

CHAPTER 447

DENTISTRY EXAMINING BOARD

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447.001 Definitions. In this chapter:

(1) "Dental disease" means any pain, injury, deformity, physical illness or departure from complete dental health or the proper condition of the human oral cavity or any of its parts.

(2) "Direction" means the delegation, by written prescription, of dental procedures and services by a licensed dentist following examination, diagnosis and development of a treatment plan by the licensed dentist.

(3) "Examining board" means the dentistry examining board.

(4) "Written prescription" means permission or approval in writing for a dental hygienist to perform patient services or procedures permitted by a dental hygienist under this chapter, in accordance with the dentist's diagnosis of and treatment plan for a dental patient.

History: 1987 a. 316

447.01 Annual meeting. The annual meeting of the examining board shall be held in July.

History: 1981 c. 20; 1985 a. 332

447.02 Practice defined. (1) Any person who was lawfully engaged in the practice of dentistry in this state on January 1, 1939, may so continue if registered as required by s. 447.05 (4). No other person may practice dentistry in this state, unless licensed by the examining board and registered in this state. Without limitation by reason of specific enumeration, any person is deemed to be "practicing dentistry" within the meaning of this chapter who does any of the following:

(a) Uses or permits to be used, directly or indirectly, for a profit or otherwise for himself or herself, or for any other person, the title or appends to his or her name the words or letters "doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," or "D.M.D.," or any other letters, titles, degrees, terms or descriptive matter, personal or not, which directly or indirectly represent him or her to be engaged in the practice of dentistry.

(c) Informs the public directly or indirectly in any language, orally, in writing or printing, or by drawings, demonstrations, signs, pictures or other means that he or she can perform or will attempt to perform dental services of any kind.

(d) Undertakes to practice dentistry by any means or methods, including those defined in this chapter, gratuitously, or for a salary, fee, money's worth, or other reward, paid directly or indirectly to himself or herself or to any other person.

(e) Examines into the fact, condition or cause of dental health or dental disease or applies principles or techniques of dental science in the diagnosis, treatment or prevention of or prescription for any of the lesions, dental diseases, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible, or adjacent associated structures.

(f) Extracts human teeth or corrects their malposition.

(g) Directly or indirectly, by mail, carrier, person or any other method, furnishes, supplies, constructs, reproduces or repairs prosthetic dentures, bridges, appliances or other structures to be used or worn as substitutes for natural human teeth, except on a written work authorization of a licensed dentist, and by the use of impressions taken by a dentist licensed by and practicing in this state; or who places such substitutes in the mouth directly or indirectly or adjusts the same; or who takes or makes or gives advice or assistance or provides facilities for the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge or appliance; or taking impressions for and fitting athletic mouthguards.

NOTE: Par. (g) is shown as affected by 1987 Wis. Act 316, which replaced "written prescription" with "written work authorization" but did not indicate the change with strikes and underscores.

(h) Administers anesthetics, either general or local, within the meaning of this chapter, while performing or claiming to perform dental services.

(i) Prescribes or administers drugs in the course of or incident to the rendition of dental services, or as part of a representation that dental services have been or will be rendered.

(j) Engages in any of the practices, techniques or procedures included in the curricula of recognized dental schools or colleges.

(k) Penetrates, pierces or severs the tissues within the human oral cavity or adjacent associated structures. This paragraph does not apply to care or treatment rendered by a physician, as defined in s. 448.01 (5), acting within the scope of the practice of medicine and surgery, as defined in s. 448.01 (9).

(L) Develops a treatment plan for a dental patient to treat, operate, prescribe or advise for the patient by any means or instrumentality. Nothing in this paragraph prohibits a dental hygienist from participating in the development of a dental patient's dental hygiene treatment plan.

(1m) A dentist has the ultimate responsibility for the application of principles or techniques of dental science in the diagnosis or prevention of any condition which affects the human oral cavity and adjacent associated structures and the overall quality of a patient's dental care.

(2) No contract of employment entered into between a dentist and any other party under which the dentist renders dental services may require the dentist to act in a manner which violates the professional standards for dentistry set forth in this chapter. Nothing in this subsection limits the ability of the other party to control the operation of the dental practice in a manner in accordance with the professional standards for dentistry set forth in this chapter.

(3) No person shall circulate or advertise fraudulent or misleading statements as to the skill of the operator, the quality of the materials, drugs or medicines used or methods practiced.

