



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

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

### ***RESIDENTIAL CARE COVID-19 PREVENTIVE MEASURES – OCTOBER 4, 2021***

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 WHO ARE 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**

#### **WHEREAS:**

- A. On March 17, 2020 I provided notice under section 52 (2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as COVID-19 among the population of the Province of British Columbia, constitutes a regional event, as defined in section 51 of the *Public Health Act*;
- B. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in contact;
- C. The presence of virus variants of concern in the Province, in particular the Delta variant, has heightened the risk to the population generally and particularly to frail elderly and persons with underlying medical conditions;

- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be made available to residents and staff in British Columbia;
- E. Unvaccinated persons are at higher risk than vaccinated persons of being infected with SARS-CoV-2, of experiencing higher rates of complications and death, and of transmitting SARS-CoV-2 to other persons, including vaccinated persons;
- F. Although the vaccination rate of residents and staff is generally high in many facilities, there are facilities where this is not the situation, and in all facilities there are residents and staff who are not vaccinated;
- G. 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;
- H. Vaccination is safe, very effective and the single most important preventive measure a staff member or a person providing health care, personal care, other services or support can take to protect residents, and the health care and personal care workforce, from infection, severe illness and possible death from COVID-19.
- I. There are clear, objective criteria for determining whether a person has a medical contraindication to a COVID-19 vaccination, and very few people fall into this category.
- J. There are difficulties and risks in accommodating persons who are unvaccinated, since no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death.
- K. The 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.
- L. Both the public health and the health care systems are using a disproportionate amount 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.
- M. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population is critical.
- N. The retention of public confidence in the safety and integrity of the public health and health care systems is critical.
- O. I recognize the effect which the measures I am putting in place to protect the health of the residents and staff in facilities may have on people who are unvaccinated or who remain susceptible even if vaccinated, and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly

in facilities, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm to residents of facilities created by the presence of unvaccinated persons in facilities;

- P. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the Canadian *Charter of Rights and Freedoms*, including the right to life, liberty and security of the person, along with freedom of religion and conscience, freedom of thought, belief, opinion and expression. These rights and freedoms are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the *Charter* rights and freedoms of British Columbians less intrusively, where doing so is consistent with public health principles;
- Q. In addition, I recognize the interests protected by the *Human Rights Code* and have taken these into consideration when exercising my powers to protect the health interests of residents and staff in facilities;
- R. After weighing the health interests of residents and staff in facilities, against the interests of persons who provide care and services in those settings who are not vaccinated for reasons other than medical contraindication, and taking into account the importance of maintaining a healthy workforce in residential care settings, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated, I have decided not to consider a request for an exemption by way of a variance under section 43 of the *Public Health Act*, other than on the basis of a medical contraindication to vaccination.
- S. I have reason to believe and do believe that
- (i) the presence of an unvaccinated staff member or other provider in a facility constitutes a health hazard under the *Public Health Act*;
  - (ii) in order to mitigate the risk of the transmission of SARS-CoV-2 arising from the presence of unvaccinated staff or other providers in facilities, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 67 (2) and 69 of the *Public Health Act* **TO ORDER** as follows:

**THIS ORDER REPEALS AND REPLACES THE *RESIDENTIAL CARE STAFF COVID-19 PREVENTIVE MEASURES* ORDER MADE ON SEPTEMBER 2, 2021**

## DEFINITIONS:

### In this Order

**“close contact”** means within two metres of another person for more than 15 minutes cumulatively in a day;

**“exemption”** means a variance issued to a person under the *Public Health Act* on the basis of a medical contraindication to vaccination, which permits a person to work, despite not being vaccinated;

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

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

**“medical mask”** means a medical grade face mask that meets the ASTM International and ISO (or equivalent) performance requirements for bacterial filtration efficiency, particulate filtration efficiency, fluid resistance, pressure differential, flame spread, skin sensitivity and cytotoxic testing;

**“new staff member”** means a person hired after October 25, 2021 to work in a facility;

**“occasional”** means not being present on an ongoing basis in either one or different facilities;

**“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*;

**“outside health care or personal care provider”** means a medical practitioner, nurse, physiotherapist, occupational therapist, home support worker, faculty member of a health care or personal care educational or training facility, emergency medical assistant present in a facility on a non-urgent basis, patient transport worker or any other non-staff member who provides health care or personal care to a resident, but does not include a visitor;

