

Before the Electrical Workers Registration Board

CE No. 22389

Electrical Worker: Raymond Parker (the Respondent)

Registration Number: I 641

Electrical Worker Number: EW 017469

Registration Class: Inspector

Decision of the Board in Respect of the Conduct of an Electrical Worker

Under section 147G and 147M of the Electricity Act 1992

Hearing Location: Palmerston North

Hearing Type: In Person

Hearing and Decision Date: 16 November 2021

Board Members Present:

Mr M Orange (Presiding)
Mr R Keys, Registered Inspector
Mr M Macklin, Registered Inspector
Mr M Perry, Registered Electrician

Appearances: M E Dowse for the Investigator

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 a disciplinary offence under section 143(c) and 143(f) of the Act.

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Introduction

- [1] 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. The charges were:

First Alleged Disciplinary Offence

1. On 19 January 2020 and 17 February 2020 at [OMITTED], Mr Raymond Parker has failed to comply with a term or condition of his registration or licence, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(c) of the Act, IN THAT, he has issued 13 Warrants of Electrical Fitness, when he did not hold a practising licence, for caravans identified as: 76MCC; 80MCC; 82MCC; 84MCC; 98MCC; 97MCC; 95MCC; 105MCC; 106MCC; 109MCC; 123MCC; 41MCC; and 35MCC.

Second Alleged Disciplinary Offence

2. On 19 January 2020 and 17 February 2020 at [OMITTED], Mr Raymond Parker has provided 13 false or misleading returns being an offence under section 143(f) of the Act, IN THAT, he has issued 13

Warrants of Electrical Fitness, when he did not hold a practising licence, for caravans identified as: 76MCC; 80MCC; 82MCC; 84MCC; 98MCC; 97MCC; 95MCC; 105MCC; 106MCC; 109MCC; 123MCC; 41MCC; and 35MCC.

- [3] 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.
- [4] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [5] 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.
- [6] 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.”

- [7] 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

- [8] The matter proceeded on the basis of an Agreed Statement of Facts, which set out the evidence that the Board needed to consider. It also noted that the Respondent did not accept that he had committed a disciplinary offence.

Evidence

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

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

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

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.

- [10] In addition to the Agreed Statement of Facts, the Board heard evidence from the Respondent prior to it making its decision.
- [11] The Agreed Statement of Facts set out that the Respondent accepted that on 19 January 2020 and 17 February 2020, he issued 13 warrants of electrical fitness (WoEF) and provided stickers, for caravans situated at the [OMITTED] as per the charges and that he was not the holder of a current practicing licence at the time he carried out the work as his licence was suspended as a result of a disciplinary hearing on 18 April 2018.
- [12] The Respondent accepted that only a registered person who holds a current practising licence may carry out or assist in doing prescribed electrical work and that he would have failed to have complied with a term or condition of his registration or licence under section 143(c) of the Act if he had carried out prescribed electrical work when subject to a licence suspension as he would not have been authorised.
- [13] The Respondent, however, disputed that the inspection/verification work that he undertook was prescribed electrical work and, therefore, disputed that a licence was needed to carry out the work he completed.
- [14] The Investigator submitted that in accordance with a Board decision in matter CE22184, the issuing of a WoEF was prescribed electrical work as it was maintenance.
- [15] The WoEFs all contained the Respondents registration number I1846.
- [16] The Respondent also accepted that if the work he completed was prescribed electrical work, then he had issued false and misleading returns because he was not authorised to carry out that work. Again, however, he maintained that the work was not prescribed electrical work and, as such, he disputed that the charge that the WoEFs were false or misleading. Again, the Investigator relied on the Board's decision in CE22184.
- [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.

Submissions

- [18] The Respondent made various submissions in support of his position that the work he completed was not prescribed electrical work. He did not, however, address the Board's findings in matter CE22184 other than to submit that as he did not do any physical work he had not carried out any prescribed electrical work.

[19] Counsel for the Investigator noted the provisions of regulation 78 of the Safety Regulations which the Board put to the Respondent. Under regulation 78(1), the Respondent would not have been, by definition, an authorised person, irrespective of whether he carried out any prescribed electrical work, as he was not a licensed Electrical Inspector. Regulation 78(1) provides:

78 Issue of warrants of electrical fitness for connectable installations

(1) *The following people may issue warrants of electrical fitness for connectable installations:*

(a) *a person who is authorised to inspect mains work:*

(b) *a person who, immediately before these regulations come into force, is authorised by the Secretary to issue warrants of electrical fitness, but only in respect of the same class of connectable installations that the authorisation relates to:*

(c) *in relation to a connectable installation that has been certified under regulation 66, the person who did the certification (and, to avoid doubt, the warrant may be issued at the same time that the certification is done).*

[20] The provision that would ordinarily apply to the Respondent is regulation 78(1)(a), a person who is authorised to inspect mains work.

