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

(Pursuant to Sections 30, 31, 32, 39 (3), 54 56, 67 (2) and 69 *Public Health Act*, S.B.C. 2008)

### ***RESIDENTIAL CARE COVID-19 VACCINATION STATUS INFORMATION AND PREVENTIVE MEASURES – OCTOBER 5, 2023***

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*, 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 A “STAFF MEMBER” OR COLLECTIVELY AS “STAFF”)**
- TO: PERSONS WHO PROVIDE CARE, SERVICES, SUPPORT OR OTHER MATTERS IN FACILITIES**
- TO: STAFF, FACULTY AND RESEARCHERS OF POST-SECONDARY INSTITUTIONS**
- TO: STUDENTS OF POST-SECONDARY INSTITUTIONS**
- TO: RESIDENTS, TRAINEES AND FELLOWS**

#### **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 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 and ongoing mutation of SARS-CoV-2, and the uncertainty which exists about its future behaviour, there continues to be a reasonable risk that it could have a serious impact on public health;
  - (b) There is a continued reasonable risk of an unusual or 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 mutate and new variants continue to spread in British Columbia, Canada and around the world;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
  - C. People over 65 years of age, and people with chronic health conditions or compromised immune systems, are particularly vulnerable to severe illness, hospitalization, ICU admission, and death from COVID-19, even if they are vaccinated;
  - D. Adults and children who are particularly vulnerable to infection with SARS-CoV-2 depend upon the people with whom they come into contact to protect them from the risk of infection;
  - E. Unvaccinated people in close contact with other people promotes the transmission of SARS-CoV-2 to a greater extent than vaccinated people in the same situations, which in turn increases the number of people who develop COVID-19 and become seriously ill;
  - F. The continuing emergence of variants, which have led to significant surges in infection and hospitalizations in British Columbia and in other jurisdictions worldwide, underlines the importance of vaccination in protecting the population and in removing the conditions which foster the development of variants which pose continuing threats to public health;
  - G. The emergence of the Omicron variants introduced uncertainty into the course of the pandemic. 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, reflects the unpredictability of SARS-CoV-2, and this uncertainty has led me to conclude that I must exercise caution when determining what measures continue to be necessary to mitigate the extent of the virus's transmission, and to reduce the severity of disease which it causes;
  - H. Chief among these measures is vaccination, and I am of the opinion that any slippage in the level of vaccination in the health-care workforce could result in significant illness on the part of the health-care workforce which would undermine the capacity of the health-care system to respond to a significant resurgence of disease;
  - I. There continues to be a reasonable probability of the emergence of virulent variants that could result in a significant resurgence of disease in the province;
  - J. On May 5, 2023, the World Health Organization ("WHO") issued a statement that the WHO Director-General, relying on the advice offered in the Report of the fifteenth meeting of the

International Health Regulations (2005) (IHR) Emergency Committee regarding the COVID-19 pandemic, declared an end to the public health emergency of international concern;

- K. At the same time, however, in his statement the WHO Director-General made it most clear that this change “does not mean COVID-19 is over as a global health threat” and stated that: “This virus is here to stay. It is still killing, and it’s still changing. The risk remains of new variants emerging that cause new surges in cases and deaths. The worst thing any country could do now is to use this news as a reason to let down its guard, to dismantle the systems it has built, or to send the message to its people that COVID-19 is nothing to worry about.”;
- L. Since the end of July, COVID-19 indicators in British Columbia (i.e. cases, hospitalizations, deaths, positivity of test results, facility outbreaks, waste water detections) have stopped declining and instead, the indicators have continued to increase. In addition, based on the earlier onset of influenza virus disease and respiratory syncytial disease in the southern hemisphere, I anticipate a sooner than usual onset of the annual increase in influenza virus disease and respiratory syncytial disease, along with other respiratory viruses in the northern hemisphere, all of which will result in increases in illness, hospitalizations and deaths across British Columbia. The trend of the COVID-19 indicators, coupled with the anticipated sooner than usual onset of other diseases, mean that I must continue to advise on and take extraordinary measures to protect the health of British Columbians.

