Suspension and Partnership agreements in Scotland

The Scottish General Practitioners Committee and the Scottish Government have recently agreed a Determination that introduces changes to the payment arrangements for suspended GPs. Practices should consider their partnership agreements in light of this new Determination and the guidance that follows.

This advice is supplementary to existing BMA guidance on partnership agreements but supersedes (in Scotland) the section in the existing guidance on suspension.

It is important to note that this guidance, consistent with the general guidance on partnership agreements as referenced above, is for general use only. It is strongly advised that practices take independent accountancy and legal advice in preparing their partnership agreements.

General practitioners in Scotland can be suspended from practising medicine in Scotland by the General Medical Council, NHS Tribunal and NHS boards. Suspension should be a neutral act and therefore processes exist that are intended to ensure that general practitioners are not financially disadvantaged during a period of suspension.

Suspension of a GP who is part of a partnership for the purpose of delivering a General Medical Services contract will have considerable ramifications for the partnership and practice finances. Therefore, it is strongly recommended that the partnership agreement contains provisions specifically covering the possible suspension of a partner.

The information contained in this document aims to help guide practices to include arrangements in their partnership agreement regarding suspension; however, it cannot prescribe definitive clauses as each partnership will have to make their own decisions to cover particular situations. For example, it is possible under certain circumstances that the financial support available to the practice/suspended GP during a period of suspension will not fully meet the total costs associated with the suspension. Practices will need to decide whether additional costs would be carried by the suspended GP, the practice partnership, or some compromise arrangement.

Suspension by the General Medical Council or the NHS Tribunal

Where a GP in a GMS partnership is suspended from the medical performers list following:

- suspension from the medical register by the GMC, or
- suspension by the NHS Tribunal pending a hearing

The practice may be entitled to payments under section 11 of the Statement of Financial Entitlements (Appendix 1) which are meant to cover the costs associated with locum cover for the suspended doctor.

The payments under the SFE will only be made to the practice where a number of conditions are satisfied and may not necessarily be the maximum amount payable (which currently stands at £982.92 per week). One of the key conditions of the payments under the SFE is that the suspended GP continues to receive at least 90% of their normal monthly drawings from the partnership account.

The partnership agreement should contain clauses to address the following where a partner is suspended following action by the GMC or NHS Tribunal:

- That the partner should not be inhibited from continuing to carry out normal administrative and non-NHS responsibilities, subject to any conditions imposed by the suspension, but that the remaining partners should have the power to prevent the suspended partner from such activities as they reasonably believe will be detrimental to the partnership.
• That the suspended partner will continue to receive at least 90% of their normal monthly drawings from the partnership account in order not to preclude a practice from accessing payments under the SFE.

• The process in the event that the practice fails to receive payments under the SFE or the payments received under the SFE are insufficient to cover the costs to the practice associated with the suspension, and how the shortfall will be met. This will require a decision by the partnership – possible arrangements could include: requiring the suspended partner to indemnify the other partners against any shortfall, the partnership covering any shortfall, or contributions from both the suspended partner and the remaining partners covering any shortfall.

Suspension by the NHS board

NHS boards have the power to suspend GPs from the performers list in the absence of action from the GMC or NHS Tribunal. Where a GP is suspended by an NHS board:

• Consistent with suspension from the performers list following action by the GMC or NHS Tribunal, and as outlined in the section above, the practice may be eligible for payments under section 11 of the Statement of Financial Entitlements, or

• The suspended GP may be entitled to payments directly from the NHS board under regulation 15(1) of the Performers List Regulations as outlined in the Determination (Appendix 2).

Payments from under the Determination and SFE cannot be received at the same time. Therefore the suspended GP and the partnership will need to agree which payments to pursue. It is likely that payments under the Determination would be advantageous as, unlike the payments under the SFE, there is no cap on the payments and the suspended GP, if eligible, would receive their normal monthly drawings during the period of the suspension.

Payments under the Determination are only made where certain conditions are met. One of the key conditions is that in order to receive the payments under the Determination the suspended partner must not be entitled to their normal monthly drawings from the partnership.

The partnership agreement should contain clauses to address the following where a partner is suspended by an NHS board:

• That the partner should not be inhibited from continuing to carry out normal administrative and non-NHS responsibilities, subject any conditions imposed by the suspension, but that the remaining partners should have the power to prevent the suspended partner from such activities as they reasonably believe will be detrimental to the partnership.

• Where payments are to be sought under the Determination - the partnership agreement must specify that during a period of suspension by the NHS board a suspended partner is not entitled to drawings from the partnership account. This is necessary (and indeed the only mechanism) to ensure a partner is “not entitled” to payments from the partnership.

• Where payments are to be sought from the SFE – the partnership agreement would need to specify that the suspended partner will continue to receive at least 90% of their normal monthly drawings from the partnership account in order not to preclude a practice from accessing payments under the SFE.

• The process where either:
  • the costs to the practice are greater than the monies retained by the practice where the suspended partners receives payments directly by the NHS board under the Determination and is not making monthly drawings from the practice account, or
  • the practice fails to receive payments under the SFE or the payments received under the SFE are insufficient to cover the costs to the practice associated with the suspension and how the shortfall is met.
11. Payments for locums to cover for suspended doctors

11.1 This section applies where a GP performer is on 1 April 2004 suspended from a medical or supplementary medical list or, on or after that day, is suspended from a performers list.

