



## **ORDER OF THE PROVINCIAL HEALTH OFFICER**

(Pursuant to Sections 30, 31, 32, 39 (3), 54, 67 (2) and 69 *Public Health Act*, S.B.C. 2008)

### ***RESIDENTIAL CARE STAFF COVID-19 PREVENTIVE MEASURES – SEPTEMBER 2, 2021***

The *Public Health Act* is at:

<http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl>

(excerpts enclosed)

- TO: PERSONS WHO OPERATE OR PROVIDE HOUSING IN LONG TERM CARE FACILITIES, PRIVATE HOSPITALS, STAND ALONE EXTENDED CARE HOSPITALS DESIGNATED UNDER THE HOSPITAL ACT, ASSISTED LIVING RESIDENCES WHICH PROVIDE REGULAR ASSISTANCE WITH ACTIVITIES OF DAILY LIVING, INCLUDING EATING, MOBILITY, DRESSING, GROOMING, BATHING OR PERSONAL HYGIENE, PROVINCIAL MENTAL HEALTH FACILITIES (HEREINAFTER REFERRED TO AS AN “OPERATOR” OR A “FACILITY” OR COLLECTIVELY AS “OPERATORS” OR AS “FACILITIES”)**
- TO: PERSONS WHO EMPLOY STAFF WHO WORK IN FACILITIES, INCLUDING OPERATORS AND CONTRACT EMPLOYERS (HEREINAFTER REFERRED TO AS AN “EMPLOYER” OR COLLECTIVELY AS “EMPLOYERS”)**
- TO: PERSONS WHO WORK IN FACILITIES (HEREINAFTER REFERRED TO AS A “STAFF MEMBER” OR COLLECTIVELY AS “STAFF”)**

#### **WHEREAS:**

- A. On March 17, 2020 I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event, as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. The presence of virus variants of concern in the Province, in particular the Delta variant, has heightened the risk to the population generally and particularly to the frail elderly and persons with underlying medical conditions;

- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be made available to residents and staff in British Columbia;
- E. Unvaccinated persons are at higher risk than vaccinated persons of being infected with SARS-CoV-2 and of transmitting SARS-CoV-2 to other persons, including vaccinated persons;
- F. Residents of facilities are typically elderly and usually have chronic health conditions or compromised immune systems which makes them particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated;
- G. The vaccination of all staff is the best means of protecting residents from infection, severe illness and possible death;
- H. I recognize the effect which the measures I am putting in place to protect the health of the residents of facilities may have on people who are unvaccinated, and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly in facilities, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm to residents of facilities created by the presence of unvaccinated persons in facilities;
- I. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms, including the right to life, liberty and security of the person, along with freedom of religion and conscience, freedom of thought, belief, opinion and expression. These rights and freedoms are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the Charter rights and freedoms of British Columbians less intrusively, where doing so is consistent with public health principles;
- J. In addition, I recognize the interests protected by the *Human Rights Code* and have taken these into consideration when exercising my powers to protect the health interests of residents and staff in facilities;
- K. I have reason to believe and do believe that
- (i) the presence of an unvaccinated staff member constitutes a health hazard under the *Public Health Act*;
  - (ii) in order to mitigate the risk of the transmission of SARS-CoV-2 arising from the presence of unvaccinated staff in facilities, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

**EFFECTIVE OCTOBER 12, 2021,**

**THIS ORDER REPEALS AND REPLACES THE PROVISIONS IN PART E [PREVENTIVE MEASURES APPLICABLE TO STAFF] OF THE COVID-19 VACCINATION STATUS INFORMATION AND PREVENTIVE MEASURES ORDER MADE AUGUST 31, 2021, AND CONFIRMS THE OTHER PARTS OF THE ORDER**

**DEFINITIONS:**

**In this Order**

**“employer”** means a person who employs a staff member;

**“facility”** means a long term care facility, a private hospital, a stand-alone extended care hospital, an assisted living residence which provides regular assistance with activities of daily living, including eating, mobility, dressing, grooming, bathing or personal hygiene, or a Provincial mental health facility.

