

**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-5.1c, Chapter 38, New Jersey State Board of Optometrists, expires on September 3, 2011. See: 43 N.J.R. 822(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State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990.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.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION**

- 13:38-1.1 Optometrist presumed responsible for advertisements
- 13:38-1.2 General advertising practices
- 13:38-1.3 Permissible business structures; referral fees
- 13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

**SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE**

- 13:38-2.1 Minimum examination; record of conditions
- 13:38-2.2 Minimum equipment and instrumentation
- 13:38-2.3 Records of examinations and prescriptions; computerized records
- 13:38-2.4 Requirements for issuing prescriptions and dispensing of medications
- 13:38-2.5 through 13:38-2.7 (Reserved)
- 13:38-2.8 Optometrists availability
- 13:38-2.9 (Reserved)
- 13:38-2.10 Minimum standards and tolerances
- 13:38-2.11 Delegation of duties to ancillary personnel
- 13:38-2.12 Preceptorship program
- 13:38-2.13 Independent doctor of optometry
- 13:38-2.14 Sexual misconduct
- 13:38-2.15 Excessive fees

**SUBCHAPTER 3. GENERAL PROVISION**

- 13:38-3.1 Change of name
- 13:38-3.2 Renewal of registration certificates
- 13:38-3.3 Military service
- 13:38-3.4 (Reserved)
- 13:38-3.5 Requirements for application for licensure
- 13:38-3.6 (Reserved)
- 13:38-3.7 Suspended or revoked licenses
- 13:38-3.8 Branch offices
- 13:38-3.9 Termination of the optometrist-patient relationship
- 13:38-3.10 Renewal; reinstatement; inactive/active status

**SUBCHAPTER 4. THERAPEUTIC PHARMACEUTICAL AGENTS (TPA) CERTIFICATION**

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

**SUBCHAPTER 5. FEE SCHEDULE**

- 13:38-5.1 Fee schedule

**SUBCHAPTER 6. RECORDS**

- 13:38-6.1 Availability of records

**SUBCHAPTER 7. CONTINUING PROFESSIONAL OPTOMETRIC EDUCATION**

- 13:38-7.1 Active registration renewal; continuing education requirement
- 13:38-7.2 Nonactive registration renewal and reactivation of license; continuing education requirement
- 13:38-7.3 Credit hour requirements
- 13:38-7.4 Approved course offerings
- 13:38-7.5 Sources of continuing professional optometric education credit and credit-hour calculation
- 13:38-7.6 Documentation of continuing professional optometric education credit

- 13:38-7.7 Waiver of continuing professional optometric education requirements
- 13:38-7.8 Responsibilities of continuing education sponsors for courses/programs with three credits or less

## SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

### 13:38-1.1 Optometrist presumed responsible for advertisements

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

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

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

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

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

#### Case Notes

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

### 13:38-1.2 General advertising practices

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

"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