

CHAPTER 38

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Authority

N.J.S.A. 45:12-4.

Source and Effective Date

R.1990 d.476, effective August 27, 1990.
See: 22 N.J.R. 1866(a), 22 N.J.R. 3153(a).

Executive Order No. 66(1978) Expiration Date

Chapter 38, New Jersey State Board of Optometrists, expires on August 27, 1995.

Chapter Historical Note

Chapter 38, New Jersey State Board of Optometrists, was filed 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). Subchapter 2, General Rules of Optometric Practice, expired July 17, 1984 and was readopted pursuant to Executive Order No. 66(1978) with amendments effective February 19, 1985 as R.1985 d.60. See: 16 N.J.R. 3289(a), 17 N.J.R. 467(a). Subchapter 5, Fee Schedule, expired April 23, 1984 and was readopted pursuant to Executive Order No. 66(1978) 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: New Jersey Optometric Association petitioned for rules establishing post-operative care of surgical patients as within the scope of Optometry. See: 22 N.J.R. 673(a). Petition for Rulemaking: Prescription of pharmaceutical agents and post surgical care. See: 22 N.J.R. 1634(a). Pursuant to Executive Order No. 66(1978) Chapter 38, New Jersey State Board of Optometrists, was readopted and Subchapter 4, Forms was repealed by R.1990 d.476, effective August 27, 1990 (repeal effective October 1, 1990). See: Source and Effective Date. Petition for Rulemaking: For the use and prescription of pharmaceutical therapeutic measures or agents by optometrists. See: 23 N.J.R. 1213(a). Petition for Rulemaking: Request of the Board to determine the use and prescription of pharmaceutical therapeutic measures or agents by optometrists. See: 23 N.J.R. 1214(a). Notice of Action on Petition: Use and prescription of pharmaceutical therapeutic measures or agents by optometrists. See: 23 N.J.R. 2191(c). Notice of Action on Petition: Rulemaking on the scope of an optometrists licensure. See: 23 N.J.R. 2191(d).

See section annotations for specific rulemaking activity.

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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) An optometrist may, consistent with the provisions set forth in this section, advertise to the consuming public the availability for sale and offering of optometric services and ophthalmic goods or merchandise. 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. For the purpose of this section the term "advertising" shall mean any attempt directly or indirectly by publication, dissemination, circulation or in any other way to induce a consumer to purchase or consider the purchase of optometric services or ophthalmic goods or merchandise.

(b) An optometrist may advertise by means of print or electronic media, including on premise signs, professional cards and appointment cards.

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

1. The advertised service, goods or merchandise is 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 or price 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 or prices. A statement of price relating to ophthalmic goods or merchandise 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 goods is to be charged, the advertisement shall disclose the dollar amount of such fee;

5. Where prices are set forth for ophthalmic goods 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 item;

6. When prices are set forth for ophthalmic goods and services for contact lenses, the advertisement shall include, but not be limited to, the fee for the eye exam appropriate to a contact lens evaluation, the type and brand of lens being offered, fitting instruction and follow-up care. These items may be priced separately or as a combined package. If the cost of a contact lens care kit is not indicated as a separate item or as a part of a package, the following statement shall be set forth: "The proper maintenance of 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 goods 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 material conditions including, but not limited to relevant time periods and dollar amounts to be refunded.

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

(f) When an advertisement contains information on professional credentials, it shall only contain the highest academic degrees obtained relating to the practice of optometry and certifications from bona fide accrediting bodies directly related to the practice of optometry.

1. The use of titles of post-graduate professional fellowships in optometry from the American Academy of Optometry and the College of Optometrists in Vision Development shall not be deemed to be a claim of professional superiority.

2. It shall be deemed to be the use or employment of deception and misrepresentation for a licensee to utilize or authorize the use of the terms "specialist," "specialty" or the substantial equivalent thereof in any advertising as defined by (a) above; provided, however, that nothing in this section shall prohibit a licensee from utilizing such terminology as "practice limited to," where the advertising licensee's practice is exclusively or primarily devoted to one or more recognized areas of optometric care or services, for example, contact lens services, low vision services, vision training service, etc.

