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The suspended GP performer

Guidance for GPs



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Introduction

The GPC produced guidance on suspended GPs in 2001. Since then, the legislative frameworks for both GP contracts and the GMC have changed. This guidance seeks to provide LMCs and GPs with authoritative guidance on the implications for, and actions required by, a suspended GP performer.

The guidance is set out to cover the wide variety of contractual arrangements available to GPs. This guidance applies to England, Wales, Scotland and Northern Ireland but provisions differ between these nations. The GPC is issuing this guidance subject to revision following discussion between the Scottish GPC and the Scottish Executive Health Department.

What is suspension?

The term suspension is used in two entirely different circumstances. It may be either a neutral act while an investigation or other proceeding takes place or, in the case of a final decision by a Fitness to Practise Panel, suspension may be disciplinary in nature.

Suspension by the General Medical Council

The GMC has powers to suspend doctors for reasons relating to discipline, health and performance. It also has powers to suspend a doctor during the investigation of allegations where the panel believe it is in the interest of the public or the doctor so to do.

A. If suspension follows a final Fitness to Practise Panel decision the PCO:

- **Must**, other than in an Health Case, remove the doctor's name from its performers list¹.

B. If suspension is an 'interim suspension'² by a Fitness to Practise or Interim Orders Panel or is a health case the PCO:

- **Is not required to** remove the doctor's name from its performers list³.
- **Must** not count any period of suspension when calculating the 12 month period after which it may remove a doctor who has not demonstrated that he has performed primary medical services within the area of the PCO.
- **May** pursue action to remove the doctor from its performers list for the same or other reasons.⁺

⁺ Discussion about interim suspension in Scotland is ongoing between the Scottish GPC and the Scottish Executive Health Department. This guidance will be updated once the issue has been clarified.

Suspension by the PCO

PCOs in England and Wales have the power to suspend GPs on their performers list. These powers are set out in the respective performers lists regulations 2004, as amended.⁴ Health Boards in Scotland will soon also have the power to suspend. Any doctor faced with suspension proceedings should seek the advice of their LMC, MDO and, if BMA members, the BMA.

There is no right of appeal against a suspension, but there is against any definitive action a PCO may take as a result of the allegations which lead to suspension. While suspended by a PCO, a GP's 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 service for any patient.

When a PCO is considering suspending a GP from its performers list it:

- **Must** give :
 - notice of any allegation against the doctor involved;
 - notice of what action it is considering and on what grounds; and
 - the opportunity for the doctor's case to be put forward at an oral hearing before the PCO, on a specified day, provided that at least 24 hours notice of the hearing is given
- **May** if the performer does not wish to have an oral hearing or does not attend the oral hearing, suspend the performer with immediate effect
- **Must** if an oral hearing does take place, take into account any representations made before it reaches its decision
- **May** suspend the performer with immediate effect following the hearing
- **Must** notify the performer of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision
- **Must** notify the performer of any right of review under the regulations.
- **Must** specify a time, not exceeding 6 months, for the suspension (the suspension may last longer than six months where the suspension is the result of a regulatory body or criminal investigations or proceedings and the PCT is awaiting an outcome)
- **May** increase the period of suspension to a maximum of 6 months
- **May** seek an extension from the FHSAA beyond 6 months (the FHSAA in considering this application will look for evidence that the PCO is taking all possible steps to conclude its inquiries).

The contractual and financial position for suspended GPs

The contractual and financial position for suspended GPs will vary according to the contractual relationship a GP has with an employer or contracting body, and his/her partnership agreement. This section of the guidance considers each arrangement in turn. The financial support available to suspended GPs also varies by nation, as noted below.

A number of documents including the statements of financial entitlements and performers list regulations across the UK and national determinations in England and Wales provide for payments to be made in connection with suspended GPs where the suspension is a neutral act (see Appendix 1).

Salaried GPs

In England and Wales the PCO must make payments to a suspended employed doctor, under national Determinations, to make up any reduction in payments by the employer to 90% of that doctor's normal salary payments (pro rata for part months). Northern Ireland and Scotland expect to introduce similar Determinations during 2006.

The new contract agreement introduced model terms and conditions for doctors employed by either a GMS practice or a PCO, providing minimum conditions for doctors so employed (although it is quite acceptable for improved terms to be offered). There are no minimum terms and conditions for doctors employed by contractors providing services under either PMS or APMS arrangements.

Paragraph 36 (iii) of the PCO and GMS minimum terms provides for a practice to terminate the employment of a doctor suspended either by the PCO or GMC, but subject to the practice's or PCO's own disciplinary procedures. The sessional GPs subcommittee is currently trying to amend this provision so that suspension from the list for reasons not amounting to grave misconduct does not merit summary dismissal.

