Before the Electrical Workers Registration Board

	CE No. 22927
Electrical Worker:	[Omitted] (the Respondent)
Registration Number:	[Omitted]
Electrical Worker Number:	[Omitted]
Registration Class:	Registered Electrician / Electrician endorsed supervision

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Decision of the Board under section 147M of the Electricity Act 1992

Hearing Type:	In person in Auckland
Decision Date:	17 July 2025

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)
Mr T Wiseman, Registered Inspector
Mr J Hutton, Registered Inspector
Ms S Cameron, Registered Electrician
Ms L Wright, Barrister
Mr T Tran, Barrister
Mr S Rogers, 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 Policies.

Board Decision:

The Board determined that the Respondent has committed offences pursuant to section 143(b)(ii) and section 143(f) of the Act. The Respondent is ordered to attend a specified course of instruction and pass a specified exam pursuant to section 147M(2)(a) and (c) of the Act. Specifically, the Respondent is directed to complete a regulations course and sit and pass regulations exam within 6 months of the date of this decision The Respondent is ordered to

pay costs. The Respondent has been granted name suppression and will not be named in this decision or any publication relating to this matter.

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Introduction

[1] On 4 September 2024, a complaint was received by the Board under section 144 of the Act relating to prescribed electrical work (PEW) carried out at [Omitted] (the Property).

[2] The circumstances giving rise to the complaint occurred on or around 10 February 2024, when the Respondent was engaged to carry out PEW at the Property, including supply and installation of consumers mains cabling, main earthing system, electrical switchboards, final sub-circuit wiring, and connection of electrical fittings.

Background

[3] The Respondent holds practising licences as a Registered Electrician ([Omitted]) and Electrician endorsed supervision ([Omitted]).

The Incident

[4] On 4 September 2024, [Omitted] of [Omitted] lodged a complaint alleging that the Respondent had carried out non-compliant PEW at the Property. The complaint identified two key issues:

a. The use of incorrectly coloured insulation (green/yellow) as active conductors in a two-way lighting circuit; and

b. Exposed live electrical connections and cable ends left in the ceiling cavity.

[5] Upon investigation by [Omitted], it was found that plastic electrical connectors used within the ceiling cavity to join conductors had not been enclosed, and conductors (tails) associated with the electrical connection were left in a manner that the bare copper conductor ends were exposed. Testing verified these exposed connections were live (energised).

The charges

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

[7] The following disciplinary charges were alleged in the Notice of Proceeding:

First Alleged Disciplinary Offence:

1. On or around 10 April 2024 at [Omitted], Auckland, [Omitted] 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

a. Failed to use the correctly coloured insulation in a two-way light circuit and/or,

b. Failed to ensure measures were in place to prevent accidental direct or indirect contact with live parts of the electrical installation.

In breach of regulations 13(1), 20(2), 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2.On or around 10 April 2024 at [Omitted], Auckland, [Omitted] 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 a.

a. Failed to use the correctly coloured insulation in a two-way light circuit and/or,

b. Failed to ensure measures were in place to prevent accidental direct or indirect contact with live parts of the electrical installation.

Or in the Alternative

3. On or around 10 April 2024 at [Omitted], Auckland, [Omitted] has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he failed to ensure measures were in place to prevent accidental direct or indirect contact with live parts of the electrical installation.

Second Alleged Disciplinary Offence

On or around 10 April 2024 at [Omitted], Auckland, [Omitted] 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 that contained incorrect information, and falsely certified the PEW as having been carried out lawfully and safely.

[8] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his power or possession.

[9] Counsel for the investigator summarised the proceedings as follows;

[10] *Both disciplinary offences relate to prescribed electrical work (PEW) being carried out at* [Omitted], *Auckland on or around 10 April 2024. In brief, it is alleged* [Omitted] *carried out, or was responsible for the carrying out, non-compliant PEW at this property. It is also alleged that* [Omitted] *issued a false or misleading Certificate of Compliance/Electrical Safety Certificate. The non-compliant PEW relates to:*

a. *An electrical joint was completed within the ceiling cavity in a manner that live (energised) screw connectors and non-terminated conductor ends were left exposed; and*

b. *Protective earthing conductors with green/yellow coloured insulation had been utilised as active switching conductors for two-way lighting circuits.*

Function of Disciplinary Action

[11] 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]

[12] 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. Those grounds relate to carrying out or supervising prescribed electrical work (PEW).

