

have followed his conviction does not change from civil to criminal the nature of the proceeding under secs. 1436e and 1436f. *State v. Lewis*, 164 W 363, 159 NW 746.

Upon conviction of a physician or surgeon under 351.22, Stats. 1917, of having used instruments with intent to procure a miscarriage, it is proper in the criminal action to adjudge a revocation of his license to practice. Sec. 1435i, Stats. 1917, commands an immediate revocation in a criminal action which, in case of an acquittal, may be secured in a civil action. It makes conviction conclusive proof of unfitness. *Rodermund v. State*, 167 W 577, 168 NW 390.

A physician's prescription or sale of narcotics to an addict to satisfy his addiction, contrary to law, involves "moral turpitude" within 147.20 (1). *State v. Willstead*, 248 W 240, 21 NW (2d) 271.

It is proper to revoke rather than suspend a license after convictions for filing false and fraudulent federal income tax returns and for attempting to influence a federal court officer. *State v. Margoles*, 21 W (2d) 224, 124 NW (2d) 37.

The license of a doctor who attempts to perform an abortion may be revoked. 12 Atty. Gen. 144.

Conviction of a physician for the crime of conspiracy to violate the national prohibition law by issuing false prescriptions for whisky is ground for revocation of the physician's license, as the crime involves moral turpitude. 15 Atty. Gen. 491.

The license of a physician who has been convicted of a crime cannot be revoked by the state board of medical examiners unless the crime was committed in the course of professional conduct. A license or certificate may be revoked by a circuit court in an action brought by a district attorney on conviction of a crime involving moral turpitude. 18 Atty. Gen. 289.

The certificate of registration of a midwife may be revoked for procuring a criminal abortion, in a civil action by a district attorney, even though she was acquitted in a criminal prosecution. 21 Atty. Gen. 227.

A physician's license may be revoked upon a civil action against a physician brought by a district attorney for indulging in the drug habit. 21 Atty. Gen. 476.

Where a license to practice medicine is revoked by the board because of conviction for crime, a pardon by the governor does not automatically restore the right to practice. 22 Atty. Gen. 942.

Revocation of a medical license under 147.20 (3), Stats. 1937, for commission of crime in the course of professional conduct requires affirmative action by the state board of medical examiners and the right to practice continues until such action is taken. 26 Atty. Gen. 378.

Under 147.20 (3), Stats. 1937, power to revoke a physician's license because of crime committed by him in the course of his professional conduct is vested in the board of medical examiners and may not be redelegated by the board to its president. 27 Atty. Gen. 335.

Time during which the state board of medi-

cal examiners may revoke the license of a person convicted of crime committed in the course of his professional conduct is not limited by 147.20 (3), Stats. 1939, or otherwise. 30 Atty. Gen. 43.

448.19 History: 1969 c. 336 s. 166; Stats. 1969 s. 448.19.

As to civil actions brought under 147.205 (1), Stats. 1963, and responsibility for prosecuting such actions see 52 Atty. Gen. 394.

448.20 History: 1969 c. 336 s. 166; Stats. 1969 s. 448.20.

A midwife licensed under 150.04, Stats. 1951, may not give prenatal care. 26 Atty. Gen. 236. See note to 448.02, citing 44 Atty. Gen. 94.

448.21 History: 1969 c. 336 s. 166; Stats. 1969 s. 448.21.

See note to sec. 6, art. I, on cruel punishments, citing *State v. Michaels*, 226 W 574, 277 NW 157.

448.22 History: 1969 c. 336 s. 166; Stats. 1969 s. 448.22.

Sec. 1435i, Stats. 1917, is applicable to chiropractors. *Kuechler v. Volgmann*, 180 W 238, 192 NW 1015.

448.23 History: 1969 c. 336 s. 166; Stats. 1969 s. 448.23.

Fee splitting by physicians is not permitted even where more than one physician takes part in an operation but each physician must render his bill direct to the patient. 24 Atty. Gen. 580.

CHAPTER 449.

Optometry Examining Board.

449.01 History: 1915 c. 488; Stats. 1915 s. 1435f—35; 1917 c. 14 s. 80; 1917 c. 357 s. 2; 1919 c. 362 s. 32; 1923 c. 448 s. 93a; Stats. 1923 s. 153.01; 1925 c. 291 s. 2; 1927 c. 61; 1943 c. 273; 1951 c. 608; 1963 c. 507; 1969 c. 336 ss. 124, 168; Stats. 1969 s. 449.01.

