

**CHAPTER 38**

**NEW JERSEY STATE BOARD OF OPTOMETRISTS**

**Authority**

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

**Source and Effective Date**

R.2006 d.126, effective March 7, 2006.  
See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

**Chapter Expiration Date**

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 38, New Jersey State Board of Optometrists, expires on September 3, 2013. See: 43 N.J.R. 1203(a).

**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State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990.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: 32 N.J.R. 2370(a), 32 N.J.R. 3446(a).

Subchapter 7, Continuing Professional Optometric Education, was adopted as new rules by R.2002 d.105, effective April 1, 2002. See: 33 N.J.R. 2947(a), 34 N.J.R. 1454(b).

Chapter 38, New Jersey State Board of Optometrists, was readopted as R.2006 d.126, effective March 7, 2006. As a part of R.2006 d.126, effective April 3, 2006, Subchapter 3, General Provisions, was renamed Subchapter 3, General Provision. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 38, New Jersey State Board of Optometrists, was scheduled to expire on September 3, 2011. See: 43 N.J.R. 822(a).

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## 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:

"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 the 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 disinfection, 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. The advertisement shall include the usual and customary fee. 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.

(e) An advertisement shall not state that the optometrist possesses professional superiority with regard to services or materials offered or with regard to apparatus, equipment or technology utilized by the optometrist unless such claims can be substantiated.

(f) When an advertisement contains information on professional credentials, it shall only contain academic degrees obtained from colleges and universities accredited by the United States Department of Education and the Council on Post-Secondary Accreditation.

1. Titles of post-graduate professional fellowships may be used by licensees in advertisements provided such titles are reviewed and approved by the Board.

2. The Board shall only review and approve the use of titles from post-graduate professional fellowships that have an educational, peer review and testing component. The listing of approved titles shall be maintained by the Board and available to licensees upon request.

3. The use of approved titles of post-graduate professional fellowships shall not be deemed to be a claim of professional superiority.

4. It shall be deemed to be deceptive advertising for an optometrist to utilize the terms "specialist," "specialty" or the substantial equivalent in any advertisement as defined by (a) above; provided, however, that nothing in this section shall prohibit an optometrist from utilizing such terminology as "practice limited to," where the advertising optometrist's practice is exclusively or primarily devoted to one or more of the recognized areas of optometric services, for example, practice limited to low vision services.

5. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to experience in a particular area of optometry (for example, 10 years experience in contact lens fitting and dispensing).

(g) For a period of not more than two years from the date of succession to the practice of another optometrist, an optometrist may use a telephone listing of such prior optometrist together with the words "succeeded by" or "successor to" or the substantial equivalent, and for the same time period may also use the prior optometrist's name in any advertisement.

(h) An optometrist may only be listed in the classified section of any directory under the classification entitled "Optometrist," "Doctor of Optometry," or "Optometric Physician." Such listing shall show the address or addresses for which an active license or certification has been issued to practice optometry in this State.

(i) Any optometrist whose license is either suspended or revoked shall not be permitted to advertise during the period of active suspension or revocation except to announce the closing of the optometrist's office and/or where the patient records may be available.

(j) It shall be an unlawful advertising practice for an optometrist to:

1. Guarantee that services rendered will result in cures of any optometric or visual abnormality;

2. Fail to retain a copy or duplicate of any advertisement for a period of three years following the date of publication or dissemination. Such copies or tapes shall be made available upon request by the Board or its designee; or

3. Fail to substantiate any objective material claim or representation set forth in an advertisement.

(k) An optometrist may use testimonial advertising provided that:

1. All testimonials involving a specific or identifiable procedure truthfully reflect the actual experience of the patient;

2. The optometrist shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct;

3. Where an optometrist directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible and readable manner in any advertisement as follows: "COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL"; and

4. The optometrist shall maintain documentation relating to such testimonials for a period of three years from the date of the last use of the testimonial. Such documentation shall include the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed release indicating that person's willingness to have his or her testimonial used in the advertisement.

(l) An optometrist shall include his or her license and certification number in all advertisements, except in directory

listings that do not include any optometric services (that is, listings that include the licensee's name, address, and phone number).

R.1981 d.295, effective August 6, 1981.

See: 13 N.J.R. 233(a), 13 N.J.R. 519(a).

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 1.2 from old 1.9 and replaced old 1.2, "Announcements of office opening or association," which was repealed.