3. 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", and for the same time period may also use the prior optometrist's name in any advertisement.

(h) An optometrist may be listed in the classified section of any directory under the classification entitled "Optometrist", "Doctor of Optometry", or any other designation which is not misleading. Such listing shall show the address or addresses for which a valid, unrevoked, active certificate 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 licensed by the New Jersey Board of Optometrists 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 on request by the Board or its designee; or

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

(k) An advertisement may contain either a lay or expert testimonial, provided that such testimonial is based upon personal knowledge or experience obtained from a provider relationship with the licensee or direct personal knowledge of the subject matter of the testimonial. A lay person's testimonial shall not attest to any technical matter. An expert testimonial shall be rendered only by an individual possessing expertise sufficient to allow the rendering of a bona fide statement or opinion. An advertiser shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial, and the failure to do so, if required by the Board, may be deemed professional misconduct.

1. Where an advertiser directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a legible and readable manner in any advertisement in the following language or its substantial equivalent:

COMPENSATION HAS BEEN PROVIDED FOR THIS TESTIMONIAL.

2. An optometrist who advertises through the use of testimonials 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, but not be limited to, the name, address and telephone number of the individual in the advertisement, the type and amount or value of compensation, and a signed, notarized statement and release, obtained prior to the information contained in the testimonial and indicating that person's willingness to have his or her testimonial used in the advertisement.

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).

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 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 merchandise shall:

1. In all advertising placed by such corporation cause to be conspicuously disclosed the names of all corporate officers who are 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 goods and services at a particular location or group of locations, the name of at least one licensee responsible for the optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be accompanied by one of the following designations: O.D., Optometrist, Doctor of Optometry.

(e) 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.

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).

13:38-1.4 (Reserved)

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

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

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

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

Section was "Soliciting".

Case Notes

Regulation invalidated. Att'y Gen. Form. Op. 1980-No. 17.

13:38-1.5 (Reserved)

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

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

Section was "Public education messages".

13:38-1.6 (Reserved)

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

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

Section was "Taking over former practices".

13:38-1.7 (Reserved)

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

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

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

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

Section was "Soliciting through reduced fees".

Case Notes

Regulation invalidated. Att'y Gen. Form. Op. 1980-No. 17.

13:38-1.8 (Reserved)

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

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

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

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

Section was "Listing of directories".

13:38-1.9 (Reserved)

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

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

This section was recodified to section 1.2.

13:38-1.10 (Reserved)

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

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

Section was recodified to section 1.3.

SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

13:38-2.1 Minimum examination; record of conditions

(a) As authorized under N.J.S.A. 45:12-11v, the following procedures shall be performed on each and every patient examined and the findings shall be duly recorded:

1. Complete history;
2. Complete 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 (keratometry) must be taken at the time of the original examination;
6. Objective refractive findings;
7. Subjective refractive findings;
8. Extra-ocular measurement (EOM);
9. Fusion, stereopsis, and color vision testing at the time of the original examination;
10. Visual fields; measurement of central and peripheral vision on all patients where indicated and possible;
11. Tonometry on all patients where possible unless contraindicated;
12. In addition to the above procedures, corneal examinations shall be performed by the doctor in the course of fitting contact lenses using a slit-lamp (biomicroscope), or such equipment with equivalent technological capabilities.

(b) Procedures (a)3, 4, 5, 7 and 12 above must be performed by the doctor. In procedure (a)11 above, where any form of contact tonometry is used, the doctor must perform the procedure. The accuracy of the findings from the above-referenced procedures shall be the exclusive responsibility of the examining optometrist(s).

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).

