



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

(Pursuant to Sections 30, 31, 32, 39 (3), 53, 54, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008)

### ***SCHOOL STAFF MEMBER VACCINATION STATUS REPORTING – JANUARY 17, 2022***

The *Public Health Act* is at:

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

(excerpts enclosed)

**TO: BOARDS OF EDUCATION, INDEPENDENT SCHOOL AUTHORITIES AND  
FRANCOPHONE EDUCATION AUTHORITIES**

**TO: A PERSON EMPLOYED BY A BOARD OF EDUCATION, AN INDEPENDENT  
SCHOOL AUTHORITY OR A FRANCOPHONE EDUCATION AUTHORITY**

#### **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. Vaccination is safe, highly effective, and the single most important preventive measure a person can take to protect themselves, their families, and other persons with whom they come into contact from infection, severe illness and possible death from COVID-19. In particular:
  - (a) the vaccines available in British Columbia, in company with other protective and preventive measures, are highly effective and provide protection across all eligible age groups against infection and strong protection against severe illness and death;
  - (b) most British Columbians have strong and durable protection from SARS-CoV-2 resulting from the extended interval between dose one and dose two of vaccine that is being utilized in British Columbia; in addition, a new vaccine is now being offered which only requires one dose to be effective, and booster doses are being implemented in order to reinforce the protection afforded by vaccination;

- (c) a full course of vaccine provides more effective and durable protection against infection and severe illness than natural immunity from prior COVID-19 infection alone, or natural immunity in combination with a single-dose of vaccine (of those vaccines that require two doses to be effective); and
  - (d) a full course of vaccine provides highly effective and durable protection from severe illness resulting in hospitalization or death from COVID-19, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people;
- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be readily available in British Columbia and while substantial progress has been made in vaccinating the population of British Columbia 12 years of age and older, and children aged 5 to 11 years of age are now being vaccinated, a portion of the public remains unvaccinated and there are communities where vaccination rates are low;
  - E. Communities with low vaccination rates have experienced more serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people. By contrast, communities with high vaccination rates have seen corresponding less serious illness and hospitalizations;
  - F. Unvaccinated people are at greater risk than vaccinated people of being infected with SARS-CoV-2, and those who are infected, experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
  - G. People who are vaccinated can be infected with SARS-CoV-2, but experience less severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who contract COVID-19 can transmit SARS-CoV-2 but are also generally contagious for shorter periods of time, are less symptomatic, and are less likely to transmit SARS-CoV-2, when compared to unvaccinated infected persons;
  - H. This situation has been exacerbated over time, first by the arrival of the highly transmissible Delta variant of SARS-CoV-2, which continues to circulate in British Columbia and which causes significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people, than earlier variants, and now by the arrival of the even more transmissible Omicron variant, which is responsible for a surge in infections in the province, and is the dominant strain of SARS-CoV-2 circulating in the province;
  - I. Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but the transmissibility of the Delta and now the Omicron variant means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions;

- J. The appearance of the Omicron variant, which is causing significant surges in infection with SARS-CoV-2 in other provinces and other parts of the world in addition to British Columbia, underlines the importance of vaccination in protecting the population, and in removing the conditions which foster the development of variants which pose ever greater threats to public health;
- K. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spillover effects on health care delivery across the Province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population, primarily among unvaccinated people;
- L. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to the transmission of SARS-CoV2, and to provide care for those who become ill with COVID-19, primarily unvaccinated people who comprise the majority of hospitalizations and ICU admissions;
- M. While people who have contracted SARS-CoV-2 may develop some natural immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors, including severity of infection. The risk of reinfection and hospitalization is significantly higher in people who remained unvaccinated after contracting SARS-CoV-2 than in those who were vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection. It does so by providing a stronger immune response that is known to be effective for a longer period of time than immunity arising from infection.
- N. Vaccination is the single most important preventive measure a member of a community can take to protect themselves and other members of the community from infection, severe illness and possible death from COVID-19;
- O. People over 70 years of age, and people with chronic health conditions or compromised immune systems, are particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated;
- P. Included among the members of the community who are more likely to be infected are children aged 5 to 11 years. This is because children in this age group have only recently become eligible for vaccination and it will take some time before the members of this group can be fully vaccinated;
- Q. Adults and children who are either particularly vulnerable to infection with SARS-CoV-2 or too young to have received two doses of COVID-19 vaccine depend upon the people with whom they come into contact to protect them from the risk of infection;
- R. Unvaccinated people in close contact with other people can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19 and become seriously ill;