In (b), deleted language requiring that an advertisement includes statement regarding an optometrist's licensure.

In (c)2, deleted "and set forth in the same type size."

Deleted old (c)3 and 4 and recodified old (c)5 and 6 as new (c)3 and 4.

Added new (c)5 and 6 clarifying advertisement guidelines for the sale of optometric goods.

Deleted old (c)7 and 8 describing contact lens advertising and added new (c)7.

Deleted old (e) and recodified old (f)-(i) as new (e)-(h), adding additional language clarifying advertising requirements.

Added new (i) with language explaining sanctions regarding advertising by suspended or revoked licensed optometrists.

Amended by R.1989 d.552, effective November 6, 1989.

See: 21 N.J.R. 2467(a), 21 N.J.R. 3475(a).

In (j): Deleted old 1 on use of certain lights for advertising. Changed 2 to 1, adding 1i-iii. Changed old 3 to 2 and deleted old 4 and 5, regarding prohibition against use of unprofessional advertising or a medium that limits access to a closed class of optometrists. Changed old 6 and 7 to new 3 and 4.

Amended by R.1993 d.357, effective July 19, 1993.

See: 24 N.J.R. 4237(a), 25 N.J.R. 3232(a).

Petition for Rulemaking.

See: 26 N.J.R. 4707(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

In (a), deleted definition "Accrediting bodies"; in (c)6, corrected a grammatical error and substituted "disinfection" for "sterilization"; in (c)7, added "The advertisement shall include the usual and customary fee."; rewrote (f); in (l), added " , except in directory listings that do not include any optometric services (that is, listings that include the licensee's name, address, and phone number)".

#### Case Notes

Misleading advertising. See *In re Shack*, 177 N.J.Super. 358, 426 A.2d 1031 (App.Div.1981) certification denied 87 N.J. 352, 434 A.2d 95.

Generally, see Att'y Gen. Form. Op. 1977-No. 20.

Rules of the board of optometrists which prohibit any communication of information of the identity of any optometrist or firm employing optometrists in conjunction with any agreement offering optometric services at a stipulated fee or smaller than ordinary fees or which purports to offer discounts, inducements or advantages and prohibit the offering of optometric services at a fee less than the usual fee in consideration of a patient being associated with a third party plan were invalid. Atty.Gen.F.O.1980, No. 17.

#### 13:38-1.3 Permissible business structures; referral fees

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

"Associate" means a closely allied health care professional in the permissible business structure who is the licensee's

partner, employee, fellow shareholder or fellow member in that business structure.

"Board" means the New Jersey State Board of Optometrists.

"Closely allied health care professional" means an individual who provides professional services and is licensed in New Jersey by a professional or occupational licensing board or other State agency, in any of the following fields pursuant to N.J.S.A. 14A:17-3(b): optometry, dentistry, registered professional nursing, physical therapy, or any branch of medicine or surgery.

"Limited liability company" (LLC) means a business corporation organized in compliance with the Limited Liability Company Act, N.J.S.A. 42:2B-1 et seq., to engage in and carry on any lawful business, purpose, or activity, which combines the attributes of both corporation and partnership, and provides the limited liability generally associated with a corporation and the Federal tax treatment of a partnership.

"Limited liability partnership" (LLP) means an association of two or more persons to carry on as owners of a business for profit, which partnership is formed pursuant to an agreement governed by the laws of New Jersey, registered pursuant to N.J.S.A. 42:1-44 and in compliance with N.J.S.A. 42:1-45.

"Permissible business structure" means a sole proprietorship, partnership, including limited liability partnership, or corporation, including limited liability company, all of which are subject to the limitations of (b) below.

"Professional service corporation" means a business entity established pursuant to N.J.S.A. 14A:17-1 et seq., in which all shareholders are licensed by the State of New Jersey to render the same or a closely allied professional service.

"Referral" means the sending or directing of a person to any health care provider other than an associate for diagnosis, evaluation, treatment, or the furnishing of optometric or other health goods or services.

"Remuneration" means any salary, payment, distribution of income, dividend, interest income, loan, bonus, commission, kickback, bribe, rebate, gift, free goods or services of more than nominal value, discount, the furnishing of supplies, facilities or equipment, credit arrangement, and/or waiver of financial obligations.

