

CHAPTER 448, HRS DENTISTRY

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§448-1 Dentistry defined; exempted practices. A person practices dentistry, within the meaning of this chapter, who represents oneself as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or who offers or undertakes by any means or methods to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or

to take impressions of the teeth or jaws; or who owns, maintains, or operates an office for the practice of dentistry; or who engages in any of the practices included in the curricula of recognized and approved dental schools or colleges. Dentistry includes that part of health care concerned with the diagnosis, prevention, and treatment of diseases of the teeth, oral cavity, and associated structures including the restoration of defective or missing teeth. The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby one represents oneself to be a dentist, shall be prima facie evidence that the person is engaged in the practice of dentistry.

The following practices, acts, and operations, however, are exempt from the operation of this chapter:

- (1) The rendering of dental relief in emergency cases in the practice of one's profession by a physician or surgeon, licensed as such and registered under the laws of this State, unless one undertakes to reproduce or reproduces lost parts of the human teeth in the mouth or to restore or replace in the human mouth lost or missing teeth;
- (2) The practice of dentistry in the discharge of their official duties by dentists in the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration;
- (3) The practice of dentistry by licensed dentists of other states or countries at meetings of the Hawaii Dental Association or component parts thereof, alumni meetings of dental colleges, or any other like dental organizations, while appearing as clinicians;
- (4) The use of roentgen and other rays for making radiograms or similar records of dental or oral tissues;
- (5) The making of artificial restorations, substitutes, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues, or parts, upon orders, prescription, casts, models, or from impressions furnished by a Hawaii licensed dentist; and
- (6) The ownership and management of a dental practice by the executor or administrator of a dentist's estate or the legal guardian or authorized representative of a dentist, where the licensed dentist has died or is incapacitated, for the purpose of winding down, transferring, or selling the practice, for a period not to exceed one year from the time of death or from the date the dentist is declared incapacitated; provided that all other aspects of the practice of dentistry are performed by one or more licensed dentists.

[§448-1.5] Lead apron during x-ray; required. (a) A dentist shall cover a patient's torso from the neck to the pelvis including the genital area with a lead apron while conducting an x-ray procedure on the patient.

(b) The board of dental examiners, by rule adopted pursuant to chapter 91, shall establish minimum specifications for the lead apron; provided that the lead apron shall protect the patient's body from unnecessary exposure to x-rays yet not unduly discomfort the patient.

(c) Any violation of this section shall be considered an improper conduct in the practice of dentistry for the purpose of section 448-17.

§448-2 Practice without license prohibited. No person shall practice dentistry or dental surgery in the State, either gratuitously or for pay, or shall offer to so practice or shall advertise or announce oneself, either publicly or privately, as prepared or qualified to so practice, or append the letters "D.D.S.", "D.M.D.", "Dr.", "L.D.S.", or any other dental degree to the person's name with intent thereby to imply that the person is a practitioner of dentistry or a dental surgeon, without having a valid unrevoked license from the board of dental examiners.

§448-3 Practice by unlicensed employee prohibited; penalty. (a) Except as provided in section 447-3, no person who manages or conducts as manager, proprietor, conductor, or otherwise a place where dental operations are performed, shall employ any person as operator in dental surgery or as a practitioner, or cause to permit any person to so act, who is not duly licensed to practice dentistry; provided that nothing in this chapter shall prohibit any unlicensed person from performing merely mechanical work upon inert matter in a dental laboratory.

(b) A duly licensed and registered dentist may employ auxiliary personnel, other than registered dental hygienists, to assist the dentist in the practice of dentistry. These employees shall be known as dental assistants and shall perform all duties assigned to them under the supervision, direction and responsibility of the dentist. Duties of the dental assistant and regulatory directives shall be delineated under rules which the board of dental examiners may from time to time adopt.

(c) Any person violating this section shall be fined not less than \$100 nor more than \$1,000 for the first violation. Any person violating this section a second time shall be fined not less than \$500 nor more than \$2,000 and, in addition to the fine, the person's license shall be revoked.

§448-4 Fraudulent advertising. It shall be unlawful for any person to publish or circulate, directly or indirectly, any statements relating to the person's practice of dentistry that are or tend to be false, fraudulent, or misleading. A violation of this section shall subject the licensee to the penalties provided in section 448-17.

