



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

(Pursuant to Sections 30, 31, 32, 39 (3), 53, 54, 56, 57 (1) and 67 *Public Health Act*, S.B.C. 2008)

### ***RESIDENTIAL CARE FACILITIES STAFF INFORMATION COLLECTION – DECEMBER 16, 2022***

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 AND SERVICES IN LONG TERM CARE FACILITIES, PRIVATE HOSPITALS, STAND ALONE EXTENDED CARE HOSPITALS DESIGNATED UNDER THE *HOSPITAL ACT* OR ASSISTED LIVING RESIDENCES FOR SENIORS (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 EMPLOYED TO WORK IN FACILITIES (HEREINAFTER REFERRED TO AS “STAFF”)**

#### **WHEREAS:**

#### **Epidemiology of COVID-19**

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*, and I continue to believe that all four of the criteria described in section 52 (2) of the *Public Health Act* continue to be met for the following reasons:

- (a) in view of the history of mutation of SARS-CoV-2, and the uncertainty which exists about its future behaviour, there continues to be a significant risk that it could have a serious impact on public health;

- (b) there is a continued significant risk of an unexpected occurrence of a new variant of SARS-CoV-2 which could cause serious disease among the population;
  - (c) the infectious agent, SARS-CoV-2, continues to spread in British Columbia, Canada and around the world;
  - (d) travel restrictions remain in place in some countries as a result of the circulation of SARS-CoV-2;
- B. The ongoing incidence of COVID-19 and serious health consequences that result has been exacerbated over time, first by the arrival of the highly transmissible Delta variant of SARS-CoV-2, which caused significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people than earlier variants, and by the arrival of the even more transmissible Omicron variants, the first of which caused a surge in infections, hospitalizations and deaths, and is the dominant variant of SARS-CoV-2 circulating in the province;
  - C. The suddenness of the arrival of the first Omicron variant and its swift and significant impact on the level of infection, hospitalization and ICU admission rates in British Columbia, and the greater level of transmissibility of subsequent Omicron variants, reflect the unpredictability of SARS-CoV-2;
  - D. There are other infectious agents which can cause serious and life-threatening diseases, such as influenza, respiratory syncytial virus, norovirus and antimicrobial organisms;
  - E. There is significant uncertainty about the impact which the seasonal rise in respiratory viruses in the autumn and winter months, including the ones described above, may have on the course of SARS-CoV-2;
  - F. Based on the latest modelling information available to me, there is a continuing risk of a significant resurgence of disease in the province;
  - G. The introduction to and transmission of which between facilities can be facilitated by infected staff working in multiple facilities;

### **Residential Care**

- H. A person infected with SARS-CoV-2 or other infectious agents can infect other people with whom the infected person is in contact;
- I. Infectious agents can be introduced and transmitted in the residential care sector and between facilities by infected staff working in multiple facilities;
- J. Consequently, despite the currently lower level of illness in the general population caused by the Omicron variants, and the removal of widespread measures to mitigate the risk of infection by SARS-CoV-2 in British Columbia and elsewhere, measures continue to be necessary to monitor

staff movement for the purpose of mitigating and preventing the introduction and transmission of infectious agents into and between facilities in the residential care sector;

### **Balancing Competing Interests**

- K. I continually engage in reviewing the measures which I put in place, 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, reports from the rest of Canada and other jurisdictions, scientific journal articles reflecting divergent opinions, and opinions expressing contrary views to my own submitted in support of challenges to my orders, and in making this Order have balanced the interests of people working or providing services in the residential care sector, including constitutionally protected interests, against the risk of harm to residents posed by staff working in more than one facility or a cluster of facilities;
- L. 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, 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. 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 includes proportionate, precautionary and evidence-based measures to prevent loss of life, serious illness and disruption of the residential care sector;
- M. When exercising my powers to protect the health of vulnerable populations 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 to 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 consistent with principles of fundamental justice. The measures are neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect vulnerable populations 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 residents and staff in facilities and the capacity of the residential care sector to operate safely, and there are no other reasonable alternatives that would provide the same level of protection;
- N. In addition, I recognize privacy interests, informational privacy rights protected by the *Freedom of Information and Protection of Privacy Act* and the rights protected by the *Human Rights Code*, and have taken these into consideration when exercising my powers;
- O. For certainty, this order does not apply to dietitians, medical laboratory technologists, medical laboratory assistants, nurse practitioners, paramedics, pharmacists, physicians, speech language

pathologists, inter-facility transport staff, delivery persons, trades people, regular and biochemical waste removal people or biomedical engineers;

- P. For further certainty, this Order does not apply to the First Nations Health Authority, First Nations Health Service Organizations, Treaty First Nations, the Nisga'a Nation, the Métis Nation of BC, or to facilities provided or funded by one of those bodies;