History: 1971 c. 40 s. 93; 1977 c. 29, 418; 1979 c. 162 s. 38 (4), (7), (8), (9); 1985 a. 29; 1987 a. 316.

447.03 Educational requirements. (1) Only persons possessing a license to practice dentistry under s. 447.05, may use or assume the title "doctor", or append to his or her name the words or letters "doctor", "Dr.", or his or her degree in dentistry earned by graduation from a dental school or college approved by the examining board, including but not limited to "Doctor of Dental Surgery", "D.D.S.", or "D.M.D." The degree of "Doctor of Dental Surgery", or its equivalent, shall be recognized only for one who has satisfactorily completed a curriculum of at least 4 years of 32 weeks each in a dental school or college approved by the examining board. No dental school or college within this state may enroll anyone not filing with the examining board proof satisfactory to it that he or she has an education equivalent to graduation from a high school or academy in this state offering a 4-year curriculum beyond the 8th grade, and has completed at least 2 years of college satisfactory to the examining board. The examining board shall admit for examination only graduates of dental schools or colleges which it has approved and which require for admission a minimum of 2 years of college work leading to a baccalaureate degree, and including at least one year of English, and at least one course in each of the sciences of physics, biology and chemistry. An applicant for licensure who graduated from a dental school at any time prior to 1941 shall meet the requirements of the statutes and of the examining board which were in force at the time of the applicant's graduation.

(2) (a) No person may be examined by the examining board unless the person files proof satisfactory to it that the person:

1. Has the preliminary education set forth in sub. (1); and
2. Is a graduate of a recognized dental school or college approved by the examining board.

History: 1975 c. 39, 199; 1977 c. 29; 1979 c. 162, 337.

447.04 Examination. (1) An applicant who has complied with s. 447.03, shall be examined in writing in such of those subjects usually taught in reputable dental schools or colleges as the examining board deems necessary. In addition, an applicant shall submit to a clinical and laboratory examination in operative and restorative dentistry as may be prescribed by the examining board. In lieu of its own examination, the examining board may accept, in whole or in part, the certificate of the national board of dental examiners.

(2) The examining board may permit a dental student who has successfully completed at least 2 years in a dental school or college approved by the examining board, who files proof satisfactory to the examining board that he or she has met the

preprofessional educational requirements of s. 447.03 (1), to take written examinations, and credit satisfactory grades toward the student's final examination.

History: 1977 c. 29.

447.05 License; renewal. (1) If a majority of the examining board finds an applicant qualified, it shall grant him a license to practice dentistry, signed by at least 2 of the members and attested by the seal of the examining board.

(2) The examining board may license without written examination a person holding a license to practice dentistry in another state who presents to the examining board satisfactory proof of having reputably engaged in practice in that state for at least 5 years next preceding the application, if in such state the requirements imposed are equivalent to those of this state, upon presentation of the license and a diploma from a dental school or college approved and recognized by the examining board but only if the other state extends a similar privilege to dentists licensed to practice in this state. The applicant shall pass such practical demonstrations in operative and restorative dentistry as may be prescribed by the examining board. The fee for such license shall be that specified in s. 440.05 (2).

(3) Whoever engages in the practice of dentistry shall keep his license conspicuously displayed in his place of practice where it can be easily seen and read.

(4) A renewal fee is due and payable on or before September 30 of each odd-numbered year following issuance of the license. The examining board shall maintain a list of the names and places of practice of all licensed and registered dentists and registered dental hygienists which shall be available for purchase at cost. Any registrant who, subsequent to registering, changes the address or place of residence or professional office, or who opens an additional office, shall, within 30 days thereafter, notify the examining board in writing of the change and furnish the new residence or professional address.

(7) No person may practice dentistry in this state under any other given name, or any other surname than that under which originally licensed or registered to practice dentistry in this or any other state, in any instance in which the examining board, after a hearing, finds that practicing under a changed name enables the person to compete unfairly with another practitioner, or to mislead the public as to the person's identity, or otherwise to result in a detriment to the public or the profession. This subsection does not apply to a change of name resulting from marriage or divorce. Upon furnishing proof of a change of name resulting from marriage or divorce and the payment of the fee under s. 440.05 (7) a new license shall be issued to the person.

History: 1977 c. 29, 418; 1979 c. 98, 175, 337, 355; 1987 a. 264.

447.06 Exceptions. Sections 447.02 to 447.05 shall not apply to:

(1) A physician or surgeon licensed in this state who extracts teeth, or operates upon the palate or maxillary bones and investing tissues, or who administers anesthetics, either general or local, within the meaning of this chapter.

