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ISSUE DATE: SEPTEMBER 6, 2005
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY BOARD OF EXAMINERS OF OPHTHALMIC DISPENSERS AND OPHTHALMIC
TECHNICIANS

37 N.J.R. 3437(a)

Readoption with Recodification and Amendments: N.J.A.C. 13:33

Adopted Repeals: 13:33-1.19 and 1.35

Rules of the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians

Proposed: April 4, 2005 at 37 N.J.R. 938(a).

Adopted: June 8, 2005 by the New Jersey Board of Examiners of Ophthalmic Dispensers And Ophthalmic Technicians, Linda Cohen, President.

Filed: August 11, 2005, R.2005 d.305, without change.

Authority: N.J.S.A. 52:17B-41.13 and 45:1-15.

Effective Date: August 11, 2005, Readoption;

September 6, 2005, Amendments and Repeals.

Expiration Date: August 11, 2010.

Summary of Public Comments and Agency Responses follows:

The official comment period ended June 3, 2005. The Board received one comment from Susan H. Gartland, Executive Director, New Jersey State Board of Optometrists:

COMMENT: The commenter suggests that N.J.A.C. 13:33-7.1(f) be amended to read "licensees may advertise eye examinations available provided they state that the examination is performed by an independent doctor of optometry or ophthalmology."

RESPONSE: The Board believes that N.J.A.C. 13:33-7.1(f) clearly indicates that a licensee may not perform eye examinations. The addition of the word "available" to the rule does not clarify the rule and the Board will not amend N.J.A.C. 13:33-7.1(f) as the commenter suggests.

COMMENT: The commenter asks why the word "may" was added to N.J.A.C. 13:33-5.5(a).

RESPONSE: The addition of the word "may" clarified N.J.A.C. 13:33-5.5(a), clearly indicating that the functions listed in the rule are within the scope of practice of a licensed ophthalmic dispenser. The summary of the amendments to this rule stated that the rule was being amended to clarify its language.

COMMENT: The commenter suggests that regulations in N.J.A.C. 13:33-7 be amended to require that ophthalmic dispensers and ophthalmic technicians include their license number in all advertisements.

RESPONSE: The Board agrees that license numbers should appear on advertisements and will incorporate such a change in a future rulemaking.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the rules readopted with amendments.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:33.

Full text of the adopted amendments follows:

SUBCHAPTER 1. APPRENTICESHIPS

13:33-1.1 Minimum age for ophthalmic dispenser's apprentice certificate

Applicants for an ophthalmic dispenser's apprentice certificate shall be at least 17 years old.

13:33-1.2 Minimum age for ophthalmic technician's apprentice certificate

Applicants for an ophthalmic technician's apprentice certificate shall be at least 16 years old.

Recodify existing N.J.A.C. 13:33-1.1 and 1.2 as 1.3 and 1.4 (No change in text.)

13:33-1.5 Supervision of apprentice ophthalmic dispensers and technicians

(a) (No change.)

(b) During an apprenticeship, a supervising preceptor shall be qualified to instruct and train an apprentice in the requisite skills, methods and techniques so as to assure that an apprentice is competent in producing and reproducing ophthalmic lenses and kindred products and mounting the same to supporting materials. In addition, a preceptor must be qualified to afford training and instruction in the following areas:

1. With regard to ophthalmic dispenser apprentices:

i.-iv. (No change.)

v. Use of all required equipment pursuant to N.J.A.C. 13:33-3.5 and 3.6, including, but not limited to, vertometer, lensometer or any other automatic electron equipment to measure the power of a lens, a lens clock and millimeter ruler, hand or automatic protractor for marking up lenses, automatic edger and handfinishing stone;

vi. (No change.)

2. With regard to ophthalmic technician apprentices:

i.-ii. (No change.)

iii. Use of all required equipment pursuant to N.J.A.C. 13:33-3.5 and 3.6, including, but not limited to, vertometer, lensometer or any other automatic electronic equipment to measure the power of a lens, a lens clock and millimeter ruler, hand or automatic protractor for marking up lenses, automatic edger and hand-finishing stone;

iv. (No change.)

(c)-(e) (No change.)

