CHAPTER 148

MEDICAL SOCIETIES

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148.01 Definition. In this chapter, "medical society" means the State Medical Society of Wisconsin and any county medical society organized or continued under this chapter.

History: 1987 a. 13; 2001 a. 103.

148.015 State society. (1) The State Medical Society of Wisconsin is continued with the general powers of a corporation. It may from time to time adopt, alter, and enforce constitution, bylaws, and regulations for admission and expulsion of members, election of officers, and management.

(2) A member expelled from a county medical society may appeal to the state society, whose decision shall be final.

History: 1987 a. 13; Stats. 1987 s. 148.015; 2001 a. 103.

The transfer of all the assets and liabilities of the State Medical Society's Wisconsin Physicians Service was precluded by the Society's statutory duty of exclusive control, since the transfer would result in separation of the Society's assets from those of the new corporation and permit use of Physicians Service assets and structure for purposes not consistent with the legislative intent of ch. 148. State Medical Society v. Comm. of Insurance, 70 Wis. 2d 144, 233 N.W.2d 470 (1975).

148.02 County societies. (1) The physicians and surgeons, not less than 5 in number, of the several counties, except those counties where a county medical society already exists, may meet at such time and place at the county seat as a majority agree upon and organize a county medical society. When so organized, a county medical society:

(a) Shall be a body corporate by the name of the medical society of the county for which it is organized.

(b) Shall have the general powers of a corporation.

(c) May take, by purchase or gift, and hold real and personal property.

(1m) All County medical societies organized prior to June 7, 1878, shall have the powers and privileges conferred by this chapter.

(2) Physicians and surgeons who have received a license from the medical examining board shall be entitled to meet to organize or become members of the county medical society.

(3) If there is not a sufficient number of physicians and surgeons in any county to form a county medical society they may associate with those of adjoining counties, and the physicians and surgeons of not more than 15 adjoining counties may organize a county medical society under this chapter, meeting at such time and place as a majority agree upon.

(4) A county medical society may from time to time adopt, alter and enforce constitution, bylaws and regulations for the admission and expulsion of members, election of officers, and management, not inconsistent with the constitution, bylaws and regulations of the state society.

History: 1971 c. 164 s. 91; 1987 a. 13; 1997 a. 254.

148.03 Service insurance corporations for health care. The state medical society or, in a manner approved by the state society, a county society, may establish in one or more counties of this state a service insurance corporation for health care under ch. 613.

History: 1973 c. 275; 1975 c. 223.

NOTE: Chapter 223, laws of 1975, which repealed and recreated this section contained notes on this section and the revision.

148.04 Definitions applicable to indemnification and insurance provisions. In ss. 148.04 to 148.17:

(1) "Director or officer" means any of the following:

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

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

(c) A natural person who, while a director or officer of a medical society, is or was serving an employee benefit plan because his or her duties to the medical 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.

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

(3) "Liability" includes the obligation to pay a judgment, settlement, penalty, forfeiture, or fine, including any excise tax assessed with respect to an employee benefit plan, plus costs, fees, and surcharges imposed under ch. 814, and reasonable expenses.

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

(5) "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 medical society or by any other person.

History: 1987 a. 13; 2003 a. 139.

148.05 Mandatory indemnification. (1) A medical 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 medical society.

(2) (a) In cases not included under sub. (1), a medical 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 medical society, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the medical society and the breach or failure to perform constitutes any of the following:

1. A willful failure to deal fairly with the medical 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. Willful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 148.06.

(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 medical society.

(4) (a) Indemnification under this section is not required to the extent limited by the medical society's constitution or bylaws under s. 148.09.

(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 medical society, in connection with the same proceeding.

History: 1987 a. 13.

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

148.06 Determination of right to indemnification. Unless otherwise provided by the constitution or bylaws or by written agreement between the director or officer and the medical society, the director or officer seeking indemnification under s. 148.05 (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 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. 148.13.

(6) By any other method provided for in any additional right to indemnification permitted under s. 148.11.

History: 1987 a. 13.

148.07 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a medical society may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the medical 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 medical society.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the medical society, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 148.06 that indemnification under s. 148.05 (2) is not required and that indemnification is not ordered by a court under s. 148.13 (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.

148.09 Medical society may limit indemnification. (1) A medical society's obligations to indemnify under s. 148.05 may be limited as follows:

(a) With respect to the state medical society or, except as provided in s. 148.02 (4), a county medical society organized under s. 148.02 (1) before June 13, 1987, by an amendment to its constitution or bylaws which becomes effective on or after June 13, 1987.

(b) With respect to a county medical society organized under s. 148.02 (1) on or after June 13, 1987, except as provided in s. 148.02 (4), by its constitution or bylaws, including any amendments to its 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.

148.11 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 148.05 and 148.07 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 constitution or bylaws.

(b) A written agreement between the director or officer and the medical 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 medical 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 medical society that the director or officer did not breach or fail to perform a duty he or she owes to the medical society which constitutes conduct under s. 148.05 (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 148.04 to 148.17 do not affect a medical 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 employee, agent, director or officer of the medical society.

History: 1987 a. 13.

148.13 Court–ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the medical society, a director or officer who is a party to a proceeding may apply for indemnification to the court con-

ducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 148.06 (5) or for review by the court of an adverse determination under s. 148.06 (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. 148.05 (1) or (2). If the court also determines that the medical society unreasonably refused the director's or officer's request for indemnification, the court shall order the medical 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. 148.05 (2).

History: 1987 a. 13.

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

History: 1987 a. 13.

148.17 Insurance. A medical society may purchase and maintain insurance on behalf of an individual who is an employee, agent, director or officer of the medical society against liability asserted against and incurred by the individual in his or her capacity as an employee, agent, director or officer, or arising from his or her status as an employee, agent, director or officer, regardless of whether the medical society is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 148.05, 148.07, 148.11 and 148.15.

History: 1987 a. 13.

148.19 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the medical society, may 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 employee of the medical society whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, certified public accountants licensed or certified under ch. 442, 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; 2001 a. 16.

148.21 Consideration of interests in addition to members' interests. In discharging his or her duties to the medical society and in determining what he or she believes to be in the best interests of the medical 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 medical society.

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

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

History: 1987 a. 13.

148.23 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer is not liable to the medical society, its members or creditors, or any person asserting rights on behalf of the medical 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 willful failure to deal fairly with the medical 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) Willful 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.