

CHAPTER 449

OPTOMETRY EXAMINING BOARD

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449.01 Definitions; discrimination prohibited. (1) OPTOMETRY. (a) The practice of the profession of optometry is defined as:

1. The employment of any optometric means, including topical ocular diagnostic pharmaceutical agents under s. 449.17, to determine the visual efficiency of the human visual system, including refractive and functional abilities, or to diagnose the presence of ocular disease or ocular manifestations of systemic disease and other departures from normal.

2. The diagnosis and treatment of the refractive and functional ability of the visual system and enhancement of visual performance by any of the following:

a. Prescribing, furnishing, fitting or employing ophthalmic lenses, contact lenses, frames, aids or prosthetic materials.

b. Administering visual training, orthoptics, visual therapy or any other optometric means.

c. Prescribing or administering drugs for ocular therapeutic purposes or removing superficial foreign bodies from the eye or an appendage to the eye under s. 449.18.

3. Examining into the fact, condition or cause of ocular health or disease, or treating or rendering advice regarding a condition or cause of ocular health or disease, by any optometric means or instrumentality.

4. Applying principles or techniques of optometric sciences in the diagnosis, prevention or treatment of a condition or cause of ocular health or disease.

(b) Except as provided in par. (a), the practice of the profession of optometry does not include surgery or medical treatment.

(2) DISPENSING OPTICIANS. A dispensing optician is one who practices optical dispensing. The practice of optical dispensing comprises the taking of necessary facial measurements and the processing, fitting and adjusting of mountings, frames, lenses and kindred products in the filling of prescriptions of duly licensed physicians or optometrists for ophthalmic lenses. Duplications, replacements or reproductions not requiring optometric service may be done without prescription. Nothing herein contained shall change the responsibility of physician to patient, or optometrist to patient.

(3) DISCRIMINATION PROHIBITED. Any agency of the state, county, municipality or school district shall accept the optometric services, as defined in sub. (1), of optometrists licensed under this chapter, on the same basis as those of any other person authorized by law to render such services.

(4) In this chapter, "examining board" means optometry examining board.

History: 1977 c. 83, 280; 1979 c. 32; 1989 a. 31.

449.02 Licenses; exemptions. (1) No person shall practice optometry within the meaning of this chapter without a

license to do so and a valid certificate of registration issued by the examining board, except that a dispensing optician need not be so licensed for the practice of optical dispensing.

(2) This section shall not apply to physicians and surgeons duly licensed as such in Wisconsin nor shall this section apply to the sale of spectacles containing simple lenses of a plus power only at an established place of business incidental to other business conducted therein, without advertising other than price marking on the spectacles, if no attempt is made to test the eyes. The term "simple lens" shall not include bifocals.

Ophthalmic assistants performing functions within definition of optometry under delegation and supervision of ophthalmologist are not engaged in unlawful practice of optometry. Certified optometric technician who performs services within definition of optometry under delegation and supervision of licensed optometrist is engaged in unlicensed practice of optometry. 74 Atty. Gen. 146

449.03 Rule making; enforcement. (1) No rule made by the examining board shall expand the practice of optometry or affect the practice of dispensing opticians, nor shall the examining board enact rules which forbid the employment of an optometrist or declare such employment unprofessional conduct, or prohibit the operation of an optometric department by optometrists in a mercantile establishment.

(2) The chairperson or the secretary of the examining board shall cause actions to be instituted for violations of this chapter. The district attorney of the county in which the offense has been committed shall promptly prosecute upon being informed thereof from any source.

History: 1979 c. 162 s. 38 (10).

Under (1), the board is prohibited from enacting rules which affect the practice of dispensing opticians or forbidding the employment of an optometrist or declaring such employment unprofessional conduct. *Feinberg v. Hasler*, 63 W (2d) 268, 217 NW (2d) 334.

449.04 Examination. (1) Licenses to engage in the practice of optometry shall be issued only to persons who pass an examination conducted by the examining board. An applicant who qualifies under s. 449.05 (1) may take any examination administered by the examining board upon payment of the fee specified in s. 440.05 (1).

(2) The examination shall include a written and practical examination, shall reasonably relate to the skills likely to be needed for an applicant to practice optometry in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise such skills. In regard to the written examination, the examining board may:

(a) Prepare, administer and grade the examination;

(b) Approve in whole or in part an examination prepared, administered and graded by the national board of examiners in optometry; or

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91-92 Wis. Stats. 3960

(c) Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry.

History: 1977 c. 29, 418; 1991 a. 39.

449.05 Qualification for examination. (1) No person shall be examined by the board:

(b) Unless he or she presents proof satisfactory to the examining board that, subject to ss. 111.321, 111.322 and 111.335, he or she does not have an arrest or conviction record;

(c) Unless the person has graduated from an accredited college of optometry approved and recognized by the examining board; and

(d) Unless the person has had 5 years' approved training in optometry, of which at least 3 years must have been in an accredited school or college of optometry.