(2) A bona fide student in regular attendance at a dental school or college approved by the examining board and located in this state; who practices under the direct supervision of a dental instructor of such school or college, or in an infirmary, clinic, hospital or other institution connected or associated for training or other purposes with such dental school or college.

(3) A dentist licensed in another state who demonstrates before a recognized dental society or group, including a specialty organization, or before a dental school or college.

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(4) Dentists attached to the army, navy, air force, and U.S. public health service and veterans' bureau while acting under the jurisdiction of such departments.

(5) A dental laboratory or dental laboratory technician which or who constructs appliances or restorations for licensed dentists in a dental office or commercial dental laboratory; provided such appliances or restorations are constructed for a licensed dentist only upon receipt of impressions or measurements supplied with directions and a written prescription from such licensed dentist, and that such appliances or restorations or the services rendered in the construction, repair or alterations thereof shall not be advertised, sold or delivered, directly or indirectly, to the public by the dental laboratory or dental laboratory technician, either as principal or agent.

(6) Nothing in this chapter shall prevent the establishment of dental clinics by boards of education of public or private schools, county boards, boards of health, or charitable institutions open to the general public or to members of a sect.

(7) All full-time instructors in dental science, who are employed by a dental school or college approved by the examining board; a dental fellow who is engaged in teaching, research or both, in some area of dental science, by appointment and under the supervision of the faculty of a dental school or college approved by the examining board; a dental intern who has been appointed by a hospital located within this state if the hospital has been approved for dental internship training by the council on dental education of the American dental association and the internship does not exceed one year; a dental resident who has been appointed by a hospital located in this state for a 2nd or subsequent year of advanced study of dental science within the institution if the hospital has been approved for dental residency training by the council on dental education of the American dental association, and the residency does not exceed an aggregate of 3 years in the case of any individual. None of those claiming exemption under one of the foregoing classifications may engage in private practice, have an office outside the institution to which appointed, or hold himself or herself out to the general public, unless the person has first been licensed by the examining board, and registers biennially.

History: 1977 c. 29; 1987 a. 403.

447.065 Exception to license or certificate requirements.

Except for the practice of dental hygiene as licensed under s. 447.08 (1), nothing in this chapter may be construed to prohibit or to require a license or certificate under this chapter for a person who provides patient services as diagnosed, directed and inspected by a licensed dentist who may direct, decide and inspect the implementation of the patient services rendered.

History: 1987 a. 316.

447.07 Reprimand; limitation; suspension; revocation. (1)

The examining board may, without further notice or process, limit, suspend or revoke the license of a dentist who fails within 60 days after the mailing of notice in writing, sent by registered or certified mail to the dentist's last-known address, to register and pay the fee due. The license may be reinstated, in the discretion of the examining board, by the payment of the fees specified in s. 440.05 (3) and (5) within one year from revocation. If application for reinstatement is not made within one year from the date of revocation the dentist may be required to demonstrate current qualification to practice by taking an examination in such dental subjects as may be required by the examining board and paying the fee specified in s. 440.05 (1).

(2) Subject to ss. 111.321, 111.322 and 111.335, the examining board may reprimand or may limit, suspend or revoke the license of one who has an arrest or conviction record.

(3) Subject to the rules promulgated under s. 440.03 (1), the examining board may on its own motion make investigations and conduct hearings in regard to any alleged actions of any licensed dentist or dental hygienist, or of any other person it has reason to believe is acting or has acted in such capacity within the state, and may, on its own motion, or upon complaint in writing, suspend or revoke such license, registration or certificate, or reprimand the holder thereof if it finds that the holder has been guilty of:

(a) Unprofessional conduct in the course of practicing dentistry.

(b) Having procured the license by fraud or perjury or through error.

(c) A violation of s. 447.02 (2).

(d) Directly or indirectly sending impressions or measurements to a dental laboratory without a written authorization in form approved by the board, signed by the dentist authorizing the same, or directly or indirectly sending a patient, or an agent of a patient, to a dental laboratory for any purpose whatsoever. The board, its agents or employes may inspect dental offices to determine their compliance with this subsection, and may inspect the work authorization records of dental laboratories to determine compliance with this subsection.

(e) A violation of s. 447.08.

(f) A violation of the rules adopted by the examining board.

(g) Conduct which indicates a lack of knowledge of, an inability to apply or the negligent application of, principles or skills of the profession which the holder has a license, permit or certificate to practice.

