

MONDAY, MARCH 18, 2002
RULE ADOPTION
LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS
SEXUAL MISCONDUCT

Adopted New Rule: N.J.A.C. 13:38-2.14

Proposed: November 5, 2001 at 33 N.J.R. 3733(a).

Adopted: January 16, 2002 by the New Jersey State Board of Optometry, Dr. Leonard Steiner, President.

Filed: February 15, 2002 as R.2002 d.81, without change.

Authority: N.J.S.A. 45:12-4.

Effective Date: March 18, 2002.

Expiration Date: September 18, 2005.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rule is governed by N.J.S.A. 45:15B-1 and is not subject to any Federal requirements or standards.

Full text of the adoption follows:

<< **NJ ADC 13:38-2.14** >>

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.
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