

CHAPTER 38

NEW JERSEY STATE BOARD OF OPTOMETRISTS

Authority

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

Source and Effective Date

R.2006 d.126, effective March 7, 2006.
See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

Chapter Expiration Date

Chapter 38, New Jersey State Board of Optometrists, expires on March 7, 2011.

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State Board of Optometrists, was readopted as R.1990 d.476, effective August 27, 1990, and Subchapter 4, Forms, was repealed by R.1990 d.476, effective October 1, 1990.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 by R.2006 d.126, effective March 7, 2006. As a part of R.2006 d.126, effective April 3, 2006, Subchapter 3, General Provisions, was renamed Subchapter 3, General Provision. 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.Supcr. 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

7. An optometrist may offer a free or reduced fee eye examination. The advertisement shall include the usual and customary fee. 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.

(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 academic degrees obtained from colleges and universities accredited by the United States Department of Education and the Council on Post-Secondary Accreditation.

1. Titles of post-graduate professional fellowships may be used by licensees in advertisements provided such titles are reviewed and approved by the Board.

2. The Board shall only review and approve the use of titles from post-graduate professional fellowships that have an educational, peer review and testing component. The listing of approved titles shall be maintained by the Board and available to licensees upon request.

3. The use of approved titles of post-graduate professional fellowships shall not be deemed to be a claim of professional superiority.

4. 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.

5. 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" 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, except in directory

listings that do not include any optometric services (that is, listings that include the licensee's name, address, and phone number).

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).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

In (a), deleted definition "Accrediting bodies"; in (c)6, corrected a grammatical error and substituted "disinfection" for "sterilization"; in (c)7, added "The advertisement shall include the usual and customary fee."; rewrote (f); in (l), added ", except in directory listings that do not include any optometric services (that is, listings that include the licensee's name, address, and phone number)".

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, recordkeeping, 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) Violations of (b) through (e) 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, Amended by R.2004 d.336, effective September 7, 2004.

See: 36 N.J.R. 10(a), 36 N.J.R. 4152(a).

Deleted former (f) and recodified former (g) as (f).

Case Notes

Administrative rule promulgated by the State Board of Optometrists which prohibited optometrists from entering agreements with any person, other than an associate, in which remuneration received by that person was to be determined as a fixed percentage of income derived from practice of optometry, conflicted with provision of Consumer Access to Eye Care Act purportedly authorizing it, and was invalid: statute in question generally permitted practice of optometry in a rented location in a retail or commercial store, and only within that context forbade an arrangement in which landlord could control optometrist's professional judgment. In re Adoption of N.J.A.C. 13:38-1.3(f) by the State Board of Optometrists, 775 A.2d 629 (2001).

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) The business, partnership or corporation name shall not use the terms "Specialist," "Specialty," or its substantial equivalent.

(f) 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).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

Added (e); recodified former (e) as (f).

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.

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

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, legible, 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 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;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or impression;
8. Complete eyeglass, contact lens, or pharmaceutical prescriptions;
9. The treatment or plan initiated, including specific dosages, quantities and strengths of medications, including

the number of refills, if prescribed, administered or dispensed, and recommended follow-up;

10. The identity of the optometrist providing treatment and the name of the person dispensing eyeglasses, contact lenses, or issuing pharmaceutical prescriptions to the patient;

11. Documentation when, in the reasonable exercise of the optometrist's judgment, the communication of examination results is necessary and action needs to be taken but reasonable efforts made by the optometrist responsible for communication have been unsuccessful; and

12. Documentation concerning the decision and justification when, after the required evaluation of a patient for the specifically advertised brand and type of contact lens which attracted or induced the patient to seek such goods, the patient is fitted with another brand or type of contact lens.

(c) Corrections, but no deletions or additions, may be made to an existing record, provided that each entry is clearly identified as such and initialed and dated by the licensee.

(d) Treatment records may be prepared and maintained on a personal or other computer but shall be in compliance with the following criteria:

1. The record shall contain no less than two independent forms of identification, such as patient name and record number;

2. An entry in a patient's treatment record shall be made by the optometrist contemporaneously with the optometric service and shall contain all of the information required in (b) above, and the full printed name of the optometrist providing the care. The system and/or software shall be set up in such a way that all data and findings must be manually entered and are not entered by default;

3. The optometrist shall finalize or "sign" the entry by means of a confidential personal code ("CPC") and include the date of the "signing." In those practices with multiple licensees, each optometrist shall have his or her own CPC;

4. The optometrist may dictate a dated entry for later transcription. The transcription shall be identified as "preliminary" until reviewed and finalized as provided in 3, above;

5. The system used to record the treatment record shall provide an automatic dating of the entry and prepare an automatic back-up file. No other data or findings may be entered automatically by the system. Any additional data or findings shall be entered manually each time a patient's treatment record is updated;

6. The system shall not allow an entry to be modified in any manner after it is "signed" by means of the CPC. A new entry shall be required to modify a preexisting entry and signed again by means of the CPC;

7. The system shall have the capability to print on demand a hard copy of all current and historical data contained in each patient record file;

8. The optometrist shall maintain the safety and security of back-up data and hard copies maintained off premises; and

9. The optometrist shall provide to the Board upon request any back-up data and/or hard copies maintained off premises on any requested patient records, together with the following information:

i. The name of the computer operating system and patient record management software package containing the requested patient record files and instructions on using such system;

ii. Current passwords necessary to access the requested patient record files;

iii. Previous passwords if required to access the requested patient record files; and

iv. The name of the contact person(s) who provides technical support for the licensee's computer operating system and patient record management software package.

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

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

(c) added.

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

See: 20 N.J.R. 236(b), 21 N.J.R. 1366(b).

Added new (e), clarifying procedure regarding an optometrist's responsibility for patient evaluation for a specifically advertised brand of contact lenses.

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).

Petition for Rulemaking.

See: 30 N.J.R. 2958(b), 30 N.J.R. 3109(a).

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

In (a), added "legible."; in (b)8, made grammatical changes and added ", or pharmaceutical"; rewrote (b)10; in (c), substituted "Corrections, but no deletions or additions." for "Corrections or additions, but no deletions." and "entry" for "change"; deleted (d)10.

