

CHAPTER 448

MEDICAL PRACTICES

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Cross-reference: See definitions in s. 440.01.

SUBCHAPTER I

GENERAL PROVISIONS

448.01 Definitions. In this chapter:

(2) “Disease” means any pain, injury, deformity or physical or mental illness or departure from complete health or the proper condition of the human body or any of its parts.

(2g) “Occupational therapist” means an individual who meets the requirements under s. 448.05 (5m) (a) and is certified by the medical examining board to practice occupational therapy.

(2m) “Occupational therapy” means the use of purposeful activity with persons who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability or the aging process, in order to maximize independent function, prevent further disability and achieve and maintain health and productivity, and encompasses evaluation, treatment and consultation services that are provided to a person or a group of persons.

(2r) “Occupational therapy assistant” means an individual who meets the requirements under s. 448.05 (5m) (b) and is certified by the medical examining board to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(5) “Physician” means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the medical examining board.

(6) “Physician assistant” means an individual licensed by the medical examining board to provide medical care with physician supervision and direction.

NOTE: Sub. (6) is shown as affected eff. 2–1–99 by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–99 it reads:

(6) “Physician assistant” means an individual certified by the medical examining board to perform patient services under the supervision and direction of a licensed physician.

(9) “Practice of medicine and surgery” means:

(a) To examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, by any means or instrumentality.

(b) To apply principles or techniques of medical sciences in the diagnosis or prevention of any of the conditions described in par. (a) and in sub. (2).

(c) To penetrate, pierce or sever the tissues of a human being.

(d) To offer, undertake, attempt or do or hold oneself out in any manner as able to do any of the acts described in this subsection.

(9s) “Scene of an emergency” means an area not within the confines of a hospital or other institution which has hospital facilities or the office of a person licensed, certified or holding a limited permit under this chapter.

(10) “Treat the sick” means to examine into the fact, condition or cause of human health or disease, or to treat, operate, prescribe or advise for the same, or to undertake, offer, advertise, announce or hold out in any manner to do any of the aforementioned acts, for compensation, direct or indirect, or in the expectation thereof.

(12) “Warn” means to privately apprise the holder of a license or certificate of the unprofessional nature of the holder’s conduct and admonish the holder that continued or repeated conduct of

such nature may give the medical examining board or an attached affiliated credentialing board cause to reprimand the holder or to limit, suspend or revoke such license or certificate.

History: 1975 c. 383, 421; 1977 c. 418 ss. 845, 846, 929 (41); 1985 a. 146; 1987 a. 399; 1989 a. 229; 1993 a. 105, 107; 1995 a. 448; 1997 a. 67, 175 ss. 16 to 26, 40, 41; s. 13.93 (2) (c).

NOTE: Chapter 383, laws of 1975, which repealed and recreated chapter 448 of the statutes contains a statement of legislative policy in section 1.

Physician, subject to certain limitations, may advise patient whether or not continued chiropractic care is necessary. 68 Atty. Gen. 316.

SUBCHAPTER II

MEDICAL EXAMINING BOARD

448.015 Definitions. In this subchapter:

(1) “Board” means medical examining board.

(2) “Respiratory care” means that branch or system of treating the sick which is limited to assisting in the prevention, diagnosis and therapeutic treatment of respiratory disorders by various means, including the administration of medical gases, oxygen therapy, ventilation therapy, artificial airway care, bronchial hygiene therapy, aerosolization of pharmacological agents, respiratory rehabilitation therapy and other treatment, testing, evaluation and rehabilitation procedures performed under the direction of a physician, but not including the use of general anesthetic agents.

(3) “Respiratory care practitioner” means an individual who practices respiratory care.

(4) “Unprofessional conduct” means those acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board by s. 15.08 (5) (b) and any act by a physician [or] physician assistant in violation of ch. 450 or 961.

NOTE: Sub. (4) is shown as affected eff. 2–1–99 by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language is inserted to correct grammar. Correction legislation is pending. Prior to 2–1–99 it reads:

(4) “Unprofessional conduct” means those acts or attempted acts of commission or omission defined as unprofessional conduct by the board under the authority delegated to the board by s. 15.08 (5) (b) and any act by a physician in violation of ch. 450 or 961.

History: 1997 a. 175 ss. 16, 23, 24, 25, 27; s. 13.93 (2) (c).

448.02 Authority. (1) **LICENSE.** The board may grant licenses, including various classes of temporary licenses, to practice medicine and surgery [and] to practice as a physician assistant.

NOTE: Sub. (1) is shown as affected eff. 2–1–99 by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). The bracketed language must be inserted for correct grammar. Corrective legislation is pending. Prior to 2–1–99 it reads:

(1) **LICENSE.** The board may grant licenses, including various classes of temporary licenses, to practice medicine and surgery.

(2) **CERTIFICATE.** The board may certify occupational therapists, occupational therapy assistants and respiratory care practitioners.

NOTE: Sub. (2) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(2) **CERTIFICATE.** The board may certify physician assistants, occupational therapists, occupational therapy assistants and respiratory care practitioners.

(3) **INVESTIGATION; HEARING; ACTION.** (a) The board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license, certificate or limited permit granted by the board. An allegation that a physician has violated s. 253.10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical certification required under s. 69.18 (2) within 21 days after the pronouncement of death of the person who is the subject of the required certificate or that a physician has failed at least 6 times within a 6–month period to mail or present a medical certificate required under s. 69.18 (2) within 6 days after the pronouncement of death of the person who is the subject of the required certificate is an allegation of unprofessional conduct. Information contained in reports filed with the board under s.

49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the board. Information contained in a report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the discretion of the board, be used as the basis of an investigation of a person named in the report. The board may require a person holding a license, certificate or limited permit to undergo and may consider the results of one or more physical, mental or professional competency examinations if the board believes that the results of any such examinations may be useful to the board in conducting its investigation.

(b) After an investigation, if the board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the board shall hold a hearing on such conduct. The board may use any information obtained by the board or the department under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, in an investigation or a disciplinary proceeding, including a public disciplinary proceeding, conducted under this subsection and the board may require a person holding a license, certificate or limited permit to undergo and may consider the results of one or more physical, mental or professional competency examinations if the board believes that the results of any such examinations may be useful to the board in conducting its hearing. A unanimous finding by a panel established under s. 655.02, 1983 stats., or a finding by a court that a physician has acted negligently in treating a patient is conclusive evidence that the physician is guilty of negligence in treatment. A finding that is not a unanimous finding by a panel established under s. 655.02, 1983 stats., that a physician has acted negligently in treating a patient is presumptive evidence that the physician is guilty of negligence in treatment. A certified copy of the findings of fact, conclusions of law and order of the panel or the order of a court is presumptive evidence that the finding of negligence in treatment was made. The board shall render a decision within 90 days after the date on which the hearing is held or, if subsequent proceedings are conducted under s. 227.46 (2), within 90 days after the date on which those proceedings are completed.

(c) Subject to par. (cm), after a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimously found or a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke any license, certificate or limited permit granted by the board to that person. The board may condition the removal of limitations on a license, certificate or limited permit or the restoration of a suspended or revoked license, certificate or limited permit upon obtaining minimum results specified by the board on one or more physical, mental or professional competency examinations if the board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

(cm) The board may initiate disciplinary action against a physician no later than one year after initiating an investigation of an allegation involving the death of a patient and no later than 3 years after initiating an investigation of any other allegation, unless the board shows to the satisfaction of the secretary that a specified extension of time is necessary for the board to determine whether a physician is guilty of unprofessional conduct or negligence in treatment. For purposes of this paragraph, the date that a matter is reopened under sub. (8) (c) is considered the date that an investigation of the matter is initiated.

(e) A person whose license, certificate or limited permit is limited under this subchapter shall be permitted to continue practice upon condition that the person will refrain from engaging in unprofessional conduct; that the person will appear before the board or its officers or agents at such times and places as may be designated by the board from time to time; that the person will fully disclose to the board or its officers or agents the nature of the

person's practice and conduct; that the person will fully comply with the limits placed on his or her practice and conduct by the board; that the person will obtain additional training, education or supervision required by the board; and that the person will cooperate with the board.

(f) Unless a suspended license or certificate is revoked during the period of suspension, upon the expiration of the period of suspension the license or certificate shall again become operative and effective. However, the board may require the holder of any such suspended license or certificate to pass the examinations required for the original grant of the license or certificate before allowing such suspended license or certificate again to become operative and effective.

(g) The board shall comply with rules of procedure for the investigation, hearing and action promulgated under ss. 440.03 (1) and 448.40.

(h) Nothing in this subsection prohibits the board, in its discretion, from investigating and conducting disciplinary proceedings on allegations of unprofessional conduct by persons holding a license, certificate or limited permit granted by the board when the allegations of unprofessional conduct may also constitute allegations of negligence in treatment.

(4) SUSPENSION PENDING HEARING. The board may summarily suspend any license, certificate or limited permit granted by the board for a period not to exceed 30 days pending hearing, when the board has in its possession evidence establishing probable cause to believe that the holder of the license, certificate or limited permit has violated the provisions of this subchapter and that it is necessary to suspend the license, certificate or limited permit immediately to protect the public health, safety or welfare. The holder of the license, certificate or limited permit shall be granted an opportunity to be heard during the determination of probable cause. The board may designate any of its officers to exercise the authority granted by this subsection to suspend summarily a license, certificate or limited permit, but such suspension shall be for a period of time not to exceed 72 hours. If a license, certificate or limited permit has been summarily suspended by the board or any of its officers, the board may, while the hearing is in progress, extend the initial 30-day period of suspension for an additional 30 days. If the holder of the license, certificate or limited permit has caused a delay in the hearing process, the board may subsequently suspend the license, certificate or limited permit from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

(5) VOLUNTARY SURRENDER. The holder of any license, certificate or limited permit granted by the board may voluntarily surrender the license, certificate or limited permit to the secretary of the board, but the secretary may refuse to accept the surrender if the board has received allegations of unprofessional conduct against the holder of the license, certificate or limited permit. The board may negotiate stipulations in consideration for accepting the surrender of licenses.

(6) RESTORATION OF LICENSE, CERTIFICATE OR LIMITED PERMIT. The board may restore any license, certificate or limited permit which has been voluntarily surrendered or revoked under any of the provisions of this subchapter, on such terms and conditions as it may deem appropriate.

(7) HOSPITAL REPORTS. (a) Within 30 days of receipt of a report under s. 50.36 (3) (c), the board shall notify the licensee, in writing, of the substance of the report. The licensee and the licensee's authorized representative may examine the report and may place into the record a statement, of reasonable length, of the licensee's view of the correctness or relevance of any information in the report. The licensee may institute an action in circuit court to amend or expunge any part of the licensee's record related to the report.

(b) If the board determines that a report submitted under s. 50.36 (3) (c) is without merit or that the licensee has sufficiently improved his or her conduct, the board shall remove the report

from the licensee's record. If no report about a licensee is filed under s. 50.36 (3) (c) for 2 consecutive years, the licensee may petition the board to remove any prior reports, which did not result in disciplinary action, from his or her record.

(c) Upon the request of a hospital, the board shall provide the hospital with all information relating to a licensee's loss, reduction or suspension of staff privileges from other hospitals and all information relating to the licensee's being found guilty of unprofessional conduct. In this paragraph, "hospital" has the meaning specified under s. 50.33 (2).

