

CHAPTER 447

DENTISTRY EXAMINING BOARD

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Cross-reference: See definitions in s. 440.01.

447.01 Definitions. In this chapter:

(1) “Accredited” means accredited by the American dental association commission on dental accreditation or its successor agency.

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

(3) “Dental hygiene” means the performance of educational, preventive or therapeutic dental services. “Dental hygiene” includes any of the following:

(a) Removing supragingival or subgingival calcareous deposits, subgingival cement or extrinsic stains from a natural or restored surface of or a fixed replacement for a human tooth.

(b) Deep scaling or root planing a human tooth.

(c) Conditioning a human tooth surface in preparation for the placement of a sealant and placing a sealant.

(d) Conducting a substantive medical or dental history interview or preliminary examination of a dental patient’s oral cavity or surrounding structures, including the preparation of a case history or recording of clinical findings.

(e) Conducting an oral screening without the written prescription of a dentist.

(f) Participating in the development of a dental patient’s dental hygiene treatment plan.

(g) Any other practice specified in the rules promulgated under s. 447.02 (1) (d).

(4) “Dental hygiene student” means an individual who is enrolled in and in regular attendance at an accredited dental hygiene school.

(5) “Dental hygienist” means an individual who practices dental hygiene.

(6) “Dental student” means an individual who is enrolled in and in regular attendance at an accredited dental school.

(7) “Dentist” means an individual who practices dentistry.

(8) “Dentistry” means the examination, diagnosis, treatment, planning or care of conditions within the human oral cavity or its adjacent tissues and structures. “Dentistry” includes any of the following:

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

(b) Extracting human teeth or correcting their malposition.

(c) Directly or indirectly, by mail, carrier, person or any other method, furnishing, supplying, constructing, reproducing or repairing prosthetic dentures, bridges, appliances or other structures to be used or worn as substitutes for natural human teeth; or placing such substitutes in the mouth directly or indirectly or adjusting the same; or taking, making or giving advice or assistance or providing facilities for the taking or making of any impression, bite, cast or design preparatory to, or for the purpose of, or with a view to the making, producing, reproducing, constructing, fitting, furnishing, supplying, altering or repairing of any such prosthetic denture, bridge or appliance; or taking impressions for or fitting athletic mouthguards.

(d) Administering anesthetics, either general or local, while performing or claiming to perform dental services.

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

(f) Engaging in any of the practices, techniques or procedures included in the curricula of accredited dental schools.

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

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

(9) “Examining board” means the dentistry examining board.

(12) “Remediable procedures” means patient procedures that create changes within the oral cavity or surrounding structures that are reversible and do not involve any increased health risks to the patient.

(13) “Written or oral prescription” means specific written or oral authorization by a dentist who is licensed to practice dentistry under this chapter to perform patient procedures according to a clearly defined treatment plan developed by the dentist.

History: 1989 a. 56; 1989 a. 349 ss. 4, 5, 8 to 10.

447.02 Dentistry examining board. (1) The examining board may promulgate rules:

(a) Governing the reexamination of an applicant who fails an examination specified in s. 447.04 (1) (a) 5. or (2) (a) 5. The rules may specify additional educational requirements for those applicants and may specify the number of times an applicant may be examined.

(b) Governing the standards and conditions for the use of radiation and ionizing equipment in the practice of dentistry.

(c) Subject to ch. 553 and s. 447.06 (1), governing dental franchising.

(d) Specifying practices, in addition to the practices specified under s. 447.01 (3) (a) to (f), that are included within the practice of dental hygiene.

(e) Providing for the granting of temporary licenses under this chapter.

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

(a) The conditions for supervision and the degree of supervision required under ss. 447.03 (3) (a), (b) and (d) 2. and 447.065.

(b) The standards, conditions and any educational requirements that are in addition to the requirements specified in s. 447.04 (1) that must be met by a dentist to be permitted to induce general anesthesia or conscious sedation in connection with the practice of dentistry.

