



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

(Pursuant to Sections 30, 31, 32, 39 (3) and (6), and 54 (1) (h) and 2, *Public Health Act*, S.B.C. 2008)

### ***VARIANCE OF GATHERINGS AND EVENTS & FOOD AND LIQUOR SERVING PREMISES ORDERS TO SUSPEND RECONSIDERATION re PROOF OF VACCINATION – NOVEMBER 12, 2021***

The *Public Health Act* is at:

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

(excerpts enclosed)

#### **WHEREAS:**

- A. On March 17, 2020, I provided notice under section 52 (2) of the *Public Health Act* (the “Act”) that the transmission of the infectious agent SARS-CoV-2, which has caused cases 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* a regional event is an emergency under section 51 of the *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 are highly effective, providing strong protection across all eligible age groups against infection and especially against severe illness;
  - b. most British Columbians have strong and durable protection from SARS-CoV-2 resulting from the extended interval between dose one and dose two that is being utilized in British Columbia;
  - 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; and

- d. a full course of vaccine provides highly effective and durable protection from infection and in particular from severe illness resulting in hospitalization or death from the Delta variant of SARS-CoV-2, 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, a portion of the public remains unvaccinated and there are communities where vaccination rates are low;
  - E. Communities with low vaccination rates have experienced rapid spread of SARS-CoV-2, causing serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people. By contrast, communities with high vaccination rates have seen corresponding lower transmission, and case rates;
  - F. Unvaccinated people are at a significantly 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 decreased severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who develop COVID-19 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 by the highly transmissible Delta variant of SARS-CoV-2, which is now the dominant variant of SARS-CoV-2 circulating in British Columbia, causing significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people. Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but transmissibility of the Delta 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 going forward;
  - I. 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 spill-over 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;
  - J. 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;

- K. 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. In particular, social mingling coupled with the consumption of alcohol, which increases risky behavior, is associated with increases in the transmission of SARS-CoV-2, and increases in the number of people who develop COVID-19 and become seriously ill;
- L. 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 those who were vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection by providing a stronger immune response that is known to be effective for a longer period of time and against a wider variety of strains of SARS-CoV-2 that are currently circulating in British Columbia, including the Delta variant;
- M. Programs that require that proof of vaccination be provided in certain settings have been shown to increase vaccination uptake in populations, thereby reducing the public health risk of COVID-19, and accordingly, I have issued public health orders that, among other things, require proof of vaccination in certain settings, which orders include my September 10 and October 25, 2021 *Gatherings and Events Orders* and my September 10, 2021 and October 25 *Food and Liquor Serving Premises Orders* (collectively, the “*Vaccine Card Orders*”);
- N. There are difficulties and risks in accommodating persons who are unvaccinated, and in making, amending and continually reevaluating the ongoing need for the Vaccine Card Orders, I have considered and continue to consider based on the currently available generally accepted scientific evidence whether other measures, such as natural immunity, PCR testing or rapid antigen testing, are as effective as vaccination in reducing the risk of transmission SARS-CoV-2 and the severity of illness if infected;
- O. Routine COVID-19 testing of asymptomatic people is not recommended in BC and PCR testing capacity is reserved for people who may be ill with COVID-19 to promote public health case identification, follow up and control measures. Asymptomatic testing increases the likelihood of generating false positive tests, which can unnecessarily consume public health resources in following up false positive tests. Similarly, rapid testing, which is followed up with confirmatory PCR testing for positive tests, is reserved for specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes of COVID-19, such as in long-term care and assisted living facilities, or in remote communities where obtaining results of PCR testing may be delayed.
- P. I have reason to believe and do believe that because unvaccinated people continue to be a significant source of viral transmission to other vaccinated and unvaccinated people, and these infections can result in serious illness, hospitalization, intensive care unit admission for care and death, particularly in elder people irrespective of vaccination status:
- a. the continued presence of clusters and outbreaks of unvaccinated people in the population, particularly in some age groups and some communities where vaccination rates continue to be low, continues to pose a risk to the health of the population, including in particular when people congregate at gatherings and events; and