### **Vaccination Importance and Effectiveness**

- M. 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, protect against the long-term effects of COVID-19, provide protection against infection, and are highly effective in protecting against severe illness, hospitalization, intensive care unit (ICU) admission and death across all eligible age groups, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people;
  - (b) most British Columbians have received their primary course of vaccine and booster doses have been made available in order to reinforce the protection offered by vaccination;
  - (c) there are several vaccines approved for use by Health Canada available in the province (<http://www.bccdc.ca/health-info/diseases-conditions/covid-19/covid-19-vaccine/vaccines-for-covid-19>) and this offers an array of choice to people who may have a concern about a particular vaccine;
- N. As the variants of the virus have evolved in the past year and vaccines have been updated to cover the variants now circulating the best protection for unvaccinated people is derived from receipt of one of the updated vaccines tailored to the XBB.1.5 variant of the Omicron strain. Due to the high effectiveness of vaccination, and that seroprevalence data indicates that people who have not been vaccinated have a high probability of having some immune markers from infection, Health Canada has authorized that vaccination with the mRNA based updated vaccines, rather than the vaccines previously recommended, is adequate to provide protection. In addition, the National Advisory Committee on Immunization has advised to no longer provide the bivalent or original strain vaccines once the updated vaccines are available. Therefore, I am satisfied that receiving

the recommended dose or doses of one of the updated vaccines will provide an unvaccinated person seeking to work, be a student or volunteer in the health-care sector with immunity from infection.

- O. Although it is highly recommended that people who were vaccinated with a primary series of vaccine previously recommended by Health Canada be vaccinated with one of the updated vaccines, seroprevalence data from British Columbia indicates that nearly all people in British Columbia have antibodies to SARS CoV-2 virus from combinations of infection and vaccination. This means that people who have been vaccinated with a previously recommended primary series are most likely to have had their immune systems stimulated by subsequent vaccination or infection and therefore continue to have an immunity to infection. Therefore, I am satisfied that it is not necessary to require that a person who was vaccinated with a primary series previously recommended by Health Canada, and who is already working, or is already a student, or is already a volunteer in the health-care sector, be vaccinated with one of the updated vaccines.
- P. Vaccines have been and continue to be readily available in British Columbia, however, some members of the public remain unvaccinated, and many have not taken advantage of the offer of recommended further doses;
- Q. Communities with low vaccination rates have experienced rapid spread of SARS-CoV-2, causing serious illness and increases in hospitalizations and ICU admissions, primarily in unvaccinated people. By contrast, communities with high vaccination rates have seen corresponding less serious illness and lower per capita hospitalization, ICU admission and death rates;
- R. Unvaccinated people have been at greater risk than vaccinated people of being infected with some variants of SARS-CoV-2, and those who have been infected have experienced significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people;
- S. People who are vaccinated can be infected with SARS-CoV-2, but experience less severity of illness than unvaccinated people, especially in younger populations;
- T. People who are unvaccinated are a greater risk to other people than vaccinated people. The reasons for this are that unvaccinated people are more prone to carry SARS-CoV-2 compared with vaccinated people, can be infectious for a longer period of time, clear the infection more slowly, and are more likely to have symptoms which spread the virus than a vaccinated person. The result is that an unvaccinated person is more likely to become infected than a vaccinated person and is more likely to transmit SARS-CoV-2 than a vaccinated person;
- U. Vaccinated people who are infected with SARS-CoV-2 have been shown to have high levels of protection against severe illness, have a reduced risk of the long-term effects of COVID-19, experience shorter infectious and symptomatic periods and recover from COVID-19 faster than similarly situated unvaccinated people, which, in turn, reduces the risk of transmission to their close contacts and co-workers and minimizes the disruption caused by absenteeism, all of which supports the continued provision of essential services in particular, and the orderly functioning of society as a whole;
- V. Staff in the health-care system are regularly encouraged to receive recommended further doses of vaccine;