13:38-2.4 Requirements for issuing prescriptions and dispensing of medications

(a) Every optometrist shall provide the following on all prescriptions:

1. The prescriber's full name, address, telephone number, license number and academic degree or identification of professional practice. This information shall be pre-printed on all prescriptions;

2. The full name of the patient;

3. The date of issuance of prescription; and

4. The signature of the prescriber, hand-written.

(b) Every optometrist certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.12 shall, in addition to the information set forth in (a) above, provide the following on all prescriptions for pharmaceutical agents:

1. The optometrist's certification number;

2. The name, strength and quantity of drug or drugs to be dispensed;

3. Adequate instruction for the patient, which shall include, but not be limited to, duration, frequency and dosage. The use of "p.r.n." or "as directed" without further instruction shall be deemed insufficient direction.

4. The number of refills permitted or time limit for refills, or both; and

5. Every prescription blank shall be imprinted with the words "substitution permissible" and "do not substitute" and shall contain space for the optometrist's initials next to the chosen option, in addition to the space required for the signature in (a)4 above.

(c) In addition to the provisions of (a) and (b) above, optometrists certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.13 shall comply with the following:

1. The optometrist shall advise all patients by sign or pamphlet or similar notice available in a conspicuous location in the optometrist's office that the patient may request that the optometrist substitute a generic drug, when available, for any prescribed medication.

2. The optometrist shall not dispense a prescription as provided for in N.J.S.A. 45:12-1 in an amount exceeding a 72-hour supply unless the prescription is dispensed at no charge to the patient.

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.

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

(e) Written prescriptions shall be issued only on New Jersey Prescription Blanks (NJPB), secured from an approved vendor and subject to the required security mandates of the prescription blank program pursuant to N.J.S.A. 45:14-14 and N.J.A.C. 13:45A-27.

(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 prescriptions(s) other than another controlled substance shall 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.

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 (c), inserted "and N.J.A.C. 13:45A-27"; and added (f) through (j).

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.



Recodified from 13:28-2.6 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, Optometrists availability, recodified to 13:38-2.8.

13:38-2.8 Optometrists availability

The examining optometrist shall assure that every patient has access to the optometrist or to a suitable covering doctor in an emergency, during a doctor's vacation time or during hours when the office is not open.

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

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

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

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

This section was "Approval of Vision Service Plan."

New Rule. R.1989 d.252, effective May 15, 1989.

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

Recodified as new 2.7 from old 2.8. Prior annotations refer to old 2.8. "Approval of Vision Service Plan."

Added new rule, "Optometrist's availability," to remedy consumers' complaints regarding inaccessibility of optometrists for emergency care. Recodified from 13:28-2.7 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. (Reserved), recodified to 13:38-2.9.

Case Notes

Authority of Board. Att'y Gen. Form. Op. 1980-No. 13.

A requirement which allows only "open panel" plans, plans which do not restrict the number of optometrists to be used by plan members, to operate is beyond the authority of the board of optometrists. Atty. Gen.F.O.1980, No. 13.

The exercise of the right of the board of optometrists of prior approval over vision service plans should be carried out in a reasonable manner, within a reasonable period of time and after full consultation with the office of the Attorney General. Atty.Gen.F.O.1980, No. 13.

13:38-2.9 (Reserved)

13:38-2.10 Minimum standards and tolerances

(a) Every pair of lenses, spectacles or eyeglasses provided to a patient shall conform to the following minimum standards and tolerances:

Physical Quality and Appearance	Tolerance
1. Surface imperfections	No pits, scratches (other than hairline), grayness or watermarks shall be acceptable.
2. Glass defects	No bubbles, striae and inclusions shall be acceptable.
3. Localized power errors	Waves found by visual inspection shall be passable if no deterioration in image quality is found when the localized area is examined with a standard lens measuring instrument.
4. Refractive powers	0.0 to 6.00 + or - 0.12. 6.25 to 12.00 2 per cent of power. Above 12.00 + or - 0.25. Maximum cylinder power variation + or - 0.12.
5. Refractive power addition	+ or - 0.12.0.
6. Cylinder Axis	0.12 or 0.37 + or - 3 degrees.

Physical Quality and Appearance	Tolerance
7. Prism power and location of specified optical center	0.50 to 1.00 + or - 2 degrees. 1.12 on up + or - 1 degree. Vertical + or - 0.25 prism for each lens or a total of 1/2 prism imbalance. Horizontal + or - 0.25 prism for each lens or a total of 0.50 prism diopter imbalance; if prism exceeds .50 prism diopter, the optical centers must be within 2 mm. If prism is less than 0.50 prism diopter, the optical centers must be within 4 mm.
8. Segment size	+ or - 0.5 mm. Pair must be symmetrical upon visual inspection.
9. Segment location	As specified within + or - 0.5 mm.
10. Lens size:	
i. Rimless	+ or - 0.5 mm;
ii. Bevel, for plastic frames	+ or - 0.5 mm;
iii. Bevel, for metal frames	To fit standard specified frames. Lens shape must match. Edges must be smooth and straight and sharp edge must be removed.
11. Heat-treated and chemically-treated industrial safety eyewear	Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
12. Heat-treated and chemically treated dress eyewear	Tolerance for power, size and the like shall be as above, except that minimum thickness edge or center shall meet the requirements of American Standard Z80.1-1972 and subsequent revisions.
13. Frame selection and fit	Frame shall be selected for the requirements of the prescription and facial contour. Bridge size should fit the nose within 2 mm of its width with flair, and temple length must fit within 5 mm.

(b) When eyeglasses are provided to the patient, the following information shall be recorded in the patient's record:

1. Eye size, bridge size, temple length, frame manufacturer and style, patient pupillary distance, and, if applicable, multi-focal type, segment height and base curve.

(c) Upon completion of the fabrication of corrective lenses and upon dispensing within the State of New Jersey, the lenses or finished eyeglasses shall be verified to assure the accuracy of the prescription and properly fitted to the patient's face.

R.1975 d.19, effective January 28, 1975.
See: 6 N.J.R. 447(a), 7 N.J.R. 115(b).
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.