(c) Whether an individual is required to be licensed under this chapter to remove plaque or materia alba accretions with mechanical devices.

(d) The oral systemic premedications and subgingival sustained release chemotherapeutic agents that may be administered by a dental hygienist licensed under this chapter under s. 447.06 (2) (e) 1. and 3.

(e) The educational requirements for administration of local anesthesia by a dental hygienist licensed under this chapter under s. 447.06 (2) (e) 2.

History: 1989 a. 349; 1997 a. 96.

447.03 License required. (1) DENTISTS. Except as provided under sub. (3), no person may do any of the following unless he or she is licensed to practice dentistry under this chapter:

(a) Practice or offer to practice dentistry.

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

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

(2) DENTAL HYGIENISTS. Except as provided under sub. (3), no person may do any of the following unless he or she is licensed to practice dental hygiene under this chapter:

(a) Practice or offer to practice dental hygiene.

(b) Represent himself or herself to the public as a dental hygienist or use, in connection with his or her name, any title or description that may convey the impression that he or she is a dental hygienist.

(3) EXCEPTIONS. No license or certificate under this chapter is required for any of the following:

(a) A dental student who practices dentistry under the supervision of a dentist in an infirmary, clinic, hospital or other institution connected or associated for training purposes with an accredited dental school.

(b) A dental hygiene student who practices dental hygiene under the supervision of a dentist in an infirmary, clinic, hospital or other institution connected or associated for training purposes with an accredited dental hygiene school.

(c) An individual licensed to practice dentistry or dental hygiene in another state or country who practices dentistry or dental hygiene in a program of dental education or research at the invitation of a group of dentists or practices dentistry or dental hygiene under the jurisdiction of the army, navy, air force, U.S. public health service or veterans bureau.

(d) Any of the following individuals who do not engage in the private practice of dentistry and do not have an office outside the institution at which he or she is appointed or employed:

1. A nonclinical instructor in dental science who is employed by an accredited dental school.

2. A dental fellow engaged in dental science teaching or research who is appointed by and is under the supervision of the faculty of an accredited dental school.

3. A dental intern who is appointed by a hospital located in this state, if the hospital is accredited for dental internship training and the internship does not exceed one year.

4. A dental resident who is appointed by a hospital located in this state for a 2nd or subsequent year of advanced study of dental science if the hospital is accredited for dental residency training.

(e) Any examiner representing a testing service approved by the examining board.

(f) A dental laboratory or dental laboratory technician to construct appliances or restorations for dentists if all of the following apply:

1. The appliances or restorations are constructed upon receipt from a dentist of impressions or measurements, directions, and a written work authorization on a form approved by the examining board.

2. The amounts payable for the services are billed to the dentist.

(g) Any individual who provides remediable procedures that are delegated under s. 447.065 (1).

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

History: 1989 a. 349 ss. 15, 18; 1997 a. 96.

447.04 Licensure. (1) DENTISTS. (a) The examining board shall grant a license to practice dentistry to an individual who does all of the following:

1. Submits an application for the license 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 examining board that he or she has graduated from an accredited dental school.

4. Submits evidence satisfactory to the examining board that he or she has passed the national dental examination and the examination of a dental testing service approved by the examining board.

5. Passes an examination administered by the examining board on the statutes and rules relating to dentistry.

6. Completes any other requirements established by the examining board by rule.

(b) The examining board may grant a license to practice dentistry to an individual who is licensed in good standing to practice dentistry in another state or territory of the United States or in another country if the applicant meets the requirements for licensure established by the examining board by rule and upon presentation of the license and payment of the fee specified under s. 440.05 (2).

(2) DENTAL HYGIENISTS. (a) The examining board shall grant a license to practice dental hygiene to an individual who does all of the following:

1. Submits an application for the license 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 examining board that he or she has graduated from an accredited dental hygiene school.

