

Before the Electrical Workers Registration Board

	CE No. 22515
Electrical Worker:	Blair Gardner (the Respondent)
Registration Number:	I 285818
Electrical Worker Number:	EW 105735
Registration Class:	Inspector

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:	Wellington
Hearing Type:	In Person or On the Papers
Hearing and Decision Date:	18 October 2022
Board Members Present:	
	Mr M Orange, Barrister (Presiding)
	Ms J Davel, Lay Member
	Mr M Perry, Registered Electrician

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 disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

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Summary of the Board’s Decision

[1] The Respondent carried out prescribed electrical work in a negligent manner and provided a false or misleading return. He is censured and ordered to pay costs of \$250. A record of the disciplinary offending will be recorded on the Public Register for a period of three years.

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 30 November 2021, Mr Blair Gardner has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done, being an offence under section 143(a)(ii) of the Act, IN THAT, he failed to adequately test a Food Truck, registration number [OMITTED], and issued a Warrant of

Electrical Fitness that had the following non-compliant issues: No overcurrent protection fitted to ensure that the maximum demand did not exceed the rating of the supply lead and supply lead fittings in breach of Regulation 78 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 30 November 2021, Mr Blair Gardner has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner, being an offence under section 143(a)(i) of the Act, IN THAT, he failed to adequately test a Food Truck, registration number [OMITTED], and issued a Warrant of Electrical Fitness that had the following non-compliant issues: no overcurrent protection fitted to ensure that the maximum demand did not exceed the rating of the supply lead and supply lead fittings.

Second Alleged Disciplinary Offence

3. On or around 30 November 2021, Mr Blair Gardner has provided a false or misleading return, being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on food truck, registration number [OMITTED], that did not meet all the lawful requirements as set out in Regulation 78 of the Electricity (Safety) Regulations 2010.

- [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

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

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.

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.
- [10] The appearance of Counsel for the Investigator was excused.

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] The Board heard from the Respondent prior to it making a decision.
- [13] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged by the owner of a food truck to carry out prescribed electrical work for the purposes of issuing a Warrant of Electrical Fitness (WEOF) on the food truck. He completed the work and issued a WEOF, a Certificate of Compliance (COC) and an Electrical Safety Certificate (ESC). A complaint was made about the Respondent’s work.
- [14] An expert was engaged by the Investigator to provide a technical review of the prescribed electrical work undertaken by the Respondent. The expert noted the Respondent had failed to identify that the food truck did not comply with AS/NZS 3001:2008 clause 3.3.1.1, in that it did not have overcurrent protection at the switchboard for the supply lead. He also noted that the Respondent had provided a false and misleading return in that he issued a WEOF on the food truck that did not meet the lawful requirements set out in regulation 78 of the Electricity (Safety) Regulations 2010.
- [15] The Respondent accepted that he had failed to identify that the food truck did not have a current limiting device to match the cord set and that he had carried out prescribed electrical work in a negligent manner. He further accepted that he had

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

provided a false or misleading return when he issued a WOEf on the food truck that did not meet the lawful requirements set out in regulation 78.

- [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** carried out prescribed electrical work in a negligent manner, being an offence under section 143(a)(i) of the Act, IN THAT, he failed to adequately test a Food Truck, registration number [OMITTED], and issued a Warrant of Electrical Fitness that had the following non-compliant issues: no overcurrent protection fitted to ensure that the maximum demand did not exceed the rating of the supply lead and supply lead fittings.
- [18] The Board has also found that the Respondent **has** provided a false or misleading return, being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on food truck, registration number [OMITTED], that did not meet all the lawful requirements as set out in Regulation 78 of the Electricity (Safety) Regulations 2010.
- [19] The reasons for the Board's decisions follow.

First Offence

- [20] The charges put before the Board were laid in the alternatives of negligence or incompetence under section 143(a)(i) and contrary to an enactment under section 143(a)(ii) of the Act. The Respondent accepted that negligence was the appropriate finding. The Board agreed.
- [21] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that was contrary to an enactment. If the Board finds in the affirmative, it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence.
- [22] Contrary to an enactment is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations. The Board does not need to find that there was intention, fault, or negligence⁵.
- [23] Negligence is considered to be the departure by an electrical worker, whilst carrying out or supervising prescribed electrical work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

being inquired into. This is described as the *Bolam*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.