Locum GPs

In England and Wales locums are also entitled to a reasonable approximation of what, in the PCO's view, amounted to 90% of their 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. Again, similar provisions are likely to be introduced in Scotland and Northern Ireland in 2006.

GPs who are providers of primary medical services

Primary medical service providers may be affected by suspension either by being a suspended doctor within a partnership, by being a suspended sole practitioner, by having a suspended doctor as one of the partners or by being an employer of a suspended doctor. The principles underlying the actions are the same in all cases.

Suspension from the performers list does not suspend the contract, even in the case of a sole practitioner. The contract continues in the same way, but the way services are provided, and the way in which the practitioner's personal income is maintained, varies according to the parties to the contract (but not according to whether the contract is for PMS, GMS or APMS). The entitlement of suspended GP providers to income maintenance during suspension also varies by nation.

If the suspended doctor continues to receive at least 90% of normal drawings, or if an employee continues to receive at least 90% of normal salary, a GMS partnership may be eligible for payments under Part 4 Paragraph 11 of the SFE. It is normal for the PCO to determine whether or not it is in fact necessary for a GMS practice to engage a locum, depending on the circumstances of the practice (paragraph 11.4 of the SFE).

- If the PCO offers a locum, no payments are due
- If the practice provides a locum the PCO may provide financial assistance in respect of the cost of engaging a locum (a maximum of £978.91 per week in 2006)

In England and Wales, if the doctor's income, drawings or salary are less than 90% of the usual amount, that doctor will be eligible for payments under the Determinations as shown

above for locum or salaried doctors. It is likely that Scotland will follow suit.

A partnership agreement should contain provisions for the eventuality of suspension by the PCO, particularly regarding provision of locum cover, in order to protect the income of both the suspended partner and the other partners. There are, broadly speaking, two ways of doing this:

- the partnership agreement can stipulate that the suspended partner will continue to receive their normal share of profit but that they will indemnify the other partners against locum expenses, such that the indemnity is deducted from any monthly drawings
- to trigger payments under the determination governing payments to suspended performers the partnership agreement could stipulate that the suspended doctor will not receive any of their normal drawings, and that he or she will indemnify the other partners against locum expenses.

In either case, the partner's drawings will be less than 90% of their normal amount, and in England and Wales the doctor will be eligible for payments under the Determination. It is particularly important that non-GMS contracted GP partnerships contain such clauses because the provisions in the SFE for PCO support for locums during suspension do not apply automatically to non-GMS practices. Similar provisions are due to be introduced in Scotland and Northern Ireland in 2006.

Doctors in contract either as sole practitioners or in partnerships with persons not on the medical performers list

The contractual position in such circumstances is no different to any other contract. However, there are a number of practical difficulties which may make the continuation of the contract difficult and doctors in this position are urged to seek written agreement with their PCO about their role in the provision of services.

The PCO has no power to 'take over' a practice without terminating the contract; such action is contrary to the health departments' and GPC's joint understanding that suspension is a neutral act.

A contractor may subcontract any or all of the contract to any other appropriate person or organisation. The PCO's agreement is required to subcontract clinical matters to anyone other than an health professional.

A suspended GP should not be involved in the clinical management of patients.

It may be appropriate for the doctor to agree with the PCO a continued role in the management of the practice.

If the PCO is unhappy for the doctor to be involved in managing the practice and believes patients' safety is at risk, it may be able to take action to terminate the contract and, therefore, an agreement should be reached.

There is no provision for payments under the contract to be suspended, although this is stated as a requirement for payments under 3(a) of the Determinations (payments from the

PCO of a reasonable approximation of 90% of normal monthly NHS profits). It follows that, according to the wording of the Determinations (but probably not according to its intention), in order to preserve a sole practitioner's income of at least 90% of the pre-suspension level, the PCO must, strictly speaking, either make payments under section 28Y of the NHS Act 1977 as amended, or provide the locum itself.

General conditions for PCO payments to performers

- Tax and National Insurance contributions are to be deducted by the PCO
- The GP must provide the PCO with adequate details of previous income, current income and insurance payments
- The PCO must deduct
 - £1 from every £2 received from alternative work or insurance payments
 - £9 from every £10 the GP is entitled to receive from any provider for whom they were performing services before suspension
- The GP must warrant that the information provided is correct
- Overpayments can be reclaimed

These arrangements will probably be mirrored in Scotland.

