



ORDER OF THE PROVINCIAL HEALTH OFFICER

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

RESIDENTIAL CARE COVID-19 VACCINATION STATUS INFORMATION – FEBRUARY 28, 2022

The *Public Health Act* is at:

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

(excerpts enclosed)

- TO: PERSONS WHO OPERATE AND PERSONS WHO ADMIT PERSONS TO 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”, AN “ADMITTER” OR A “FACILITY” OR COLLECTIVELY AS “OPERATORS”, “ADMITTERS” OR “FACILITIES”)**
- TO: OPERATORS WHO EMPLOY STAFF TO WORK IN FACILITIES**
- TO: EMPLOYERS WHO ARE NOT OPERATORS WHO PROVIDE STAFF TO WORK IN FACILITIES (HEREINAFTER REFERRED TO AS “CONTRACTORS”)**
- TO: MEDICAL HEALTH OFFICERS**

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. 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, 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 who have received their primary course of vaccine (two doses) have strong and durable protection against severe illness from SARS-CoV-2 resulting from the extended interval between dose one and dose two that is being utilized in British Columbia; in addition, a new vaccine is now being offered which only requires one dose to be effective, and booster doses are being implemented in order to reinforce the protection afforded by vaccination; and
- (c) a full course of vaccine provides more effective and durable protection against infection and severe illness than natural immunity from prior COVID-19 infection alone, or natural immunity in combination with a single-dose of vaccine;

- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be readily available in British Columbia, and while substantial progress has been made in vaccinating the population of British Columbia 12 years of age and older, and children aged 5 to 11 years of age are now being vaccinated, a portion of the public remains unvaccinated, and there are communities where vaccination rates are low;
- E. Communities with low vaccination rates have experienced rapid spread of SARS-CoV-2, causing serious illness and increases in hospitalizations and ICU admissions, primarily in unvaccinated people. In contrast, communities with high vaccination rates have seen corresponding less serious illness and lower per capita hospitalization, ICU admission and death rates;
- F. Unvaccinated people are at greater risk than vaccinated people of being infected with SARS-CoV-2, and unvaccinated people who are infected, experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
- G. People who are vaccinated can be infected with SARS-CoV-2, but experience less severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who contract COVID-19 can transmit SARS-CoV-2, but since they are generally contagious for shorter periods of time and are less symptomatic, they are less likely to transmit SARS-CoV-2 when compared to unvaccinated infected persons;
- H. The ongoing incidence of COVID-19 and serious health consequences that result has been exacerbated over time, first by the arrival of the highly transmissible Delta variant of SARS-CoV-2, which caused significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people, than earlier variants, and now by the presence of the even more transmissible Omicron variant, which is responsible for a surge in infections, and is now the dominant strain of SARS-CoV-2 circulating in the province;
- I. Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but the transmissibility of the Delta and Omicron variants means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case numbers and serious outcomes, and, most

importantly, given the high case rates we are presently experiencing with Omicron, reduce the burden on the healthcare system, particularly hospital and ICU admissions going forward;

- J. The emergence of the Omicron variant, which is leading 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 ever greater threats to public health;
- K. Further, vaccinated people who are infected with SARS-CoV-2, including the Omicron variant, have been shown to have high levels of protection against severe illness and to experience shorter infectious and symptomatic periods, and to 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.
- L. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spill-over effects on health care delivery across the province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population;
- M. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to COVID-19 due to transmission of SARS-CoV-2 across the province, and to provide care for those who become ill with COVID-19, who can be quite ill, require high levels of care and be hospitalized for long periods of time, which situation is exacerbated by the care needs of unvaccinated people, who comprise a substantial proportion of those who require hospitalization and ICU admission;
- N. While people who have contracted SARS-CoV-2 may develop some natural immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors, including which variant they were infected with and severity of infection. The risk of reinfection and hospitalization is significantly higher in people who remained unvaccinated after contracting SARS-CoV-2 than in those who are vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection by providing a stronger immune response that is known to be effective for a longer period of time than immunity arising from infection;
- O. 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.
- P. The Omicron variant has introduced uncertainty into the course of the pandemic, and the rapid rise in infection, hospitalization and ICU admission rates in British Columbia has led me to conclude that unless measures are kept in place to temper the extent of transmission, reduce severity of disease and continue to incentivize vaccination, there is a strong likelihood that the highly-transmissible nature of Omicron will cause serious illness among a sufficient proportion of the public to overwhelm the Province's health care system, which is already operating beyond capacity;

- Q. 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;
- R. 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;
- S. Admitters and operators need to know which residents are unvaccinated in order to make placement decisions;
- T. Operators need to know the vaccination status of residents in order to implement infection prevention and control measures to protect residents and staff, including adjusting the schedules of non-vaccinated staff in the event that a facility is under enhanced surveillance for COVID-19, or there is an outbreak of COVID-19;
- U. Operators and contract employers need to know the vaccination status of staff in order to enforce preventive measures ordered by me or by the medical health officer and to make employment decisions;
- V. Medical health officers need to know the vaccination status of residents and staff at a facility on both an aggregate and individual level in order to be in a position to most effectively plan for a response to, and for the management of, an exposure or outbreak of COVID-19 at the facility;
- W. The risk of transmission of COVID-19 in facilities provides a strong precautionary basis for preventive measures intended to protect the health of residents and staff;
- X. I recognize the effect which the facility related preventive measures which I have put in place may have for residents and staff members 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 my orders, including constitutionally protected interests, against the risk of the transmission of COVID-19 in facilities;
- Y. 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. I understand that making decisions about whether to get vaccinated may engage these rights and freedoms. 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, including vaccination, to prevent loss of life, serious illness and disruption of our health system and society;

