Plumbers, Gasfitters and Drainlayers Board

JURY v X

Plumbers, Gasfitters & Drainlayers Board Disciplinary Decision (2024/19)

Summary

X, Tradesman Plumber, was charged with carrying out sanitary plumbing in a negligent or incompetent manner and while unlicensed. The charges related to residential sanitary plumbing at a property in the Wellington region.

Mr X pleaded guilty to the charges.

The Board considered Mr X's offending was moderately serious although at the higher end of that scale. There were a number of defects with the work including the absence of a tempering valve and the Board considered that the defects should not have been expected from a practitioner with Mr X's years of experience. The Board found there were no aggravating factors in the case and Mr X was entitled to credit for his guilty plea, cooperation, lack of any previous disciplinary offending, and obvious remorse.

The Board ordered Mr X to pay a fine of $2,750 and $3,000 towards costs. Mr X was also granted name suppression.

IN THE MATTER OF a disciplinary hearing pursuant to section 101 of the Plumbers, Gasfitters, and Drainlayers Act 2006

BETWEEN **MEGAN JURY**

Investigator

AND **X**
Tradesman Plumber, of the Wellington region.

Registered Person

DECISION OF THE BOARD
15 OCTOBER 2024

Hearing:	Held on the papers on 5 September 2024
Members sitting:	Diana Kuhtz-Covich (Chair), James Smith, Beth Healy, Selwyn Hikuroa, Sue Simons
Counsel:	Elena Mok and Madeleine Purcell for the investigator Helen Hotai for Mr X
Legal advisor:	Michael Hodge

Disciplinary hearing

1. On 5 September 2024, the Plumbers, Gasfitters and Drainlayers Board (**Board**) held a disciplinary hearing on the papers to consider a complaint by Rachael Evans against X, Tradesman Plumber. The complaint related to sanitary plumbing work at residential property in the Wellington region.

Guilty plea

2. On 2 July 2024, Mr X pleaded guilty to charges of carrying out sanitary plumbing when unlicensed and carrying out sanitary plumbing in a manner contrary to an enactment. He also signed an agreed summary of facts, the material parts of which were as follows:

    a. Mr X is a registered tradesman plumber. Mr X has not held a practising licence since 31 March 2017.

    b. Between May 2022 and March 2023, Ms Evans engaged a builder to carry out renovations on her property. The builder engaged Mr X to carry out sanitary plumbing work in relation to those renovations.

    c. In May, June, and December 2022, Mr X carried out sanitary plumbing work at the property despite not holding a current practice licence or any other form of authorisation under the Plumbers, Gasfitters, and Drainlayers Act 2006 (**Act**) authorising him to carry out sanitary plumbing. The work Mr X carried out included the disconnection and re-installation of fittings and pipework to replace the vanity, bath, shower, hot water cylinder, kitchen sink, and mixer.

    d. In May 2023, Ms Evans raised concerns with the builder that the plumbing work was defective and had caused leaks from the bathroom vanity and kitchen sink. In addition, there had been two separate leaks from pipes underneath the property. In August 2023, Ms Evans made a complaint to the Board about the work.

    e. Samuel Wood, Certifying Plumber, Certifying Gasfitter and a technical advisor to the Board, identified the following issues with the work carried out by Mr X:

        i. a 40mm waste pipe was used with three fixtures attached without a vent contrary to clause G13.3.1 of the New Zealand Building Code (**Code**)

        ii. newly installed pipes were leaking contrary to clause G12.3.7 of the Code

        iii. kitchen and bathroom water pipes were leaking contrary to clause G13.3.1(b) of the Code

iv. no sealant was installed around the shower head contrary to E3.3.6 of the Code

v. a new hot water cylinder was installed without a tempering valve contrary to G12.3.6 and 12.1(b) of the Code

vi. the top seismic strap on the cylinder was installed incorrectly and no lower strap was installed contrary to clause B1.3.3(f) of the Code

vii. the temperature pressure relief valve was installed to discharge into the safe tray grate instead of a tundish contrary to G12.1(b) of the Code

f. Mr Wood assessed the risk relating to the sanitary plumbing work was high as there was a risk of people being scalded by hot water because of the absence of a tempering valve on the hot water cylinder. The work also risked property damage because of the leaks.

g. Mr X admitted that he completed the sanitary plumbing work and did not hold a practising licence at the time.