(8) ADMINISTRATIVE WARNING. (a) After an investigation by the board under sub. (3) (a) or by the department under s. 440.03 (3m) or (5), the board may issue a private and confidential administrative warning to a holder of a license, certificate or limited permit if the board determines that there is evidence of misconduct by him or her. The board may issue an administrative warning under this paragraph only if the board determines that no further action is warranted because the matter involves a first occurrence of minor misconduct and the issuance of an administrative warning adequately protects the public by putting the holder of the license, certificate or limited permit on notice that any subsequent misconduct may result in disciplinary action. The board shall review the determination if the holder of the license, certificate or limited permit makes a personal appearance before the board. Following the review, the board may affirm, rescind or modify the administrative warning. A holder of a license, certificate or limited permit may seek judicial review under ch. 227 of an affirmation or modification of an administrative warning by the board.

(b) An administrative warning issued under par. (a) does not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the holder of a license, certificate or limited permit is guilty of misconduct.

(c) Notwithstanding par. (b), if the board receives a subsequent allegation of misconduct about a holder of a license, certificate or limited permit to whom the board issued an administrative warning under par. (a), the board may reopen the matter that resulted in the issuance of the administrative warning or use the administrative warning in any subsequent disciplinary hearing under sub. (3) (b) as evidence that he or she had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law.

(d) The record that an administrative warning was issued under par. (a) shall be a public record. The contents of an administrative warning shall be private and confidential.

(9) JUDICIAL REVIEW. No injunction, temporary injunction, stay, restraining order or other order may be issued by a court in any proceeding for review that suspends or stays an order of the board to discipline a physician under sub. (3) (c) or to suspend a physician's license under sub. (4), except upon application to the court and a determination by the court that all of the following conditions are met:

(a) The board has received notice of the application and the court has provided advance notice to the board of the date of the court hearing on the application.

(b) There is a substantial likelihood that the applicant will prevail in the proceeding for review.

(c) The applicant will suffer irreparable harm if the order is not suspended or stayed.

(d) There is no substantial likelihood of harm to patients of the applicant if the board's order is suspended or stayed.

History: 1975 c. 383, 421; 1977 c. 418; 1981 c. 135, 375, 391; 1983 a. 188 s. 10; 1983 a. 189 s. 329 (5); 1983 a. 253, 538; 1985 a. 29; 1985 a. 146 s. 8; 1985 a. 315, 332, 340; 1987 a. 27, 399, 403; 1989 a. 229; 1991 a. 186; 1993 a. 105, 107; 1995 a. 309; 1997 a. 67, 175, 191, 311; s. 13.93 (2) (c).

Reading (3) (b) in conjunction with 227.46 (2), "hearing" for purposes of computing time period for decision includes taking of evidence and all subsequent proceedings. *Sweet v. Medical Examining Board*, 147 W (2d) 539, 433 NW (2d) 614 (Ct. App. 1988).

There is a 5-prong test to guide the Board in determining whether a physician improperly treated a patient. The Board must provide written decision that separately identifies the 5 elements and discusses the evidence which relates to each element and

provides details of why the evidence supports the Board's findings. *Gimenez v. State Medical Examining Board*, 203 W (2d) 349, 552 NW (2d) 863 (Ct. App. 1996).

As used in this section, "negligence in treatment" means medical negligence, as defined by Wisconsin courts, which holds a doctor to the standard of reasonable care. The "reasonable physician" is not synonymous with the "average physician". *Dept. of Regulation and Licensing v. Medical Examining Board*, 215 W (2d) 187, 572 NW (2d) 508 (Ct. App. 1997).

Ninety-day direction for decision is mandatory. 72 Atty. Gen. 147.

Wisconsin medical examining board does not deny due process by both investigating and adjudicating charge of professional misconduct. *Withrow v. Larkin*, 421 US 35.

448.03 License or certificate required to practice; use of titles; civil immunity; practice of Christian Science.

(1) LICENSE REQUIRED TO PRACTICE. (a) No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license to practice medicine and surgery granted by the board.

NOTE: Sub. (1) (a) is shown as renumbered and affected eff. 2–1–99 by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–99 it reads:

(1) LICENSE REQUIRED TO PRACTICE. No person may practice medicine and surgery, or attempt to do so or make a representation as authorized to do so, without a license granted by the board.

(b) No person may practice as a physician assistant unless he or she is licensed by the board as a physician assistant.

NOTE: Par. (b) is created eff. 2–1–99 by 1997 Wis. Act 67.

(c) No person may practice podiatry, or attempt to do so or make a representation as authorized to do so, without a license to practice podiatry granted by the board.

NOTE: Par. (c) is created eff. 2–1–99 by 1997 Wis. Act 67. 1997 Wis. Act 175 moved the regulation of podiatrists to Subch. IV of ch. 448 without taking the treatment by Act 67 into account. See Subch. IV of ch. 448 for the regulation of podiatrists.

(1m) CERTIFICATE REQUIRED TO PRACTICE. No person may practice respiratory care, or attempt to do so or make a representation as authorized to do so, without a certificate as a respiratory care practitioner granted by the board.

(2) EXCEPTIONS. Nothing in this subchapter shall be construed either to prohibit, or to require, a license or certificate under this subchapter for any of the following:

(a) Any person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted to practice professional or practical nursing or nurse–midwifery under ch. 441, to practice chiropractic under ch. 446, to practice dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to practice acupuncture under ch. 451 or under any other statutory provision, or as otherwise provided by statute.

(b) The performance of official duties by a physician of any of the armed services or federal health services of the United States.

(c) The activities of a medical student, respiratory care student or physician assistant student required for such student's education and training, or the activities of a medical school graduate required for training as required in s. 448.05 (2).

(d) Actual consultation or demonstration by licensed physicians or certified respiratory care practitioners of other states or countries with licensed physicians or certified respiratory care practitioners of this state.

(e) Any person other than a physician assistant who is providing patient services as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the patient services rendered.

NOTE: Par. (e) is shown as affected eff. 2–1–99 by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). Prior to 2–1–99 it reads:

(e) Any person providing patient services as directed, supervised and inspected by a physician who has the power to direct, decide and oversee the implementation of the patient services rendered.

(g) Ritual circumcision by a rabbi.

(h) The gratuitous domestic administration of family remedies.

(i) Any person furnishing medical assistance or first aid at the scene of an emergency.

(j) Any person assisting a respiratory care practitioner in practice under the direct, immediate, on–premises supervision of the respiratory care practitioner.

(k) Any persons other than physician assistants who assist physicians.

NOTE: Par. (k) is shown as amended and renumbered from 448.05 (5) (d) eff. 2–1–99 by 1997 Wis. Act 67.

(3) USE OF TITLES. (a) No person may use or assume the title "doctor of medicine" or append to the person's name the letters "M.D." unless one of the following applies:

1. The person possesses the degree of doctor of medicine.

2. The person is licensed as a physician under this subchapter because the person satisfied the degree requirement of s. 448.05 (2) by possessing a medical degree that was conferred by a medical school recognized and listed as such by the World Health Organization of the United Nations.

(b) No person not possessing the degree of doctor of osteopathy may use or assume the title "doctor of osteopathy" or append to the person's name the letters "D.O."

(e) No person may designate himself or herself as a "physician assistant" or use or assume the title "physician assistant" or append to the person's name the words or letters "physician assistant" or "P.A." or any other titles, letters or designation which represents or may tend to represent the person as a physician assistant unless he or she is licensed as a physician assistant by the board.

NOTE: Par. (e) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(e) No person may designate himself or herself as a "physician assistant" or use or assume the title "physician assistant" or append to the person's name the words or letters "physician assistant" or "P.A." or any other titles, letters or designation which represents or may tend to represent the person as a physician assistant unless certified as a physician assistant by the board.

(f) No person not an occupational therapist may designate himself or herself as an occupational therapist, claim to render occupational therapy services or use the abbreviation "O.T." or "O.T.R." after the person's name. This paragraph does not apply to:

1. Any person employed as an occupational therapist by a federal agency, as defined under s. 59.57 (2) (c) 1., if the person provides occupational therapy solely under the direction or control of the federal agency by which he or she is employed.

2. Any person pursuing a supervised course of study, including internship, leading to a degree or certificate in occupational therapy under an accredited or approved educational program, if the person is designated by a title which clearly indicates his or her status as a student or trainee.

3. Any person performing occupational therapy services in this state under a limited permit, as provided under s. 448.04 (1) (h), if at least one of the following applies:

a. The person is licensed or certified as an occupational therapist under the law of another state which has licensure or certification requirements that are determined by the board to be at least as stringent as the requirements of this subchapter.

b. The person meets the requirements for certification as an occupational therapist, registered, established by the American occupational therapy certification board.

(g) No person not an occupational therapy assistant may describe himself or herself as an occupational therapy assistant or claim to render occupational therapy services as an occupational therapy assistant or use the abbreviation "O.T.A." or "C.O.T.A." after the person's name. This paragraph does not apply to:

1. Any person employed as an occupational therapy assistant by a federal agency, as defined under s. 59.57 (2) (c) 1., if the person provides occupational therapy solely under the direction or control of the federal agency by which he or she is employed.

2. Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy assistantship under an approved educational program, if the person is desig-

nated by a title which clearly indicates his or her status as a student or trainee.

3. Any person performing occupational therapy services in this state under a limited permit, as provided under s. 448.04 (1) (h), if at least one of the following applies:

a. The person is licensed or certified as an occupational therapy assistant under the law of another state which has licensure or certification requirements that are determined by the board to be at least as stringent as the requirements of this subchapter.

b. The person meets the requirements for certification as a certified occupational therapy assistant, established by the American occupational therapy certification board.

(5) CIVIL LIABILITY; CERTAIN MEDICAL PROCEDURES AND REPORTS. (a) No person licensed or certified under this subchapter shall be liable for any civil damages resulting from such person's refusal to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus from a person if such refusal is based on religious or moral precepts.

(b) No physician 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 information relevant to a physical or mental condition of the patient which in the physician'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 a physical or mental condition of the patient which in the physician's judgment does not impair the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

(c) A physician who in good faith provides the board with information concerning an allegation that another physician has engaged in unprofessional conduct or acted negligently in treating a patient is immune from liability for any damage that results from any act or omission in providing the information and may not be disciplined by the board for providing the information. In any administrative or court proceeding, the good faith of a physician who provides such information shall be presumed.

(6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment.

History: 1975 c. 383, 421; 1977 c. 164; 1979 c. 317; 1985 a. 29; 1987 a. 40, 399; 1989 a. 31, 229; 1991 a. 23; 1993 a. 105, 107, 490; 1995 a. 27, 201; 1997 a. 67, 175, 311; s. 13.93 (2) (c).

Restrictions on business corporations providing medical, legal and dental services discussed. 75 Atty. Gen. 200 (1986).

448.04 Classes of license; certificate of licensure.

(1) CLASSES OF LICENSE. (a) *License to practice medicine and surgery.* A person holding a license to practice medicine and surgery may practice as defined in s. 448.01 (9).

