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RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF OPTOMETRISTS
EXCESSIVE FEES

Adopted New Rule: N.J.A.C. 13:38-2.15

Proposed: August 6, 2001 at 33 N.J.R. 2601(a).

Adopted: October 17, 2001 by the New Jersey State Board of Optometrists, Leonard Strulowitz, President.

Filed: July 29, 2002 as R.2002 d.274, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: August 19, 2002.

Expiration Date: September 18, 2005.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal standards or requirements applicable to the adopted new rule.

Full text of the adoption follows:

<< NJ ADC 13:38-2.15 >>

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 <<-only->> <<+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.
