

ORDER OF THE MEDICAL HEALTH OFFICER
(Pursuant to Sections 1, 13, 27, and 28, 54(1) *Public Health Act*, S.B.C. 2008)

TO: *Registered Nurses, Registered Psychiatric Nurses and Licensed Practical Nurses*

FACILITIES: Any community outreach centres, staff/physician assessment centres, or other testing facilities as designated by Vancouver Coastal Health Authority Leadership

On the basis that the British Columbia Provincial Health Officer, jointly with the Minister of Health, has declared the COVID 19 pandemic to be an emergency pursuant to Part 5 of the *Public Health Act*, S.B.C. 2008, c. 28, and on the basis of information provided to or obtained by me in my capacity as medical health officer in order to protect the public that:

1. It is necessary to monitor the incidence and control the spread of the novel coronavirus infection known as COVID-19 or 2019-nCov, which is a reportable communicable disease (the "Communicable Disease") under the *Public Health Act* and the Reporting Information Affecting Public Health Regulation, BC Reg. 167/2018. The *Public Health Act* and regulations are at: <http://www.bclaws.ca/civix/content/complete/statreg/08028/?xsl=/templates/browse.xsl> and excerpts are enclosed with this Order;
2. The diagnostic examination required to screen for the presence of the Communicable Disease involves the carrying out of a nasopharyngeal swab of the Infected Person;
3. A nasopharyngeal swab requires the insertion of an instrument or device beyond the point in the nasal passages where they normally narrow, which is a restricted activity in the scope of nursing practice requiring a client-specific order made by a listed health professional, pursuant to;
 - a. Section 7 of the Nurses (Registered) and Nurse Practitioners Regulation, BC Reg. 284/2008;
 - b. Section 7 of the Nurses (Registered Psychiatric) Regulation, BC Reg. 227/2015; and
 - c. Section 7 of the Nurses (Licensed Practical) Regulation, BC Reg. 224/2015

issued under the *Health Professions Act*, R.S.B.C. 1996, c183

4. Community outreach centres and staff/physician assessment centres that will screen for the Communicable Disease are being opened within the Vancouver Coastal Health Authority geographic region;
5. It is anticipated that these community outreach centres and staff/physician assessment centres will be staffed by registered nurses ("RNs"), Registered Psychiatric Nurses ("RPNs"), and Licensed Practical Nurses ("LPNs"), but not by any of the listed health professionals who can issue a client-specific order that would authorize an RN, RPN or LPN to collect the nasopharyngeal swab from an Infected Person.

I have reason to believe, and do believe, that in order to monitor the incidence and control the spread of the Communicable Disease, it is necessary for me to exercise my authority under sections 13, 27, 28, and 54(1) of the *Public Health Act* to make the following Order. **Upon receipt of this Order:**

1. Having made an initial assessment in accordance with applicable guidelines issued by a medical health officer employed by VCH (a "VCH MHO"), of a person who presents to the community outreach centre that such person requires screening for the presence of the Communicable Disease, an RN, RPN or LPN is ordered to collect a nasopharyngeal swab from

the person in the absence of a client-specific order from a listed health professional. This collection forms an integral part of the diagnostic examination that is necessary to monitor effectively the incidence of the Communicable Disease.

2. This Order applies only to RNs, RPNs and LPNs who self-assess as having the individual competence to perform the collection of a nasopharyngeal swab in a safe manner, and where the RN, RPN or LPN can manage the intended and unintended outcomes of this restricted activity.
3. RNs, RPNs and LPNs who perform the collection of a nasopharyngeal swab are ordered to keep records of this collection and to make these records available to a VCH MHO upon their request.

You may contact me at:

Althea Hayden, MD, MPH, FRCPC
Medical Health Officer, Vancouver Coastal Health
800-601 W Broadway, Vancouver, B.C.
Telephone: 604-675-3900 and Fax: 604-731-2756


This Order does not have an expiration date. I will review this order and the conditions contained in it four weeks from the date it is made. This order is subject to revision by me.

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*, no MHO employed by VCH will be accepting requests for reconsideration, requests for review, or requests for reassessment of this Order.

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*.

DATED THIS: 18th day of March, 2020

SIGNED:


Althea Hayden, MD, MPH, FRCPC
Medical Health Officer, Vancouver Coastal Health
800-601 W Broadway, Vancouver, B.C.
Telephone: 604-675-3900 and Fax: 604-731-2756

DELIVERED BY: Posting at Vancouver Coastal Health staff/physician assessment centres and community outreach centres, and by facsimile to the British Columbia College of Nursing Professionals and College of Physicians and Surgeons of British Columbia.

