

# Say NO to The Health Professions and Occupations Act of British Columbia

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*\*Interpretations are solely those of Gail Davidson.*

*Feedback is welcome on errors, omissions, analyses.*

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# Background

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## **The Health Professions and Occupations Act (Act)**

- Improperly pushed through on 24 November 2022 without the consultation, disclosure, debate and informed voting required in a democracy.
- Perhaps the largest bill ever presented to the BC Legislative Assembly at 645 sections over 276 pages, the Act involves repeal of one and amendments to 33 statutes and concerns the governance, licensing, discipline and control of approximately 130,000 health care workers in 25 health professions and occupations in BC.
- Repeals the Health Professions Act (s. 546) and amends 31 existing statutes (ss 547-644).
- Has never been subject to proper disclosure, debate and acceptance or rejection by health care workers, the Legislative Assembly or the 5 million residents of BC in need of access to ethical personalized medical care.
- Has 645 sections over 276 pages and will replace the Health Professions Act which has 54 Sections over 83 pages.
- Is not yet in force.

world health organization emergency  
public health totalitarian  
who wef health ihr pandemic  
international health regulation

# The Unstated Purpose of the Act

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## The Act paves the way for global totalitarian control of health care in BC. The Act

- allows for adoption as law in BC, regulations, standards, codes or rules enacted in other jurisdictions or set by "any body that may make codes, standards and rules" (ss. 533, 335), which would allow rules set by the WHO, WHA, WEF to become law in BC;
- mirrors proposed changes to the International Health Regulations (IHR) that appear to provide the foundation of a global system of control over all aspects of health;
- IHR proposed rules grant powers to; (i) change the meaning of words; (ii) mandate or prohibit medical treatment of choice; (iii) collect, use and share personal health information without permission; (iv) mandate treatments; (v) declare international or regional health emergencies in response to actual or *potential* threats to health; (vi) mandate responses to a declared public health emergency; and, (vii) impose punishments for non-compliance. The IHR allow almost anything to qualify as a public health emergency.

The Act authorizes similar measures without a public health emergency. As stated by US law professor Francis Boyle, the IHR and the Pandemic Treaty "are *fatally dangerous*. Either one or both would set up a worldwide medical police state under the control of the WHO, and... WHO Director... will be able to issue orders that will go all the way down the pipe to your primary care physicians."

# Petition to Recall Premier of BC & Rescind the Act

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A Petition to recall Premier David Eby as the MLA for Vancouver Point Grey was initiated because of perceptions that the Act:

1. Impairs or destroys rights to provide and receive personalized health care;
2. Puts political appointees in charge of governance and licensing of health care workers, lawmaking regarding health, seizure of health records, definition of ethical standards and the punishment of health care workers;
3. Prohibits punished medical advice to patients of opinions to public that are not sanctioned by authorities;
4. Criminalizes freedom of expression and authorizes violation of other essential rights including rights to privacy and due process;
5. Authorizes adoption as BC law, laws made elsewhere and rules made by organizations without notice, justification, consultation, voting or oversight;
6. Allows appointees to mandate vaccination as a condition of licensing and employment;
7. Creates involuntary markets for pharma products through mandated vaccination;
8. Authorizes appointees to change the meaning of words.

The Petition did not receive the requisite number of signatures to trigger recall.



[https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96398\\_02](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96398_02)

# Recall Petition & Petition to Legislative Assembly

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**Recall Process** – To trigger recall of MLA David Eby, the [Recall and Initiative Act](#) required campaigners to collect, in 60 days ending 17 March 2023), signatures from 40% of the 41,000 voters in the Vancouver Point Grey constituency.

**11.31% of constituents voting in the 2022 election opposed the Act and supported Recall** - 2,737 Vancouver Point Grey constituents, representing 11.31% of votes cast in the October 2020 election signed the petition to recall the Premier for his support of the Act.

**17,500 signed a Petition to the Legislative Assembly of BC opposing the Act.** - On 4 May 2023 John Rustad, Leader of the Conservative Party of BC and MLA for Nechako Lakes presented a Petition signed by 17,500 people calling for the Act to be paused.