Cross References

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

13:38-2.2 Minimum equipment

(a) For the proper performance of the requirements of N.J.A.C. 13:38-2.1 (Minimum examination), the following equipment is mandatory in each office in this State where an optometrist is licensed to practice:

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. Test objectives for stereopsis and fusion;

6. Instrument or chart to measure distance and near visual acuity;
7. Pseudoisochromatic method for testing color vision;
8. Equipment to measure central and peripheral fields;
9. Accurate corneal or non-contact tonometer to determine intraocular pressure;
10. Biomicroscopic (slit-lamp), or such 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).

13:38-2.3 Records of examinations and prescriptions

(a) Every optometrist practicing in this State shall keep a record of examinations made and prescriptions issued, which shall include the names and addresses of persons examined and for whom prescriptions were prepared.

(b) All findings and pertinent facts concerning the patient, discovered and disclosed during the course of such examination, as well as the record of professional services rendered and the fees charged, shall be preserved by the optometrist for a period of not less than seven years from the date of the last entry.

(c) In a multi-doctor practice and/or corporation, for every professional service rendered, the name of the doctor or doctors rendering such service or services, shall be clearly indicated on the patient record.

(d) The name of the person dispensing eyeglasses or contact lenses to the consumer/patient, shall also be indicated on the patient record.

(e) Every optometrist shall be required to evaluate a patient for the specifically advertised brand and type of contact lenses which attracted or induced the patient to seek such goods. In the event that the patient is fitted with another brand or type of contact lens, the patient record shall reflect that decision and the justification therefor.

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. 2361(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).

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 pre-printed on all prescriptions;
2. The full name, age and address 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 P.L. 1991, c.385, 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. A direction of "p.r.n." or "as directed" alone shall be deemed an 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 P.L. 1991, c.385, shall comply with the following:

1. The optometrist shall advise all patients by adequate notice, such as, but not limited to, a sign or pamphlet in the waiting room of the optometrist's office, that the patient may request the optometrist to substitute a generic drug 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 container of medication dispensed directly to a patient is labeled in a legible manner with at least the following information:
 - i. The optometrist's full name;
 - ii. The full name of the patient;
 - iii. The date the medication is dispensed;

- iv. The expiration date of medication;
- v. The name, strength and quantity of medication dispensed;
- vi. Adequate instructions for the patient regarding the frequency of administration of the medication;
- vii. When an optometrist dispenses a pharmaceutical sample which has been packaged and labeled by the manufacturer and such sample package contains the information required by (c)3v and vi above, the information listed in (c)3i through ii, inclusive, above need not be added; and
- viii. When an optometrist dispenses a medication, other than a sample exempted pursuant to (c)3vii above, in a container without sufficient space for the information required by this paragraph, the container shall be placed in a larger container or envelope, and the larger container or envelope shall be labeled as indicated in this paragraph and shall contain only one type of medication.

(d) In no instance shall an optometrist sign a blank prescription form or dispense drugs without complying with the above standards.

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.

13:38-2.5 Vision screening

Nothing contained in this chapter shall be construed to prohibit vision screening under the direction and supervision of an optometrist for the purpose of determining the advisability of a complete optometric examination.

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 Division of fees

It shall be professional misconduct for a licensee to pay, offer to pay, to solicit or to receive from any person any fee or other form of compensation for the referral of a patient or purchaser of goods and services. The within prohibition shall not prohibit the division of fees among licensees engaged in a bona fide employment, partnership or corporate relationship for the delivery of professional services.

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 Vision service plans

(a) N.J.S.A. 45:12-19.1 shall not be construed to prohibit an optometrist from providing optometric services in conjunction with a vision service plan.

(b) A vision service plan shall be construed to mean a plan offered by an association or corporation whereby professional practitioners legally authorized to provide optometric care can offer their professional services upon a planned payment basis to members of groups desiring said services and to make available any and all other optometric functions and services on such planned payment basis.

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.

Recodified from 13:28-2.6 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, Optometrists availability, recodified to 13:38-2.8.