(b) The following are permissible business structures which may offer optometric services in the State of New Jersey:

1. A sole proprietorship consisting of one licensed optometrist;
2. A partnership, including a limited liability partnership pursuant to N.J.S.A. 42:1-44 et seq., in which

all partners are licensed optometrists or closely allied health care professionals;

3. A corporation established consistent with the provisions of the Professional Service Corporation Act (N.J.S.A. 14A:17-1 et seq.) in which all shareholders are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals; and

4. A limited liability company established consistent with the provisions of the Limited Liability Company Act (N.J.S.A. 42:2B-1 et seq.), in which all members are licensed optometrists or a combination of licensed optometrists and closely allied health care professionals.

(c) Optometrists may be employed by a permissible business structure which includes one or more closely allied health care professionals, including at least one licensed optometrist provided that their professional practice is supervised and evaluated by a professional who is an optometrist or physician licensed by the State of New Jersey.

(d) Optometrists may engage in the practice of optometry, as a sole proprietor, partner, shareholder or member, in any permissible business structure in which they are not shielded from liability for their own breaches of professional duties, retain responsibility for the quality of care and appropriateness of their professional judgments, and are assured access to information and involvement in issues pertaining to quality of care, professional judgment, recordkeeping, advertising practices, and the finances of the permissible business structure.

(e) Optometrists shall not receive, solicit, offer, or pay any remuneration as an inducement to make a referral or as compensation for a referral of a patient for a service, product, drug or device or to purchase, prescribe or recommend a service, product, drug, or device.

(f) Violations of (b) through (e) above shall be deemed professional misconduct pursuant to N.J.S.A. 45:1-21(e).

New Rule, R.2000 d.178, effective May 1, 2000.

See: 31 N.J.R. 3041(a), 32 N.J.R. 1620(a).

Former N.J.A.C. 13:38-1.3, Optometric practice under assumed names and disclosure of practitioner names, recodified to N.J.A.C. 13:38-1.4. Amended by R.2004 d.336, effective September 7, 2004.

See: 36 N.J.R. 10(a), 36 N.J.R. 4152(a).

Deleted former (f) and recodified former (g) as (f).

#### Case Notes

Administrative rule promulgated by the State Board of Optometrists which prohibited optometrists from entering agreements with any person, other than an associate, in which remuneration received by that person was to be determined as a fixed percentage of income derived from practice of optometry, conflicted with provision of Consumer Access to Eye Care Act purportedly authorizing it, and was invalid; statute in question generally permitted practice of optometry in a rented location in a retail or commercial store, and only within that context forbade an arrangement in which landlord could control optometrist's professional judgment. In re Adoption of N.J.A.C. 13:38-1.3(f) by the State Board of Optometrists, 775 A.2d 629 (2001).

#### 13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

(a) Except as may be authorized by the Professional Service Corporation Act, N.J.S.A. 14A:17-1 et seq., a licensed optometrist shall not practice under a name other than his or her own.

(b) A licensed optometrist who is also an officer of a professional service corporation which renders optometric service or sells ophthalmic materials shall:

1. In all advertising placed by such corporation cause to be conspicuously disclosed the name of at least one corporate officer who is licensed to practice optometry within this State;

2. Cause the names of all optometrists who render optometric services in connection with such corporation to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered.

3. File with the Board of Optometrists by March 31 of each year a copy of that report required to be filed pursuant to N.J.S.A. 14A:17-15 showing the names and post office addresses of all shareholders, directors, and officers of such corporation. In addition thereto, the report shall include the names and post office addresses of all licensed optometrists employed by the corporation.

(c) It shall be the joint and several responsibility of all corporate officers holding licenses to secure compliance with this section.

(d) In all advertisements for optometric materials and services at a particular location or group of locations, the name and license number of at least one licensee responsible for optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be immediately followed by one of the following designations: O.D., Optometrist, Doctor of Optometry, or Optometric Physician.

(e) The business, partnership or corporation name shall not use the terms "Specialist," "Specialty," or its substantial equivalent.

(f) A sole practitioner of optometry and all licensed optometrists offering services as partners in a partnership shall cause the names of all licensees offering optometric services in connection with the sole proprietorship or the partnership to be displayed in a conspicuous place at the entrance to the premises from which optometric services are rendered. If the premises contain more than one office, the names of all optometrists who render optometric services in connection with such sole proprietorship or partnership, at that particular location, shall be visible to the public and displayed in a conspicuous place at the entrance of the outer office.

R.1981 d.295, effective August 6, 1981.

See: 13 N.J.R. 233(a), 13 N.J.R. 519(a).

