

July 2021

The Saskatchewan Government has released information confirming the rescinding of the Public Health Order (PHO) around continuous masking, social distancing and gathering restrictions. FAQ's are available with answers to questions pertinent to business owners and much of this information is applicable to community health settings including private physiotherapy and home-based clinics.

#### FAQ's from SCPT Members

1. Can I ask my staff if they are vaccinated? Can I tell clients the vaccination status of my employees?

Vaccination is personal health information and as such is protected under HIPA legislation. As such employees can voluntarily share but are not required to share this information with their employer or patients/families.

Employers and Clinic administration may not share personal health information around vaccination with clients attending the clinic without informed consent from the employee.

2. If a patient is vaccinated but presents with mild symptoms can treatment be refused?

If you choose to use the SHA Outpatient Screening Tool it would indicate that regardless of vaccination status, even mild symptoms would mean the client has screened positive. The client should not be seen in clinic for routine physiotherapy and should be directed to call 811 to discuss their symptoms and determine if testing is appropriate. They must follow the guidelines for self-isolation as directed by 811.

3. As a clinic owner, can I mandate that my employees get vaccinated?

Currently vaccination in Saskatchewan is voluntary, therefore mandating employees to get vaccinated may pose a risk in the form of a complaint under The Employment Act.

4. Can I request COVID testing and obtain results from my staff?

Except in exceptional circumstances, testing and test results are personal health information and as such are confidential unless your employee chooses to share this information with you.

5. Can I require patients to reveal their immunization status? Can I refuse to treat an un-vaccinated client or have them follow safety protocols unique to their vaccination status?

Vaccination status is personal health information that may not be required for the assessment and treatment being provided. As such asking a client their vaccination status may impinge on their HIPA rights of confidentiality and the need to know. Vaccination status is a question on the Outpatient COVID Screening Tool. It is however only asked as an opportunity to discuss/educate patients on vaccination. It is not part of the algorithm for the tool and therefore not a determining factor in COVID status. Refusing treatment based on vaccination status may pose significant risk to the clinician, as such clinic owners are encouraged to consult with their legal counsels prior to implementing any policies in this regard.

6. Can we continue to mandate use of masks in our clinic even with the lifting of the PHO?

Although masking will no longer be required, private businesses can choose to implement their own policies on masking. Although community-based health settings are not under the SHA jurisdiction it is important to note that acute care facilities will still require patients and visitors to wear masks and screen for COVID-19.

Businesses and organizations' mandatory mask policies are not enforceable by public enforcement agencies such as Public Health or the Police.

7. As an employer, do I require policies around mask usage and vaccination?

SCPT legal advice – Merrilee Rasmussen – “Clinics should establish clear, written policies, based on the evidence available from time to time, providing for accommodation of those who cannot for human rights reasons comply with a mask or vaccination requirement, and including procedures for protecting the confidentiality of the information about the vaccination status of both employees and patients. They should also obtain legal advice in this regard, as the matter is something of a moving target.”

8. Can I follow the SHA guidelines for masking, screening and infection control?

Health Care Workers in Community Health Settings such as private PT clinics do not fall under the jurisdiction of the SHA but rather under the medical directives for public places from the Chief Medical Health Officer (CMHO) for the province. As such, with the CMHO lifting all mandates for continuous masking in public places, these orders will affect Community Health Settings including private clinics.

Although the SCPT does not have the authority to mandate continued masking, with the lifting of the Public Health Order it is strongly recommended that physiotherapists in all practice settings continue to wear medical grade surgical or procedure masks at all times and in all areas of the workplace when either providing direct patient care or cannot maintain two-meter distance from patients and co-workers.

As an employer you also have the obligation to fulfill your legislative responsibilities under OHS law and to mitigate the risk for your employees within the work environment.

The bigger challenge lies in masking requirements for clients attending your clinics. The CMHO orders, patient's rights of choice, patient's rights to access safe care and the health and safety of all who enter the practice environment must be considered. Unfortunately, at this point there is no black and white answer, and you may wish to consult with your lawyer to obtain further guidance on masking for clients in your clinic.

9. If one of my employees is contacted by public health and informed they are a close contact to a positive COVID case, will they have to self isolate if they are fully vaccinated?

As with any communicable disease, positive COVID 19 cases will continue to be tracked. Self-isolation for positive cases or close contacts will be a decision made by local medical health officials. Questions around close contacts should be directed to Healthline 811.

**Important Resources for Legal Considerations:**

Some factors your business should consider before undertaking measures that are no longer required under a public health order include, but are not limited to:

- The responsibilities an employer has to their employees under *The Saskatchewan Employment Act* and *The Occupational Health and Safety Regulations, 2020*;
- The responsibilities your business or organization has under *The Saskatchewan Human Rights Code, 2018*;
- The responsibilities your business or organization (notably for government entity) has under the *Canadian Charter of Rights and Freedoms*;
- The risk of transmission of COVID in your business or organization;
- Whether your business or organization provides services to medically vulnerable persons;
- Whether your business or organization is a trustee pursuant to privacy legislation such as *The Health Information Protection Act* and therefore subject to provisions relating to collection, use and disclosure of individuals' personal information;
- Whether any of your employees are unionized, and if so, if there are provisions contained in the collective bargaining agreement(s) that need to be considered;
- Whether there are provisions in any employment or contractor agreements that need to be considered.

**Please note that private physiotherapy business owners and employers are responsible for and must conduct their own assessments and due diligence, including seeking legal advice where required.**