Procedure

[13] The matter proceeded as a defended hearing. The Respondent confirmed that he disputed the charges against him. However, he did subsequently, accept that he had used protective earthing conductors with green/yellow coloured insulation as active switching conductors for two-way lighting circuits.

[14] Counsel for Investigator advised the Board that, just prior to the hearing, the Respondent had asked him if he needed a lawyer. The Board checked with the Respondent and advised him that the hearing could be adjourned for him to obtain a lawyer. The Respondent advised the Board, that he did not wish to have a lawyer and wanted to proceed with the hearing. The Board told the Respondent that he should let the Board know if there was anything that he didn't understand or had any questions about the process.

Evidence

[15] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed.[3] 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.*

[16] In this case, the Board heard evidence from the following witnesses:

***Evidence of* [Omitted]**

[17] [Omitted], a registered electrician, provided evidence via WhatsApp audio link. He confirmed the accuracy of the written answers, in a question and answer document provided to the Board. [Omitted] attended the property on 3 September 2024 and continued to undertake work there for a few days. His evidence was that he observed some non-compliant work. In particular, he observed conductors with tails hanging out in the ceiling cavity and the use of incorrect conductors behind a switch.

[18] [Omitted] took photographs of what he saw. It was his evidence that he tested conductors from the ceiling cavity by undertaking a voltage test on a multi-meter. He received a 230 volt result. He gave evidence that conductors were definitely live. He said that the live

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

nature of the conductors was very memorable as it was not something that he would expect to see in a new house. He couldn't recall the exact details of the testing, but he said that he was certain that the wires were live. Following identification of the live copper wires/ exposed connectors, [Omitted] said that he killed the power, and put a junction box on so the wires could not be touched

[19] [Omitted] reported his concerns directly to his employer and described that he was "mind blown" by what he had seen.

[20] [Omitted] told the Board that he found the live wires when replacing a light.

[21] [Omitted] also identified some issues with a switch. He observed that protective earthing conductors with green/yellow coloured insulation had been used as active switching conductors for two-way lighting circuits.

[22] [Omitted] fixed this issue, by using a suitable cable already installed but not used, to make the wiring compliant and safe and notified [Omitted].

***Evidence of* [Omitted]**

[23] [Omitted] is the employer of [Omitted]. When [Omitted] advised him of the protective earthing conductors being used as active switching conducts and of the energised connectors in the ceiling cavity, [Omitted] reviewed the photographs and made a complaint to the Board.

[24] [Omitted] told the Board that the work had not been done to code and it was unsafe.

[25] The certificate of compliance (COC) for the work was provided to [Omitted] by the property owner and he provided this with the complaint.

[26] [Omitted] told the Board that using the incorrect cables at the light switch meant that someone could inadvertently connect to it, thinking that it was an earth conductor and the worst case scenario would be death. [Omitted] confirmed that a person might assume that a red conductor was live but the rest was de-energised and it could cause an electric shock.

[27] In relation to the ceiling wires, [Omitted] answered questions about the risk posed. He was of the view that, if someone put a hand up into the ceiling space and had not seen connectors, they would have got a nasty shock and, if up ladder, they may have fallen from the shock. [Omitted] also considered the live wires to be a potential fire hazard.

[28] [Omitted] confirmed that the AS/NZS 3000:2007 (the applicable industry standard) provided guidance on how to do the work safely.

Evidence of Mervin Johnson

[29] Mr Johnson appeared remotely. He was the investigator assigned to conduct the investigation. He confirmed the contents of his statement which outlined the investigation process and the information received.

***Evidence of* [Omitted]**

[30] [Omitted] was one of the workers who undertook the work with the Respondent. [Omitted] was not available to give evidence at the hearing. He had answered some questions from the investigator, prior to the hearing and the Respondent had no objection to the record of the questions and answers being admitted as evidence and stated that he had no questions for [Omitted]. The Respondent agreed with the contents of the statement. However, this was unsigned, so the Board has not attached any significant weight to this evidence.

[31] Counsel for the investigator advised the Board that it intended to rely on [Omitted] evidence to show the level of influence and control of the Respondent. The Respondent admitted that he was contracted to undertake the work and directed the other workers on site, so there is no dispute about this issue and the Board therefore does not require the evidence of [Omitted].

