

NATIONAL HEALTH SERVICE ACT 1977

Secretary Of State's Determination

Payments to Medical Practitioners Suspended From Medical Performers Lists

The Secretary of State for Health, in exercise of the powers conferred by regulation 13(17) of the National Health Service (Performers List) Regulations 2004^(a), and of all other powers enabling him in that behalf, hereby makes the following Determination:–

Commencement, application and interpretation

1.-(1) This Determination applies to in relation to England only and shall come into force on 1st April 2004.

(2) In this Determination–

“the 1983 Act” means the Medical Act 1983^(b);

“the 2004 Order” means the General Medical Services Transitional and Consequential Provisions Order 2004^(c);

“the 2004 Regulations” means the National Health Service (Performers List) Regulations 2004;

“contractor” means–

- (a) a person with whom a PCT has entered into a general medical services contract or a default contract;
- (b) a person with whom a PCT has entered into a section 28C arrangements which require the provision by that person of primary medical services;
- (c) a person with whom a PCT has made contractual arrangements for the provision of primary medical services under section 16CC(2)(b) of the National Health Service Act 1977^(d);

“default contract” means a contract entered into under article 13 of the 2004 Order (entitlement to a contract under section 176(3) of the Act);

“medical performers list” shall be construed in accordance with regulation 3(1) of the 2004 Regulations;

“PCT” means a Primary Care Trust, and “its PCT” in relation to a contractor means the PCT with which the contractor has entered into its contract or arrangements;

^(a) S.I. 2004/585.

^(b) 1983 c.54.

^(c) S.I. 2004/433.

^(d) 1977 c.49. Section 16CC was inserted by section 174 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

“provider” means–

- (a) a contractor; or
- (b) a PCT that provides primary medical services through medical practitioners employed or engaged by it;

“relevant contractor” shall be construed in accordance with paragraph 2;

“Statement of Fees and Allowances” means the statement determined and published by the Secretary of State under regulation 34 of the National Health Service (General Medical Services) Regulations 1992^(a), as that statement had effect on 31st March 2004; and

“suspended” has the same meaning as in the 2004 Regulations, and “suspension” unless the context otherwise requires shall be construed accordingly,

and other expressions used in this Determination have, unless the context otherwise requires, the meanings they bear in the 2004 Regulations.

(3) In determining what is or are “normal” income, salary, payments, drawings or NHS profits for the purposes of this Determination, 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, in the PCT’s view, represents an unreasonable amount by way of protected earnings for the suspended medical practitioner during his suspension.

Medical practitioners who may be entitled to payments by virtue of this Determination

2. A suspended medical practitioner may be entitled to payments from a PCT that suspends him from its medical performers list (“the relevant PCT”) by virtue of this determination if he is or was immediately prior to his suspension (or immediately prior to the circumstances which precipitated his suspension)–

- (a) a contractor, and its PCT is or was the relevant PCT;
- (b) a partner or shareholder in a contractor, and its PCT is or was the relevant PCT;
- (c) employed by a provider to perform primary medical services, and–
 - (i) the provider is or was a contractor, or
 - (ii) the provider is or was the relevant PCT;
- (d) a locum who has or had a contract for services with a provider to perform primary medical services, and–
 - (i) the provider is or was a contractor, or
 - (ii) the provider is or was the relevant PCT;

^(a) S.I. 1992/635; regulation 34 was amended by S.I. 1993/540, 1997/2468, 2000/601 and 2002/2469.

- (e) a locum employed or engaged by a body that provides or provided a locum or deputising services to providers, who in the six months immediately prior to his suspension performed primary medical services which were–
 - (i) provided by the relevant PCT, or
 - (ii) provided by a contractor; or
- (f) a locum who does or did not have a contract of service or for services with a provider or with a body that provides or provided locum or deputising services to providers, but who in the six months immediately prior to his suspension performed primary medical services which were–
 - (i) provided by the relevant PCT, or
 - (ii) provided by a contractor,

and apart from the suspension, and any suspension from the Medical Register which does not provide for grounds for removal from a medical performers list under regulation 26 of the 2004 Regulations, he is able and permitted to perform primary medical services.

Duty to pay

3. Subject to the following provisions of this Determination, where, by virtue of paragraph 2, a suspended medical practitioner may be entitled to payments from the relevant PCT, he shall be entitled to payments from it, in respect of any complete calendar month or part month for which he is suspended, if, in the case of–

- (a) a contractor, the normal monthly payments (or a *pro rata* amount in the case of part months) under his contract or arrangements with the relevant PCT have been suspended;
- (b) a partner in a contractor, or a suspended medical practitioner who was a partner in a contractor–
 - (i) when he was suspended, or
 - (ii) immediately prior to the circumstances which precipitated his suspension,

he is not entitled to at least 90% of his normal monthly drawings (or a *pro rata* amount in the case of part months) from the partnership account, whether or not he is actually in receipt of those drawings;
- (c) an employee of a provider (including an employee who is a shareholder in a contractor), or a suspended medical practitioner who was an employee of a provider (including an employee who was a shareholder in a contractor)–
 - (i) when he was suspended, or
 - (ii) immediately prior to the circumstances which precipitated his suspension,

he is not entitled to at least 90% of his normal monthly salary (or a *pro rata* amount in the case of part months), whether or not he is actually in receipt of that salary; or

- (d) a locum, he is not entitled to an amount under a contract of service or a contract for services representing at least 90% of what (in the PCT's view) is a reasonable approximation of his 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, whether or not he claims or is in receipt of that amount.