Case Notes

Authority of the board of optometrists over vision service plans of right of prior approval cannot be limited solely to those of nonprofit character, and of review and approval is limited to those elements which reasonably relate to the provision of quality patient eye care. Atty.Gen.F.O.1980, No. 13.

A requirement which allows only "open panel" plans, plans which do not restrict the number of optometrists to be used by plan members, to operate is beyond the authority of the board of optometrists. Atty. Gen.F.O.1980, No. 13.

The exercise of the right of the board of optometrists of prior approval over vision service plans should be carried out in a reasonable manner, within a reasonable period of time and after full consultation with the office of the Attorney General. Atty.Gen.F.O.1980, No. 13.

13:38-2.8 Optometrists availability

The examining optometrist shall assure that every patient has access to the optometrist or to a suitable covering doctor in an emergency, during a doctor's vacation time or during hours when the office is not open.

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

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

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

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

This section was "Approval of Vision Service Plan." New Rule, R.1989 d.252, effective May 15, 1989.

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

Recodified as new 2.7 from old 2.8. Prior annotations refer to old 2.8, "Approval of Vision Service Plan."

Added new rule, "Optometrist's availability," to remedy consumers' complaints regarding inaccessibility of optometrists for emergency care. Recodified from 13:28-2.7 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, (Reserved), recodified to 13:38-2.9.

Case Notes

Authority of Board. Att'y Gen. Form. Op. 1980-No. 13.

A requirement which allows only "open panel" plans, plans which do not restrict the number of optometrists to be used by plan members, to operate is beyond the authority of the board of optometrists. Atty. Gen.F.O.1980, No. 13.

The exercise of the right of the board of optometrists of prior approval over vision service plans should be carried out in a reasonable manner, within a reasonable period of time and after full consultation with the office of the Attorney General. Atty.Gen.F.O.1980, No. 13.

13:38-2.9 (Reserved)

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

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

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

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

This section was "Optometric services through vision service plan."

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 2.9 as new 2.8 and retained reserved status of section.

Recodified from 13:28-2.8 by R.1992 d.443, effective November 2, 1992.

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

Renumbered old 2.8 as new 2.9 and retained reserved status of section.

13:38-2.10 Minimum standards and tolerances

(a) Every prepared pair of lenses, spectacles, eyeglasses or appurtenances thereto, to the intended wearers on written prescriptions from optometrists duly licensed to practice their profession, or duplication, replacements, reproductions or repetitions, must conform to the following minimum standards and tolerances:

Physical Quality and Appearance	Tolerance
1. Surface imperfections	No pits, scratches (other than hairline), grayness or watermarks shall be acceptable.
2. Glass defects	No bubbles, striae and inclusions shall be acceptable.
3. Localized power errors	Waves found by visual inspection shall be passable if no deterioration in image quality is found when the localized area is examined with a standard lens measuring instrument.
4. Refractive powers	0.0 to 6.00 + or - 0.12. 6.25 to 12.00 2 per cent of power.
5. Refractive power addition	Above 12.00 + or - 0.25. Maximum cylinder power variation + or - 0.12. + or - 0.12.0.
6. Cylinder Axis	0.12 or 0.37 + or - 3 degrees. 0.50 to 1.00 + or - 2 degrees. 1.12 on up + or - 1 degree.

Physical Quality and Appearance	Tolerance
7. Prism power and location of specified optical center	Vertical + or - 0.25 prism for each lens or a total of $\frac{1}{2}$ prism imbalance. Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than 0.50 prism diopter, the optical centers must be within 4 mm.
8. Segment size	+ or - 0.5 mm. Pair must be symmetrical upon visual inspection.
9. Segment location	As specified within + or - 0.5 mm.
10. Lens size:	
i. Rimless	+ or - 0.5 mm;
ii. Bevel, for plastic frames	+ or - 0.5 mm;
iii. Bevel, for metal frames	To fit standard specified frames. Lens shape must match. Edges must be smooth and straight and sharp edge must be removed.
11. Heat-treated and chemically-treated industrial safety eyewear	Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
12. Heat-treated and chemically treated dress eyewear	Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
13. Frame selection and fit	Frame shall be selected for the requirements of the prescription and facial contour. Bridge size should fit the nose within 2 mm of its width with flair, and temple length must fit within 5 mm.