(2) Any person who is licensed in good standing to practice optometry in another state, having substantially similar requirements and granting equal privileges to residents of Wisconsin, may be issued a certificate in the discretion of the examining board upon passing an examination in pathology and practical optometry, payment of the fee specified in s. 440.05 (1) and production of a certificate showing that the person has passed an examination in such other state and satisfactory evidence that the person has actually practiced there for 5 years.

History: 1971 c. 213 s. 5; 1977 c. 29; 1981 c. 380; 1981 c. 391 s. 211; 1991 a. 207, 316.

449.06 Registration. (1) Persons practicing optometry shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), register with the department and pay the applicable renewal fee specified under s. 440.08 (2) (a).

(2) Every practicing optometrist shall display in a conspicuous place, at the entrance of his or her office, the name of the person so practicing therein and shall keep the certificate of registration conspicuously displayed in that place of business so that it can easily be seen and read.

History: 1977 c. 29; 1991 a. 39, 207.

449.07 Denial, limitation, suspension, revocation, reprimand. (1) The examining board, by order, may reprimand and may deny, limit, suspend or revoke any license or certificate of registration if the licensee or registrant:

(a) Obtained the license or certificate through error or fraud;

(b) Is grossly incompetent;

(c) Is habitually drunk or addicted to the use of habit-forming drugs;

(d) Has been convicted in a court of competent jurisdiction, either within or without this state, of any violation of any law governing the practice of optometry or of any felony, subject to ss. 111.321, 111.322 and 111.335, a certified copy of the record of conviction to be conclusive evidence of such conviction;

(e) Has obtained or sought to obtain anything of value by fraudulent representation in the practice of optometry;

(f) Is guilty of immoral or unprofessional conduct;

(fm) Violates s. 449.17, 449.18 or 449.19;

(g) Continued practice, knowingly having an infectious or contagious disease; or

(h) If the applicant or registrant maintains a professional connection or association with any other person continuing to violate this chapter after 10 days' notice in writing by the examining board.

(3) Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examin-

ing board may reinstate any license or registration by it suspended or revoked.

History: 1975 c. 39, 199; 1977 c. 29, 125, 280; 1977 c. 418 ss. 851, 853; 1979 c. 162; 1981 c. 334 s. 25 (1); 1983 a. 289; 1989 a. 31; 1991 a. 39.

449.08 Unprofessional conduct. (1) Unprofessional conduct includes without limitation because of enumeration:

(a) Any conduct of a character likely to deceive or defraud the public;

(b) Loaning of an optometric license or certificate to anyone;

(d) Splitting or dividing any fee for optometric service with any person, except an associate licensed optometrist; or

(e) Engaging in conduct unbecoming a person licensed to practice.

(2) Unprofessional advertising includes without limitation because of enumeration:

(a) Advertising professional superiority or the performance of professional services in a superior manner;

(d) Advertising by the use of any name other than the name under which the optometrist is licensed to practice optometry in this state. Nothing in this paragraph precludes the use of a predecessor optometrist's name by his or her successor for a period of 6 months after taking over the predecessor's practice.

History: 1977 c. 362; 1979 c. 337.

449.09 Investigations. Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to the conduct of any licensed optometrist or any person who, it has reason to believe, is acting or has acted in such capacity within the state. The person complained against may proceed to review such action of the examining board under ch. 227.

History: 1977 c. 418.

449.10 Advertising. No rule of the examining board, unless intended to regulate false or misleading advertising, may restrict advertising on products and nonvariable services. In this section, "nonvariable services" means services for which a fee can be objectively determined prior to the time the services are rendered.

History: 1977 c. 362.

449.11 Penalties. Any person not lawfully authorized to practice optometry, who shall practice optometry or shall hold himself or herself out as a practitioner thereof, or who shall impersonate another practitioner or who shall violate any provisions of this chapter, or any rule or regulation made under authority thereof, shall be punished for the first offense by a fine not less than \$50 nor more than \$200, or by imprisonment for not more than 3 months, or both. And for a subsequent offense by a fine not less than \$200 nor more than \$500 or by imprisonment for not less than 3 nor more than 6 months, or both.

History: 1979 c. 162 s. 38 (9).

449.12 Interpretation. This chapter is passed in the interests of public health, safety and welfare and its provisions shall be liberally construed to carry out its objects and purposes.

449.13 Wisconsin Vision Services, Inc. The Wisconsin Vision Services, Incorporated, 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.

449.15 Service insurance corporations for optometric care. The Wisconsin vision services, incorporated, may establish a service insurance corporation for optometric care under ch. 613.

History: 1975 c. 223.

449.17 Use of diagnostic pharmaceuticals. (2) Topical ocular diagnostic pharmaceutical agents may be used only by optometrists who have established a plan approved by the secretary after consultation with the examining board and the medical examining board for the referral of patients who experience adverse reactions from the application of such agents to appropriate medical services.

