

KEEPING CURRENT

May 16, 2019

Removing Information from the Public Register – A Guide for Regulated Health Professionals

By Lad Kucis

Over the past few years, amendments to the *Regulated Health Professions Act, 1991* (the “RHPA”) and the By-Laws of the health professions colleges (the “Colleges”) have resulted in a significant increase in the types of information that must be posted on the public register, including but not limited to cautions, Specified Continuing Education or Remedial Programs (“SCERPs”) and findings of guilt made in criminal matters.¹

Although much has been made about the need for this increased level of transparency, it goes without saying that the posting of negative information about a regulated health professional (“Health Professional”) can result in serious professional, economic and reputational consequences.

In recognition of this stark reality, this article will discuss some of the circumstances where a Health Professional can request that their College remove information about them from the public register.

A. Information is Obsolete and No Longer Relevant

Under s. 23(7) of the Health Professions Procedural Code (the “Code”) under the *RHPA*, the Registrar of a College may remove information from the public register if they have “...reasonable grounds to believe that the information is obsolete and no longer relevant to the member’s suitability to practice”.

As such, if a Health Professional feels that information posted about them is obsolete and no longer relevant to their suitability to practice, they should consider making a request to the Registrar of their College to have it removed. This request should be made in writing and must set out the reasons as to *why* the information should be removed. Although the reasons will inevitably vary from case to case, a Health Professional should consider the following:

- the length of time that has passed since the conduct at issue;

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes two of Canada’s largest banks, several medium to large-sized municipalities, agencies, boards and commissions and other government entities, high tech and software companies, real estate developers, lenders and investors. A number of our lawyers have enjoyed in-house corporate positions and been appointed as board members of tribunals or as judges.

Lad Kucis
Partner
416.864.3114
lkucis@grllp.com

continued on page 2

- the absence of any prior or subsequent conduct of concern;
- satisfaction of any applicable terms, conditions and limitations imposed by the College;
- additional steps that have been taken by the Health Professional;
- changes in law or College policies related to the conduct at issue; and
- whether the public still requires the information in making a decision about their health care provider.

It is also important to note that a College may have its own additional rules in terms of dealing with requests of this type. For example, certain Colleges require members to complete a specific application form and/or require that the information remain posted on the public register for a minimum number of years before a request for removal is even considered.

In the coming years, we would expect that there will be a significant increase in the number of these requests, especially since it is the only way to remove cautions and SCERPs, which would otherwise remain posted indefinitely.

B. Information Relates to Certain Professional Misconduct Findings

As set out in s. 23(11) of the Code, the Registrar of a College must remove information relating to a finding of professional misconduct made by the Discipline Committee in the following circumstances:

- the penalty order made was only a reprimand or a fine;
- more than six years have passed since the information was prepared or last updated;
- the information does not relate to disciplinary proceedings concerning “sexual abuse of a patient”, as defined in s. 1(3) of the Code; and

- the Health Professional has made an application to the Discipline Committee for the removal of the information and the Discipline Committee has directed the Registrar to remove the information. In order to make such a direction, the Discipline Committee must be satisfied that the information is no longer relevant to the Health Professional’s suitability to practice and the removal of the information outweighs the desirability of public access to the information.

In considering an application of this type, it is important to keep in mind that most findings of professional misconduct result in penalty orders that are more significant than a reprimand or a fine. As such, this type of application would only be applicable in a narrow range of cases.

C. Information Relates to Findings of Incapacity Made Several Years Ago

Section 23(11) of the Code also provides that the Registrar must remove information relating to a finding of incapacity made by the Fitness to Practice Committee in the following circumstances:

- more than six years have passed since the information was prepared or last updated; and
- the Health Professional has made an application to the Fitness to Practice Committee for the removal of the information and the Fitness to Practice Committee has directed the Registrar to remove the information.²

D. Record Suspension or Pardon Obtained in Criminal and Other Matters

As set out in s. 1(2) of Ontario Regulation 261/18 under the RHPA, information regarding a finding of guilt under the *Criminal Code* or the *Controlled Drugs and Substances Act* is to be



removed from the public register in the following circumstances:

- the Parole Board of Canada has ordered a record suspension in respect of the conviction;
- a pardon has been obtained in respect of the conviction; or
- the conviction has been overturned on appeal.

If any of the above takes place, a Health Professional should ensure that they immediately notify their College and request that information regarding the finding of guilt be removed as soon as possible.

E. Information is No Longer Current

There are a number of situations where information is to be removed from the public register because it is no longer current. The following are some examples:

- charges under the Criminal Code that have been withdrawn or that have resulted in an acquittal;
- an undertaking entered into with a College that is no longer in effect;
- a caution or SCERP that has been set aside by the Health Professions Appeal and Review Board, following a complaint review;
- an interim order imposed by the Inquiries, Complaints and Reports Committee that has been set aside by the Divisional Court; and
- a finding of professional misconduct or incompetence made by a health professions regulator in another jurisdiction that has been overturned on appeal.

In all such instances, a Health Professional should ensure that they notify their College regarding the development (if it is not already aware of it) and request that the information in question be removed as soon as possible.

Conclusion

In light of the recent expansion of the public register and the potential repercussions flowing from the posting of certain information, it is more important than ever that Health Professionals are well aware of the various ways in which such information can be removed.

About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law. As part of his health law practice, he provides advice and representation to regulated health professionals regarding the full spectrum of matters falling under the governance of their regulatory colleges, including registration, fitness to practice, complaints, investigations and discipline.

He can be reached by telephone at 416.864.3114 or by email at lkucis@grllp.com.

(Please note that this article has been prepared for information purposes only and is not intended to be construed as legal advice.)

¹ For a full listing information that must be posted on the public register, please refer to s.23(1) of the Code and the By-Laws of each respective College.
2. In order to make a direction under s.23(11)(c) of the Code, the Fitness to Practice Committee must be satisfied that the information is no longer relevant to the Health Professional's suitability to practice and the removal of the information outweighs the desirability of public access to the information.