W. Options for establishing vaccine status, including in paper and online format, are readily available;

### **Post-Infection Immunity and Testing**

X. I have considered and continue to consider, based on the currently available generally accepted scientific evidence, whether other measures such as post-infection immunity, polymerase chain reaction (PCR) testing or rapid antigen testing, are as effective as vaccination in reducing the risk of transmission of SARS-Co-2, or the severity of illness, if a person is infected;

Y. While people who have contracted SARS-CoV-2 may develop some post-infection immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors, including age, co-occurring medical conditions, medications being taken, which variant they were infected with, severity of infection, and time since infection;

Z. The risk of reinfection and hospitalization is significantly higher in people who remain unvaccinated after contracting SARS-CoV-2 than in those who are vaccinated post-infection. Vaccination, even after infection, remains an important measure in protecting against reinfection by providing a more consistent and reliable immune response than immunity arising from infection alone;

AA. Further, there is no reliable means of assessing the level of immunity which a person may have to re-infection or serious illness in consequence of infection with SARS-CoV-2;

BB. Routine COVID-19 testing of asymptomatic people is not recommended in British Columbia, and PCR testing capacity is reserved for people who may be ill with COVID-19 to enable initiation of treatment. Asymptomatic testing can result in false negative testing, leading to a false sense of security that someone is not infected when in fact they are, and increases the likelihood of generating false positive tests, which can be misleading and lead to imposition of unnecessary requirements on people who are not infected;

CC. Rapid antigen testing is not a substitute for vaccination but can be useful when used for symptomatic people in specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes of COVID-19, and then followed up with confirmatory PCR testing for positive tests, and when used in remote communities where obtaining results of PCR testing may be delayed;

DD. Although the wearing of personal protective equipment provides a measure of protection, it does not provide the level of protection afforded by vaccination, particularly in an environment where there are people who are highly vulnerable to infection and serious illness;

EE. There are clear, objective criteria for determining whether a person has a medical deferral to a COVID-19 vaccination, and very few people fall into this category;

FF. There are difficulties and risks in accommodating a person who is unvaccinated, since no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-CoV-2, and the likelihood of severe illness and death;

## **Residential Care**

- GG. Ensuring safe residential care is critical to the wellbeing of residents, as is preserving the ability of the residential care system to provide for the health and care needs of residents, and the best means to achieve this is by having a highly vaccinated workforce;
- HH. Residents of facilities are typically elderly and usually have chronic health conditions or compromised immune systems which makes them particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated, since despite the fact that vaccination is the single most effective protection against illness, vaccination is not completely protective, and protection may wane with time;
- II. Their high level of vulnerability to infection with SARS-CoV-2 and risk of resulting serious illness distinguishes the situation of residents of facilities from that of young people in the general population, who are generally in robust good health. Accordingly, and by way of example, although the risk of transmission of infection and attendant illness created by the presence of unvaccinated post-secondary students in post-secondary environments does not require comprehensive vaccination as a measure of mitigation, the situation is completely different when it comes to the risk of transmission of infection and attendant illness created by the presence of unvaccinated people working or providing services in the residential care sector;
- JJ. Further, since vaccinated workers who are infected with SARS-CoV-2 have high levels of protection against severe illness, experience shorter infectious and symptomatic periods, and recover from COVID-19 faster than similarly situated unvaccinated people, this reduces the risk of transmission of infection to their co-workers and minimizes the disruption caused by absenteeism in the residential facility sector;
- KK. Vaccination is safe, very effective and the single most important preventive measure a person working or providing services in the residential care sector can take to protect residents and other workers and service providers from infection with SARS-CoV-2;
- LL. Significantly, at the end of 2021 and early in 2022, with the occurrence of the Omicron wave of infections, it was the high level of vaccination among the residential care workforce which ensured that the residential care system was able to continue to function safely and to provide the necessary level of care to residents;
- MM. To avoid the risk of undermining the ability of the residential care sector to function safely and to properly care for residents, it is necessary to keep the number of unvaccinated people in the residential care workforce as low as possible, including among the members of the workforce who may have little or no direct contact with residents or other workers on a regular basis;
- NN. Every year respiratory viruses take a significant toll on the health of the elderly and those with chronic health issues and compromised immune systems, causing serious illness which often

