

CHAPTER 38

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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

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

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

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

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

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

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

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

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State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990.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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. The nature and circumstances under which services are provided.

(d) Unless services are provided during an emergency or other circumstances where opportunity, custom and practice will preclude discussion prior to the rendition of such services, the licensee or his or her designee shall, in advance of providing services, specify or discuss and agree with the patient, the fee or basis for determination of the fee to be charged.

(e) Charging an excessive fee in violation of (b) above shall constitute professional misconduct subjecting the licensee to disciplinary action by the New Jersey State Board of Optometrists.

New Rule, R.2002 d.274, effective August 19, 2002.
See: 33 N.J.R. 2601(a), 34 N.J.R. 3008(a).

SUBCHAPTER 3. GENERAL PROVISIONS

13:38-3.1 Change of name

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

Recodified from 13:38-3.4 and amended by R.1995 d.524, effective September 18, 1995.

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

Prior text at 13:38-3.1, Application for examination, repealed.

13:38-3.2 Renewal of registration certificates

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

Recodified from 13:38-3.5 and amended by R.1995 d.524, effective September 18, 1995.

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

Prior text at 13:38-3.2, Reexamination, repealed.

13:38-3.3 Military service

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

Recodified from 13:38-3.7 and amended by R.1995 d.524, effective September 18, 1995.

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

Prior text at 13:38-3.3, Payment of registration fee, repealed.

13:38-3.4 (Reserved)

Recodified from 13:38-3.9 and amended by R.1995 d.524, effective September 18, 1995.

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

13:38-3.5 Requirements for application for licensure

(a) An applicant seeking licensure shall satisfy the character and education requirements set forth in N.J.S.A. 45:12-1 et seq.

(b) An applicant seeking licensure shall submit the following to the Board:

1. A completed application form supplied by the Board that requires the applicant to provide identifying information;

2. A non-refundable application fee set forth in N.J.A.C. 13:38-5.1;

3. An official transcript(s) indicating that the applicant has satisfied the educational requirements as set forth in N.J.S.A. 45:12-1 et seq.;

4. Verification of the test scores from the National Board of Examiners in Optometry indicating that the applicant successfully passed parts I and II of the written examination conducted by the National Board of Examiners in Optometry; and

5. Verification of test scores from the North East Region Clinical Optometric Assessment Testing Services (NERCOATS) or the National Board of Examiners in Optometry indicating that the applicant successfully passed an optometric clinical skills assessment test administered by NERCOATS or the Part III Patient Care portion of the National Board of Examiners in Optometry test.

(c) When an applicant is seeking licensure and is also seeking therapeutic pharmaceutical agents (TPA) certification at the same time, the licensee shall comply with (b) above and the TPA certification requirements set forth at N.J.A.C. 13:38-4.2(b) and (c), except that the applicant is not required to pay two application fees.

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).

Recodified from 13:38-3.11 and 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.1997 d.458, effective November 3, 1997.

See: 29 N.J.R. 2781(b), 29 N.J.R. 4712(a).

In (a)3, inserted references to the National Board of Examiners in Optometry test.

13:38-3.6 (Reserved)

Recodified from 13:38-3.12 by R.1995 d.524, effective September 18, 1995.

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

13:38-3.7 Suspended or revoked licenses

(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, another optometrist, to ascertain that the optometrist possesses an active registration renewal certificate or an active branch office certificate for the address at which the employee or associate will practice optometry.

Recodified from 13:38-3.13 by R.1995 d.524, effective September 18, 1995.

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

13:38-3.8 Branch offices

(a) A branch office certificate issued for one address is transferable to a different address. A licensee desiring to change a branch office address shall file a change of address form together with the fee as set forth in N.J.A.C. 13:38-5.1 and shall return the branch office certificate previously issued.

(b) A licensee desiring an additional branch office certificate shall file an application for a new branch office certificate and submit the fee as set forth in N.J.A.C. 13:38-5.1.

Recodified from 13:38-3.14 and amended by R.1995 d.524, effective September 18, 1995.

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

Prior text at 13:38-3.8, Degree required of applicants, and text at former 13:38-3.10, Accelerated courses, repealed.

SUBCHAPTER 4. THERAPEUTIC PHARMACEUTICAL AGENTS (TPA) CERTIFICATION

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, N.J.S.A. 45:12-9.8 through 9.12.

(b) This subchapter shall apply to a licensed optometrist utilizing pharmaceutical agents, as defined and limited in N.J.S.A. 45:12-9.8 through 9.12.

13:38-4.2 Application for therapeutic pharmaceutical agents (TPA) certification; general requirements

(a) An optometrist licensed in this State who wishes to use pharmaceutical agents for treatment purposes as permitted by N.J.S.A. 45:12-9.8 through 9.12 shall be certified by the Board prior to prescribing or dispensing such agents.

(b) An applicant seeking therapeutic pharmaceutical agents (TPA) certification shall submit the following to the Board:

1. A completed TPA application form supplied by the Board that requires the applicant to provide identifying information;
2. A non-refundable 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. Verification of test scores that the applicant has successfully passed 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 N.J.S.A. 45:12-9.8 through 9.12.

13:38-4.3 Educational requirements for TPA certification

Each applicant seeking TPA 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 Postsecondary Accreditation. This education shall be no less than that required of currently enrolled students as part of their requirements for graduation from that school. If an applicant attends a school other than a college of optometry, the education necessary to satisfy the ocular pharmacology educational requirement shall be substantially equivalent to that of a college of optometry.

13:38-4.4 Examination requirements for TPA certification

Each applicant for TPA certification shall be required to successfully pass the Treatment and Management of Ocular Disease Examination, or any successive examination, administered by the National Board of Examiners in Optometry.

13:38-4.5 Biennial TPA 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 ocular pharmacology, ocular manifestation of systemic disease treatable by pharmacological agents, or ocular pathology treatable by pharmacological agents. 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.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

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	\$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.