



VARIANCE OF THE PROVINCIAL HEALTH OFFICER

(Pursuant to Sections 39 and 67 *Public Health Act*, S.B.C. 2008)

VACCINATED STAFF: VARIANCE OF THE FACILITY STAFF ASSIGNMENT ORDER –DECEMBER 15, 2021

The *Public Health Act* is at:

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

(excerpts enclosed)

- TO: MEMBERS OF WORKING GROUPS ESTABLISHED PURSUANT TO THE
FACILITY STAFF ASSIGNMENT ORDER**
- TO: LICENSEES OF LONG TERM CARE FACILITIES AND PRIVATE
HOSPITALS, BOARDS OF MANAGEMENT OR OPERATORS OF STAND
ALONE EXTENDED CARE HOSPITALS DESIGNATED UNDER THE
HOSPITAL ACT, REGISTRANTS OF ASSISTED LIVING RESIDENCES
WHICH PROVIDE REGULAR ASSISTANCE WITH ACTIVITIES OF DAILY
LIVING, INCLUDING EATING, MOBILITY, DRESSING, GROOMING,
BATHING OR PERSONAL HYGIENE AND OPERATORS OF PROVINCIAL
MENTAL HEALTH FACILITIES (HEREINAFTER REFERRED TO
COLLECTIVELY AS “OPERATORS” AND “FACILITIES”)**
- TO: CONTRACTORS AND SUB-CONTRACTORS WHO PROVIDE STAFFING FOR
FACILITIES**
- TO: EMPLOYEES AND CONTRACTED WORKERS (HEREINAFTER REFERRED
TO COLLECTIVELY AS “STAFF”) AT 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 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 are highly effective, providing strong protection across all eligible age groups against infection and especially against severe illness;
 - (b) most British Columbians have strong and durable protection from SARS-CoV-2 resulting from the extended interval between dose one and dose two of vaccine that is being utilized in British Columbia, a new vaccine is now being offered which only requires one dose to be effective, and booster doses are now being implemented to help reinforce protection from vaccination;
 - (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 the vaccines which require two doses to be effective; and
 - (d) a full course of vaccine provides highly effective and durable protection from infection and, in particular from severe illness resulting in hospitalization or death from the Delta variant with COVID-19, with illness being mostly milder in vaccinated people who become infected than in unvaccinated people.
- D. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be readily available in British Columbia;
- E. Communities with low vaccination rates have experienced rapid spread of SARS-CoV-2, causing serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people. In contrast, communities with high vaccination rates have seen corresponding lower transmission and case rates;
- F. Unvaccinated people are at a significantly greater risk than vaccinated people of being infected with SARS-CoV-2, and those who are infected experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
- G. People who are vaccinated can be infected with SARS-CoV-2 but experience less severity of illness than unvaccinated people, especially in younger populations. Vaccinated persons who contract COVID-19 are also generally contagious for shorter periods of time, are less symptomatic, and are less likely to transmit SARS-CoV-2, when compared to unvaccinated infected persons;
- H. This situation has been exacerbated by the highly transmissible Delta variant of SARS-CoV-2, which is now the dominant variant of SARS-CoV-2 circulating in British

Columbia, causing significantly more rapid transmission and increased severity of illness, particularly in younger unvaccinated people. This has now been joined by AY 4.2, a sub-lineage of the Delta variant, which is more transmissible than the Delta variant and which can cause more serious illness in younger people than the Delta variant;

- I. The recent appearance of Omicron, a new variant of concern which the World Health Organization has said could lead to surges of infection, 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;
- J. 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 variants now present in British Columbia means that higher vaccination rates than previously thought necessary are now required in order to maintain this balance, control transmission, reduce case numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions;
- K. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spill-over effects on health care delivery across the Province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population, primarily among unvaccinated people;
- L. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to the transmission of SARS-CoV2, and to provide care for those who become ill with COVID-19, primarily unvaccinated people who comprise the majority of hospitalizations and ICU admissions;
- M. 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 severity of infection and evidence is emerging that natural immunity may not provide protection against infection by the Omicron variant. The risk of reinfection and hospitalization is significantly higher in people who remained unvaccinated after contracting SARS-CoV-2 than in those who were vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection. It does so by providing a stronger immune response that is known to be effective for a longer period of time and against a wider variety of strains of SARS-CoV-2 that are currently circulating in British Columbia, including the Delta variant;
- N. Vaccination is the single most important preventive measure a person working in a facility can take to protect themselves, residents, other staff members and visitors, from infection, severe illness and possible death from COVID-19;