4. Submits evidence satisfactory to the examining board that he or she has passed the national dental hygiene examination and the examination of a dental hygiene testing service approved by the examining board.

5. Passes an examination administered by the examining board on the statutes and rules relating to dental hygiene.

6. Completes any other requirements established by the examining board by rule.

(b) The examining board may grant a license to practice dental hygiene to an individual who is licensed in good standing to practice dental hygiene in another state or territory of the United States or in another country if the applicant meets the requirements for licensure established by the examining board by rule and upon presentation of the license and payment of the fee specified under s. 440.05 (2).

(c) 1. The examining board shall grant a certificate to administer local anesthesia to a dental hygienist who is licensed under par. (a) or (b), and who submits evidence satisfactory to the examining board that he or she satisfies the educational requirements established in rules promulgated under s. 447.02 (2) (e).

2. No fee may be charged for a certificate granted under subd. 1. A certificate granted under subd. 1. remains in effect while the dental hygienist's license granted under par. (a) or (b) remains in effect unless the certificate is suspended or revoked by the examining board.

History: 1989 a. 349; 1997 a. 96.

447.05 Expiration and renewal. Renewal applications shall be submitted to the department on a form provided by the department on or before the applicable renewal date specified under s. 440.08 (2) (a) and shall include the applicable renewal fee specified under s. 440.08 (2) (a).

History: 1989 a. 349; 1991 a. 39.

447.06 Practice limitations. (1) No contract of employment entered into between a dentist and any other party under which the dentist renders dental services may require the dentist to act in a manner which violates the professional standards for dentistry set forth in this chapter. Nothing in this subsection limits the ability of the other party to control the operation of the dental practice in a manner in accordance with the professional standards for dentistry set forth in this chapter.

(2) (a) A hygienist may practice dental hygiene or perform remediable procedures only as an employe or as an independent contractor and only as follows:

1. In a dental office.
2. For a school board or a governing body of a private school.
3. For a school for the education of dentists or dental hygienists.
4. For a facility, as defined in s. 50.01 (1m), a hospital, as defined in s. 50.33 (2), a state or federal prison, county jail or other federal, state, county or municipal correctional or detention facility, or a facility established to provide care for terminally ill patients.
5. For a local health department, as defined in s. 250.01 (4).
6. For a charitable institution open to the general public or to members of a religious sect or order.
7. For a nonprofit home health care agency.
8. For a nonprofit dental care program serving primarily indigent, economically disadvantaged or migrant worker populations.

(b) A dental hygienist may practice dental hygiene or perform remediable procedures under par. (a) 1., 4., 6., 7. or 8. only as authorized by a dentist who is licensed to practice dentistry under this chapter and who is present in the facility in which those practices or procedures are performed, except as provided in par. (c).

(c) A dental hygienist may practice dental hygiene or perform remediable procedures under par. (a) 1., 4., 6., 7. or 8. if a dentist who is licensed to practice dentistry under this chapter is not present in the facility in which those practices or procedures are performed only if all of the following conditions are met:

1. The dental hygiene practices or remediable procedures are performed under a written or oral prescription.

2. The dentist who made the written or oral prescription has examined the patient at least once during the 12-month period immediately preceding:

- a. The date on which the written or oral prescription was made; and
- b. The date on which the dental hygiene practices or remediable procedures are performed.

3. The written or oral prescription specifies the practices and procedures that the dental hygienist may perform with the informed consent of the patient or, if applicable, the patient's parent or legal guardian.

4. If the practices or procedures are performed in a dental office, the patient has been the dentist's patient of record for not less than 6 months.

(d) A dental hygienist may not diagnose a dental disease or ailment, determine any treatment or any regimen of any treatment outside of the scope of dental hygiene, prescribe or order medication or perform any procedure that involves the intentional cutting of soft or hard tissue of the mouth by any means.

