

Before the Electrical Workers Registration Board

	CE No. 22408
Electrical Worker:	Eduardo Ramos Mendonca (the Respondent)
Registration Number:	E 257269
Electrical Worker Number:	EW 116259
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:	Christchurch
Hearing Type:	In Person
Hearing and Decision Date:	19 November 2021

Board Members Present:

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

Appearances:	Ms T Sagaga 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 disciplinary offences under sections 143(c) and 143(f) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent, whose practising licence had not been renewed, carried out prescribed electrical work when not authorised to do so and provided a false or misleading return. He has committed disciplinary offences under sections 143(c) and 143(f) of the Act. The Respondent is censured and ordered to pay costs of \$250.

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 19 February 2021 at [OMITTED], Mr Eduardo Mendonca has failed to have complied with a term or condition of his registration or licence being an offence under section 143(c) of the Act, IN THAT, he has carried out prescribed electrical work when he did not hold a current practising licence.

Second Alleged Disciplinary Offence

2. On or around 19 February 2021 at [OMITTED], Mr Eduardo Mendonca has failed to provide a return / 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 when he did not hold a current practising licence.

[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.

Procedure

[9] The matter proceeded on the basis of an Agreed Statement of Facts.

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

Evidence

- [10] 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.

- [11] The Board heard evidence from the Respondent and from [OMITTED], a registered and licensed electrician [OMITTED], with whom he carried out the prescribed electrical work.
- [12] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the alleged disciplinary offences related to prescribed electrical work carried out and certified by the Respondent at a time when he did not hold a current practising licence.
- [13] The prescribed electrical work was carried out on 19 February 2021, and a Certificate of Compliance was provided by the Respondent on the same date. The work was high-risk and had to be inspected. The electrical inspector who carried out the inspection checked the Respondent's licensing details and found that the Respondent was not licenced at the time the work was carried out. His practising licence expired on 31 December 2020.
- [14] The Respondent acknowledged that his practising licence had expired when he carried out the prescribed electrical work and issued the Certificate of Compliance.
- [15] At the hearing, the Respondent stated that he was aware that his licence had expired when he did the prescribed electrical work. He was not able to provide a reason for why he did not work under [OMITTED] supervision or allow him to do the certification other than that they had worked together in the past, and he usually takes responsibility for the completed work. The Respondent also accepted that he had received the correspondence from the Board with regard to the renewal of his licence.
- [16] It was noted that there were no safety or compliance issues with the prescribed electrical work that was completed.
- [17] 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.

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

Board's Conclusion and Reasoning

- [18] The Board has decided that the Respondent failed to comply with a term or condition of his registration or licence being an offence under section 143(c) of the Act, in that, he carried out prescribed electrical work when he did not hold a current practising licence.
- [19] The Board has also decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act, in that, he provided a Certificate of Compliance when he did not hold a current practising licence.
- [20] The reasons for the Board's decisions follow.

Not Licensed

- [21] Section 74 of the Act places restrictions on who can carry out prescribed electrical work. It states:

- 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.*
- (2) *The following persons may do prescribed electrical work, or assist in doing prescribed electrical work, within the limits prescribed in regulations (if any):*
- (a) *a registered person who is authorised to do, or assist in doing, the work under a current practising licence:*
- (b) *a person who is authorised to do, or assist in doing, the work under a provisional licence:*
- (c) *a person who is authorised to do, or assist in doing, the work under an employer licence.*
- (3) *A person does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if that work is done in accordance with any of sections 75 to 80.*
- (4) *A body corporate that is responsible for any prescribed electrical work does not do any prescribed electrical work, or assist in doing any prescribed electrical work, in breach of this section if the natural person or natural persons who actually do, or assist in doing, that work are authorised to do so under this Act.*
- (5) *Subsection (1) is subject to subsections (3) and (4) and sections 75 to 81.*
- (6) *For the purposes of this Part and Part 10, regulations means regulations made under section 169.*