requires hospitalization and often results in death. I am particularly concerned that if the people who work or provide services in residential care environments are not vaccinated, a combination of seasonal respiratory viruses and infection with SARS-CoV-2 could ravage these vulnerable populations by causing significant illness and could cause significant absenteeism among the workforce, thereby putting increased stress on both the residential care system and the health-care system;

OO. 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 both in British Columbia and elsewhere, in my opinion, any step back from the comprehensive vaccination of people working or providing services in the residential care sector would undermine the level of safety which comprehensive vaccination of the workforce has brought to these environments;

PP. Residents need to have confidence that they are not putting their health at risk when they receive care or services in residential care facilities; members of the residential care workforce need to have confidence in the safety of working in residential care facilities; and the public needs to have confidence in the safety of the residential care system. The knowledge that the residential care workforce is vaccinated is critical to establishing and maintaining this confidence on the part of residents, the workforce and the public;

### **Balancing Competing Interests**

QQ. I recognize the effect which the measures I am putting in place to protect the health of the residents and workforce in facilities may have on people who work or provide services in facilities, but am of the opinion that a high level of vaccination is the best means to protect the health of residents and the workforce in residential care facilities, and the ability of the residential care sector to function safely;

RR. 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 volunteering in the residential care sector, including constitutionally protected interests, against the risk of harm to residents posed by unvaccinated people working or volunteering in the residential care sector;

SS. 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;

TT. 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 vulnerable populations, and there are no other reasonable alternatives that would provide the same level of protection for these populations;

UU. 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 to protect the health interests of vulnerable populations;

VV. For 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) an unvaccinated workforce in the residential care sector poses a risk to residents and workers and to the residential care system, and constitutes a health hazard under the *Public Health Act*;
- (b) the provision of care or services by an unvaccinated person in a facility poses a risk to residents and other staff members and constitutes a health hazard under the *Public Health Act*;
- (c) it is essential to maintain the high level of vaccination currently in place in the residential care workforce since this is the best means available by which to mitigate the risk to the health of residents and workers and to ensure the preparedness and resiliency of the residential care system, both at present and in the event of a resurgence of COVID-19 disease in the province;
- (d) expanding the grounds upon which a worker may request an exemption to the requirement to be vaccinated beyond those based upon a risk to the health of the worker would undermine the high level of vaccination which is currently in place among the residential care workforce by increasing the number of unvaccinated workers in the workforce, and would introduce an



unacceptable level of risk to the health of residents and workers, weaken the preparedness and resiliency of the residential care system, and undermine the confidence of the residential care workforce in the safety of their working environment and the confidence of the public in the safety of the residential care system;

- (e) a lack of information on the part of employers and operators about the vaccination status of workers interferes with the suppression of SARS-CoV-2 in residential care settings, and constitutes a health hazard under the *Public Health Act*;
- (f) medical health officers need to know the vaccination status of workers in order to most effectively respond to clusters or outbreaks of COVID-19 among residents or workers;
- (g) in order to mitigate the risk in facilities and to the residential care and health-care systems arising from an unvaccinated residential care workforce, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 56, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

**THIS ORDER REPEALS AND REPLACES THE *RESIDENTIAL CARE COVID-19 PREVENTIVE MEASURES ORDER MADE ON APRIL 6, 2023***

**DEFINITIONS:**

**In this Order**

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

“**care**” means health care, personal care or activation provided to a resident;

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

“**exemption**” means a variance issued to a person under the *Public Health Act* which permits an unvaccinated person to do that which they would otherwise be prohibited from doing pursuant to an order made under the *Public Health Act*, despite not being vaccinated;

