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D E T E R M I N A T I O N

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**NATIONAL HEALTH SERVICE, ENGLAND**

**Determination on Payments to Persons Suspended from the  
Ophthalmic Performers List 2013**

The Secretary of State, 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 and commencement**

1. This Determination may be cited as the Determination on Payments to Persons Suspended from the Ophthalmic Performers List 2013 and comes into force on 1st April 2013.

**Interpretation**

2. In this Determination—

“2009 Determination” means the Determination on Payments to Persons suspended from the Ophthalmic Performers List 2009(b);

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

“ophthalmic performers list” means the list prepared, maintained and published by the Board pursuant to regulation 3(1)(c) of the Performers Lists Regulations (performers lists);

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

“Primary Care Trust” means a Primary Care Trust which was established and which subsisted immediately before the coming into force of section 34 of the Health and Social Care Act 2012(d) (abolition of Primary Care Trusts); and

“suspended Practitioner” means an ophthalmic practitioner suspended by the Board from its ophthalmic performers list in accordance with regulation 12 of the Performers Lists Regulations (suspension).

**Duty to make payments**

3. The Board must make payments determined in accordance with this Determination to a suspended Practitioner.

**Calculation of payments**

4. Subject to the following paragraphs of this Determination, the Board must, for each complete month and any residual part month that the suspended Practitioner is suspended, make a payment to, or in respect of the suspended Practitioner of such sum as seems to the Board to be fair and

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- (a) S.I. 2013/335. The powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England.
- (b) This determination was signed on 19th January 2009.
- (c) The National Health Service Commissioning Board was established by section 1H of the National Health Service Act 2006 (c.41). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c.7).
- (d) 2012 c.7.

reasonable, having regard in particular, where possible, to the average monthly remuneration paid in respect of an ophthalmic practitioner performing primary ophthalmic services in the period of 12 months ending on the date on which the suspension takes effect.

#### **Other factors relevant to payments**

5. In calculating what is fair and reasonable for the purposes of paragraph 4, the Board must take into account—

- (a) any expenses that the suspended Practitioner would have incurred as an ophthalmic practitioner if not suspended, and
- (b) any income from alternative employment that the suspended Practitioner undertakes or could reasonably be expected to undertake whilst suspended.

#### **Evidence of remuneration**

6. Payments are payable under this Determination subject to the condition that the suspended Practitioner provides the Board with such information as it may reasonably require in order to assist it in complying with the preceding paragraphs of this Determination, and in particular with information relating to—

- (a) all remuneration the suspended Practitioner received from performing primary ophthalmic services in the period of 12 months ending on the date on which the suspension takes effect;
- (b) the expenses the suspended Practitioner incurred in assisting in the performing of primary ophthalmic services during that 12 month period; and
- (c) any income from alternative employment that the suspended Practitioner undertakes or could reasonably be expected to undertake while suspended.

#### **Failure to provide information**

7. Where the suspended Practitioner breaches the condition in paragraph 6, the Board may deduct from the amount it might otherwise pay to the suspended Practitioner under paragraph 4 such amount as it considers appropriate in the circumstances, having regard to the desirability of leaving the suspended Practitioner with the minimum amount (which may be nothing) that the Board might be required to pay under this Determination if it possessed all the information that has not been provided.

#### **Revocation of the 2009 Determination**

8.—(1) Subject to paragraph (2), the 2009 Determination is revoked.

(2) Notwithstanding the revocation provided for in paragraph (1), the 2009 Determination continues to apply to the extent necessary to—

- (a) establish entitlement to payment,
- (b) make any payment due, or
- (c) recover a payment made

under that Determination, and for these purposes any reference to a Primary Care Trust in that Determination is to be taken as a reference to the Board.

Signed by authority of the Secretary of State



Date

26 March 2013

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