A complaint charging that the defendant corporation was engaged in the perpetration of a public nuisance, by repeatedly, continuously and habitually violating ch. 153, in that it engaged unlicensed persons to practice optometry for its benefit, unlawfully advertised that its servants possessed qualifications superior to those of licensed optometrists in the community, that its advertising was misleading and deceiving, and that it engaged in conduct likely to deceive or defraud, and praying that it and its agents and servants be enjoined from continuing such acts, stated a cause of action. *State ex rel. Abbott v. House of Vision, etc.*, 259 W 87, 47 NW (2d) 321.

Fitting of contact lenses involves the practice of optometry under 153.01, Stats. 1947, and under 153.02 may be done only by a licensed optometrist or licensed physician or surgeon. 36 Atty. Gen. 314.

The practice of optometry includes the rendering of such services as the measurement of interpupillary distances, the adjustment of lenses in frames so as to hold the focal centers in perfect alignment and at the proper distance from the eyes, the determination of bridge sizes, size and shape of lenses, type and

height of bifocal or trifocal lenses, length of temples, and the determination of the need for tinted lenses, or any other service designed or calculated to aid in the selection or fitting of eyeglasses and the adaptation of lenses to aid vision. 38 Atty. Gen. 520.

449.02 History: 1943 c. 273; Stats. 1943 s. 153.02; 1951 c. 608; 1969 c. 336 s. 125; Stats. 1969 s. 449.02.

An unlicensed person who tested a patient's eyes by means of a big frame, different lenses and a card with different sized letters, violated the statute. But an unlicensed person who sells from an established place of business without applying any tests does not by that act alone hold himself out to the public as qualified to engage in the practice of optometry. *Price v. State*, 168 W 603, 171 NW 77.

A corporation, in employing licensed and registered optometrists to assist in its business of serving its customers by adjusting glasses to their eyes, furnishing certain devices and machines to be used by such employe, and selling lenses to persons on prescriptions written by such employe, did not violate ch. 153, Stats. 1937, regulating the practice of optometry, although the corporation itself was not licensed to practice optometry. *State ex rel. Harris v. Kindy Optical Co.* 235 W 498, 292 NW 283. See also 52 Atty. Gen. 109.

See notes to sec. 1, art. I, on exercises of police power, citing *Price v. State*, 168 W 603, 171 NW 77, and *Kachian v. Optometry Ex. Board*, 44 W (2d) 1, 170 NW (2d) 743.

One who examines eyes and fits glasses for railroad men engaged in interstate commerce is not exempt from the optometry law. 10 Atty. Gen. 87.

The sale of spectacles by use of eye-testing machines by one not a physician or surgeon, without a certificate to practice optometry, is a violation of the optometry law. 14 Atty. Gen. 85.

A postgraduate instructor engaged in instructing a doctor in the use of appliances in optometry does not violate this section. 15 Atty. Gen. 333.

Displaying of an illustration of a pair of glasses or of an eye without wording or lettering on the same violates the advertising provision. 20 Atty. Gen. 773.

A corporation cannot practice optometry under ch. 153, Stats. 1935. 24 Atty. Gen. 472.

A peddler traveling from house to house selling glasses, even though they be simple lenses, violates this section. 26 Atty. Gen. 54.

Although osteopaths are permitted to practice optometry without a license, pursuant to this section, this does not authorize the use of "drops" in the eyes as an aid in refraction, since that is not included in optometry but constitutes the practice of medicine. Osteopaths may not use drugs for any purpose except incidentally to the practice of surgery. 30 Atty. Gen. 246.

449.03 History: 1943 c. 273; Stats. 1943 s. 153.03; 1951 c. 319 s. 246b; 1957 c. 268; 1961 c. 254; 1969 c. 336 ss. 126, 127; Stats. 1969 s. 449.03.

449.04 History: 1943 c. 273; Stats. 1943 s.

153.04; 1961 c. 255; 1969 c. 154; 1969 c. 336 s. 128; 1969 c. 392 s. 69t; Stats. 1969 s. 449.04.

449.05 History: 1943 c. 273; Stats. 1943 s. 153.05; 1949 c. 452; 1955 c. 10; 1969 c. 154; 1969 c. 336 s. 129; 1969 c. 392 s. 69v; Stats. 1969 s. 449.05.