(b) *Temporary license to practice medicine and surgery.* 1. An applicant for license to practice medicine and surgery who has passed an examination satisfactory to the board, or who is a graduate of a medical school in this state, and who more than 30 days prior to the date set by the board for the holding of its next examination has complied with all the requirements of s. 448.05 (2) and (7) may, at the discretion of the board, be granted a temporary license to practice medicine and surgery. Such temporary license shall expire 60 days after the next examination for license is given or on the date following the examination on which the board grants or denies such applicant a license, whichever occurs first; but the temporary license shall automatically expire on the first day the board begins its examination of applicants after granting such license, unless its holder submits to examination on such date. The board may require an applicant for temporary licensure under this subdivision to appear before a member of the board for

an interview and oral examination. A temporary license shall be granted under this subsection only once to the same person.

2. An applicant who is a graduate of a foreign medical school and who, because of noteworthy professional attainment, is invited to serve on the academic staff of a medical school in this state as a visiting professor, may be granted a temporary license to practice medicine and surgery if the applicant does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335. Such license shall remain in force only while the holder is serving full-time on the academic staff of a medical school, and the holder's entire practice is limited to the duties of the academic position. Such license shall expire 2 years after its date of granting and may be renewed at the discretion of the board. The board may require an applicant for licensure under this subdivision to appear before a member of the board for an interview.

3. The board may grant a temporary license to practice medicine and surgery for a period not to exceed 90 days to a nonresident physician who is serving on a full-time or temporary basis in a camp or other recreational facility, or to a physician temporarily maintaining the practice of another physician. In either case, the applicant for such temporary license must satisfy the board that the applicant is needed in the area in which the applicant wishes to serve and that the applicant holds a license granted upon written examination in another licensing jurisdiction of the United States or Canada. The board may renew such temporary license for additional periods of 90 days each but may not renew such license more than 3 consecutive times. The board may require an applicant for such temporary license to appear before a member of the board for interview.

(c) *Temporary educational permit to practice medicine and surgery.* Application for a temporary educational permit to practice medicine and surgery may be made to the board by a person who meets the requirements of s. 448.05 (2). Such permit may be issued for a period not to exceed one year and may be renewed annually for not more than 4 years. Such permit shall entitle the holder to take postgraduate educational training in a facility approved by the board. The holder of such permit may, under the direction of a person licensed to practice medicine and surgery in this state, perform services requisite to the training authorized by this section. Acting under such direction, the holder of such permit shall also have the right to prescribe drugs other than narcotics and to sign any certificates, reports or other papers for the use of public authorities which are required of or permitted to persons licensed to practice medicine and surgery. The holder of such permit shall confine training and practice to the facility in which the holder is taking the training. The purpose of this paragraph is solely to provide opportunities in this state for the postgraduate education of certain persons having training in medicine and surgery satisfactory to the board, without compliance with the licensure requirements of this subchapter. Nothing in this paragraph changes in any respect the requirements for licensure to practice medicine and surgery in this state. The violation of this paragraph by the holder of such permit shall constitute cause for the revocation of the permit. All holders of such permits shall be subject to such provisions of this subchapter as the board, by rule, determines are appropriate and to any penalties applicable to those with a temporary or regular license to practice medicine and surgery. The board may require an applicant for licensure under this paragraph to appear before a member of the board for an interview and oral examination.

(f) *Physician assistant license.* The board shall license as a physician assistant an individual who meets the requirements for licensure under s. 448.05 (5). The board may, by rule, provide for various classes of temporary licenses to practice as physician assistants.

NOTE: Par. (f) is shown as amended eff. 2-1-99 by 1997 Wis. Act 67. Prior to 2-1-99 it reads:

(f) *Certificate as physician assistant.* The board shall certify as a physician assistant an individual who meets the requirements for certification under s. 448.05 (5). The board may, by rule, provide for various classes of temporary certificates to practice as physician assistants.

(g) *Certification to practice or assist in the practice of occupational therapy.* 1. A person who is certified to practice occupational therapy may practice occupational therapy.

2. A person who is certified to practice as an occupational therapy assistant may assist in the practice of occupational therapy.

3. The board may waive the requirements under s. 448.05 (5m) (a) or (b) and, upon payment of a reciprocal certificate fee under s. 440.05 (2), certify as an occupational therapist or occupational therapy assistant:

a. Any person who presents proof of current licensure or certification as an occupational therapist or occupational therapy assistant in another state or territory of the United States which requires standards for licensure or certification considered by the board to be equivalent to the requirements for certification in this state.

b. Any person who presents proof of certification by the American occupational therapy certification board, if the medical examining board determines that the requirements for the certification are equivalent to the requirements under s. 448.05 (5m) (a) or (b).

(h) *Limited permit to practice or assist in the practice of occupational therapy.* The board may, upon application, issue a permit for a limited period of time designated by the board to any of the following:

1. A person who presents evidence satisfactory to the board of having met the requirements under s. 448.05 (5m) (a), to practice occupational therapy in association with an occupational therapist.

2. A person who presents evidence satisfactory to the board of having met the requirements under s. 448.05 (5m) (b), to assist in the practice of occupational therapy under the supervision of an occupational therapist.

(i) *Certificate as respiratory care practitioner.* The board may certify as a respiratory care practitioner any individual who meets the qualifications for certification under s. 448.05 (5r) and passes the examination required under s. 448.05 (6). The board may, by rule, provide for a temporary certificate to practice respiratory care to be granted to any individual who meets the requirements of s. 448.05 (5r) but has not passed the examination required by s. 448.05 (6). Temporary certificates may be issued for a period not to exceed one year and may not be renewed.

(2) **CERTIFICATE OF LICENSURE.** Each license granted by the board shall be attested by a certificate of licensure.

(3) **DUPLICATE.** Any person holding a license or certificate granted under this subchapter, which is lost, stolen or destroyed, may apply to the board for a duplicate thereof. Such application shall be made in such manner as the board may designate and shall be accompanied by an affidavit setting out the circumstances of loss. The board shall then issue a duplicate bearing on its face the word “duplicate”.

History: 1975 c. 383, 421; 1979 c. 162 s. 38 (10); 1979 c. 337; 1981 c. 380; 1981 c. 391 s. 211; 1985 a. 290; 1987 a. 399; 1989 a. 31, 229; 1991 a. 39, 180; 1993 a. 105, 107; 1997 a. 67, 175.

Discussion of circumstances under which physical therapist may practice without a referral under (1) (e). 75 Atty. Gen. 217 (1986).

448.05 Qualification for licensure or certification; examinations; application. (1) **GENERAL REQUIREMENTS.** To be qualified for the grant of any license or certificate by the board, an applicant must:

(a) Subject to ss. 111.321, 111.322 and 111.335, not have an arrest or conviction record.

(b) Meet the specific requirements as set out in this section for that class of license or certificate for which applying.

(c) Achieve a passing grade in the examinations required in this section.

(d) Be found qualified by three-fourths of the members of the board, except that an applicant for a temporary license under s.

448.04 (1) (b) 1. and 3. must be found qualified by 2 members of the board.

(2) **LICENSE TO PRACTICE MEDICINE AND SURGERY.** An applicant for any class of license to practice medicine and surgery must supply evidence satisfactory to the board that the applicant is a graduate of and possesses a diploma from a medical or osteopathic college approved by the board and has completed postgraduate training of 12 months in a facility approved by the board. If an applicant is a graduate of a foreign medical school which has not been approved by the board, and if such applicant has had postgraduate training in this country in a 12-month program approved by the board or has had other professional experience which the board deems has given the applicant the education and training substantially equivalent, and if such applicant has passed the examinations given by the educational council for foreign medical graduates or its successors, the board may make such additional inquiry including a personal interview as satisfies it that the applicant has had such education and training. If a majority of the board is so satisfied, the applicant may then be admitted to examination for a license to practice medicine and surgery. If an applicant is a graduate of a foreign medical school not approved by the board, and such foreign medical school requires either social service or internship or both of its graduates, and if such applicant has not completed such requirements but has completed a 12-month supervised clinical training program under the direction of a medical school approved by the board and has complied with all other requirements of this subsection for graduates of foreign medical schools not approved by the board, the applicant may then be admitted to examination for a license to practice medicine and surgery.

(5) **PHYSICIAN ASSISTANT LICENSE.** (a) The board shall promulgate rules establishing licensing standards and practice standards for physician assistants and shall license persons under those rules. The board may not grant a license as a physician assistant to an applicant unless the applicant submits evidence satisfactory to the board of all of the following:

NOTE: Sub. (5) (title) and (a) (intro.) are shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 they read:

(5) **CERTIFICATE AS A PHYSICIAN ASSISTANT.** (a) The board shall promulgate rules establishing certification standards and practice standards for physician assistants and shall certify persons under those rules. The board may not grant a certificate as a physician assistant to an applicant unless the applicant submits evidence satisfactory to the board of all of the following:

1. That the applicant has passed the certifying examination administered by the National Commission on Certification of Physician Assistants.

NOTE: Subd. 1. is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

1. That the applicant is certified to assist primary care physicians by the national commission on certification of physician assistants.

2. That the applicant has satisfactorily completed a physician assistant training program that is accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or its successor.

NOTE: Subd. 2. is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

2. That the applicant has satisfactorily completed a physician assistant training program that is certified under par. (b).

(b) The board shall promulgate rules establishing certification standards for physician assistant training programs and shall certify programs under those rules.

NOTE: Par. (b) is repealed eff. 2–1–99 by 1997 Wis. Act 67.

(c) In promulgating rules under par. (a), the board shall recognize the objective under s. 448.20 (4).

NOTE: Par. (c) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(c) In promulgating rules under pars. (a) and (b), the board shall recognize the objective under s. 448.20 (4).

(d) Nothing in this subsection shall be construed as requiring certification under this subsection of other persons who assist physicians.

NOTE: Par. (d) is amended and renumbered 448.03 (2) (k) eff. 2–1–99 by 1997 Wis. Act 67.

(5m) CERTIFICATE TO PRACTICE OCCUPATIONAL THERAPY. (a) An applicant for certification as an occupational therapist shall submit evidence to the board that he or she has done any of the following:

1. Successfully completed the academic requirements and supervised internship of an educational program in occupational therapy recognized by the board and accredited by the accreditation council for occupational therapy education of the American occupational therapy association.

2. Received certification as an occupational therapist by the American occupational therapy certification board.

(b) An applicant for certification as an occupational therapy assistant shall submit evidence to the examining board that he or she has done any of the following:

1. Successfully completed the academic and supervised internship requirements of an educational program in occupational therapy or other requirements recognized by the board and approved by the American occupational therapy association.

2. Received certification as an occupational therapy assistant by the American occupational therapy certification board.

(5r) CERTIFICATE AS RESPIRATORY CARE PRACTITIONER. An applicant for a certificate or a temporary certificate to practice respiratory care shall submit evidence satisfactory to the board that the applicant is a graduate of a school with a course of instruction in respiratory care approved by the commission on accreditation of allied health education programs of the American medical association.

(6) EXAMINATIONS. (a) The board shall examine each applicant it finds eligible under this section in such subject matters as the board deems applicable to the class of license or certificate which the applicant seeks to have granted. Examinations may be both written and oral. In lieu of its own examinations, in whole or in part, the board may make such use as it deems appropriate of examinations prepared, administered, and scored by national examining agencies, or by other licensing jurisdictions of the United States or Canada. The board shall specify passing grades for any and all examinations required.