(b) In order to assure the proper fabrication of lenses and eyewear, the following information shall be recorded:

1. Eye size, bridge size, temple length, frame shape and style, patient pupillary distance, optical centers and, if applicable, bifocal type, segment height and base curve.

(c) Upon completion of the fabrication of such corrective lenses and prior to dispensing within the State of New Jersey, the lenses or finished eyeglasses shall be verified to assure the accuracy of the prescription, the sphere, cylinder, axis prism, base, add, patient pupillary distance, segment height, frame size, eye size, bridge size and temple length. In addition, the eyewear must be adjusted for fit and verified for compliance with the standards set forth in (a) above.

R.1975 d.19, effective January 28, 1975.

See: 6 N.J.R. 447(a), 7 N.J.R. 115(b).

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.

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 2.10 as new 2.9 with no change in text.

Recodified from 13:28-2.9 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, (Reserved), recodified to 13:38-2.11.

13:38-2.11 (Reserved)

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 2.11 as new 2.10.

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

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

Renumbered old 2.10 as new 2.11 and retained reserved status of section.

13:38-2.12 Preceptorship program

(a) An active registered New Jersey Optometrist may act as a preceptor to supervise a fourth year student, as preceptee, of an accredited optometry school or college in that optometrist's office under the conditions set forth herein:

1. The clinical training, when performed in the preceptor's office shall be classified as a preceptorship program.

2. The school or college shall submit to the New Jersey State Board of Optometrists a detailed description of its preceptorship program, indicating procedures for monitoring such operational programs, procedures for selection of preceptors and preceptees, the number of weeks during which such programs will be in effect, and other pertinent information for the Board's approval.

3. The school or college shall provide the Board with the name and address of the preceptor under whose supervision the preceptee shall work, the name and address of the preceptee, and the dates of preceptorship.

4. The school or college shall select the preceptors and shall submit those names to the New Jersey State Board of Optometrists. Such preceptor shall have been engaged in the practice of optometry in the State of New Jersey for at least five years. The Board shall issue a Certificate of Preceptorship which shall be valid no longer than one year from the date of issuance and which shall be displayed conspicuously on the office premises of the preceptor. It shall be the responsibility of the preceptor to inform his/her patients of the preceptee's status prior to the submission of the patient to the examination by the preceptee.

5. All tests referred to in N.J.A.C. 13:38-2.1 pursuant to N.J.S.A. 45:12-11(u) may be performed by the preceptee; provided however that during the performance of any such tests, the preceptor shall be on the premises and immediately available for supervision at all times. All preceptee evaluations of the patient shall be reviewed by the preceptor prior to final determination of the case before the patient leaves the premises. A preceptor shall at all times be responsible for the effective supervision and direction of the preceptee.

6. The preceptor-preceptee ratio shall be one to one and the optometry school or college shall appoint preceptees to preceptors whose office can accommodate this type of program.

7. Under no circumstances shall the preceptee be paid for this experience.

8. Failure of the preceptee or preceptor to follow the terms and conditions 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.

SUBCHAPTER 3. LICENSURE BY EXAMINATION

13:38-3.1 Application for examination

Applications for examination by the Board made in accordance with the provisions of N.J.S.A. 45:12-5, shall be completed and filed with the secretary of the Board not more than 60 days nor less than 30 days prior to the date of which the examination is to be held.

13:38-3.2 Reexamination

An applicant for licensure failing the first examination shall be permitted to take any of the next two succeeding examinations conducted by the Board. An applicant failing the examination twice must take courses approved by the Board before taking the examination a third and fourth time. This same procedure shall prevail after each two failures.