[21] The inspection of mains work is, under regulation 6A of the Safety Regulations, high-risk work. Under regulation 71 and the Board's Gazette Notices for Classes of Licence, persons who are authorised are those who are registered and licensed as an Electrical Inspector. The Respondent was not, at the time of issue of the WoEFs, a licensed Electrical Inspector.

[22] The Respondent, in response to this, submitted that there are various exemptions from the requirement to be a licensed person when carrying out prescribed electrical work, including the exemptions for domestic wiring work (section 79 of the Act and regulation 57 of the Safety Regulations) and maintenance of domestic appliances (section 80 of the Act), the latter on the basis of a submission that caravans are appliance and not connectable installations as they connect to a power source by way of a cord and plug.

[23] The Respondent accepted that he was not the owner of the caravans that he issued WoEFs for. He was not able to clarify how the exemptions applied to him other than to submit that there was a degree of confusion over who could do what under the Act and the Safety Regulations.

[24] Finally, the Respondent submitted that had he been reissued with a licence in a timely manner, he would have been licensed and thereby authorised. The submission related to a Board ordered suspension of his licence and a disciplinary order that he undertake and satisfactorily complete a course of training prior to him

being relicensed. The Respondent gave evidence that he had completed a course of training and had sought to be relicensed but that it had not been progressed by the Ministry of Business Innovation and Employment (MBIE).

- [25] The Board obtained a copy of the training providers report. The Respondent stated he had not received a copy of it. A copy was provided to the Respondent at the hearing. The report noted concerns with the Respondents competence.
- [26] The Respondent accepted that he knew, at the time he issued the warrants, that he was not licensed.

Board's Conclusion and Reasoning

- [27] The Board has decided that the Respondent **has** failed to comply with a term or condition of his registration, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(c) of the Act, in that, he issued 13 Warrants of Electrical Fitness for connectable installations (caravans) when he did not hold a practising licence.
- [28] The Board has also decided that the Respondent provided 13 false or misleading returns being an offence under section 143(f) of the Act, in that, he issued 13 Warrants of Electrical Fitness for connectable installations (caravans) when he did not hold a practising licence.
- [29] The reasons for the Board's decisions follow.

Not Authorised or Licensed

- [30] The first charge under section 147(c) of the Act is upheld on the basis that the Respondent was not, under regulation 78(1) of the Safety Regulations an authorised person.
- [31] As noted in paragraphs [19] to [21] herein, an authorised person is a licensed electrical inspector. The Respondent was not licensed at the time. It follows that he was not authorised.
- [32] The Board does not accept that any of the domestic exemptions for wiring work or maintenance of appliances apply. The Respondent was not the owner of the caravans, which were connectable installations (not appliances). For clarity, each are defined in the Act as:

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

electrical appliance means any appliance that uses, or is designed or intended to use, electricity, whether or not it also uses, or is designed or intended to use, any other form of energy

- [33] On the basis of the definitions, a caravan is clearly a connectable installation. It is also to be noted that connectable installations must be inspected and certified in accordance with AS/NZS:3001 and that the standard expressly refers to and deals with caravans.
- [34] The Board also finds that the Respondent did carry out prescribed electrical work without a practising licence when he completed a periodic verifications (inspections of caravans and the issued WoEFs) and, in doing so, that he committed an offence under section 143(c) of the Act.
- [35] Firstly, the Board upholds its previous findings that a periodic verification of a caravan is prescribed electrical work. In a previous matter before the Board, it determined that the issuing of a warrant of electrical fitness was prescribed electrical work. The full reasons were outlined in that decision. In short, however, the Board decided that the actions came within the definition of “maintenance”. The Board set out:

[16] Maintenance is not defined in AS/NZS3000. It is defined in IEC 60050 which defines maintenance as the “combination of all technical and management actions intended to retain an item in, or restore it to, a state in which it can perform as required” .

[17] Notably, from the definition, the Board considers that actions required under AS/NZS 3001 to issue a warrant of electrical fitness come within the management actions intended to retain an item in the state in which it can perform as required. In particular, the testing requirements in C7 require that the person issuing the warrant of electrical fitness carry out tests to ensure electrical fittings in a caravan can perform as required. In the Board’s view, testing is the equivalent of “a management action”.

[18] The Board is also of the view that the issue of a warrant of electrical fitness comes within the plain and ordinary meaning of the term “maintenance” and that such a finding is in accordance with the purpose of the Electricity Act.