(b) The board may require an applicant who fails to appear for or to complete the required examinations to reapply for licensure or certification before being admitted to subsequent examinations.

(c) An applicant who fails to achieve a passing grade in the required examinations may request reexamination, and may be reexamined not more than twice at not less than 4-month intervals, and shall pay a reexamination fee for each such reexamination. An applicant who fails to achieve a passing grade on the 2nd such reexamination may not be admitted to further examination until the applicant reapplies for licensure or certification and also presents to the board evidence of further professional training or education as the board may deem appropriate.

(7) APPLICATION. Application for any class of license or certificate shall be made as a verified statement in a form provided by the department and at such time and place as the board may designate, and shall be accompanied by satisfactory evidence setting out the qualifications imposed by this section. Application for any class of license to practice medicine and surgery also shall be accompanied by a verified statement that the applicant is familiar with the state health laws and the rules of the department of health and family services as related to communicable diseases.

History: 1975 c. 383, 421; 1979 c. 221; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 399; 1989 a. 229; 1991 a. 180; 1993 a. 105, 107; 1995 a. 27 s. 9126 (19); 1995 a. 171, 172, 245; 1997 a. 27, 67, 175.

448.06 License, certificate or limited permit granted, denied. **(1) GRANT OF LICENSE, CERTIFICATE OR LIMITED PERMIT.** If three-fourths of the members of the board find that an applicant who has passed the required examinations or who applies under s. 448.04 (1) (h) is qualified, the board shall so notify the applicant and shall grant the license, certificate or limited permit.

(1m) GRANT OF LIMITED LICENSE OR CERTIFICATE. If the board finds, based upon considerations of public health and safety, that the applicant has not demonstrated adequate education, training or performance on examinations or in past practice, if any, to qualify for full licensure or certification under sub. (1), the board may grant the applicant a limited license or certificate and shall so notify the applicant.

(2) DENIAL OF LICENSE OR CERTIFICATE. The board may deny an application for any class of license or certificate and refuse to grant such license or certificate on the basis of unprofessional conduct on the part of the applicant, failure to possess the education and training required for that class of license or certificate for which application is made, or failure to achieve a passing grade in the required examinations.

History: 1975 c. 383, 421; 1985 a. 340; 1987 a. 399.

448.065 Permanent license for certain professors. A person who possesses a temporary license under s. 448.04 (1) (b) 2. and who has practiced under such license for 4 or more years may apply for a license to practice medicine and surgery under s. 448.04 (1) (a). If the applicant achieves a passing grade in the examination for a license to practice medicine and surgery and three-fourths of the board find that the applicant is qualified, notwithstanding s. 448.05 (1) (b) and (2), the board may grant the license. The board may limit the license and, notwithstanding s. 448.02 (3) (e), may continue such limits indefinitely or may remove the limits when it is satisfied that the reasons for the limits no longer exist, except that the board shall remove any limitations on the geographical areas of this state in which the physician may practice and any limitations on the persons with whom the physician may associate, after a period of 5 years of continuous medical practice within this state by the physician.

History: 1977 c. 329; 1981 c. 135; 1985 a. 29 ss. 2238z, 3202 (45).

448.07 Registration. **(1) REGISTRATION.** (a) Every person licensed or certified under this subchapter shall register on or before November 1 of each odd-numbered year following issuance of the license or certificate with the board in such manner as the board shall designate and upon forms the board shall provide. The secretary of the board, on or before October 1 of each odd-numbered year, shall mail or cause to be mailed to every person required to register a registration form. The board shall furnish to each person registered under this section a certificate of registration, and the person shall display the registration certificate conspicuously in the office at all times. No person may exercise the rights or privileges conferred by any license or certificate granted by the board unless currently registered as required under this subsection.

(b) The board shall maintain the register required by s. 440.035 (4), which shall be divided according to the activity for which the registrant is licensed or certified. The board shall make copies available for purchase at cost.

(c) Every registration made as provided in this section shall be presumptive evidence in all courts and other places that the person named therein is legally registered for the period covered by such registration, and shall be deemed to fulfill any statutory requirement for renewal of license or certificate.

(d) No registration may be permitted by the secretary of the board in the case of any physician, occupational therapist or occupational therapy assistant who has failed to meet the requirements of s. 448.13 or any person whose license, certificate or limited permit has been suspended or revoked and the registration of any such person shall be deemed automatically annulled upon receipt by the secretary of the board of a verified report of such suspension or revocation, subject to the licensee's or permittee's right of appeal. A person whose license, certificate or limited permit has been suspended or revoked and subsequently restored shall be registered by the board upon tendering a verified report of such restoration of the license, certificate or limited permit, together with an application for registration and the registration fee.

(2) FEES. The fees for examination and licenses granted or renewed under this subchapter are specified in ss. 440.05 and 440.08.

History: 1975 c. 383, 421; 1977 c. 29, 131, 418; 1979 c. 162; 1987 a. 27, 264, 399; 1991 a. 39; 1995 a. 245; 1997 a. 175.

448.08 Fee splitting; separate billing required, partnerships and corporations; contract exceptions.

(1) DEFINITIONS. As used in this section:

(a) “Hospital” means an institution providing 24-hour continuous service to patients confined therein which is primarily engaged in providing facilities for diagnostic and therapeutic services for the surgical and medical diagnosis, treatment and care, of injured or sick persons, by or under the supervision of a professional staff of physicians and surgeons, and which is not primarily a place of rest for the aged, drug addicts or alcoholics, or a nursing home. Such hospitals may charge patients directly for the services of their employe nurses, nonphysician anesthetists, physical therapists and medical assistants other than physicians or dentists, and may engage on a salary basis interns and residents who are participating in an accredited training program under the supervision of the medical staff, and persons with a temporary educational certificate issued under s. 448.04 (1) (c).

(b) “Medical education and research organization” means a medical education and medical research organization operating on a nonprofit basis.

(1m) FEE SPLITTING. Except as otherwise provided in this section, no person licensed or certified under this subchapter may give or receive, directly or indirectly, to or from any person, firm or corporation any fee, commission, rebate or other form of compensation or anything of value for sending, referring or otherwise inducing a person to communicate with a licensee in a professional capacity, or for any professional services not actually rendered personally or at his or her direction.

(2) SEPARATE BILLING REQUIRED. Any person licensed under this subchapter who renders any medical or surgical service or assistance whatever, or gives any medical, surgical or any similar advice or assistance whatever to any patient, physician or corporation, or to any other institution or organization of any kind, including a hospital, for which a charge is made to such patient receiving such service, advice or assistance, shall, except as authorized by Title 18 or Title 19 of the federal social security act, render an individual statement or account of the charges therefor directly to such patient, distinct and separate from any statement or account by any physician or other person, who has rendered or who may render any medical, surgical or any similar service whatever, or who has given or may give any medical, surgical or similar advice or assistance to such patient, physician, corporation, or to any other institution or organization of any kind, including a hospital.

(3) BILLING FOR TESTS PERFORMED BY THE STATE LABORATORY OF HYGIENE. A person other than a state or local government agency who charges a patient, other person or 3rd party payer for services performed by the state laboratory of hygiene shall identify the actual amount charged by the state laboratory of hygiene and shall restrict charges for those services to that amount.

(4) PROFESSIONAL PARTNERSHIPS AND CORPORATIONS PERMITTED. Notwithstanding any other provision in this section, it is lawful for 2 or more physicians, who have entered into a bona fide partnership for the practice of medicine, to render a single bill for such services in the name of such partnership, and it also is lawful for a service corporation to render a single bill for services in the name of the corporation, provided that each individual licensed, registered or certified under this chapter or ch. 446, 449, 450, 455, 457 or 459 that renders billed services is individually identified as having rendered such services.

(5) CONTRACT EXCEPTIONS; TERMS. Notwithstanding any other provision in this section, when a hospital and its medical staff or a medical education and research organization and its medical staff consider that it is in the public interest, a physician may contract with the hospital or organization as an employe or to provide

consultation services for attending physicians as provided in this subsection.

(a) Contracts under this subsection shall:

1. Require the physician to be a member of or acceptable to and subject to the approval of the medical staff of the hospital or medical education and research organization.

2. Permit the physician to exercise professional judgment without supervision or interference by the hospital or medical education and research organization.

3. Establish the remuneration of the physician.

(b) If agreeable to the contracting parties, the hospital or medical education and research organization may charge the patient for services rendered by the physician, but the statement to the patient shall indicate that the services of the physician, who shall be designated by name, are included in the departmental charges.

(c) No hospital or medical education and research organization may limit staff membership to physicians employed under this subsection.

(d) The responsibility of physician to patient, particularly with respect to professional liability, shall not be altered by any employment contract under this subsection.

History: 1975 c. 383, 421; 1977 c. 29; 1993 a. 107, 473; 1995 a. 167, 225; 1997 a. 175.

Medical professional service corporation may bill patient for services by both physician and physical therapist if billing separates charges. 71 Atty. Gen. 108.

448.09 Penalties; appeal. (1) PENALTIES. A person who violates s. 448.08 (3) may be fined not more than \$250. Except as provided in sub. (1m), a person who violates any other provision of this subchapter may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

NOTE: Sub. (1) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(1m) PHYSICIANS. A physician who violates any provision of this subchapter, except s. 448.08 (3), or any rule promulgated under this subchapter may be fined not more than \$25,000 or imprisoned not more than 9 months or both.

(2) APPEAL. Any person aggrieved by any action taken under this subchapter by the board, its officers or its agents may apply for judicial review as provided in ch. 227, and shall file notice of such appeal with the secretary of the board within 30 days. No court of this state may enter an ex parte stay of any action taken by the board under this subchapter.

History: 1975 c. 383; 1977 c. 29; 1997 a. 175, 311; s. 13.93 (2) (c).

448.10 Previous practice. (1) OSTEOPATHY. Sections 448.02 (1), 448.03 (1) and (3), 448.04 and 448.05 shall not be construed to abrogate the existing rights, privileges and immunities of any person licensed to practice osteopathy and surgery, or osteopathy, who does not hold license to practice medicine and surgery.

(4) MASSAGE AND HYDROTHERAPY. Any person who, on July 11, 1953, was practicing massage and hydrotherapy in this state under a certificate of registration issued pursuant to s. 147.185, 1951 stats., as it existed prior to July 11, 1953, or who had applied for a certificate of registration in massage and hydrotherapy before said date, shall have the right to continue to so practice under such certificate, and the term “massage and hydrotherapy” shall be deemed to include the use of galvanic generator, diathermy, infrared ray and ultraviolet light for massage purposes. Nothing contained in this subsection shall limit the existing authority of the board to revoke such certificate for cause, and in addition, the board may require the holder of such certificate to demonstrate by examination fitness to use the instrumentalities enumerated in this subsection. A lack of such fitness shall constitute cause for revocation of such certificate. No such certificate holder shall treat a specific disease except on the advice of a licensed physician.

(5) MIDWIFERY. Any person who, on May 7, 1953, was practicing midwifery in this state under a certificate of registration issued by the board may continue to so practice under such certifi-

cate but subject to the provisions of ch. 150, 1951 stats., as in effect prior to such date and subject to the other provisions of this subchapter.