- O. People over 70 years of age, and people with chronic health conditions or compromised immune systems, are particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated, and this is particularly the case with residents of facilities;
- P. Adults living in facilities depend upon the people with whom they come into contact to protect them from the risk of infection;
- Q. Unvaccinated people in close contact with other people living or working in facilities can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19 and become seriously ill;
- R. There are difficulties and risks in accommodating persons who are unvaccinated, particularly in facilities where there is close and continued contact between residents and staff, 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;
- S. I have considered and continue to consider, based on the currently available generally accepted scientific evidence, whether other measures, such as natural immunity, PCR testing or rapid antigen testing, are as effective as vaccination in reducing the risk of transmission SARS-CoV-2 and or the severity of illness if infected;
- T. 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 in order to promote public health case identification, follow up and control measures. Asymptomatic testing increases the likelihood of generating false positive tests, which can unnecessarily consume public health resources in following up false positive tests. Similarly, rapid testing, which is followed up with confirmatory PCR testing for positive tests, is reserved for specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes from COVID-19, such as in long-term care and assisted living facilities, or in remote communities where obtaining results of PCR testing may be delayed;
- U. I recognize the effects, including the hardships, which the measures which I have put in place and continue to put in place to protect the health of residents and staff in congregate care facilities have, and, with this in mind, continually 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 in congregate care 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 residents and staff of congregate care facilities, including constitutionally protected interests, against the risk of harm created by having unvaccinated persons working in facilities;

- V. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, including freedom of religion and conscience, freedom of thought, belief, opinion and expression. These freedoms, and the other rights protected by the *Charter*, 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 this is consistent with public health principles;
- W. 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, staff and visitors in facilities from the risk of infection with SARS-CoV-2 created by contact with unvaccinated persons;
- X. Staff and residents of many facilities have now been vaccinated against COVID–19, thereby lessening the risks of transmission of infection, and of serious illness and hospitalization on the part of residents;
- Y. There is a shortage of staff available to work in facilities;
- Z. The requirement that staff only work in one facility affects the ability of operators to staff facilities;
- AA. Staff who are vaccinated pose a minimal risk of transmitting COVID–19 to residents or other staff;
- BB. In order to reduce the risk that vaccinated staff who work in more than one facility could introduce SARS-CoV-2 into multiple facilities, it is desirable to limit the number of facilities in which a vaccinated staff member may work to a cluster of facilities, as determined by health authority working groups;
- CC. In order to increase the ability of operators to operate facilities with adequate staff levels, it is necessary for me to extend and vary my variance of September 29, 2021, to permit vaccinated staff to work in more than one facility beyond December 31, 2021.

ACCORDINGLY, pursuant to the authority vested in me by section 39 (6) of the *Public Health Act*:

I hereby Vary the ***FACILITY STAFF ASSIGNMENT ORDER*** dated, April 15, 2020 (the “Order”), and the Variance dated September 29, 2021, as follows:

THIS VARIANCE FORMS PART OF THE ORDER

In this Variance the definitions in the Order apply and

“casual work” means work which is:

- (a) temporary; and
- (b) the need for which arises solely due to staffing shortages experienced by the operator, contractor or sub-contractor.

“cluster” means a group of facilities determined by a working group;

“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) another form of identification, issued by a government of any jurisdiction, including a photograph of the holder;
- (g) a military identification card that is issued by a government of any jurisdiction, which includes a photograph of the holder;

“primary facility” means the facility to which a person has been assigned under the Order;

“proof of vaccination” means

- (a) in the case of a person who is more than 18 years of age, photo identification and a vaccine card;
- (b) in the case of a person who is 18 years of age or younger, a vaccine card;

“vaccinated” means to have received all doses of a vaccine or a combination of vaccines, but not including a booster dose, as recommended by

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

“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 an international visitor,
 - (i) proof, whether electronic or in writing, relied upon to enter Canada, and
 - (ii) the person's passport or photo identification;

“working group” means a working group established by a regional health board under the Order.