**“medical mask”** means a medical grade face mask that meets the ASTM International and ISO (or equivalent) performance requirements for bacterial filtration efficiency, particulate filtration efficiency, fluid resistance, pressure differential, flame spread, skin sensitivity and cytotoxic testing;

**“new staff member”** means a person hired after October 11, 2021 to work in a facility;

**“operator”** means a board designated under the *Health Authorities Act*, a board of management of a stand-alone extended care hospital designated under the *Hospital Act*, a licensee under the *Hospital Act*, a licensee or a registrant under the *Community Care and Assisted Living Act*, or a director of a Provincial mental health facility which is designated under the *Mental Health Act*;

**“PCR test”** means a polymerase chain reaction test administered by a publicly funded program or a publicly paid health care provider;

**“Provincial mental health facility”** means a place designated as a Provincial mental health facility by the minister under section 3 (1) of the *Mental Health Act* and appearing in Schedule A to Ministerial Order M 393/2016 at <https://www.health.gov.bc.ca/library/publications/year/2016/facilities-designated-mental-health-act.pdf>, unless otherwise stated.

**“staff member”** means a person employed by the operator of a facility to work in a facility, or a person employed by a contractor to work in a facility under contract;

**“vaccine”** means a World Health Organization approved vaccine against infection by SARS-CoV-2;

**“unvaccinated”** means that a person does not meet the definition of “vaccinated”;

**“vaccinated”** means a person who is at least 7 days post-receipt of the full series of a World Health Organization (“WHO”) approved vaccine against infection by SARS-CoV-2, or a combination of approved WHO vaccines.

**A. STAFF MEMBERS HIRED BEFORE OCTOBER 12, 2021**

1. An unvaccinated staff member hired after September 13, 2021 and before October 12, 2021, must not work in a facility, or accompany a resident away from a facility, until the staff member has received one dose of vaccine.
2. An operator and an employer must not permit an unvaccinated staff member hired after September 13, 2021 and before October 12, 2021, to work in a facility, or to accompany a resident away from a facility, unless the staff member has received one dose of vaccine.
3. Subject to sections 4 and 5, as of October 12, 2021, a staff member hired before October 12, 2021, must be vaccinated to work in a facility, or accompany a resident away from a facility.
4. Despite section 3, an unvaccinated staff member who received two doses of vaccine before October 12, 2021, and complies with the preventive measures in Part B, may work in a facility, or accompany a resident away from a facility, after October 11, 2021.
5. An operator and an employer must not permit an unvaccinated staff member who received two doses of vaccine before October 12, 2021, to work in a facility, or accompany a resident away from a facility, after October 11, 2021, unless the staff member complies with the preventive measures in Part B.
6. Subject to section 7, and despite section 3, and an unvaccinated staff member hired after September 13, 2021 and before October 12, 2021, who received one dose of vaccine before October 12, 2021, and who complies with the preventive measures in Part B, may work in a facility, or accompany a resident away from a facility, after October 11, 2021.
7. Despite section 6, an unvaccinated staff member hired after September 13, 2021 and before October 12, 2021, who received one dose of vaccine before October 12, 2021, must not continue to work in a facility, or accompany a resident away from a facility, more than 35 days after receiving the first dose of vaccine, if the staff member has not received a second dose of vaccine during that 35 day period
8. An operator and an employer must not permit an unvaccinated staff member hired after September 13, 2021 and before October 12, 2021, who received one dose of vaccine before October 12, 2021, to continue to work in a facility, or accompany a resident away from a facility, more than 35 days after receiving the first dose of vaccine, if the staff member has not received a second dose of vaccine during that 35 day period.