History: 1975 c. 383, 421; 1981 c. 390; 1985 a. 135; 1993 a. 107; 1997 a. 175.

448.11 Injunction. If it appears upon complaint to the board by any person or if it is known to the board that any person is violating this subchapter, or rules adopted by the board under this subchapter, the board or the attorney general may investigate and may, in addition to any other remedies, bring action in the name and on behalf of the state against any such person to enjoin such person from such violation. The attorney general shall represent the board in all proceedings.

History: 1975 c. 383; 1997 a. 175.

448.12 Malpractice. Anyone practicing medicine, surgery, osteopathy, or any other form or system of treating the sick without having a license or a certificate of registration shall be liable to the penalties and liabilities for malpractice; and ignorance shall not lessen such liability for failing to perform or for negligently or unskillfully performing or attempting to perform any duty assumed, and which is ordinarily performed by authorized practitioners.

History: 1975 c. 383, 421.

448.13 Biennial training requirement. (1) (a) Each physician shall, in each 2nd year at the time of application for a certificate of registration under s. 448.07, submit proof of attendance at and completion of continuing education programs or courses of study approved for at least 30 hours of credit by the board within the 2 calendar years preceding the calendar year for which the registration is effective. The board may waive this requirement if it finds that exceptional circumstances such as prolonged illness, disability or other similar circumstances have prevented a physician from meeting the requirement.

(b) The board shall, on a random basis, verify the accuracy of proof submitted by physicians under par. (a) and may, at any time during the 2 calendar years specified in par. (a), require a physician to submit proof of any continuing education programs or courses of study that he or she has attended and completed at that time during the 2 calendar years.

(2) Each occupational therapist or occupational therapy assistant shall, in each 2nd year at the time of application for a certificate of registration under s. 448.07, submit proof of completion of continuing education requirements promulgated by rule by the board.

History: 1977 c. 131, 418; 1987 a. 399; 1995 a. 245; 1997 a. 175, 311.

448.14 Annual report. Annually, no later than March 1, the board shall submit to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) a report that identifies the average length of time to process a disciplinary case against a physician during the preceding year and the number of disciplinary cases involving physicians pending before the board on December 31 of the preceding year.

History: 1997 a. 311.

448.20 Council on physician assistants; duties.

(1) **RECOMMEND LICENSING AND PRACTICE STANDARDS.** The council on physician assistants shall develop and recommend to the examining board licensing and practice standards for physician assistants. In developing the standards, the council shall consider the following factors: an individual's training, wherever given; experience, however acquired, including experience obtained in a hospital, a physician's office, the armed services or the federal health service of the United States, or their equivalent as found by the examining board; and education, including that offered by a medical school and the technical college system board.

NOTE: Sub. (1) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(1) **RECOMMEND CERTIFICATION AND PRACTICE STANDARDS.** Within 3 months after the selection of all its initial members, the council on physician assistants

shall develop and recommend to the examining board certification and practice standards for physician assistants. In developing the standards, the council shall consider the following factors: an individual's training, wherever given; experience, however acquired, including experience obtained in a hospital, a physician's office, the armed services or the federal health service of the United States, or their equivalent as found by the examining board; and education, including that offered by a medical school and the technical college system board.

(2) **ADVISE BOARD OF REGENTS.** The council shall advise and cooperate with the board of regents of the university of Wisconsin system in establishing an educational program for physician assistants on the undergraduate level. The council shall suggest criteria for admission requirements, program goals and objectives, curriculum requirements, and criteria for credit for past educational experience or training in health fields.

(3) **ADVISE BOARD.** The council shall advise the board on:

(a) Revising physician assistant licensing and practice standards and on matters pertaining to the education, training and licensing of physician assistants.

NOTE: Par. (a) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(a) **Revising physician assistant certification and practice standards and on matters pertaining to the education, training and certification of physician assistants.**

(b) Developing criteria for physician assistant training program approval, giving consideration to and encouraging utilization of equivalency and proficiency testing and other mechanisms whereby full credit is given to trainees for past education and experience in health fields.

(4) **ADHERE TO PROGRAM OBJECTIVES.** In formulating standards under this section, the council shall recognize that an objective of this program is to increase the existing pool of health personnel.

History: 1975 c. 383; 1993 a. 105, 399, 491; 1997 a. 67.

448.21 Physician assistants. (1) PROHIBITED PRACTICES. No physician assistant may provide medical care, except routine screening, in:

NOTE: Sub. (1) (intro.) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(1) **PROHIBITED PRACTICES.** No physician assistant may perform patient services, except routine screening, in:

(a) The practice of dentistry or dental hygiene within the meaning of ch. 447.

(b) The practice of optometry within the meaning of ch. 449.

(c) The practice of chiropractic within the meaning of ch. 446.

(d) The practice of podiatry within the meaning of s. 448.60 (4).

(e) The practice of acupuncture within the meaning of ch. 451.

(2) **EMPLOYE STATUS.** No physician assistant may be self-employed. The employer of a physician assistant shall assume legal responsibility for any medical care provided by the physician assistant during the employment. The employer of a physician assistant, if other than a licensed physician, shall provide for and not interfere with supervision of the physician assistant by a licensed physician.

NOTE: Sub. (2) is shown as amended eff. 2–1–99 by 1997 Wis. Act 67. Prior to 2–1–99 it reads:

(2) **EMPLOYE STATUS.** No physician assistant may be self-employed. The employer of a physician assistant shall assume legal responsibility for any patient care undertaken by the physician assistant during the employment. The employer of a physician assistant, if other than a licensed physician, shall provide for and not interfere with supervision of the physician assistant by a licensed physician.

(3) **PRESCRIPTIVE AUTHORITY.** A physician assistant may issue a prescription order for a drug or device in accordance with guidelines established by a supervising physician and the physician assistant and with rules promulgated by the board. If any conflict exists between the guidelines and the rules, the rules shall control.

NOTE: Sub. (3) is created eff. 2–1–99 by 1997 Wis. Act 67.

History: 1975 c. 383, 421; 1983 a. 524; 1989 a. 31; 1993 a. 105; 1997 a. 67, 175.

448.30 Information on alternate modes of treatment. Any physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. The physi-

cian's duty to inform the patient under this section does not require disclosure of:

- (1) Information beyond what a reasonably well-qualified physician in a similar medical classification would know.
- (2) Detailed technical information that in all probability a patient would not understand.
- (3) Risks apparent or known to the patient.
- (4) Extremely remote possibilities that might falsely or detrimentally alarm the patient.
- (5) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.
- (6) Information in cases where the patient is incapable of consenting.

History: 1981 c. 375.

A one to three in 100 chance of a condition's existence is not an "extremely remote possibility" under sub. (4) where very serious consequences could result if the condition were present. *Martin v. Richards*, 192 W (2d) 156, 531 NW (2d) 70 (1995).

A doctor has a duty under this section to advise of alternative modes of diagnosis as well as of alternative modes of treatment for diagnosed conditions. *Martin v. Richards*, 192 W (2d) 156, 531 NW (2d) 70 (1995).

What constitutes informed consent emanates from what a reasonable person in the patient's position would want to know. What a physician must disclose is contingent on what a reasonable person would need to know to make an informed decision. When different physicians have substantially different success rates with a procedure and a reasonable person would consider that information material, a court may admit statistical evidence of the relative risk. *Johnson v. Kokemoor*, 199 W (2d) 615, 545 NW (2d) 495 (1996).

A hospital does not have the duty to ensure that a patient has given informed consent to a procedure performed by an independent physician. *Mathias v. St. Catherine's Hospital, Inc.* 212 W (2d) 540, 569 NW (2d) 330 (Ct. App. 1997).

It is basic to the informed consent doctrine that a physician has a legal, ethical and moral duty to respect patient autonomy and to provide only authorized treatment. A doctor's refusal to comply with a patient's request for a cesarean section made during her labor violated the duty. *Schreiber v. Physicians Insurance Co.* 217 W (2d) 94, 579 NW (2d) 730 (Ct. App. 1998).

Generally there can be no patient contributory negligence in an informed consent case. The statute does not place an affirmative duty to question or investigate on the patient. *Brown v. Dibbell*, 220 W (2d) 200, 582 NW (2d) 134 (Ct. App. 1998).

The doctrine of informed consent is limited to apprising the patient of risks that inhere to proposed treatments. It does not impose a duty to apprise a patient of any knowledge the doctor may have regarding the condition of the patient or of all possible methods of diagnosis. *McGeshick v. Choucair* 9 F (3d) 1229 (1993).

448.40 Rules. (1) The board may promulgate rules to carry out the purposes of this subchapter.

(2) The board shall promulgate all of the following rules:

- (a) Implementing s. 448.30.
- (b) Establishing standards for acceptable examination performance by an applicant for certification as an occupational therapist or occupational therapy assistant.
- (c) Establishing continuing education requirements for certificate renewal for an occupational therapist or occupational therapy assistant under s. 448.13 (2).
- (d) Establishing standards of practice for occupational therapy, including criteria for referral.
- (e) Establishing the criteria for the substitution of uncompensated hours of professional assistance volunteered to the department of health and family services for some or all of the hours of continuing education credits required under s. 448.13 (1) (a) for physicians specializing in psychiatry. The eligible substitution hours shall involve professional evaluation of community programs for the certification and recertification of community mental health programs, as defined in s. 51.01 (3n), by the department of health and family services.
- (f) Establishing requirements for prescription orders issued by physician assistants under s. 448.21 (3).

NOTE: Par. (f) is created eff. 2-1-99 by 1997 Wis. Act 67.

(g) Establishing procedures for issuing and using administrative warnings under s. 448.02 (8).

NOTE: Par. (g) was created as par. (f) by 1997 Wis. Act 311 and renumbered by the revisor under s. 13.93 (1) (b).

History: 1975 c. 383; 1981 c. 375; 1987 a. 399; 1993 a. 445; 1995 a. 27 s. 9126 (19); 1997 a. 67, 175, 311; s. 13.93 (1) (b).

SUBCHAPTER III

PHYSICAL THERAPISTS AFFILIATED
CREDENTIALING BOARD

448.50 Definitions. In this subchapter:

- (1) "Affiliated credentialing board" means the physical therapists affiliated credentialing board.
- (2) "Licensee" means a person who is licensed under this subchapter.
- (3) "Physical therapist" means an individual who has been graduated from a school of physical therapy and holds a license to practice physical therapy granted by the affiliated credentialing board.
- (4) "Physical therapy" means that branch or system of treating the sick which is limited to therapeutic exercises with or without assistive devices, and physical measures including heat and cold, air, water, light, sound, electricity and massage; and physical testing and evaluation. The use of roentgen rays and radium for any purpose, and the use of electricity for surgical purposes including cauterization, are not part of physical therapy.

History: 1993 a. 107.

448.51 License required. (1) Except as provided in s. 448.52, no person may practice physical therapy or designate himself or herself as a physical therapist or use or assume the title "physical therapist" or "physiotherapist" or "physical therapy technician" or append to the person's name the letters "P.T.", "P.T.T." or "R.P.T." or any other title, letters or designation which represents or may tend to represent the person as a physical therapist unless the person is licensed under this subchapter.