(3) Topical ocular diagnostic pharmaceutical agents may be used only by optometrists who successfully complete an examination conducted by the examining board on the subject of general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents, including the treatment of any adverse reactions that may occur. The examination shall be prepared or approved by the department in consultation with the examining board, the medical examining board and the pharmacy examining board. The department shall periodically review the validity, reliability and appropriateness of the examination. In regard to the examination, the department may:

(a) Prepare, administer and grade the examination;

(b) Approve in whole or in part an examination prepared, administered and graded by the national board of examiners in optometry or by the optometry examining board; or

(c) Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry.

(4) In addition to the requirements of sub. (3), optometrists who wish to use topical ocular diagnostic pharmaceutical agents shall successfully complete 60 classroom hours of study in general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to pharmaceutical agents, including the treatment of any adverse reactions that may occur. The course of study shall be offered by an institution approved by the secretary and accredited by a regional or professional accrediting organization which is recognized by the council on post-secondary accreditation and the U.S. office of education and shall be completed prior to entering the examination required by sub. (3).

(5) The secretary shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying the topical ocular diagnostic pharmaceutical agents which optometrists may utilize in this state.

(6) The department shall certify optometrists who meet the requirements in this section.

(7) No fee may be charged for a certificate issued under this section. A certificate issued under this section remains in effect while the optometrist's license to practice optometry remains in effect unless the certificate is suspended or revoked by the department.

(8) No optometrist may be reimbursed under s. 49.46 (2) (a) 3 for any increase in charges or separate charge which is attributable to the use of topical ocular diagnostic pharmaceutical agents.

History: 1977 c. 280; 1979 c. 162; 1981 c. 15; 1983 a. 273, 524; 1989 a. 31; 1991 a. 39.

449.18 Removals from eyes; use of therapeutic pharmaceuticals. (1) No optometrist may use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye unless the optometrist is certified by the examining board under this section.

(2) The examining board shall certify an optometrist to use therapeutic pharmaceutical agents and remove foreign bodies from an eye or from an appendage to the eye if the optometrist satisfies all of the following:

(a) The optometrist is certified under s. 449.17 to use topical ocular diagnostic pharmaceutical agents.

(b) The optometrist has successfully completed 100 hours of approved study in the use of therapeutic pharmaceutical agents and the removal of superficial foreign bodies from an eye or from an appendage to the eye. The course of study shall be offered by an institution approved by the examining board and accredited by a regional or professional accrediting organization that is recognized by the council on post-secondary accreditation of the federal department of education.

(c) The optometrist has passed an examination under sub. (3).

(3) The examining board shall conduct or approve an examination for optometrists seeking certification under this section. The department shall periodically review the validity, reliability and appropriateness of the examination.

(4) Certificates issued under this section expire on January 1 of each even-numbered year. Renewal applications shall be submitted to the examining board biennially on a form provided by the examining board, along with proof of completion of continuing education requirements established in the rules promulgated under sub. (7).

(4m) No fee may be charged for the issuance or renewal of a certificate under this section.

(5) An optometrist who is certified under this section may not remove a foreign body from an eye or from an appendage to an eye if the foreign body is deeper than Bowman's layer of the cornea or deeper than the conjunctiva.

(6) An optometrist who is certified under this section:

(a) May not prescribe or administer any therapeutic pharmaceutical agent that he or she is prohibited from prescribing or administering under the rules promulgated under sub. (8).

(b) Shall include with each prescription order all of the following:

1. A statement that he or she is certified under this section.

2. The indicated use of the therapeutic pharmaceutical agent so prescribed.

(c) May not dispense, as defined in s. 450.01 (7), other than by prescribing or administering. This paragraph does not prohibit the optometrist from providing a complimentary sample of a therapeutic pharmaceutical agent to a patient to whom the optometrist has rendered therapeutic care.

(7) The examining board shall promulgate rules requiring applicants for renewal under sub. (4) to attend continuing education courses approved by the examining board. The rules shall establish criteria for the approval of such courses and may not require an applicant for renewal to attend more than 30 hours of courses within the 2 calendar years immediately preceding the expiration date specified in sub. (4).

(8) The secretary shall, after consultation with the examining board, the medical examining board and the pharmacy examining board, promulgate rules specifying those therapeutic pharmaceutical agents that may or may not be prescribed or administered.

History: 1989 a. 31; 1991 a. 39

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449.19 Referral to other specialists. If, during the course of examining a person, an optometrist determines the existence of a pathological condition requiring treatment outside the scope of the practice of optometry, the optometrist shall so advise the person and shall refer the person to an appropriate medical specialist for further evaluation.

History: 1977 c. 280; 1989 a. 31.

449.20 Civil immunity. No optometrist shall be liable for any civil damages for either of the following:

(1) Reporting in good faith to the department of transportation under s. 146.82 (3) a patient's name and other informa-

tion relevant to the vision of the patient which in the optometrist's judgment impairs the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

(2) In good faith, not reporting to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to the vision of the patient which in the optometrist's judgment does not impair the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

History: 1987 a 215