# Issues of Concern: Impact of the Act

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# Governance

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## **1. The Act abolishes democratic governance of health care colleges and imposes governance by political appointees.**

Under s. 17 of the existing *Health Professional Act*, boards are composed of a majority elected by members and people appointed by the Minister of Health (minister). Appointees cannot exceed elected board members.

Under s. 346 of the Act, all members of the board will be appointed by the minister, half licensees and half “representatives of the public.” (“A regulatory college is a corporation consisting of the persons appointed as members of the board.” (See ss. 343 (1), 344, 345, 346). Appointees are not independent of the Executive and are not required to be competent or impartial.

# Governance

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2. **The Act empowers the Minister and Cabinet to appoint dozens of people to positions of authority over all aspects of health care without notice to, or consultation with, the public, health care workers or the BC Legislative Assembly.**
- The Superintendent of Health Professions and Occupations Oversight (superintendent) is appointed by Cabinet (s. 436 (2)) and reports only to the minister (s. 486).
  - The Office of the Superintendent is “an arm of the government” (s. 345 (1)) and has significant powers including to make recommendations to the minister on the administration of and amendments to the Act, improvement of performance of regulators and “any other matter the minister requests”; and, to publish any “information and record” deemed by the superintendent to be in the public interest (s. 345 (2)).
  - The Director of Discipline is appointed by the minister (s. 444) and then the Director himself appoints the Deputy Director who exercises the same powers of the Director (s. 445). Their wide powers include to: manage discipline panels, set practice directives, issue and cancel disciplinary citations and approve disciplinary orders. For actions regarding disciplinary proceedings they have statutory immunity (s. 400)



# Governance

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## 3. **The Act empowers appointees to exercise powers and to themselves appoint dozens of other authorities with duties under the Act.**

Appointed Boards are mandated to:

- Make bylaws regarding: monitoring licensees for contraventions of the Act; complaint procedures; production of records; summary protection orders; summary actions by the registrar (s. 118); anti-discrimination measures; sexual misconduct; what constitutes false or misleading information (s. 70(2));
- Appoint the registrar, professional standards advisors and members of the license, investigation and permit committees (s. 359);
- Seek advice from the professional standards advisors appointed by the board when making bylaws on eligibility, ethics and practice standards (s. 361).

# Law Making

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1. **The Act authorizes adoption as law in BC, regulations, codes, standards or rules, enacted by “another jurisdictions including a foreign jurisdiction, or set by a provincial, national or international body or any body that may make codes, standards or rules.” (ss. 533 (1), 335 (2))**
  - Cabinet and an unspecified number of appointees are authorized to adopt as law in BC any regulations, codes, standards or rules enacted in any other jurisdictions or set by any national or international organizations (s. 533 (1));
  - **A provincial health officer may, when making scope of practice orders (emergency orders), also adopt as law in BC, any regulations, codes, standards of rules enacted in other jurisdictions or set by any national of international body** (s. 335).
- These provisions would allow the adoption as law in BC, any rules set by, for example, the World Health Organization, World Health Assembly or World Economic Forum.
- This would allow adoption of the International Health Regulations and/or the Pandemic Treaty, whether or not Canada voted for or otherwise accepted such provisions.
- Adoption can occur without notice, disclosure, justification, consultation, debate or consent and without oversight by the public, health care workers or the Legislative Assembly.

# Law Making

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- 2. The Act creates acts of misconduct and criminal offences that violate the principle of legality and predictability. The offences are not defined with sufficient specificity to be objectively determined in advance of contravention or hearing and therefore cannot be avoided or defended and contravene freedom from ex post facto law.**

Examples of illegitimate offences and acts of misconduct:

- **“providing false or misleading information to patients or the public”** is both an act of misconduct (s. 70 (2) (g)) and a criminal offence (s. 514(2) (b));
- **“conduct that may bring the practice... into disrepute.”** Section 11 (2) states, “a licensee commits an act of misconduct if the licensee engages in conduct that (a) may bring the practice of a designated health profession into disrepute”.