“**exemption certificate**” means

(a) proof, whether in paper or electronic form,

(i) issued by the provincial health officer or a delegate of the provincial health officer for the purpose of showing proof of exemption in accordance with orders of the provincial health officer made under the *Public Health Act*, and

(ii) showing the name of the holder; or

(b) proof of exemption from vaccination, whether in paper or electronic form

(i) issued by the chief medical health officer, or equivalent or delegate, of a province or territory of Canada, and

(ii) showing the name of the holder;

“**employer**” means a person who employs or contracts with a staff member;

**“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;

**"health care"** means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health;

**“health professional”** has the same meaning as in the *Public Health Act*;

**“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*;

**“personal care”** means assistance with the activities of daily living, including eating, moving about, dressing and grooming, bathing and other forms of personal hygiene, and assistance with managing medication;

**“photo identification”** means one of the following:

- (a) a photo BC Services Card within the meaning of the Identification Card regulation;
- (b) a temporary or permanent driver’s licence, issued by a government of a province of Canada;
- (c) a certificate of Indian Status;
- (d) a Métis Nation British Columbia citizenship and identification card;
- (e) a passport attesting to citizenship or other national status, issued by a government of any jurisdiction and including a photograph of the holder;
- (f) a military identification card that is issued by a government of any jurisdiction, which includes a photograph of the holder and is satisfactory to an employer or operator;
- (g) another form of identification that is issued by a government of any jurisdiction, which includes a photograph of the holder and is satisfactory to an employer or operator;

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

**“proof of exemption”** means

- (a) in the case of a person who is more than 18 years of age, photo identification and an exemption certificate,
- (b) in the case of a person who is 18 years of age or younger, an exemption certificate, but does not include the requirement to provide photo identification in the case of a staff member;

**“proof of vaccination”** means a vaccine card, but does not include the requirement to provide photo identification in the case of a staff member;

**“resident”** means a person who is a person in care in a long term care facility, a patient in a private hospital or a stand-alone extended care hospital, or a resident in an assisted living residence for seniors;

**“services”** includes

- (a) dietary, kitchen, housekeeping, inside maintenance services or inside construction work,
- (b) administrative or managerial services,
- (c) information technology services,

provided in, to or otherwise with respect to a facility, but does not include urgent or emergency inside maintenance services or construction work;

**“staff member”** in Parts A and B means a person employed by the operator of a facility, to provide care or services, or a person employed by a contractor to provide care or services under contract, except construction services under contract, and a health professional who is in either an employment or contractual relationship with an operator or contractor, which requires the health professional to provide health care to a resident;

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

**“vaccinated”** means to have received, at least 7 days previously, one dose of Janssen vaccine, or two doses of a vaccine or a combination of vaccines,

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

or, after this Order comes into effect, in the case of a person who has not been vaccinated as described above, to have received the recommended dose or doses of the XBB.1.5-containing formulation of COVID-19 vaccine approved for use by Health Canada and available in the province

<http://www.bccdc.ca/health-info/diseases-conditions/covid-19/covid-19-vaccine/vaccines-for-covid-19>

**“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 a person vaccinated outside Canada, proof in English, French, or a certified translation into English or French, whether electronic or in writing, issued by a government or a

government body or by an organization which administered the vaccine for the purpose of showing proof of vaccination, which

- (i) is in the form of an official certificate, pass, card, receipt or confirmation showing the number of doses of vaccine received,
- (ii) is not just a QR code,
- (iii) includes in text
  - A. the person's name,
  - B. the name of the government or government body or organization which administered the vaccine,
  - C. the brand name or any other information which identifies the vaccine,
  - D. the date the vaccine was administered;

“**WHITE**” means the Workplace Health Indicator Tracking and Evaluation database;

“**work**” means to provide care or services.

## **A. VACCINATION STATUS INFORMATION**

### **I. EMPLOYERS WITHOUT ACCESS TO WHITE**

1. An employer must request proof of vaccination, or proof of an exemption, from each staff member and must keep a record of the staff member's vaccination status.
2. A staff member must provide their employer with proof of vaccination, or proof of an exemption, on request from their employer.
3. An employer must disclose information about the vaccination status of their staff members on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a facility.