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

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

Renumbered old 2.10 as new 2.9 with no change in text.

Recodified from 13:28-2.9 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, (Reserved), recodified to 13:38-2.11.

13:38-2.11 Delegation of duties to ancillary personnel

(a) As used in this section, the following words have the following meanings unless the context indicates otherwise:

1. "Ancillary personnel" means any natural person other than a licensed physician, optometrist, or ophthalmic dispenser or technician who is an employee of a New Jersey licensed optometrist and who performs patient care.

2. "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.

(b) An optometrist may delegate any procedure relating to minimum examination requirements as enumerated in N.J.A.C. 13:38-2.1 to ancillary personnel under his or her direct supervision.

(c) The supervising optometrist who delegates any procedure pursuant to (b) above shall:

1. Assume full responsibility for the performance of the delegated procedures by the ancillary personnel; and

2. Ensure that ancillary personnel have received the appropriate level of training necessary to satisfactorily complete the delegated procedures.

(d) An optometrist shall not delegate the following functions or duties to ancillary personnel:

1. Any procedure which must be performed by the optometrist as part of the minimum examination requirements pursuant to N.J.A.C. 13:38-2.1(a), subject to the restrictions as set forth in N.J.A.C. 13:38-2.1(b) through (d);

2. Inserting and removing contact lenses;

3. Determining the fit of contact lenses;

4. Determining the power of contact lenses (over refracting);

5. Determining the method of contact lens cleaning or sterilization;

6. Selecting lens materials (all types);

7. Selecting bifocal types;

8. Selecting tints (except for Rose #1); and

9. Final verification of all ophthalmic goods prior to their dispensing to the patient.

(e) The name of the supervising optometrist and the ancillary personnel shall be indicated on the patient record.

New Rule, R.1999 d.143, effective May 3, 1999.

See: 30 N.J.R. 1193(a), 31 N.J.R. 1201(a).

13:38-2.12 Preceptorship program

(a) A New Jersey optometrist, with an active license and therapeutic certification, may act as a preceptor to supervise a fourth-year student of an accredited college of optometry in that optometrist's office under the conditions in this section.

1. The clinical training, when performed in the preceptor's office shall be classified as a preceptorship program.

2. The college of optometry shall submit to the New Jersey State Board of Optometrists a detailed description of its preceptorship program, indicating procedures for monitoring such programs, procedures for selection of preceptors, the number of weeks during which such programs will be in effect, and other pertinent information for the Board's approval.

3. The college of optometry shall provide the Board with the name and address of the preceptor under whose supervision the student shall work, the name and address of the student, and the dates of preceptorship.

4. The college of optometry shall select the preceptors and shall submit those names to the New Jersey State Board of Optometrists. Such preceptor shall have been engaged in the practice of optometry in the State of New Jersey for at least five years immediately preceding the application. The Board shall issue a Certificate of Preceptorship which shall be valid no longer than one year from the date of issuance and which shall be displayed conspicuously on the office premises of the preceptor. The preceptor shall inform his or her patients of the student's status prior to the submission of the patient to examination by the student.

5. All tests referred to in N.J.A.C. 13:38-2.1 may be performed by the student; provided however that during the performance of any such tests, the preceptor shall be on the premises and immediately available for supervision at all times. All student evaluations of the patient shall be reviewed by the preceptor prior to final determination of the case and before the patient leaves the premises. A preceptor shall at all times be responsible for the effective supervision and direction of the student.

6. The preceptor shall not supervise more than one student and supervision shall not be delegated without the approval of the college of optometry.

7. Under no circumstances shall the student be paid for the preceptorship experience.

8. Failure of the student or preceptor to follow the provisions of this section shall constitute a violation of N.J.S.A. 45:1-14 et seq.

R.1979 d.276, effective July 18, 1979.

See: 11 N.J.R. 252(b), 11 N.J.R. 402(a).

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

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

(a)4: added text "Such preceptor . . . least five years."

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

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

Renumbered old 2.12 as new 2.11 with no change in text.

Recodified from 13:28-2.11 by R.1992 d.443, effective November 2, 1992.

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

No change in text.

13:38-2.13 Independent doctor of optometry

(a) For the purpose of N.J.S.A. 45:12-9.12 and this chapter, in order to perform as an independent doctor of optometry, a licensee shall:

1. Take no instruction from an ophthalmic dispenser with regard to any aspect of optometric practice and retain authority to exercise professional judgment within accepted standards of professional care with regard to skill, diligence in examinations, allocation of time for professional services, and diagnosis and treatment of patients;

2. Take no instruction from a landlord with regard to any aspect of optometric practice and lease space on the basis of a written lease and only where rent is a fixed fee determined by the fair market value, is for a regular term and not for sporadic use of the space, is not contingent upon the number of patients, or the number or type of optometric services;

3. Maintain a separate telephone number;

4. Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, materials and fees by that optometrist. Any optometrist advertisement for optometric services, materials and fees by that optometrist which appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box;

5. Employ, supervise, pay and maintain responsibility for training assistants and employees. If any personnel services are included as part of a rental agreement, such as a receptionist's services, the terms shall be included in the written lease;

6. Furnish his or her own equipment, instruments, and materials; or if these are leased, it shall be for fair market value and the terms shall be included in a written lease;

7. Establish all patient fees for ophthalmic materials and services;

8. Maintain his or her own patient treatment and billing records, separate and apart from any ophthalmic

dispenser records, and be responsible for the confidentiality and security of all patient treatment and billing records, whether electronic or hard copy;

9. Establish hours of availability of optometric services and retain responsibility for suitable coverage in an emergency, during vacation, or during hours when the office is closed;

10. Display registration certificate(s) and signs so as to be read on the outside of the office as required by N.J.S.A. 45:12-8.

New Rule, R.2000 d.496, effective December 18, 2000.

See: 31 N.J.R. 3586(a), 32 N.J.R. 4453(a).

Amended by R.2004 d.336, effective September 7, 2004.

See: 36 N.J.R. 10(a), 36 N.J.R. 4152(a).

In (a), deleted "patient fees," preceding "the number of patients" in 2.