# Law Making

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## 3. The Act authorizes appointees to:

- **Mandate vaccination for 'transmissible disease' as a condition of licensing and employment** Sections 49 (1) (b) (v) and 49 (3) (f) respectively provide that boards *must* and *may* make bylaws mandating vaccination. It is not clear if boards may make bylaws requiring mandatory vaccination in the absence of "an enactment". Boards have unrestricted authority to make by-laws "in collaboration with other persons" (s. 67). The Act does not define vaccination or transmissible disease;
- These mandates violate individual rights accept or refuse medical treatment and experimentation and to informed consent and, rights to deliver personalized care.
- **Make rules regarding: informed consent** (s. 72 (3) (b); **ethical standards** (ss. 70(2), 361); **what health care services can be provided, by who, to whom** (s. 72(3), **and in what locations** (s 72 (4) (a). The Act does not require that rules respecting informed consent conform with rights established by Canadian law and international treaties to which Canada is a State Party (s. 72 (3) (b);

# Law Making – Compulsory Vaccination

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**The minister may mandate vaccination:** The minister may make regulations requiring applicants and regulated health service providers to be vaccinated against specified transmissible illnesses (s. 200 (2) (a)).

**Boards must mandate vaccination** - Boards must make bylaws mandating vaccination against transmissible illnesses as a condition of licensing when there is an enactment requiring vaccination (s. 49 (1)).

**Boards may mandate vaccination.** Boards may make bylaws mandating vaccination, required under the bylaws, against transmissible illnesses (s. 49 (3) (f)).

**The provincial health officer can, as an emergency order, adopt mandatory vaccination requirements** set by any state or any non-state organization, anywhere (s. 335 (2)).

**Cabinet and an unspecified number of appointees can , in non-emergency time, adopt as law mandatory vaccination requirements** enacted by other states or set by non-state organization anywhere (s. 533 (1)).

# Law Making – Emergency Orders

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- 1. The Act (ss. 325-340) authorizes the minister and the provincial health officer to make emergency orders.** Whenever notice of a public health emergency is provided under the Public Health Act, the minister can make administrative orders emergency orders (ss.330-331: the provincial health officer can make scope of practice orders emergency orders (ss. 333 – 340).
- 2. Emergency Orders are not required to be lawful, necessary, proportionate, legitimate or temporary. The Act does not require that emergency orders comply with Canadian or international law obligations to maintain rights, democracy and the rule of law.**

# Law Making – Emergency Orders

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## 3. Public health emergency powers

- **Broad Interpretation** -The Act allows a broad interpretation of a public health emergency (see s. 325 and Public Health Act s. 52(2)) and authorizes emergency orders without notice and information needed to assess justification and without consultation with health care professionals, emergency specialists, the Legislative Assembly or other informed parties.
- **Competence to make orders not required** - Neither the minister or the provincial health officer are required to have the competence to assess the lawfulness, necessity, legitimacy or proportionality of emergency orders or to identify measures capable of delivering benefit, limiting harm and complying with domestic and international law.
- **Additional Risks of Emergency Powers**—through summarily imposed laws, mandates, restriction and prohibitions to rights to provide and receive personal health care.

# Law Making – Emergency Orders

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## **4. The Act authorizes the minister and the provincial health officer to summarily make undemocratic, apparently unreviewable and potentially dangerous emergency orders:**

- Based on subjective determinations of necessity and harm (ss. 330, 333) and on subjective opinions of appropriateness (s.335 (2) (a));
- Made without release or debate of the information needed to assess the safety, efficacy necessity, proportionality or legitimacy of the emergency orders;
- Restricted to one or more persons, classes of persons or geographical areas (s. 327(2)).
- Made without notice to or oversight by, MLAs, the public or the affected health professions, occupations or patients (s. 326 to 329).



# Law Making - Emergency Orders

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## 4. (cont'd) The Act authorizes imposition of emergency orders:

- Made without notice, other than to appointees who lack independence and possibly the competence or impartiality (ss. 326 to 329) to act in the public interest;
  - Before making an emergency order, the minister and provincial health officer must give notice to and *make reasonable efforts* to consult: the superintendent, the Health Professions Review Board and affected regulators (s. 329(a), all of whom are appointees;
  - The provincial health officer must give notice to the minister and advise of any objections raised by the above named appointees (s. 329(b);
- Based on any regulation, code, standard or rule, enacted in any other jurisdiction or “set by a provincial, national or international body or any other body that may make codes, standards or rules, or published by a laboratory...” (s. 335(2), adopted by the provincial health officer.

