respondent's Building Consent documentation, gave evidence that, as a result of the Respondent's failure to address design issues and the risks they presented to the project combined with the resulting delays, put the project at risk and that the Building Consent application was put on hold.
- [11] At the hearing, the Respondent accepted that there were some issues with the Building Consent application, which should have been identified prior to its submission, but he maintained that, overall, it was a competent design and that his supervision was adequate.
- [12] Submissions were to be filed by no later than 15 March 2024. Submissions were received on 16 March 2024. The Board took the submissions into consideration when making its decision.
- [13] As part of his submission, the Respondent provided a copy of his responses to a 5 August 2022 RFI letter. This was a notated version of the RFI letter. It included the statement: "We are pleased to provide an updated version of our plans, which we have worked on without receiving an RFI letter we are reviewing now. Our revisions are informed by the final structural engineering specifications, the client's requirements, and our internal assessments. This iterative process ensures that our plans are comprehensive and tailored to meet the specific needs of the project." The submission also included his Building Consent export folder, which contained the documentation originally submitted for Building Consent. No actual updated Building Consent documents containing RFI responses, other than the notated letter, were provided by the Respondent.
- [14] It is also noted that as part of the Board's investigations, on 9 March 2023 it received a copy of the Council property file. The file did not include the RFI response of 5 August 2022 that the Respondent submitted he had provided to the Council.

### **Negligence or Incompetence**

- [15] The Board's finding was that the Respondent had carried out design work in a negligent manner. 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 (design 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>

---

<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)

- [16] A threshold test applies to negligence. Even if the Respondent has been negligent or incompetent, the Board must also decide if the conduct fell seriously short of expected standards.<sup>7</sup> If it does not, then a disciplinary finding cannot be made.
- [17] The Board did not make a finding of incompetence, which is a demonstrated lack of ability, skill, or knowledge to carry out or supervise building work (design work) to an acceptable standard,<sup>8</sup> because the Board formed the view that the Respondent knew what to do and how to do it but that he did not apply those abilities, skills, or knowledge.

Has the Respondent departed from an acceptable standard of conduct?

- [18] When considering what an acceptable standard is, the Board must consider the purpose of the Building Act<sup>1</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>
- [19] Under the definitions in the Building Act, design work forms part of the wider definition of building work, and, as such, in respect of section 317(1)(b), it comes within the Board's jurisdiction. In this respect, the definition of building work in section 7 of the Act states that it "includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be Restricted Building Work for the purposes of this Act". The Building (Design Work Declared to be Building Work) Order 2007 declared:
- 3      *Design work declared to be building work***
- (1)      *Design work of the specified kind is building work for the purposes of Part 4 of the Building Act 2004.*
- (2)      *Design work of the specified kind means design work (relating to building work) for, or in connection with, the construction or alteration of a building.*

[20] Part 4 of the Act relates to the regulation of building practitioners. The combined effect of the two declarations is that design work applies to building work in general and to Restricted Building Work for the purposes of the licensing regime.

[21] With respect to design work, the Board also notes the provisions of section 14D of the Act, which states:

---

<sup>7</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>8</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>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.

**14D Responsibilities of designer**

- (1) *In subsection (2), designer means a person who prepares plans and specifications for building work or who gives advice on the compliance of building work with the building code.*
- (2) *A designer is responsible for ensuring that the plans and specifications or the advice in question are sufficient to result in the building work complying with the building code, if the building work were properly completed in accordance with those plans and specifications or that advice.*