- [24] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [25] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰.
- [26] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.]*

- [27] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹⁰ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- [28] Turning to seriousness in *Collie v Nursing Council of New Zealand*¹¹ the Court's noted, as regards the threshold for disciplinary matters, that:

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

Contrary to an Enactment

- [29] The prescribed electrical work was carried out on a low-voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000. This is because regulation 59 stipulates:

59 Low and extra-low voltage installations to comply with AS/NZS 3000

- (1) *Every low or extra-low voltage domestic installation, or part of a domestic installation, must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000 if it has a maximum demand at or below—*
- (a) *80 amperes per phase if single-phase; or*
- (b) *50 amperes per phase if multi-phase.*

- [30] The mobile food truck was an installation (a connectable installation) as it comes within the definition in section 2(1) of the Act, which defines a connectable installation as:

connectable installation, in relation to a vehicle, a relocatable building, or a pleasure vessel, means an electrical installation of that vehicle, relocatable building, or pleasure vessel that is designed or intended for, or capable of, connection to an external power supply that operates at or above such voltage as is prescribed for the purposes of this definition by regulations made under section 169; and includes any electrical appliance that is connected, or intended to be connected, to any such installation

- [31] The Board received evidence that the prescribed electrical work had not been completed in accordance with AS/NZS 3000 as it did not have overcurrent protection, and the Respondent accepted that evidence and agreed that the work was not in accordance with AS/NZS 3000. As such, the prescribed electrical work was carried out in a manner that was contrary to an enactment.

¹¹ [2001] NZAR 74

Negligence

[32] The non-compliant prescribed electrical work was, however, more serious and, in that respect, the Board found that the Respondent had been negligent.

[33] The Board made its findings of negligence with respect to the under-rated conductors and fittings that were used and on the basis that the provisions of regulation 13 of the Safety Regulations had been breached. It states:

13 Doing work on works, installations, fittings, and appliances

(1) *A person who does work on any works or installation, or on any part of any works or installation, must ensure—*

(a) *that the resulting works or installation, or part of the works or installation, is electrically safe; and*

(b) *if the work is on only part of any works or installation, that the work has not adversely affected the electrical safety of the rest of the works or installation.*

[34] The terms electrically safe and unsafe are defined in regulation 5 of the Safety Regulations:

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a significant risk that a person may suffer serious harm, or that property may suffer significant damage, as a result of dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.

[35] Further, regulation 20 deems certain installations to be unsafe. In respect of the correct rating of conductors and fittings:

20 Electrically unsafe works and installations

(1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*

(b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*

- [36] The failure to provide over overcurrent protection meant that the prescribed electrical work had not been carried out in accordance with regulation 20 and was unsafe.
- [37] Given the above, and on the basis of the Agreed Statement of Facts, the Board found that the Respondent had carried out prescribed electrical work in a manner that was not in accordance with the standards to be expected of an electrical worker and that the transgressions were sufficiently serious enough to warrant a disciplinary finding of negligence.

False or Misleading Certification

- [38] The charge under section 143(f) of the Act related to the provision of 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 irrelevant¹².
- [39] The return referred to, a WOEf, is issued under regulation 78 of the Safety Regulations. As noted, a caravan is a connectable installation. Regulations 76 to 78 of the Regulations create requirements for connectable installations:

76 No supply without warrant of electrical fitness

- (1) *Before permitting or authorising a connection for the supply of electricity to a connectable installation in a vehicle, relocatable building, or pleasure vessel, the person supplying electricity must verify that the connectable installation has a current warrant of electrical fitness.*
- (2) *A person who supplies electricity commits an offence and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).*

77 Restrictions on use of connectable installations

- (1) *A person must not hire or lease out, or offer to hire or lease out, a vehicle, relocatable building, or pleasure vessel that contains a connectable installation unless the connectable installation has a current warrant of electrical fitness.*
- (2) *A person who hires or leases out, or offers to hire or lease out, a vehicle, relocatable building, or pleasure vessel commits an offence*

¹² *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

and is liable on conviction to a level 1 penalty if he or she fails to comply with subclause (1).