(2) (a) In this subsection, "advertisement" includes advertisements that appear on outdoor signs, in print or electronic media, and in material mailed to a person other than a patient or prospective patient who has requested the material.

(b) Except as provided in par. (c), no person may claim to render physical therapy or physiotherapy services unless the person is licensed under this subchapter.

(c) A chiropractor licensed under ch. 446 may claim to render physical therapy or physiotherapy services only as follows:

1. In accordance with the rules promulgated under ss. 446.02 (10) and 448.525.

2. If the rules under ss. 446.02 (10) and 448.525 have not taken effect, as follows:

a. If, anytime before October 17, 1995, the chiropractor claimed in an advertisement to render physical therapy or physiotherapy services, the chiropractor may continue to claim to render physical therapy or physiotherapy services in an advertisement until the rules promulgated under ss. 446.02 (10) and 448.525 take effect.

b. The chiropractor may claim to render physical therapy or physiotherapy services in private communications with an individual who is a patient or prospective patient until the rules promulgated under ss. 446.02 (10) and 448.525 take effect. This subd. 2. b. also applies to an employe or agent of the chiropractor who claims that the chiropractor renders physical therapy or physiotherapy services.

History: 1993 a. 107; 1995 a. 166.

448.52 Applicability. This subchapter does not require a license under this subchapter for any of the following, if the person does not claim to render physical therapy or physiotherapy services as prohibited under s. 448.51 (2) (b):

- (1) Any person lawfully practicing within the scope of a license, permit, registration or certification granted by this state or the federal government.

(2) Any person assisting a physical therapist in practice under the direct, on-premises supervision of the physical therapist.

(3) A physical therapist assistant assisting a physical therapist in practice under the general supervision of the physical therapist. In this subsection, “physical therapist assistant” means an individual who has graduated from a physical therapist assistant associate degree program approved by the American physical therapy association. The affiliated credentialing board shall promulgate rules defining “general supervision” for purposes of this subsection.

(4) A physical therapy student practicing physical therapy within the scope of the student’s education or training.

(5) A physical therapist who is licensed to practice physical therapy in another state or country and is providing a consultation or demonstration with a physical therapist who is licensed under this subchapter.

History: 1993 a. 107 ss. 51, 52, 59; 1995 a. 166.

448.525 Rules concerning claims to render physical therapy or physiotherapy services. (1) The affiliated credentialing board and the chiropractic examining board acting under s. 446.02 (10) shall jointly promulgate rules that establish the circumstances under which and the extent to which a chiropractor licensed under ch. 446 may claim to render physical therapy or physiotherapy services within the scope of the practice of chiropractic.

(2) The affiliated credentialing board may promulgate rules relating to the circumstances under which and the extent to which a chiropractor licensed under ch. 446 may claim to render physical therapy or physiotherapy services within the scope of the practice of chiropractic only as provided under sub. (1).

History: 1995 a. 166; 1997 a. 35.

448.53 Licensure of physical therapists. (1) The affiliated credentialing board shall grant a license as a physical therapist to a person who does all of the following:

(a) Submits an application for the license to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (1).

(c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the affiliated credentialing board that the applicant does not have an arrest or conviction record.

(d) Submits evidence satisfactory to the affiliated credentialing board that the applicant is a graduate of a school of physical therapy approved by the affiliated credentialing board, unless the affiliated credentialing board waives this requirement under sub. (3).

(e) Passes an examination under s. 448.54.

(2) The affiliated credentialing board may promulgate rules providing for various classes of temporary licenses to practice physical therapy.

(3) The affiliated credentialing board may waive the requirement under sub. (1) (d) for an applicant who establishes, to the satisfaction of the affiliated credentialing board, all of the following:

(a) That he or she is a graduate of a physical therapy school.

(b) That he or she is licensed as a physical therapist by another licensing jurisdiction in the United States.

(c) That the jurisdiction in which he or she is licensed required the licensee to be a graduate of a school approved by the licensing jurisdiction or of a school that the licensing jurisdiction evaluated for education equivalency.

(d) That he or she has actively practiced physical therapy, under the license issued by the other licensing jurisdiction in the United States, for at least 3 years immediately preceding the date of his or her application.

History: 1993 a. 107.

448.54 Examination. (1) The affiliated credentialing board shall conduct or arrange for examinations for physical therapist

licensure at least semiannually and at times and places determined by the affiliated credentialing board.

(2) Except as provided in sub. (3), examinations shall consist of written or oral tests, or both, requiring applicants to demonstrate minimum competency in subjects substantially related to the practice of physical therapy.

(3) The affiliated credentialing board may not require an applicant to take an oral examination or an examination to test proficiency in the English language for the sole reason that the applicant was educated at a physical therapy school that is not in the United States if the applicant establishes, to the satisfaction of the affiliated credentialing board, that he or she satisfies the requirements under s. 448.53 (3).

History: 1993 a. 107.

448.55 Issuance of license; expiration and renewal.

(1) The department shall issue a certificate of licensure to each person who is licensed under this subchapter.

(2) The renewal dates for licenses granted under this subchapter, other than temporary licenses granted under rules promulgated under s. 448.53 (2), are specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a).

History: 1993 a. 107.

448.56 Practice requirements. (1) WRITTEN REFERRAL.

Except as provided in this subsection and s. 448.52, a person may practice physical therapy only upon the written referral of a physician, chiropractor, dentist or podiatrist. Written referral is not required if a physical therapist provides services in schools to children with disabilities, as defined in s. 115.76 (5), pursuant to rules promulgated by the department of public instruction; provides services as part of a home health care agency; provides services to a patient in a nursing home pursuant to the patient’s plan of care; provides services related to athletic activities, conditioning or injury prevention; or provides services to an individual for a previously diagnosed medical condition after informing the individual’s physician, chiropractor, dentist or podiatrist who made the diagnosis. The affiliated credentialing board may promulgate rules establishing additional services that are excepted from the written referral requirements of this subsection.

(2) FEE SPLITTING. No licensee may give or receive, directly or indirectly, to or from any other person any fee, commission, rebate or other form of compensation or anything of value for sending, referring or otherwise inducing a person to communicate with a licensee in a professional capacity, or for any professional services not actually rendered personally by the licensee or at the licensee’s direction.

(3) BILLING BY PROFESSIONAL PARTNERSHIPS AND CORPORATIONS. If 2 or more physical therapists have entered into a bona fide partnership or have formed a service corporation for the practice of physical therapy, the partnership or corporation may not render a single bill for physical therapy services provided in the name of the partnership or corporation unless each physical therapist who provided services that are identified on the bill is identified on the bill as having rendered those services.

History: 1993 a. 107 ss. 54, 59; 1995 a. 27 s. 9145 (1); 1997 a. 27, 164.

448.57 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may make investigations and conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may reprimand a licensee or may deny, limit, suspend or revoke a license granted under this subchapter if it finds that the applicant or licensee has done any of the following:

(a) Made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of physical therapy.

(c) Advertised in a manner that is false, deceptive or misleading.

(d) Advertised, practiced or attempted to practice under another's name.

(e) Subject to ss. 111.321, 111.322 and 111.34, practiced physical therapy while the applicant's or licensee's ability to practice was impaired by alcohol or other drugs.

(f) Engaged in unprofessional or unethical conduct.

(g) Engaged in conduct while practicing physical therapy which evidences a lack of knowledge or ability to apply professional principles or skills.

(h) Violated this subchapter or any rule promulgated under this subchapter.

History: 1993 a. 107.

448.58 Injunctive relief. If the affiliated credentialing board has reason to believe that any person is violating this subchapter or any rule promulgated under this subchapter, the affiliated credentialing board, the department, the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring an action in the name and on behalf of this state to enjoin the person from the violation.

History: 1993 a. 107.

448.59 Penalties. Any person who violates this subchapter or any rule promulgated under this subchapter may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

History: 1993 a. 107.

SUBCHAPTER IV

PODIATRISTS AFFILIATED CREDENTIALING BOARD

448.60 Definitions. In this subchapter:

(1) "Affiliated credentialing board" means the podiatrists affiliated credentialing board.

(2) "Licensee" means a person who is licensed under this subchapter.

(3) "Podiatrist" means an individual possessing the degree of doctor of podiatric medicine or doctor of surgical chiropody or equivalent degree as determined by the affiliated credentialing board, and holding a license to practice podiatry or podiatric medicine and surgery granted by the affiliated credentialing board.

(4) "Podiatry" or "podiatric medicine and surgery" means that branch or system of treating the sick which is limited to the diagnosis, or mechanical, medical or surgical treatment or treatment by use of drugs, of the feet, but does not include amputations other than digits of the foot or the use of a general anesthetic unless administered by or under the direction of a person licensed to practice medicine and surgery under subch. II. Diagnosis or treatment shall include no portion of the body above the feet except that diagnosis and treatment shall include the tendons and muscles of the lower leg insofar as they shall be involved in conditions of the feet.

(5) "Unprofessional conduct" means an act or attempted act of commission or omission, as defined by the affiliated credentialing board by rule under s. 448.695 (1), or an act by a podiatrist in violation of ch. 450 or 961.

History: 1997 a. 175 ss. 21, 22, 69.

448.61 License required. Except as provided in s. 448.62, no person may practice podiatry, designate himself or herself as a podiatrist, use or assume the title "doctor of surgical chiropody",

"doctor of podiatry" or "doctor of podiatric medicine", or append to the person's name the words or letters "doctor", "Dr.", "D.S.C.", "D.P.M.", "foot doctor", "foot specialist" or any other title, letters or designation which represents or may tend to represent the person as a podiatrist unless the person is licensed under this subchapter.

History: 1997 a. 175.

448.62 Applicability. This subchapter does not require a license for any of the following:

(1) A person lawfully practicing within the scope of a license, permit, registration or certification granted by this state or the federal government.

(2) A person assisting a podiatrist in practice under the direct, on-premises supervision of the podiatrist.

(3) A podiatry student engaged in activities required for his or her education or training.

(4) A podiatrist who is licensed to practice podiatry in another state or country and is providing a consultation or demonstration with a podiatrist who is licensed under this subchapter.

(5) A person performing the gratuitous domestic administration of family remedies.

(6) A person furnishing medical assistance or first aid at the scene of an emergency.

History: 1997 a. 175.

448.63 Licensure of podiatrists. (1) Subject to sub. (4), the affiliated credentialing board shall grant a license as a podiatrist to a person who does all of the following:

(a) Submits an application for the license to the department on a form provided by the department.

(b) Pays the fee specified in s. 440.05 (1).

(c) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the affiliated credentialing board that the applicant does not have an arrest or conviction record.

(d) Submits evidence satisfactory to the affiliated credentialing board of all of the following:

1. That the applicant is a graduate of a school of podiatric medicine and surgery approved by the affiliated credentialing board and possesses a diploma from such school conferring the degree of doctor of podiatric medicine, or equivalent degree as determined by the affiliated credentialing board, unless the affiliated credentialing board waives these requirements under sub. (2).

2. That the applicant has completed 12 months of postgraduate training in a program approved by the affiliated credentialing board.

(e) Passes an examination under s. 448.64.

(2) The affiliated credentialing board may waive the requirement under sub. (1) (d) 1. for an applicant who establishes, to the satisfaction of the affiliated credentialing board, all of the following:

(a) That he or she is a graduate of a podiatry school.

