

CHAPTER 448

MEDICAL PRACTICES

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448.01 Definitions. In this chapter:

- (1) "Board" means medical examining board.
- (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 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 board to assist in the practice of occupational therapy under the supervision of an occupational therapist.
- (3) "Physical therapist" means an individual who has been graduated from a school of physical therapy, and holding a license to practice physical therapy granted by the 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.
- (5) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the board, and holding a license granted by the board.
- (6) "Physician's assistant" means an individual certified by the board to perform patient services under the supervision and direction of a licensed physician.
- (7) "Podiatrist" means an individual possessing the degree of doctor of podiatric medicine or doctor of surgical chiropody or equivalent degree as determined by the board, and holding a license to practice podiatry or podiatric medicine and surgery granted by the board.
- (8) "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.

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.

(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.

(9g) "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.

(9m) "Respiratory care practitioner" means an individual who practices respiratory care.

(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.

(11) "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 podiatrist in violation of ch. 161 or 450.

(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 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

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

448.02 Authority. (1) LICENSE. The board may grant licenses, including various classes of temporary licenses, to practice medicine and surgery, to practice podiatric medicine and surgery and to practice physical therapy.

(2) CERTIFICATE. The board may certify physician's 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. 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 1001.109 (e) and 42 CFR 1001.124 (a) (3) and (b) 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 the persons named in the reports. 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) After a disciplinary hearing, the board may, when it determines that a panel established under s. 655.02, 1983 stats., has unanimsly 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.

(e) A person whose license, certificate or limited permit is limited 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 chapter 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 chapter, 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).

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.

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).

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.** No person may practice medicine and surgery, podiatry or physical therapy, or attempt to do so or make a representation as authorized to do so, without a license granted by the board.

(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 chapter shall be construed either to prohibit, or to require a license or certificate under this chapter 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, podiatry student, physical therapy student, respiratory care student or physi-

cian's 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, podiatrists or physical therapists or certified respiratory care practitioners of other states or countries with licensed physicians, podiatrists or physical therapists or certified respiratory care practitioners of this state.

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

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

(fm) A physical therapist assistant assisting a physical therapist in practice under the general supervision of the physical therapist. In this paragraph, "physical therapist assistant" means an individual who has graduated from a physical therapist assistant associate degree program approved by the American physical therapy association. Upon the advice of the physical therapists examining council, the board shall promulgate rules defining "general supervision" for purposes of this paragraph.

(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.

(3) USE OF TITLES. (a) No person not possessing the degree of doctor of medicine may use or assume the title "doctor of medicine" or append to the person's name the letters "M.D."

(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."

(c) No person not a podiatrist may designate himself or herself as a podiatrist or use or assume the title "doctor of surgical chiropody" or "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." or "foot doctor" or "foot specialist" or any other title, letters or designation which represents or may tend to represent the person as a podiatrist.

(d) No person not a physical therapist may 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.

(e) No person may designate himself or herself as a "physician's assistant" or use or assume the title "physician's assistant" or append to the person's name the words or letters "physician's assistant" or "P.A." or any other titles, letters or designation which represents or may tend to represent the person as a physician's assistant unless certified as a physician's 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. 59.071 (3) (a), 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 chapter.

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. 59.071 (3) (a), 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 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 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 chapter.

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

(4) **DEFINITION.** In this section, "the scene of an emergency" means areas 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.

(5) **CIVIL LIABILITY; CERTAIN MEDICAL PROCEDURES AND REPORTS.** (a) No person licensed or certified under this chapter 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.

(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.

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 chapter. 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 chapter 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.

(d) *License to practice podiatry.* A person holding a license to practice podiatry may practice as defined by s. 448.01 (3). The board may, by rule, provide for various classes of temporary licenses to practice podiatry.

(e) *License to practice physical therapy.* A person holding a license to practice physical therapy may practice as defined in s. 448.01 (4) upon the written referral of a physician, chiropractor, dentist or podiatrist. Written referral is not required if a physical therapist is providing services in schools to children with exceptional educational needs 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 board may promulgate rules establishing additional services that are excepted from the written referral requirements of this paragraph and may promulgate rules providing for various classes of temporary licenses to practice physical therapy.

(f) *Certificate as physician's assistant.* The board shall certify as a physician's 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's 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 chapter, 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.

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, (d) and (e) 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.

