

Before the Electrical Workers Registration Board

	CE No. 22213
Electrical Worker:	Yehui Zhai (the Respondent)
Registration Number:	EE 277651
Electrical Worker Number:	EW 139246
Registration Class:	Electrical Engineer

Decision of the Board in Respect of the Conduct of an Electrical Worker Under section 147G and 147M of the Electricity Act 1992

Hearing Location:	Auckland
Hearing Type:	In Person
Hearing Date:	19 June 2020
Decision Date:	19 June 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Counsel:	Martin Denyer for the Investigator Jared Robert Moss for the Respondent
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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(b)(ii), 143(a)(i) 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. They were:

First Alleged Disciplinary Offence

1. Between 1 November 2018 and 21 June 2019 at [REDACTED] Mr Yehui Zhai 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 identify main earth electrode location on main switchboard; and/or
 - (b) Failed to label all devices used for isolation; and/or
 - (c) Failed to adequately seal combination meter/main switchboard with fire retardant; and/or
 - (d) Installed a batten holder in a position allowing direct contact with live parts; and/or
 - (e) Installed a junction box in a ceiling cavity with excessive insulation on conductors; and/or

- (f) Installed a socket outlet on a ceiling easily accessible to live parts; and/or
- (g) Terminated recessed downlights exposing excessive primary insulation; and/or
- (h) Installed wiring tightly twisted around nails risking damage to cables and conductors; and/or
- (i) Installed fixed wiring to recessed downlights with exposed primary insulation; and/or
- (j) Installed junction box with exposed primary insulation within ceiling cavity; and/or
- (k) Installed fixed wiring within ceiling cavity without adequate support; and/or
- (l) Installed a non-compliant PCU within zone 2 of a damp situation; and/or
- (m) Failed to provide a reliable protective earth termination to heat pump compressor; and/or
- (n) Caused damage to cables supplying exterior luminaires during installation

In breach of regulations 13(1)(a) and/or 16(1)(a) and or 20(1)(a) and/or 20(2)(d) and or 20(2)(g) and or 59(1)(a) of the Electricity (Safety) Regulations 2010.

Or in the alternative

2. Between 1 November 2018 and 21 June 2019 at [REDACTED] Mr Yehui Zhai 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) Failed to identify main earth electrode location on main switchboard; and/or
- (b) Failed to label all devices used for isolation; and/or
- (c) Failed to adequately seal combination meter/main switchboard with fire retardant; and/or
- (d) Installed a batten holder in a position allowing direct contact with live parts; and/or
- (e) Installed a junction box in a ceiling cavity with excessive insulation on conductors; and/or
- (f) Installed a socket outlet on a ceiling easily accessible to live parts; and/or
- (g) Terminated recessed downlights exposing excessive primary insulation; and/or
- (h) Installed wiring tightly twisted around nails risking damage to cables and conductors; and/or
- (i) Installed fixed wiring to recessed downlights with exposed primary insulation; and/or

- (j) Installed junction box with exposed primary insulation within ceiling cavity; and/or
- (k) Installed fixed wiring within ceiling cavity without adequate support; and/or
- (l) Installed a non-compliant PCU within zone 2 of a damp situation; and/or
- (m) Failed to provide a reliable protective earth termination to heat pump compressor; and/or
- (n) Caused damage to cables supplying exterior luminaires during installation.

Or in the Alternative

3. Between 1 November 2018 and 21 June 2019 at [REDACTED] Mr Yehui Zhai 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:

- (a) Failed to adequately seal combination meter/main switchboard with fire retardant; and/or
- (b) Installed a batten holder in a position allowing direct contact with live parts; and/or
- (c) Installed a socket outlet on a ceiling easily accessible to live parts; and/or
- (d) Terminated recessed downlights exposing excessive primary insulation; and/or
- (e) Installed wiring tightly twisted around nails risking damage to cables and conductors; and/or
- (f) Installed fixed wiring to recessed downlights with exposed primary insulation; and/or
- (g) Installed junction box with exposed primary insulation within ceiling cavity; and/or
- (h) Installed a non-compliant PCU within zone 2 of a damp situation; and/or
- (i) Failed to provide a reliable protective earth termination to heat pump compressor; and/or
- (j) Caused damage to cables supplying exterior luminaires during installation.

Second Alleged Disciplinary Offence

4. On 20 February 2019 at [REDACTED] Mr Yehui Zhai has provided a false or misleading return being an offence under section 143(f) of the Act, IN

THAT, he certified prescribed electrical work as being carried out lawfully and safely when it had not.