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 1.3 from old 1.10 and replaced old 1.3, "Optometrist presumed responsible for advertisements," which was repealed.

In (b)3, added "post office" before address.

In (d), added language elaborating on requirements for advertisements of optometric goods and services to include names of responsible optometric practitioners.

Petition for Rulemaking.

See: 26 N.J.R. 4707(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.1998 d.91, effective February 17, 1998.

See: 29 N.J.R. 308(a), 29 N.J.R. 1253(a), 30 N.J.R. 698(a).

In (d), added "or Optometric Physician".

Recodified from N.J.A.C. 13:38-1.3 by R.2000 d.178, effective May 1, 2000.

See: 31 N.J.R. 3041(a), 32 N.J.R. 1620(a).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

Added (e); recodified former (e) as (f).

## SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

### 13:38-2.1 Minimum examination; record of conditions

(a) Prior to prescribing eyeglasses or contact lenses for a patient, the licensee shall perform the following procedures and shall duly record the findings:

1. Complete history;
2. Entrance visual acuity findings;
3. Complete examination of the external eye and adnexae;
4. Complete examination of the internal parts of the eye;
5. Corneal measurements taken at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
6. Objective refractive findings;
7. Subjective refractive findings and acuities;
8. Evaluation of ocular motility and status of binocularity;
9. Color vision testing at the time of the original examination and as subsequently needed in the professional judgment of the optometrist;
10. Visual fields screening on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation;
11. Tonometry on all patients unless contraindicated in the professional judgment of the optometrist or by lack of the patient's cooperation; and

12. Complete examination of the anterior segment of the eye using a biomicroscope (slit-lamp) or other equipment with equivalent technological capabilities.

(b) Procedures (a)3, 4, 7 and 12 above shall be performed only by the optometrist.

(c) Where any form of contact tonometry is used in procedure (a)11 above, only the optometrist shall perform the procedure.

(d) The optometrist may delegate the performance of procedures (a)5 and 6 above only when automated electronic devices are used.

(e) The accuracy of the findings for all of the procedures in (a) above shall be the exclusive responsibility of the examining optometrist(s).

(f) Nothing contained in this chapter shall be construed to prohibit vision screening under the direct supervision of an optometrist for the purpose of determining the advisability of a complete optometric examination. For purposes of this section, "direct supervision" means the continuous physical presence of the optometrist who is in a supervisory status at the office location and who is available on-site for consultation, guidance, and instruction during the performance of any delegable procedures by ancillary personnel.

Amended by R.1983 d.511, effective November 7, 1983.

See: 15 N.J.R. 1234(a), 15 N.J.R. 1866(b).

Deleted old text and added new text.

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

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

(b) added.

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

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

In (b), added "7" to section (a) procedures references.

Petitions for Rulemaking.

See: 26 N.J.R. 2812(c); 27 N.J.R. 773(a).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.1999 d.143, effective May 3, 1999.

See: 30 N.J.R. 1193(a), 31 N.J.R. 1201(a).

Rewrote the section.

#### Cross References

Preceptees, see N.J.A.C. 13:38-2.12.

### 13:38-2.2 Minimum equipment and instrumentation

(a) For the proper performance of a minimum examination as required by N.J.A.C. 13:38-2.1, the following equipment and instrumentation shall be maintained in an optometrist's office:

1. Ophthalmoscope;
2. Instrument for the objective measurement of the refractive status of the eye;
3. Instrument to measure the radius of the curvature of the cornea;

4. Instrument, including but not limited to, trial frame with test lenses and auxiliary prisms, for the measurement of the subjective refractive status of the eye;
5. Instruments to test for stereopsis and fusion;
6. Instruments or charts to measure distance and near visual acuities;
7. Instruments to test color vision;
8. Equipment to measure central and peripheral visual fields;
9. Instruments to measure intraocular pressure;
10. Biomicroscope (slit-lamp), or other equipment with equivalent technological capabilities.

Amended by, R.1980 d.202, effective May 6, 1980.

See: 12 N.J.R. 90(b), 12 N.J.R. 348(d).

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

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

Substantially amended.

Petition for Rulemaking.

See: 26 N.J.R. 2812(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

### **13:38-2.3 Records of examinations and prescriptions; computerized records**

(a) Licensees shall prepare contemporaneous, legible, permanent professional treatment records and shall also maintain records relating to billings made to patients or third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment of services rendered. Treatment records shall be maintained for a period of not less than seven years from the date of the most recent entry.