1. A person permitted under the Variance of September 29, 2019, to do casual work at a facility other than the person's primary facility at the time when this Variance takes effect, may continue to do casual work at that facility, without providing proof of vaccination to the operator.
2. A person to whom section 1 applies must provide proof of vaccination as required by this Variance, if the person does casual work at a facility other than one at which the person was doing casual work at the time this Variance takes effect.
3. A person may do casual work at a facility other than the person's primary facility, if the person provides proof of vaccination to an operator, contractor or sub-contractor, and the facility is in the same cluster as the person's primary facility.
4. An operator must not permit a person to do casual work at a facility other than the person's primary facility, unless section 1 applies, or the person provides the operator with proof of vaccination, and the facility is in the same cluster as the person's primary facility.
5. A contractor or sub-contractor must not permit a person to do casual work at a facility other than the person's primary facility, unless section 1 applies, or the person provides the contractor or sub-contractor with proof of vaccination, and the facility is in the same cluster as the person's primary facility.
6. A person must not do casual work at a facility other than the person's primary facility, unless section 1 applies, or the person provides proof of vaccination to an operator, or a contractor or sub-contractor, and the facility is in the same cluster as the person's primary facility.
7. In the event that a medical health officer declares an outbreak of COVID-19 in either the primary facility at which a person works, or in another facility at which the person does casual work, the person must only work in the person's primary facility until the medical

health officer declares that the outbreak is over, unless the person is permitted to work in more than one facility by the medical health officer.

8. An operator, contractor or sub-contractor must not permit a person to work at a facility other than the person's primary facility, after the expiry of this Variance, unless the person is permitted to do so under the Order.
9. A person must not work at a facility other than the person's primary facility after the expiry of this Variance, unless the person is permitted to do so under the Order.

This Variance expires on December 31, 2022.

After weighing the interests of persons who receive health care and related services in facilities, against the interests of the operators of facilities and the employers of persons who work in those facilities and persons who provide care and services in those settings, including a person who has an exemption on the basis of a medical deferral to a vaccination under the *Residential Care COVID-19 Preventive Measures Order*, the *COVID-19 Vaccination Status Information and Preventive Measures Order* or the *Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures Order*, and taking into account the importance of protecting the health of residents of facilities, maintaining a healthy workforce in facilities, 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, and 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, it is my reasonable belief that it is necessary, in the interest of the public health, that I not accept requests for a reconsideration of this Variance, until the risk of transmission of infection and incidence of serious disease in facilities significantly decreases, and until the number of hospitalizations, admissions to intensive care units and deaths, and the strain on the public health and health care systems, are significantly reduced;

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

You are required under section 42 of the *Public Health Act* to comply with this Variance. Failure to comply with this Variance is an offence under section 99 (1) (k) of the *Public Health Act*.

If you fail to comply with this Variance, 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
P O Box 9648 STN PROV GOVT, Victoria BC V8W 9P4
Fax: (250) 952-1570
ProvHlthOffice@gov.bc.ca

DATED THIS: 15th December 2021

SIGNED: 
Bonnie Henry
MD, MPH, FRCPC
Provincial Health Officer

DELIVERY BY posting on the BC Government and the BC Centre for Disease Control websites.

Enclosure: Excerpts of *Public Health Act*

ENCLOSURE

Excerpts of the PUBLIC HEALTH ACT

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;

Contents of orders

- 39** (1) A health officer must make an order in writing, and must describe all of the following in the order:
- (a) subject to subsection (5), who must comply with the order;
 - (b) what must be done or not done, and any conditions, including if applicable the date by which something must be done;
 - (c) the date on which, or the circumstances under which, the order is to expire, if the date or circumstances are known;
 - (d) subject to the regulations, information sufficient to enable a person to contact the health officer;
 - (e) how a person affected by the order may have the order reconsidered;
 - (f) any prescribed matter.
- (2) A health officer may combine 2 or more orders in a single written notice.
- (3) An order may be made in respect of a class of persons.
- (4) If a provision under this Act refers to a specified facility, place, person or procedure in respect of an order, a health officer must specify the facility, place, person or procedure
- (a) in accordance with an order made under section 63 [*power to establish directives and standards*], or

(b) if no order under section 63 applies, that the health officer reasonably believes to be appropriate in the circumstances.

(5) If a medical health officer publishes an order respecting an infected person, the infected person's identity must not be disclosed unless disclosure is necessary for the protection of public health.

(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

Duty to comply with orders

42 (1) A person named or described in an order made under this Part must comply with the order.

(2) Subsection (1) applies regardless of whether the person leaves the geographic area for which the health officer who made the order is designated.

General emergency powers

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

(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.

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*];