Third Alleged Disciplinary Offence

5. On 26 June 2019 at [REDACTED] Mr Yehui Zhai has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified prescribed electrical work as being carried out lawfully and safely when it had not.
- [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. The matter was, by consent, dealt with on the papers.
- [9] The Third Alleged Disciplinary Offence was withdrawn and was not considered by the Board. The allegations that the Respondent failed to provide a reliable protective earth termination to heat pump compressor was also withdrawn and was not considered.

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 matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was engaged to perform prescribed electrical work on a new housing development in 2018. The scope of engagement was to install the lighting, alarms, switches, background music system, switchboard, towel rails and CCTV as well as connecting the consumer mains. Work commenced in November 2018 and was completed in February 2019.
- [12] The Respondent accepted that he had committed the first alleged disciplinary offence as set out in the Notice of Proceeding with the exception of the heat pump compressor.
- [13] Further work was carried out after the Respondent left the site, in that trapdoors were installed in the ceilings of each garage and there was excavation work carried out for the construction of decks. Around April 2019 the property was sold to Housing New Zealand, and a lot of fixtures were removed from the house as a result. That work was not done by the Respondent. As a result, the Investigator advised that particulars (c) and (f) of the first alleged offence were not being pursued as it was accepted that the work had not been carried out by the Respondent.
- [14] When advised of the defects, the Respondent returned from an overseas trip to remedy them.
- [15] The Respondent accepted that there was deficient work that should not have been signed off on 20 February 2019. He attributed this to inexperience in checking his work for errors.
- [16] The Respondent stated that he put the errors he did make down to inexperience. He acknowledged that he should have done better. He stated that he understood that safety must be paramount in carrying out his job, and he will use this experience as an educational one, to become a better electrician.
- [17] The Respondent denied that the certification of his work was deliberately false or misleading.

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

- [18] Submissions filed by Counsel for the Respondent noted that the Respondent accepted that he was negligent in carrying out the work and that there was a risk of serious harm or significant property damage.
- [19] 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 summary.

Board's Conclusion and Reasoning

- [20] The Board has decided that the Respondent **has** negligently created a risk of serious harm to any person, or 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:
- (a) failed to identify main earth electrode location on main switchboard;
 - (b) failed to label all devices used for isolation;
 - (c) failed to adequately seal combination meter/main switchboard with fire retardant;
 - (d) installed a batten holder in a position allowing direct contact with live parts;
 - (e) installed a junction box in a ceiling cavity with excessive insulation on conductors;
 - (f) installed a socket outlet on a ceiling easily accessible to live parts;
 - (g) terminated recessed downlights exposing excessive primary insulation;
 - (h) installed wiring tightly twisted around nails risking damage to cables and conductors;
 - (i) installed fixed wiring to recessed downlights with exposed primary insulation; and
 - (j) installed junction box with exposed primary insulation within ceiling cavity.
- [21] The Board has also decided that the Respondent 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) installed fixed wiring within ceiling cavity without adequate support;
 - (b) installed a non-compliant PCU within zone 2 of a damp situation; and
 - (c) caused damage to cables supplying exterior luminaires during installation.
- [22] The Board further decided that the Respondent had, on 20 February 2019 provided a false or misleading return being an offence under section 143(f) of the Act.

[23] The Board reached its decisions on the basis of the Agreed Statement of Facts filed, the Respondent's acceptance of wrongdoing and the following reasoning.

First Offence

[24] The First Alleged Offence was laid in the alternatives of negligently creating a risk of serious harm or significant property damage, carrying out or causing to be carried out in a negligent or incompetent manner or in a manner contrary to an enactment.

[25] To make a finding on the First Alternative the Board must make a finding that there was a risk of serious harm or significant property damage. Serious harm 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.*

[26] The relevant parts of Section 23 of the Health and Safety at Work Act 2015 are:

23 Meaning of notifiable injury or illness

(1) *In this Act, unless the context otherwise requires, a notifiable injury or illness, in relation to a person, means—*

- (a) *any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid):*
 - (i) *the amputation of any part of his or her body:*
 - (ii) *a serious head injury:*
 - (iii) *a serious eye injury:*
 - (iv) *a serious burn:*
 - (v) *the separation of his or her skin from an underlying tissue (such as degloving or scalping):*
 - (vi) *a spinal injury:*
 - (vii) *the loss of a bodily function:*
 - (viii) *serious lacerations:*
- (b) *an injury or illness that requires, or would usually require, the person to be admitted to a hospital for immediate treatment:*
- (c) *an injury or illness that requires, or would usually require, the person to have medical treatment within 48 hours of exposure to a substance:*

[27] Significant property damage is not defined in the Act. Section 16(1)(b)(ii) of the Act, which relates to notification of accidents, also refers to serious harm and to property damage. In respect of damage it requires notification where there is:

damage to any place or part of a place that renders that place or that part of that place unusable for any purpose for which it was used or designed to be used before that accident.