13:38-2.14 Sexual misconduct

(a) The purpose of this section is to identify for optometrists licensed by the Board of Optometrists the types of conduct which shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

"Licensee" means any person licensed to practice optometry in the State of New Jersey.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of diagnosis, treatment or consultation relating to treatment. "Patient" for purposes of this section also means any person who is the subject of a professional examination even if the purpose of that examination is unrelated to treatment.

"Patient-physician relationship" means an association between an optometric physician and a patient wherein the optometrist owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience. The performance of any professional service including, but not limited to, the issuance of a prescription or authorization of a refill of a prescription is deemed to be a professional service and evidence of a patient-physician relationship.

"Sexual contact" means knowingly touching a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the patient's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee or patient's body into or near the genital, anal or other opening of the other person's body. "Sexual contact" does not include the touching of a

patient's body which is necessary for the performance of a generally accepted and recognized optometric procedure.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, and which occurs in connection with a licensee's activities or role as a provider of optometric services, and that either: is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment, and the licensee knows, should know, or is told this; or is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act or of multiple acts and may include, but is not limited to, conduct of a licensee with a patient, co-worker, employee, student or supervisee whether or not such individual is in a subordinate position to the licensee.

"Spouse" means either the husband or wife of the licensee or an individual in a long-term committed relationship with the licensee.

(c) A licensee shall not engage in sexual contact with a patient with whom he or she has a patient-physician relationship. The patient-physician relationship is considered ongoing for purposes of this section in all contexts unless:

1. Professional services are actively terminated by way of written notice to the patient and is documented in the patient record; or
2. The last professional services were rendered more than one year ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-physician relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(e) A licensee shall not engage in any discussion of an intimate sexual nature with a patient, unless that discussion is related to legitimate patient needs. Such discussion shall not include disclosure by the licensee of his or her own intimate sexual relationships.

(f) A licensee shall not engage in sexual harassment whether in a professional setting such as an office, hospital, health care facility, or outside of the professional setting.

(g) A licensee shall not engage in any other activity, such as, but not limited to, voyeurism or exposure of the genitalia of the licensee, which would lead a reasonable person to believe that the activity serves the licensee's personal prurient interest or is for the sexual arousal, the sexual gratification or the sexual abuse of the licensee or patient.

(h) Violation of any of the prohibitions or directives set forth in (c) through (g) above shall be deemed to constitute gross or repeated malpractice pursuant to N.J.S.A. 45:1-21(c) or (d) or professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(i) Nothing in this section shall be construed to prevent a licensee from rendering optometric examinations or treatment to a spouse, providing that the rendering of such service is consistent with accepted standards of optometric care and that the performance of optometric services is not utilized to exploit the patient for the sexual arousal or sexual gratification of the licensee.

(j) It shall not be a defense to any action under this section that:

1. The patient solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the patient.

New Rule, R.2002 d.81, effective March 18, 2002.
See: 33 N.J.R. 3733(a), 34 N.J.R. 1269(a).

13:38-2.15 Excessive fees

(a) The New Jersey State Board of Optometrists shall review information and complaints concerning allegations of excessive fees charged by licensees of the Board. This section is not intended to impinge upon the strong public policy in favor of competitive, free enterprise economy embodied in the antitrust laws of the United States and the State of New Jersey. The Board shall consider comparable fees charged by licensees not under inquiry that are in a similar type, mode and setting of practice, a similar geographic and economic area, and similar years in practice to the minimum extent necessary to render a determination as to whether a fee is excessive.

(b) A licensee of the New Jersey State Board of Optometrist shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching under the circumstances.

(c) Factors which may be considered in determining whether a fee is excessive include, but are not limited to, the following:

1. The time and effort required;
2. The novelty and difficulty of the procedure or treatment;
3. The skill required to perform and interpret the procedure or treatment properly;
4. Any requirements or conditions imposed by the patient or by the circumstances;
5. The nature and length of the professional relationship with the patient;
6. The experience, reputation and ability of the licensee performing the services; and

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 PROVISION

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 full-time 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 full-time 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.
Amended by R.2006 d.126, effective April 3, 2006.
See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).
Added "full-time" throughout.

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 as 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, except that the applicant shall only be required to pay one application fee.

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.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In (b)2, inserted "as"; in (c), substituted "N.J.A.C. 13:38-4.2" for "N.J.A.C. 13:38-4.2(b) and (c)" and substituted "shall only be required

to pay one application fee" for "is not required to pay two application fees".

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 transfer 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.

Amended by R.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

In (a), substituted "transfer" for "change".

13:38-3.9 Termination of the optometrist-patient relationship

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

"Emergency care or service" means the provision of optometric services to an individual in such circumstances where timely care is necessary to prevent potential vision loss or would cause the patient undue hardship.

"Optometrist" means any person licensed by the New Jersey State Board of Optometrists.

"Optometrist-patient relationship" means an association between an optometrist and patient in which the optometrist owes a continuing duty to the patient to be available to provide optometric services consistent with his or her training, experience and scope of practice.

"Patient" means any individual who is the recipient of optometric services for purposes of diagnosis, treatment or consultation relating to treatment.

(b) The optometrist-patient relationship shall be deemed to exist where the optometrist has provided services within the scope of his or her license within one calendar year preceding the date on which care is to be terminated. In addition, the optometrist-patient relationship shall also be deemed to exist in those circumstances in which the patient has indicated to the optometrist that he or she anticipates that the optometrist will continue to provide professional services.

(c) In order to terminate an optometrist-patient relationship, the optometrist shall:

1. Notify the patient that he or she wishes to terminate the optometrist-patient relationship and will no longer be providing care. The notification shall be in writing, by certified mail, return receipt requested, to the patient's last known address and made no less than 30 days prior to the date on which care is to be terminated;

2. Provide all necessary emergency care or services, which shall include the provision of necessary prescriptions, until the date on which the optometrist-patient relationship is terminated. The provision of such emergency care or services shall not be deemed to manifest any intention to reestablish the optometrist-patient relationship; and

3. Comply with all requirements set forth in N.J.A.C. 13:38-6.1 for access to and transfer of the patient records.

(d) Notwithstanding (c) above, an optometrist shall not terminate an optometrist-patient relationship under the following circumstances:

1. Where to do so would be for any discriminatory purpose and/or would violate any laws or rules prohibiting discrimination; or

2. Where the optometrist knows or reasonably should know, that no other professional is currently able to provide the type of care or service that the optometrist is providing the patient.