3. The Board was satisfied that the facts in the agreed summary of facts meant that Mr X had committed disciplinary offences under section 89(a)(i) and 89(a)(ii) of the Act.

Penalty and costs submissions

4. On behalf of the investigator, Ms Purcell submitted that the principles and purposes of disciplinary proceedings were well established. They were to protect the public and to maintain proper industry standards. She submitted that the principles that were relevant to the assessment of penalty in disciplinary proceedings were the need to ensure rehabilitation, the importance of treating practitioners consistently where possible, and the need to impose the least severe penalty appropriate to ensure the principles and purposes of the disciplinary proceeding were met.

5. Ms Purcell submitted that Mr X's offending was moderately serious. As an experienced plumber, Mr X would have known that he could not carry out sanitary plumbing work without holding a current practising licence. In addition, it had been five years since Mr X had last held a licence and Ms Purcell submitted that as he would not have completed any continuing professional development during this period, there was an increased risk of him carrying out defective work. She submitted that that risk had eventuated in this case and the defects with Mr X's work had posed a high risk of harm to the occupants of the property because of the missing tempering valve and property damage because of the leaking pipes.

6. Recognising that consistency with previous decisions was an important consideration when determining penalty, Ms Purcell referred the Board to the cases of *Radovich v Frogley* (2019/13), *Thomas v Reeve* (2018/3), and *Cannell v McKerchar* (2023/16). In the *Frogley* case, Mr Frogley pleaded guilty to two counts of causing negligent or

incompetent sanitary plumbing work and was found guilty of one count of causing negligent or incompetent sanitary plumbing work. The charges related to the installation of a hot water cylinder and plumbing work at a residential property. Amongst the defects with the work, a tempering valve had not been installed. The Board considered Mr Frogley's offending was serious given the absence of the tempering valve and a starting point for the fine of $5,000 to $5,500 was adopted in the case. Ms Purcell submitted that a number of the defects in the *Frogley* case were also present in Mr X's case. However, there were more defects in the present case and Mr X had carried out the work himself while the work in the *Frogley* case had been carried out by supervisees. Ms Purcell submitted that Mr X's case was therefore more serious warranting a higher starting point for the fine.

7. In the *Reeve* case, Mr Reeve pleaded guilty to carrying out sanitary plumbing without an authorisation and in a negligent or incompetent manner. The work involved residential sanitary plumbing and there were a number of defects with the work creating a risk of the hot water cylinder, pipes, and sanitary fixtures bursting and leaking. Mr Reeve was fined $3,500. Ms Purcell submitted that the defects with Mr X's work were more extensive and more serious than those in the *Reeve* case but accepted that while Mr X was unlicensed, Mr Reeve had never held any form of authorisation to carry out sanitary plumbing.

8. Finally, in the *McKerchar* case, Mr McKerchar pleaded guilty to carrying out sanitary plumbing in a manner contrary to an enactment for failing to install a tempering valve on a hot water line to the shower in a bathroom conversion to make the bathroom accessible for the elderly owner. The Board considered Mr McKerchar's offending was low to moderate in terms of seriousness and adopted a starting point for the fine of $2,500. Ms Purcell submitted that Mr X's offending was more serious given the number of defects in his case and the fact that there had previously been no tempering valve installed in the *McKerchar* case meaning the elderly owner had always been exposed to the risk of scalding.

9. Having regard to the Board's previous decisions, Ms Purcell submitted that a starting point for any fine in the case should be $5,500 to $6,000. Ms Purcell submitted that the investigator was not aware of any aggravating factors personal to Mr X in the case and acknowledged that his guilty plea, cooperation, and lack of any previous disciplinary history were mitigating factors in his favour.

10. Ms Purcell submitted that under section 107 of the Act, the Board could require Mr X to pay a contribution towards the costs and expenses of the investigation, prosecution, and hearing. She submitted that the usual starting point for an order of costs was half of the costs but acknowledged that Mr X may be entitled to a reduction from this point to recognise his guilty plea and cooperation.

11. On behalf of Mr X, Ms Hotai submitted that a fine at the lower end of the scale was appropriate in the range of $3,000 to $3,500 given the mitigating factors in the case. She also requested that the Board consider leniency in relation to any order of costs

and impose an order of what was just and reasonable having regard to the mitigating factors.