(e) Pursuant to a treatment plan approved by a dentist who is licensed under this chapter, a dental hygienist licensed under this chapter may administer the following upon delegation by the dentist if the dentist remains on the premises in which the practices are performed and is available to the patient throughout the completion of the appointment:

1. Oral systemic premedications specified by the examining board by rule.
2. If the dental hygienist is certified under s. 447.04 (2) (c) 1., local anesthesia.
3. Subgingival sustained release chemotherapeutic agents specified by the examining board by rule.

History: 1989 a. 349 ss. 13, 16 to 19; 1993 a. 27; 1997 a. 96.

447.065 Delegation of remediable procedures and dental practices. (1) A dentist who is licensed to practice dentistry under this chapter may delegate to an individual who is not licensed under this chapter only the performance of remediable procedures, and only if all of the following conditions are met:

- (a) The unlicensed individual performs the remediable procedures in accordance with a treatment plan approved by the dentist.
- (b) The dentist is on the premises when the unlicensed individual performs the remediable procedures.
- (c) The unlicensed individual's performance of the remediable procedures is subject to inspection by the dentist.

(2) Subject to the requirements under s. 447.06 (2), a dentist who is licensed to practice dentistry under this chapter may delegate to a dental hygienist who is licensed to practice dental hygiene under this chapter the performance of remediable procedures and the administration of oral systemic premedications, local anesthesia and subgingival sustained release chemotherapeutic agents.

(3) A dentist who delegates to another individual the performance of any practice or remediable procedure is responsible for that individual's performance of that delegated practice or procedure.

History: 1989 a. 349; 1997 a. 96.

447.067 Identification of removable prosthetic devices. (1) Except as provided in sub. (2), a dentist who constructs a removable prosthetic device shall mark the device with the patient's first and last name. Except as provided in sub. (2), a dentist who authorizes a dental laboratory or dental laboratory technician to construct a removable prosthetic device shall ensure that the device is marked with the patient's first and last name.

(2) The following exceptions apply to the identification required under sub. (1):

- (a) The first, middle and last name initials of the patient may be substituted for the first and last name of the patient if, in the pro-

professional judgment of the dentist, it is impracticable to mark the first and last name of the patient.

(b) The name and the initials of the patient may be omitted if each of those forms of identification is medically contraindicated.

History: 1993 a. 103.

447.07 Disciplinary proceedings. (1) The examining board may, without further notice or process, limit, suspend or revoke the license or certificate of any dentist or dental hygienist who fails, within 60 days after the mailing of written notice to the dentist's or dental hygienist's last-known address, to renew his or her license or certificate.

(3) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to any alleged action of any dentist or dental hygienist, or of any other person it has reason to believe is engaged in or has engaged in the practice of dentistry or dental hygiene in this state, and may, on its own motion, or upon complaint in writing, reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has done any of the following:

(a) Engaged in unprofessional conduct.

(b) Made any false statement or given any false information in connection with an application for a license or certificate or for renewal or reinstatement of a license or certificate or received a license or certificate through error.

(c) Been adjudicated mentally incompetent by a court.

(d) Directly or indirectly sent, for a purpose other than shade verification, impressions or measurements to a dental laboratory without a written work authorization on a form approved by the examining board and signed by the authorizing dentist, or directly or indirectly sent a patient, or an agent of a patient, to a dental laboratory for any purpose other than for shade verification. The examining board or its agents or employes may inspect dental offices and the work authorization records of dental laboratories to determine compliance with this paragraph.

(e) Subject to ss. 111.321, 111.322 and 111.335, been convicted of a crime, the circumstances of which substantially relate to the practice of dentistry or dental hygiene.

(f) Violated this chapter or any federal or state statute or rule which relates to the practice of dentistry or dental hygiene.

(g) Subject to ss. 111.321, 111.322 and 111.34, practiced dentistry or dental hygiene while his or her ability was impaired by alcohol or other drugs.

(h) Engaged in conduct that indicates a lack of knowledge of, an inability to apply or the negligent application of, principles or skills of dentistry or dental hygiene.