**B. PREVENTIVE MEASURES APPLICABLE TO UNVACCINATED STAFF MEMBERS HIRED BEFORE OCTOBER 12, 2021**

1. Until seven days have passed after receipt of the second dose of vaccine, an unvaccinated staff member must
  - a. wear a medical mask which covers the person's nose and mouth when in a facility, or when accompanying a resident away from a facility, except when consuming food or a beverage,

- b. be tested for COVID-19 by means of a rapid test at a facility at every shift.
2. If a rapid test result is positive, an unvaccinated staff member must
  - a. notify the operator and employer, if not the operator, of the test result,
  - b. leave the facility as soon as it is operationally safe to do so,
  - c. arrange to have a PCR test as soon as possible,
  - d. advise the operator and employer, if not the operator, of the result of the PCR test, and
  - e. not return to the facility, unless
    - i. the result of the PCR test is negative, or,
    - ii. if the PCR test result is positive,
      - A. 10 days have passed from the time of the positive rapid test result, or
      - B. the staff member's return has been approved by the medical health officer.
3. The operator and employer, if not the operator, must require an unvaccinated staff member to wear a medical mask which covers the person's nose and mouth when in a facility, or when accompanying a resident away from a facility.
4. The operator must make provision for the rapid testing of staff for COVID-19 in a facility, and the operator and employer, if not the operator, must require an unvaccinated staff member to be tested as required in section 1.
5. The operator and the employer, if not the operator, must require an unvaccinated staff member, who tests positive after a rapid test, to leave the facility immediately it is operationally safe to do so.
6. An unvaccinated staff member who is not in compliance with sections 1 and 2, must not be in a facility, and must not accompany a resident away from a facility.
7. An unvaccinated staff member who does not provide an operator and employer, if not the operator, with a negative PCR test result, after receiving a positive test result from a rapid test, must not return to a facility until 10 days have passed from the time of the positive rapid test result, unless an earlier return is approved by the medical health officer.
8. An operator and employer, if not the operator, must not permit an unvaccinated staff member, who is not in compliance with sections 1 and 2, to be in a facility, or to accompany a resident away from a facility.
9. An operator and employer, who is not an operator, must not permit an unvaccinated staff member, who tests positive on a rapid test, to return to a facility, until the staff member provides

a negative PCR test result, 10 days have passed from the time of the positive rapid test result, or an earlier return is approved by the medical health officer.

**C. PREVENTIVE MEASURES APPLICABLE TO NEW STAFF [hired after October 11, 2021]**

1. A new staff member must be vaccinated to work in a facility, or to accompany a resident away from a facility.
2. An unvaccinated new staff member must not work in a facility, or accompany a resident away from a facility.
3. An operator must not permit an unvaccinated new staff member to work in a facility, or accompany a resident away from a facility.
4. An employer must not permit an unvaccinated new staff member to work in a facility, or accompany a resident away from a facility.

**D. DELEGATION OF AUTHORITY TO THE MEDICAL HEALTH OFFICER TO CONSIDER AND MAKE A DECISION WITH RESPECT TO A REQUEST FOR RECONSIDERATION MADE UNDER SECTION 43 WITH RESPECT TO THIS ORDER**

Under the authority vested in me by section 69 of the *Public Health Act*, I delegate my authority under section 43 of the *Public Health Act* to the medical health officer for the geographic region of the Province in which a facility is located to receive, consider, and make a decision with respect to a request for reconsideration related to the facility.

**E. MEDICAL HEALTH OFFICER ORDERS**

Recognizing that the risk differs in different regions of the province, and that medical health officers are in the best position to assess local circumstances with respect to the risk of the transmission of communicable diseases in facilities, **I FURTHER ORDER:**

1. A medical health officer may make an order subsequent to this Order for the purpose of imposing more restrictive limitations or conditions with respect to facilities in the whole or part of the geographic area of the province for which the medical health officer is designated, or with respect to a particular facility.
2. While it is in force, a provision in an order made by a medical health officer subsequent to this Order, which imposes more restrictive limitations or requirements than this Order with respect to one or more facilities, or one or more classes of facilities, applies in the whole or part of the geographic area of the province for which the medical health officer is designated, according to the terms of the order, despite the provisions of this Order.

This Order does not have an expiration date.

You are required under section 42 of the *Public Health Act* to comply with this Order.

Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

Pursuant to section 43 of the *Public Health Act*, you may request the medical health officer [see below] to reconsider this Order if you:

(a) have additional relevant information that was not reasonably available to the health officer when the order was issued or varied,

(b) have a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would

(i) meet the objective of the order, and

(ii) be suitable as the basis of a written agreement under section 38 [may make written agreements], or

(c) require more time to comply with the order.

A request under section 43 may be submitted to the Provincial Health Officer at [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca) with the subject line “Request for Reconsideration about Preventive Measures in Facilities”.

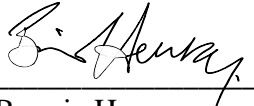
A request for reconsideration of any aspect of this Order on the basis of a medical contraindication made by a person to whom the Order applies must include a signed and dated statement from a medical practitioner, based upon a current assessment, that the health of the person would be seriously jeopardized if the person were to comply with the Order, and a signed and dated copy of each portion of the person’s health record relevant to this statement.

If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer  
4th Floor, 1515 Blanshard Street  
PO Box 9648 STN PROV GOVT, Victoria BC V8W 9P4  
Fax: (250) 952-1570  
Email: [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca)

DATED THIS: 2<sup>nd</sup> day of September 2021

SIGNED:   
\_\_\_\_\_  
Bonnie Henry  
MD, MPH, FRCPC  
Provincial Health Officer

DELIVERY BY: Posting to the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of the *Public Health Act*.



**ENCLOSURE****Excerpts of the Public Health Act [SBC 2008] c. 28****Definitions****1 In this Act:**

**"health hazard"** means

- (a) a condition, a thing or an activity that
  - (i) endangers, or is likely to endanger, public health, or
  - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
- (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
  - (i) is associated with injury or illness, or
  - (ii) fails to meet a prescribed standard in relation to health, injury or illness;

**When orders respecting health hazards and contraventions may be made**

**30** (1) A health officer may issue an order under this Division only if the health officer reasonably believes that

- (a) a health hazard exists,
- (b) a condition, a thing or an activity presents a significant risk of causing a health hazard,
- (c) a person has contravened a provision of the Act or a regulation made under it, or
- (d) a person has contravened a term or condition of a licence or permit held by the person under this Act.

(2) For greater certainty, subsection (1) (a) to (c) applies even if the person subject to the order is complying with all terms and conditions of a licence, a permit, an approval or another authorization issued under this or any other enactment.

**General powers respecting health hazards and contraventions**

**31** (1) If the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, a health officer may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes:

- (a) to determine whether a health hazard exists;
- (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard;
- (c) to bring the person into compliance with the Act or a regulation made under it;

(d) to bring the person into compliance with a term or condition of a licence or permit held by that person under this Act.

(2) A health officer may issue an order under subsection (1) to any of the following persons:

- (a) a person whose action or omission
  - (i) is causing or has caused a health hazard, or
  - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
- (b) a person who has custody or control of a thing, or control of a condition, that
  - (i) is a health hazard or is causing or has caused a health hazard, or
  - (ii) is not in compliance with the Act or a regulation made under it, or a term or condition of the person's licence or permit;
- (c) the owner or occupier of a place where
  - (i) a health hazard is located, or
  - (ii) an activity is occurring that is not in compliance with the Act or a regulation made under it, or a term or condition of the licence or permit of the person doing the activity.

### **Specific powers respecting health hazards and contraventions**

**32** (1) An order may be made under this section only

- (a) if the circumstances described in section 30 [*when orders respecting health hazards and contraventions may be made*] apply, and
- (b) for the purposes set out in section 31 (1) [*general powers respecting health hazards and contraventions*].