- S. Attendance at school in person fosters the educational, social, emotional and physical wellbeing of students, provides a secure source of nutrition for many and enables parents who cannot work from home to continue working, thereby ensuring a continuing source of family income;
- T. Schools provide a structured environment for students which in many cases provides greater protection to students from the risk of transmission of SARS-CoV2 than other environments in which they might be;
- U. Protecting and supporting the ability of boards of education, independent school authorities and francophone education authorities to continue to provide in person schooling is critical to the well-being of children and their families.
- V. Cases of COVID-19 among school staff members can contribute to clusters of infection and lead to the isolation of a large number of children who are identified as close contacts, adversely affecting their well-being by preventing them from attending school and other social activities;
- W. Unvaccinated staff members pose a health hazard to students and other staff members due to the higher risk that they can transmit SARS-CoV-2 to others;
- X. Information about staff members vaccination rates will assist boards of education, independent school authorities and francophone education authorities, superintendents and principals in mitigating the risk of and, where necessary, responding to the spread of infection in schools, and will assist the medical health officer in assessing, advising on and responding to the risks arising from exposures, cases, clusters and outbreaks in schools;
- Y. Various options for establishing vaccine status, including in paper and online format, are readily available;
- Z. The Omicron variant has introduced more uncertainty into the course of the pandemic, and the rapid rise in infection rates in British Columbia and the experience in other places have led me to conclude that additional measures are necessary in order to permit the school and public health systems to plan for and respond to clusters and outbreaks of Omicron in schools;
- AA. I recognize that constitutionally protected interests include the rights and freedoms guaranteed by the Canadian *Charter of Rights and Freedoms*, including specifically freedom of religion and conscience, freedom of thought, belief, opinion and expression, and the right not to be deprived of life, liberty or security of the person, other than in accordance with the principles of fundamental justice. I understand that making decisions about whether to get vaccinated may engage these rights and freedoms. However, these rights and freedoms are not absolute and are subject to such reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society, which include proportionate, precautionary and evidence-based measures, including vaccination, 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, and balance these rights and interests in a way that is consistent with the protection of public health. I have concluded that the measures which I am putting in place in

this Order are proportionate, rational and tailored to address the risk, and are neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect public health, including the well-being of children, at this time. In my view, any limits on constitutionally protected rights and freedoms arising from this Order are proportionate and reasonable in the interests of protecting public health and there are no other reasonable alternatives that would provide the same level of protection; and

BB. In addition, I recognize the privacy interests of boards of education, independent school authorities and francophone education authorities staff members and the interests protected by the *Human Rights Code*, and have taken these into consideration when exercising my powers to protect the health interests of children and their families from the risk of infection created by children being in contact with unvaccinated staff in schools, and the well-being of children and their families from the risks arising from classroom or school closures;

**THEREFORE**, I have reason to believe and do believe that:

- (a) increasing numbers of persons in the province are being infected with the Omicron variant of SARS-CoV-2;
- (b) a lack of information on the part of boards of education, independent school authorities and francophone education authorities and the medical health officer about the vaccination status of staff members in school settings interferes with the suppression of SARS-CoV-2 and constitutes a health hazard under the *Public Health Act*;
- (c) in some health regions or parts of health regions of the province there is an immediate and urgent need for focused action to reduce the risk of transmission of SARS-CoV-2 in schools and to ensure the continuity of school services; and
- (d) for these reasons, it is in the public interest for me to exercise the powers in sections 30, 31, 32, 39 (3), 53, 54, 57, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

## **AS AND WHEN DIRECTED BY THE MEDICAL HEALTH OFFICER**

### **Definitions**

In this Order:

**“board of education”** means a board of education as defined in section 1 of the *School Act*, and includes a francophone education authority;

**“employer”** means a board of education, independent school authority and francophone education authority which is subject to this Order by direction of the medical health officer;

**“francophone school authority”** means a francophone education authority established or continued under *School Act* section 166.12;

**“francophone school”** means a francophone school as defined in section 1 of the *School Act*;

**“independent school authority”** means

- (a) a society within the meaning of the *Societies Act* which operates an independent school,
- (b) a company within the meaning of the *Business Corporations Act*, or a corporation incorporated under a private Act, which operates an independent school, or
- (c) a person designated by regulation made pursuant to the *Independent School Act* as an authority that operates an independent school, but
- (d) does not include a person that operates a First Nation school certified as an independent school under the *Independent School Act*;

**"independent school"** means an independent school as defined in section 1 of the *Independent School Act*;

**“proof of vaccination”** means a vaccine card;

**“staff member”** means a person employed by a board of education, independent school authority and francophone education authority which is subject to this Order by direction of the medical health officer;

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

**“vaccinated”** means to have received, at least 7 days previously, all doses of a vaccine or a combination of vaccines as recommended by

- (a) the provincial health officer, with respect to vaccines approved for use in Canada by the department of the federal government responsible for regulating drugs, or
- (b) the World Health Organization, with respect to vaccines approved by the World Health Organization but not approved for use in Canada;

**“vaccination status”** means whether a staff member is vaccinated or is unvaccinated and includes

- (a) how many doses of vaccine a staff member has received; and
- (b) when a staff member has received a dose of vaccine.