(h) Advertising by use of statements of a character tending to deceive or mislead the public.

(i) Obtaining a fee by fraud or deceit.

(j) Employing directly or indirectly a student or a suspended or unlicensed dentist to perform operations or make diagnoses, or to treat lesions of the human teeth or jaws, or to correct malposed formations thereof, except that an unlicensed person may perform exclusively mechanical work upon inert matter in a dental office or laboratory.

(k) Repeated irregularities in billing a 3rd party for services rendered to a patient. In this paragraph, "irregularities in billing" includes:

1. Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered.

2. Reporting incorrect treatment dates for the purpose of obtaining payment.

3. Reporting charges for services not rendered.

4. Incorrectly reporting services rendered for the purpose of obtaining payment.

5. Abrogating the copayment provisions of a contract by accepting the payment received from the 3rd party as full payment.

(L) A violation of ch. 161 or 450.

(7) Subject to the rules promulgated under s. 440.03 (1), the examining board may suspend the license or registration of any person licensed or registered under this chapter who is a patient in a hospital for mental illnesses in this state or elsewhere. A certified copy of commitment or admission papers shall be conclusive evidence of the incapacity of such person to continue in the practice of dentistry or dental hygiene. A person who has been released from a hospital for mental illnesses may request the examining board in writing

for reinstatement of the license or certificate of registration in dentistry or license in dental hygiene. Following receipt of such request the examining board shall hold a hearing as soon as practicable to determine the capacity of the applicant to reengage in practice. At such hearing medical or other testimony on the issue of the applicant's mental and nervous condition, and on the degree and probable permanence of recovery may be offered on behalf of the applicant or the examining board. The examining board may also examine such applicant so as to be satisfied of the applicant's qualifications to resume the practice of dentistry or dental hygiene. Any decision made following such hearing shall be reviewable under ch. 227.

History: 1975 c. 94 s. 91 (12); 1977 c. 29; 1977 c. 418; 1979 c. 162; 1981 c. 65, 380; 1981 c. 391 ss. 169, 211; 1983 a. 289; 1985 a. 29, 146; 1987 a. 316.

447.08 Dental hygienists. (1) No person may practice as a dental hygienist without a license from the examining board. Such a license shall authorize the holder, under the requirements of sub. (4), to perform those functions for which the hygienist has been educated in a school approved by the examining board.

(2) (a) An applicant shall file proof satisfactory to the examining board that he or she has a general education equivalent to graduation from a high school or academy in this state offering a 4-year curriculum beyond the 8th grade and that he or she is a graduate of an educational institution for dental hygienists, approved by the examining board, which has a course of not less than 2 years of 8 months each. The fee specified in s. 440.05 (1) shall accompany the application. Applicants who have graduated prior to July 1, 1941, shall file proof satisfactory to the examining board that their educational requirements at the time of their graduation equaled those then required by the examining board.

(b) Applicants who qualify under par. (a) shall be examined in writing in such subjects usually taught in reputable schools for the education of dental hygienists as the examining board deems necessary. In lieu of its own examination, the examining board may accept, in whole or in part, the certificate of the national board of dental examiners. In addition, the applicants shall submit to such practical examination as is prescribed by the examining board.

(3) The fee specified in s. 440.05 (3) shall be due and payable on or before September 30 of each odd-numbered year following issuance of the license. Any registrant who, subsequent to registering, changes place of residence or employment shall, within 30 days thereafter, notify the examining board in writing of the change and furnish the address of the new residence or employment and, where applicable, the name of the new employer.

(4) (a) A licensed dental hygienist may practice dental hygiene as an employe or as an independent contractor only as follows:

1. In a dental office under the direction or in the presence of a licensed dentist.
2. For the board of education of a public or private school.
3. For a school for the education of dentists or dental hygienists.
4. For a facility, as defined in s. 50.01 (1m).
5. For a county, city-county or multiple-county health department, a county health committee or commission, or a city, village or town board of health under ch. 141.
6. For charitable institutions open to the general public or to members of a religious sect or order.
7. For a nonprofit home health care agency.

(b) No licensed dental hygienist may engage in the practice of dental hygiene in an entity used for the practice of dental

hygiene without direction or the presence of a dentist, except under par. (a) 2, 3 or 5.