12. Ms Hotai described two separate events which had happened to Mr X in late 2016 and then early 2017. These events had had a profound and long-lasting impact on Mr X's health and had resulted in him not renewing his practising licence in April 2017 and having to close his business. Ms Hotai described the ongoing impacts both the events and their consequences had had on Mr X over the next five years.

13. Mr X accepted that he had carried out sanitary plumbing while unlicensed and had carried out that plumbing in a negligent or incompetent manner. Ms Hotai submitted that in May 2022, Ms Evans' builder, who was a good friend of Mr X's, had contacted him asking for help to do some plumbing work at Ms Evans' property. Not wanting to let his friend down, Mr X had agreed to do the work. He stated he had carried out the work over a number of months for a few hours at a time and believed that the work added up to about three full days' work in total.

14. Ms Hotai submitted that Mr X knew he was not licensed at the time but did not appreciate the seriousness of working without a current licence. She submitted that Mr X believed that as he remained a registered plumber with over 30 years' experience and had kept his continuing professional development current, it would be alright for him to do the work even though he had not paid for a new licence. He did not anticipate his actions could result in disciplinary action.

15. Ms Hotai submitted that Mr X now understood the significance of what he had done and he was deeply ashamed at his failure to appreciate the seriousness of his actions in working unauthorised. He was also disappointed in himself and regretted any financial loss, stress, or potential injuries his negligence or incompetence caused Ms Evans. She submitted that Mr X's thoughts of regret and guilt were having an impact on his health and it had been a long and hard but valuable lesson for him.

16. Mr X accepted the defects that had been found with his work and provided the following explanations:

    a. Regarding the 40mm combined waste, he said he had intended to run separate wastes once a hole had been punched into the foundation as he still needed to run a 20mm copper line for the temperature relief valve and cold water. However, due to medical reasons he had not been able to carry this out.

    b. Regarding the leaking pipes, he said there had not been aware of any pipes leaking while he was working. Had he known any of the pipes were leaking he would have rectified them immediately.

    c. He accepted that he had not put sealant around the shower head as no sealant was available at the time. He had let the builder know who had said he would do it and Mr X did not follow up with him to ensure it had been done.

d. Regarding the missing tempering valve, he said he had worked from 8.30am to 5.30pm that day and it was his first time carrying out a full days' work since his injuries in 2016 and 2017. He said he was fatigued at the end of the day and was trying to ensure the homeowner would have running water. He had intended to install the tempering valve the next morning and run the 20mm copper line for the temperature pressure relief valve and cold water expansion valve. However, the next morning he was taken to hospital by ambulance as a result of a serious health incident that resulted in him having emergency surgery and he did not come out of hospital for two to three weeks. He had still intended to return to the property and complete the work but ongoing health issues had prevented that.

e. In relation to the seismic restraints on the hot water cylinder, he recalls it was a very tight fit as the cylinder that was installed was bigger. He had thought he had installed the upper restraint within 150cm from the top and had also installed the lower restraint but accepts he did not double check both were installed correctly.

f. Notwithstanding his explanations, Mr X recognised his negligence and incompetence in relation to all the defects and accepted full responsibility for them.

17. Ms Hotai submitted there were a number of mitigating factors in Mr X's case. He had pleaded guilty early in the proceedings and had cooperated fully in the investigation and hearing process. He had no previous disciplinary offending and had had no client complaints in the last 30 to 35 years. He had multiple ongoing health issues which he was managing and had not intended to leave his work at the property incomplete or in a state that breached the Code. Despite not holding a practising licence, Mr X had kept his continuing professional development up to date between 2017 and 2024. He was genuinely remorseful and apologetic and regretted the impact of his actions on others. Mr X also provided a number of references speaking to his good character.

18. Ms Hotai submitted that Mr X accepted that a penalty would be imposed on him and was willing to pay the penalty. However, she submitted that he had been unemployed since 2017 and was receiving payments from ACC. She also advised that Mr X was being represented in this matter by a local Community Law Centre because he met its criteria for free legal advice and representation. She requested that the Board show leniency in the circumstances when determining the level of any fine.