BMA help for suspended GPs

Suspended doctors with BMA membership can contact askbma on 0870 60 60 828 for practical advice. Doctors can also receive help, counselling and personal support through the BMA. A BMA Counselling Service is staffed by professional telephone counsellors and is available 24 hours a day, seven days a week. All counsellors are members of the British Association for Counselling and Psychotherapy and are bound by strict codes of confidentiality and ethical practice. Doctors for Doctors is an enhancement of the BMA Counselling Service, giving doctors in distress or difficulty the choice of speaking in confidence to another doctor. Doctor-advisers can work with those referred to them to provide support on a wide range of issues such as drug and alcohol problems, bullying at work, mental health issues and referral to the GMC or the National Clinical Assessment Service. To contact the BMA Counselling Service or Doctors for Doctors call 08459 200169. For further information visit www.bma.org.uk/doctorsfordoctors

Appendix 1 – Examples of suspension cases

Example A

Dr N is a single-handed doctor in contract with Summertown PCT to provide general medical services. The PCT have received an allegation of fraudulent activity from the NHS Counter Fraud Service and have suspended Dr N from its performers list pending further investigation.

Although Dr N is suspended, this is a neutral act and the NHS is required to maintain Dr N's income during the period of suspension. Under the SFE the PCT provide Dr N's practice with £978.91 a week towards locum costs. However, the locum required to cover Dr N's absence costs almost £2,000. Dr N meets this difference out of his normal income. As a result he is eligible for payment from the PCT under the Secretary of State's Determination. He will therefore be paid an additional amount to ensure he receives a total of 90% of what, in the PCT's view, is a reasonable approximation of his normal monthly NHS profits arising under his contract with the PCT at the time of his suspension.

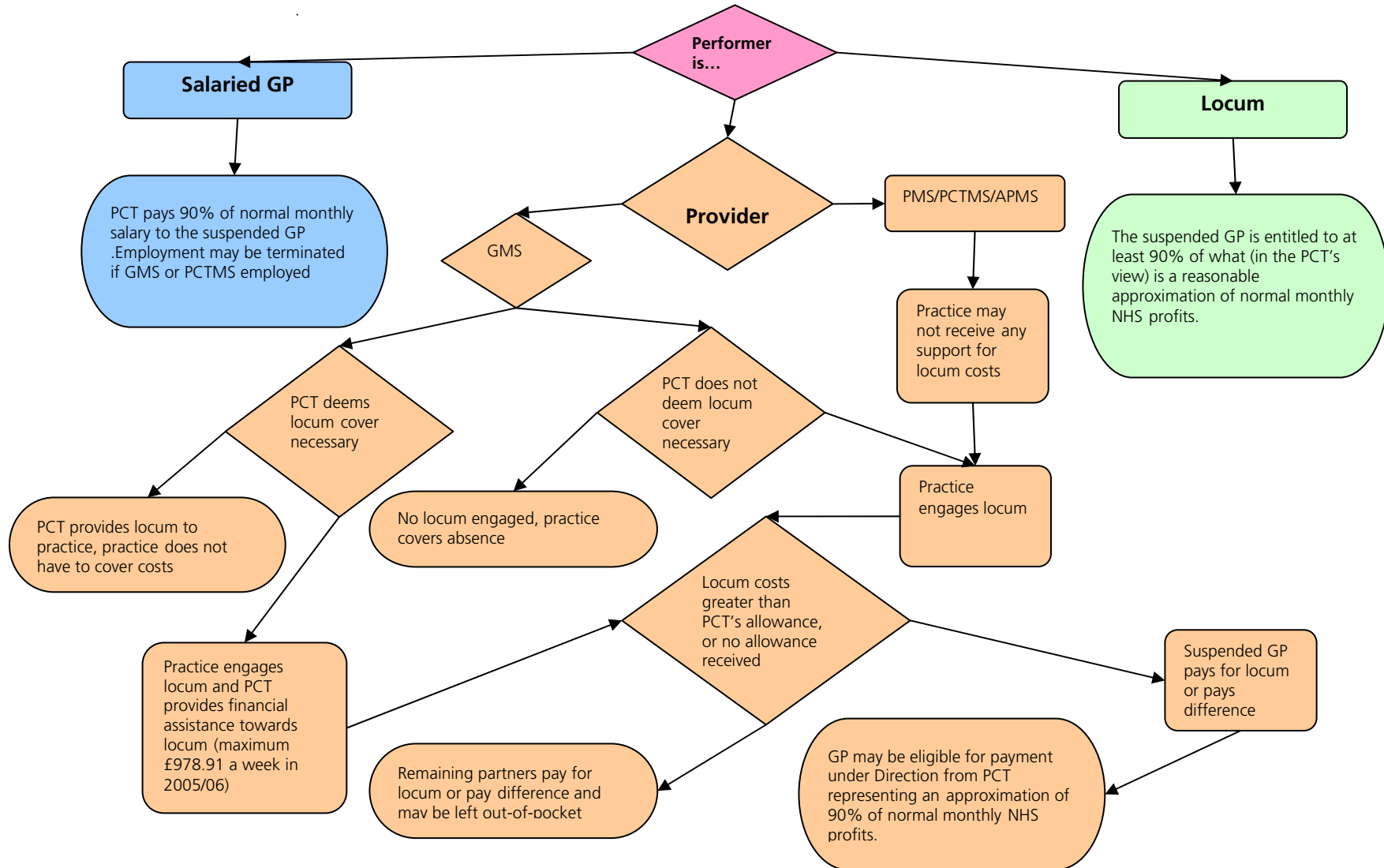
As Dr N's contract is not suspended he is still responsible for its delivery. As the suspension is based on a suggestion of financial irregularity, the PCT will wish to negotiate with him joint arrangements for the management of the practice; these arrangements should not be at Dr N's expense.