11.2 A GP performer who is suspended from a medical performers’ list either–

(a) on or after 1st April 2004; or
(b) by virtue of being suspended from a performers list,

may be entitled to payments directly from the Health Board that suspended him. This is covered by a separate determination under regulation 15 (1) of the Performers List Regulations

Eligible cases.

11.3 In any case where a contractor–

(a) either–

(i) is a sole practitioner who is suspended from his Health Board’s medical performers list and is not in receipt of any financial assistance from his Health Board under section 17Q of the 1978 Act as a contribution towards the cost of the arrangements to provide primary medical services under his GMS contract during his suspension,

(ii) is paying a suspended GP performer–

(aa) who is a partner in the contractor, at least 90% of his normal monthly drawings (or a pro rata amount in the case of part months) from the partnership account; or

(bb) who is an employee of the contractor, at least 90% of his normal salary (or a pro rata amount in the case of part months); or

(iii) paid a suspended GP performer the amount mentioned in paragraph (ii)(aa) or (bb) for at least six months of his suspension, and the suspended GP performer is still a partner in or employee of the contractor;

(b) actually and necessarily engages a locum (or more than one such person) to cover for the absence of the suspended GP performer;

(c) the locum is not a partner or shareholder in the contractor, or already an employee of the contractor, unless the absent performer is a job-sharer; and

(d) the contractor is not also claiming a payment for locum cover in respect of the absent performer under another Section in this Part;

then subject to the following provisions of this Section, the Health Board must provide financial assistance to the contractor under its GMS contract in respect of the cost of engaging that locum (which may or may not be the maximum amount payable, as set out in paragraph 11.5).

11.4 It is for the Health Board to determine whether or not it is or was in fact necessary to engage the locum, or to continue to engage the locum, but it is to have regard to the following principles–
(a) it should not normally be considered necessary to employ a locum if the Health Board has offered to provide the locum cover itself and the contractor has refused that offer without good reason;

(b) it should not normally be considered necessary to employ a locum if the absent performer had a right to return but that right has been extinguished; and

(c) it should not normally be considered necessary to employ a locum if the contractor has engaged a new employee or partner to perform the duties of the absent performer and it is not carrying a vacancy in respect of another position which the absent performer will fill on his return.

Ceilings on the amounts payable.

11.5 The maximum amount payable under this Section by the Health Board in respect of locum cover for a GP performer is £982.92 per week.

Payment arrangements.

11.6 The contractor is to submit claims for costs actually incurred after they have been incurred, at a frequency to be agreed between the Health Board and the contractor, or if agreement cannot be reached, within 14 days of the end of month during which the costs were incurred. Any amount payable falls due at the end of the month after the claim is submitted.

Conditions attached to the amounts payable.

11.7 Payments under this Section, or any part thereof, are only payable if the contractor satisfies the following conditions–

(a) the contractor must, on request, provide the Health Board with written records demonstrating–

(i) the actual cost to it of the locum cover; and

(ii) that it is continuing to pay the suspended GP performer at least 90% of his normal income before the suspension (i.e. his normal monthly drawings from the partnership account, his normal salary or a pro rata amount in the case of part months); and

(b) once the locum arrangements are in place, the contractor must inform the Health Board–

(i) if there is to be any change to the locum arrangements; or

(ii) if, for any other reason, there is to be a change to the contractor’s arrangements for performing the duties of the absent performer;

at which point the Health Board is to determine whether it still considers the locum cover necessary.

11.8 If the contractor breaches any of these conditions, the Health Board may, in appropriate circumstances, withhold payment of any sum otherwise payable under this Section.
Appendix 2

Suspension Determination – extract

Medical practitioner who is a partner in or member of a contractor

4. - (1) A medical practitioner who is a partner in or member of a contractor will be eligible for payments from the relevant Health Board in accordance with this determination where:

(a) the other party to the contract or arrangement is the relevant Health Board; and
(b) the medical practitioner is not entitled to, and does not at any time receive, his or her normal monthly drawings of NHS profits from the partnership or company account in respect of the period of suspension.

(2) Where sub-paragraph (1) applies, the relevant Health Board must pay the medical practitioner his or her normal monthly drawings during the period of suspension.

(3) In sub-paragraph (2), “normal monthly drawings” means an average of the medical practitioner’s monthly share of the NHS profits, which has been paid to the practitioner in the twelve months prior to the suspension based on available figures at the time of payment.

(4) The medical practitioner must provide documentary evidence to confirm the monthly NHS profits referred to in sub-paragraph (3).

(5) The calculation of normal monthly drawings as per sub-paragraph (3) shall be subject to review once the practice or company accounts for the relevant financial year are finalised, when it will be possible to determine the actual NHS profits during the twelve months prior to the suspension. Following such a review, where the medical practitioner’s actual share of the NHS profit is greater than the amount which has been paid by the Health Board under sub-paragraph (2), the Health Board must pay the difference to the medical practitioner.

(6) For the avoidance of doubt a medical practitioner who is a partner in or member of a contractor will not be eligible for payments from the relevant Health Board in accordance with this determination where the contract or arrangement has been terminated.

Link to full determination (http://www.sehd.scot.nhs.uk/pca/DC20130821payments.pdf)