13:33-1.6 Preparation of apprentice ophthalmic dispensers for examination

(a) (No change.)

13:33-1.7 Preparation of apprentice ophthalmic technicians for examination

(a) (No change.)

13:33-1.8 Ophthalmic dispenser apprentice; licensing examination

(a)-(h) (No change.)

13:33-1.9 Ophthalmic technician apprentice; licensing examination

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

SUBCHAPTER 2. LICENSURE

13:33-2.1 Application for examination

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

13:33-2.2 Out-of-State ophthalmic dispenser application

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

(c) If the holder of a Temporary Ophthalmic Dispenser Permit fails the Ophthalmic Dispenser licensing examination once, the Temporary Ophthalmic Dispenser Permit may be renewed one time. An applicant working as a Temporary Ophthalmic Dispenser pursuant to a renewed permit shall take the next scheduled licensing examination. If the applicant fails the second examination, the applicant shall surrender the Temporary Ophthalmic Dispenser Permit and shall no longer work as an ophthalmic dispenser until he or she passes the licensing examination. If an applicant fails to take the next scheduled examination because of illness, emergency or other good cause, the Board may allow the applicant to take another examination. An applicant who has surrendered the Temporary Ophthalmic Dispenser Permit may work in an ophthalmic dispensing establishment supervised by a preceptor pursuant to N.J.A.C. 13:33-1.5. An applicant who has surrendered the Temporary Ophthalmic Dispenser Permit may take the Ophthalmic Dispenser Licensing examination provided that the applicant practiced as an Ophthalmic Dispenser in another state within the previous five years. An applicant whose last year of Ophthalmic Dispenser practice was more than five years ago may enter an apprenticeship program for licensure.

(d) (No change.)

13:33-2.3 Out-of-State ophthalmic technician applicants

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

(c) If the holder of a Temporary Ophthalmic Technician Permit fails the Ophthalmic Technician licensing examination, the Temporary Ophthalmic Technician Permit may be renewed one time. An applicant working as a Temporary Ophthalmic Technician pursuant to a renewed Temporary Ophthalmic Technician Permit shall take the next scheduled licensing examination. If the applicant fails the second examination, he or she shall surrender the Temporary Ophthalmic Technician Permit and shall no longer work as an Ophthalmic Technician until he or she passes the licensing examination. If an applicant fails to take the next scheduled examination because of illness, emergency or other good cause, the Board may allow the applicant to take another examination. An applicant who has surrendered his or her Temporary Ophthalmic Technician Permit may work in an Ophthalmic establishment supervised by a preceptor pursuant to N.J.A.C. 13:33-1.5. An applicant who has surrendered the Temporary Ophthalmic Technician Permit may take the Ophthalmic Technician Licensing examination provided that the applicant practiced as an Ophthalmic Technician in another state within the previous five years. An applicant whose last year of Ophthalmic Technician practice was more than five years ago may enter an apprenticeship program for licensure.

(d) (No change.)

13:33-2.4 Review of examinations

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

13:33-2.5 Failure to apply for licensure within two years of examination; reexamination required

If an applicant who has passed a licensing examination fails to apply for a license within two years of passing the examination, the applicant shall be required to retake the examination before applying for a license.

SUBCHAPTER 3. PROFESSIONAL PRACTICE

13:33-3.1 Space rental agreements with other health care practitioners

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

13:33-3.2 Display of certificate of registration

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

13:33-3.3 Branch office certificate

(a) (No change.)

(b) A fee will be charged for this certificate as indicated in N.J.A.C. 13:33-8.8.

(c) (No change.)

(d) If a licensee spends or intends to spend more than 12 days in a calendar year at unregistered locations, he or she shall notify the Board in writing. The licensee shall obtain a branch certificate from the Board for any location in which he or she practices and shall pay the branch office registration fee pursuant to N.J.A.C. 13:33-8.8.

13:33-3.4 Permits: registration

(a)-(c) (No change.)

13:33-3.5 Minimum optical equipment in establishments where apprentices are registered and/or where fabricating is done on the premises

(a) (No change.)