(c) If a licensed dentist is not present, a licensed dental hygienist may render dental hygiene services under direction only if all of the following conditions are met:

1. The dentist has examined the patient within the immediately preceding 12 months.

2. The dentist has entered a written prescription in the patient's dental record immediately following examination of the patient. The written prescription shall set forth the specific procedures which the dental hygienist may perform on the patient with the informed consent of the patient or parent or legal guardian of the patient. The period of validity of a written prescription under this subdivision is not more than 12 months from the date of issuance, unless earlier revoked by the dentist, and the dental hygienist may perform the procedures included in the written prescription only during this period of validity.

3. The patient has been the dentist's patient of record for not less than 12 months.

(5) The examining board may license without written examination one licensed to practice dental hygiene in another state who presents satisfactory proof of having reputationally engaged in practice in that state for 5 years next preceding the application, if in that state the requirements imposed are equivalent to those of this state, upon presentation of a license from the other state, and evidence of completion of a course in a reputable educational institution for dental hygienists approved by the examining board in this state but only if the other state extends similar treatment to dental hygienists licensed to practice in this state. The applicant shall pass a practical demonstration in dental hygiene to the satisfaction of the examining board and pay the fee specified in s. 440.05 (2).

(6) The examining board may without further notice or process revoke the license of a dental hygienist who fails within 60 days after the mailing of notice in writing, sent by registered or certified mail to the person's last-known address, to register and pay the fee due for that 2-year period. A license may be reinstated, in the discretion of the examining board, by the payment of the fees specified in s. 440.05 (3) and (5) within one year after revocation. If application for reinstatement is not made, within one year from the date of revocation, the person may be required to demonstrate current qualification by taking an examination in subjects relating to dental hygiene required by the examining board and pay the fee specified in s. 440.05 (1).

(7) No person may practice as a dental hygienist under any other given name, or any other surname than that under which originally registered to practice dental hygiene in this or any other state. This subsection does not apply to a change of name resulting from marriage or divorce. Upon furnishing proof of a change of name resulting from marriage or divorce and the payment of the fee under s. 440.05 (7) a new certificate of registration shall be issued to the person.

History: 1977 c. 29; 1979 c. 98, 337, 355; 1981 c. 380; 1983 a. 289; 1987 a. 27, 316.

447.09 Penalties. Any person violating any provision of this chapter may be fined not more than \$1,000 or imprisoned not more than one year in county jail or both for the 1st offense and may be fined not more than \$2,500 or imprisoned not more than 2 years or both for the 2nd or subsequent conviction within 5 years.

447.10 Injunction. If it appears upon the complaint of any person to the examining board, or it is believed by the examining board that any person is violating this chapter, the

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examining board, or the district attorney of the proper county, may investigate such alleged violation, and may, in addition to or in lieu of any other remedies provided by law, bring action in the name and on behalf of the state against any such person to enjoin such violation. Between meetings of the examining board, its president and secretary, acting in its behalf, are empowered jointly to make such an investigation, and on the basis thereof to seek such relief. Investigations conducted by the examining board, or by its president and secretary, shall be conducted according to rules promulgated under s. 440.03 (1).

History: 1977 c. 418.

447.11 State dental society. The Wisconsin state dental society is continued with the general powers of a domestic nonstock corporation. It may take by purchase or gift and hold real and personal property. It may adopt, alter and enforce bylaws and rules for the admission and expulsion of members, the election of officers and the management of its affairs.

447.12 County and district dental societies. (1) The dentists of the several counties who are licensed to practice in this state, provided there are at least 5 in a given county, may meet at such time and place as a majority agree upon, and organize a county dental society. When so organized it shall be a body corporate, and shall thereafter be designated as the dental society of such county, and shall have the general powers of a corporation and may take by purchase or gift and hold real and personal property. County dental societies now existing are continued with the powers and privileges conferred by this chapter. A county or district dental society which was in existence but unincorporated on September 29, 1963 shall not be required by the terms hereof to incorporate unless that is the express wish of the majority of its members.

(2) Persons who hold the degree of doctor of dental surgery, or its equivalent, and any other persons who have been licensed by the examining board to practice dentistry in this state, shall be eligible to meet for the organization of or to become members of a county dental society.

(3) If there are not a sufficient number of dentists in a given county to form a dental society under sub. (1), those residing in such county may unite with those of adjoining counties and organize a multiple county or district dental society under this section, such organizational meeting to occur at the time and place agreed upon in writing by a majority of those eligible to belong.