(b) To the extent applicable, professional treatment records shall contain, in addition those findings required by the minimum examination as set forth in N.J.A.C. 13:38-2.1:

1. The dates of all patient visits, examinations, and treatments;
2. The patient complaint or reason for visit;
3. The patient history;
4. The findings of the examination;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or impression;
8. Complete eyeglass, contact lens, or pharmaceutical prescriptions;
9. The treatment or plan initiated, including specific dosages, quantities and strengths of medications, including

the number of refills, if prescribed, administered or dispensed, and recommended follow-up;

10. The identity of the optometrist providing treatment and the name of the person dispensing eyeglasses, contact lenses, or issuing pharmaceutical prescriptions to the patient;

11. Documentation when, in the reasonable exercise of the optometrist's judgment, the communication of examination results is necessary and action needs to be taken but reasonable efforts made by the optometrist responsible for communication have been unsuccessful; and

12. Documentation concerning the decision and justification when, after the required evaluation of a patient for the specifically advertised brand and type of contact lens which attracted or induced the patient to seek such goods, the patient is fitted with another brand or type of contact lens.

(c) Corrections, but no deletions or additions, may be made to an existing record, provided that each entry is clearly identified as such and initialed and dated by the licensee.

(d) Treatment records may be prepared and maintained on a personal or other computer but shall be in compliance with the following criteria:

1. The record shall contain no less than two independent forms of identification, such as patient name and record number;

2. An entry in a patient's treatment record shall be made by the optometrist contemporaneously with the optometric service and shall contain all of the information required in (b) above, and the full printed name of the optometrist providing the care. The system and/or software shall be set up in such a way that all data and findings must be manually entered and are not entered by default;

3. The optometrist shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include the date of the "signing." In those practices with multiple licensees, each optometrist shall have his or her own CPC;

4. The optometrist may dictate a dated entry for later transcription. The transcription shall be identified as "preliminary" until reviewed and finalized as provided in 3, above;

5. The system used to record the treatment record shall provide an automatic dating of the entry and prepare an automatic back-up file. No other data or findings may be entered automatically by the system. Any additional data or findings shall be entered manually each time a patient's treatment record is updated;

6. The system shall not allow an entry to be modified in any manner after it is "signed" by means of the CPC. A new entry shall be required to modify a preexisting entry and signed again by means of the CPC;

7. The system shall have the capability to print on demand a hard copy of all current and historical data contained in each patient record file;

8. The optometrist shall maintain the safety and security of back-up data and hard copies maintained off premises; and

9. The optometrist shall provide to the Board upon request any back-up data and/or hard copies maintained off premises on any requested patient records, together with the following information:

i. The name of the computer operating system and patient record management software package containing the requested patient record files and instructions on using such system;

ii. Current passwords necessary to access the requested patient record files;

iii. Previous passwords if required to access the requested patient record files; and

iv. The name of the contact person(s) who provides technical support for the licensee's computer operating system and patient record management software package.

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

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

(c) added.

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

See: 20 N.J.R. 236(b), 21 N.J.R. 1366(b).

Added new (e), clarifying procedure regarding an optometrist's responsibility for patient evaluation for a specifically advertised brand of contact lenses.

Amended by R.1993 d.357, effective July 19, 1993.

See: 24 N.J.R. 4237(a), 25 N.J.R. 3232(a).

Petition for Rulemaking.

See: 26 N.J.R. 4707(c).

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Petition for Rulemaking.

See: 30 N.J.R. 2958(b), 30 N.J.R. 3109(a).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

In (a), added "legible,"; in (b)8, made grammatical changes and added "or pharmaceutical"; rewrote (b)10; in (c), substituted "Corrections, but no deletions or additions," for "Corrections or additions, but no deletions," and "entry" for "change"; deleted (d)10.

### 13:38-2.4 Requirements for issuing prescriptions and dispensing of medications

(a) Every optometrist shall provide the following on all prescriptions:

1. The prescriber's full name, address, telephone number, license number and academic degree or identification of professional practice. This information shall be printed on all prescriptions;

2. The full name of the patient;

3. The date of issuance of prescription; and

4. The signature of the prescriber, hand-written.

(b) Every optometrist certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.12 shall, in addition to the information set forth in (a) above, provide the following on all prescriptions for pharmaceutical agents:

1. The optometrist's certification number;

2. The name, strength and quantity of drug or drugs to be dispensed;

3. Adequate instruction for the patient, which shall include, but not be limited to, duration, frequency and dosage. The use of "p.r.n." or "as directed" without further instruction shall be deemed insufficient direction.