[19] The common dictionary meaning of the term maintenance is the process of preserving a condition or the process of keeping something in good condition. Maintain is causing or enabling a condition to continue and to keep in good condition by regularly checking or repairing. Again, looking at the requirements in AS/NZS 3001, it is clear that the actions required to issue a warrant of electrical fitness come within these definitions. The Electrical Inspector is, by inspecting

and testing a caravan, checking the good condition of the connectable installation.

[20] *Turning to the purpose of the Electricity Act section 1A states:*

1A Purposes

The purposes of this Act are—

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

[21] *Section 1A includes the regulation of electrical workers. The Act goes on, in Part 11, to provide a disciplinary regime for electrical workers. Section 143 of the Act sets out the disciplinary provisions that the Board may consider. Most, but not all, of the charges that can be laid against an electrical worker, require that prescribed electrical work was carried out.*

[22] *Looking at the conduct in question, if issuing a warrant of electrical fitness was not prescribed electrical work then the Board would have no jurisdiction except for offences under section 143(c) of the Act – failing to comply with a term or condition of a licence, or 143(f) in respect of returns required under an enactment. That, in turn, would mean that in the event an Electrical Inspector negligently or incompetently carried out a warrant of electrical fitness, that the Board would not be able to take any disciplinary action. The counter-position is that if the Board does have jurisdiction, it can take steps to protect the public through the penalties available to it under section 147M of the Act including by suspending or cancelling a licence or ordering training. In this respect, it is to be noted that the infringement regime that also applies does not and cannot prevent an electrical worker from continuing to issue warrants of electrical*

fitness, no matter how negligent or incompetent they may have been, whereas the Board, through disciplinary action, can. Accordingly, the Board considers that interpreting the issue of a warrant of electrical fitness to come within the term maintenance promotes the purpose of the Act.

[23] *Given the above, the Board finds that the issue of a warrant of electrical fitness was prescribed electrical work in that it was maintenance. On this basis the Board further finds that the prescribed electrical work was carried out in a manner that was contrary to an enactment as per the charge before it.*

[36] It follows that if a periodic verification is prescribed electrical work then the restrictions in the Act as to who can carry out prescribed electrical work apply. Those restrictions are set out in section 74 of the Act. 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.*

[37] 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.*

[38] The Respondent did not have a current practising licence at the time he issued the WoEFs.

[39] 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.

[40] Turning to the offence itself, under section 143(c) of the Act, it is an offence 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.

[41] 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.

[42] 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:

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

⁶ Refer section 1A of the Act.

- (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*

[43] Also, 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.

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

[45] With respect to the submission that the Respondent should have been relicensed at the time of the issue of the WoEFs, the matter is not a defence. It may be mitigation, although the Board notes that the person who completed the training expressed his reservations about the Respondent's competence.

False or Misleading Certification

[46] The second charge 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. All that is required of the Board is to determine whether a return, a warrant of electrical fitness required under regulations 76 to 78 of the Regulations, was false or misleading.

[47] The WoEFs issued all contained the Respondent's registration number. This implied that he was licensed when he was not. The issue of the licences also implied that he was authorised to issue them when he was not. On that basis, the WoEFs were false or misleading.

Penalty, Costs and Publication

[48] 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.

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

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

Penalty

[50] 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.

[51] 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.

[52] The Respondent cooperated in that he agreed to the facts that the Board should consider the matter on. He also accepted that, if he had carried out prescribed electrical work, he had committed the disciplinary offences.

[53] The Board was concerned that the Respondent, notwithstanding his previous status as an Electrical Inspector, seemed to lack regulatory knowledge and was confused as regards basic regulatory matters such as the exemptions that can apply and the differences between an appliance and a connectable installation.

[54] The Respondent continuing to carry out prescribed electrical when he knew he was not authorised to do so as a result of a disciplinary suspension is an aggravating factor. The failure by MBIE to deal appropriately with his application to be relicensed is a mitigating factor.

[55] Based on the above, and taking into account that the Respondent’s licence is currently suspended, the Board decided that a censure would be an appropriate penalty. A censure is a public expression of disapproval of conduct.

[56] The Respondent is reminded that he must not carry out any prescribed electrical work until such time as he is relicensed and that it is open to the Board to pursue any future transgressions in the courts.

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

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

Costs

[57] 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.

[58] 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.

[59] 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.

[60] 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.

[61] There were extenuating circumstances in the present matter, including the failure by MBIE to deal with relicensing inquiries when they were made. On that basis, the Board has decided that, in this instance, it will not make a costs order.

Publication

[62] 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

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

¹³ Refer sections 128 of the Act

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.

- [63] 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.
- [64] 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.
- [65] 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.
- [66] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.
- [67] 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.

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

Penalty, Costs and Publication Orders

[68] 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.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision.

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

[69] 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.

Right of Appeal

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

Signed and dated this 15th 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—*
- (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

- (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.