

CHAPTER 38

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Authority

N.J.S.A. 45:12-1 et seq., specifically 45:12-4.

Source and Effective Date

R.2000 d.382, effective September 18, 2000.
See: 32 N.J.R. 2370(a), 32 N.J.R. 3446(a).

Executive Order No. 66(1978) Expiration Date

Chapter 38, New Jersey State Board of Optometrists, expires on September 18, 2005.

Chapter Historical Note

Chapter 38, New Jersey State Board of Optometrists, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Subchapter 6, Records, was readopted as R.1983 d.359, effective August 15, 1983. See: 15 N.J.R. 1011(a), 15 N.J.R. 1481(d).

Pursuant to Executive Order No. 66(1978), Subchapter 2, General Rules of Optometric Practice, expired on July 17, 1984.

Subchapter 2, General Rules of Optometric Practice, was adopted as new rules by R.1985 d.60, effective February 19, 1985. See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Fee Schedule, expired on April 23, 1984.

Subchapter 5, Fee Schedule, was adopted as new rules by R.1985 d.254, effective May 20, 1985. See: 17 N.J.R. 667(a), 17 N.J.R. 1323(a).

Petition for Rulemaking. See: 22 N.J.R. 673(a).

Petition for Rulemaking. See: 22 N.J.R. 1634(a).

Pursuant to Executive Order No. 66(1978) Chapter 38, New Jersey State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990. See: 22 N.J.R. 1866(a), 22 N.J.R. 3153(a).

Petition for Rulemaking. See: 23 N.J.R. 1213(a), 23 N.J.R. 2191(c).

Petition for Rulemaking. See: 23 N.J.R. 1214(a), 23 N.J.R. 2191(d).

Subchapter 4, Examination, was adopted as new rules by R.1992 d.443, effective November 2, 1992. See: 24 N.J.R. 2802(a), 24 N.J.R. 4058(a).

Pursuant to Executive Order No. 66(1978), Chapter 38, New Jersey State Board of Optometrists, was readopted as R.1995 d.524, effective August 25, 1995. See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a). Pursuant to Executive Order No. 66(1978), Chapter 38 expired on August 25, 2000.

Chapter 38, New Jersey State Board of Optometrists, was adopted as new rules by R.2000 d.382, effective September 18, 2000. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

13:38-1.1 Optometrist presumed responsible for advertisements

- 13:38-1.2 General advertising practices
- 13:38-1.3 Permissible business structures; referral fees
- 13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

- 13:38-2.1 Minimum examination; record of conditions
- 13:38-2.2 Minimum equipment and instrumentation
- 13:38-2.3 Records of examinations and prescriptions; computerized records
- 13:38-2.4 Requirements for issuing prescriptions and dispensing of medications
- 13:38-2.5 through 13:38-2.7 (Reserved)
- 13:38-2.8 Optometrists availability
- 13:38-2.9 (Reserved)
- 13:38-2.10 Minimum standards and tolerances
- 13:38-2.11 Delegation of duties to ancillary personnel
- 13:38-2.12 Preceptorship program
- 13:38-2.13 Independent doctor of optometry
- 13:38-2.14 Sexual misconduct

SUBCHAPTER 3. GENERAL PROVISION

- 13:38-3.1 Change of name
- 13:38-3.2 Renewal of registration certificates
- 13:38-3.3 Military service
- 13:38-3.4 (Reserved)
- 13:38-3.5 Requirements for application for licensure
- 13:38-3.6 (Reserved)
- 13:38-3.7 Suspended or revoked licenses
- 13:38-3.8 Branch offices

SUBCHAPTER 4. THERAPEUTIC PHARMACEUTICAL AGENTS (TPA) CERTIFICATION

- 13:38-4.1 Purpose and scope
- 13:38-4.2 Application for therapeutic pharmaceutical agents (TPA) certification; general requirements
- 13:38-4.3 Educational requirements for TPA certification
- 13:38-4.4 Examination requirements for TPA certification
- 13:38-4.5 Biennial TPA certification renewal

SUBCHAPTER 5. FEE SCHEDULE

- 13:38-5.1 Fee schedule

SUBCHAPTER 6. RECORDS

- 13:38-6.1 Availability of records

SUBCHAPTER 7. CONTINUING PROFESSIONAL OPTOMETRIC EDUCATION

- 13:38-7.1 Active registration renewal; continuing education requirement
- 13:38-7.2 Nonactive registration renewal and reactivation of license; continuing education requirement
- 13:38-7.3 Credit hour requirements
- 13:38-7.4 Approved course offerings
- 13:38-7.5 Sources of continuing professional optometric education credit and credit-hour calculation
- 13:38-7.6 Documentation of continuing professional optometric education credit
- 13:38-7.7 Waiver of continuing professional optometric education requirements
- 13:38-7.8 Responsibilities of continuing education sponsors for courses/programs with three credits or less

SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

13:38-1.1 Optometrist presumed responsible for advertisements

Every registered optometrist whose name appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused, permitted, and approved the advertising and shall be personally responsible for its material content and character.