- [22] Under section 98 of the Act, a registered person cannot carry out prescribed electrical work without a practising licence:
- 98 Practising licence required**
- (1) *A registered person is not authorised to do, or assist in doing, prescribed electrical work that the person is otherwise authorised to do by virtue of that person's registration unless that person is the holder of a current practising licence issued under this subpart that authorises the person to do, or assist in doing, the work.*
- (2) *Subsection (1) is subject to sections 75 to 80.*
- (3) *Any authority given under a practising licence issued under this subpart to a registered person to do, or assist in doing, any prescribed electrical work is sufficient authority for the person so authorised to do or, as the case may be, assist in doing that work.*
- (4) *Subsection (3) is subject to the terms and conditions imposed under section 103 and to any regulations.*
- [23] Sections 75 to 80 of the Act provide for various exemptions. Section 75 covers exemptions granted by the Board, section 76 an exemption for work carried out under supervision and sections 77 and 78 exemptions for trainees. Sections 79 and 80 cover exemptions for domestic wiring work and the maintenance of domestic appliances. None of those exemptions applied. The Respondent could, however, have worked under the supervision of [OMITTED] but chose not to.
- [24] Practising licenses are issued for a period of two years. Electrical workers are responsible for maintaining the currency of their practising licences but are given renewal notices. In order to renew, an electrical worker must meet the requirements in section 106 of the Act. Included is the requirement to complete a competency programme under section 108 of the Act. Competence programmes provide confidence that an electrical worker retains the required competencies for the reissue of a licence.
- [25] The Respondent had been given notice that his licence was expiring and that he had to renew it. He did not do so and, at the time he carried out the prescribed electrical work, he had not carried out the required competency course.
- [26] Turning to the offence itself, it is an offence under section 143(c) of the Act to fail to comply with a term or condition of an electrical workers registration or licence. Given the facts before the Board and the legislative requirements as outlined above, the Respondent has not complied with sections 74(2) and 98(1) of the Act.
- [27] The disciplinary offence is a strict liability one. The Investigator does not have to prove any intention. It is enough that the elements of the offence have been committed. The Board does not need to find that there was intention, fault or

negligence⁵ to make a decision. Accordingly, the Board found that the offence had been committed.

[28] The Respondent should note that unauthorised persons carrying 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 include⁶:

- (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*

[29] Also, the Respondent should 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.

[30] As such, it would have been open to the Board to pursue the matter in the courts.

False or Misleading Certification

[31] 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 irrelevant⁷.

[32] The returns referred to are issued under the Regulations. There is 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. As the Respondent was not authorised to carry out the prescribed electrical work it follows that the certificate was a false certification.

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

⁶ Refer section 1A of the Act.

⁷ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Penalty, Costs and Publication

- [33] 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.
- [34] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [35] 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*⁸ 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.

- [36] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁹ 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.
- [37] The Respondent cooperated with the investigation and accepted that he had committed a disciplinary offence at the earliest opportunity. There were no issues with the electrical work.
- [38] The Respondent noted that, at the time of the offending, he was under financial pressures as a result of an injury and needed, post the Christmas period, to work to gain an income. The Respondent outlined that he is a church pastor and that he suffered anxiety as a result of the complaint and investigation. He was genuine in his remorse for his offending.
- [39] It was noted that the Respondent completed a competency programme course on 11 February 2021 and lodged an application to be relicensed on 1 March 2021. As such the offending was only for a short period of time. The Respondent stated that he had tried to attend a competency course prior to his licence expiring but was not

⁸ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

able to do so as a result of the Christmas break and an unavailability of spaces on courses.

- [40] The Board took the above factors into consideration. Ordinarily, the Board would impose a fine for offending of this nature. However, given the mitigating factors present, the Board decided that a censure was appropriate. A censure is a public expression of disapproval.

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 case¹⁰.
- [43] In *Collie v Nursing Council of New Zealand*,¹¹ 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] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,¹² 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.

[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.

- [45] 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

¹⁰ *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.

¹¹ [2001] NZAR 74

¹² CIV-2011-485-000227 8 August 2011

current matter was simple. Adjustments based on the High Court decisions above are then made.

- [46] 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

- [47] 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 Act¹³. 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.
- [48] 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.
- [49] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁴. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁵. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁶. 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*¹⁷.
- [50] 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 interest¹⁸. 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.
- [51] The Board has decided that, notwithstanding the above, it will not publish the matter in Electron as it ordinarily would. The reason is that the offending was at the lower end of offending.

¹³ Refer sections 128 of the Act

¹⁴ Section 14 of the Act

¹⁵ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁶ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁷ *ibid*

¹⁸ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

- [52] 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 the prohibition of publication.

Penalty, Costs and Publication Orders

- [53] 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.

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

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

Right of Appeal

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

Signed and dated this 14th day of December 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—*

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- (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.*