13:33-3.6 Optical equipment required for practice of ophthalmic dispensing in establishments where no fabricating is done on premises and where no apprentices are registered

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

SUBCHAPTER 4. DISPENSING OF CONTACT LENSES

13:33-4.1 Dispensing of contact lenses

(a)-(f) (No change.)

(g) Ophthalmic dispensers shall complete three classroom hours of continuing education covering the dispensing of contact lenses pursuant to N.J.A.C. 13:33-6.2 every biennial period.

SUBCHAPTER 5. PRACTICE STANDARDS

13:33-5.1 Record of prescriptions filled

(a)-(c) (No change.)

13:33-5.2 Minimum standards and tolerances

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

13:33-5.3 Identification tags

Each licensee and permit holder shall wear an identification tag, which shall be clearly visible to the patient at all times. The tag shall bear the first name or initial, the full second name, the license or permit number, and the level of licensure. The letters on the tag shall be in type not smaller than inch.

13:33-5.4 Compliance with rules and regulations

(a)-(c) (No change.)

13:33-5.5 Ophthalmic dispenser: definition; scope of practice

(a) A licensed ophthalmic dispenser may prepare and dispense to the intended wearer lenses, spectacles, eyeglasses, appurtenances thereto, or contact lenses only if those preparations are based on a written prescription from a licensed physician or licensed optometrist. A licensed ophthalmic dispenser may also duplicate or replace existing lenses, spectacles, eyeglasses, appurtenances, or contact lenses.

(b) The following functions are within the scope of practice of a licensed ophthalmic dispenser:

1. Those activities performed by licensed ophthalmic technicians as set forth in N.J.A.C. 13:33-5.6(b);

2.-3. (No change.)

4. The taking of interpupillary distances and bifocal, trifocal, and progressive placement measurements;

5.-6. (No change.)

7. The dispensing of contact lenses pursuant to N.J.A.C. 13:33-4.1;

8. The mailing of completed eyeglasses pursuant to N.J.A.C. 13:33-5.7; and

9. The mailing of contact lenses pursuant to N.J.A.C. 13:33-4.1.

13:33-5.6 Ophthalmic technician: definition; scope of practice

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

13:33-5.7 Mailing completed eyewear

(a) (No change.)

13:33-5.8 Prohibition on rebates and commissions for referring patients

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

SUBCHAPTER 6. CONTINUING EDUCATION

13:33-6.1 Continuing education requirements

(a) (No change.)

(b) Each ophthalmic dispenser licensed by the Board shall successfully complete 12 credits per biennial period of approved continuing education course work, of which three such credits shall be in the dispensing of contact lenses in compliance with N.J.A.C. 13:33-6.2. One credit shall equal one hour of attendance at an approved course. Two credits may be carried over into a succeeding biennial period only if earned during the last six months of the preceding biennial period.

(c)-(f) (No change.)

13:33-6.2 Continuing education for dispensing of contact lenses

(a) During each biennial registration period, a licensed ophthalmic dispenser shall complete pursuant to N.J.A.C. 13:33-6.1, a continuing education course of at least three classroom hours covering the dispensing of contact lenses. Such course shall include, at a minimum, instruction in the following areas related to contact lenses:

1.-4. (No change.)

SUBCHAPTER 7. ADVERTISING

13:33-7.1 Advertising

(a) An ophthalmic dispenser or ophthalmic technician may advertise provided that the advertisement does not mislead or deceive the public or discredit others in the eye care field.

(b) Any advertisement, placed on or in newspapers, magazines, radio, television, flyers, on-premise signs, off-premise signs and the Internet, which contains the price of corrective lenses, frames, complete corrective eyeglasses or the dispensing of contact lenses shall, for each stated price:

1. Specify the type of lenses being offered, such as single vision, bifocal, trifocal, or progressive; whether they have tints or colorations; whether they are standard size or oversize; and of what material the lenses are made; and

2. Specify the type of frame and the material from which it is made; and whether the frame advertised has been discontinued by the manufacturer.

(c) Where delivery time is advertised, any restrictions imposed upon such delivery shall be in a minimum of 10 point type and shall be placed adjacent to the indicated delivery time.

(d) Where warranties and guarantees are advertised, all exceptions to such warranty or guarantee shall be listed.

