



ORDER OF THE PROVINCIAL HEALTH OFFICER

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

DELAYED RETURN TO SCHOOL

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 (AS DEFINED IN THIS ORDER)

TO: INDEPENDENT SCHOOL AUTHORITIES

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 severe illness resulting in hospitalization or death due to 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 the vaccination of children aged 5 to 11 years of age is underway, 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 contract 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 and Omicron variants of SARS-CoV-2, causing significantly more rapid transmission and increased severity of illness due to the Delta variant, 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 and Omicron variants 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. The recent appearance of Omicron, a new variant of concern has led to a surge of infection, which underlines the importance of vaccination in protecting public health by removing the conditions which foster the development of variants which pose ever greater threats to public health;

- J. 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;
- K. 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. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population is critical;
- L. The British Columbia Centre for Disease Control (BCCDC) has issued public health communicable disease guidance for K-12 schools, to reduce the risk of COVID-19, and other communicable diseases, in schools. Earlier guidance of the BCCDC for K-12 reflected the evidence gathered nationally and internationally, which saw schools as lower-risk sites for COVID-19 transmission when infection prevention and exposure control measures were in place.
- M. On December 29, 2021 the BCCDC updated the public health guidance for schools to provide for enhanced safety protocols in schools in response to the appearance of and higher incidence of transmission and illness from the Omicron variant (the “Updated Health Guidance”). The Updated Health Guidance is available from the BCCDC website at http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Addendum_K-12Guidance_12292021.pdf
- N. It is necessary for boards of education and independent school authorities to have time to implement the Updated Health Guidance of the BCCDC for Omicron before students return to schools on January 10. The return of students to schools starting immediately on January 3, 2022 constitutes a health hazard, since this activity will likely interfere with the ability of boards of education and independent school authorities to suppress SARS CoV-2 by fully implementing the Updated Health Guidance.
- O. I have considered the importance of protecting the health of the public, students and staff and 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 allowing all students to return to schools before boards of education and independent school authorities had the opportunity to fully implement the Updated Health Guidance;

THEREFORE, I have reason to believe and do believe that in order to mitigate the transmission of SARS CoV-2 in schools, it is necessary for me to exercise the powers in section 31, 31, 32, 39, 53, and 67 of the *Public Health Act*, TO ORDER as follows:

DEFINITIONS

In this Order:

“board of education” mean a board of education as defined in section 1 of the *School Act*, and includes a francophone education authority and a Provincial school as those terms are defined in section 1 of the *School Act*

“independent school authority” means

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

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

1. For the period starting on January 3, 2022 and ending on January 9, 2022 every board of education and independent school authority must limit the attendance of students at each school they operate to ensure the full implementation of the Updated Health Guidance by the board of education or independent school authority.

MEDICAL HEALTH OFFICER ORDERS

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

1. A medical health officer may make an order subsequent to this Order for the purpose of imposing more restrictive limitations or conditions with respect to 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.
2. While it is in force, a provision in an order made by a medical health officer subsequent to this Order, which imposes more restrictive limitations or requirements than this Order with respect to a school, a board of education or an independent school 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.

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

This Order expires at midnight January 9, 2022.

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

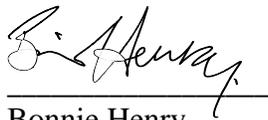
Failure to comply with this Order is an offence under section 99 (1) (k) of the *Public Health Act*.

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: 31st day of December 2021

SIGNED:



Bonnie Henry
MD, MPH, FRCPC
Provincial Health Officer

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

Enclosure: Excerpts of the *Public Health Act*.

ENCLOSURE

Excerpts of the *Public Health Act* [SBC 2008] c. 28

Definitions

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;

“health professional” means

- (a) a medical practitioner,
- (b) a person authorized to practise a designated health profession within the meaning of the *Health Professions Act*, or
- (c) a person who practises a health profession within the meaning of the *Health Professions Act* that is prescribed for the purposes of this definition;

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.

General emergency powers

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

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.

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*];