Evidence of Mr Mark Carter

[32] Mr Carter, an electrical inspector of Torque IP Ltd, provided expert evidence after reviewing the complaint documentation and the photographs. He confirmed the contents of the report he had prepared for the Board together with the updates to that report.

Technical Assessment

[33] The report identified that the Respondent's work breached multiple regulatory and standards requirements.

[34] Mr Carter found that the use of conductors with green/yellow coloured insulation as active conductors for a two-way light switching circuit was contrary to AS/NZS 3000:2007 clause 3.8.1, which prohibits such use. Mr Carter was of the opinion that this work was undertaken negligently.

[35] Mr Carter also determined that the exposed electrical connectors and cable ends in the ceiling cavity violated requirements for protecting against contact with live parts of an electrical installation contrary to AS/NZS 3000:2007 clause 1.5.4.1. Mr Carter assessed that this presented a risk of electric shock to any persons working within or reaching up to the ceiling cavity.

[36] Mr Carter concluded that both issues were significantly misaligned with reasonably expected work practice for a competent electrician, with the exposed live parts creating a risk of serious harm to persons. Mr Cater's evidence given during the hearing confirmed that exposed live parts created a risk of electric shock. He considered the risk of fire to be lower. He stated that a professional electrician would not leave work in that state.

[37] Mr Carter was of the view that the wires would have to have been live for Mr Johnson to receive the testing result of 230 volts.

[38] Having reviewed the evidence, Mr Carter expressed the view that the Respondent had caused the work to be done. He confirmed that it was not unusual for one electrical worker to undertake the work and another to certify the work. He explained that he would

expect the COC issuer to undertake visual inspecting and testing in accordance with the AS/NZS 3000:2007 standard.

[39] Mr Carter confirmed that the work was non-compliant, and it was his view that the Respondent did not carry out the required testing. The work was certified on the same day that it was carried out, as being lawful and safe when it was not. The Respondent was required to enter the names in the certificate of compliance of those who were supervised when undertaking the work. He failed to do this. Mr Carter explained that signing the COC was taking responsibility for the work.

[40] He gave evidence that installing smoke alarms was part of the work undertaken by the Respondent.

Safety Regulations

[41] Mr Carter identified that the Respondent had breached regulations 13(1), 20(2), and 59 of the Electricity (Safety) Regulations 2010, because:

a. Measures were not put in place to prevent accidental direct or indirect contact with exposed conductive parts; and

b. That the installation did not comply with the applicable parts of AS/NZS 3000:2007.

The homeowner

[42] A signed statement from the homeowner was also introduced as evidence. This evidence did not go to any fact in dispute and was admitted by consent.

[Omitted]

[43] The investigator sought to rely on a question-and-answer document from a further worker, [Omitted], who worked on the site with the Respondent. This statement was not signed, and the worker was not called to give evidence. The Board did not place any significant weight on this statement particularly given that the Respondent does not dispute that he directed the work and signed the COC.

***Evidence of* [Omitted]**

[44] The Respondent provided evidence at the hearing. He explained that he was contracted to undertake the work, and he directed the work of the other electrical worker and the unlicensed supervised person on site.

[45] The Respondent accepted that he had used the incorrect cables behind the switch. He explained that this was done because one of the cables was damaged. The Respondent did not appear to appreciate the importance of using the correct cables.

[46] In relation to the ceiling cavity work, the Respondent explained that after the smoke alarms had been installed, he was advised that there were not enough smoke alarms, and they had not been installed in accordance with new council requirements. This meant that the existing smoke alarms had to be disconnected, and new ones installed. The

Respondent and his team undertook this work on 14 units in the development. There were approximately 100 smoke alarms in total.

[47] The Respondent disputed that there were any live parts in the ceiling cavity. He stated that the photos did not prove that the conductors were live. He noted that there was no documented proof of the testing results. He stated that there might be other reasons for a live result. He speculated that perhaps a screw or nail through the cable could have caused a live result.

[48] While it is accepted that the photographs do not prove that there the parts were energised, the Board accept the evidence of Mr Johnson that the parts were live.