Amount of payments

4.-(1) Subject to the following provisions of this Determination, if a suspended medical practitioner is entitled to payments from a PCT by virtue of paragraph 3, the amount to which he is entitled, in respect of each complete calendar month or part month for which he is suspended, is in the case of—

- (a) a contractor, a reasonable approximation (in the PCT's view) of what, at the time of his suspension, amounted to 90% of his normal monthly NHS profits (or a *pro rata* amount in the case of part months) arising under his contract with the PCT;
- (b) a partner in a contractor, or a suspended medical practitioner who was a partner in a contractor—
 - (i) when he was suspended, or
 - (ii) immediately prior to the circumstances which precipitated his suspension, 90% of what, at the time of his suspension (or immediately prior to the circumstances which precipitated his suspension), were his normal monthly drawings (or a *pro rata* amount in the case of part months) from the partnership account;
- (c) an employee of a provider (including an employee who is a shareholder in a contractor), or a suspended medical practitioner who was an employee of a provider (including an employee who was a shareholder in a contractor)—
 - (i) when he was suspended, or
 - (ii) immediately prior to the circumstances which precipitated his suspension, 90% of what, at the time of his suspension (or immediately prior to the circumstances which precipitated his suspension), was his normal monthly salary (or a *pro rata* amount in the case of part months);
- (d) a locum, a reasonable approximation (in the PCT's view) of what—
 - (i) when he was suspended, or
 - (ii) in the case of an ex-employee of a locum or deputising services provider, immediately prior to the circumstances which precipitated his suspension, amounted to 90% of his 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 3, he—

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

the sum which he is entitled pursuant to sub-paragraph (1) shall be reduced by £1 for each complete £2 to which he is entitled to receive in respect of the alternative work or as an insurance payment;

- (b) is entitled to receive any income from any provider for or in respect of which he was performing primary medical services before his suspension, the sum to which he is entitled pursuant to sub-paragraph (1) shall be reduced by £9 for each complete £10 to which he is entitled to receive from that provider; or
- (c) receives any payment under article 41(1) of the 2004 Order (persons not able to enter into a default contract), the monthly amount to which he is entitled pursuant to sub-paragraph (1) shall be reduced by the monthly amount of the payment that he receives under the said article 41(1).

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

Conditions of payment

5. No payments shall be payable pursuant to this Determination unless the PCT is satisfied that the suspended medical practitioner is entitled to that specific sum, and in particular unless—

- (a) the PCT has obtained from the suspended medical practitioner accurate and reliable details of—
 - (i) his normal income from performing primary medical services, including details of any arrangements that any provider has for paying him all or part of his normal income while he is suspended,
 - (ii) any insurance policies he has taken out in order to provide him with payments if his work ceases or is reduced, and
 - (iii) any alternative work he has taken on following his suspension;
- (b) the suspended medical practitioner has—
 - (i) warranted that the information that he has provided about his normal income (including any arrangements for paying him his normal income while he is suspended), insurance policies and any alternative work he has taken on is accurate, and
 - (ii) undertaken to inform the PCT immediately of any change to his circumstances (such as his taking on alternative work) what might affect his entitlement to payments by virtue of this Determination,

but a PCT may make payments to him on account in respect of amounts that are likely to be payable to him pursuant to this Determination once it has the information it needs in order to determine the specific sum payable.

Overpayments

6. If a PCT makes a payment to a medical practitioner pursuant to this Determination and the medical practitioner was not entitled to receive all or part thereof, 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 to fall due),

the PCT may recover the amount of the overpayment by deducting an equivalent amount from any other payment payable by the PCT to the medical practitioner under this Determination.

Transitional arrangements

7.-(1) If a suspended medical practitioner—

- (a) was, on 31st March 2004, entitled to receive payments in respect of his suspension under the Statement of Fees and Allowances; and
- (b) the gross monthly amount to which he was so entitled, less the monthly amount of any payments he receives under article 41(1) of the 2004 Order (persons not able to enter into a default contract), is greater than the gross monthly amount to which he is entitled by virtue of this Determination,

for the duration of his suspension, he shall continue to receive the gross monthly amount to which he was entitled in respect of his suspension under the Statement of Fees and Allowances, but subject to any lawful deduction of income tax, national insurance and superannuation contributions by the PCT.

(2) A suspended medical practitioner who is a person to whom article 13(2) or (3) of the 2004 Order applies is only entitled to receive payments under this Determination if he does not enter into a default contract or a general medical services contract which takes effect for payment purposes on 1st April 2004.

Signed by authority of the Secretary of State for Health



24 March 2004

Department of Health
A member of the Senior Civil Service