Amended by R.1985 d.504, effective October 7, 1985.

See: 17 N.J.R. 1639(b), 17 N.J.R. 2443(a).

Substantially amended.

13:38-3.3 Payment of registration fee

Any applicant who satisfactorily passes the examination given by the Board shall be required to pay the fee of \$15.00 for his registration certificate within 30 days after receiving notification from the Board that he has satisfactorily passed said examinations.

13:38-3.4 Change of name

The Board shall issue a new registration certificate to any licensee whose name has been legally changed upon receipt of satisfactory evidence of the legality of such change, the return of the original certificate with satisfactory evidence that he is the same person to whom the certificate was issued, together with a fee of \$10.00.

13:38-3.5 Renewal of registration certificates

All registration certificates shall be renewed on or before December 31 of each year, subject to the provisions of N.J.S.A. 45:12-9.

13:38-3.6 (Reserved)

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

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

Old section "Duplicate registration certificates".

13:38-3.7 Military service

Any licentiate 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 is in service.

13:38-3.8 Degree required of applicants

Applicants for examination by the board subsequent to July 1, 1956, must be graduates of an approved college of optometry that grants the degree of doctor of optometry.

13:38-3.9 Accredited schools of optometry

No school or college of optometry will be accredited by the board that fails to require for graduation the satisfactory completion of a course of study of at least six college years, consisting of at least two college years of preoptometry study or its equivalent in an accredited college or university, and at least four college years of professional study of optometry in an accredited college or university. Credits received in less than four calendar years in an optometric school or college of optometry, except as provided for in section 10 of this subchapter, will not be accepted by the board as proper qualification.

13:38-3.10 Accelerated courses

No school or college of optometry will be accredited by the board which admits students to an accelerated course in optometry except in times of national emergency during which the Federal government requires accelerated courses in lieu of induction into the armed military forces.

13:38-3.11 Requirements for application for licensure

(a) Applications for licensure will be accepted under the following conditions:

1. The applicant shall satisfy the character and education requirements set forth in N.J.S.A. 45:12-1 et seq.;

2. The applicant shall have passed the basic science and clinical science written examination conducted by the National Board of Examiners in Optometry, and the New Jersey State Board of Optometrists shall have received verification of the scores from the National Board of Examiners in Optometry; and

3. The applicant shall have passed an optometric clinical skills assessment test administered either by the New Jersey State Board of Optometrists on or before July 18, 1990 or by the North East Region Clinical Optometric Assessment Testing Service (NERCOATS) on or after July 11, 1990, and the State Board of Optometrists shall have received verification of test scores from NERCOATS.

Amended by R.1976 d.105, effective April 7, 1976.

See: 8 N.J.R. 83(a), 8 N.J.R. 251(a).

Repeal and New Rule, R.1991 d.228, effective May 6, 1991.

See: 23 N.J.R. 166(a), 23 N.J.R. 1418(b).

Repealed rule—"Applicants required to pass all parts of the examination conducted by the National Board of Examiners in Optometry".
Petitions for Rulemaking.

See: 27 N.J.R. 773(a).

13:38-3.12 Employment of optometrist by unlicensed persons

N.J.S.A. 45:12-11(u) shall not be construed to permit an optometrist to be employed by another optometrist or physician who is directly or indirectly employed or connected or associated as an optometrist or a physician with any unlicensed person, company, association, organization or corporation.

13:38-3.13 Suspended or revoked optometrists

(a) No optometrist shall accept employment or association with, nor shall continue in the employment of or association with, any optometrist whose license to practice optometry has been suspended or revoked during the period of the suspension or revocation.

(b) It shall be the duty and responsibility of any optometrist, before employing, engaging the services of, or accepting as an associate or assistant, another optometrist, to ascertain that the optometrist possesses a duly issued registration renewal certificate or branch office certificate for the address at which the employee, associate or assistant will practice optometry.