4. The number of refills permitted or time limit for refills, or both; and

5. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the optometrist's initials next to the chosen option, in addition to the space required for the signature in (a)4 above.

(c) In addition to the provisions of (a) and (b) above, optometrists certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.13 shall comply with the following:

1. The optometrist shall advise all patients by sign or pamphlet or similar notice available in a conspicuous location in the optometrist's office that the patient may request that the optometrist substitute a generic drug, when available, for any prescribed medication.

2. The optometrist shall not dispense a prescription as provided for in N.J.S.A. 45:12-1 in an amount exceeding a 72-hour supply unless the prescription is dispensed at no charge to the patient.

3. The optometrist shall ensure that each medication dispensed directly to a patient is placed in a container or envelope labeled in a legible manner with at least the following information:

i. The optometrist's full name, license and certificate number;

ii. The full name of the patient;

iii. The date the medication is dispensed;

iv. The name, strength and quantity of medication dispensed; and

v. Adequate instructions for the patient regarding the frequency of administration of the medication.

(d) In no instance shall an optometrist sign a blank prescription form or dispense medications without complying with the requirements of this section.

(e) Written prescriptions shall be issued only on New Jersey Prescription Blanks (NJPB), secured from an approved vendor and subject to the required security mandates of the prescription blank program pursuant to N.J.S.A. 45:14-14 and N.J.A.C. 13:45A-27.

(f) All licensees who are certified to prescribe therapeutic pharmaceutical agents on a topical level only, shall include the following language on the prescription blank:

“NOT VALID FOR CONTROLLED SUBSTANCES. VALID FOR TOPICAL PHARMACEUTICAL AGENTS (IF TPA CERTIFIED) AND PRESCRIPTION EYEWEAR ONLY.”

(g) Any licensee who practices outside his or her scope of practice, as defined in N.J.S.A. 45:12-1, will be deemed to have engaged in professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(h) Each prescription for a controlled dangerous substance shall be written on a separate NJPB.

1. An NJPB that contains prescriptions for two or more controlled dangerous substances shall be invalid.

2. An NJPB that contains a prescription for only one controlled dangerous substance and contains other prescriptions(s) other than another controlled substance shall be valid.

(i) All licensees are prohibited from prescribing controlled dangerous substances as outlined in N.J.S.A. 24:21-5, Schedule I, and 24:21-6, Schedule II.

(j) Each prescription for a pharmaceutical agent shall be for the purpose of diagnosing and treating deficiencies, deformities, diseases, or abnormalities of the human eye and adnexae.

New Rule, R.1992 d.443, effective November 2, 1992.

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

Prior text at section, Vision screening, recodified to 13:38-2.5.

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Petition for Rulemaking.

See: 29 N.J.R. 2717(b), 30 N.J.R. 3556(b), 31 N.J.R. 2007(b).

Amended by R.2006 d.450, effective December 18, 2006.

See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In introductory paragraph of (c), updated the last N.J.S.A. reference; in (c)1, inserted “; when available;”; in (e), inserted “and N.J.A.C. 13:45A-27”; and added (f) through (j).

### 13:38-2.5 (Reserved)

As amended, R.1970 d.59, effective May 29, 1970.

See: 2 N.J.R. 35(b), 2 N.J.R. 55(f).

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

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

(b) deleted.

Recodified from 13:28-2.4 by R.1992 d.443, effective November 2, 1992.

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

Prior text at section, Division of Fees, recodified to 13:38-2.6.

### 13:38-2.6 (Reserved)

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

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

(b): Deleted “or responsibility”.

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 2.5 from old 2.6 (with no change of text) and replaced old 2.5, “Free eye examinations or refractions,” which was repealed.

Recodified from 13:28-2.5 by R.1992 d.443, effective November 2, 1992.

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

Prior text at section, Vision service plans, recodified to 13:38-2.7.

Repeal and New Rule, R.1993 d.357, effective July 19, 1993.

See: 24 N.J.R. 4237(a), 25 N.J.R. 3232(a).

### 13:38-2.7 (Reserved)

Amended by, R.1970 d.59, effective May 29, 1970.

See: 2 N.J.R. 35(b), 2 N.J.R. 55(f).

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

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

Old text deleted and new text substituted.

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 2.6 from old 2.7 with no change in text.