- [22] Given the above, when considering what is and is not an acceptable standard, the provisions of the building code need to be taken into account.
- [23] Turning to the Respondent's Building Consent application and its design work, the Board considered it to be substandard. It contained significant and fundamental errors, omissions and inconsistencies, as set out in the RFI and noted by the Board during the hearing. In particular, the failure to design the dwelling to accommodate a brick veneer and to ensure the engineering detail reflected the inclusion of a brick veneer was substandard. It would have required significant architectural and engineering redesign. It was apparent, at the hearing, that the Respondent was not aware of the issue as it had to be drawn out for him by reference to the drawings that he had submitted. The other issues identified were also significant, but the brick veneer issue was a glaring example of the substandard nature of the design work.
- [24] At the hearing, the Respondent submitted that design changes impacted the design, and he noted that he had worked off a Building Consent checklist for the Queenstown Lakes District, not off the Auckland Council checklist. He stated he was not aware that there was an Auckland checklist. The Respondent went on to submit that he had not had significant issues with his designs in the Central Otago region and that the design under investigation was of similar quality to those he has submitted in Central Otago.
- [25] A designer should not be relying on others to identify and fix their mistakes. A Builder is entitled to rely on a design that has been consented. The introduction of the Licensed Building Practitioner (LBP) regime was aimed at improving the skills and knowledge of those involved in residential construction. The following was stated as the intention to the enabling legislation<sup>12</sup>:

*The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone*

---

<sup>12</sup> Hansard volume 669: Page 16053

*involved in building work knows what they are accountable for and what they rely on others for.*

*We cannot make regulation more efficient without first getting accountability clear, and both depend on people having the necessary skills and knowledge. The Building Act 2004 will be amended to make it clearer that the buck stops with the people doing the work. Builders and designers must make sure their work will meet building code requirements; building owners must make sure they get the necessary approvals and are accountable for any decisions they make, such as substituting specified products; and Building Consent authorities are accountable for checking that plans will meet building code requirements and inspecting to make sure plans are followed.*

[26] The Respondent did not carry out the design work. He supervised it. At the hearing, in his post-hearing submission, the Respondent noted that when the design work was completed, he was operating under work pressures created by the client, a hip operation he had undergone, and his post-operative recovery. He maintained that he had been proactive in his review of the documentation, noting that issues with the design had been picked up before the RFI was received. Whilst some issues may have been identified by him before the RFI, they should have been identified prior to his submitting the Building Consent application. Also, he was completely unaware of the most significant issue as regards the brick veneer.

[27] It is to be noted that the Respondent was the author of the Certificate of Design Work that was submitted with the Building Consent application. As such, he took responsibility for its quality and compliance. This is because, under section 45(3) of the Act, an LBP with a Design Licence must submit a certificate of work with a Building Consent that states that the design complies with the building code:

- (3) *The plans and specifications that contain the design work referred to in subsection (2) must be accompanied by a certificate of work—*
  - (a) *provided by 1 or more Licensed Building Practitioners who carried out or supervised that design work; and*
  - (b) *that identifies that design work; and*
  - (c) *that states—*
    - (i) *that the design work complies with the building code; or*
    - (ii) *whether waivers or modifications of the building code are required and, if so, what those waivers or modifications are.*

[28] Looking at the Respondent's supervision, the term supervise is defined in section 7<sup>13</sup> of the Act. The definition states:

---

<sup>13</sup> Section 7:

*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—*

(a) *is performed competently; and*

*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—*

*(a) is performed competently; and*

*(b) complies with the Building Consent under which it is carried out.*

[29] The Board, when considering the supervision, must take various factors into consideration, but ultimately, the Board needs to consider whether the work met the requirements of the building code and, if not, the level of non-compliance.

[30] 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>14</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, in 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.”*

[31] It was clear to the Board that the Respondent’s level of supervision also failed to meet an acceptable standard. He should have identified and rectified design issues prior to the Building Consent being submitted to the Auckland Council. It is not enough to say, as the Respondent did in his response to the RFI: “we were prepared to ...”, or “we were ready to ...” when addressing the compliance points. They should have been addressed before the Building Consent was submitted, not afterwards, and only when the Council had to bring the issues to the Respondent’s attention.

[32] 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.

#### Was the conduct serious enough?

[33] The conduct was serious. The design issues were multitudinous. If the Respondent had carefully checked the design work prior to it being submitted for a Building Consent, then the design issues would, or should, have been identified and dealt with. They were not, and whilst the Board does not expect perfection, it does expect

---

*(b) complies with the building consent under which it is carried out.*

<sup>14</sup> *Electrical Workers Registration Board v Gallagher* Judge Tompkins, District Court at Te Awamutu, 12 April 2011



a better standard than that which the Respondent displayed. His failings went beyond mere error, oversight or inadvertence. They were fundamental and serious.

