



## Ask a Lawyer: Refusal to wear a mask and mask exemption requests in Canada

### ***Thank you for this two-part question! Let's start by looking at the request for a mask exemption.***

As we continue to face a global pandemic, masks have become a part of our day-to-day life. Many Public Health agencies across Canada have mandated the use of masks or face coverings while indoors, in enclosed public spaces and in some outdoor spaces, in conjunction with proper social distancing. These restrictions vary by region. For example, certain jurisdictions have now removed or relaxed mask mandates and therefore masks are no longer required in certain public spaces (unless the business decides to make them mandatory).<sup>1</sup> Masks are however typically still required in health facilities.<sup>2</sup> It is therefore recommended to remain up to date with your legal and professional obligations in the jurisdiction of your nursing practice.

Despite masks being proven as an effective method to prevent and reduce the spread of COVID-19 by Public Health agencies, health-care professionals and the World Health Organization, some people have doubts about their effectiveness, or hold strong convictions against them. This may make it more difficult for those with health conditions that make wearing a mask difficult or unadvisable, and who therefore have an exemption.

Certain jurisdictions that have enacted by-laws or regulations regarding the wearing of face coverings will typically stipulate a list of generally exempted individuals:<sup>3</sup>

- Children under two years of age.
- Individuals who are unable to put on or remove their mask without assistance.
- Individuals with medical conditions that could be exacerbated by wearing a mask, such as certain respiratory conditions.
- Employees who require an accommodation based on the provincial or territorial Human Rights Code.
- Individuals who are hearing impaired and need their companion or another person to take off their mask, where the ability to see the mouth is crucial to communicate.
- A person who is temporarily removing their mask to engage in services that require the removal of their mask (e.g. dentist appointment), engaging in a fitness or athletic activity, or consuming food or drink in a premise that offers it.

It would also be beneficial to review the applicable bylaws and/or regulations in the jurisdiction in which you practice, to determine whether your client may already be exempt from wearing a mask on those grounds. Some jurisdictions have further defined these exemptions especially as they relate to workplaces, including Québec<sup>4</sup> and Ontario<sup>5</sup>.

For some individuals, a mask or face covering is not advisable due to for instance, their complex medical histories. Healthcare practitioners may also decide to provide the patient with relevant documentation to demonstrate their exception from mandatory mask or face coverings. These may exempt the individual from wearing a mask or face covering in indoor public spaces, as some proof of exemption may be required in certain cases. As one example, a medical certificate of exemption is required by Transport Canada to board a commercial flight without an appropriate face covering.<sup>6</sup> While completing a reasonable clinical assessment, including symptoms and health history, a qualified health professional (such as a physician or a nurse practitioner) should be able to determine if the patient requires an exemption from wearing masks. Vaccination status may also be considered in this assessment. Although an RN will not typically make the medical diagnosis, they may be asked to assist in completing a form regarding the exemption.

When completing or signing a form, it is important to offer accurate and objective information, and leave the third party (ex: school or employer) to decide the outcome of the process.<sup>7</sup> Further, it is a good practice to ascertain that the information relied upon is documented or readily available in the records so that the content of the report can be further explained and supported, if necessary.<sup>8</sup> This may not apply in jurisdictions that have loosened their restrictions regarding wearing masks.

There may also be an educational component involved for nurses speaking with patients seeking exemptions for wearing masks or who have already received an exemption such as discussing mask alternatives (ex: face shields) that are appropriate for the patient's condition.

Looking to learn more about the implications of completing a patient form, such as an exemption letter? Consult our article on the topic [here](#).

### ***What if a patient is refusing to wear a mask during the provision of health services?***

When facing a situation where a patient is refusing to wear a mask, there are some guidelines a nurse can look to:

1. Assess the patient at the time of their appointment to determine the level of risk of exposure you or your staff, or other patients may have. In doing so, you may wish to review your provincial, or municipal COVID-19 screening protocols and policies to determine who may be considered higher risk for COVID-19 transmission (this may include confirming whether the individual has travelled internationally, been in close contact with confirmed COVID-19 cases, or if the individual is exhibiting COVID-19 like symptoms unrelated to a pre-existing medical condition);
2. Ask if it is for a medical reason or one of the permitted exemptions;
3. If not, explain to the patient the importance of wearing a mask and why they are required in most jurisdictions;
4. Ask the patient questions to explore their perspective, or reasons for not wearing a mask and attempt to resolve the matter in a way that enables the patient to reach an informed decision about wearing a face mask;
5. If the patient does not have an acute or urgent problem, suggest obtaining medical care through virtual care;
6. If the patient has not completed mandatory quarantine or isolations, you may wish to consider opting for a virtual care consultation or rescheduling their in-person appointment to a later date;
7. If possible, place the patient in an isolation room;
8. When possible, share all practice policies in advance, display them clearly throughout the premises and especially at all entrances, and follow appropriate protocols at all times to ensure consistency;
9. Be aware of the health institution's policies in the event that a patient becomes difficult or makes health professionals or other patients feel unsafe.<sup>9</sup>
10. Remember to prioritize a safe health-care environment and the well-being of the patients, both individually and collectively.<sup>10</sup>

CNPS beneficiaries can contact CNPS at 1-800-267-3390 with specific questions related to their practice to speak with a member of CNPS legal counsel. All calls are confidential.

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1. For example, consult <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/about-covid-19/how-to-protect-yourself#masking>

2. Alberta, Masks, online: <https://www.alberta.ca/masks.aspx>

3. Please note this list is not exhaustive, and may vary depending on the bylaws or regulations in the city, county, region or jurisdiction in which you reside.

4. Québec, Wearing a face covering in public settings, <https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/mask-or-face-covering/wearing-a-face-covering-in-public-settings-covid-19#:~:text=When%20wear%20a%20mask%20or,people%20age%2010%20and%20over.>

5. Ontario, Face coverings and face masks, <https://www.ontario.ca/page/face-coverings-and-face-masks>

6. Transport Canada, [COVID-19: Guidance Material for Air Operators Managing Air Travellers for Flights Departing from an Aerodrome in Canada](#), January 2021.

7.CPSO, [Covid-19 FAQs for Physicians](#), January 2021.

8.CNPS, [Nurse Practitioner Series: Are you aware of the implications of completing a patient form?](#) 2018.

9.For more recommendations, see [CPSO's guidelines](#), or

CMQ's: <http://www.cmq.org/nouvelle/fr/position-du-college-concernant-l-obligation-de-porter-le-masque-dans-les-milieux-de-soins-et-sur-les-exemptions-demandees.aspx>

Revised in August 2021.

**In light of the fast-paced and constantly evolving nature of this pandemic and the continual flow of new information, it is important for nurses to consult reliable sources, such as their local government websites, their local public health departments, and their nursing regulatory bodies, frequently to ensure that they are practicing with the most updated information. As such, the information in this article is only current up to the date of publication.**

THIS PUBLICATION IS FOR INFORMATION PURPOSES ONLY. NOTHING IN THIS PUBLICATION SHOULD BE CONSTRUED AS LEGAL ADVICE FROM ANY LAWYER, CONTRIBUTOR OR THE CNPS. READERS SHOULD CONSULT LEGAL COUNSEL FOR SPECIFIC ADVICE

Other Resources: [Fact check: ADA, disability rights and face mask requirements \(usatoday.com\)](#)