### **II. EMPLOYERS WITH ACCESS TO WHITE**

1. An employer must confirm the vaccination status of each staff member from WHITE.
2. If an employer does not find information about a staff member's vaccination status in WHITE, the employer must request the staff member to provide proof of vaccination, or proof of an exemption, and keep a record of the staff member's vaccination status.
3. A staff member must provide their employer with proof of vaccination, or proof of an exemption, on request from their employer.
4. An employer must disclose information about the vaccination status of their staff members on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a facility.

### III. OPERATORS

1. An operator may request proof of vaccination, or proof of an exemption, from a staff member and may keep a record of the staff member's vaccination status.
2. A staff member must provide an operator with proof of vaccination, or proof of an exemption, on request from an operator.

#### B. VACCINATION REQUIREMENTS AND OTHER PREVENTIVE MEASURES

1. A staff member must not work unless the staff member
  - (a) is vaccinated and provides proof of vaccination to the staff member's employer,
  - (b) has an exemption, provides proof of the exemption to the employer, and complies with the conditions of the exemption when working.
2. An employer must not permit a staff member who is not in compliance with section 1 to work.
3. A staff member who is not in compliance with section 1 must not work.
4. A volunteer must not engage in volunteer activities unless the volunteer
  - (a) is vaccinated and provides proof of vaccination to the operator,
  - (b) has an exemption, provides proof of the exemption to the operator, and complies with the conditions of the exemption when engaged in volunteer activities.
5. An operator must not permit a volunteer who is not in compliance with section 4 to engage in volunteer activities.
6. A volunteer who is not in compliance with section 4 must not engage in volunteer activities.

#### C. POST-SECONDARY INSTITUTIONS, STAFF MEMBERS AND STUDENTS

##### In this Part

“college” has the same meaning as in the *Health Professions Act*;

“enrolled” means to be admitted to an academic program at a post-secondary institution;

“HSPnet database” means the Health Sciences Placement Network which provides a web-based system for managing practice education in the health sciences (<https://hspanada.net/about-hspnet/>);

“in a facility” includes any place where a staff member or student is engaged in training, certification, equipment assembly, research or associated administrative purposes with respect to a facility;

“post-secondary institution” includes an entity that provides any of the following programs:

- (a) an educational or training program provided under
  - (i) the *College and Institute Act*,

- (ii) the *Royal Roads University Act*,
- (iii) the *Thompson Rivers University Act*,
- (iv) the *University Act*,
- (v) the *Private Training Act*, or
- (vi) the *Chartered Professional Accountants Act*,
- (b) a program provided in accordance with a consent given under the *Degree Authorization Act*;
- (c) a theological education or training program provided under an Act;
- (d) an institution in another jurisdiction which provides post-secondary education or training;

**“staff member” in this Part** means an employee, faculty member, contractor, technical specialist, or a researcher at a post-secondary institution who is in a facility for training, certification, equipment assembly, research or associated administrative purposes;

**“student”** means

- (a) a person who is applying for admission to an academic program at a post-secondary institution who will be in a facility for training, research or associated administrative purposes, or
  - (b) a person who is enrolled in an academic program at a post-secondary institution and who is in a facility for training, research or associated administrative purposes.
1. A post-secondary institution must request proof of vaccination, or proof of an exemption, from each staff member and must keep a record of each staff member’s vaccination status.
  2. A staff member must provide a post-secondary institution with proof of vaccination, or proof of an exemption, on request from a post-secondary institution.
  3. A post-secondary institution must disclose information about the vaccination status of their staff members on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of, COVID-19 in a facility.
  4. A post-secondary institution must request proof of vaccination, or proof of an exemption, from a student.
  5. A post-secondary institution must keep a record of an enrolled student’s vaccination status, and for this purpose may collect information from the HSPnet database, and may enter this information into the HSPnet database.
  6. A student must provide the post-secondary institution to which they have applied for admission, or at which they are enrolled, with proof of vaccination, or proof of an exemption, on request from the post-secondary institution.
  7. A post-secondary institution must destroy information about the vaccination status of a person who applies for admission but who is not subsequently enrolled.
  8. A post-secondary institution must disclose information about the vaccination status of their students on both an aggregate and individual level to me or the medical health officer, on request, for the purpose of preventing, or responding to, exposures to, or clusters or outbreaks of,

COVID-19 in a facility.