(e) An optometrist need not comply with the requirements set forth in (c)1 above if:

1. The optometrist-patient relationship has been terminated by the patient as evidenced by conduct manifesting a

deliberate intention to terminate the relationship. Such conduct shall be recorded in the patient record; or

2. The reason for termination of the optometrist-patient relationship is because the optometrist has discontinued providing services to the patient's managed care provider or health maintenance organization (HMO) and such managed care provider or HMO has discharged its notice obligation pursuant to N.J.S.A. 26:2S-5a(1).

(f) When requested by the patient, the optometrist shall make reasonable efforts to assist the patient in obtaining professional services from another health care provider qualified to meet the patient's needs.

New Rule, R.2003 d.83, effective February 18, 2003.
See: 34 N.J.R. 1623(a), 35 N.J.R. 1143(a).

13:38-3.10 Renewal; reinstatement; inactive/active status

(a) All licenses to practice optometry issued by the Board shall be issued for a two-year biennial licensure period. Except as provided in N.J.A.C. 13:38-3.3, a licensee who seeks renewal of the license shall submit a renewal application and the renewal fee set forth in N.J.A.C. 13:38-5.1 prior to the expiration date of the license.

(b) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee and a late fee, as set forth in N.J.A.C. 13:38-5.1.

(c) A license that is not renewed within 30 days of its expiration shall be automatically suspended. An individual who continues to practice with a suspended license shall be deemed to be engaged in unlicensed practice.

(d) A licensee whose license has been automatically suspended for up to five years for nonpayment of a biennial renewal fee pursuant to (c) above may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee and all past delinquent biennial renewal fees pursuant to N.J.A.C. 13:38-5.1;
2. Completion of the continuing education credits required for each biennial registration period for which the licensee was suspended; and
3. Submission of an affidavit of employment listing each job held during the period of suspended license which includes the names, addresses, and telephone numbers of each employer.

(e) A licensee whose license has been automatically suspended for more than five years who wishes to have his or her license reinstated shall reapply for licensure. The applicant shall fulfill all of the initial licensure requirements.

(f) Renewal applications shall provide the licensee with the option of either active or inactive status. A licensee elect-

ing inactive status shall pay the inactive license fee set forth in N.J.A.C. 13:38-5.1 and shall not engage in the practice of optometry.

(g) A licensee who elected inactive status and has been on inactive status for less than five years may be reinstated by the Board upon completion of the following:

1. Payment of the reinstatement fee;
2. The completion of the continuing education credits required for each biennial registration period for which the licensee was on inactive status; and
3. Submission of an affidavit of employment listing each job held during the period the licensee was on inactive status which includes the names, addresses, and telephone numbers of each employer.

(h) A licensee who was on inactive status for more than five years who wishes to return to practice shall reapply for licensure. The applicant shall fulfill all of the initial licensure requirements.

New Rule, R.2006 d.126, effective April 3, 2006.
See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

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 9.13.

(b) This subchapter shall apply to a licensed optometrist utilizing therapeutic pharmaceutical agents, as defined and limited in N.J.S.A. 45:12-9.8 through 9.13.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In (a) and (b), updated the N.J.S.A. references; and in (b), inserted "therapeutic".

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

(a) An optometrist licensed in this State who wishes to use therapeutic pharmaceutical agents for treatment purposes as permitted by N.J.S.A. 45:12-9.8 through 9.13 shall be certified by the Board prior to prescribing or dispensing such agents.

(b) Any applicant applying for initial TPA certification on or after December 18, 2006 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 as 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(a) and (b). 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 as set forth in N.J.A.C. 13:38-4.3 and 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 therapeutic pharmaceutical agents as defined and limited in N.J.S.A. 45:12-9.8 through 9.13.

(d) Any applicant certified by the Board prior to August 7, 2005 to use or prescribe topical TPA may choose to renew his or her certification every biennial period at the topical TPA level. The applicant shall certify in the renewal application that he or she has completed the continuing professional optometric education requirements as outlined in N.J.A.C. 13:38-7.3. If such applicant wishes to obtain the oral TPA certification, then he or she shall comply with the requirements set forth in (b) above.

(e) Any applicant who is applying for initial TPA certification and has graduated from a college of optometry on or after August 7, 2005 does not have to complete the credentialing course(s) requirement of N.J.A.C. 13:38-4.3(b)2 since this coursework is required to earn the degree.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).
Rewrote the section.

13:38-4.3 Educational requirements for TPA certification

(a) 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.

(b) Each applicant seeking TPA certification shall be required to successfully complete credentialing courses consisting of the following:

1. All educational requirements as outlined in (a) above; and

2. A minimum of 30 hours distributed amongst the following credentialing course(s), with successful completion of an examination covering the following topics:

i. General pharmacology of appropriate agents;

ii. Pharmacokinetics, which includes drug absorption, distribution, metabolism, and elimination;

iii. Special populations including pediatrics and geriatrics;

iv. Prescription writing and appropriate dosages;

v. Appropriate and ethical uses of off-label medications;

vi. Safety issues, adverse drug reactions and interactions; recognition of systemic side-effects; awareness of medication errors (look-alike, sound-alike names), inappropriate use of medical abbreviations, proper notification of FDA MedWatch, and prevention of errors;

vii. Addiction recognition of patient, self and impaired practitioner;

viii. Recordkeeping; and

ix. CPR.

(c) The credentialing course(s) as set forth in (b) above shall be offered by a school that is accredited by the U.S. Department of Education and the Council on Postsecondary Accreditation and approved by the New Jersey State Board of Optometrists to ensure that the credentialing course(s) cover the topics in (b) above.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).
Inserted designation (a) and added (b) and (c).

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, prior to certification by the New Jersey State Board of Optometrists.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

Inserted " , prior to certification by the New Jersey State Board of Optometrists".

