

CHAPTER 38**NEW JERSEY STATE BOARD OF OPTOMETRISTS****Authority**

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

Source and Effective Date

R.1995 d.524, effective August 25, 1995.
See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).

Executive Order No. 66(1978) Expiration Date

Chapter 38, New Jersey State Board of Optometrists, expires on August 25, 2000.

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Order No. 66(1978) Chapter 38, New Jersey State Board of Optometrists, was readopted and Subchapter 4, Forms was repealed by R.1990 d.476, effective August 27, 1990 (repeal effective October 1, 1990).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: 22 N.J.R. 1866(a), 22 N.J.R. 3153(a). 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). Subchapter 4, Certification by Examination, was adopted as 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 was readopted as R.1995 d.524. 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) 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 (package). If the eye examination is included in the package, the advertisement shall also indicate the cost of the eye examination if the package is not purchased;

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 a combined package is advertised, the advertisement shall also indicate the cost of the eye examination appropriate to a contact lens evaluation if the 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 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).

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 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 li-

censed 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 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 goods and services at a particular location or group of locations, the name 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.

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".

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, 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. 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) taken at the time of the original examination;
6. Objective refractive findings;
7. Subjective refractive findings;
8. Evaluation of ocular motility;
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 possible and if indicated;
11. Tonometry on all patients where possible unless contraindicated; and
12. Complete examination of the anterior segment of the eye using a slit-lamp (biomicroscope) or such equipment with equivalent technological capabilities.

(b) Procedures (a)3, 4, 7 and 12 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 only when an automated electronic device (autorefractor keratometer) is 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).

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.