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RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF OPTOMETRISTS
Rules**

38 N.J.R. 1574(b)

Readoption with Amendments: N.J.A.C. 13:38

New Jersey State Board of Optometrists Rules

Proposed: October 3, 2005 at 37 N.J.R. 3780(a).

Adopted: January 1, 2006 by the New Jersey State Board of Optometrists, Mitchell Fink, O.D., President.

Filed: March 7, 2006 as R.2006 d.126, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: March 7, 2006, Readoption;

April 3, 2006, Amendments.

Expiration Date: March 7, 2011.

Summary of Agency-Initiated Change: N.J.A.C. 13:38-6.1(c) has been amended upon adoption to be consistent with Federal law which provides that an optometrist must release the contact lens prescription to the patient upon completion of the contact lens fitting. But upon further review of N.J.A.C. 13:38-6.1(c), the Board realized that subsection (c) could be interpreted that the release of the contact lens prescription is optional. Therefore, the Board further amends N.J.A.C. 13:38-6.1(c) to conform with Federal law and to ensure that an optometrist release the contact lens prescription to the patient upon completion of the contact lens fitting.

Federal Standards Statement

The Federal standard which applies to the release of contact lens prescriptions is contained in 16 CFR 315.3(a)(1). The State of New Jersey has complied with this requirement, and has established standards that are not in excess of this requirement. The rules readopted with amendments are not subject to any other Federal standards or requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:38.

Full text of the adopted amendments follows (addition to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. ADVERTISEMENTS AND SOLICITATION

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:

(b) (No change.)

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

1.-5. (No change.)

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)-(e) (No change.)

(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.

Recodify existing 2. and 3. as 4. and 5. (No change in text.)

(g)-(k) (No change.)

(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).

13:38-1.4 Optometric practice under assumed names and disclosure of practitioner names

(a)-(d) (No change.)

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

(f) (No change in text.)

SUBCHAPTER 2. GENERAL RULES OF OPTOMETRIC PRACTICE

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.-7. (No change.)

8. Complete eyeglass, contact lens, or pharmaceutical prescriptions;

9. (No change.)

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.-12. (No change.)

(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.-7. (No change.)

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.

SUBCHAPTER 3. GENERAL PROVISION

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.

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) (No change.)

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 electing 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.

SUBCHAPTER 6. RECORDS

13:38-6.1 Availability of records

(a)-(b) (No change.)

(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. ***[If] *Upon the release of a contact lens prescription directly to a patient,* an optometrist *[releases a contact lens prescription directly to a patient, the 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. (No change.)

(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) (No change in tex