13:38-4.5 Biennial TPA certification renewal

An application for certification renewal shall be submitted to the Board every biennial period. The applicant shall certify in the renewal application that he or she has completed the continuing education requirements as outlined in N.J.A.C. 13:38-7.3.

Amended by R.1995 d.524, effective September 18, 1995.
 See: 27 N.J.R. 2092(a), 27 N.J.R. 3617(a).
 Repeal and New Rule, R.2006 d.450, effective December 18, 2006.
 See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).
 Section was "Biennial TPA certification renewal".

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:	\$250.00
ii. If paid during the second year of a biennial renewal period:	\$125.00
8. Biennial renewal fee—certification to prescribe:	\$250.00
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.

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

Added new 7-9, recodified existing 7-14 as 10-17.

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.2006 d.450, effective December 18, 2006.

See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In (a)7i and (a)8, substituted "250.00" for "210.00"; and in (a)7ii, substituted "125.00" for "105.00".

SUBCHAPTER 6. RECORDS

13:38-6.1 Availability of records

(a) For purposes of this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Authorized representative" means a person who has been designated, pursuant to a court order or a signed writing by the patient, to exercise the patient's rights under this section. An authorized representative may be the patient's attorney or an employee of an insurance carrier with whom the patient has a contract which provides that the carrier be given such access in order to assess a claim for reimbursement. If the patient is a minor, a parent or guardian shall be deemed to be an authorized representative except where a court order makes a specific designation to the contrary.

"Patient" means any person who is the recipient of optometric services rendered by a licensee for the purpose of examination, treatment, or consultation relating to the treatment.

(b) The patient record, or a copy thereof, shall be released upon written request, to the patient, the patient's authorized representative, or to another optometrist or physician acting on behalf of the patient. A patient record or portion thereof shall be released to any person or other entity only upon the receipt of a signed release from the patient whose records are being requested. An optometrist may charge a fee for the reproduction of records, which shall be no greater than \$.50 per page or \$100.00 for the entire record, whichever is less. If the record requested is 10 pages, the optometrist may charge up to \$10.00 to cover postage and the miscellaneous costs associated with retrieval of the record. If agreeable to the individual requesting the record, the optometrist may send a summary in lieu of the actual record and the charge for the summary shall not exceed the cost that would be charged for the actual record.

(c) An optometrist shall, free of charge, release the contact lens prescription directly to the patient upon completion of the contact lens fitting. An optometrist shall, free of charge, release a copy of a patient's contact lens prescription directly to a licensed ophthalmologist, optometrist, or ophthalmic dispenser upon either the oral or written request of a patient. Upon the release of a contact lens prescription directly to a patient, an optometrist, shall provide the patient with a written warning, which shall include the following language in boldface, underlined and in capital letters:

WARNING: YOU SHOULD BE AWARE THAT YOUR EYES MAY CHANGE WITH TIME AND CONTACT LENSES THAT WERE INITIALLY FITTING PROPERLY MAY NO LONGER BE

APPROPRIATE AND MAY ENDANGER YOUR EYE HEALTH. YOU SHOULD SEE YOUR EYE DOCTOR PERIODICALLY TO ENSURE YOUR LENSES ARE FITTING PROPERLY.

1. As used in this section, a "contact lens prescription" shall include those specifications contained within the doctor's records that are necessary for the preparation of contact lenses for a patient. A contact lens prescription is not complete unless and until a patient has been fitted for the contact lenses being prescribed and the fit has been fully evaluated over at least one follow-up visit and determined to be satisfactory. A contact lens prescription shall include a date of expiration that cannot exceed two years from the date of the last contact lens evaluation and may be of shorter duration depending on the professional judgment of the optometrist.

(d) After the completion of a patient's comprehensive eye examination, and upon the patient's request, a copy of the patient's prescription for eyeglasses shall be given, free of charge, to the patient or to another optometrist, ophthalmologist or ophthalmic dispenser acting on the patient's behalf.

(e) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients may obtain their records or transfer those records to another licensee who will assume the responsibilities of the practice;
2. Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once a month for the first three months after the cessation; and
3. File a notice of the established procedure for the retrieval of records with the Board of Optometrists.

R.1978 d.242, effective July 21, 1978.

See: 10 N.J.R. 119(a), 10 N.J.R. 352(b).

Amended by, R.1979 d.465, effective November 27, 1979.

See: 11 N.J.R. 462(b), 12 N.J.R. 48(c).

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

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

Added new (d) regarding application of preceding subsections.

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.2006 d.126, effective April 3, 2006.

See: 37 N.J.R. 3780(a), 38 N.J.R. 1574(b).

Rewrote (c); in (d), added "After completion of a patient's comprehensive eye examination, and upon" and made technical changes by substituting "ophthalmic dispenser" for "optician"; deleted former (e); recodified former (f) as (e).

Case Notes

History of rule. Hillman/Kohan v. N.J. Board of Optometrists, 169 N.J. Super. 259, 404 A.2d 1172 (App.Div.1979).

SUBCHAPTER 7. CONTINUING PROFESSIONAL OPTOMETRIC EDUCATION

13:38-7.1 Active registration renewal; continuing education requirement

Any applicant who applies for an active registration renewal certificate for a biennial period shall confirm on the renewal application that the applicant has completed continuing professional optometric education programs of the types and number of credits specified in N.J.A.C. 13:38-7.3. The Board shall not issue an active registration renewal certificate to any applicant who fails to confirm that the applicant has completed the continuing professional optometric education requirements unless the Board issues the applicant a waiver pursuant to N.J.A.C. 13:38-7.7.

13:38-7.2 Nonactive registration renewal and reactivation of license; continuing education requirement

(a) Any licensee who has a nonactive certificate shall be exempt from the continuing professional optometric education requirements set forth in this subchapter.

(b) Any licensee seeking to reactivate a nonactive certificate shall provide the Board with evidence of having maintained proficiency by completing the professional optometric education requirements set forth at N.J.A.C. 13:38-7.3(a) during the two calendar years immediately preceding the application for reactivation.