9. A staff member, or a student, must provide an operator with proof of vaccination, or proof of an exemption, on request from an operator, and an operator may keep a record of the staff member's or student's vaccination status.
10. A staff member or a student must not engage in training, research or an associated administrative purpose unless the staff member or student.
  - (a) is vaccinated and provides proof of vaccination to the post-secondary institution,
  - (b) has an exemption, provides proof of the exemption, and complies with the conditions of the exemption.
11. A post-secondary institution must not permit a staff member or a student who is not in compliance with section 10 to engage in training, research or an associated administrative purpose.
12. A staff member or student who is not in compliance with section 10 must not engage in training, research or an associated administrative purpose.

#### **F. VARIANCE AND RECONSIDERATION**

After weighing the interests of residents and persons who work in residential care facilities against the interests of unvaccinated persons in light of the risk of the transmission of infection posed by the presence of unvaccinated persons, and taking into account the vulnerability of residents to serious illness, the importance of maintaining a healthy and resilient residential care workforce, 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 anticipated onset of the respiratory virus season, the continuing reasonable probability of a resurgence of disease transmission with increases in serious outcomes, clusters and outbreaks of COVID-19 and resulting strain this would place upon already overburdened public health and health care systems, and the risk inherent in accommodating persons who are not vaccinated in the workforce of residential care facilities, it is my reasonable belief that it is necessary that I limit requests for reconsideration of this Order to those made by an individual on the basis that vaccination would so seriously jeopardize the individual's health that the risk to the individual's health posed by vaccination outweighs the benefit.

Accordingly, pursuant to the authority vested in me by sections 39 (6), 54 (1) (h) and 56 of the *Public Health Act*, I have decided not to consider requests for reconsideration by way of variance under section 43 of the *Public Health Act* with respect to the requirement to be vaccinated in this Order, other than on the basis of a medical deferral to a vaccination.

A request for reconsideration on the basis of a medical deferral to a vaccination must follow 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-the-provincial-health-officer/current-health-issues/covid-19-novel-coronavirus>).

A person who is seeking to work as a staff member, to be in a facility as a student, or to engage in volunteer activities in a facility may make a request for a medical deferral to a vaccination as provided for in this Part.

A request for reconsideration on the basis of a medical deferral to a vaccination may be submitted to the Provincial Health Officer at [PHOExemptions@gov.bc.ca](mailto:PHOExemptions@gov.bc.ca) with the subject line “Request for Reconsideration about Preventive Measures in Residential Care Facilities”.

## **G. EXPIRATION AND COMPLIANCE**

This Order comes into force on October 5, 2023.

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*.

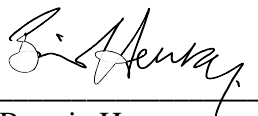
If you fail to comply with this Order, I have the authority to take enforcement action against you under Part 4, Division 6 of the *Public Health Act*.

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: 5<sup>th</sup> day of October 2023

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*.



## 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.

### **Reconsideration of orders**

**43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

(a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,

(b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would

(i) meet the objective of the order, and

(ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or

(c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request

(i) is not relevant, or

(ii) was reasonably available at the time the order was issued;

(b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;

(c) confirm, rescind or vary the order.

(4) A health officer must provide written reasons for a decision to reject the request under subsection (3)

(a) or to confirm or vary the order under subsection (3) (c).

(5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.

(6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

(7) For the purposes of this section,

(a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and

(b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

## **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*]....

## **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.

## **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*];