

New Jersey Register
VOLUME 33, NUMBER 14
MONDAY, JULY 14, 2001
RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

**STATE BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS
AND OPHTHALMIC TECHNICIANS RULES**

Additions to proposals are indicated by <<+Text +>>; deletions from proposals are indicated by <<- Text ->>.

Changes in tables are made but not highlighted.

Adopted New Rule: N.J.A.C. 13:33-1.44

Proposed: December 18, 2000 at 32 N.J.R. 4379(a).

Adopted: April 11, 2001 by the New Jersey State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, Robert Troast, President.

Filed: June 15, 2001 as R.2001 d.230, without change.

Authority: N.J.S.A. 52:17B-41.13.

Effective Date: July 16, 2001.

Expiration Date: March 10, 2005.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rule is not subject to any Federal standards or requirements.

Full text of the adoption follows:

<< **NJ ADC 13:33-1.44** >

13:33-1.44 Sexual misconduct

(a) The purpose of this section is to identify for licensees conduct which the Board of Ophthalmic Dispenser and Technicians deems 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 by or registered with the Board of Ophthalmic Dispenser and Technicians.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of

obtaining contact lenses, eyeglasses or a consultation relating to ophthalmic services. "Patient" for purposes of this section also means a person who is the subject of professional evaluations.

"Patient-practitioner relationship" means an association between a practitioner and patient wherein the practitioner owes a continuing duty to the patient to be available to render professional services consistent with his or her training and experience and the performance of any professional ophthalmic service including, but not limited to, the interpretation of a prescription, taking facial and visual measurements, final fitting and adjusting of the finished product.

"Sexual contact" means the knowing touching of 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 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 ophthalmic services, and that either: is unwelcome, 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. "Sexual harassment" may also include conduct of a nonsexual nature if it is based on the sex of an individual.

"Spouse" means the husband, wife, fiancé or fiancée of the licensee or an individual in a long-term committed relationship with the licensee. For the purposes of the definition of "spouse" a long term committed relationship means a relationship which is at least six months in duration.

(c) A licensee shall not engage in sexual contact with a patient with whom the licensee has a patient-practitioner relationship. The patient-practitioner relationship is considered ongoing for purposes of this section, unless:

1. Terminated by way of written notice to the patient and documented in the patient record; or
2. The last professional service rendered by the practitioner to the patient was more than six months ago.

(d) A licensee shall not seek or solicit sexual contact with a patient with whom he or she has a patient-practitioner 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, including 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, residence or 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 at (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 professional services to a spouse,

providing that the rendering of such service is consistent with accepted standards of professional care.

(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 was in love with or had affection for the patient.