**“outside support or personal service provider”** means a volunteer, hired companion, barber, hairdresser, nail esthetician or any other non-staff member who provides personal support or a personal service to a resident, but does not include a visitor;

**“other outside provider”** means a person other than a resident, staff member, visitor, outside health care provider, outside personal care provider, outside support provider or outside personal service provider, who is in a facility, and includes an entertainer, animal therapy provider or maintenance person;

**“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;

**“PCR test”** means a polymerase chain reaction test administered by a publicly funded program or a publicly paid health care provider;

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

**“provider”** means a person to whom one of Parts F through K applies;

**“rapid test”** means a test that

- a. is administered using a device commonly known as a “rapid testing device” or “point-of-care test device”,
- b. is used as a screening tool for the communicable disease known as COVID-19,
- c. provides test results at the point of testing within approximately 20 minutes of the test being administered, and
- d. is approved for use in Canada by the department of the federal government responsible for regulating health devices;

**“regular”** means being present at least once a month on an ongoing basis in either one or different facilities;

**“staff member”** means a person employed by the operator of a facility to work in a facility, or a person employed by a contractor to work in a facility under contract, and a medical practitioner who is in either an employment or contractual relationship with an operator, which requires the medical practitioner to work in a facility;

**“vaccine card”** means the following:

- a. in the case of a person who is more than 18 years of age, photo identification and proof in one of the following forms that the holder is vaccinated:
  - i. electronic proof or a printed copy of an electronic proof
    - (A) issued by the government in the form of a QR code, accessible through the “BC Services Card” electronic online platform, and
    - (B) showing the name of the holder;
  - ii. proof in writing, issued by the government for the purpose of showing proof of vaccination in accordance with orders made under the *Public Health Act*;
  - iii. a type of proof, whether electronic or in writing, that is issued
    - (A) by the government of Canada or of a province of Canada, and
    - (B) 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;

- b. in the case of a person who is 12 to 18 years of age, proof in a form referred to in paragraph a. (i), (ii) or (iii).

**“vaccine”** means a World Health Organization approved vaccine against infection by SARS-CoV-2;

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

**“vaccinated”** means a person who is at least 7 days post-receipt of the full series of a World Health Organization (“WHO”) approved vaccine against infection by SARS-CoV-2, or a combination of approved WHO vaccines.

**A. STAFF MEMBERS HIRED BEFORE OCTOBER 26, 2021**

1. An unvaccinated staff member hired after October 11, 2021 and before October 26, 2021, must not work in a facility, or accompany a resident away from a facility, until the staff member has received one dose of vaccine and 7 days have passed.
2. An operator and an employer must not permit an unvaccinated staff member hired after October 11, 2021 and before October 26, 2021, to work in a facility, or to accompany a resident away from a facility, unless the staff member has received one dose of vaccine and seven days have passed.
3. A staff member to whom section 1 applies, must comply with the preventive measures in Part B.
4. An operator and an employer must not permit a staff member to whom section 1 applies to work in a facility, or to accompany a resident away from a facility, unless 7 days have passed from the time the staff member received a dose of vaccine, and the staff member complies with the preventive measures in Part B.
5. Subject to sections 6 and 8, a staff member hired before October 12, 2021, must be vaccinated to work in a facility, or accompany a resident away from a facility, after October 11, 2021.
6. Subject to section 7, and despite section 5,
  - a. an unvaccinated staff member who received one dose of vaccine before October 12, 2021 may work in a facility, or accompany a resident away from a facility, after October 11, 2021, if the staff member complies with the preventive measures in Part B., or
  - b. an unvaccinated staff member who is ineligible to work as of October 12, 2021, because the staff member did not receive one dose of vaccine before October 12, 2021, but who received one dose of vaccine before October 26, may, 7 days after receiving the dose of vaccine, work in a facility, or accompany a resident away from a facility, after October 11, 2021, if the staff member complies with the preventive measures in Part B.

7. Despite section 6, an unvaccinated staff member described in section 6 a. or b., must not continue to work in a facility more than 35 days after receiving the first dose of vaccine, unless the staff member has received a second dose of vaccine between 28 to 35 days after the first dose, and continues to comply with the preventive measures in Part B until 7 days after the receiving the second dose of vaccine.
8. An operator and an employer must not permit an unvaccinated staff member described in section 6 a. or b.,
  - a. to work in a facility if the staff member is not in compliance with section 6, or
  - b. to continue to work in a facility more than 35 days after receiving the first dose of vaccine, if the staff member has not received a second dose of vaccine between 28 to 35 days after the first dose.

