

Before the Electrical Workers Registration Board

	CE No. 22536
Electrical Worker:	Daniel Boyce (the Respondent)
Registration Number:	E 257217
Electrical Worker Number:	EW 118137
Registration Class:	Electrician

Decision of the Board in Respect of the Conduct of an Electrical Worker Under section 147G and 147M of the Electricity Act 1992

Hearing Location:	Audio visual link
Hearing Type:	On the papers
Hearing and Decision Date:	17 November 2022

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)
Ms M Kershaw, Registered Electrician
Mr M Macklin, Registered Inspector
Ms J Davel, Lay Member
Ms A Yan, Registered Electrical Engineer

Appearances:	Alistair Miller for the Investigator
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Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed two disciplinary offences under section 143(f) of the Act.

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Summary of the Board’s Decision

[1] The Respondent, failed to provide a return and, on a separate occasion, provided false or misleading return. Both matters were contrary to section 143(f) of the Act. In the circumstances, the Board decided that it would not take any disciplinary action. Costs of \$225 were ordered. There will be no publication of the matter.

Introduction

[2] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.

[3] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 2 January 2022 at [OMITTED], Mr Daniel Boyce has failed to provide a return under section 143(f) of the Act, IN THAT, he:
 - a. failed to provide a Certificate of Compliance (CoC) for the installation of junction boxes (electrical fittings) and rerouting cables and the connection of a heat transfer fan and controller; and/or
 - b. failed to provide an Electrical Safety Certificate (ESC) for the installation of junction boxes (electrical fittings) and rerouting cables and the connection of a heat transfer fan and controller; and/or

- c. failed to provide an Electrical Safety Certificate (ESC) for the connection of new downlights, outside socket outlets, or new sensor lights in relation to CoC reference DLB 0304; and/or
- d. failed to provide an Electrical Safety Certificate (ESC) for the connection of a heat pump in relation to CoC reference DLB 0301.

Second Alleged Disciplinary Offence

- 2. On or around 2 January 2022 at [OMITTED], Mr Daniel Boyce has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he incorrectly specified the type of supply system as a 240V MEN in relation to CoC reference DLB 0301.
- [4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in their power or possession.
- [5] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [6] 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*¹ and in New Zealand in *Dentice v Valuers Registration Board*².
- [7] 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*,³ 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.”*
- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

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

² [1992] 1 NZLR 720 at p 724

³ [2016] HZHC 2276 at para 164

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.
- [10] The appearance of the Respondent was excused for personal reasons. Counsel for the Investigator's appearance was also excused. The matter was dealt with on the papers.

Evidence

- [11] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

- [12] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to carry out the installation of a heat pump, socket outlets and new lighting. The work was prescribed electrical work (PEW) and a complaint was made about it.
- [13] The Investigator engaged an expert to review the complaint and the PEW. Mr David Olsen, an Electrical Inspector, carried out a review and provided his opinion that the Respondent had failed to provide a Certificate of Compliance (CoC) and an Electrical Safety Certificate (ESC) for all of the work that was carried out (as specified in the Notice of Proceeding) and that he had provided a false or misleading CoC for that which had had certified.
- [14] The Respondent responded to the complaint by stating that he posted the certificates for the heat pump, new downlights, outside socket outlets, or new sensor lights on two occasions but that he had not provided a CoC for remedial work carried out in the ceiling space and stated he could not provide a CoC for non-compliant work until it was remedied.
- [15] In the Agreed Statement of Facts, the Respondent accepted that he had carried out PEW at the Property and that he had failed to provide a CoC or ESC for the installation of junction boxes (electrical fittings), rerouting cables and the connection of a heat transfer fan and controller. He further accepted that he failed to provide an ESC for the installation and connection of a heat pump, and the installation and connection of new downlights, outside socket outlets, or new sensor light. Finally, he accepted that he had provided a false and misleading CoC in relation to the installation and connection of a heat pump, as set out in the Notice of Proceeding.

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

[16] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

Board's Conclusion and Reasoning

[17] The Board has decided that the Respondent **has** failed to provide returns contrary to section 143(f) of the Act **and has** provided a false or misleading return contrary to section 143(f) of the Act.

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

Failure to Provide

[19] The allegation was that the Respondent had failed to provide a return, required under an enactment, in this instance a Certificate of Compliance (CoC) and an Electrical Safety Certificate (ESC).

[20] A CoC must, under regulation 65 of the Safety Regulations, be issued for all general and high risk prescribed electrical work (PEW) on installations or part installations. Under regulation 65(3) general PEW may not be treated as complete until a CoC is issued for it. At the same time under regulation 73A(1)(c) a CoC must have been issued or sighted before a power supply is connected to an installation or part installation on which PEW has been carried out. Regulation 74E(2) requires that a CoC be issued within 20 days of completion.

[21] An ESC must, under regulation 74A of the Safety Regulations, be issued for all PEW on installations, part installations or any fitting that supplies an installation or a part installation with electricity. Under regulation 74C an ESC must be issued within 20 days after connection.