- [28] As section 16 refers to both serious harm and to damage the Board considers significant property damage in section 143(b)(ii) should be interpreted in line with the definition in section 16(1)(b)(ii).
- [29] Actual serious harm or significant property damage need not occur. There need only be a risk that either might occur. The risk must be real in that there needs to be a material or substantial possibility, chance or likelihood that serious harm or significant property damage will occur. A real risk has also been described as one that a reasonable person would not brush aside as being far-fetched or fanciful⁵. The manner in which the work had been carried out meant that there was a risk.
- [30] The First Alternative also requires that the Respondent be found to have been negligent. Negligence 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*⁶ test of negligence which has been adopted by the New Zealand Courts⁷.
- [31] The New Zealand Courts have stated that the assessment of negligence in a disciplinary context is a two-stage test⁸. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [32] When considering what an acceptable standard is the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act⁹. The test is an objective one, and in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner¹⁰.
- [33] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*

⁵ Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd (The Wagon Mound No 2) [1967] 1 AC 617

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

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

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

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

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

- (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*
to provide for the regulation of electrical workers.

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

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

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

[36] The Board's finding of negligence relates to the Respondent leaving the installation in a dangerous and electrically unsafe state.

[37] The Board also made a finding that work had been completed in a negligent and incompetent manner. Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*¹² it was stated as "*an inability to do the job*".

[38] The manner in which the prescribed electrical work was carried out, and the state in which it was left indicated that the Respondent was out of his depth and was taking on work that he was not competent to do.

[39] Given the above factors the Board, which includes persons with extensive experience and expertise in carrying out and supervising prescribed electrical work, considered the Respondent has departed from what the Board considers to be an accepted standard of conduct and that the conduct was sufficiently serious enough to warrant a disciplinary outcome.

Second Offence

[40] The second charge relates 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

¹¹ [2001] NZAR 74

¹² *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

decided objectively and the intention of the issuer is irrelevant¹³. As such the submissions that the return was not deliberately issued as a false or misleading return is irrelevant. The lack of intention may, however, go to mitigation.

- [41] The return referred to is issued under the Regulations. There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance (CoC) be issued for high and general risk prescribed electrical work. A CoC must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.
- [42] Given the findings in respect of the prescribed electrical work, it follows that the certified work was not safe. Nor had it been done lawfully.

Penalty, Costs and Publication

- [43] 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.
- [44] Counsel for the Investigator and Counsel for the Respondent made written penalty submissions.
- [45] Counsel for the Investigator submitted that the penalty sought was a fine, censure, and costs but that inexperience was a contributing factor and that training may be appropriate. Counsel did not seek cancellation, suspension or publication. Counsel noted the Respondent had not previously appeared before the Board but that this matter was one of three matters currently before the Board. He submitted the Board may want to consider the totality of the breaches in imposing an appropriate penalty.
- [46] Counsel for the Respondent submitted that a fine and censure was appropriate. He noted that the three matters before the Board should be considered in their totality on the basis that the three matters relate to three separate properties which all ultimately formed the same job and as such happened at the same time; and that the breaches in all three matters were mostly the same.
- [47] Counsel for the Respondent also submitted:
9. Given that the standard of conduct is submitted to be that of negligence, that *places it at the lower end of the spectrum (as opposed to reckless or wilful breaches). Counsel leaves it in the hands of the board as to what that the appropriate starting point for a fine would be, but submits that a starting point of \$1,000 per matter (\$3,000 in totality) would be fair.*