## **B. PREVENTIVE MEASURES**

1. A staff member who is required to comply with preventive measures must
  - a. wear a medical mask which covers the person's nose and mouth when in a facility, or when accompanying a resident away from a facility, except when consuming food or a beverage,
  - b. be tested for COVID-19 by means of a rapid test at a facility at every shift.
2. If a rapid test result is positive, an unvaccinated staff member must
  - a. notify the operator and employer, if not the operator, of the test result,
  - b. leave the facility as soon as it is operationally safe to do so,
  - c. arrange to have a PCR test as soon as possible,
  - d. advise the operator and employer, if not the operator, of the result of the PCR test, and
  - e. not return to the facility, unless
    - i. the result of the PCR test is negative, or,
    - ii. if the PCR test result is positive,
      - A. 10 days have passed from the time of the positive rapid test result, or
      - B. the staff member's return has been approved by the medical health officer.
3. The operator and employer, if not the operator, must require an unvaccinated staff member to wear a medical mask which covers the person's nose and mouth when in a facility, or when accompanying a resident away from a facility.

4. The operator must make provision for the rapid testing of staff for COVID-19 in a facility, and the operator and employer, if not the operator, must require an unvaccinated staff member to be tested as required in section 1.
5. The operator and the employer, if not the operator, must require an unvaccinated staff member, who tests positive after a rapid test, to leave the facility immediately it is operationally safe to do so.
6. An unvaccinated staff member who is not in compliance with sections 1 and 2, must not be in a facility, and must not accompany a resident away from a facility.
7. An unvaccinated staff member who does not provide an operator and employer, if not the operator, with a negative PCR test result, after receiving a positive test result from a rapid test, must not return to a facility until 10 days have passed from the time of the positive rapid test result, unless an earlier return is approved by the medical health officer.
8. An operator and employer, if not the operator, must not permit an unvaccinated staff member, who is not in compliance with sections 1 and 2, to be in a facility, or to accompany a resident away from a facility.
9. An operator and employer, who is not an operator, must not permit an unvaccinated staff member, who tests positive on a rapid test, to return to a facility, until the staff member provides a negative PCR test result, 10 days have passed from the time of the positive rapid test result, or an earlier return is approved by the medical health officer.

**C. STAFF MEMBERS WITH AN EXEMPTION FROM VACCINATION OR WHO HAVE APPLIED FOR AN EXEMPTION IN COMPLIANCE WITH THIS ORDER**

1. Despite Part A,
  - a. an unvaccinated staff member with an exemption from vaccination may work in a facility, if the staff member is in compliance with the conditions of the exemption, or
  - b. an unvaccinated staff person who has made a request for an exemption and provided a signed and dated statement from a medical practitioner, based upon a current assessment, that the health of the person would be seriously jeopardized if the person were to comply with the Order, and a signed and dated copy of each portion of the person's health record relevant to this statement, may work in a facility, if the staff member complies with the preventive measures in Part B, until their request is responded to by me or the medical health officer.
2. An operator or employer must not permit an unvaccinated staff person to whom either section 1 (a) or (b) applies to work in a facility, if the person is not in compliance with section 1.

**D. PREVENTIVE MEASURES APPLICABLE TO NEW STAFF [hired after October 25, 2021]**

1. A new staff member must be vaccinated to work in a facility, or to accompany a resident away from a facility.
2. An unvaccinated new staff member must not work in a facility, or accompany a resident away from a facility.
3. An operator must not permit an unvaccinated new staff member to work in a facility, or accompany a resident away from a facility.
4. An employer must not permit an unvaccinated new staff member to work in a facility, or accompany a resident away from a facility.

**F. OUTSIDE HEALTH CARE OR PERSONAL CARE PROVIDERS**

1. An outside health care or personal care provider who does not provide an operator with proof of vaccination or an exemption, and who is in a facility, must:
  - a. wear a medical mask which covers their nose and mouth,
  - b. maintain a two metre distance from every other person in the facility, except for the resident to whom they are providing care,
  - c. not be in close contact with a resident to whom they are providing care, unless it is necessary in order to provide care to the resident.
2. An outside health care or personal care provider who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, must not be in a facility.
3. An operator must not permit an outside health care or personal care provider who does not provide proof of vaccination or an exemption, and who is not in compliance with section 1, to be in a facility.
4. An operator must make and retain a record of proof of vaccination or an exemption provided by an outside health care or personal care provider, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:**

5. An outside health care or personal care provider who does not provide an operator with proof of vaccination or an exemption must not be in a facility.
6. An operator must request proof of vaccination or an exemption from an outside health care or personal care provider who seeks access to a facility.