(e) Anyone who advertises the price of lenses, frames, complete corrective eyeglasses or dispensing of contact lenses shall answer telephone inquiries on the availability and the prices of the advertised ophthalmic items.

(f) Licensees may advertise eye examinations provided they state that the examination is performed by an independent doctor of optometry or ophthalmologist.

(g) Any advertisement shall include the telephone number and street address of the business.

13:33-7.2 Unlawful practices

(a) The following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet anticipated consumer demand. When an advertisement states a specific period of time during which merchandise will be available for sale, such merchandise shall be made available to meet anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall

be made available to meet anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. This paragraph shall not apply to merchandise which is advertised:

- i. On an in-store sign only with no corresponding out-of-store sign;
 - ii. As being available in a specific quantity; or
 - iii. As being available in a "limited supply," pursuant to a "closeout sale" or pursuant to a "clearance sale" if such offering is represented to be permanently reduced, or the sale is one in which the advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold;
2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condition or availability;
 3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as "sale," or "as advertised";
 4. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;
 5. Describing the advertiser through the use of the terms "warehouse," "factory outlet," "discount," "bargain," "clearance," "liquidators," or other words or terms of similar meaning, whether in the advertiser's corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described;
 6. Whenever an advertiser provides a raincheck for an advertised item which is not available for immediate purchase, the failure to:
 - i. Honor or satisfy such raincheck within 60 days of issuance unless an extension of such time period is agreed to by the holder thereof;
 - ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for a reasonable time after giving such notice; and
 - iii. Offer a raincheck to all customers who are unable, due to the unavailability thereof, to purchase the advertised merchandise during the period of time during which the merchandise has been advertised as available for sale.
 7. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale;
 8. The failure of an advertiser to substantiate through documents, records or other written proof any claim made regarding the safety, performance, availability, efficiency, quality or price of the advertised merchandise, nature of the offering or quantity of advertised merchandise available for sale. Such records shall be made available upon request for inspection by the Board;
 9. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest a comparison between the cost of supply and the price at retail for the advertised merchandise; or
 10. Use of the term "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise.

(b) An advertiser shall not use a fictitious former price in an advertisement. Use of a fictitious former price shall be deemed professional misconduct.

1. A former price or price range or the amount of reduction shall be deemed fictitious if it cannot be substantiated, through a showing of:

i. Sales of the advertised merchandise, or comparable merchandise of like grade or quality, made within the advertiser's trade area, the geographical area in which an advertiser solicits or makes a substantial number of sales, in the regular course of business at any time within 60 days prior to, or after, the effective date of the advertisement;

ii. That the advertised merchandise, or comparable merchandise of like grade or quality, was offered for sale at that price within the advertiser's trade area in the regular course of business during at least 28 days of a 90 day period before or after the effective date of the advertisement; or

iii. That the price does not exceed the supplier's cost plus the mark-up on the merchandise used by the advertiser in the regular course of business.

2. If the former price specifically references a time in the remote past during which it was offered, it shall be deemed fictitious unless substantiated pursuant to either (b)1i or iii above.

(c) It shall be unlawful to advertise or employ displays in such a manner as to suggest, infer or indicate that persons licensed under N.J.S.A. 52:17B-41.1 et seq. are qualified to give professional advice concerning eye care or perform eye examinations.

13:33-7.3 Reduced price sales; price ranges; percentage sales

(a) An advertiser advertising an item of merchandise specifically advertised for sale at a reduced price shall:

1. State the selling price or price range;

2. State the former price or price range or the amount of the reduction in dollars;

3. State with specificity in any price reduction advertisement the period of time during which the price reduction shall be applicable, unless the merchandise is advertised on an in-store sign with no corresponding out-of-store sign, or as being available in a specific quantity, or as being available in a "limited supply" pursuant to a "closeout sale" or a "clearance sale";

4. Set forth the former price or price range or the amount of reduction in dollars in close proximity to the selling price or price range and the advertised item; and

5. Set forth the basis upon which the former price or price range or the amount of reduction in dollars was established in close proximity to the former price or price range of the advertised item. In this regard, terms such as "comparable value," "our regular price," or words of similar import shall be used to designate the basis for the former price.