13:38-3.14 Branch offices

A branch office license issued for one address is not transferable to a different address. A licensee desiring to change his branch office address must file a new application for a new branch office license and must return the branch office certificate previously issued for cancellation with his new application and fee for the new branch office license.

SUBCHAPTER 4. CERTIFICATION BY EXAMINATION

Authority

P.L. 1991, c.385.

Source and Effective Date

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

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

13:38-4.1 Purpose and scope

(a) The rules of this subchapter implement the provisions of the Consumer Access to Eye Care Act of 1991, P.L. 1991, c.385.

(b) This subchapter shall apply to a licensed optometrist utilizing pharmaceutical agents, as defined and limited in P.L. 1991, c.385, for the purposes of treating deficiencies, deformities, diseases or anomalies of the human eye, including the removal of superficial foreign bodies from the eye and adnexae.

13:38-4.2 Application for certification; general requirements

(a) An optometrist licensed in this State who wishes to use pharmaceutical agents for treatment purposes as permitted by P.L. 1991, c.385, must be certified by the Board prior to prescribing or dispensing such agents.

(b) Each applicant for certification shall submit the following to the Board:

1. A completed application form;
2. The application fee set forth in N.J.A.C. 13:38-5.1;
3. Verification that the applicant has successfully completed the educational requirements set forth in N.J.A.C. 13:38-4.3. The applicant shall obtain the required verification from the school where the applicant completed the educational requirements; and
4. Proof that the applicant has successfully completed the examination requirements set forth in N.J.A.C. 13:38-4.4.

(c) An applicant who satisfies all of the requirements set forth in (b) above shall, upon payment of the initial certification fee set forth in N.J.A.C. 13:38-5.1, be certified by the Board to use pharmaceutical agents as defined and limited in P.L. 1991, c.385.

13:38-4.3 Educational requirements for certification

Each applicant for certification shall be required to successfully complete all educational requirements in ocular pharmacology at a school duly accredited by the United States Department of Education and the Council on Post-secondary Accreditation. The education shall be no less than that required of currently enrolled students as part of their requirements for graduation from that school.

13:38-4.4 Examination requirements for certification

Each applicant for certification shall be required to successfully complete the Treatment and Management of Ocular Disease Examination administered by the National Board of Examiners in Optometry.

13:38-4.5 Biennial certification renewal

(a) An application for certification renewal shall be issued by the Board upon the applicant's submission of proof that during the two calendar years immediately preceding application for renewal the applicant successfully completed 20 continuing professional education credits in Board-approved courses devoted to both ocular pathology and ocular pharmacology. Each credit shall represent or be equivalent to one hour of actual course attendance.

(b) Ten credits of the 20-credit continuing education requirement set forth in (a) above shall be in addition to the 50-credit continuing education requirement for license renewal. Credit for a continuing education course which is approved as fulfilling either the certification or the license renewal requirements shall be applied only once, either to the certification or to the license renewal requirement.

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.

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:	\$210.00
ii. If paid during the second year of a biennial renewal period:	\$105.00
8. Biennial renewal fee—certification to prescribe:	\$210.00
9. Each additional certificate—certification to prescribe (for second and third branch locations)	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).

SUBCHAPTER 6. RECORDS

13:38-6.1 Availability of records

(a) A patient record prepared by an optometrist shall be maintained for seven years from the date of the last entry. The patient record, or a copy thereof, shall be released to another optometrist or physician.

(b) The complete record of contact lens specifications shall be released by an optometrist to another optometrist, ophthalmologist or ophthalmic dispenser licensed in New Jersey upon either the oral or written request of the patient or the professional acting on the patient's behalf.

(c) A copy of the patient's prescription for eyeglasses shall be given to the patient or to another optometrist, physician or optician.

(d) The above subsections shall not apply unless the patient has satisfied all financial obligations to the optometrist.

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.

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).