Has the Respondent been negligent or incompetent?

[34] The Respondent has carried out building work (design work) in a negligent manner.

**Penalty, Costs and Publication**

[35] Having found that one or more of the grounds in section 317 applies, 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.

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

Penalty

[37] 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>15</sup> It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:<sup>16</sup>

- (a) protection of the public and consideration of the purposes of the Act;<sup>17</sup>
- (b) deterring other Licensed Building Practitioners from similar offending;<sup>18</sup>
- (c) setting and enforcing a high standard of conduct for the industry;<sup>19</sup>
- (d) penalising wrongdoing;<sup>20</sup> and
- (e) rehabilitation (where appropriate).<sup>21</sup>

[38] 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>22</sup> and applying the least restrictive penalty available for the particular offending.<sup>23</sup> In all, the Board should be looking to impose a fair, reasonable, and

---

<sup>15</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>16</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>17</sup> Section 3 Building Act

<sup>18</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>19</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

<sup>20</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

<sup>21</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>22</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

<sup>23</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

proportionate penalty<sup>24</sup> that is consistent with other penalties imposed by the Board for comparable offending.<sup>25</sup>

- [39] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.<sup>26</sup>
- [40] The Board considered a suspension or training order. However, as the finding was one of negligence, not incompetence, and it was the first time the Respondent had appeared before the Board, the Board decided that a suspension was not warranted. As such, it adopted a starting point of a fine of \$3,500. The level of the fine was established by reference to other disciplinary matters that have come before the Board. The starting point also reflects the seriousness of the offending and the degree of negligence displayed.
- [41] The Board considered that the Respondent's circumstances at the time, whilst not excusing the conduct, were mitigating factors. Countering this is the Respondent's inability to recognise or acknowledge that his supervision of the design work was substandard. This was evidenced by his post-hearing submission, in which he maintained that he had done a good job. Balancing those factors, the Board has decided that it will reduce the fine from the starting point by \$500 to a fine of \$3,000.

### Costs

- [42] 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>27</sup>
- [43] The courts have indicated that 50% of the total reasonable costs should be taken as a starting point in disciplinary proceedings<sup>28</sup>. The starting point can then be adjusted up or down, having regard to the particular circumstances of each case<sup>29</sup>.
- [44] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings: simple, moderate and complex. The current matter was moderately complex. Adjustments are then made.
- [45] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$2,625 toward the costs of and incidental to the Board's inquiry. This is the

---

<sup>24</sup> *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

<sup>26</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>27</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74

<sup>28</sup> *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society* CIV-2011-485-000227 8 August 2011

<sup>29</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.

Board's scale amount for an investigation and hearing where the hearing is held by an audio-visual link. The costs are significantly less than 50% of actual costs.

### Publication

- [46] 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>30</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.
- [47] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.<sup>31</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>32</sup>
- [48] 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**

- [49] 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 \$3,000.
- Costs:** Pursuant to section 318(4) of the Act, the Respondent is ordered to pay costs of \$2,625 (GST included) towards the costs of, and incidental to, the inquiry of the Board.
- Publication:** The Registrar shall record the Board's action in the Register of Licensed Building Practitioners in accordance with section 301(l)(iii) of the Act.
- In terms of section 318(5) of the Act, the Respondent will be named in this decision, which will be published on the Board's website.**
- [50] 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.

---

<sup>30</sup> Refer sections 298, 299 and 301 of the Act

<sup>31</sup> Section 14 of the Act

<sup>32</sup> Kewene v Professional Conduct Committee of the Dental Council [2013] NZAR 1055

## Submissions on Penalty, Costs and Publication

[51] The Board invites the Respondent to make written submissions on the matters of disciplinary penalty, costs and publication up until the close of business on **7 May 2024**. The submissions should focus on mitigating matters as they relate to the penalty, costs and publication orders. If no submissions are received, then this decision will become final. If submissions are received, then the Board will meet and consider those submissions prior to coming to a final decision on penalty, costs and publication.

## Right of Appeal

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

Signed and dated this 12<sup>th</sup> day of April 2024



**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.