Example B

Dr L is a partner in a large partnership in contract with Blankshire PCT to provide personal medical services. She has been suspended from the performers list after an allegation of poor performance following a complaint, which she strenuously denies. The practice is highly regarded and carries out a significant amount of non NHS work. Dr L's partners are in no way concerned over her performance although they recognise that she has a reputation for being 'direct' in her approach to patients. As Dr L's partners are happy with her work they permit her to carry out management activities on behalf of the partnership.

The practice has a partnership agreement revised following the introduction of both PMS and the performers list. However, this agreement does *not* require a suspended partner to indemnify, by a reduction in normal drawings, the remaining partners to enable a locum to be employed. The PCT does not consider a locum to be necessary as it believes the partners can cover the absence themselves. The practice decides it needs to employ a locum. As the PCT will not contribute towards this cost and Dr L is not required to pay for the locum, the costs are met by the remaining partners, leaving them all out of pocket. If the partnership agreement had provided for the suspended partner to cover the costs of a locum through a reduction in her normal drawings, the other partners' income would have been unaffected and Dr L would have been able to recover 90% of her normal drawings under the Determination; under this partnership agreement only Dr L is able to seek payments to ensure 90% of her normal drawings.

Appendix 2 – Flowchart of support entitlements in England and Wales where GPs are suspended from performers lists



Appendix 3 – Regulatory basis for payments in connection with suspended GPs

- England –** The GMS Statement of Financial Entitlements, section 11
www.opsi.gov.uk/si/si2004/20040585.htm
- The National Health Service (Performers Lists) Regulations 2004, regulation 13 (17) www.dh.gov.uk/assetRoot/04/11/35/25/04113525.pdf
- The Secretary of State’s Determination: Payments to Medical Practitioners Suspended from Medical Performers Lists
www.dh.gov.uk/assetRoot/04/07/84/13/04078413.pdf
- Northern Ireland –** The Statement of Financial Entitlements, section 11
www.dhsspsni.gov.uk/hss/gp_contracts/documents/SFE-NI-Final-Draft.pdf
- The Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004, regulation 15 (1)
www.opsi.gov.uk/sr/sr2004/20040149.htm
- [Directions for payments to suspended practitioners are due to be introduced in 2006]
- Scotland -** The Statement of Financial Entitlements, section 11
[www.paymodernisation.scot.nhs.uk/gms/leg_guide/legislation/PCA2005\(M\)09.pdf](http://www.paymodernisation.scot.nhs.uk/gms/leg_guide/legislation/PCA2005(M)09.pdf)
- The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004, regulation 15 (1)
www.opsi.gov.uk/legislation/scotland/ssi2004/20040114.htm
- [Directions for payments to suspended practitioners are due to be introduced in 2006]
- Wales -** The Statement of Financial Entitlements, section 11
www.wales.nhs.uk/sites3/docopen.cfm?orgid=480&ID=41211&4826C532-C345-461E-939EA0F9870B4264
- The National Health Service (Performers Lists) (Wales) Regulations 2004, regulation 13 (17)
www.hmsso.gov.uk/legislation/wales/wsi2004/20041020e.htm
- Determination by the National Assembly for Wales: Payments to Medical Practitioners Suspended from Medical Performers Lists
www.wales.nhs.uk/sites3/docopen.cfm?orgid=480&ID=33580&ADBBA BC0-4E7D-45AB-AD3149A5F7E15E40

¹ It therefore follows that any such suspended GP is automatically disqualified from membership of an LMC, PCO Board or Executive.

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- ² See section 41A The Medical Act 1983 (as ammended) available on line at www.gmc-uk.org/about/legislation/medical_act.asp#41a
- ³ But as that doctor's name is no longer treated as being included in the Medical Register, any such suspended doctor is automatically disqualified from membership of an LMC/PCT.
- ⁴ England - SI 2004 No. 585, Amended by SI 2004 No. 2694 and SI 2005 No. 893
Wales – The National Health Service (Performers Lists) (Wales) Regulations 2004. SI 2004 No. 1020 (W.117)