(3) LICENSE TO PRACTICE PODIATRY. An applicant for any class of license to practice podiatry must supply evidence satisfactory to the board that the applicant is a graduate of and possesses a diploma conferring the degree of doctor of podiatric medicine, or equivalent degree as determined by the board, from a school of podiatric medicine and surgery approved by the board.

(4) LICENSE TO PRACTICE PHYSICAL THERAPY. An applicant for any class of license to practice physical therapy must supply evidence satisfactory to the board that the applicant is a graduate of a school of physical therapy approved by the board.

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

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's assistant training program that is certified under par. (b).

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

(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.

(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 committee on allied health education and accreditation of the American medical association and 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 joint review committee for respiratory therapy education 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 such form 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 social 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

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 certifica-

tion 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 chapter 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) **FBES.** The fees for examination and licenses granted or renewed under this chapter 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

448.075 Podiatrists; malpractice liability insurance. (1) Every licensed podiatrist shall annually submit to the board evidence satisfactory to the board of one of the following:

(a) That 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) That the podiatrist's principal place of practice is not in this state; that the podiatrist will not be engaged in the practice of podiatry in this state for more than 240 hours during the following 12 months; that the podiatrist has in effect malpractice liability insurance coverage that covers services provided by the podiatrist to patients in this state; if the podiatrist is required under the laws of the state in which the board determines that his or her principal place of practice is located to have in effect a minimum amount of malpractice liability insurance coverage, that the podiatrist has in effect at least that minimum amount of malpractice liability insurance coverage; and, if the podiatrist is not required under the laws of the state in which the board determines that his or her principal place of practice is located to have in effect a minimum amount of malpractice liability insurance coverage, that the podiatrist has in effect at least the minimum amount of malpractice liability insurance coverage that the board determines is necessary to protect the public. For purposes of this paragraph, a podiatrist's principal place of practice is not in this state if the board determines that, during the following 12 months, any of the following applies:

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

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

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

(2) The 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

448.08 Fee splitting; separate billing required, partnerships and corporations; contract exceptions. (1) **FEE SPLITTING.** Except as otherwise provided in this section, no person licensed or certified under this chapter 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 chapter 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, 2 or more podiatrists or 2 or more physical therapists, who have entered into a bona fide partnership for the practice of medicine, podiatry or physical therapy, to render a single bill for such services in the name of such partnership; and it also is lawful for a service corporation of physicians, podiatrists or physical therapists to render a single bill for such services in the name of the corporation; provided that each individual physician, podiatrist or physical therapist rendering services so billed for shall be 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.

(6) 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.

History: 1975 c. 383, 421; 1977 c. 29.

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. Anyone violating s. 448.08 (3) may be fined not more than \$250. Anyone violating any other provision of this chapter may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

(2) APPEAL. Any person aggrieved by any action taken under this chapter 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 chapter.

History: 1975 c. 383; 1977 c. 29.

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.

(2) PODIATRY. Any person lawfully practicing podiatry in this state under a certificate of registration granted under s. 448.13, 1973 stats., may continue to so practice until one year after June 15, 1976, and may apply for and be granted a license to practice podiatry without further examination and without payment of an additional fee, provided that such application is made to the board within one year after June 15, 1976.

(3) PHYSICAL THERAPY. Any person lawfully practicing physical therapy in this state under a certificate of registration granted under s. 448.09, 1973 stats., may continue so to practice until one year from June 15, 1976, and may apply for and be granted a license to practice physical therapy without further examination and without payment of an additional fee, provided that such application is made to the board within one year after June 15, 1976.

(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 examining board may continue to so practice under such certificate 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 chapter.

History: 1975 c. 383, 421; 1981 c. 390; 1985 a. 135

448.11 MEDICAL PRACTICES

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 chapter, or rules adopted by the board under this chapter, 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.

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) 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.

(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.

448.20 Council on physician's assistants; duties. (1) RECOMMEND CERTIFICATION AND PRACTICE STANDARDS. Within 3 months after the selection of all its initial members, the council on physician's assistants shall develop and recommend to the examining board certification and practice standards for physician's 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 board of vocational, technical and adult education.

(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's 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's assistant certification and practice standards and on matters pertaining to the education, training and certification of physician's assistants.

(b) Developing criteria for physician's 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.

448.21 Physician's assistants. (1) PROHIBITED PRACTICES. No physician's 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. 448.01 (8).

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

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

History: 1975 c. 383, 421; 1983 a. 524; 1989 a. 31.

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 physician'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.

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

(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.

History: 1975 c. 383; 1981 c. 375; 1987 a. 399.