# Law Making – Emergency Orders

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**5. The Act (s. 335) authorizes the provincial health officer to adopt as law in BC, laws enacted in any other jurisdiction and rules adopted by any state or non-state body anywhere:**

- in the sole discretion of the provincial health officer;
  - if adoption is “appropriate,” in the personal, subjective opinion of the provincial health officer;
  - with no requirement that the rules adopted as law serve a public purpose or be consistent with domestic or international law obligations or the rule of law;
  - without any notice to, consultation with, debate by or consensus of the Legislative Assembly, the public, health practitioners and without evidence justifying adoption;
- **Section 335 would, for example, allow adoption all or some of the International Health Regulations as law in BC, including measures restricting guaranteed rights.**

# Enforcement

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- 1. The Act imposes severe penalties for acts of misconduct that include temporary or permanent loss of licenses and employment and for criminal offences, fines up to \$500,000, imprisonment up to 2 years (s. 518) and additional penalties for each day that the offence continues (517).**
- 2. The Act authorizes “the minister, a board or a health occupation director” to establish all medical and ethical standards along with standards governing eligibility to practice and accreditation (s. 7 (1)).**
- 3. The Act imposes a mandatory duty on licensees to report other licensees believed to be “not fit to practice” or to present “a significant risk of harm to the public” (s, 85).**

# Enforcement

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- 4. The Act authorizes appointees to suspend the license to practice without notice to the practitioner and before a complaint has been investigated or determined.**
- A registrar can make suspend a practice license by summary protection order (SPO) before a complaint is referred to an investigation committee (ss. 122 (1) and 153);
  - A health occupation director can also make SPOs (s. 225);
  - Section 259 authorizes SPOs when, *inter alia*, "a respondent is providing false or misleading information to patients or the public" What constitutes false and misleading information is not defined.

The SPO can be issued without notice or hearing (s. 260). Regarding the arbitrariness of the term 'misleading', see US District Court decision of 25/01/23 granting an interim injunction against enforcement of provisions allowing discipline of doctors for spreading misinformation.

# Data Collection and Control

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- 1. The Act allows invasion of patient and professional privacy.** The Act allows the collection, use and disclosure of confidential information even “...for purposes...not covered by the Act” (s. 530). This section allows an order for the collection, use and disclosure of personal information excluded from disclosure by ss. 491 and 492.
- 2. The Act allows the search of premises and seizure of documents including patient records with and without a warrant.** The Act contemplates applying for court orders *ex parte* and in secret (ss. 502(1), 503 (1)) authorizes seizure of documents not described in a court order (s. 508) and authorizes, without a warrant, securement of practitioner’s premises, search and seize documents (s. 511) and treatment of items seized as though there had been a court order.

# Data Collection and Control

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## **3. The Act authorizes appointees to order the production, examination and copying of documents and confidential records.**

- An investigator may order production of information and without a court order, may enter premises and inspect and copy documents (s. 131);
- The superintendent may order production of documents or enter premises without a warrant and inspect and copy documents (s. 469(1));
- The Health Occupation Director may make complaints (s. 222) and order production of information including confidential information (s. 224);
- The provincial health officer may make an emergency order for the production of records to the minister and appointees (s. 338) and such orders last for 90 days after “the order ceases to have effect” (s. 328 (4)).
- These provisions potentially authorize violation of the privacy rights of patients and practitioners without prior notice or hearing.

# Lack of Legitimate Statutory Purpose

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## 1. The Act appears directed at restricting, not enabling the quality, provision, delivery and receipt of individualized health care ostensibly to prevent harms posed by members of health professions and occupations.

- Section 6 defines health professionals as providing services that “**present a risk of harm to the public**”: those practicing health occupations are described as providing health services that “**present a lower risk of harm to the public**”, and,
- States that regulation of health professionals is **necessary** and regulation of health occupations **advisable** in order to protect “the public from harm” and “the public interest” (s.6). Neither harm or public interest is defined.

Although health professionals must act ethically, safely, and in accordance with applicable ethics and practice standards, the definition of these standards is left to be determined, perhaps arbitrarily, by appointees (see s. 7(2) definition) who may lack competence.