§448-5 Board of examiners; appointment. The board of dental examiners shall consist of twelve members, eight of whom shall be practicing dentists who have been engaged in the practice of dentistry for a period of five years preceding their several appointments, two of whom shall be practicing dental hygienists, duly licensed under section 447-1, who have been engaged in the practice of dental hygiene in the State for a period of five years preceding appointment, and two of whom shall be public members. No member shall be in any way connected with, or interested financially in, any dental supply company. One member in the practice of dentistry shall be appointed from each of the counties of Hawaii, Maui, and Kauai and five members in the practice of dentistry shall be appointed from the city and county of Honolulu. As used in this chapter, "board" means the board of dental examiners.

§448-6 Powers and duties; meetings. (a) The board shall meet for the purpose of examining applicants and for other purposes at times that it designates. Adequate statewide public notice of the times and places of examinations shall be given. The board may prescribe which members shall participate in the examination and licensing procedures.

(b) In addition to any other powers and duties authorized by law, the board shall adopt rules pursuant to chapter 91 as it deems proper and necessary for the performance of its work.

§448-7 Fees. Every applicant qualified for registration shall pay a license fee before entering practice. Every person holding a license to practice dentistry in the State shall pay to the board on or before December 31 of each odd-numbered year, a biennial registration fee. The failure, neglect, or refusal of any duly licensed dentist or doctor of dental surgery to pay the biennial fee during the time the license remains in force, shall constitute a forfeiture of the license. The license may be restored upon written application therefor and the payment to the board of dental examiners of the appropriate fee.

§448-8 REPEALED.

§448-8.5 Continuing education requirements. The board shall adopt a program of continuing education for dentists and a program of continuing education for dental hygienists. After January 1, 2002, at the time of reregistration of license as a dentist or dental hygienist, each licensee shall present to the board evidence of compliance with the program of continuing education applicable to their profession. In addition to any other continuing education requirement adopted by the board, after January 1, 2016, each licensee who is a dentist shall present to the board evidence of having completed at least three hours of ethics training during the previous year. Failure to reregister and present evidence of compliance shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a restoration fee.

§448-9 Application for licensure. Any person of eighteen years or more shall be eligible for licensure upon submission of:

- (1) An application to the executive officer of the board not later than forty-five days prior to the date of the scheduled examination;
- (2) Application and examination fees; and
- (3) Documentation and credentials that shall include but are not limited to the following:
 - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) A certificate or other evidence satisfactory to the board of having passed parts I and II of the National Board Dental Examination.

§448-9.4 American Board of Dental Examiners (ADEX) examination; regional examinations. An applicant shall take and pass the ADEX examination, and neither the state examination nor any regional examination shall be accepted.

§448-9.5 REPEALED.

[§448-9.6] Community service license. (a) The board of dental examiners may issue, without examination, a community service license to practice dentistry in the employment of the department of health, a federally qualified health center, Native Hawaiian health systems center, or post-secondary dental auxiliary training program accredited by the American Dental Association Commission on Dental Accreditation. Community service licensees under this section shall abide by the requirements and conditions placed upon those fully licensed under this chapter.

Eligible candidates shall:

- (1) Provide copies of documentation and credentials that include but are not limited to:
 - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) Either of the following:
 - (i) A certificate or other evidence satisfactory to the board of having passed part II of the National Board Dental Examination within five years of the date of request; or
 - (ii) Evidence of active practice of clinical dentistry of not less than one thousand hours per year for the three years immediately prior to the date of request;
- (2) Provide a copy of an active, unrestricted dental practice license from another state;
- (3) Disclose to the board of dental examiners all previous and pending legal or regulatory action relating to claims of malpractice, or personal or professional misconduct; and
- (4) Pay applicable registration fees, which shall be one half of the prevailing biennial registration fee for dentistry.

No person who after the effective date of this Act has failed to pass the license examination administered under this chapter shall have the benefit of a community service dental license.

(b) Community service licensees shall actively participate in a formal and ongoing program of clinical quality assurance.

(c) A license may be renewed biennially, pending review and reauthorization of the board of dental examiners.

(d) A community service license authorizes the licensee to practice dentistry only within the employment of an eligible organization and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the community service license;
- (2) The date on which the results of the license examination taken by the person under this chapter are posted by the board;
- (3) The date the community service license expires; or
- (4) The date on which the board revokes the community service license; provided that the board may revoke the community service license at any time for cause.

