

(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 the academic degrees and certifications from bona fide accrediting bodies.

1. The use of the titles of FAAO (Fellow American Academy of Optometry) and FCOVD (Fellow College of Optometrists in Vision Development) shall not be deemed to be a claim of professional superiority.

2. 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.

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).

4. Nothing in this section shall preclude any truthful and nondeceptive statement in regard to any residency or fellowship approved by any accredited school of optometry.

(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.

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).

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, record-keeping, 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) Optometrists shall not participate in any arrangement or agreement, with any person other than an associate, whereby any remuneration received by that person in payment for the provision of space, facilities, equipment, products, drugs, personnel, marketing or management services used by the optometrists is to be determined or calculated as a fixed percentage of, or otherwise dependent upon, the income or receipts derived from the practice of optometry. Nothing in this subsection shall preclude an optometrist from entering into a bona fide profit sharing plan or retaining the services of a collection agency.

(g) Any violations of (b) through (f) 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.

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) 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).

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, 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 to 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;