The board of examiners in optometry should withhold its certificate from one convicted of a crime involving moral turpitude. 5 Atty. Gen. 763.

449.06 History: 1943 c. 273; 1943 c. 375 s. 60; 1943 c. 553 s. 30; Stats. 1943 s. 153.06; 1949 c. 452; 1957 c. 268; 1969 c. 154; 1969 c. 336 s. 130; 1969 c. 392 s. 69w; Stats. 1969 s. 449.06.

449.07 History: 1943 c. 273; Stats. 1943 s. 153.07; 1969 c. 336 s. 131; Stats. 1969 s. 449.07.

See note to 449.10, citing *Stone v. Harris*, 6 W (2d) 634, 95 NW (2d) 764.

The board of examiners in optometry has no power to revoke a certificate of an optometrist for slander. 6 Atty. Gen. 370.

449.08 History: 1943 c. 273; Stats. 1943 s. 153.08; 1961 c. 254; 1969 c. 336 s. 132; Stats. 1969 s. 449.08.

A board rule purporting to proscribe dual-title advertising by optometrists-opticians by characterizing them as a form of unprofessional conduct went beyond the board's rule-making power and was contrary to the legislative intent expressed in 153.03 (4) and 153.08, Stats. 1967. Although one who is both an optometrist and optician may not be required to select which of the 2 titles he will list on his stationery or office window, so much of the rule applicable to other dual-title or multiple-title advertising listed therein and characterized as unprofessional conduct is not inconsistent with the statutes. *Kindy v. Hayes*, 44 W (2d) 301, 171 NW (2d) 324. See also 56 Atty. Gen. 201.

The board of examiners in optometry cannot by "rule" add to or change the meaning of "unprofessional conduct." Advertising of prices of frames in such manner as to deceive the public into the belief that the price is for complete optical service is "unprofessional conduct." 21 Atty. Gen. 1111.

An optometrist who advertises his professional services over the name of a deceased optometrist without indicating that he is the successor of the former optometrist is probably guilty of unprofessional conduct. Services of an optometrist should not be advertised by an optometrist describing himself as an optician. 23 Atty. Gen. 486.

449.09 History: 1943 c. 273; Stats. 1943 s. 153.09; 1969 c. 336 s. 133; Stats. 1969 s. 449.09.

449.10 History: 1943 c. 273; Stats. 1943 s. 153.10; 1969 c. 336 s. 134; Stats. 1969 s. 449.10.

Where some of the advertising of a firm operating optical stores is shown actually to result in defrauding the public, 153.10, Stats. 1943, as a whole will not be held void, nor will all prosecutions for enforcement of it be enjoined, although some of the firm's advertising may not contravene the statute, especially in view of the severability clause in 153.12. Advertising to sell eyeglasses to fit the needs

of the public, which requires, under ch. 153, the services of a person licensed to practice optometry or medicine, does not involve mere "merchandising" of glasses, and in any event such advertising may be prohibited by statute where it tends to deceive and mislead the public. *Ritholz v. Johnson*, 246 W 442, 17 NW (2d) 590.

See notes to sec. 1, art. I, on exercises of police power and limitations imposed by the Fourteenth Amendment, citing *Ritholz v. Johnson*, 246 W 442, 17 NW (2d) 590.

153.10, Stats. 1957, must be read and interpreted in the light of the declared purpose in 153.12. Considered in such light, 153.10 specifically applies to opticians who are members of an optical firm and engaged in advertising relating to the price of lenses, frames, complete glasses, and advertising a one-price policy. Proof of fraud is not required in order to spell out an offense since the practice protected against is that of filling a prescription to meet the price rather than the needs of the patient. *Bedno v. Fast*, 6 W (2d) 471, 95 NW (2d) 396.

See note to sec. 1, art. I, on exercises of police power, citing *Bedno v. Fast*, 6 W (2d) 471, 95 NW (2d) 396.

A rule promulgated by the board of examiners in optometry, so far as declaring that certain advertising practices constitute unprofessional conduct, is beyond the authority of the board, in view of 153.10, Stats. 1955, relating to prohibited advertising, but not enumerating any type of advertising covered by provisions of the rule of the board; hence an order of the board suspending the license of an optometrist to practice, because of violating such rule, is void. *Stone v. Harris*, 6 W (2d) 634, 95 NW (2d) 764.