(e) Commissioned officers of the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration practicing in the department of health, a federally qualified health center, or Native Hawaiian health systems center shall qualify for a community service license to practice dentistry, which may be issued for the term of the officer's federal duty assignment. Officers shall provide to the board of dental examiners:

- (1) A copy of an active, unrestricted dental practice license from another state; and

- (2) A copy of documentation reflecting official duty assignment to a qualifying community service dental license site.

§448-10 REPEALED.

Historical note: Pursuant to section 7, Act 121, SLH 2005, on the date that the board of dental examiners approves the American Board of Dental Examiners (ADEX) examination, section 448-10, HRS, shall be repealed. The board of dental examiners determined that the ADEX examination was available and approved it on October 17, 2005.

§448-11 Investigations and hearings. The board of dental examiners, or its duly authorized representative, may inquire of any applicant for examination concerning the applicant's character, qualifications, or experience and may conduct investigations and hearings in order to secure further information concerning the character, qualifications, or experience of any such applicant.

§448-12 Temporary license. (a) The board of dental examiners may issue without examination to any resident or nonresident otherwise qualified to be examined a temporary license to practice dentistry in the employment of or while under contract with the State or any county, or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively while engaged in that employment or contracted by the department of health to conduct dental education and training, and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the temporary license;
- (2) The three hundred ninety-sixth calendar day following the date of issuance of the temporary license;
- (3) The date on which the results of the licensure examination taken by the person under this chapter are posted by the board; or
- (4) The date on which the board revokes the temporary license; provided that the board may revoke the temporary license at any time for cause.

No person who has failed an examination shall have the benefit of any temporary license.

(b) The board of dental examiners may issue a temporary license without examination to any person otherwise qualified to be examined, who is enrolled in a post-doctoral residency program that is accredited and recognized by the American Dental Association Commission on Dental Accreditation. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively under the auspices of the dental residency program and shall be in force until the earliest of the following occurs:

- (1) The date the person completes or leaves the residency program; or
- (2) The date on which the board revokes the temporary license;

provided that the board may revoke the temporary license at any time for cause.

(c) Post-doctoral dental residents who are granted temporary licenses under this section shall:

- (1) Be assigned to affiliated training sites that are restricted to eleemosynary health care organizations, training site hospitals, or university-affiliated training programs, and that shall be visited and accredited by the Commission on Dental Accreditation of the American Dental Association, consistent with the policies of the Commission on Dental Accreditation of the American Dental Association; and
- (2) Act under the direct supervision of the dental residency faculty licensed in Hawaii.

§448-13 Certificate, evidence. All certificates of license issued by the board of dental examiners shall be signed by the chairperson, sealed, and shall be presumptive evidence of the right of the holder to practice dentistry. No person shall practice dentistry without first having procured such a certificate, except as provided in this chapter. Any person practicing dentistry and not having at the time a valid and uncanceled license shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided.

§448-14 REPEALED.

§448-14.5 Prohibition on ownership and interference. (a) No dentist licensed pursuant to this chapter who engages in the practice of dentistry shall permit a person or entity, other than a dentist licensed pursuant to this chapter, to directly or indirectly own, direct, control, or interfere with the licensee's practice of dentistry; provided that this section shall not apply to the State or any county, any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center.

- (b) A licensed dentist shall not permit a non-dentist to:
 - (1) Direct or interfere with the licensee's clinical judgment and competent practice of dentistry;
 - (2) Select a course of treatment for a patient, the procedures or materials to be used as part of the course of treatment, and the manner in which such course of treatment is carried out by the licensee;
 - (3) Exercise control of the patient's records; or
 - (4) Prohibit or limit access to the dental office, facilities, and equipment necessary to provide service to the licensee's patients.

§448-15 No corporation to practice dentistry; penalty. No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit through itself, or its agents, officers, employees, directors, or trustees, dental patronage for any dentist or dental surgeon employed by any corporation; provided that nothing in this section shall prohibit a corporation from employing a dentist or dentists to render free dental services to its employees, nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be

furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when the dentist assumes full responsibility for the information and services, nor shall it apply to dental service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of dentists and dental surgeons and of contracting on behalf of dentists and dental surgeons to furnish such services as provided in chapter 423, nor shall it apply to professional corporations as defined in chapter 415A. Any corporation violating this section shall be fined not less than \$200 or more than \$500 for each offense, and each day's violation shall be considered a separate offense.

