

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Order No. 66(1978) Chapter 38, New Jersey State Board of Optometrists, was readopted and Subchapter 4, Forms was repealed by R.1990 d.476, effective August 27, 1990 (repeal effective October 1, 1990).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.

See section annotations for specific rulemaking activity.

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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.