(b) A former price or a selling price may be stated in terms of a price range when:

1. An advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase at different prices in the ordinary course of business. In such case, the price range shall be based upon the sales or offers of sale at the advertiser's retail outlets; or

2. An advertiser advertises two or more items of comparable merchandise as available at reduced prices, in which case the price range shall be based upon former or usual selling prices of the advertised products.

(c) An advertiser offering merchandise for sale at a savings of a percentage shall set forth the basis upon which the former price was established in close proximity to the percentage reduction. In this regard, terms such as "our regular price" or words of similar import shall be used to designate the basis for the former price.

SUBCHAPTER 8. GENERAL PROVISIONS

13:33-8.1 Renewal of registration certificates

- (a) Licenses shall be renewed biennially on a form provided by the Board. Each applicant shall attest that the continuing education requirements of N.J.A.C. 13:33-6.1 have been completed during the prior biennial period.
- (b) The Board shall send a notice of renewal to each licensee, at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.
- (c) The licensee shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:33-8.8 prior to the date of expiration of the license. If the licensee does not renew the license prior to its expiration date, the licensee may renew it no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:33-8.8. A licensee who fails to renew the license within 30 days after the expiration date of the license shall be suspended without a hearing.
- (d) Individuals who continue to hold themselves out as licensed after being suspended shall be deemed to have violated N.J.S.A. 52:17B-41.18, even if no notice of suspension had been provided to the person.
- (e) A person seeking reinstatement within five years following the suspension of a license shall submit the following to the Board:
1. A completed reinstatement application;
 2. Payment of all past delinquent renewal fees as set forth in N.J.A.C. 13:33-8.8;
 3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:33-8.8;
 4. A certification verifying completion of the continuing education credits required pursuant to N.J.A.C. 13:33-6.1 for the renewal of a license; and
 5. An affidavit of employment listing each job held during the period of suspension which includes the names, addresses, and telephone numbers of each employer.
- (f) A person seeking reinstatement after more than five years following the suspension of a certification shall satisfy the requirements of (e) above and shall successfully complete the examination required for initial certification as set forth in N.J.A.C. 13:33-1.8, for ophthalmic dispensers, and N.J.A.C. 13:33-1.9, for ophthalmic technicians.
- (g) Renewal applications for all licenses shall provide the licensee with the option of either active or inactive renewal. Licensees electing to renew as inactive shall not hold themselves out to the public as licensees.
- (h) Upon application to the Board, the Board may permit a licensee who has been on inactive status to return to active status provided such applicant completes the continuing education credits that are required per biennial period for each biennial period that the applicant is on inactive status.

13:33-8.2 Military service

Any licensee who is engaged in active duty in the military service of this country shall be required to renew his or her license to keep it in force, but shall not be required to pay the renewal fee for any year during which he or she is in the service. Notwithstanding a licensee's engagement in active duty, a licensee shall be required to meet all continuing education requirements within 12 months of returning to practice.

13:33-8.3 Change of address

All persons holding certificates or permits must notify the Board within 10 days of any change of address or place of employment.

13:33-8.4 Change of name

(a) The Board shall issue a new registration certificate to any licensee whose name has been legally changed, upon receipt of:

- 1-2. (No change.)
- 3. The certificate replacement fee set forth in N.J.A.C. 13:33-8.8.

13:33-8.5 Replacement certificates of registration

If a licensee's certificate of registration has been lost or destroyed, the licensee may request that the Board provide a replacement certificate of registration. Such request shall be in writing, include the certificate replacement fee pursuant to N.J.A.C. 13:33-8.8 and the licensee shall certify on a Board-provided form that the certificate has been lost or destroyed and has not been given to another person.

13:33-8.6 Full calendar year; week

A full calendar year shall consist of 12 months of compensated employment. A working week shall consist of no less than 32 hours.

13:33-8.7 Sexual misconduct

(a)-(j) (No change.)

13:33-8.8 Fee schedule

(a) The following fees shall be charged by the Board effective upon promulgation.

- 1-9. (No change.)
- 10. Reinstatement fee..... 150.00
- 11. Inactive fee..... (to be established by the Board by rule)