
DETERMINATION

NATIONAL HEALTH SERVICE, ENGLAND

Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015

The Secretary of State for Health, in exercise of the powers conferred by regulation 13(1) of the National Health Service (Performers Lists) (England) Regulations 2013(a), makes the following Determination.

Citation, commencement and application

1.—(1) This Determination may be cited as the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers List 2015.

(2) This Determination comes into force on the day after the day on which it is made.

(3) This Determination applies in respect of England only(b).

Interpretation

2. In this Determination—

“2006 Act” means the National Health Service Act 2006(c);

“2013 Regulations” means the National Health Service (Performers Lists) (England) Regulations 2013(d);

“the Board” means the National Health Service Commissioning Board(e);

“contractor” means a person with whom the Board has entered into contractual arrangements for the provision of primary medical services under a primary medical services contract or who, as a consequence of a property transfer scheme made under section 300 of the Health and Social Care Act 2012(f) (transfer schemes), is a party to such contractual arrangements with the Board;

“medical performers list” means the list prepared, maintained and published by the Board pursuant to regulation 3(1)(a) of the 2013 Regulations (performers lists);

“medical practitioner” means a medical practitioner whose name is included in the register of medical practitioners kept by the General Medical Council under section 2 of the Medical Act 1983(g) (registration of medical practitioners);

“practice” means the business operated by a contractor for the purpose of delivering services under a primary medical services contract;

“primary medical services” are medical services to which the provisions of Part 4 of the 2006 Act (medical services) apply;

(a) S.I. 2013/335.

(b) The powers exercised in making this Determination are exercisable by the Secretary of State only in relation to England.

(c) 2006 c.41.

(d) S.I. 2013/335; as amended by S.I. 2015/362.

(e) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the National Health Service Act 2006. Section 1H was inserted by section 9 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(f) 2012 c.7.

(g) 1983 c.54. Section 2 was amended by S.I. 2002/3135, S.I. 2006/1914, S.I. 2007/3101, S.I. 2008/1774 and S.I. 2014/1101.

“primary medical services contract” means—

- (a) a general medical services contract under section 84 of the 2006 Act(a) (general medical services contracts: introductory);
- (b) an arrangement under section 92 of the 2006 Act(b) (arrangements for the provision of primary medical services); or
- (c) a contractual arrangement for the provision of primary medical services under section 83(2) of the 2006 Act(c) (primary medical services); and

“suspended”, in relation to a medical practitioner, means suspended by the Board in accordance with regulation 12 of the 2013 Regulations (suspension).

Qualifying Medical practitioners

3.—(1) A medical practitioner may be entitled to receive payments from the Board by virtue of this Determination if sub-paragraphs (2) and (3) apply to that medical practitioner.

(2) This sub-paragraph applies to a medical practitioner who—

- (a) is suspended; and
- (b) immediately prior to the suspension (or the circumstances giving rise to the suspension) is or was—
 - (i) a contractor (including a partner in a partnership which is a contractor),
 - (ii) a person employed or engaged by a contractor to perform primary medical services,
 - (iii) a locum who has, or has had, a contract for services with a contractor to perform primary medical services,
 - (iv) a locum employed or engaged by a body that provides or provided locum or deputising services to contractors who, in the period of six months beginning immediately prior to the suspension, performed primary medical services which were provided at a contractor’s practice,
 - (v) a locum who does not, or did not, have a contract of service or a contract for services with a contractor or a body referred to in paragraph (iv) but who, in the period of six months beginning immediately prior to the suspension, performed primary medical services which were provided at a contractor’s practice.

(3) This sub-paragraph applies to a medical practitioner to whom sub-paragraph (2) applies who, apart from the suspension, and any suspension from the register of medical practitioners which does not provide grounds for removal from the medical performers list under regulation 28 of the 2013 Regulations (grounds for removal from the medical performers list), is able and permitted to perform primary medical services.

Entitlement to payments

4.—(1) A medical practitioner to whom paragraph 3(2) and (3) applies (“a suspended medical practitioner”) is, subject to the following provisions of this Determination, entitled to payments from the Board in respect of any complete calendar month, or part of a calendar month, for which—

- (a) where the suspended medical practitioner is a contractor who is an individual medical practitioner, that practitioner’s normal monthly payments (or a pro rata amount in the case of a part month) are withheld or deducted by the Board in accordance with the terms of the contractor’s primary medical services contract;
- (b) where the suspended medical practitioner is one of two or more individuals practising in a partnership, that medical practitioner is not entitled to receive at least 90% of the normal

(a) Section 84 was amended by paragraph 31 of Schedule 4 to the 2012 Act.
(b) Section 92 was amended by paragraph 36 of Schedule 4 to the 2012 Act.
(c) Section 93 was amended by paragraph 30 of Schedule 4 to the 2012 Act.

monthly drawings (or a pro rata amount in the case of a part month) from the partnership account, whether or not that medical practitioner is actually in receipt of those drawings;

- (c) where the suspended medical practitioner is or was employed or engaged by a contractor, other than as a locum, that medical practitioner is not entitled to receive at least 90% of that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services (or a pro rata amount of such earnings from such work in the case of a part month), whether or not that medical practitioner is actually in receipt of at least that amount from the contractor; or
- (d) in a case where the suspended medical practitioner is a locum, that medical practitioner is not entitled to an amount under the contract of service or the contract for services representing at least 90% of what the Board considers is a reasonable approximation of that medical practitioner's normal monthly NHS profits (or a pro rata amount in the case of a part month) from locum work as a performer of primary medical services, whether or not the suspended medical practitioner claims or is in receipt of that amount.