13:38-7.3 Credit hour requirements

(a) An applicant for an active registration renewal certificate shall complete, during the preceding biennial period, a minimum of 50 credits of continuing professional optometric education. At least 30 of the 50 credits shall consist of courses or programs classified as therapeutic pharmaceutical agents (TPA) credits and shall be primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease, of which 10 of the 30 continuing professional optometric education credits shall be in oral TPA. The remaining 20 general continuing professional optometric education credits shall be in content areas set forth in N.J.A.C. 13:38-7.4.

(b) An applicant who initially obtains a certificate within the first year of a biennial period shall complete at least 25 of the minimum required credits of continuing professional optometric education. At least 15 of the 25 credits shall consist of courses or programs classified as TPA credits and shall be devoted to the subject matter set forth in (a) above.

(c) An applicant who initially obtains a certificate within the second year of a biennial period shall be exempt from completing continuing professional optometric credits for that biennial renewal period.

(d) A licensee who completes more than the required 50 credits in any biennial period may carry up to 20 credits into any succeeding biennial period. Any credits to be carried over shall be earned in the last one year of the biennial renewal period and shall be applied to the general continuing professional optometric education requirements and shall not be applied to the TPA requirements.

(e) Any continuing education courses or programs directed or ordered by the Board to be taken by a licensee as all or part of a disciplinary or remedial measure or to remediate a deficiency in continuing professional optometric education credits for a prior biennial renewal period shall not be eligible to fulfill the mandatory continuing professional optometric education requirements for a subsequent biennial renewal period as set forth in this subchapter.

Amended by R.2006 d.450, effective December 18, 2006.
See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

In (a), substituted "30" for "25", inserted ", of which 10 of the 30 continuing professional optometric education credits shall be in oral TPA", and inserted "20"; in (b), substituted "15" for "12.5"; in (d), inserted "general".

13:38-7.4 Approved course offerings

(a) The Board shall grant continuing professional optometric education credit only for courses or programs that have significant educational or practical content which deal with matters related to the practice of optometry or with the professional responsibilities or ethical obligations of licensees, such as the following:

1. Clinical Optometry: general optometry; contact lenses; ophthalmic lens design; low vision; functional vision; principals of diagnosis; HIV control; infection control;

2. Ocular Disease and Management: treatment and management of ocular disease: anterior segment; treatment and management of ocular disease: posterior segment; glaucoma; refractive surgery management; peri-operative management of ophthalmic surgery;

3. Related Systemic Disease: ocular/systemic disease; pharmacology; and

4. Optometric Practice Management: jurisprudence; practice management; managed care courses or programs related to the practice of optometry, except that estate planning, financial or investment/tax planning, personal health, the selling of ophthalmic materials, or other similar subjects shall not be acceptable for credit.

(b) All courses or programs offered by the following sources and providers shall be deemed to be automatically approved and a licensee may obtain all 50 continuing professional optometric education credits from the following:

1. Post-graduate courses or programs in the professional skills of optometric practice and scientific courses or programs, which are accredited by the United States

Department of Education or the Council on Postsecondary Accreditation;

2. Continuing professional optometric education courses or programs that consist of educational and scientific courses, which are approved by the Council on Optometric Practitioner Education (COPE); or

3. A residency, which is a one year post-OD training program at an accredited college of optometry or accredited by the Accreditation Council on Optometric Education (ACOE) of the American Optometric Association, or a fellowship, which is a one year post-residency training program at an accredited college of optometry or accredited by the ACOE of the American Optometric Association in a specialty area.

(c) Sponsors submitting applications for pre-approval of continuing professional optometric education programs or courses which award three credits or less shall submit to the Board, on a form provided by the Board, no less than 45 days prior to the date the program or course is to be offered. Such courses or programs shall be in compliance with N.J.A.C. 13:38-7.8 and cover topics outlined at (a) above.

(d) A continuing professional optometric education program or course pre-approved by the Board pursuant to (c) above shall only be acceptable for the biennial period in which it was approved. In order to continue to offer a pre-approved continuing professional optometric education program or course, the sponsor shall re-apply and receive an approval by the Board. If a pre-approved continuing professional optometric education program or course is given in multiple locations during the then current biennial period, the course or program shall be identical in course titles speaker and content as that pre-approved by the Board. The sponsor shall notify the Board, in writing, of any change in course or program venue.

(e) The Board shall grant a maximum of 20 of the mandatory 50 continuing professional optometric education credits, including a maximum of 10 of the mandatory 30 TPA credits required, from any or all of the following:

1. Videotape, audiotape, computer media, Internet, journal, or correspondence courses or programs. The course or program shall include an examination at the end of the course or program. Credit for correspondence and other individual study courses or programs will be given only in the renewal period in which the course is completed with a successful final examination. TPA credits may be obtained from participating in any of these courses that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

2. Structured grand rounds, which is a presentation, with a formal outline of course or program material, of clinical cases involving actual patient encounters and the lecture and discussion of the diagnosis and treatment of the particular patient condition. Non-structured grand rounds

that consist of observation of individual patient care shall not be accepted for credit. TPA credits may be obtained from participating in structured grand rounds that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

3. Hands-on demonstrations of instrumentation when accompanied by didactic lectures. TPA credits may be obtained from participating in hands-on demonstrations of instrumentation that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

4. Interactive workshops which include demonstrations and applications of hands-on techniques and skills in optometric procedures and instrumentations accompanied by didactic lectures. TPA credits may be obtained from participating in interactive workshops that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

5. Preparation and presentation of a continuing professional optometric education lecture. TPA credits may be obtained from preparing and presenting continuing professional optometric education lectures that are primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

6. Preparation of an educational or scientific article authored and published in a professional refereed journal. TPA credits may be obtained from preparing an educational or scientific article authored and published in a professional refereed journal that is primarily devoted to the diagnosis, treatment and management of ocular disease, ocular pathology or the ocular manifestation of systemic disease;

7. The Board shall grant a maximum of 10 continuing professional optometric education credits per biennial renewal period for optometric practice management or managed care courses or programs relating to the practice of optometry. Continuing professional optometric education credit shall not be granted in courses or programs taken in the following subjects: estate planning, financial or investment/tax planning, personal health, the selling of ophthalmic materials, or other similar subjects; or

8. The Board shall grant a maximum of six continuing professional optometric education credits per biennial renewal period for CPR certification.