[49] The evidence was that the smoke alarm work was undertaken by the Respondent and his workers, with it being most likely that the work on number [Omitted] was undertaken by one of the Respondent's workers. The Respondent stated that he undertook 70% to 80% of the wiring work himself.

[50] The Respondents evidence about how the work was undertaken contained several inconsistencies and contradictions. At times he was 100% certain that the work was not left live. At other points his evidence was much less certain and his memory less clear.

[51] The Respondent explained that he wasn't a cowboy and didn't want to do unsafe work. The Board accepts that the Respondent did not deliberately leave the work in an unsafe state and that he had high trust in his workers. While the Respondent expressed the view that someone must have cut the cable, there is no evidence to suggest this.

[52] The Respondent confirmed that he directed the work, did all of the testing at the property at number [Omitted] and issued the only COC for the work. He confirmed that the signature on the COC was his. The Respondent's evidence was that, the disconnection work was undertaken after the COC was signed. The Respondent did not complete further documentation for the disconnection work.

[53] When questioned by Counsel for the Investigator the Respondent acknowledged that he could not be 100% certain that the wires were not left live and that he did not have any notes to confirm the disconnection. Although the Respondent conveyed at one point that he knew it was disconnected, he also referred to the passage of time since the work was undertaken and acknowledged some uncertainty.

Credibility Assessment

[54] Before addressing the specific particulars of each alleged offence, the Board assessed the credibility of the witnesses whose evidence it received. This assessment is crucial as it forms the foundation upon which the Board evaluates conflicting accounts.

[55] The Board found Mr Johnson, [Omitted] and Mr Carter to be credible witnesses who provided consistent, professional evidence supported by photographic records. They demonstrated good knowledge of the technical requirements of the relevant regulations and standards.

[56] By contrast, the Board found the Respondent's evidence to be inconsistent around his level of certainty that the wires were not live.

[57] Based on the inconsistencies and the contradictions between the Respondent's evidence and the evidence of other witnesses, the Board finds that where there is a conflict between the evidence of the Respondent and other witnesses. The Board find that the evidence of the other witnesses is to be preferred. While it is not possible to say with certainty what occurred, the Board has applied the standard of the balance of probabilities and prefers the evidence of Mr Johnson, [Omitted] and Mr Carter.

[58] Turning to the particulars of the disciplinary charges.

Board's Decision

First alleged Disciplinary offence

[59] The first alleged disciplinary Offence involved three alternatives. The first is that the work was undertaken contrary to regulations. The second is that the work was done negligently or incompetently. The third, and most serious alternative charge is that the work created a serious risk of harm or significant damage to property.

Negligence

[60] Negligence, in a disciplinary context, is 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 being inquired into. This is described as the *Bolam*[4] test of negligence which has been adopted by the New Zealand Courts.[5]

[61] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test.[6] The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[62] 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 Act,[7] which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. 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,

[4] *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582
[5] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[6] *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)
[7] *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

the Board was required to take into account subjective considerations relating to the practitioner.[8]

Risk of Serious Harm or Significant Property Damage

[63] Turning to risk of serious harm, the term is defined in section 2 of the Act. It means:

> *death; or*
>
> *injury that consists of or includes loss of consciousness; or*
>
> *a notifiable injury or illness as defined in section 23 of the Health and Safety at Work Act 2015.*

[64] It is noted that actual serious harm need not occur for the Board to make a finding. It is the *risk* of serious harm.

[65] The Board notes that under Safety Regulation 20, installations are deemed to be electrically unsafe if there are not measures in place that prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the installation.

[66] Applying the above to the present case, the Board finds that the Respondent has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out PEW, being an offence under section 143(b)(ii) of the Act. This finding is specifically related to particular (b) of the first disciplinary offence, concerning the Respondent leaving the work electrically unsafe as live parts were exposed.

