

Before the Electrical Workers Registration Board

	CE No. 22295
Electrical Worker:	Ijaz Khan (the Respondent)
Registration Number:	E260362
Electrical Worker Number:	EW 124292
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:	Auckland
Hearing Type:	In Person or On the Papers
Hearing and Decision Date:	16 December 2020

Board Members Present:

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

Appearances:	Martin Denyer 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 sections 143(f) of the Act and one offence under section 143(g) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent has committed two offences of providing a false or misleading return under section 143(f) of the Act and one offence of directing or permitting unauthorised persons to carry out prescribed electrical work. He is fined \$2,500 and ordered to pay costs of \$1,125.

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 about 10 March 2018, at [Omitted] Mr Ijaz Khan has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has provided a certificate of compliance for prescribed electrical work that he did not carry out, supervise or test.*

Second Alleged Disciplinary Offence

2. *On or about 10 March 2018, at [Omitted] Mr Ijaz Khan has employed, directed, or permitted any unauthorised person to carry out any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has provided certification for prescribed electrical work that has been undertaken by persons not authorised to carry out prescribed electrical work.*

Third Alleged Disciplinary Offence

3. *Between 25 September 2017 and 11 March 2018, Mr Ijaz Khan has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he has provided a certificate of compliance indicating that prescribed electrical work was carried out by a supervised person when it was not at the following addresses:*

a) [Omitted]

b) [Omitted]

c) [Omitted]

d) [Omitted]

e) [Omitted]

f) [Omitted]

g) [Omitted]

[4] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her 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 partly on the basis of an Agreed Statement of Facts and partly on evidence produced at the hearing. The Agreed Statement of Facts related to charges that the Respondent accepted being the Third Alleged Disciplinary Offence. The evidence produced at the hearing related to the Third Disciplinary Offence which the Respondent denied.
- [10] Prior to the hearing, the Respondent made an application for the matter to be heard in private under section 153 of the Act. In accordance with the provisions of that section the application was heard in private.
- [11] The burden is on the applicant to establish that there are grounds for the matter to be heard in private. The Respondent put forward his reasons. The Investigator objected. The Board found that the Respondent had not established good grounds for the matter to be heard in private. The application was rejected.

Evidence

- [12] 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.*
- [13] In addition to an Agreed Statement of Facts the Board heard evidence from [Omitted], the Manager at [Omitted] and from the Respondent. The Respondent had called by [Omitted] to give evidence on his behalf. [Omitted] did not attend or give evidence.
- [14] The Agree Statement of Facts set out that after the Respondent had left his employment at [Omitted] a number of Certificates of Compliance (CoC) were discovered in a vehicle that had been used by him. Data from the vehicle's GPS system indicated that he had not been to the addresses in the CoCs. The CoC's did not relate to [Omitted] projects. The Respondent stated that he had completed prescribed electrical work which related to the CoCs and that he did not carry out the work during the hours that he worked for [Omitted] but that he completed the work in the weekends or after normal business hours. The Respondent accepted that he made an error in providing the names of installers who had not carried out any prescribed electrical work on the CoCs issued for the properties identified in the Third Alleged Disciplinary Offence.

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

- [15] 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 and the allegations as regards the Third Alleged Disciplinary Offence.
- [16] The Respondent did not accept that he had allowed unauthorised persons to carry out prescribed electrical work or that he had provided a false CoC for [Omitted]. That allegation related to the First and Second Alleged Disciplinary Offences. The Board received evidence in respect of those allegations.
- [17] [Omitted] stated that the [Omitted] purchased two heat-pumps and that I Fix 4U was engaged to install them. The units were installed at [Omitted] on a Saturday. [Omitted] met the two installers, [Omitted] and [Omitted] on site and was in the office or playroom the entire time the installers were there. The areas the heat-pumps were being installed were the playroom and a bedroom adjacent to the office. The switchboard was located in her office. [Omitted] noted that, to enter [Omitted], all visitors must enter their details in a visitor's register at the front reception and that there was no other way to enter the property as it has protected security gates at both entrances. She stated that no one could have come onto the property over a weekend without her letting them in as the property is protected by double gates that require a passcode to be entered and the parking at the facility can only be accessed by a swipe card which she had.
- [18] [Omitted] stated that the installers demonstrated the heat-pump units before they left and apologised that they had lost a remote control. She noted that she did not get a CoC for the work but received an invoice direct from I Fix 4U Limited which she produced. The invoice noted [Omitted] as a reference.
- [19] The Investigator provided [Omitted] with a copy of a photograph of the Respondent. [Omitted] was asked if she could identify the Respondent. She did not recognise him. There was no record of him in the visitor's register which she produced. The installer's names were in the register on the day of the install. No other names were recorded on that day.
- [20] The Respondent gave evidence that he did attend the site on the day and that he did supervise the prescribed electrical work. He stated that he could not actually remember the job, but that [Omitted] had assured him that he had attended. The Respondent thought that he most likely got one of the installers to provide him with access. He noted that it was not necessary for him to meet or deal with the owner or occupier of a site where a job is being undertaken. The Respondent did not produce any evidence which showed he was on-site at any time on the day the heat-pumps were installed.
- [21] The Respondent also gave evidence as regards his business relationship with [Omitted]. He stated that [Omitted] contracts to I Fix 4U Limited to install heat pumps and that the Respondent provides supervision.