[22] The Respondent accepted that he had not issued a CoC or an ESC for all of the PEW that he had carried out. As such, on the basis of the above, the offence has been committed.

False or Misleading

[23] The other charge under section 143(f) of the Act was that the Respondent had provided a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant⁵.

[24] The return referred to, a Certificate of Compliance (CoC), must, as noted above, be issued for general risk prescribed electrical work (PEW). A CoC must state that the PEW has been done lawfully and safely and that the information in the Certificate is correct.

⁵ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [25] The specific allegations were that the Respondent failed to provide a correct description of the PEW carried out. The Respondent accepted that he had incorrectly specified the type of supply system. Accordingly, the offence has been committed.

Penalty, Costs and Publication

- [26] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [27] The matter was dealt with on the papers. Included was information relevant to penalty, costs, and publication, and the Board has decided to make orders.

Penalty

- [28] 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*⁶ 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.

- [29] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁷ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act, they 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. The same applies to disciplinary proceedings under the Electricity Act.
- [30] Certification is important. The Act and Safety Regulations are designed so as to allow self-certification of prescribed electrical work (PEW). That certification, in turn, is relied on others as regards the compliance and safety of the installation certified. False or misleading certification puts that at risk. Ordinarily, the Board would impose a modest fine in respect of an offence under section 143(f) of the Act of failing to provide.
- [31] Mitigating factors include that the quality of the Respondent’s PEW was not at issue and that the Respondent has cooperated and accepted the charges. The Board was also made aware of personal mitigating circumstances that it has taken into account.

⁶ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

Taking all of those factors into account, the Board considered that punishing the Respondent by imposing a penalty might be unfair.

- [32] Within the penalty provisions in section 147M of the Act is a provision that allows the Board to “make no order”. In this instance, the Board decided, on the basis of the mitigating circumstances present, that I would not make an order. In essence, this means that there will not be a public record on the Register of the offending. However, should the Respondent commit a future disciplinary offence, the Board may take its finding in this matter into account when determining an appropriate penalty.
- [33] The Respondent should take care in the future when certifying work that it is accurate, complete, and timely.

Costs

- [34] Under section 147N of the Act, the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of, and incidental to the investigation, prosecution, and the hearing.
- [35] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case⁸.
- [36] In *Collie v Nursing Council of New Zealand*,⁹ 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.

- [37] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁰ the High Court noted:

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

⁸ *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.

⁹ [2001] NZAR 74

¹⁰ CIV-2011-485-000227 8 August 2011

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

- [38] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate, and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [39] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$225 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [40] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act¹¹. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [41] 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.
- [42] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹². The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹³. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁴. 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*¹⁵.
- [43] 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 interest¹⁶. It is,

¹¹ Refer sections 128 of the Act

¹² Section 14 of the Act

¹³ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁴ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁵ *ibid*

¹⁶ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

- [44] Normally, as a consequence of a decision a respondent's name and the disciplinary outcome is recorded in the public register of electrical workers¹⁷.
- [45] In this instance the Board has taken no action. Section 128(1)(viii) of the Act which requires an entry in the register to be made stipulates that it applies if any action is taken by the Board under section 147M. In this instance the Board has not taken any action. As such there will be no record of the matter in the public register. The Respondent's electrical worker file will, however, note the matter.
- [46] Given the above the board will not order any further publication under section 147Z of the Act. In accordance with the principles of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁸ the Respondent will be named in this decision.
- [47] The Respondent should note, however, that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(h) of the Electricity Act 1992, the Board makes no order.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

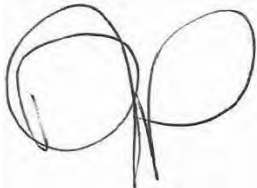
Publication: The Respondent will be named in this decision.

In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.

Right of Appeal

- [49] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Actⁱⁱ.

Signed and dated this fifteenth day of December.



Mr R Keys
Presiding Member

¹⁷ Refer sections 128 of the Act

¹⁸ Section 14 of the Act

ⁱ **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
 - (i) *permanently, or for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (e) *order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:*
 - (f) *order the person to pay a fine not exceeding \$10,000:*
 - (g) *order that the person be censured:*
 - (h) *make no order under this subsection.*
- (2) *The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—*
- (a) *pass any specified examination:*
 - (b) *complete any competence programme or specified period of training:*
 - (c) *attend any specified course of instruction.*
- (3) *The Board may take only 1 type of action in subsection (1) 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), (c), (e) or (g).*
- (4) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—*
- (a) *offence for which the person has been convicted by a court; or*
 - (b) *infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.*
- (5) *The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.*
- (6) *If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]*

ⁱⁱ **Section 147ZA Appeals**

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- (1) *A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:*
- (e) *any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).*

Section 147ZB Time for lodging appeal

An appeal under section 147ZA must be brought within—

- (a) *20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or*
- (b) *any further time that the District Court may allow on application made before or after the expiration of that period.*