



## **VARIANCE OF THE PROVINCIAL HEALTH OFFICER**

(Pursuant to Sections 39 and 67 *Public Health Act*, S.B.C. 2008)

### ***VACCINATED STAFF: VARIANCE OF THE FACILITY STAFF ASSIGNMENT ORDER – July 28, 2021***

The *Public Health Act* is at:

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

(excerpts enclosed)

- TO: MEMBERS OF WORKING GROUPS ESTABLISHED PURSUANT TO THE  
FACILITY STAFF ASSIGNMENT ORDER**
- TO: LICENSEES OF LONG TERM CARE FACILITIES AND PRIVATE  
HOSPITALS, BOARDS OF MANAGEMENT OR OPERATORS OF STAND  
ALONE EXTENDED CARE HOSPITALS DESIGNATED UNDER THE  
HOSPITAL ACT, REGISTRANTS OF ASSISTED LIVING RESIDENCES  
WHICH PROVIDE REGULAR ASSISTANCE WITH ACTIVITIES OF DAILY  
LIVING, INCLUDING EATING, MOBILITY, DRESSING, GROOMING,  
BATHING OR PERSONAL HYGIENE AND OPERATORS OF PROVINCIAL  
MENTAL HEALTH FACILITIES (HEREINAFTER REFERRED TO  
COLLECTIVELY AS “OPERATORS” AND “FACILITIES”)**
- TO: CONTRACTORS AND SUB-CONTRACTORS WHO PROVIDE STAFFING FOR  
FACILITIES**
- TO: EMPLOYEES AND CONTRACTED WORKERS (HEREINAFTER REFERRED  
TO COLLECTIVELY AS “STAFF”) AT FACILITIES**

#### **WHEREAS:**

- A. Staff and residents of many facilities have now been vaccinated against COVID–19 thereby lessening the risks of transmission of infection and of serious illness and hospitalization on the part of residents;
- B. There is a shortage of staff available to work in facilities;

- C. The requirement that staff only work in one facility affects the ability of operators to staff facilities, particularly in order to provide coverage for staff holidays over the summer months;
- D. Staff who are fully vaccinated pose a minimal risk of transmitting COVID-19 to residents or other staff;
- E. In order to the reduce the risk that immunized staff could introduce COVID-19 into multiple facilities it is desirable to limit the number of facilities in which a fully vaccinated person may work during the summer months by permitting immunized staff to only work in a cluster of facilities, as determined by health authority working groups;
- F. In order to increase the ability of operators to operate facilities with adequate staff levels over the summer months, it is necessary for me to vary my Order of April 15, 2020 to permit vaccinated staff to work in more than one facility during the term of this variance

**ACCORDINGLY**, pursuant to the authority vested in me by section 39 (6) of the *Public Health Act*:

**I hereby Vary** the ***FACILITY STAFF ASSIGNMENT ORDER*** dated, April 15, 2020 (the “Order”), as follows:

**THIS VARIANCE FORMS PART OF THE ORDER**

In this Variance the definitions in the Order apply and

**“casual work”** means work offered to an employee by an operator, contractor or sub-contractor which is:

(a) temporary; and

(b) the need for which arises solely due staffing shortages experienced by the operator, contractor or sub-contractor due to staff absences for vacation;

**“cluster”** means a group of facilities determined by a working group;

**“proof of vaccination”** means providing official written documentation that a person has been vaccinated either in paper or online format;

**“fully vaccinated”** means that a person has received two doses of an approved COVID-19 vaccine;

**“working group”** means a working group established by a regional health board under the Order.

1. An operator may permit a person to obtain casual work as staff at more than one facility in a cluster, if
  - a. the person is fully vaccinated,
  - b. the person provides the operator with proof of being fully vaccinated, and
  - c. more than 14 days have elapsed since the date on which the person received the second dose of COVID-19 vaccine.
2. A contractor or sub-contractor may permit a person to obtain casual work as staff at more than one facility in a cluster, if
  - a. the person is fully vaccinated,
  - b. the person provides the contractor or sub-contractor with proof of being fully vaccinated, and
  - c. more than 14 days have elapsed since the date on which the person received the second dose of COVID-19 vaccine.
3. A person may obtain casual work and work as staff at more than one facility in a cluster, if
  - a. the person is fully vaccinated,
  - b. the person provides proof of being fully vaccinated to an operator, or a contractor or sub-contractor, and
  - c. more than 14 days have elapsed since the date on which the person received the second dose of COVID-19 vaccine.
4. An operator must not permit a person to obtain casual work at a more than one facility, unless the facilities are in the same cluster and the provisions of section 1 are complied with.
5. A contractor or sub-contractor must not permit a person to obtain casual work at more than one facility, unless the facilities are in the same cluster and the provisions of section 2 are complied with.
6. A person must not work at more than one facility, unless the facilities are in the same cluster and the provisions of section 3 are complied with.
7. In the event that a medical health officer declares an outbreak of COVID-19 in a facility at which a person who is working at more than one facility pursuant to the terms of this variance is working, unless permitted by the medical health officer to work at another facility or facilities, the person must only work in one facility until the medical health officer declares that the outbreak is over.
8. An operator, contractor or sub-contractor may not permit a person to work at more than one facility for a period which extends beyond the expiry of this Variance, unless permitted to do so under the Order.
9. A person must not work at more than one facility after the expiry of this Variance, unless permitted to do so under the Order.

This Variance expires on September 30, 2021.

Pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the *Public Health Act*, I will not be accepting requests for reconsideration of this Variance.

You are required under section 42 of the *Public Health Act* to comply with this Variance. Failure to comply with this Variance is an offence under section 99 (1) (k) of the *Public Health Act*.

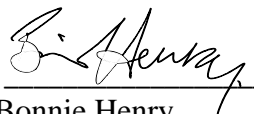
If you fail to comply with this Variance, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

You may contact me at:

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

DATED THIS: 28<sup>th</sup> day of July 2021

SIGNED:

  
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Bonnie Henry  
MD, MPH, FRCPC  
Provincial Health Officer

DELIVERY BY posting on the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of *Public Health Act*

## ENCLOSURE

### *Excerpts of the PUBLIC HEALTH ACT*

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#### ***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** (1) A health officer must make an order in writing, and must describe all of the following in the order:

- (a) subject to subsection (5), who must comply with the order;
  - (b) what must be done or not done, and any conditions, including if applicable the date by which something must be done;
  - (c) the date on which, or the circumstances under which, the order is to expire, if the date or circumstances are known;
  - (d) subject to the regulations, information sufficient to enable a person to contact the health officer;
  - (e) how a person affected by the order may have the order reconsidered;
  - (f) any prescribed matter.
- (2) A health officer may combine 2 or more orders in a single written notice.
- (3) An order may be made in respect of a class of persons.
- (4) If a provision under this Act refers to a specified facility, place, person or procedure in respect of an order, a health officer must specify the facility, place, person or procedure
- (a) in accordance with an order made under section 63 [*power to establish directives and standards*], or
  - (b) if no order under section 63 applies, that the health officer reasonably believes to be appropriate in the circumstances.
- (5) If a medical health officer publishes an order respecting an infected person, the infected person's identity must not be disclosed unless disclosure is necessary for the protection of public health.
- (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

### **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.

### **General emergency powers**

- 54** (1) A health officer may, in an emergency, do one or more of the following:



(h) not reconsider an order under section 43 [*reconsideration of orders*], not review an order under section 44 [*review of orders*] or not reassess an order under section 45 [*mandatory reassessment of orders*];

## **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*];