Amended by R.1995 d.524, effective September 18, 1995.  
 See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).  
 Repeal and New Rule, R.2006 d.450, effective December 18, 2006.  
 See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).  
 Section was "Biennial TPA certification renewal".

See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).  
 In (a)7i and (a)8, substituted "250.00" for "210.00"; and in (a)7ii, substituted "125.00" for "105.00".

## SUBCHAPTER 5. FEE SCHEDULE

### 13:38-5.1 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application fee:	\$125.00;
2. Initial license fee:	
i. During the first year of a biennial renewal period:	\$250.00;
ii. During the second year of a biennial renewal period:	\$125.00;
3. Biennial renewal fee—active certificate:	\$250.00;
4. Biennial renewal fee—non-active certificate:	\$100.00;
5. Initial branch office certificate:	
i. During the first year of a biennial renewal period:	\$250.00;
ii. During the second year of a biennial renewal period:	\$125.00;
6. Biennial renewal fee—branch office certificate:	\$250.00;
7. Initial certification fee:	
i. If paid during the first year of a biennial renewal period:	\$250.00
ii. If paid during the second year of a biennial renewal period:	\$125.00
8. Biennial renewal fee—certification to prescribe:	\$250.00
9. Each additional certificate-certification to prescribe	\$25.00
10. Change of address fee—active or non-active:	\$25.00;
11. Transfer fee—non-active to active:	
i. During the first year of a biennial renewal period:	\$150.00;
ii. During the second year of a biennial renewal period:	\$75.00;
12. Penalty for late renewal of certificate:	\$200.00;
13. Endorsement fee:	\$75.00;
14. Duplicate wall certificate:	\$25.00;
15. Letter of certification:	
i. License:	\$40.00;
ii. Continuing education credit:	\$50.00;
16. Preceptorship certificate:	\$25.00;
17. Reinstatement fee:	\$200.00.

R.1975 d.23, effective March 1, 1975.

See: 7 N.J.R. 115(c).

Amended by, R.1979 d.158, effective April 23, 1979.

See: 11 N.J.R. 145(a), 11 N.J.R. 298(a).

Amended by R.1985 d.254, effective May 20, 1985.

See: 17 N.J.R. 667(a), 17 N.J.R. 1323(a).

Substantially amended.

Amended by R.1991 d.360, effective July 15, 1991.

See: 23 N.J.R. 1064(a), 23 N.J.R. 2160(b).

Renumbered existing 1 as 3, 2 as 4, 3 as 6, 4 as 7, 5 as 8, 13 as 12, 14 as 13; all fees charged except in 13. Added 8i, ii. Changed fee in 9. Deleted 6, 7, 8, 10, 12.

Amended by R.1992 d.443, effective November 2, 1992.

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

Added new 7-9, recodified existing 7-14 as 10-17.

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.2006 d.450, effective December 18, 2006.

## SUBCHAPTER 6. RECORDS

### 13:38-6.1 Availability of records

(a) For purposes of this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

“Authorized representative” means a person who has been designated, pursuant to a court order or a signed writing by the patient, to exercise the patient’s rights under this section. An authorized representative may be the patient’s attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given such access in order to assess a claim for reimbursement. If the patient is a minor, a parent or guardian shall be deemed to be an authorized representative except where a court order makes a specific designation to the contrary.

“Patient” means any person who is the recipient of optometric services rendered by a licensee for the purpose of examination, treatment, or consultation relating to the treatment.

(b) The patient record, or a copy thereof, shall be released upon written request, to the patient, the patient’s authorized representative, or to another optometrist or physician acting on behalf of the patient. A patient record or portion thereof shall be released to any person or other entity only upon the receipt of a signed release from the patient whose records are being requested. An optometrist may charge a fee for the reproduction of records, which shall be no greater than \$.50 per page or \$100.00 for the entire record, whichever is less. If the record requested is 10 pages, the optometrist may charge up to \$10.00 to cover postage and the miscellaneous costs associated with retrieval of the record. If agreeable to the individual requesting the record, the optometrist may send a summary in lieu of the actual record and the charge for the summary shall not exceed the cost that would be charged for the actual record.