IN THE PRESENCE OF:

 Senior Legal Counsel, Vancouver
Coastal Health

ON THE:

18th day of March, 2020.

Enclosure: Excerpts of *Public Health Act* and Regulations

Enclosure

Excerpts of the PUBLIC HEALTH ACT and Regulations

Definitions

1 In this Act:

"communicable disease" means an illness caused by an infectious agent or its toxic products;

"diagnostic examination" includes, for the purposes of determining the existence or identity of an infectious agent or a hazardous agent, or of managing a health condition,

- (a)collecting bodily fluids and substances for examination,
- (b)diagnostic imaging examinations,
- (c)skin testing, and
- (d)psychological testing;

"infectious agent" means a prescribed thing that could give rise to an illness and that may be transmitted in any manner and at any distance

- (a)by a person who, or thing that, is infected with the thing, or
- (b)through another thing, the environment or any other means;

"infected person" or "infected thing" means a person who, or thing that,

- (a) is or is likely infected with, or has been or has likely been exposed to, a prescribed infectious agent, or
- (b) is or is likely contaminated with, or has been or has likely been exposed to, a prescribed hazardous agent

Mandatory sampling and reporting

13 (1)For the purposes of monitoring the incidence and nature of infectious agents and hazardous agents and controlling their spread, a medical health officer may, on his or her own initiative or on receiving a report under this Division, order a laboratory or other person to perform a diagnostic examination and make a report of findings.

(2)A laboratory or person subject to an order under this section must comply with the order.

When orders respecting infectious agents and hazardous agents may be made

27 (1) A medical health officer may issue an order under this Division only if the medical health officer reasonably believes that

- (a) a person
 - (i) is an infected person, or
 - (ii) has custody or control of an infected person or an infected thing, and
- (b) the order is necessary to protect public health.

(2) An order may be issued based on clinical findings or a person's or thing's circumstances or medical history, even if the person or thing has been examined and the examination did not reveal the presence of an infectious agent or a hazardous agent.

(3) For greater certainty, this section 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 infectious agents and hazardous agents

28 (1) If the circumstances described in section 27 [*when orders respecting infectious agents and hazardous agents may be made*] apply, a medical health officer may order a person to do anything that the medical health officer reasonably believes is necessary for either or both of the following purposes:

- (a) to determine whether an infectious agent or a hazardous agent exists, or likely exists;
- (b) to prevent the transmission of an infectious agent or a hazardous agent.

(2) A medical health officer may, in respect of an infected thing,

- (a) make any order, with any necessary modifications, that can be made under this Division as if the infected thing were an infected person, and
- (b) direct the order to any person having custody or control of the infected thing.

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 43 [*reconsideration of orders*].

Instructions to other persons

- 40** (1) If a medical health officer orders a person to be examined, the medical health officer must include with the order an instruction to the examiner to provide a copy of the results of the examination to the examined person, and may instruct the examiner to provide
- (a) a copy of the results of the examination to one or more of
 - (i) a health professional chosen by the examined person, if any,
 - (ii) the medical health officer, and
 - (iii) a person specified by the medical health officer, and
 - (b) a report to a person listed in paragraph (a) respecting
 - (i) the examiner's recommendations, and
 - (ii) the compliance of a person ordered to be examined with that order.
- (2) Despite subsection (1), a medical health officer may order an examiner not to disclose the results of an examination to the examined person if the medical health officer reasonably believes that the disclosure could reasonably be expected to
- (a) threaten another person's safety or mental or physical health,
 - (b) interfere with public safety, or
 - (c) result in immediate and grave harm to the examined person's safety or mental or physical health.

- (3) If a medical health officer orders a person to be examined, the medical health officer may, to assist a person in complying with an order or to protect or promote public health, include with the order instructions to the examiner respecting an outcome to be achieved.
- (4) A person given instructions under this section must comply with the instructions.

Service of orders

- 41** (1) Orders and notices of variations of orders must be served in accordance with the regulations.
- (2) If an order is served by posting the order in a place, a person other than a health officer must not remove, deface or alter the posted order.

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.