78 Issue of warrants of electrical fitness for connectable installations

- (1) *The following people may issue warrants of electrical fitness for connectable installations:*
 - (a) *a person who is authorised to inspect mains work:*
 - (b) *a person who, immediately before these regulations come into force, is authorised by the Secretary to issue warrants of electrical fitness, but only in respect of the same class of connectable installations that the authorisation relates to:*
 - (c) *in relation to a connectable installation that has been certified under regulation 66, the person who did the certification (and, to avoid doubt, the warrant may be issued at the same time that the certification is done).*
- (2) *Every warrant of electrical fitness for a connectable installation must be issued in accordance with AS/NZS 3001, except that a warrant of electrical fitness for a connectable installation—*
 - (a) *in a pleasure vessel must be issued in accordance with AS/NZS 3004.2; and*
 - (b) *in a mobile medical facility must be issued in accordance with NZS 6115; and*
 - (c) *that has been imported must be issued in accordance with AS/NZS 3001, but only after an assessment for compliance with Part 1 of AS/NZS 3000.*
- (3) *A person who issues a warrant of electrical fitness must—*
 - (a) *give it to the person who requests the warrant; and*
 - (b) *keep a copy of the completed warrant for at least 3 years, or send a copy to WorkSafe; and*
 - (c) *complete a warrant of electrical fitness sticker that is in the form prescribed or approved by WorkSafe; and*
 - (d) *affix the sticker in a prominent place on the connectable installation.*
- (4) *A warrant of electrical fitness for a connectable installation expires on the earlier of—*
 - (a) *the date on which a new warrant of electrical fitness is issued for the connectable installation; or*

- (b) *the date that is 4 years from its date of issue or, in the case of a mobile medical facility, 1 year from its date of issue.*
- (5) *Every warrant of electrical fitness must be in a form that is either—*
 - (a) *the form prescribed by the relevant standard referred to in subclause (2); or*
 - (b) *a form approved by WorkSafe.*
- (6) *If WorkSafe charges a fee to supply forms of warrants of electrical fitness, the fee must be the fee set out in Schedule 5.*
- (7) *A person commits an offence and is liable on conviction to a level 1 penalty if he or she—*
 - (a) *issues a warrant of electrical fitness otherwise than in accordance with this regulation; or*
 - (b) *issues a warrant of electrical fitness for a connectable installation that is electrically unsafe; or*
 - (c) *is not authorised to issue a warrant of electrical fitness.*

[40] The persons who can issue a Warrant of Electrical Fitness are, pursuant to regulation 78(1)(a), persons who are registered and licensed by the Board as Electrical Inspectors.

[41] The regulations require that electrical warrants of fitness be issued on the basis of, and in accordance with, cited standards. With respect to a caravan, the standards are AS/NZS 3000 and AS/NZS 3001. In this instance, the caravan did not meet those requirements. It follows that the disciplinary offence has been committed.

Penalty, Costs and Publication

[42] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

[43] The Respondent made submissions at the hearing as regards penalty, costs, and publication.

Penalty

[44] 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*¹³ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times,

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

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.

- [45] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁴ 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.
- [46] The Board adopted a starting point of a fine. The Respondent is an Inspector. He should have known better. There are mitigating factors present, including that the matter was dealt with by way of an Agreed Statement of Facts. The Respondent also noted that he was, at the time, distracted and that he has taken steps to address that factor. On the basis of the mitigating factors present, the Board decided to reduce the penalty to one of a censure. A censure is a public expression of disapproval.

Costs

- [47] 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.
- [48] 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 case¹⁵.
- [49] In *Collie v Nursing Council of New Zealand*¹⁶ 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.*
- [50] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹⁷ the High Court noted:

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

¹⁵ *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.

¹⁶ [2001] NZAR 74

¹⁷ CIV-2011-485-000227 8 August 2011

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

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

- [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 based on the High Court decisions above are then made.
- [52] Based on the above the Board's costs order is that the Respondent is to pay the sum of \$250 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

- [53] 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 Act¹⁸. 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.
- [54] 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.
- [55] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁰. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal

¹⁸ Refer sections 128 of the Act

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

Procedure Act do not apply but can be instructive²¹. 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*²².

- [56] 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 interest²³. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [57] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.
- [58] The Respondent should also note 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

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

Penalty: Pursuant to section 147M(1)(g) of the Electricity Act 1992, the Respondent is censured.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (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 Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision.

A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

- [60] The Respondent should note that the Board may refuse to relicence an electrical worker who has not paid any fine or costs imposed on them.

²¹ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

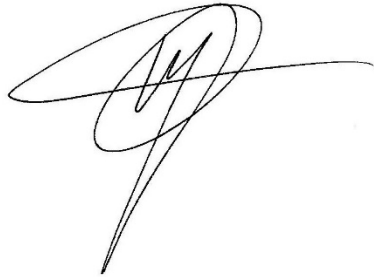
²² *ibid*

²³ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

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

Signed and dated this fourth day of November 2022



Mr M Orange
Presiding Member

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*

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- (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

- (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.*