



Department of  
**Health, Social Services  
and Public Safety**

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AN ROINN

**Sláinte, Seirbhísí Sóisialta  
agus Sábháilteachta Poiblí**

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Date: 5 January 2010

To: Mr John Compton, Chief Executive, Health and Social Care Board  
Dr Sloan Harper, Health and Social Care Board  
Dawn Raine, Health and Social Services Board  
Pat Brolly, Health and Social Care Board  
Tom Coyle, Health and Social Care Board  
Margaret O'Brien, Health and Social Care Board  
Michele Beckmez, Health and Social Care Board

Copied for information to: Chair, GPC (NI)

Dear Colleague

**PRIMARY MEDICAL SERVICES PERFORMERS LIST – MAKING  
PAYMENTS TO SUSPENDED DOCTORS**

1. Since the Health and Personal Social Services (Primary Medical Services Performers Lists) (Amendment) Regulations (Northern Ireland) 2008 came into operation on 8th December 2008 the Health and Social Care Board (the Board) has the power to suspend GPs on its performers list. While suspended by the Board a GPs name will remain on the Performers List but they will be treated as if their name has been removed and will not be able to provide any primary medical services for any patient.
2. The contractual and financial position for suspended GPs will vary according to the contractual relationship a GP has with an employer or contracting body or their partnership agreement. Suspended GPs who

are not having their income maintained may be entitled to get income maintenance payments from the Board.

3. The attached Determination “ Payments to Medical Practitioners Suspended from the Primary Medical Services Performers List Determination (Northern Ireland) 2010” makes provision for the making of such payments, the type of medical practitioners who may be entitled to payments and the amount of payments.

Yours faithfully

**Robert Kirkwood**  
**Primary and Community Care Directorate**

## HEALTH AND PERSONAL SOCIAL SERVICES (NORTHERN IRELAND) ORDER 1972

### Payments to Medical Practitioners Suspended from the Primary Medical Services Performers List Determination (Northern Ireland) 2010

The Department of Health, Social Services and Public Safety<sup>(1)</sup>, in exercise of the powers conferred by regulation 15<sup>(2)</sup> of the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004 <sup>(3)</sup>, makes the following Determination:

#### Citation, commencement and interpretation

1.—(1) This Determination may be cited as the Payments to Medical Practitioners Suspended from the Primary Medical Services Performers List Determination (Northern Ireland) 2010 and shall come into operation on 4 January 2010.

(2) In this Determination—

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(4)</sup>;

“the 2004 Regulations” means the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004;

“the Board” means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(5)</sup>;

“contractor” means —

(a) a person with whom the Board has entered into a general medical services contract; or

(b) a person with whom the Board has made contractual arrangements for the provision of primary medical services under Article 56(2)(b) of the 1972 Order<sup>(6)</sup>;

“deputising services provider” means an organisation which directly arranges for qualified medical practitioners to provide primary medical services to patients of a contractor at the request of the contractor or the Board;

“primary medical services performers list” shall be construed in accordance with regulation 4(1) of the 2004 Regulations;

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(1) See S.I.1999/283 (N.I.), Article 3 (6)

(2) See regulation 12A(16) (Suspension) as inserted into S.R.2004 No 149 by S.R.2008 No. 434 which provides that during a period of suspension, payments shall be made to the performer in accordance with regulation 15.

(3) S.R. 2004 No.149 as amended by S.R. 2008 No. 434

(4) S.I.1972/1265 (N.I. 14)

(5) 2009 c.1 (N.I.)

(6) Article 56 was substituted by Article 3 of S.I.2004/311 (N.I. 2)

“ provider” means—

- (a) a contractor; or
- (b) the Board which provides primary medical services through medical practitioners employed or engaged by it; and

“suspended” has the 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 health service profits for the purpose 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 Board’s view, represents an unreasonable amount by way of protected earnings for the suspended medical practitioner during suspension.

### **Medical Practitioners who may be entitled to payments by virtue of this Determination**

2. A medical practitioner suspended by the Board from the primary medical services performers list may be entitled to payments from the Board by virtue of this Determination if the medical practitioner was immediately prior to the suspension (or immediately prior to the circumstances which precipitated the suspension)—

- (a) a contractor;
- (b) a partner or shareholder in a contractor;
- (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 Board;
- (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 Board;
- (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 the suspension performed primary medical services which were—
  - (i) provided by the Board, or
  - (ii) provided by a contractor; or
- (f) a locum who does not 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 the suspension performed primary medical services which were —
  - (i) provided by the Board, or
  - (ii) provided by a contractor,

and apart from the suspension, and any suspension from the Medical Register which does not provide for removal from the primary medical services performers list under regulation 9 of the 2004 Regulations, the medical practitioner 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 Board, the medical

practitioner shall be entitled to payments from it, in respect of any complete calendar month or part month from which the suspension started, if, in the case of—

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

the medical practitioner is not entitled to at least 90% of the medical practitioner's normal monthly drawings (or a pro rata amount in the case of part months) from the partnership account, whether or not the medical practitioner 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 the medical practitioner was suspended, or
  - (ii) immediately prior to the circumstances which precipitated the suspension,

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

- (d) a locum, who is not entitled to an amount under a contract of service or a contract for services representing at least 90% of what (in the Board's view) is a reasonable approximation of the locum's normal monthly health service 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 the locum 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 the Board by virtue of paragraph 3, the amount to which the medical practitioner is entitled, in respect of each complete calendar month or part month of the suspension, is in the case of—

- (a) a contractor, a reasonable approximation (in the Board's view) of what, at the time of the suspension, amounted to 90% of the contractor's normal monthly health service profits (or a pro rata amount in the case of part months) arising under the contract with the Board;
- (b) a partner in a contractor, or a suspended medical practitioner who was a partner in a contractor—
  - (i) when the medical practitioner was suspended, or
  - (ii) immediately prior to the circumstances which precipitated the suspension,

90% of what, at the time of the suspension (or immediately prior to the circumstances which precipitated the suspension), was the medical practitioner's 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 the medical practitioner was suspended, or
  - (ii) immediately prior to the circumstances which precipitated the suspension,

90% of what, at the time of the suspension (or immediately prior to the circumstances which precipitated the suspension), was the medical practitioner's normal monthly salary (or a pro rata amount in the case of part months);

- (d) a locum, a reasonable approximation (in the Board's view) of what—
  - (i) when the locum 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 the suspension,

amounted to 90% of the medical practitioner's normal health service 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, the 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 to which the medical practitioner is entitled pursuant to sub-paragraph (1) shall be reduced by £1 for each complete £2 to which the medical practitioner is entitled to receive in respect of the alternative work or as an insurance payment; or

- (b) is entitled to receive any income from any provider for or in respect of which the medical practitioner was performing primary medical services before the suspension, the sum to which the medical practitioner is entitled pursuant to sub – paragraph (1) shall be reduced by £9 for each complete £10 to which the medical practitioner is entitled to receive from that provider.

(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 Board.

### **Conditions of payment**

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

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

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

## **Overpayments**

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

Signed on behalf of the Department of Health, Social Services and Public Safety on 4th January 2010



A senior officer of the Department of Health, Social Services and Public Safety