[67] The Board has determined that section 143(b)(ii) is the most appropriate provision in this case for the following reasons:

a. The evidence establishes that the exposed wires were energised/ live.

b. The Board considers this conduct to be more serious than merely carrying out work contrary to an enactment under section 143(a)(ii). While the conduct did breach regulatory requirements, the gravity of the offending extends beyond simple non-compliance to creating an actual risk of harm;

c. The conduct clearly constitutes negligence as it significantly deviates from the standard of care expected of a reasonable electrical worker. No reasonable electrical worker would undertake work in this manner;

d. The risk created was significant and foreseeable. Exposed live parts pose an obvious and serious risk of electric shock, which could result in serious injury or death;

e. The Respondent's claim that the wires were de-energised when he left the site is not credible given the circumstances and his inconsistent statements

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

[68] Accordingly, the Board considers that the most serious aspect of the Respondent's conduct was particular (b) relating to the energised conductors, creating a risk of harm to persons who could come into contact with live parts. This conduct meets the threshold for the most serious of the alternative charges under section 143(b)(ii).

Second Alleged Disciplinary Offence

[69] The second alleged disciplinary offence involved two parts. These were, incorrect information on the return and the return being false and misleading.

[70] The evidence established that a combined Certificate of Compliance and Electrical Safety Certificate was issued by [Omitted] on 10 April 2024. This certificate was false and misleading because it purported to certify the PEW carried out was lawful and safe, however because [Omitted] failed to carry out adequate testing and checks, and because of the non-compliant nature of the PEW, it was not in fact performed lawfully or safely. Further, the COC contained incorrect information, in that it did not include the names of the supervised persons who undertook some of the work.

[71] The evidence showed that the Respondent was assisted by a supervised person. However, the name of this individual was not included on the COC.

[72] Based on the evidence, the Board is satisfied on the balance of probabilities that the Respondent failed to include the names of supervised person who performed PEW and that return was false and misleading because the work was non-complaint and unsafe.

Conclusion on the Charges

[73] The Board has carefully considered all the evidence presented and the submissions made. Based on the evidence and the above analysis, the Board has determined as follows:

a. In respect of the first alleged disciplinary offence, the Board finds that the Respondent has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out PEW being an offence under section 143(b)(ii) of the Act. This finding is specifically related to particular (b), concerning the Respondent leaving live parts exposed.

b. The Board considers that the most serious aspect of the Respondent's conduct was leaving the live parts exposed, creating a significant risk of harm to persons who could come into contact with live parts. This conduct meets the threshold for the most serious of the alternative charges under section 143(b)(ii).

c. In respect of the second alleged disciplinary offence, the Board finds that the Respondent has provided a false or misleading and incomplete return, being an offence under section 143(f) of the Act, in that he failed to provide correct and complete information on the COC issued.

d. The Board is satisfied that the evidence establishes both of these offences to the required standard of proof, that is, on the balance of probabilities.

Penalty, Costs and Publication

[74] Having found that the Respondent has committed serious disciplinary offences that created potential risks to public safety and demonstrated a concerning disregard for regulatory requirements, the Board must, under section 147M of the Act, consider the appropriate disciplinary penalty, any costs and whether the decision should be published.

[75] The Board received submissions at the hearing regarding penalty, costs, and publication.

Penalty

[76] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.[9] It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:[10]

(a) protection of the public and consideration of the purposes of the Act;

(b) deterring Respondent and other Electrical Workers from similar offending;[11]

(c) setting and enforcing a high standard of conduct for the industry;[12]

(d) penalising wrongdoing;[13] and

(e) rehabilitation (where appropriate).[14]

[77] Overall, the Board should assess the conduct against the range of penalty options available in section 147M of the Act, reserving the maximum penalty for the worst cases[15] and applying the least restrictive penalty available for the particular offending.[16] The Board should be looking to impose a fair, reasonable, and proportionate penalty [17] that is consistent with other penalties imposed by the Board for comparable offending.[18]

[78] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.[19]

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[9] *Ellis v Auckland Standards Committee 5* [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

[10] Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

[11] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

[12] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

[13] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

[14] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

[15] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

[16] *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

[17] *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

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

[19] In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

[79] In this case, the Board is particularly concerned with the Respondent's failure to ensure that live parts were not left exposed, creating a serious risk of harm and that he did not appreciate the importance of using the correct coloured cables. Additionally, his provision of false information on the COC demonstrates a concerning disregard for regulatory requirements.

[80] The Board considers that these circumstances warrant a firm disciplinary response to protect the public and maintain high standards within the profession. The Board is of the view, and the Respondent agrees, that he would benefit from undertaking further training in regulatory requirements.