(2) Without limiting section 31, a health officer may order a person to do one or more of the following:

- (a) have a thing examined, disinfected, decontaminated, altered or destroyed, including
  - (i) by a specified person, or under the supervision or instructions of a specified person,
  - (ii) moving the thing to a specified place, and
  - (iii) taking samples of the thing, or permitting samples of the thing to be taken;
- (b) in respect of a place,
  - (i) leave the place,
  - (ii) not enter the place,
  - (iii) do specific work, including removing or altering things found in the place, and altering or locking the place to restrict or prevent entry to the place,
  - (iv) neither deal with a thing in or on the place nor dispose of a thing from the place, or deal with or dispose of the thing only in accordance with a specified procedure, and
  - (v) if the person has control of the place, assist in evacuating the place or examining persons found in the place, or taking preventive measures in respect of the place or persons found in the place;

- (c) stop operating, or not operate, a thing;
- (d) keep a thing in a specified place or in accordance with a specified procedure;
- (e) prevent persons from accessing a thing;
- (f) not dispose of, alter or destroy a thing, or dispose of, alter or destroy a thing only in accordance with a specified procedure;
- (g) provide to the health officer or a specified person information, records, samples or other matters relevant to a thing's possible infection with an infectious agent or contamination with a hazardous agent, including information respecting persons who may have been exposed to an infectious agent or hazardous agent by the thing;
- (h) wear a type of clothing or personal protective equipment, or change, remove or alter clothing or personal protective equipment, to protect the health and safety of persons;
- (i) use a type of equipment or implement a process, or remove equipment or alter equipment or processes, to protect the health and safety of persons;
- (j) provide evidence of complying with the order, including
  - (i) getting a certificate of compliance from a medical practitioner, nurse practitioner or specified person, and
  - (ii) providing to a health officer any relevant record;
- (k) take a prescribed action.

(3) If a health officer orders a thing to be destroyed, the health officer must give the person having custody or control of the thing reasonable time to request reconsideration and review of the order under sections 43 and 44 unless

- (a) the person consents in writing to the destruction of the thing, or
- (b) Part 5 [*Emergency Powers*] applies.

### **Contents of orders**

**39** (3) An order may be made in respect of a class of persons.

(6)A health officer who makes an order may vary the order

- (a) at any time on the health officer's own initiative, or
- (b) on the request of a person affected by the order, following a reconsideration under section 43 [*reconsideration of orders*].

### **Duty to comply with orders**

**42** (1) A person named or described in an order made under this Part must comply with the order.

(2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

### **Reconsideration of orders**

- 43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person
- (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
  - (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
    - (i) meet the objective of the order, and
    - (ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or
  - (c) requires more time to comply with the order.
- (2) A request for reconsideration must be made in the form required by the health officer.
- (3) After considering a request for reconsideration, a health officer may do one or more of the following:
- (a) reject the request on the basis that the information submitted in support of the request
    - (i) is not relevant, or
    - (ii) was reasonably available at the time the order was issued;
  - (b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;
  - (c) confirm, rescind or vary the order.
- (4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).
- (5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.
- (6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.
- (7) For the purposes of this section,
- (a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and
  - (b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.
- (8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

### **Provincial health officer may act as health officer**

- 67** (1) The provincial health officer may exercise a power or perform a duty of a medical health officer under this or any other enactment, if the provincial health officer

- (a) reasonably believes that it is in the public interest to do so because
- (i) the matter extends beyond the authority of one or more medical health officers and coordinated action is needed, or
  - (ii) the actions of a medical health officer have not been adequate or appropriate in the circumstances, and

(b) provides notice to each medical health officer who would otherwise have authority to act.

(2) During an emergency under Part 5 [*Emergency Powers*], the provincial health officer may exercise a power or perform a duty of a health officer under this or any other enactment, and, for this purpose, subsection (1) does not apply.

(3) If the provincial health officer acts under subsection (1), the provincial health officer may order a health authority to assist the provincial health officer, and the health authority must ensure that its employees and appointees comply with the order.

(4) For the purposes of exercising a power or performing a duty under this or any other enactment, the provincial health officer may exercise a power of inspection that a health officer may exercise under this Act, and, for this purpose, Division 1 [*Inspections*] of Part 4 applies.

### **Delegation by provincial health officer**

**69** The provincial health officer may in writing delegate to a person or class of persons any of the provincial health officer's powers or duties under this Act, except the following:

- (a) a power to further delegate the power or duty;
- (b) a duty to make a report under this Act.

### **Offences**

**99** (1) A person who contravenes any of the following provisions commits an offence:

...

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];