7. An operator must not permit an outside health care or personal care provider who has not provided proof of vaccination or an exemption to be in a facility.
8. An operator must make and retain a record of proof of vaccination, or an exemption provided by an outside health care or personal care provider, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

#### **G. OUTSIDE SUPPORT OR PERSONAL SERVICE PROVIDERS**

1. An outside support or personal service provider who does not provide an operator with proof of vaccination or an exemption must not be in a facility.
2. An operator must request proof of vaccination or an exemption from an outside support or personal service provider who seeks access to a facility.
3. An operator must not permit an outside support or personal service provider who has not provided proof of vaccination or an exemption to be in a facility.
4. An operator must make and retain a record of proof of vaccination, or an exemption provided by an outside support or personal service provider, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

#### **H. REGULAR OTHER OUTSIDE PROVIDERS WHO HAVE CLOSE CONTACT WITH A RESIDENT**

1. A regular other outside provider who has close contact with a resident and who does not provide an operator with proof of vaccination or an exemption must not be in a facility.
2. An operator must request proof of vaccination or an exemption from a regular other outside provider who has close contact with a resident and who seeks access to a facility.
3. An operator must not permit a regular other outside provider who has close contact with a resident, who has not provided proof of vaccination or an exemption, to be in a facility.
4. An operator must make and retain a record of proof of vaccination, or an exemption provided by a regular other outside provider who has close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

#### **I. REGULAR OTHER OUTSIDE PROVIDERS WHO DO NOT HAVE CLOSE CONTACT WITH A RESIDENT**

1. A regular other outside provider who does not have close contact with a resident, who does not provide an operator with proof of vaccination or an exemption, and who is in a facility must:
  - a. wear a face covering which covers their nose and mouth,

- b. maintain a two metre distance from every other person in the facility.
- 2. A regular other outside provider who does not have close contact with a resident, who does not provide an operator with proof of vaccination or an exemption, and who is not in compliance with section 1, must not be in a facility.
- 3. An operator must not permit a regular other outside provider who does not have close contact with a resident, who does not provide proof of vaccination or an exemption, and who is not in compliance with section 1 to be in a facility.
- 4. An operator must make and retain a record of proof of vaccination, or an exemption provided by a regular other outside provider who does not have close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:**

- 5. A regular other outside provider who does not have close contact with a resident, and who does not provide an operator with proof of vaccination or an exemption, must not be in a facility.
- 6. An operator must request proof of vaccination or an exemption from a regular other outside provider who does not have close contact with a resident, and who seeks access to a facility.
- 7. An operator must not permit a regular other outside provider who does not have close contact with a resident, and who has not provided proof of vaccination or an exemption, to be in a facility.
- 8. An operator must make and retain a record of proof of vaccination, or an exemption provided by a regular other outside provider who does not have close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**J. OCCASIONAL OTHER OUTSIDE PROVIDERS WHO HAVE CLOSE CONTACT WITH A RESIDENT**

- 1. An occasional other outside provider who has close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is in a facility must:
  - a. wear a face covering which covers their nose and mouth,
  - b. maintain a two metre distance from every person in the facility, except a resident with whom it is necessary that they be in close contact,
  - c. not be in close contact with a resident unless this is necessary.

2. An occasional other outside provider who has close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is not in compliance with section 1, must not be in a facility.
3. An operator must not permit an occasional other outside provider who has close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is not in compliance with section 1, to be in a facility.
4. An operator must make and retain a record of proof of vaccination, or an exemption provided by an occasional other outside provider who has close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**Commencing on October 26, 2021, the following requirements come into effect and replace the requirements above:**

5. An occasional other outside provider who has close contact with a resident, and who does not provide an operator with proof of vaccination or an exemption, must not be in a facility.
6. An operator must request proof of vaccination or an exemption from an occasional other outside provider who has close contact with a resident, and who seeks access to a facility.
7. An operator must not permit an occasional other outside provider who has close contact with a resident, and who has not provided proof of vaccination or an exemption, to be in a facility.
8. An operator must make and retain a record of proof of vaccination, or an exemption provided by an occasional other outside provider who has close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**K. OCCASIONAL OTHER OUTSIDE PROVIDERS WHO DO NOT HAVE CLOSE CONTACT WITH A RESIDENT**

1. An occasional other outside provider who does not have close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is in a facility must:
  - a. wear a face covering which covers their nose and mouth,
  - b. maintain a two metre distance from every other person in the facility.
2. An occasional other outside provider who does not have close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is not in compliance with section 1, must not be in a facility.