[81] The Respondent has not previously appeared before the Board. The Board accepts that the Respondent did not deliberately leave the conductors live but, when working on large scale projects, and last minute changes to the work are made, mistakes can happen and it is important to be extra vigilant about inspection and testing, particularly when some of the work is carried out by others.

[82] The Respondent has expressed an understandable desire to be able to continue to work to provide for his family.

[83] The Board noted that the Respondent had been subject to an interim suspension order since March 2025. As the Board has made a decision on penalty, that suspension has lapsed and the Respondent is able to resume undertaking prescribed electrical work. The suspension did have an impact on the Respondent, in that he was unable to do electrical work and had to rely on other sources of work.

[84] Taking all of these factors into account, the Board has determined that the appropriate penalty is to direct the Respondent to attend an electrical regulations course and sit and pass the electrical regulations exam within 6 months of the date of this decision, pursuant to section 47M(2)(a) and (c) of the Act.

[85] This penalty reflects the seriousness of the offending while providing a pathway for the Respondent to gain an improved understanding of the regulatory requirements.

Costs

[86] 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, the prosecution and the hearing.

[87] 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 case.[20]

[20] *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.

[88] In *Collie v Nursing Council of New Zealand,*[21] 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.*

[89] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,[22] the High Court noted:

> (a) *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.*
>
> (b) *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.*

[90] 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 of moderate complexity, requiring several hours of hearing time, with multiple witnesses.

[91] The Board's costs order is that the Respondent is to pay the sum of $1,575.00 towards the costs of and incidental to the matter. In setting the amount of costs, the Board has taken into account the Respondent's financial circumstances but notes that, as a matter of policy, it is not appropriate for the profession to bear the entire financial burden of the disciplinary proceedings. The Respondent chose to defend the charges and the hearing took several hours.

Publication

[92] Following the hearing, the Board received further submissions from the Respondent on publication in relation to both the financial impact on him of publication and the possible impact on his mental health. The Board invited the Respondent to obtain medical evidence to support his application for name suppression. The respondent provided notes from his GP. Based on the Respondent's submissions about the impacts on him and his business, if publication were to occur, including the risk of psychological harm (supported by medical evidence) and the financial consequences, the Board has decided to suppress

[21] [2001] NZAR 74.
[22] CIV-2011-485-000227 8 August 2011.

the Respondent's name in the decision and the article to be published in the electron will not name the Respondent.

[93] 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 Act[23] but no further publication swill be made.

[94] Within New Zealand, there is a principle of open justice and open reporting, which is enshrined in the Bill of Rights Act 1990.[24] The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction.[25] Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive.[26] 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.*[27]

[95] 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 interest.[28] 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.

[96] Based on the above, the Board will publish a general article in the Electron summarising the matter. The Respondent will not be identified in the Electron. Further, a copy of the decision will be available on the EWRB website but the Respondent will not be named in the decision.

[97] The decision in relation to publication is the decision of the majority of the Board. It is noted that not all members agreed with the decision to order name suppression.

Others matters arising

[98] Following the hearing, the Respondent raised concerns that he had not been provided with an interpreter. The Board takes its responsibility to facilitate access to justice very seriously. When served with the Notice of Proceeding, the Respondent was provided with a link to the hearing rules. Those rules clearly set out the process for advising the Board if an interpreter is required. The Respondent did not advise the Board, at any time prior to, or during the hearing, that he would like an interpreter. The Board does, from time to time, of its own initiative suggest to a Respondent that an interpreter may assist. During this hearing, there were no indications that the Respondent had any English language

[23] Refer sections 128 of the Act.
[24] Section 14 of the Act.
[25] Refer sections 200 and 202 of the Criminal Procedure Act.
[26] *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350.
[27] ibid .
[28] *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055.

difficulties. He was able to engage well in English and demonstrate that he understood the evidence and the proceedings.

Penalty, Costs and Publication Orders

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

Penalty: **Pursuant to section 147M(1)(b)(ii) of the Act, and section 147M(2)(a) and (c) of the Act the Respondent is ordered to attend a regulations course and sit and pass regulations exam within 6 months of the date of this order.**

Costs: **Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of $1575.00 (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 not be named in this decision, which will be publicly available on the Board's website.

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.

Right of Appeal

[100] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act.[i]

Signed and dated this 28th day of August 2025

R Keys
Presiding Member

[i] ***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.