**Therefore, I have reason to believe and do believe that**

- (a) the risk of an outbreak of disease among residents and staff of facilities constitutes a health hazard under the *Public Health Act*;
- (b) the risk of the health care system being unable to respond to the general health needs of the population in consequence of a high volume of cases resulting from an upsurge of disease constitutes a health hazard under the *Public Health Act*;
- (c) in order to counter these risks I require comprehensive and current information about staff movement among facilities in order to monitor the effect which lifting restrictions on where staff may work has on the health of residents and staff and so as to be in a position to mitigate the spread of infection, or prevent further spread of infection, in the event that there is an upsurge of disease among residents and staff in facilities;
- (d) it is necessary for me to exercise the powers in sections 30, 31, 32, 39 (3), 53, 54, 56, 57(1) and 67 of the *Public Health Act* **TO ORDER** as follows:

**THIS ORDER**

- (a) **REPEALS THE FACILITY STAFF ASSIGNMENT ORDER MADE ON APRIL 15, 2020, THE VACCINATED STAFF: VARIANCE OF THE FACILITY STAFF ASSIGNMENT ORDER MADE ON DECEMBER 15, 2021, THE HCAP PRACTICUMS - VARIANCE OF THE FACILITY STAFF ASSIGNMENT ORDER MADE ON MAY 16, 2021, AND THE DEPLOYMENT AND REDEPLOYMENT OF STAFF - AMENDMENT TO THE FACILITY STAFF ASSIGNMENT ORDER MADE ON OCTOBER 26, 2020, AS OF 11:59 PM ON DECEMBER 31, 2022, AND**
- (b) **REPEALS AND REPLACES THE INFORMATION COLLECTION TO ALLOCATE STAFF WORKING IN FACILITIES ORDER MADE ON MARCH 26, 2020**

**DEFINITIONS:**

**In this Order**

“assisted living residence” has the same meaning as in the *Community Care and Assisted Living Act*;

“community care facility” has the same meaning as in the *Community Care and Assisted Living Act*;

**“contractor”** means a person who enters into a contract with an operator to provide staff to work in a facility;

**“employer”** means an operator, a contractor or a sub-contractor;

**“extended care hospital”** means a hospital described in paragraph (c) of the definition of "hospital" in section 1 of the *Hospital Act*;

**“facility”** means a long term care facility, a private hospital, a stand alone extended care hospital, or an assisted living residence for seniors;

**“information of staff”** means the personal and employment information described in Schedule 1, as amended from time to time;

**“long term care facility”** means a community care facility that is licensed under the *Community Care and Assisted Living Act* to provide residential care for persons with chronic or progressive conditions, primarily due to the aging process;

**“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*, or a licensee or a registrant under the *Community Care and Assisted Living Act*;

**“private hospital”** has the same meaning as in the *Hospital Act*;

**“staff”** means a person employed or under contract to work in a facility;

**“sub-contractor”** means a person who enters into a contract with a contractor to provide staff to work in a facility.

## **A. STAFF INFORMATION**

### **EMPLOYERS MUST**

confirm or update the information of staff in electronic format following the instructions at <https://bchealthstaffing.ca/upload> on an ongoing basis, and no less than once every month.

## **B. EXPIRATION AND COMPLIANCE**

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*.

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*.

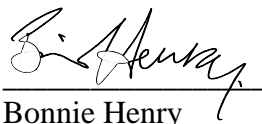
Pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the *Public Health Act*, I will not be accepting requests for reconsideration of this Order.

You may contact me at:

Dr. Bonnie Henry, Provincial Health Officer  
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: 16<sup>th</sup> day of December 2022

SIGNED:



Bonnie Henry  
OBC, 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*.

## **Schedule 1**

### **Information of Staff – December 16, 2022**

- (a) facility name;
- (b) first name and last name of staff;
- (c) social insurance number;
- (d) primary phone number of staff;
- (e) role category;
- (f) role type;
- (g) union name;
- (h) name of agreement that the staff is part of for this role;
- (i) pay period ending;
- (j) base hourly rate;
- (k) total number of hours the staff worked in this pay period, at this facility in this specific role;

## 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:

- (a) act in a shorter or longer time period than is otherwise required;
- (b) not provide a notice that is otherwise required;
- (c) do orally what must otherwise be done in writing;
- (d) in respect of a licence or permit over which the health officer has authority under section 55 [*acting outside designated terms during emergencies*] or the regulations, suspend or vary the licence or permit without providing an opportunity to dispute the action;
- (e) specify in an order a facility, place, person or procedure other than as required under section 63 [*power to establish directives and standards*], unless an order under that section specifies that the order applies in an emergency;
- (f) omit from an order things that are otherwise required;
- (g) serve an order in any manner;
- (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*];
- (i) exempt an examiner from providing examination results to an examined person;
- (j) conduct an inspection at any time, with or without a warrant, including of a private dwelling;
- (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.

(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.

### **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** (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.

### **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*];