¹³ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

10. *There however are some mitigating factors of Mr Zhai that should be considered by this board once the starting point is determined, particularly:*
- a. *Mr Zhai, upon learning of the non-compliance of the work, immediately cut short his vacation in China and returned to the properties to remedy his work.*
 - b. *Upon returning he found that some of the non-compliant work was not his work, but nonetheless remedied it.*
 - c. *Mr Zhai engaged a professional to check his work before signing it off the second time, completely at his own initiative.*
 - d. *Mr Zhai is inexperienced and this is the first time he finds himself before the board.*
 - e. *Mr Zhai has expressed great remorse to the board for his failings and has taken it upon himself to improve his work.*
11. *The factors identified in Paragraph 10 go a significant way to mitigating the errors of Mr Zhai, it is submitted that a discount from the starting point of up to 50% can be applied to the fines.*
12. *As previously stated, Mr Zhai is willing to undertake any additional training or courses that the boards see fit and will agree to any such order to this effect.*

Penalty

[48] 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*¹⁴ 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.

[49] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹⁵ 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.

¹⁴ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

- [50] Turning to the submissions, those received from Counsel for the Respondent significantly underplayed the offending. Contrary to Counsel's submission that the offending was at the lower end of the spectrum, the Board considered it to be at the upper end. The finding that an electrical worker has negligently created a risk of serious harm was the most serious of the alternatives open to the Board and amongst the most serious disciplinary offences that can be committed under section 143 of the Act.
- [51] There were aggravating factors. The standard of the work was very poor, and fundamental safety and compliance errors were made. Those errors were replicated over three sites. The Board has noted that the Respondent was not only negligent but also incompetent.
- [52] The finding of incompetence requires a penalty that addresses the Respondent's deficiencies. A training order is, therefore, appropriate.
- [53] Given the seriousness of the offending, the aggravating factors, and the risk of further offending the Board has decided that the Respondent's licence should be suspended until such time as the training ordered has been completed. The same penalty will be ordered for each of the three matters before the Board.
- [54] Based on the above, the Board's penalty decision is that the Respondent's licence is suspended until such time as, at his own cost and within 6 months of this order, the Respondent:
- (a) successfully completes, to the satisfaction of the Registrar, all of the year three on job units mandated by Skills;
 - (b) successfully completes the Stage 1,2 and 3 Practical Assessment Course and passes the Board's Stage 1,2 and 3 Practical Assessments; and
 - (c) successfully completes the Regulations Course and pass the Board's Regulations Exam.

Costs

- [55] 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.
- [56] 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 case¹⁶.

¹⁶ *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.

[57] In *Collie v Nursing Council of New Zealand*¹⁷ 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.

[58] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$1,000 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

[59] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public register as required by the Act¹⁸. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.

[60] 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.

[61] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁹. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁰. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²¹. The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*²².

[62] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest²³. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.

¹⁷ [2001] NZAR 74

¹⁸ Refer sections 128 of the Act

¹⁹ Section 14 of the Act

²⁰ Refer sections 200 and 202 of the Criminal Procedure Act

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

²² *ibid*

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

[63] Based on the above the Board will publish a general article in the Electron summarising the matter. The Respondent will be identified in the Electron. The Board will also order further publication by way of a general press release.

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(b)(ii) of the Electricity Act 1992, the Respondent's licence is to be suspended until such time as he completes, at his own cost and within 6 months of this order to the satisfaction of the Registrar, specified training under section 147M(2) of the Act being:

- (a) successfully completes, to the satisfaction of the Registrar, all of the year three on job units mandated by Skills;
- (b) successful completes the Stage 1,2 and 3 Practical Assessment Course and passes the Board's Stage 1,2 and 3 Practical Assessments; and
- (c) complete the Regulations Course and pass the Board's Regulations Exam.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,000 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

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

The Respondent will be named in this decision.

A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.

In terms of section 147Z of the Act, there will be action taken to publicly notify the Board's action.

[65] 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.

[66] The Respondent should note the provisions of section 147R of the Act which provide that the Board may attach a condition to or suspend a licence if a person fails to complete a training order.

Submissions on Penalty, Costs and Publication

- [67] The Board notes that penalty outcome is more significant than that which his Counsel submitted would be appropriate.
- [68] Given that the matter was dealt with on the papers and the penalty outcome, the Board has decided to afford the Respondent the opportunity to appear and make oral submissions prior to the order being made final.
- [69] To this end, the Respondent may seek leave to appear and make written submissions at its August meeting. If no request is made within five working days of this decision being issued, then the orders will become final.
- [70] The Respondent should note that if the Respondent does appear to make penalty submissions, it will be open to the Board to impose a different penalty including a more severe one.

Right of Appeal

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

Signed and dated this 29th day of June 2020



Mel 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.*