(c) An optometrist shall, free of charge, release the contact lens prescription directly to the patient upon completion of the contact lens fitting. An optometrist shall, free of charge, release a copy of a patient’s contact lens prescription directly to a licensed ophthalmologist, optometrist, or ophthalmic dispenser upon either the oral or written request of a patient. Upon the release of a contact lens prescription directly to a patient, an optometrist, shall provide the patient with a written warning, which shall include the following language in boldface, underlined and in capital letters:

**WARNING: YOU SHOULD BE AWARE THAT YOUR EYES MAY CHANGE WITH TIME AND CONTACT LENSES THAT WERE INITIALLY FITTING PROPERLY MAY NO LONGER BE**

**APPROPRIATE AND MAY ENDANGER YOUR EYE HEALTH. YOU SHOULD SEE YOUR EYE DOCTOR PERIODICALLY TO ENSURE YOUR LENSES ARE FITTING PROPERLY.**

1. As used in this section, a “contact lens prescription” shall include those specifications contained within the doctor’s records that are necessary for the preparation of contact lenses for a patient. A contact lens prescription is not complete unless and until a patient has been fitted for the contact lenses being prescribed and the fit has been fully evaluated over at least one follow-up visit and determined to be satisfactory. A contact lens prescription shall include a date of expiration that cannot exceed two years from the date of the last contact lens evaluation and may be of shorter duration depending on the professional judgment of the optometrist.

(d) After the completion of a patient’s comprehensive eye examination, and upon the patient’s request, a copy of the patient’s prescription for eyeglasses shall be given, free of charge, to the patient or to another optometrist, ophthalmologist or ophthalmic dispenser acting on the patient’s behalf.

(e) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients may obtain their records or transfer those records to another licensee who will assume the responsibilities of the practice;

2. Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee’s practice, at least once a month for the first three months after the cessation; and

3. File a notice of the established procedure for the retrieval of records with the Board of Optometrists.

R.1978 d.242, effective July 21, 1978.

See: 10 N.J.R. 119(a), 10 N.J.R. 352(b).

Amended by, R.1979 d.465, effective November 27, 1979.

See: 11 N.J.R. 462(b), 12 N.J.R. 48(c).

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

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

Added new (d) regarding application of preceding subsections.

Amended by R.1995 d.524, effective September 18, 1995.

See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

Rewrote (c); in (d), added “After completion of a patient’s comprehensive eye examination, and upon” and made technical changes by substituting “ophthalmic dispenser” for “optician”; deleted former (e); recodified former (f) as (e).

**Case Notes**

History of rule. Hillman/Kohan v. N.J. Board of Optometrists, 169 N.J. Super. 259, 404 A.2d 1172 (App.Div.1979).

**SUBCHAPTER 7. CONTINUING PROFESSIONAL OPTOMETRIC EDUCATION**

**13:38-7.1 Active registration renewal; continuing education requirement**

Any applicant who applies for an active registration renewal certificate for a biennial period shall confirm on the renewal application that the applicant has completed continuing professional optometric education programs of the types and number of credits specified in N.J.A.C. 13:38-7.3. The Board shall not issue an active registration renewal certificate to any applicant who fails to confirm that the applicant has completed the continuing professional optometric education requirements unless the Board issues the applicant a waiver pursuant to N.J.A.C. 13:38-7.7.

**13:38-7.2 Nonactive registration renewal and reactivation of license; continuing education requirement**

(a) Any licensee who has a nonactive certificate shall be exempt from the continuing professional optometric education requirements set forth in this subchapter.

(b) Any licensee seeking to reactivate a nonactive certificate shall provide the Board with evidence of having maintained proficiency by completing the professional optometric education requirements set forth at N.J.A.C. 13:38-7.3(a) during the two calendar years immediately preceding the application for reactivation.

**13:38-7.3 Credit hour requirements**

(a) An applicant for an active registration renewal certificate shall complete, during the preceding biennial period, a minimum of 50 credits of continuing professional optometric education. At least 30 of the 50 credits shall consist of courses or programs classified as therapeutic pharmaceutical agents (TPA) credits and shall be primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease, of which 10 of the 30 continuing professional optometric education credits shall be in oral TPA. The remaining 20 general continuing professional optometric education credits shall be in content areas set forth in N.J.A.C. 13:38-7.4.

(b) An applicant who initially obtains a certificate within the first year of a biennial period shall complete at least 25 of the minimum required credits of continuing professional optometric education. At least 15 of the 25 credits shall consist of courses or programs classified as TPA credits and shall be devoted to the subject matter set forth in (a) above.

(c) An applicant who initially obtains a certificate within the second year of a biennial period shall be exempt from completing continuing professional optometric credits for that biennial renewal period.