(b) That he or she is licensed as a podiatrist by another licensing jurisdiction in the United States.

(c) That the jurisdiction in which he or she is licensed required the licensee to be a graduate of a school approved by the licensing jurisdiction or of a school that the licensing jurisdiction evaluated for education equivalency.

(d) That he or she has actively practiced podiatry, under the license issued by the other licensing jurisdiction in the United States, for at least 3 years immediately preceding the date of his or her application.

(3) The affiliated credentialing board may promulgate rules providing for various classes of temporary licenses to practice podiatry.

(4) The affiliated credentialing board may grant a limited license to an applicant for a license under sub. (1) if the affiliated credentialing board finds that the applicant has not demonstrated

adequate education, training or performance on any past examination or in any past practice, and that, based upon considerations of public health and safety, the applicant does not qualify for full licensure under sub. (1).

History: 1997 a. 175.

448.64 Examination. (1) The affiliated credentialing board shall conduct or arrange for examinations for podiatrist licensure at least semiannually and at times and places determined by the affiliated credentialing board.

(2) Except as provided in sub. (3), examinations shall consist of written or oral tests, or both, requiring an applicant to demonstrate minimum competency in subjects substantially related to the practice of podiatry.

(3) The affiliated credentialing board may not require an applicant to take an oral examination or an examination to test proficiency in the English language for the sole reason that the applicant was educated at a podiatry school that is not in the United States if the applicant establishes, to the satisfaction of the affiliated credentialing board, that he or she satisfies the requirements under s. 448.63 (2).

(4) The affiliated credentialing board may require an applicant who fails to appear for or to complete an examination under this section to reapply for licensure before being admitted to a subsequent examination.

(5) An applicant who fails to pass an examination under this section may request reexamination, and may be reexamined not more than twice at not less than 4-month intervals, and shall pay a reexamination fee for each reexamination. An applicant who fails to pass an examination on the 2nd such reexamination may not be admitted to further examination until the applicant reapplies for licensure and submits evidence that shows, to the satisfaction of the affiliated credentialing board, that he or she has completed additional education or received additional professional training.

History: 1997 a. 175.

448.65 Issuance of license; expiration and renewal; duplicate license. (1) The department shall issue a certificate of licensure to each person who is licensed under this subchapter.

(2) The renewal date for a license granted under this subchapter, other than a temporary license granted under rules promulgated under s. 448.63 (3), is specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall be accompanied by all of the following:

(a) The renewal fee specified in s. 440.08 (2) (a).

(b) Proof of completion of continuing education requirements in s. 448.665.

(3) A licensee whose license is lost, stolen or destroyed may apply to the department for a duplicate license. Duplicate license applications shall be submitted to the department on a form provided by the department and shall be accompanied by the fee specified under s. 440.05 (7) and an affidavit setting out the circumstances of the loss, theft or destruction of the license. Upon receipt of an application under this subsection, the department shall issue a duplicate license bearing on its face the word "duplicate".

History: 1997 a. 175.

448.655 Malpractice liability insurance. (1) A licensed podiatrist shall annually submit to the affiliated credentialing board evidence satisfactory to the affiliated credentialing board that the podiatrist satisfies one of the following:

(a) The podiatrist has in effect malpractice liability insurance coverage in the amount of at least \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

(b) The podiatrist meets all of the following conditions:

1. The podiatrist's principal place of practice is not in this state.

2. The podiatrist will not be engaged in the practice of podiatry in this state for more than 240 hours during the following 12 months.

3. The podiatrist has in effect malpractice liability insurance coverage that covers services provided by the podiatrist to patients in this state and which is in one of the following amounts:

a. At least the minimum amount of malpractice liability insurance coverage that is required under the laws of the state in which the affiliated credentialing board determines that his or her principal place of practice is located.

b. If the podiatrist is not required under the laws of the state in which the affiliated credentialing board determines that his or her principal place of practice is located to have in effect a minimum amount of malpractice liability insurance coverage, at least the minimum amount of malpractice liability insurance coverage that the affiliated credentialing board determines is necessary to protect the public.

(2) For purposes of sub. (1), a podiatrist's principal place of practice is not in this state if the affiliated credentialing board determines that, during the following 12 months, any of the following applies:

(a) More than 50% of the podiatrist's practice will be performed outside this state.

(b) More than 50% of the income from the podiatrist's practice will be derived from outside this state.

(c) More than 50% of the podiatrist's patients will be treated by the podiatrist outside this state.

(3) The affiliated credentialing board may suspend, revoke or refuse to issue or renew the license of a podiatrist who fails to procure or to submit proof of the malpractice liability insurance coverage required under sub. (1).

History: 1985 a. 340; 1989 a. 152; 1997 a. 175 ss. 51 to 56; Stats. 1997 s. 448.655.

448.66 Malpractice. A person who practices podiatry without having a license under this subchapter may be liable for malpractice, and his or her ignorance of a duty ordinarily performed by a licensed podiatrist shall not limit his or her liability for an injury arising from his or her practice of podiatry.

History: 1997 a. 175.

448.665 Continuing education. The affiliated credentialing board shall promulgate rules establishing requirements and procedures for licensees to complete continuing education programs or courses of study in order to qualify for renewal of a license granted under this subchapter. The rules shall require a licensee to complete at least 30 hours of continuing education programs or courses of study within each 2-year period immediately preceding the renewal date specified under s. 440.08 (2) (a). The affiliated credentialing board may waive all or part of these requirements for the completion of continuing education programs or courses of study if the affiliated credentialing board determines that prolonged illness, disability or other exceptional circumstances have prevented a licensee from completing the requirements.

History: 1997 a. 175.

448.67 Practice requirements. (1) **FEE SPLITTING.** No licensee may give or receive, directly or indirectly, to or from any other person any fee, commission, rebate or other form of compensation or anything of value for sending, referring or otherwise inducing a person to communicate with a licensee in a professional capacity, or for any professional services not actually rendered personally by the licensee or at the licensee's direction.

(2) **SEPARATE BILLING REQUIRED.** Except as provided in sub. (4), a licensee who renders any podiatric service or assistance whatever, or gives any podiatric advice or any similar advice or assistance whatever, to any patient, podiatrist, physician, partnership or corporation, or to any other institution or organization of any kind, including a hospital, for which a charge is made to a patient, shall, except as authorized by Title 18 or Title 19 of the

federal Social Security Act, render an individual statement or account of the charge directly to the patient, distinct and separate from any statement or account by any other podiatrist, physician or other person.

(3) BILLING FOR TESTS PERFORMED BY THE STATE LABORATORY OF HYGIENE. A licensee who charges a patient, other person or 3rd-party payer for services performed by the state laboratory of hygiene shall identify the actual amount charged by the state laboratory of hygiene and shall restrict charges for those services to that amount.

(4) BILLING BY PROFESSIONAL PARTNERSHIPS AND CORPORATIONS. If 2 or more podiatrists have entered into a bona fide partnership or formed a service corporation for the practice of podiatry, the partnership or corporation may not render a single bill for podiatry services provided in the name of the partnership or corporation unless each individual licensed, registered or certified under this chapter or ch. 446, 449, 450, 455, 457 or 459, who provided services is individually identified on the bill as having rendered those services.

History: 1997 a. 175.

448.675 Disciplinary proceedings and actions.

(1) INVESTIGATION; HEARING; ACTION. (a) The affiliated credentialing board shall investigate allegations of unprofessional conduct and negligence in treatment by a licensee. Information contained in reports filed with the affiliated credentialing board under s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17 or 632.715, or under 42 CFR 1001.2005, shall be investigated by the affiliated credentialing board. Information contained in a report filed with the affiliated credentialing board under s. 50.36 (3) (c) may, within the discretion of the affiliated credentialing board, be used as the basis of an investigation of a person named in the report. The affiliated credentialing board may require a licensee to undergo and may consider the results of a physical, mental or professional competency examination if the affiliated credentialing board believes that the results of the examination may be useful to the affiliated credentialing board in conducting its investigation.

(b) After an investigation, if the affiliated credentialing board finds that there is probable cause to believe that the person is guilty of unprofessional conduct or negligence in treatment, the affiliated credentialing board shall hold a hearing on such conduct. The affiliated credentialing board may require a licensee to undergo and may consider the results of a physical, mental or professional competency examination if the affiliated credentialing board believes that the results of the examination may be useful to the affiliated credentialing board in conducting its hearing. A finding by a court that a podiatrist has acted negligently in treating a patient is conclusive evidence that the podiatrist is guilty of negligence in treatment. A certified copy of the order of a court is presumptive evidence that the finding of negligence in treatment was made. The affiliated credentialing board shall render a decision within 90 days after the date on which the hearing is held or, if subsequent proceedings are conducted under s. 227.46 (2), within 90 days after the date on which those proceedings are completed.

(c) After a disciplinary hearing, the affiliated credentialing board may, when it determines that a court has found that a person has been negligent in treating a patient or when it finds a person guilty of unprofessional conduct or negligence in treatment, do one or more of the following: warn or reprimand that person, or limit, suspend or revoke a license granted by the affiliated credentialing board to that person. The affiliated credentialing board may condition the removal of limitations on a license, or the restoration of a suspended or revoked license, upon obtaining minimum results specified by the affiliated credentialing board on a physical, mental or professional competency examination if the affiliated credentialing board believes that obtaining the minimum results is related to correcting one or more of the bases upon which the limitation, suspension or revocation was imposed.

(d) A person whose license is limited shall be permitted to continue practice if the person agrees to do all of the following:

1. Refrain from engaging in unprofessional conduct.
2. Appear before the affiliated credentialing board or its officers or agents at such times and places designated by the affiliated credentialing board.
3. Fully disclose to the affiliated credentialing board or its officers or agents the nature of the person's practice and conduct.
4. Fully comply with the limits placed on his or her practice and conduct by the affiliated credentialing board.
5. Obtain additional training, education or supervision required by the affiliated credentialing board.
6. Cooperate with the affiliated credentialing board.

(e) Unless a suspended license is revoked during the period of suspension, upon expiration of the period of suspension the affiliated credentialing board shall reinstate the person's license, except that the affiliated credentialing board may, as a condition precedent to the reinstatement of the license, require the person to pass the examinations required for the original grant of the license.

(f) The affiliated credentialing board shall comply with rules of procedure for the investigation, hearing and action promulgated by the department under s. 440.03 (1).

(g) Nothing in this subsection prohibits the affiliated credentialing board, in its discretion, from investigating and conducting disciplinary proceedings on allegations of unprofessional conduct by a licensee when the allegations of unprofessional conduct may also constitute allegations of negligence in treatment.

(2) SUSPENSION PENDING HEARING. The affiliated credentialing board may summarily suspend a license granted by the affiliated credentialing board for a period not to exceed 30 days pending hearing if the affiliated credentialing board has in its possession evidence establishing probable cause to believe that the licensee has violated the provisions of this subchapter and that it is necessary to suspend the license immediately to protect the public health, safety or welfare. The licensee shall be granted an opportunity to be heard during the determination of whether or not probable cause exists. The affiliated credentialing board may designate any of its officers to exercise the authority granted by this subsection to suspend summarily a license, for a period not exceeding 72 hours. If a license has been summarily suspended by the affiliated credentialing board or any of its officers, the affiliated credentialing board may, while the hearing is in progress, extend the initial period of suspension for not more than an additional 30 days. If the licensee has caused a delay in the hearing process, the affiliated credentialing board may subsequently suspend the license from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

(3) VOLUNTARY SURRENDER. A licensee may voluntarily surrender his or her license to the secretary of the affiliated credentialing board, but the secretary may refuse to accept the surrender if the affiliated credentialing board has received an allegation of unprofessional conduct against the licensee. The affiliated credentialing board may negotiate stipulations in consideration for accepting the surrender of a license.