Amended by R.1989 d.252, effective May 15, 1989.
See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Recodified as new 1.1 from old 1.3 and replaced old 1.1, "Professional cards," which was repealed.

Deleted language "or office address or place of practice" and added "material" to describe content and character of advertising.

Case Notes

Decision of the Board of Optometrists not to issue complaints based on charges brought by nonprofit optometric association reviewable only in the Appellate Division of Superior Court; association is without standing to sue for violation of the Optometry Act, the Optician Act, the Antitrust Act or for alleged acts of unfair competition, on behalf of itself, its members or the public interest. *New Jersey Optometric Ass'n v. Hillman-Kohan Eyeglasses, Inc.*, 144 N.J.Super. 411, 365 A.2d 956 (Ch.Div.1976) affirmed 160 N.J.Super. 81, 388 A.2d 1299 (App.Div. 1978).

13:38-1.2 General advertising practices

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Accrediting bodies" means any school of optometry, college or university approved by the Commission on Higher Education or the Council on Postsecondary Accreditation of the United States Department of Education or its successor.

"Advertisement" means any attempt directly or indirectly by publication, dissemination, or circulation in print or electronic media which directly or indirectly induces or attempts to induce any person or entity to consider, purchase or enter into an agreement to purchase optometric services, treatment, or ophthalmic materials from an optometrist.

"Electronic media" means and includes radio, television, computer and Internet.

"Optometrist" means any individual holding a license issued by the New Jersey State Board of Optometrists.

"Print media" means newspapers, magazines, periodicals, professional journals, professional letterhead, professional cards, telephone directories, circulars, handbills, flyers, billboards, signs, on premise signs and other similar items, documents or comparable publications, the content of which is disseminated by means of the printed word.

(b) An optometrist may, consistent with the provisions set forth in this section, advertise to the consuming public, through print or electronic media, the availability of optometric services and ophthalmic materials. In any advertising permitted by this subchapter, an optometrist shall not use, employ, permit or condone any practice, statement or format which is false, fraudulent, misleading or deceptive.

(c) An optometrist may advertise fees for services to be rendered and prices for ophthalmic materials offered for sale provided that:

1. The advertised service or ophthalmic materials are provided for not more than the advertised amount;

2. All advertised fees or prices are clearly and conspicuously displayed;

3. A statement of a fee for professional services shall be set forth in a single dollar amount and shall not be stated in the form of a range of fees. A statement of price relating to ophthalmic materials may be set forth in a range provided such range is stated in terms of a minimum and maximum dollar amount;

4. Where a separate or additional fee for the service of dispensing ophthalmic materials is to be charged, the advertisement shall disclose the dollar amount of such fee;

5. Where prices are set forth for ophthalmic materials and services for eyeglasses (lenses and frames), the advertisement shall indicate the type of frames and corrective lenses being offered such as clear or tinted, single vision or multifocal, and plastic, glass or other material. The lenses and frames may be priced separately or as a combined package. If the eye examination is included in the combined package, the advertisement shall also indicate the cost of the eye examination if the combined package is not purchased;

6. When prices are set forth for ophthalmic materials and services for contact lenses, the advertisement shall include, the fee for the minimum eye examination as defined in N.J.A.C. 13:38-2.1, the fee for the contact lens fitting or evaluation, the fee for the type and brand of lens being offered, and the fee for fitting instruction and follow-up care. These items may be priced separately or as a combined package. If a combined package is advertised, the advertisement shall also indicate fee for individual services if the combined package is not purchased. If the cost of a contact lens care kit is not indicated as a separate item or as a part of a combined package, the following statement shall be set forth: "The proper maintenance of certain contact lenses requires sterilization, storage and cleansing in special containers and solutions, the cost of which is not included in this offer." In all advertisements which include a price for a contact lens care kit, the type of kit shall be set forth. When the price of a contact lens is advertised, a statement shall be made to note that such lens may not be appropriate for all patients; and

7. An optometrist may offer a free or reduced fee eye examination. An advertised offer of a free or reduced fee eye examination shall not be contingent upon a resultant purchase of ophthalmic materials or services.

(d) In the event that an advertisement contains a statement with regard to an advertiser's refund policy, such policy shall clearly and conspicuously set forth all conditions including relevant time periods and dollar amounts to be refunded.

8. Failure of the student or preceptor to follow the provisions of this section shall constitute a violation of N.J.S.A. 45:1-14 et seq.

R.1979 d.276, effective July 18, 1979.

See: 11 N.J.R. 252(b), 11 N.J.R. 402(a).

Amended by R.1985 d.60, effective February 19, 1985.

See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a).

(a)4: added text "Such preceptor . . . least five years."

Amended by R.1989 d.252, effective May 15, 1989.

See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Renumbered old 2.12 as new 2.11 with no change in text.