# Lack of Legitimate Statutory Purpose

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- 2. The Act does not mandate licensees to serve the medical needs of individual patients.**
- 3. Instead, the Act mandates licensees to:**
  - to protect the public from harm and discrimination;
  - to take anti-discrimination measures; and,
  - to act in a manner that is respectful of the privacy of patients. (72 (1)):

The Act does not require licensees to respect the paramount duty of health professionals to ensure patient rights to informed consent (or refusal) to medical treatment, freedom from coercion or force to accept treatment not voluntarily chosen and freedom from non-consensual medical or scientific experimentation.



# Immunity and Limitation of Review

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## 1. **The Act limits review by any court of some decisions and orders made by appointees.**

The Act grants exclusive jurisdiction to inquire into, hear and determine all questions of fact, law and discretion under the Act to the: health occupation director, director of discipline, discipline panel and Health Professions Review Board. **Decisions are “final and conclusive and not open to question or review in any court.”(s. 512).**

The Act authorizes the appointment of these decision makers as follows:

- A health occupation director can be appointed by a board or can be a civil servant (ss. 365, 26(2) (ii) (ii)).
- The director of discipline is established by the superintendent’s office (s. 443).
- Discipline panel members are appointed by the Director of Discipline (ss. 169, 449).
- The Health Professions Review Board chair and members are appointed by Cabinet (s. 309).

# Immunity and Limitation of Review

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## 2. **Decision-making powers of appointees whose decisions are subject only to limited review include authorizations for:**

- A health occupation director to determine misconduct complaints and impose discipline (ss. 230 to 232), and, to make bylaws or rules “in addition to any imposed under this Act” (s. 530(a) (ii));
- The Discipline panel to conduct and set rules for disciplinary proceedings (ss. 173 to 189);
- The Director of Discipline to issue citations and appoint discipline panels (ss. 161 to 170);
- The Health Professions Review Board to conduct reviews (ss. 310 fllg), make orders (s. 319) and make recommendation to the superintendent on policies, discipline processes and investigations.

An amendment to s. 33 the Pharmacy Operations and Drug Scheduling Act provides immunity from legal proceedings for damages arising from acts done or omitted “(a) in the exercise or intended exercise of a power under this Act, or (b) in the performance or intended performance of a duty under this Act” (s, 629).

# Immunity and Limitation of Review

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## 3. The Act grants immunity from legal proceedings for damages against:

- A regulatory college for anything done or omitted with respect to an investigative or disciplinary action (s. 89);
- Appointees designated as “protected persons” in the exercise of intended exercise of powers or duties under the Act (s.399);
- A “protected person” for conducting an investigation, taking disciplinary action or participating in a disciplinary proceeding (s. 400)

### **Limited Review** On judicial review, the court:

- Must consider the decision maker an “expert tribunal in relation to all matters over which it has exclusive jurisdiction” and,
- Cannot set aside a finding of fact unless there is no evidence to support the finding or the finding is otherwise unreasonable; and,
- Cannot set aside a discretionary decision unless it is patently unreasonable (s. 512, Administrative Tribunals Act s. 58).

# Conclusions: Endangers Health Care, Rights & Democracy

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## **The Act is dangerous to health care, rights and democracy and must to be repealed.**

The Act is replete with unlawful provisions that restrict and potentially extinguish many essential rights and signals the end of the rights of health care workers to provide without fear of punishment, and patients to receive, personalized health care.

The Act appears to be a trial statute to bypass democratic processes that protect rights and prevent undemocratic or tyrannical law making and control. The Act allows Cabinet, the minister and dozens of unelected, unaccountable political appointees to adopt, create, change and enforce laws that violate rights without notice, justification, access to information, consultation, debate, consensus or oversight by the Legislative Assembly or the public and without meaningful access to effective remedies for victims of rights violations. Rights violated include rights to: equality and non-discrimination, privacy, informed consent, freedom from experimentation, expression, freedom from ex post facto laws, work and participation in decision making

The Act paves the way for BC to partner with big Pharma and other entities (instead of with health care providers or BC residents), unhampered by what Canada has called “the [regulatory irritants and roadblocks](#)” of democracy.

Presently the people of BC use pharma: the Act enables Pharma and other non-state actors--with the aid of state powers--to use the people.

The Act does not serve the public interest in ensuring equal access to competent and timely personalized health care in BC.