Every association of persons engaged in the practice of dentistry under the name of an association or other title, shall cause to be displayed and kept in a conspicuous place at the entrance to its place of business the names of each and every person employed by the association in the practice of dentistry; and every person so employed by any association shall cause the person's name to be so displayed. Any person employed by the association whose name is not displayed as above provided shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided; and the association, and the persons comprising the same, for failure to display the aforesaid names, shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided.

§448-16 Duty to furnish names, etc. Every person or association practicing dentistry in the State shall, upon demand in writing by the secretary of the board of dental examiners, furnish within fifteen days after such demand, to the board, through its secretary, a true statement of the name and address of each person practicing dentistry or assisting in the practice thereof, in the office of such person or association, together with a statement showing under what license or authority the person or association is practicing. Any person or association failing so to do, or making any false statement concerning or touching anything covered by this section shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided.

§448-16.5 Board of dental examiners; summary suspension. (a) The board of dental examiners may summarily suspend any license issued under this chapter upon a specific determination that the failure to take such an action may result in an immediate and unreasonable threat to personal safety or of fraud that jeopardizes or endangers the health or safety of patients as determined by the professional standards of care upon consumers, and that, for the protection of the public from the possible consequences of such practices, the license should be immediately suspended or restricted.

(b) The order of summary suspension shall include a brief statement of findings of fact and conclusions of law and shall be served upon the licensee as required by chapter 91. The order of summary suspension shall be effective upon service.

(c) A licensee served with an order of summary suspension shall have the right to request a hearing to show cause why the order of summary suspension should be terminated. Any request for a hearing shall be made in writing and filed with the board of dental examiners within five business days of service of the order. The board shall hold a hearing within seven business days of receipt of the licensee's request for the hearing to show cause.

(d) Notwithstanding any law to the contrary, an order summarily suspending a license issued under this chapter shall remain in effect until the effective date of a final decision and order issued by the board of dental examiners in a disciplinary action or the effective date of an order

issued by the board of dental examiners terminating the summary suspension following a hearing to show cause, whichever occurs first, but in either case shall not exceed thirty business days.

(e) The board of dental examiners shall conduct a hearing for disciplinary action against a licensee whose license has been summarily suspended under this section within twenty business days from the effective date of the order of summary suspension.

(f) Any attempt by the licensee to continue the practice of dentistry or the practice of dentistry by the licensee while the license has been summarily suspended shall be grounds for revocation of the license.

§448-17 Refusal, revocation, suspension, and administrative penalties. (a) The board shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and may refuse to issue a license to any applicant who has been disciplined by another state or federal agency. Notwithstanding any law to the contrary, a final order denying the issuance of a license to any applicant based on the applicant's discipline by another state or federal agency shall be a matter of public record.

(b) In addition to any other actions authorized by law, the board may suspend or revoke any license issued under this chapter and may fine a licensee for any cause authorized by law, including but not limited to the following:

- (1) Fraud in procuring license;
- (2) Habitual intoxication or addiction to the use of drugs;
- (3) Wilful or repeated violations of the rules of the department of health;
- (4) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;
- (5) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient;
- (6) Assisting in the care or treatment of a patient, without the knowledge of the patient or the patient's legal representative;
- (7) Employing, procuring, inducing, aiding, or abetting a person not licensed as a dentist to engage in the practice of dentistry;
- (8) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;
- (9) Professional connection or association with, or lending one's name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding oneself, themselves, or itself out in any manner contrary to this chapter;
- (10) By false or fraudulent representations, obtaining or seeking to obtain practice or money or any other thing of value;
- (11) Practicing, either in the State or elsewhere, under a name other than one's own;
- (12) Any other improper, unprofessional, or dishonorable conduct in the practice of dentistry;
- (13) Violation of section 447-4;
- (14) False or misleading advertising not otherwise provided for under this subsection, including:

- (A) Advertising to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association; and
- (B) Using the following words or phrases in advertising when the dentist has not successfully completed the education specified for the dental specialty as defined by the American Dental Association:
 - (i) "Dental public health";
 - (ii) "Endodontics";
 - (iii) "Oral and maxillofacial pathology";
 - (iv) "Oral and maxillofacial radiology";
 - (v) "Oral and maxillofacial surgery";
 - (vi) "Orthodontics and dentofacial or orthopedics";
 - (vii) "Pediatric dentistry";
 - (vii) "Periodontics"; or
 - (ix) "Prosthodontics";

provided that this paragraph shall not apply to a dentist who advertises as being qualified in a recognized specialty area of dental practice so long as each advertisement, regardless of form, contains a prominent disclaimer that the dentist is a general dentist or that the specialty services will be provided by a general dentist; and

- (15) Conduct or practice contrary to recognized standards of ethics of the profession, as adopted by the American Dental Association or the Hawaii Dental Association.

(c) Any person who violates, or fails to comply with, any of the provisions of this chapter, the penalty for which is not otherwise provided, shall be fined not less than \$1,000 nor more than \$5,000.

§448-18 Hearings. In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the board or of a member thereof, or of any subpoena issued by it or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§448-19 Using assumed name or degree prohibited. Nothing in this chapter shall permit the performance of dental operations by an unlicensed person under cover of the name of a registered and licensed practitioner, and no person shall practice dentistry under an assumed name, title, or degree. Any person practicing dentistry under a false or assumed name, or who assumes the degree of "Doctor of Dental Surgery" or "Doctor of Dental Medicine", or appends the letters "D.D.S.", or "D.D.M." to the person's name, the same not having been duly conferred on the person by some college or school legally empowered to confer the same; or assumes any title or appends any letters to the person's name with intent to represent falsely that the person has received a dental degree or

license, shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided.

§448-20 Practicing for advertising purposes, penalty. Any person who extracts teeth or performs any other operation pertaining to dentistry for the purpose of advertising, exhibiting, or selling any medicine, instrument, or business of any description, whether the extraction or operation is for pay or not, shall be fined not more than \$200.

§448-21 Criminal penalties. Any person who violates, or fails to comply with, any of the provisions of this chapter, where a criminal penalty is not otherwise provided, shall be fined not more than \$500 or imprisoned not more than six months, and each day's violation or failure to comply with the provisions hereof shall be deemed a separate offense.

Upon any subsequent conviction under this section, the person shall be fined not more than \$1,000 and imprisoned not more than one year.

All tools, implements, medicines, and drugs used by any person in the practice of dentistry without a license, shall be seized by the officers of the law, and upon conviction of the person for any violation of this chapter, the tools, implements, medicines, and drugs shall be declared forfeited to the State by the court and ordered destroyed.

§448-22 Prosecuting officers, duty. On notice from any member of the board of dental examiners, the several prosecuting officers of the State shall institute prosecutions for offenses under this chapter.

[§448-23] Filing of false information; revocation of license. The board of dental examiners shall refuse to grant a license to any applicant or shall revoke the license of any person who knowingly records, registers, or files, or offers for recordation, registration, or filing with the department of commerce and consumer affairs, any written statement which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information.

[§448-24] Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§448- Discipline based on action taken by another state or federal agency; conditions; prohibition on practice. (a) Upon receipt of evidence of revocation, suspension, or other disciplinary action against a licensee by another state or federal agency, the board may issue an order imposing disciplinary action upon the licensee on the following conditions:

- (1) The board shall serve the licensee with a proposed imposing disciplinary action as required by chapter 91;

- (2) The licensee shall have the right to request a hearing pursuant to chapter 91 to show cause why the action described in the proposed order should not be imposed;
- (3) Any request for a hearing shall be made in writing and filed with the board within twenty days after mailing of the proposed order to the licensee; and
- (4) If the licensee does not submit a written request for a hearing within twenty days after mailing of the proposed order, the board shall issue a final order the disciplinary action described in the proposed order.
- (b) A certified copy of the disciplinary action by another state or federal agency shall constitute prima facie evidence of the disciplinary action.
- (c) A licensee against whom the board has issued a proposed order under this section shall be prohibited from practicing in this State until the board issues a final order if:
 - (1) The licensee was the subject of disciplinary action by another state; and
 - (2) The disciplinary action by another state prohibits the licensee from practicing in that state.
- (d) In addition to the provisions of this section, the board may take any other action authorized by this chapter or chapter 436B.
- (e) Notwithstanding any law to the contrary, the final order of discipline taken pursuant to this section shall be a matter of public record.