

## CHAPTER 449

## OPTOMETRY EXAMINING BOARD

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

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

2. The diagnosis and treatment of the refractive and functional ability of the visual system and enhancement of visual performance by prescribing, furnishing, fitting or employing ophthalmic lenses, contact lenses, frames, aids or prosthetic materials or administering visual training, orthoptics, visual therapy or any other optometric means.

(b) The practice of the profession of optometry does not include surgery, medical treatment or the use of drugs for therapeutic purposes.

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

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

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

**History:** 1977 c. 83, 280; 1979 c. 32.

**449.02 Licenses; exemptions. (1)** No person shall practice optometry within the meaning of this chapter without a license to do so and a valid certificate of registration issued by the examining board, except that a dispensing optician need not be so licensed for the practice of optical dispensing.

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

test the eyes. The term "simple lens" shall not include bifocals.

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

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

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

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

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

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

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

(a) Prepare, administer and grade the examination;

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

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

**History:** 1977 c. 29, 418.

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

(b) Unless he or she presents proof, satisfactory to the examining board, that he or she is 18 years of age or older and, subject to ss. 111.321, 111.322 and 111.335, does not have an arrest or conviction record;

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

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

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

History: 1971 c. 213 s. 5; 1977 c. 29; 1981 c. 380; 1981 c. 391 s. 211.

**449.06 Registration.** (1) Persons practicing optometry shall biennially, before January 1 of even-numbered years following licensure register with the department and pay the fee specified in s. 440.05 (3).

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

History: 1977 c. 29.

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

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

(b) Is grossly incompetent;

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

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

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

(f) Is guilty of immoral or unprofessional conduct;

(fm) Violates s. 449.17 or 449.19;

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

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

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

(3) Upon application and satisfactory proof that the cause of such revocation or suspension no longer exists, the examining board may reinstate any license or registration by it suspended or revoked.

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

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

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

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

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

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

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

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

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

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

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

History: 1977 c. 418.

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

History: 1977 c. 362.

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

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

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

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

**449.15 OPTOMETRY EXAMINING BOARD**

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

History: 1975 c. 223.

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

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

- (a) Prepare, administer and grade the examination;
- (b) Approve in whole or in part an examination prepared, administered and graded by the national board of examiners in optometry or by the optometry examining board; or
- (c) Approve and administer an examination prepared and graded by or under the direction of the national board of examiners in optometry.

**(4)** In addition to the requirements of sub. (3), optometrists who wish to use topical ocular diagnostic pharmaceutical agents shall successfully complete 60 classroom hours of study in general and ocular pharmacology as it relates to optometry with particular emphasis on the use of topical ocular diagnostic pharmaceutical agents. At least 30 of the 60 classroom hours of study shall be in ocular pharmacology and shall emphasize the systemic effects of and reactions to

pharmaceutical agents, including the treatment of any adverse reactions that may occur. The course of study shall be offered by an institution approved by the secretary and accredited by a regional or professional accrediting organization which is recognized by the council on post-secondary accreditation and the U.S. office of education and shall be completed prior to entering the examination required by sub. (3).

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

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

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

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

History: 1977 c. 280.

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

**(1)** Reporting in good faith to the department of transportation under s. 146.82 (3) a patient's name and other information relevant to the vision of the patient which in the optometrist's judgment impairs the patient's ability to exercise reasonable and ordinary control over a motor vehicle.

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

History: 1987 a. 215.