- b. the presence of unvaccinated persons in food and liquor serving premises with table service, including buffets where table service is provided, cafes, food primary and liquor primary establishments, including pubs, bars, lounges and nightclubs, manufacturing facilities that have tasting rooms with seating and private clubs;

constitutes a health hazard under the *Public Health Act* that, given the current stage of the COVID-19 pandemic in British Columbia, is best addressed through, among other measures, including the *Vaccine Card Orders*;

- Q. I recognize the societal effects, including the hardships, which the measures which I have and continue to put in place to protect the health of the population, including the Vaccine Card Orders, have on many aspects of life, and, with this in mind, continually 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, 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 public, including constitutionally protected interests, in gatherings and events, against the risk of harm to public health created by gatherings and events and unvaccinated persons;
- R. I further 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, freedom of peaceful assembly and freedom of association. These freedoms, and the other rights protected by the *Charter*, 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 this is consistent with public health principles.
- S. I have weighed the health interests of participants and staff at the settings covered by the Vaccine Card Orders against the interests of persons who are not vaccinated for reasons other than medical deferral, and taken into account the fact that the proof of vaccination requirements in the Vaccine Card Orders are aimed at discretionary activities or settings for which alternative options for participation are available;
- T. I have considered the importance of protecting the health of participants and staff, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated;
- U. I am also mindful that the volume of requests for reconsideration of my Orders, and the time and expertise which considering them entails, has become beyond my capacity and that of my office

and team of medical health officers to manage, and is using resources which are better directed at assessing and responding to the protection of the public as a whole;

- V. After taking into consideration all the above, it is my reasonable belief that it is necessary, in the interest of protecting the public health, that I not accept requests to reconsider Parts D and E of the September 10, 2021 and October 25, 2021 *Gatherings and Events* Orders and Parts B and D of the September 10, 2021 and October 25, 2021 *Food and Liquor Serving Premises* Orders, which are directed at limiting the presence of unvaccinated people participating in the discretionary activities or present in the settings that are subject to those Orders, until the level of transmission of infection and incidence of serious disease decreases, and in particular, until the number of hospitalizations, admissions to intensive care units and deaths, and the strain on the public health and health care systems, are significantly reduced;

Accordingly, pursuant to the authority vested in me by sections 54 (1) (h) and section 39 (6), of the *Act*, I have decided not to consider requests for reconsideration by way of variance under section 43 of the *Public Health Act*, other than on the basis of a medical deferral from vaccination, **I hereby Vary my Orders to:**

1. Suspend the reconsideration of Parts D and E of the September 10, 2021 and October 25, 2021 *Gatherings and Events* Orders and Parts B and D of the September 10, 2021 and October 25, 2021 *Food and Liquor Serving Premises* Orders (which are posted at <https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus>) including the reconsideration of requests for reconsideration which I have received, but have not as yet considered.
2. This suspension does not apply to a request for reconsideration brought by an individual on the basis of a medical deferral to vaccination made on the basis that the health of the individual would be seriously jeopardized if the individual were to comply with the Orders set out in paragraph 1, and which request complies with the guidelines posted on the Provincial Health Officer's website (<https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-theprovincial-health-officer/current-health-topics/covid-19-novel-coronavirus>).

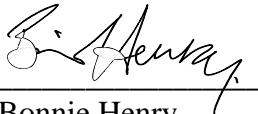
This Variance expires at 12:01 A.M. on January 31, 2022.

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 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: 12<sup>th</sup> day of November 2021

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

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

Enclosure: Excerpts of the *Public Health*

**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,

### **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*];

(2) An order that may be made under this Part may be made in respect of a class of persons or things, and may make different requirements for different persons or things or classes of persons or things or for different geographic areas.