153.10, Stats. 1953, prohibiting price advertising of eyeglasses, appears not to be applicable to the Wisconsin distributor of an out-of-state newspaper which carries the price advertising of a concern located in another state where such price advertising is permitted. 44 Atty. Gen. 23.

153.10, Stats. 1959, applies to newspapers which print advertisements and it is immaterial that the optometrist who places the ad conducts his business in a state which does not prohibit price advertising of eyeglasses. 48 Atty. Gen. 223.

449.11 History: 1943 c. 273; Stats. 1943 s. 153.11; 1969 c. 336 s. 134; Stats. 1969 s. 449.11.

449.12 History: 1943 c. 273; Stats. 1943 s. 153.12; 1951 c. 261 s. 10; 1969 c. 336 s. 134; Stats. 1969 s. 449.12.

449.13 History: 1967 c. 73; Stats. 1967 s. 153.14; 1969 c. 336 s. 134; Stats. 1969 s. 449.13.

449.15 History: 1967 c. 73; Stats. 1967 s. 153.15; 1969 c. 336 s. 135; Stats. 1969 s. 449.15.

CHAPTER 450.

Pharmacy Examining Board.

450.01 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.01; 1927 c. 448 s. 1a; 1939 c. 448; 1951 c. 319 s. 246; 1953 c. 173; 1965 c. 351; 1967 c. 297;

1969 c. 336 ss. 93, 94, 170, 175 (9); Stats. 1969 s. 450.01.

450.02 History: 1923 c. 448 s. 91; Stats. 1923 s. 151.02; 1927 c. 448 ss. 1, 2; 1929 c. 258; 1931 c. 396; 1935 c. 233; 1939 c. 448; 1939 c. 517 s. 9a; 1943 c. 77; 1943 c. 375 s. 58; 1945 c. 292; 1951 c. 62, 122, 727; 1953 c. 172, 173; 1955 c. 115; 1957 c. 81, 701; 1959 c. 545; 1961 c. 603, 612, 638; 1963 c. 441; 1965 c. 351; 1967 c. 277; 1969 c. 191, 286; 1969 c. 336 ss. 98, 175 (5); 1969 c. 392 s. 69x; Stats. 1969 s. 450.02.

"Drug sundries" as a store sign is of similar meaning to "drug store," and its use by stores that are not regular pharmacies is prohibited by 151.02 (8), Stats. 1931. 20 Atty. Gen. 778.

One convicted of a felony may be allowed to take the pharmacist's examination, if qualified to do so. 25 Atty. Gen. 708.

Where a second notice of expiration of a pharmacist's registration under 151.02 (3), Stats. 1935, is sent by registered mail with return receipt requested and notice is returned marked "unclaimed," such notice is ineffective to terminate the right to be a registered pharmacist. 26 Atty. Gen. 48.

A person who passes an examination given by the state board of pharmacy may become a legally registered pharmacist even though one member of the board is not a registered pharmacist as required by 151.01 (1), Stats. 1935. 26 Atty. Gen. 97.

Except for short absences which may be reasonably necessary in the case of a registered pharmacist in charge, an establishment using the title "pharmacy," "drug store," "pharmacist" or "apothecary" may not, in view of the provisions of 151.02 (9), Stats. 1939, be kept open in the absence of the registered pharmacist, even for the serving of meals and the sale of other commodities and regardless of the fact that drugs are kept in a separate room and locked when the pharmacist is not present. 28 Atty. Gen. 395.

Pharmaceutical training obtained in a licensed retail pharmacy or drug store operated by a hospital under the direction and supervision of a registered pharmacist must be accepted by the state board of pharmacy as a part of the training course required of applicants for registration as pharmacists. 40 Atty. Gen. 244.

Drug store permits under 151.02 (9), Stats. 1951, are to be issued to applicants whose premises and equipment qualify under the provisions of 151.02 (10), if the drug business is at all times under the separate management of a registered pharmacist. The ownership of the store is immaterial, as is the fact that other lines of business are conducted in connection therewith by nonpharmacists. 40 Atty. Gen. 290.

Under 151.02 (9), Stats. 1955, when a druggist moves his drug store from one location to another the new store must be inspected and registered and the proper fees paid therefor regardless of the distance from the old location to the new location and regardless of the fact that the druggist has just renewed his annual registration of the old store. 44 Atty. Gen. 179.

A licensed pharmacist who operates a drug store in leased premises, located in a factory, should apply for drug store registration and a