(2) For the purposes of determining what is or are "normal" income, payments, drawings, earnings or profits in respect of this paragraph and paragraphs 5 and 6, an average of the most recently available six complete months of data is to be taken, unless such a calculation is impossible or produces an amount which the Board considers represents an unreasonable amount by way of protected earnings for the medical practitioner during the period in which that practitioner is suspended.

Amount of payments

5.—(1) Subject to the following provisions of this Determination, if a suspended medical practitioner is entitled to payments from the Board in accordance with paragraph 4, the amount of those payments, in respect of each complete calendar month or part month during the period of the suspension, is—

- (a) where a contractor is an individual medical practitioner, an amount which the Board considers is a reasonable approximation of what, immediately before the suspension, amounted to 90% of the medical practitioner's normal monthly payments under the contractor's primary medical services contract;
- (b) where a contractor consists of two or more individuals practising in partnership and the suspended medical practitioner is or was a partner in the partnership immediately before the circumstances giving rise to the suspension, an amount which represents 90% of the medical practitioners normal monthly drawings (or a pro rata amount in the case of part months) from the partnership account;
- (c) where the suspended medical practitioner is or was employed or engaged by a contractor, other than as a locum, an amount which, immediately before the suspension, amounted to at least 90% of that medical practitioner's normal monthly NHS earnings from work as a performer of primary medical services (or a pro rata amount of such earnings from such work in the case of a part month);
- (d) where the suspended medical practitioner is a locum, an amount which the Board considers is a reasonable approximation of what immediately before the suspension amounted to 90% of the suspended medical practitioner's normal monthly NHS profits (or a pro rata amount in the case of part months) from locum work as a performer of primary medical services.

(2) If in respect of any month or part month for which a suspended medical practitioner is entitled to payments by virtue of paragraph 4, the suspended medical practitioner—

- (a) is entitled to receive—
 - (i) any remuneration from any alternative work that the medical practitioner has taken on following the suspension, or
 - (ii) any insurance payments by reason of the medical practitioner's cessation or reduction of work or income,

the sum which the medical practitioner is entitled to receive pursuant to sub-paragraph (1) must be reduced by £1.00 for each complete £2.00 to which entitlement to an amount of payment arises in respect of the alternative work or as an insurance payment; or

- (b) is entitled to receive any income from any body for or in respect of performing primary medical services before the suspension, the sum to which the medical practitioner is entitled pursuant to sub-paragraph (1) must be reduced by £9.00 for each complete £10.00 to which entitlement to an amount arises from that body.

(3) Any sum to be paid pursuant to sub-paragraph (1) must be paid subject to any lawful deduction of income tax, national insurance and superannuation contributions by the Board.

Conditions of payment

6.—(1) No payments may be made by the Board pursuant to this Determination unless the Board is satisfied that the suspended medical practitioner is entitled to a payment of that specific amount and, in particular, unless—

- (a) the Board has requested and obtained from the suspended medical practitioner accurate and reliable information regarding—
- (i) that medical practitioner's normal income from performing primary medical services, including details of any arrangements that any contractor or body has for paying that medical practitioner all or part of that medical practitioner's normal income during the period of the suspension,
 - (ii) any insurance policies that medical practitioner has taken out in order to provide payments if the medical practitioner's work ceases or is reduced,
 - (iii) any income which that medical practitioner receives from any body for or in respect of performing primary medical services before the suspension, and
 - (iv) any alternative work which that medical practitioner has taken on following the suspension; and
- (b) the suspended medical practitioner has—
- (i) warranted that the information which has been provided about the suspended medical practitioner's normal income (including any arrangements for paying that medical practitioner's normal income during the period of the suspension), insurance policies and any alternative work which that medical practitioner has taken on is accurate, and
 - (ii) undertaken to inform the Board immediately of any change to circumstances that might affect entitlement to payments by virtue of this Determination (such as that medical practitioner taking on alternative work).

(2) The Board may make payments to the suspended medical practitioner on account in respect of amounts that are likely to be payable to that medical practitioner pursuant to this Determination once the Board has received the information it needs in order to enable it to determine the specific sum payable.

Overpayments

7. If the Board makes a payment to a suspended medical practitioner pursuant to this Determination and that medical practitioner was not entitled to receive all or any part of that payment whether because—

- (a) the conditions relating to or underlying entitlement to the payment are or were not met; or
- (b) the payment was calculated incorrectly (including where a payment on account overestimates the amount that is payable),

the Board may recover the amount of the overpayment by deducting an equivalent amount from any other payment which is payable by the Board to the suspended medical practitioner pursuant to this Determination.

Revocation and saving

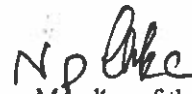
8.—(1) Subject to sub-paragraph (2), the Secretary of State's Determination: Payments to Medical Practitioners Suspended from the Medical Performers Lists made on 28th March 2013 ("the 2013 Determination") is revoked.

(2) In a case where—

- (a) a decision of the Board was made before the date on which this Determination is made which would have continuing effect but for sub-paragraph (1); or
- (b) a decision of the Board is pending immediately before the date on which this Determination is made in respect of a suspension under the 2013 Regulations,

the 2013 Determination continues to apply to the extent necessary to enable payments to be made and recovered in the case of any overpayment.

Signed by authority of the Secretary of State



Member of the Senior Civil Service
Department of Health

Date 21 April 2015