Z. 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, 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 neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect public health 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 public health, and there are no other reasonable alternatives that would provide the same level of protection for the population;

AA. In addition, I recognize the interests protected by the *Human Rights Code*, the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Privacy Act*, and have taken these into consideration when exercising my powers to protect the health of residents and staff of facilities;

BB. I am also mindful that the volume of requests for reconsideration of my Orders, and the time and expertise which considering them entails, has become beyond my capacity and that of my office and team of medical health officers to manage, and is using resources which are better directed at assessing and responding to the protection of the public as a whole;

THEREFORE, I have reason to believe and do believe that

(a) The risk of transmission of COVID-19 in facilities constitutes a health hazard under the *Public Health Act* and provides a strong precautionary basis for authorizing admitters, operators, employer and medial health officers to use and disclose the information which they have collected, or which has been disclosed to them about the vaccination status of residents and staff members for the purpose of mitigating this risk, and

(b) It is necessary for me to exercise the powers in sections 30, 31, 39, 53, 54 and 67 (2) of the *Public Health Act* to **ORDER as follows:**

THIS ORDER REPEALS AND REPLACES MY ORDER MADE ON OCTOBER 6, 2021, WITH RESPECT TO RESIDENTIAL CARE COVID-19 VACCINATION STATUS INFORMATION

DEFINITIONS:

In this Order

“**admitter**” means a person who admits another person as a resident into a facility, and includes an operator;

“**contractor**” means a person who employs staff to work in a facility, but who is not an operator;

“**employer**” means an operator or a contractor who employs staff to work in a facility;

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

“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*;

“staff member” means a person employed to work in a facility by the operator of a facility, or a person employed by a contractor to work in a facility, including a person on leave.

1. Admitters, operators, employers and medical health officers must not retain, use or disclose information about the vaccination status of residents or staff members which was collected by or disclosed to them under my order of October 6, 2021, and the orders which it replaced, except as authorized under this Order.
2. Admitters, operators, employers and medical health officers may retain, use or disclose information about the vaccination status of residents or staff members which was collected by or disclosed to them under my order of October 6, 2021, and the orders which it replaced, for the purpose of implementing my orders with respect to facilities or staff, or otherwise to prevent, manage or respond to the transmission of COVID-19 in facilities.

This Order does not have an expiration date.

After taking into consideration the interest of operators, residents and staff members in keeping the risk of infection by or becoming seriously ill from COVID-19 in facilities as low as possible, and the interest of operators and employers in maintaining a healthy workforce, and taking into account 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, the increased risk to the population arising from the presence of the Omicron variant in the Province, I have decided, pursuant to section 54 (1) (h) of the *Public Health Act*, and in accordance with the emergency powers set out in Part 5 of the *Act*, not to accept requests for a reconsideration of this Order.

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

DATED THIS: 28th day of February 2022

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.

Contents of orders

39 (3) An order may be made in respect of a class of persons.

Duty to comply with orders

42 (1) A person named or described in an order made under this Part must comply with the order.
 (2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

Part applies despite other enactments

53 During an emergency, this Part applies despite any provision of this or any other enactment, including

- (a) in respect of the collection, use or disclosure of personal information, the *Freedom of Information and Protection of Privacy Act* and the *Personal Information Protection Act*, and
- (b) a provision that would impose a specific duty, limit or procedural requirement in respect of a specific person or thing,

to the extent there is any inconsistency or conflict with the provision or other enactment.

General emergency powers

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

- (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*];
- (k) collect, use or disclose information, including personal information,

- (i) that could not otherwise be collected, used or disclosed, or
- (ii) in a form or manner other than the form or manner required.

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

67 (1) The provincial health officer may exercise a power or perform a duty of a medical health officer under this or any other enactment, if the provincial health officer

(a) reasonably believes that it is in the public interest to do so because

(i) the matter extends beyond the authority of one or more medical health officers and coordinated action is needed, or

(ii) the actions of a medical health officer have not been adequate or appropriate in the circumstances, and

(b) provides notice to each medical health officer who would otherwise have authority to act.

(2) During an emergency under Part 5 [*Emergency Powers*], the provincial health officer may exercise a power or perform a duty of a health officer under this or any other enactment, and, for this purpose, subsection (1) does not apply.

Offences

99 (1) A person who contravenes any of the following provisions commits an offence:

(k) section 42 [*failure to comply with an order of a health officer*], except in respect of an order made under section 29 (2) (e) to (g) [*orders respecting examinations, diagnostic examinations or preventive measures*];