



## REMOVING INFORMATION UNDER SUBSECTION 23(7) OF THE CODE

Subsection 23(7) of the Health Professions Procedural Code (the “Code”) provides that the Registrar may refuse to disclose to an individual or post in the College’s website information that is available to the public, if the Registrar has “reasonable grounds to believe that the information is obsolete and no longer relevant to the member’s suitability to practice”.<sup>1</sup>

The requesting physician bears the onus of establishing “reasonable grounds” that (a) the information in question is “obsolete” and (b) the information is “no longer relevant to the member’s suitability to practice”.

In determining whether the information is “obsolete”, there is no definition of this term in the Code and accordingly it should be given its ordinary meaning. An example of obsolete information may include a finding of professional misconduct on a specific head of misconduct that was subsequently struck down by a Court or a finding of failing to maintain the standard of practice in respect of treatment that later becomes standard practice.

In exercising discretion, the Registrar must consider the College’s duty to serve and protect the public interest and the public interest in disclosure of information (including general deterrence, transparency and accountability).

### Factors to Consider in Exercising Discretion

While this list is not intended to be exhaustive, the Registrar may consider the following factors in exercising his or her discretion:

- How recent is the information? For example, does the information relate to a recent finding of professional misconduct, caution, or finding of guilt in a criminal proceeding?
- How current is the information? This speaks to not only the degree of time elapsed but also the continued relevance of the information, in the context of current standards of practice, current expectations of physicians or a physician’s current area of practice. For example, if the physician was ordered to complete a SCERP, is the SCERP relevant to the physician’s current area of practice? Did the SCERP pertain to an area, such as clinical

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<sup>1</sup> Section 23(7) states:

The Registrar may refuse to disclose to an individual or to post on the College’s website information that is available to the public under subsection (5), if the Registrar has reasonable grounds to believe that the information is obsolete and no longer relevant to the member’s



suitability to practise.

judgment or record-keeping, that may be relevant regardless of a physician's specific practice area?

- Is maintaining the information on the Register consistent with the College's current practices?
- What is the severity/seriousness of the information? For example, was a caution ordered as a result of care provided to a single patient or to multiple patients?
- Does the information serve to enhance protection of the public, through general or specific deterrence?
- How does the information relate to the physician's suitability to practice? Does the information pertain to conduct/care with patients? Does the information relate to matters outside the physician's practice of medicine?
- Is there any evidence of a material change in circumstances? For example, has the physician undergone treatment of some kind?
- Is the information public in other places? Generally it will not be relevant that a disciplinary finding by another medical regulatory or licensing authority is not or is no longer available to the public by that authority.
  - Regulation 261/18 made under the *Regulated Health Professions Act, 1991*, requires that a disciplinary finding or a finding of professional misconduct or incompetence by another regulatory or licensing authority be posted to the public register. When faced with a request to remove this information, the Registrar must make a decision about what will be posted on the College's register in accordance with the legislation and principles applied by this College in Ontario; the legislation and principles applicable to other regulatory or licensing authorities may vary with regard to the posting of information on the public register.
- Regulation 261/18 made under the *Regulated Health Professions Act, 1991*, requires that findings of guilt against a physician under the *Criminal Code* or the *Controlled Drugs and Substances Act*, be posted to the public register unless the Parole Board has ordered a record suspension in respect of the conviction, a pardon in respect of the conviction has been obtained or the conviction has been overturned on appeal.