Board's Conclusion and Reasoning

- [22] The Board has decided that the Respondent **has** provided a false or misleading return being an offence under section 143(f) of the Act, in that, he provided a certificate of compliance indicating that prescribed electrical work was carried out by a supervised person when it was not at [Omitted], [Omitted], [Omitted], [Omitted], [Omitted], [Omitted], and [Omitted].
- [23] The Board made its decision on the above charge on the basis of the Agreed Statement of Facts and the Respondent's acceptance that he had committed the disciplinary offence as outlined in the charge.
- [24] The Board has also decided that the Respondent **has**:
- (a) provided a false or misleading return being an offence under section 143(f) of the Act, in that, he provided a certificate of compliance for prescribed electrical work that he did not carry out, supervise or test at the [Omitted]; and
 - (b) employed, directed, or permitted any unauthorised person to carry out any prescribed electrical work being an offence under section 143(g) of the Act, in that, he provided certification for prescribed electrical work that was undertaken by persons not authorised to carry out prescribed electrical work at the [Omitted].
- [25] The Board made the decision on the basis of the evidence it received from [Omitted] that the Respondent had not been on site. Her evidence was detailed, clear and supported by documentation. The Respondent did not produce any evidence to contradict it other than general statements. He did not produce time records, job sheets, invoices, mileage records or health and safety records to substantiate that he was on site. He was not considered to be a reliable witness.
- [26] In terms of the legal provisions relating to the [Omitted] charges 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 irrelevant.
- [27] The returns referred to are issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. A Certificate of Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.
- [28] It was clear to the Board, on the evidence received, that the CoCs provided by the Respondent contained information that was false or misleading. The Respondent did not attend the site. He did not carry out or supervise the prescribed electrical. He did not carry out the required electrical tests.

[29] The charge under section 143(g) related to employing, directing, or permitting any unauthorised person to carry out any prescribed electrical work. Section 74 of the Act places restrictions on who can carry out prescribed electrical work:

74 Restrictions on doing or assisting with prescribed electrical work

(1) *A person must not do any prescribed electrical work, or assist in doing any prescribed electrical work, unless that person is authorised to do so under this section.*

[30] There are various exemptions provided for in sections 75 to 80 of the Act. The main exemptions are in sections 76 and 77 which provide exemptions for prescribed electrical work carried out under supervision.

[31] There was no evidence before the Board that any of the exemptions applied and, in particular, that the Respondent had supervised the prescribed electrical work. As noted, the evidence given by [Omitted] was persuasive and was not rebutted. The Board found, on the basis of the evidence received that the Respondent did not attend site. The Board considered that the Respondent was simply providing his name so as to create the illusion that the prescribed electrical work was being carried out lawfully.

[32] It should be noted that allowing an unauthorised person to carry out prescribed electrical work is a serious matter. The restrictions created in the Act are put in place so as to ensure that prescribed electrical work is only carried out or supervised by competent persons. This ensures that the purposes of the Act are promoted. Those purposes include⁵:

(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*

⁵ Refer section 1A of the Act.

[33] The Respondent should also note that his conduct came within the provisions of section 162 of the Act, which states:

162 Offence to engage in prescribed electrical work in breach of section 74

Every person who does, or assists in doing, any prescribed electrical work in breach of section 74 commits an offence and is liable on conviction to a fine not exceeding \$50,000 in the case of an individual, or \$250,000 in the case of a body corporate.

Penalty, Costs and Publication

[34] 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.

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

Penalty

[36] 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.

[37] 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.

[38] The Board noted that the Respondent has previously been found to have been guilty of similar conduct. On that occasion, the Board hoped it was an aberration and that the conduct may have been a one-off. It now considers that there is a pattern of the Respondent not taking his responsibilities seriously and putting profit before

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

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

compliance and safety. A significant penalty is required to not only punish the Respondent but to deter him and others from such conduct.

[39] The Respondent noted that he has had a difficult year because of COVID 19. That has been taken into account.

[40] Based on the above, the Board's penalty decision is that the Respondent pays a fine of \$2,500.

Costs

[41] 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.

[42] 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.

[43] 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.

[44] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,125 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 part of the matter proceeding by way of an Agreed Statement of Facts.

Publication

[45] 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 Act¹⁰. 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.

[46] 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

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 Refer sections 128 of the Act

of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

- [47] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹¹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹². Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹³. 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*¹⁴.
- [48] 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 interest¹⁵. 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.
- [49] Based on the above, the Board will publish a general article in the Electron summarising the matter. The Respondent will be identified in the Electron.
- [50] The Respondent should 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

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$2,500.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,125 (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 be named in the publication.

- [52] 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.

¹¹ Section 14 of the Act

¹² Refer sections 200 and 202 of the Criminal Procedure Act

¹³ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁴ *ibid*

¹⁵ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

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

Signed and dated this 15th day of January 2021



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*
 - (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:*

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- (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.