19. With regard to costs, Ms Hotai submitted that under section 107 of the Act the Board could order a person to pay any sum it considered "just and reasonable" towards the costs of the investigation, prosecution, and hearing. She submitted that Mr X was willing to pay a costs order but referred the Board to the mitigating factors in the case in relation to how much any costs order should be.

20. Ms Hotai submitted that Mr X sought an order of non-publication of his name and the information he had provided the Board in relation to his personal circumstances. She referred the Board to its previous decisions in *Thomas v Shaw* (2018/8) and *Thomas v Sharp* (2022/11) where it was noted that non-publication would only be ordered in exceptional circumstances where the public interest was outweighed by special circumstances. Ms Hotai referred to the supporting letters provided by Mr X in support of his application which detailed his reasons for seeking the order and the potential impact publication could have in his case.

21. In response to Mr X's application for a non-publication order, Ms Purcell submitted it was opposed by the investigator. While acknowledging Mr X's grounds for seeking the order, Ms Purcell submitted the evidence provided was insufficient to establish that the threshold for non-publication had been met in this case.

Decision on penalty

22. When it comes to imposing penalties in disciplinary cases, the Board's primary considerations are the need to protect the health and safety of the public and maintain industry standards. Any disciplinary penalty should aim to ensure the competency of a practitioner by holding them to account for their offending, assist with their rehabilitation, and deter them and other practitioners from disciplinary offending.

23. Having considered the parties' submissions and the facts of the case, the Board determined that Mr X's offending was moderately serious. However, the number and nature of the defects in the case, particularly the absence of the tempering valve, placed it at the high end on the scale of moderately serious. The Board accepted that the work was unfinished though and had not been commissioned by Mr X.

24. The Board found there were no aggravating factors in the case and Mr X was entitled to credit for his guilty plea, cooperation, and lack of previous disciplinary offending. Mr X was also clearly remorseful and the Board accepted that the work in this case was uncharacteristic for him and was not representative of his skills and experience after more than 30 years in the trade.

25. The Board considered that a fine was the appropriate penalty in the circumstances and determined that the starting point should be $5,500 to recognise the numerous defects. However, taking into account the significant mitigating factors present, the Board reduced the fine to $2,750.

Costs

26. Section 107 of the Act provides that, in addition to any penalty imposed, the Board may order a registered person to pay a reasonable sum towards the costs and expenses incidental to the investigation of the complaint, prosecution, and hearing.

The Board was provided with a schedule of estimated costs for the investigation, prosecution and hearing amounting to $11,576.80.

27. The Board accepted that Mr X's guilty plea and cooperation had helped to keep the costs down and recognised that his financial circumstances justified a further reduction from the starting point of half the actual costs. In the circumstances, the Board determined that he should pay $3,000 towards costs.

Name suppression

28. The Board accepted that the test for an order of name suppression was whether the interests of the person seeking suppression outweighed the principle of open justice and the right of the public to know about practitioners who had committed disciplinary offences.

29. The Board accepted the evidence provided for Mr X setting out why he was seeking an order of non-publication and the possible impact publication could have for him. The Board was satisfied that the potential consequences for Mr X went beyond the ordinary stress and anxiety experienced by practitioners found guilty of disciplinary offences and Mr X's application for name suppression was granted.

Board orders

30. Being satisfied that Mr X was guilty of disciplinary offences under sections 89(a)(i) and 89(a)(ii) of the Act, the Board made the following orders:

    a. Pursuant to section 106(1)(f) of the Act, Mr X pay a fine of $2,750.

    b. Pursuant to section 107 of the Act, Mr X pay $3,000 towards the costs of the investigation, prosecution, and hearing.

    c. Pursuant to section 113(3)(d) of the Act, all publication of the name or any particulars of the affairs of Mr X in relation to these proceedings is prohibited, including for the purposes of section 74(2)(c)(6) of the Act.

Appeal

31. If Mr X is dissatisfied with the whole or any part of this decision or these orders, he may appeal to the District Court under section 162(1)(f) of the Act. Any appeal must be brought within 20 working days from the date on which this formal written decision is received, or within any other timeframe the District Court may allow.

Dated 15 October 2024

Signed



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Diana Kuhtz-Covich
Chair
Plumbers, Gasfitters and Drainlayers Board