**“vaccine”** means a vaccine intended for use in humans against SARS-CoV-2;

**“vaccine card”** means proof in one of the following forms that the holder is vaccinated:

- (a) electronic proof or a printed copy of an electronic proof,
  - (i) issued by the government in the form of a QR code, accessible through the Health Gateway online platform, and
  - (ii) showing the name of the holder;
- (b) proof in writing, issued by the government for the purpose of showing proof of vaccination in accordance with orders of the provincial health officer made under the *Public Health Act*;
- (c) proof, whether electronic or in writing, issued
  - (i) by the government of Canada or of a province of Canada, and

- (ii) for the purpose of showing proof of vaccination in accordance with an order made in the exercise of a statutory power with respect to the protection of public health or the facilitation of international travel;
- (d) in the case of an international visitor,
  - (i) proof, whether electronic or in writing, relied upon to enter Canada, and
  - (ii) the person's passport or photo identification;

## **EMPLOYER TO COLLECT AND REPORT THE VACCINATION STATUS OF ALL STAFF MEMBERS**

1. An employer must request proof of vaccination from each staff member and must keep a record of each staff member's vaccination status.
2. A staff member must provide their employer with proof of vaccination on the request of their employer and by the date directed by their employer, and if the vaccination status of the staff member changes the staff member must provide this information and their vaccine card to their employer without delay, and the employer must update the record of the staff member's vaccination status.
3. An employer must report the vaccination status of its staff members on an aggregate, non-individually identifying basis by school as required by the medical health officer and by the date directed by the medical health officer.
4. When putting in place measures to prevent, mitigate or respond to the spread of infection in a school, the employer must proceed on the basis that a staff member who has not provided proof of vaccination is unvaccinated.

## **MEDICAL HEALTH OFFICER DIRECTIONS AND 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 school settings, **I FURTHER ORDER:**

1. A medical health officer may implement this Order by way of a direction with respect to a board of education, independent school authority and francophone education authority in the geographic area of the Province for which the medical health officer is designated;
2. A medical health officer may make an order subsequent to this Order for the purpose of requiring the collection or reporting of further information by a board of education, independent school authority and francophone education authority, the provision of further information by a staff member, or imposing limitations or conditions with respect to a school, a board of education or an independent school authority in the geographic area of the Province for which the medical health officer is designated;
3. While it is in force, a provision in an order made by a medical health officer subsequent to this Order which requires the collection or reporting of further information by a board of education,

independent school authority and francophone education authority, the provision of further information by a staff member, or imposes limitations or requirements with respect to a school, a board of education, independent school authority and francophone education authority, 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.

## **DELEGATION TO MEDICAL HEALTH OFFICER FOR THE PURPOSE OF MAKING A DIRECTION**

Pursuant to section 69 of the *Public Health Act*, I delegate to the medical health officer the authority

1. to implement this Order by means of a direction with respect to a board of education, independent school authority and francophone education authority within the geographic area of the Province for which the medical health officer is designated, and
2. to determine when a direction issued by the medical health officer will expire.

This Order does not affect the rights, powers and duties of a school medical officer, who is designated pursuant to the *School Act*.

This Order has no expiry date, but a medical health officer may provide in a direction for the expiry of a direction.

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

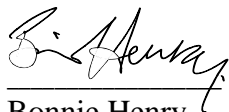
Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

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*.

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 Order.

DATED THIS: 17<sup>th</sup> day of January 2022

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.

### **Part applies despite other enactments**

**53** During an emergency, this Part applies despite any provision of this or any other enactment, including

- (a) in respect of the collection, use or disclosure of personal information, the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, and
- (b) a provision that would impose a specific duty, limit or procedural requirement in respect of a specific person or thing,

to the extent there is any inconsistency or conflict with the provision or other enactment.

### **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*];
- (k) collect, use or disclose information, including personal information,
  - (i) that could not otherwise be collected, used or disclosed, or
  - (ii) in a form or manner other than the form or manner required.

### **Emergency powers respecting reporting**

**57** (1) The provincial health officer may, in an emergency, order that a specified infectious agent, hazardous agent, health hazard or other matter be reported under this section.

(2) If an order is made under this section, a person required by the order to make a report must promptly report, to the extent of his or her knowledge, to a medical health officer the information required by the order.

(3) If a person is required to make a report under this Act, the provincial health officer may in an emergency order the person exempt from the requirement, or vary the requirement.

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

**67** (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.

### **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*];