3. An operator must not permit an occasional other outside provider who does not have close contact with a resident, who does not provide an operator with proof of vaccination or an exemption and who is not in compliance with section 1, to be in a facility.
4. An operator must make and retain a record of proof of vaccination or an exemption provided by an occasional other outside provider who does not have close contact with a resident, and must provide information from this record, or the record itself, to me or to the medical health officer, on request.

**L. PROVIDERS WITH AN EXEMPTION OR WHO HAVE APPLIED FOR AN EXEMPTION**

1. A unvaccinated provider who has an exemption must not be in a facility, unless the provider is in compliance with the conditions of the exemption.
2. An operator must not permit an unvaccinated provider with an exemption to be in a facility, unless the provider is in compliance with the conditions of the exemption.
3. Despite Part K, an unvaccinated provider who has made a request for an exemption and provided a signed and dated statement from a medical practitioner, based upon a current assessment, that the health of the person would be seriously jeopardized if the person were to comply with the Order, and a signed and dated copy of each portion of the person's health record relevant to this statement, may be in a facility, if the provider complies with the preventive measures in Part B, until their request is responded to by me or the medical health officer.
4. An operator must not permit an unvaccinated provider to whom section 3 applies to be in a facility, if the person is not in compliance with section 3.

**M. DELEGATION OF AUTHORITY TO THE MEDICAL HEALTH OFFICER TO CONSIDER AND MAKE A DECISION WITH RESPECT TO A REQUEST FOR RECONSIDERATION MADE UNDER SECTION 43 RELATING TO FACILITY OR A REQUEST FOR AN EXEMPTION ON A MEDICAL BASIS**

Under the authority vested in me by section 69 of the *Public Health Act*, I delegate my authority under section 43 of the *Public Health Act* to the medical health officer for the geographic region of the Province in which a facility is located to receive, consider, and make a decision with respect to a request for reconsideration related to a facility, or a request from an individual seeking a medical exemption.

**N. SPECIFICATION AND DESIGNATION OF THE MEDICAL HEALTH OFFICER TO RECEIVE A NOTICE UNDER SECTION 56 (2) OF THE PUBLIC HEALTH ACT AND TO ISSUE AN INSTRUCTION**

Under the authority vested in me by section 56 of the *Public Health Act*, I designate the medical health officer to receive a written notice from a medical practitioner under section 56 (2) with respect to a person in the geographic region of the Province for which the medical health officer is designated, and designate the medical health officer to issue an instruction to the person in response to the notice, if reasonably practical.

## O. 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 facilities, **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 facilities in the whole or part of the geographic area of the province for which the medical health officer is designated, or with respect to a particular facility.
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 one or more facilities, or one or more classes of facilities, 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 have an expiration date.

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

Pursuant to section 43 of the *Public Health Act*, you may request the medical health officer [*see below*] to reconsider this Order if you:

- (a) have additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
- (b) have 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) require more time to comply with the order.

A request for reconsideration for the purpose of seeking a medical exemption must include a signed and dated statement from a medical practitioner, based upon a current assessment, that the health of the person would be seriously jeopardized if the person were to comply with the Order, and a signed and dated copy of each portion of the person's health record relevant to this statement.

A request under section 43 may be submitted to the Provincial Health Officer at [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca) with the subject line "Request for Reconsideration about Preventive Measures in Facilities".

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  
4th Floor, 1515 Blanshard Street  
PO Box 9648 STN PROV GOVT, Victoria BC V8W 9P4  
Fax: (250) 952-1570  
Email: [ProvHlthOffice@gov.bc.ca](mailto:ProvHlthOffice@gov.bc.ca)

DATED THIS: 4<sup>th</sup> day of October 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****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.

### **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*];