

CHAPTER 38

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Authority

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

Source and Effective Date

R.2012 d.077, effective March 15, 2012.
See: 43 N.J.R. 822(a), 44 N.J.R. 1272(a).

Chapter Expiration Date

Chapter 38, New Jersey State Board of Optometrists, expires on March 15, 2019.

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State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990.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, Subchapter 3, General Provisions, was renamed General Provision, effective April 3, 2006. See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

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

Chapter 38, New Jersey State Board of Optometrists, was readopted as R.2012 d.077, effective March 15, 2012. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

13:38-1.1 Optometrist presumed responsible for advertisements

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

Amended by R.1989 d.252, effective May 15, 1989.
See: 20 N.J.R. 2361(b), 21 N.J.R. 1366(b).

Recodified as new 1.1 from old 1.3 and replaced old 1.1, "Professional cards," which was repealed.

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

Case Notes

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

13:38-1.2 General advertising practices

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- i. The optometrist's full name, license and certificate number;
- ii. The full name of the patient;
- iii. The date the medication is dispensed;
- iv. The name, strength and quantity of medication dispensed; and
- v. Adequate instructions for the patient regarding the frequency of administration of the medication.

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

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

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

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

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

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

2. An NJPB that contains a prescription for only one controlled dangerous substance and contains other medication(s) shall not be valid.

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

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

(k) An optometrist may transmit a prescription to a pharmacist telephonically or electronically.

New Rule, R.1992 d.443, effective November 2, 1992.
See: 24 N.J.R. 2802(a), 24 N.J.R. 4058(a).

Prior text at section, Vision screening, recodified to 13:38-2.5.
Amended by R.1995 d.524, effective September 18, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Petition for Rulemaking.

See: 29 N.J.R. 2717(b), 30 N.J.R. 3556(b), 31 N.J.R. 2007(b).
Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In introductory paragraph of (c), updated the last N.J.S.A. reference; in (c)1, inserted ", when available,"; in (e), inserted "and N.J.A.C. 13:45A-27"; and added (f) through (j).
Amended by R.2012 d.077, effective April 16, 2012.
See: 43 N.J.R. 822(a), 44 N.J.R. 1272(a).

Added new (a) and (k); recodified former (a) through (d) as (b) through (e); in the introductory paragraph of (b), inserted "information"; deleted former (e); and in (h)2, substituted "medication(s) shall not" for "prescriptions(s) other than another controlled substance shall".
Amended by R.2013 d.043, effective March 4, 2013.
See: 44 N.J.R. 2034(a), 45 N.J.R. 469(b).

In the introductory paragraph of (d)2, inserted "et seq.,"; and added (d)2i.

13:38-2.5 (Reserved)

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

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

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

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

(b) deleted.

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

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

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

13:38-2.6 (Reserved)

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

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

(b): Deleted "or responsibility".

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

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

Recodified as new 2.5 from old 2.6 (with no change of text) and replaced old 2.5, "Free eye examinations or refractions," which was repealed.

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

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

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

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

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

13:38-2.7 (Reserved)

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

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

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

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

Old text deleted and new text substituted.

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

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

Recodified as new 2.6 from old 2.7 with no change in text.