Recodified from 13:28-2.11 by R.1992 d.443, effective November 2, 1992.

See: 24 N.J.R. 2802(a), 24 N.J.R. 4058(a).

No change in text.

13:38-2.13 Independent doctor of optometry

(a) For the purpose of N.J.S.A. 45:12-9.12 and this chapter, in order to perform as an independent doctor of optometry, a licensee shall:

1. Take no instruction from an ophthalmic dispenser with regard to any aspect of optometric practice and retain authority to exercise professional judgment within accepted standards of professional care with regard to skill, diligence in examinations, allocation of time for professional services, and diagnosis and treatment of patients;

2. Take no instruction from a landlord with regard to any aspect of optometric practice and lease space on the basis of a written lease and only where rent is a fixed fee **determined by the fair market value**, is for a regular term and not for sporadic use of the space, is not contingent upon patient fees, the number of patients, or the number or type of optometric services;

3. Maintain a separate telephone number;

4. Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, materials and fees by that optometrist. Any optometrist advertisement for optometric services, materials and fees by that optometrist which appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box;

5. Employ, supervise, pay and maintain responsibility for training assistants and employees. If any personnel services are included as part of a rental agreement, such as a receptionist's services, the terms shall be included in the written lease;

6. Furnish his or her own equipment, instruments, and materials; or if these are leased, it shall be for fair market value and the terms shall be included in a written lease;

7. Establish all patient fees for ophthalmic materials and services;

8. Maintain his or her own patient treatment and billing records, separate and apart from any ophthalmic

dispenser records, and be responsible for the confidentiality and security of all patient treatment and billing records, whether electronic or hard copy;

9. Establish hours of availability of optometric services and retain responsibility for suitable coverage in an emergency, during vacation, or during hours when the office is closed;

10. Display registration certificate(s) and signs so as to be read on the outside of the office as required by N.J.S.A. 45:12-8.

New Rule, R.2000 d.496, effective December 18, 2000.

See: 31 N.J.R. 3586(a), 32 N.J.R. 4453(a).

13:38-2.14 Sexual misconduct

(a) The purpose of this section is to identify for optometrists licensed by the Board of Optometrists the types of conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Licensee" means any person licensed to practice optometry in the State of New Jersey.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnosis, treatment or consultation relating to treatment. "Patient" for purposes of this section also means any person who is the subject of a professional examination even if the purpose of that examination is unrelated to treatment.

"Patient-physician relationship" means an association between an optometric physician and a patient wherein the optometrist owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience. The performance of any professional service including, but not limited to, the issuance of a prescription or authorization of a refill of a prescription is deemed to be a professional service and evidence of a patient-physician relationship.

"Sexual contact" means knowingly touching a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a patient's body which is necessary for the performance of a generally accepted and recognized optometric procedure.

“Sexual harassment” means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee’s activities or role as a provider of optometric services, and that either: is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. “Sexual harassment” may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

“Spouse” means either the husband or wife of the licensee or an individual in a long-term committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician relationship. The patient-physician relationship is considered ongoing for purposes of this section in all contexts unless:

1. Professional services are actively terminated by way of written notice to the patient and is documented in the patient record; or
2. The last professional services were rendered more than one year ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall not engage in sexual harassment whether in a professional setting such as an office, hospital, health care facility, or outside of the professional setting.

(g) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee, which would lead a reasonable person to believe that the activity serves the licensee’s personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(h) Violation of any of the prohibitions or directives set forth in (c) through (g) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(i) Nothing in this section shall be construed to prevent a licensee from rendering optometric examinations or treatment to a spouse, providing that the rendering of such service is consistent with accepted standards of optometric care and that the performance of optometric services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(j) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

New Rule, R.2002 d.81, effective March 18, 2002.
See: 33 N.J.R. 3733(a), 34 N.J.R. 1269(a).

SUBCHAPTER 3. GENERAL PROVISIONS

13:38-3.1 Change of name

The Board shall issue a new registration certificate to any licensee whose name has been legally changed upon receipt of evidence of the legal name change, the return of the original certificate, together with a fee as set forth in N.J.A.C. 13:38-5.1.

Recodified from 13:38-3.4 and amended by R.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).
Prior text at 13:38-3.1, Application for examination, repealed.

13:38-3.2 Renewal of registration certificates

All registration certificates shall be renewed on or before April 30 of the odd numbered years, subject to the provisions of N.J.S.A. 45:12-9.

Recodified from 13:38-3.5 and amended by R.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).
Prior text at 13:38-3.2, Reexamination, repealed.

13:38-3.3 Military service

Any licensee of the Board who is engaged in active duty in the military service of this country shall not be required to pay the renewal fees for any year during which he or she is in service.

Recodified from 13:38-3.7 and amended by R.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).
Prior text at 13:38-3.3, Payment of registration fee, repealed.

13:38-3.4 (Reserved)

Recodified from 13:38-3.9 and amended by R.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).