(4) A county or district dental society may adopt, alter and enforce articles and bylaws, or a constitution and bylaws for the admission and expulsion of members, the election of officers and the management of its affairs, but no such instrument or action on the part of such a society shall be valid which is inconsistent with the articles, bylaws or policies of the state dental society, or which violates the autonomy of any other component of the state dental society. Any county or district dental society which incorporates after September 29, 1963 shall file its articles as provided in ch. 181.

447.13 Service insurance corporations for dental care. The state dental society or, in a manner and to the extent approved by the state society, a county or district society, may establish in one or more counties in this state a service insurance corporation for dental care under ch. 613.

History: 1975 c. 223.

447.15 Definitions applicable to indemnification and insurance provisions. In ss. 447.15 to 447.31:

(1) "Dental society" means a county or district dental society organized or continued under s. 447.12.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a dental society.

(b) A natural person who, while a director or officer of a dental society, is or was serving at the dental society's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another dental society or corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a dental society, is or was serving an employe benefit plan because his or her duties to the dental society also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the dental society or by any other person.

History: 1987 a. 13.

447.17 Mandatory indemnification. (1) A dental society shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the dental society.

(2) (a) In cases not included under sub. (1), a dental society shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the dental society, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the dental society and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the dental society or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 447.19.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification shall make a written request to the dental society.

(4) (a) Indemnification under this section is not required to the extent limited by the dental society's articles, constitution or bylaws under s. 447.23.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the dental society, in connection with the same proceeding.

History: 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

447.19 Determination of right to indemnification. Unless otherwise provided by the articles, constitution or bylaws or by written agreement between the director or officer and the dental society, the director or officer seeking indemnification under s. 447.17 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of a majority of members who are entitled to vote and who are present in person or represented by proxy at a meeting at which a quorum is present, if there are members having voting rights. Unless the articles, constitution or bylaws provide otherwise, members holding one-tenth of the votes entitled to be cast, present in person or represented by proxy, shall constitute a quorum at a meeting of members. Membership rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 447.27.

(6) By any other method provided for in any additional right to indemnification permitted under s. 447.25.

History: 1987 a. 13.

447.21 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a dental society may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the dental society with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the dental society.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the dental society, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 447.19 that indemnification under s. 447.17 (2) is not required and that

indemnification is not ordered by a court under s. 447.27 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

History: 1987 a. 13.

447.23 Dental society may limit indemnification. (1) A dental society's obligations to indemnify under s. 447.17 may be limited as follows:

(a) If the dental society is organized before June 13, 1987, except as provided in s. 447.12 (4), by an amendment to its articles, constitution or bylaws which becomes effective on or after June 13, 1987.

(b) If the dental society is organized on or after June 13, 1987, except as provided in s. 447.12 (4), by its articles, constitution or bylaws, including any amendments to its articles, constitution or bylaws.

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

History: 1987 a. 13.

447.25 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 447.17 and 447.21 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles, constitution or bylaws.

(b) A written agreement between the director or officer and the dental society.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the dental society may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the dental society that the director or officer did not breach or fail to perform a duty he or she owes to the dental society which constitutes conduct under s. 447.17 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 447.15 to 447.31 do not affect a dental society's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the dental society.

History: 1987 a. 13.

447.27 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the dental society, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 447.19 (5) or for review by the court of an adverse determination under s. 447.19 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

447.27 DENTISTRY EXAMINING BOARD

(a) That the director or officer is entitled to indemnification under s. 447.17 (1) or (2). If the court also determines that the dental society unreasonably refused the director's or officer's request for indemnification, the court shall order the dental society to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 447.17 (2).

History: 1987 a. 13.

447.29 Indemnification and allowance of expenses of employes and agents. A dental society may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles, constitution or bylaws, by general or specific action of the board of directors or by contract.

History: 1987 a. 13.

447.31 Insurance. A dental society may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the dental society against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the dental society is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 447.17, 447.21, 447.25 and 447.29.

History: 1987 a. 13.

447.34 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer of a county or district dental society organized or continued under s. 447.12 may, in discharging his or her duties to the dental society, rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the dental society whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

History: 1987 a. 13.

447.36 Consideration of interests in addition to members' interests. In discharging his or her duties to a county or district dental society organized or continued under s. 447.12 and in determining what he or she believes to be in the best interests of the dental society, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the dental society.

(2) The effects of the action on communities in which the dental society operates.

(3) Any other factors the director or officer considers pertinent.

History: 1987 a. 13.

447.38 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer of a county or district dental society organized or continued under s. 447.12 is not liable to the dental society, its members or creditors, or any person asserting rights on behalf of the dental society, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the dental society or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

History: 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.