Termination of orders

- 46** An order ceases to have effect on the date or in the circumstances stated in the order, or, if no date or circumstances are stated, as follows:
- (a) if an order is served by posting it in or on a place, on the date the order is removed by a health officer;
 - (b) if an order is served by publishing it, on the date a health officer publishes notice that the order has been terminated;
 - (c) in the case of an order to take preventive measures, on the date the person subject to the order receives notice from the person who is responsible for administering or supervising the preventive measures that the preventive measures are no longer required;
 - (d) in any other case, on the date a health officer provides notice by any means to the person served with the order that the order has been terminated.

Part 5 — Emergency Powers

Division 1 — Application of this Part

Definitions for this Part

51 In this Part:

"emergency" means a localized event or regional event that meets the conditions set out in section 52 (1) or (2) [*conditions to be met before this Part applies*], respectively;

"localized event" means an immediate and significant risk to public health in a localized area;

"regional event" means an immediate and significant risk to public health throughout a region or the province.

Conditions to be met before this Part applies

52 (1) A person must not exercise powers under this Part in respect of a localized event unless the person reasonably believes that

- (a) the action is immediately necessary to protect public health from significant harm, and
- (b) compliance with this Act, other than this Part, or a regulation made under this Act would hinder that person from acting in a manner that would avoid or mitigate an immediate and significant risk to public health.

(2) Subject to subsection (3), a person must not exercise powers under this Part in respect of a regional event unless the provincial health officer provides notice that the provincial health officer reasonably believes that at least 2 of the following criteria exist:

- (a) the regional event could have a serious impact on public health;
- (b) the regional event is unusual or unexpected;
- (c) there is a significant risk of the spread of an infectious agent or a hazardous agent;
- (d) there is a significant risk of travel or trade restrictions as a result of the regional event.

(3) If the provincial health officer is not immediately available to give notice under subsection (2), a person may exercise powers under this Part until the provincial health officer becomes available.

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.

Division 2 — Emergency Powers

General emergency powers

- 54** (1) A health officer may, in an emergency, do one or more of the following:
- (a) act in a shorter or longer time period than is otherwise required;
 - (b) not provide a notice that is otherwise required;
 - (c) do orally what must otherwise be done in writing;
 - (d) in respect of a licence or permit over which the health officer has authority under section 55 [*acting outside designated terms during emergencies*] or the regulations, suspend or vary the licence or permit without providing an opportunity to dispute the action;
 - (e) specify in an order a facility, place, person or procedure other than as required under section 63 [*power to establish directives and standards*], unless an order under that section specifies that the order applies in an emergency;
 - (f) omit from an order things that are otherwise required;
 - (g) serve an order in any manner;
 - (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*];
 - (i) exempt an examiner from providing examination results to an examined person;
 - (j) conduct an inspection at any time, with or without a warrant, including of a private dwelling;
 - (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.

Public Health Act - Public Health Inspections And Orders Regulation Excerpt

Reassessment of orders

- 4** (1) A person may request reassessment of an order under section 45 of the Act only if the person is affected by an order made under section 29 (2) (a) *[to remain in a place or not enter a place]* or (g) *[to take preventive measures]* of the Act.
- (2) The request must be made in writing to the medical health officer who issued the order, stating the reasons why the order should be reassessed.
- (3) Within 72 hours of receiving a request for reassessment, a medical health officer must consider whether the order is, or conditions within the order are, no longer necessary to protect public health.
- (4) On reassessment, a medical health officer must take into account any comments made
- (a) by a person specified in the order under section 29 (2) (c) to (f) of the Act, and
 - (b) respecting the clinical condition of the person affected by the order, by a health care professional having the supervision or care of that person.
- (5) A second request for reassessment may be made in accordance with subsection (2) not earlier than 7 days following the first request.
- (6) A third or subsequent request for reassessment may be made in accordance with subsection (2) not earlier than 14 days following the previous request.

Public Health Act – Reporting Information Affecting Public Health Regulation Excerpts

Prescribed infectious agents

- 2** A communicable disease listed in the Schedule is prescribed as an infectious agent for the purposes of the Act, except for the purposes of section 17.

Schedule

[am. B.C. Reg. 276/2019]

Reportable Communicable Diseases

(section 2)

Prescribed infectious agents

- 2** The following communicable diseases are prescribed as infectious agents:

(q)novel coronavirus infections, including Middle East respiratory syndrome (MERS) and severe acute respiratory syndrome (SARS);