

Removing and Withholding Information Under s. 23 Of the Code

Removing Obsolete or Irrelevant Information

Pursuant to subsection 23(7) of the Health Professions Procedural Code, a midwife may request that information posted on the College's website not be disclosed to an individual and/or be removed if the Registrar "has reasonable grounds to believe that the information is obsolete and no longer relevant to the member's suitability to practise."¹

As the Code does not define the meaning of information that is obsolete or irrelevant to a member's suitability to practise, the Registrar is entitled to use her discretion when deciding whether a request to remove information should be granted.

In exercising her discretion, the Registrar must consider the College's duty to serve and protect the public interest.

The Registrar may also consider the following factors:

- The information's relevance in enhancing the protection of the public. Principles that may be considered in this regard are specific deterrence (i.e. deterring the midwife from engaging in similar conduct in the future), general deterrence (i.e. deterring the membership from engaging in similar conduct) and ensuring the public has access to information that could assist in informed decision-making with respect to their care.
- The information's relevance to the midwife's suitability to practise midwifery. For example, if the information pertains to a matter not related to the practise of midwifery and has no bearing on enhancing public protection, the Registrar could consider removing the information.
- Whether maintaining the information is consistent with the College's by-laws, policies and practices.
- How recent the information is. For example, if a midwife's professional misconduct information is relatively old, is not relevant to the midwife's current suitability to practise, and the midwife has not had further professional misconduct findings made against him/her, the Registrar could consider removing the information
- The severity of the information – such as the severity of a disciplinary finding including the nature of the finding and the number of people affected by the midwife's conduct.

¹ S.O. 1991, CHAPTER 18

Withholding Information

The Registrar may withhold information about a midwife without a midwife having to request that it be withheld. In particular, pursuant to s. 23 of the Health Professions Procedural Code, the Registrar may refuse to disclose to an individual or post on the College's website the following information about a midwife:

- Personal information, such as a midwife's address, telephone number or other information that the College's by-laws identify as being withheld from the public, if disclosure of or access to the information may jeopardize the safety of the midwife or another individual (s. 23(6)).
- Personal health information, such as the physical and mental health of a midwife, unless it is in the public's interest that such information be disclosed or publically accessible ((s. 23(8)-(10)). For example, a finding of incapacity as a result of a Fitness to Practise proceeding can be disclosed to an individual or posted on the College's website.
- The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding if *all* of the following conditions are satisfied:
 - a finding of professional misconduct was made against the midwife and the resulting order was only a reprimand or only a fine, or a finding of incapacity;
 - more than six years have passed since the information was prepared or last updated;
 - the midwife has made an application to the relevant committee for the removal of the information from public access as it is no longer relevant to the midwife's suitability to practise;
 - the relevant committee believes that a refusal to disclose the information outweighs the desirability of disclosure in the interest of any person affected or the public interest;
 - the relevant committee has directed the Registrar to remove the information from public access; and
 - the information does not relate to disciplinary proceedings concerning sexual abuse as defined under s. 1(3) of the Health Professions Procedural Code (s.23(11)).