(i) Obtained or attempted to obtain compensation by fraud or deceit.

(j) Employed, directly or indirectly, any unlicensed or uncertified person to perform any act requiring licensure or certification under this chapter.

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

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

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

3. Reporting charges for services not rendered.

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

5. Abrogating the copayment provisions of a contract by agreeing to forgive any or all of the patient's obligation for payment under the contract.

(L) Violated ch. 450 or 961.

(m) Made a substantial misrepresentation in the course of practice that was relied upon by a client.

(n) Violated any order of the examining board.

(o) Advertised by using a statement that tends to deceive or mislead the public.

(5) The examining board may reinstate a license or certificate that has been voluntarily surrendered or revoked on terms and conditions that it considers appropriate. This subsection does not apply to a license that is revoked under s. 440.12.

(7) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license or certificate under sub. (3), the examining board may assess against an applicant, licensee or certificate holder a forfeiture of not more than \$5,000 for each violation enumerated under sub. (3).

History: 1975 c. 94 s. 91 (12); 1977 c. 29; 1977 c. 418; 1979 c. 162; 1981 c. 65, 380; 1981 c. 391 ss. 169, 211; 1983 a. 289; 1985 a. 29, 146; 1987 a. 316; 1989 a. 349; 1995 a. 448; 1997 a. 96, 97, 237.

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

NOTE: This section is amended eff. 12–31–99 by 1997 Wis. Act 283 to read:

447.09 Penalties. Any person who violates this chapter may be fined not more than \$1,000 or imprisoned for not more than one year in the county jail or both for the first offense and may be fined not more than \$2,500 or imprisoned for not more than 3 years or both for the 2nd or subsequent conviction within 5 years.

History: 1989 a. 349; 1997 a. 283.

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

History: 1977 c. 418.

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

History: 1989 a. 349.

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

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

(3) If there are not a sufficient number of dentists in a given county to form a dental society under sub. (1), those residing in the county may unite with those of adjoining counties and organize a multicounty or district dental society as a component of the Wisconsin dental association. The organizational meeting shall be held at the time and place agreed upon in writing by a majority of those eligible to belong.

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

History: 1989 a. 349.

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

History: 1975 c. 223; 1989 a. 349.

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

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

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

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

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

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

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

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

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

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

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

History: 1987 a. 13.

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

the director or officer was a party because he or she is a director or officer of the dental society.

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

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

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

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

4. Wilful misconduct.

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

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

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

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

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

History: 1987 a. 13.

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

447.19 Determination of right to indemnification.

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

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

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

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

(4) By an affirmative vote of a majority of members who are entitled to vote and who are present in person or represented by proxy at a meeting at which a quorum is present, if there are members having voting rights. Unless the articles, constitution or bylaws provide otherwise, members holding one-tenth of the votes entitled to be cast, present in person or represented by proxy, shall constitute a quorum at a meeting of members. Membership

rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 447.27.

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

History: 1987 a. 13.

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

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

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the dental society, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 447.19 that indemnification under s. 447.17 (2) is not required and that indemnification is not ordered by a court under s. 447.27 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

History: 1987 a. 13.

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

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

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

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

History: 1987 a. 13.

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

(a) The articles, constitution or bylaws.

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

(c) A resolution of the board of directors.

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

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

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

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

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

History: 1987 a. 13.

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

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

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

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

History: 1987 a. 13.

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

History: 1987 a. 13.

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

History: 1987 a. 13.

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

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

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

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

History: 1987 a. 13.

447.36 Consideration of interests in addition to members' interests. In discharging his or her duties to a county or

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

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

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

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

History: 1987 a. 13.

447.38 Limited liability of directors and officers.

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

asserting liability proves that the breach or failure to perform constitutes any of the following:

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

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

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

(d) Wilful misconduct.

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

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

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

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

History: 1987 a. 13.

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