Amended by R.2006 d.450, effective December 18, 2006.

See: 38 N.J.R. 2788(a), 38 N.J.R. 5390(a).

Added (d); recodified former (d) as (e); in the introductory paragraph of (c), substituted "30" for "25"; in (c)6, deleted "or" at the end; in (e)7, substituted "; or" for the period at the end; and added (e)8.

13:38-7.5 Sources of continuing professional optometric education credit and credit-hour calculation

(a) The Board shall grant credit only for continuing professional optometric education courses or programs that are at least one instructional hour long. For purposes of this subchapter, an "instructional hour" represents a 60-minute clock hour with no less than 50 minutes of educational content within the hour. Courses or programs may include one 10-minute break for each instructional hour. Successful completion of an entire course segment of instruction is required in order to receive any continuing professional optometric education credit for that segment.

(b) The Board shall grant a licensee continuing professional optometric education for each biennial period as follows:

1. Attendance at continuing professional optometric education courses or programs: one credit for each hour of attendance;

2. Coursework in a post-graduate educational program related to the profession of optometry: three credits for each course credit awarded;

3. Authoring an educational or scientific article authored and published in a professional refereed journal within the preceding biennial period: three credits per article;

4. Successful completion of videotape, audiotape, computer media, Internet, journal, and correspondence courses or programs: a maximum of two credits per course;

5. Structured grand rounds and hands-on demonstrations of instrumentation: one-half credit for each hour of attendance;

6. Interactive workshops: one credit for each hour of attendance;

7. Preparation and presentation of a continuing professional optometric education lecture course or program: two credits for each hour of a new presentation up to a maximum of twelve credits. For purposes of this paragraph, "new" represents a course or program that the licensee has not taught previously in any educational setting. One credit for each hour of a presentation shall be given for subsequent sessions involving substantially identical subject matter up to a maximum of 12 credits, provided the original material has been updated and subject to the credit limits of N.J.A.C. 13:38-7.4(d); and

8. A residency or a fellowship, as defined in N.J.A.C. 13:38-7.4(b)3: 25 credits, of which 12.5 shall be TPA credits, upon completing each residency or fellowship.

13:38-7.6 Documentation of continuing professional optometric education credit

(a) Each licensee shall maintain a record of all continuing professional optometric education activity completed and shall submit evidence of completion of the credit requirements to the Board upon request. Each licensee shall obtain from the continuing education course or program sponsor and retain for a period of at least four years following the renewal a record of attendance which shall include, at a minimum, the following:

1. The participant's name and New Jersey State Board of Optometrists license number;
2. The title and, if the title does not adequately describe the course content, subject matter of the course;
3. The name of the instructor;
4. The course or program sponsor;
5. The date and location of the course or program;
6. The number of continuing education hours and credits awarded;
7. The signature of a course or program official or other verification of successful completion by the course or program sponsor; and
8. The course outline and curriculum vitae for those courses or programs not approved pursuant to N.J.A.C. 13:38-7.4(b) and (c).

(b) A licensee shall verify completion of academic coursework by an official transcript.

(c) A licensee who completes a videotape, audiotape, computer media, Internet, journal, or correspondence course or program shall retain the certification of the successful final examination completed at the end of the course or program.

(d) The Board shall monitor compliance with the mandatory continuing professional optometric education requirement by conducting a random audit of licensees, who, upon request shall provide proof of successful completion of continuing professional optometric education credits.

13:38-7.7 Waiver of continuing professional optometric education requirements

(a) The Board may waive continuing professional optometric education requirements on an individual basis for reasons of hardship such as illness, disability, active service in the military, or other good cause.

(b) A licensee who seeks a waiver of the continuing professional optometric education requirements shall provide to the Board, in writing, the specific reasons for requesting the waiver and such additional information as the Board may request in support of the waiver.

13:38-7.8 Responsibilities of continuing education sponsors for courses/programs with three credits or less

(a) A continuing education sponsor seeking pre-approval for a course/program awarding three credits or less shall provide the Board, in writing on a form provided by the Board, information which demonstrates that the course meets the following requirements:

1. The course or program is offered in a subject matter and in a format permissible pursuant to the provisions of this subchapter;
2. The course or program is at least one instructional hour in length, but not more than three instructional hours in length; and
3. The course or program is conducted by an instructor or discussion leader who submits a curriculum vitae and meets one of the following criteria:
 - i. An optometrist with at least five years of experience in the lecture subject matter;
 - ii. An individual holding an O.D., M.D., Ph.D. or a substantially equivalent international degree who is either board certified or has special expertise in the lecture subject matter; or



iii. A licensed professional who has special expertise in the lecture subject matter.

(b) Applications for pre-approval of continuing professional optometric education courses or programs shall be submitted by the course or program sponsor on the form provided by the Board no less than 45 days prior to the date the course or program is to be offered. Incomplete applications shall be returned to the sponsor and may result in the failure to grant pre-approval of the course or program.

(c) The Board shall not grant post approval to a sponsor for a course or program; however, the Board may grant a licensee, upon audit, continuing professional optometric education credit for courses or programs which have not been pre-approved if the Board determines that the course or program has significant educational or practical content which deal with matters related to the practice of optometry or with the professional responsibilities or ethical obligations of licensees, such as those areas outlined in N.J.A.C. 13:38-7.4.

(d) The sponsor shall not make substantive changes to an approved course or program, such as a change in course content or instructor, without prior notice to and pre-approval by the Board.

(e) The sponsor shall monitor attendance at each approved course or program and furnish to each enrollee a verification of attendance, which shall include at least the following information:

1. The title, subject matter, if the title does not adequately describe the course content, name of instructor, date, and location of course or program;
2. The name and New Jersey State Board of Optometrists license number of each attendee;
3. The number of continuing education hours and credits awarded; and
4. The name of the sponsor and signature of officer or responsible party or other verification of successful completion by the course or program sponsor.

(f) Continuing education courses or programs shall be offered on a nondiscriminatory basis. Membership organizations may discount the cost of attending continuing professional optometric education courses or programs for dues-paying members provided the fee differential complies with N.J.S.A. 45:12-9.2.