(4) RESTORATION OF LICENSE, CERTIFICATE OR LIMITED PERMIT. The affiliated credentialing board may restore a license which has been voluntarily surrendered or revoked under this subchapter on such terms and conditions as it considers appropriate.

History: 1997 a. 175.

448.68 Hospital reports. (1) Within 30 days after receipt of a report under s. 50.36 (3) (c), the affiliated credentialing board shall notify the licensee, in writing, of the substance of the report. The licensee and the licensee's authorized representative may examine the report and may place into the record a statement, of reasonable length, of the licensee's view of the correctness or relevance of any information in the report. The licensee may institute an action in circuit court to amend or expunge any part of the licensee's record related to the report.

(2) If the affiliated credentialing board determines that a report submitted under s. 50.36 (3) (c) is without merit or that the licensee has sufficiently improved his or her conduct, the affiliated credentialing board shall remove the report from the licensee's record. If no report about a licensee is filed under s. 50.36 (3) (c) for 2 consecutive years, the licensee may petition the affiliated credentialing board to remove any prior reports, which did not result in disciplinary action, from his or her record.

(3) Upon the request of a hospital, the affiliated credentialing board shall provide the hospital with all information relating to a licensee's loss, reduction or suspension of staff privileges from other hospitals and all information relating to the licensee's being found guilty of unprofessional conduct. In this subsection, "hospital" has the meaning specified under s. 50.33 (2).

History: 1997 a. 175.

448.685 Injunctive relief. If the affiliated credentialing board has reason to believe that a person is violating this subchapter or a rule promulgated under this subchapter, the affiliated credentialing board, the department, the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring an action in the name and on behalf of this state to enjoin the person from the violation.

History: 1997 a. 175.

448.69 Penalties; appeal. (1) PENALTIES. (a) Except as provided in par. (b), a person who violates any provision of this subchapter or a rule promulgated under this subchapter may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(b) A person who violates s. 448.67 (3) may be fined not more than \$250.

(2) **APPEAL.** A person aggrieved by an action taken under this subchapter by the affiliated credentialing board, its officers or its agents may apply for judicial review as provided in ch. 227, and shall file notice of such appeal with the secretary of the affiliated credentialing board within 30 days. No court of this state may enter an ex parte stay of an action taken by the affiliated credentialing board under this subchapter.

History: 1997 a. 175.

448.695 Rules. (1) The affiliated credentialing board shall promulgate rules defining the acts or attempted acts of commission or omission that constitute unprofessional conduct under s. 448.60 (5).

(2) The affiliated credentialing board may promulgate rules to carry out the purposes of this subchapter.

History: 1997 a. 175.

SUBCHAPTER V

DIETITIANS AFFILIATED CREDENTIALING BOARD

448.70 Definitions. In this subchapter:

(1) "Affiliated credentialing board" means the dietitians affiliated credentialing board.

(1m) "Certified dietitian" means an individual who is certified as a dietitian under this subchapter.

(2) "Dietetics" means the integration and application of principles of nutritional science, biochemistry, food science, physiology, food systems management, behavioral science and social science in order to achieve or maintain the health of an individual or group of individuals. "Dietetics" includes assessing the nutritional needs of an individual or group of individuals and determining available resources and constraints in meeting those nutritional needs; establishing priorities, goals and objectives that meet those nutritional needs and are consistent with available resources and constraints; providing nutrition counseling; or developing, implementing and managing nutritional care systems.

(3) "Dietitian" means an individual who practices dietetics.

History: 1993 a. 443.

448.72 Applicability. This subchapter does not do any of the following:

(1) Require a certificate under this subchapter for any of the following:

(a) A person who is lawfully practicing within the scope of a license, permit or certificate of certification or registration granted under chs. 441, 446 to 451 or 456, or who is lawfully practicing in any other health care profession that is regulated by state law.

(b) A person to whom a practice or procedure is delegated by a person under par. (a).

(c) A person pursuing a supervised course of study, including internships, leading to a degree or certificate in dietetics from an accredited educational program or an educational program approved by the affiliated credentialing board.

(d) A dietetic technician or assistant who is working under the supervision of a certified dietitian.

(e) A dietitian who is serving in the U.S. armed forces, as defined in s. 40.02 (57m), or in the commissioned corps of the federal public health service or is employed by the U.S. veterans administration, and who is engaged in the practice of dietetics as part of that service or employment.

(f) A person who markets or distributes food, food materials or dietary or food supplements, who explains the use, benefits or preparation of food, food materials or dietary or food supplements, who furnishes nutritional information on food, food materials or dietary or food supplements, or who disseminates nutritional information or literature, if the person does not use the title "dietitian" or "certified dietitian" and the person complies with applicable federal, state and local laws.

(2) Prohibit a dietetic student described in sub. (1) (c) from using the title "dietitian student" or any other title, letters or designation that clearly indicates his or her status as a student or trainee.

(3) Prohibit an individual described in sub. (1) (e) from using the title "dietitian" or any letters or designation that represents or may tend to represent the individual as a dietitian, if the title, letters or designation is used only in the course of the individual's service or employment.

(4) Prohibit an individual who is registered as a dietitian with the commission on dietetic registration of the American dietetic association from using the title "dietitian" or "registered dietitian".

(5) Prohibit an individual who is registered as a dietetic technician with the commission on dietetic registration of the American dietetic association from using the title "dietetic technician" or "dietetic technician registered".

(6) Prohibit an individual from using the title "dietitian", "licensed dietitian" or "certified dietitian" if the person is licensed or certified as a dietitian under the laws of another state which has licensure or certification requirements that the affiliated credentialing board determines to be substantially equivalent to the requirements under s. 448.78.

History: 1993 a. 443; 1997 a. 75.

448.74 Duties of affiliated credentialing board. The affiliated credentialing board shall promulgate rules that do all of the following:

(1) Establish criteria for the approval of educational programs and training under s. 448.78 (3) and (4).

(2) Establish a code of ethics to govern the professional conduct of certified dietitians.

History: 1993 a. 443.

448.76 Use of titles. Except as provided in s. 448.72 (1)(e) and (2) to (6), a person who is not a certified dietitian may not designate himself or herself as a dietitian, claim to provide dietetic services or use any title or initials that represent or may tend to rep-

resent the person as certified or licensed as a dietitian or as certified or licensed in a nutrition–related field.

History: 1993 a. 443; 1997 a. 75.

448.78 Certification of dietitians. The affiliated credentialing board shall grant a certificate as a dietitian to an individual who does all of the following:

(1) Submits an application for the certificate to the department on a form provided by the department.

(2) Pays the fee specified in s. 440.05 (1).

(3) Submits evidence satisfactory to the affiliated credentialing board that he or she has done any of the following:

(a) Received a bachelor's, master's or doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from a program at a college or university that is regionally accredited, as determined by the affiliated credentialing board, and that is located in a state or territory of the United States.

(b) Received a bachelor's, master's or doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from a program at a college or university that is not located in a state or territory of the United States if the affiliated credentialing board determines that the program is substantially equivalent to a program under par. (a).

(c) Received a degree from or otherwise successfully completed a program in human nutrition, nutrition education, food and nutrition, dietetics or food systems management that is approved by the affiliated credentialing board.

(4) Submits evidence satisfactory to the affiliated credentialing board that he or she has completed at least 900 hours of dietetics practice in any state or territory of the United States under the supervision of any of the following:

(a) A certified dietitian.

(b) An individual who is registered as a dietitian with the commission on dietetic registration of the American dietetic association.

(c) An individual who received a doctoral degree in human nutrition, nutrition education, food and nutrition, dietetics or food systems management from any of the following:

1. A program at a college or university that is regionally accredited, as determined by the affiliated credentialing board, and that is located in a state or territory of the United States.

2. A program at a college or university that is not located in a state or territory of the United States if the affiliated credentialing board determines that the program is substantially equivalent to a program under subd. 1.

(5) Passes the registration examination for dietitians established by the commission on dietetic registration of the American dietetic association, or passes an equivalent examination approved by the affiliated credentialing board, and held under s. 448.84, to determine fitness to practice dietetics.

History: 1993 a. 443.

448.80 Temporary certificate. Upon application and payment of the fee specified in s. 440.05 (6), the affiliated credentialing board may grant a temporary dietitian certificate to an individual who satisfies the requirements under s. 448.78 (1) to (4) and has submitted an application to take the next available examination under s. 448.84. A temporary certificate granted under this section is valid for a period designated by the affiliated credentialing board, not to exceed 9 months, and may be renewed once by the affiliated credentialing board.

History: 1993 a. 443.

448.82 Reciprocal certificate. Upon application and payment of the fee specified in s. 440.05 (2), the affiliated credential-

ing board shall grant a dietitian certificate to an individual who holds a similar certificate or license in another state or territory of the United States if the affiliated credentialing board determines that the requirements for receiving the certificate in the other state or territory are substantially equivalent to the requirements under s. 448.78.

History: 1993 a. 443.

448.84 Examinations. (1) The affiliated credentialing board shall conduct or arrange for examinations for dietitian certification at least semiannually and at times and places determined by the affiliated credentialing board, and shall provide public notice of each examination at least 90 days before the date of the examination.

(2) Examinations held under sub. (1) shall consist of written or oral tests, or both, requiring applicants to demonstrate minimum competency in subjects substantially related to the practice of dietetics.

History: 1993 a. 443.

448.86 Issuance of certificate; expiration and renewal.

(1) The department shall issue a certificate to each individual who is certified under this subchapter.

(2) The renewal dates for certificates granted under this subchapter, other than temporary certificates granted under s. 448.80, are specified under s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a).

History: 1993 a. 443; 1997 a. 175.

448.90 Disciplinary proceedings and actions. (1) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may make investigations and conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the affiliated credentialing board may reprimand a certified dietitian or deny, limit, suspend or revoke a certificate granted under this subchapter if it finds that the applicant or certified dietitian has done any of the following:

(a) Made a material misstatement in an application for a certificate or for renewal of a certificate.

(b) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of dietetics.

(c) Advertised in a manner that is false, deceptive or misleading.

(d) Advertised, practiced or attempted to practice under another's name.

(e) Subject to ss. 111.321, 111.322 and 111.34, practiced dietetics while his or her ability to practice was impaired by alcohol or other drugs.

(f) Engaged in unprofessional or unethical conduct in violation of the code of ethics established in the rules promulgated under s. 448.74 (2).

(g) Engaged in conduct while practicing dietetics which evidences a lack of knowledge or ability to apply professional principles or skills.

(h) Violated this subchapter or any rule promulgated under this subchapter.

History: 1993 a. 443.

448.94 Penalties. Any person who violates this subchapter or any rule promulgated under this subchapter may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

History: 1993 a. 443.