

NEW JERSEY REGISTER
VOLUME 32, NUMBER 24
MONDAY, DECEMBER 18, 2000
RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE BOARD OF OPTOMETRISTS
INDEPENDENT DOCTOR OF OPTOMETRY

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. 13:38-2.13

Proposed: November 15, 1999 at 31 N.J.R. 3586(a).

Adopted: September 20, 2000 by the New Jersey State Board of Optometrists, Barry Schneider, O.D., President.

Filed: November 15, 2000 as R.2000 d.496, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.5 and with N.J.A.C. 13:38-2.13(a)12 not adopted.

Authority: N.J.S.A. 45:12-9.12.

Effective Date: December 18, 2000.

Expiration Date: September 18, 2005.

Summary of Agency Initiated Changes: The Board has, upon review and adoption, made changes to clarify the rule by deleting N.J.A.C. 13:38-2.13(a)9 and combining its provisions with N.J.A.C. 13:38-2.13(a)1 and 2. Since the provisions of that paragraph are simply being incorporated into other paragraphs, this is not a substantive change. The Board has also amended N.J.A.C. 13:38-2.13(a)4 to clarify that advertising by licensees has traditionally included materials and fees, in addition to the services provided by the licensee. N.J.A.C. 13:38-2.13(a) 4 has also been amended by deleting the prohibition that advertising for optometrists not be included in the advertisements of any other entity. The Board made this change because it did not wish to prevent an entity from indicating that an independent doctor of optometry was practicing on the premises as long as all other provisions of N.J.A.C. 13:38-2.13 were followed. The Board has deleted the word "goods" from N.J.A.C. 13:38-2.13(a) 7 and replaced it with "ophthalmic materials" so the language is consistent throughout the chapter, as was done on readoption (see 32 N.J.R. 2370(a) and 3446(a)).The Board has reserved adoption of N.J.A.C. 13:38-2.13(a)12 because the paragraph as proposed was overbroad. The Board will revisit this provision at a later date.

Federal Standards Statement

A Federal standards analysis is not required because the adopted new rule is dictated by State statute and is not subject to Federal requirements or standards.

Full text of the adoption follows:

<< NJ ADC 13:38-2.13 >>

13:38-2.13 Independent doctor of optometry

(a) For the purpose of N.J.S.A. 45:12-9.12 and this chapter, in order to perform as an independent doctor of optometry, a licensee shall:

1. <<-Retain->> <<+Take no instruction from an ophthalmic dispenser with regard to any aspect of optometric practice and retain+>> authority to exercise professional judgment within accepted standards of professional care with regard to skill, diligence in examinations, allocation of time for professional services, and diagnosis and treatment of patients;
2. <<-Lease->> <<+Take no instruction from a landlord with regard to any aspect of optometric practice and lease+>> space on the basis of a written lease and only where rent is a fixed fee determined by the fair market value, is for a regular term and not for sporadic use of the space, is not contingent upon patient fees, the number of patients, or the number or type of optometric services;
3. Maintain a separate telephone number;

4. Enter into a written agreement providing that the optometrist shall furnish and be responsible for all advertising for optometric services, <<- and such advertising shall not be included in the advertisement of any other entity->> <<+materials and fees by that optometrist+>>. Any optometrist advertisement <<-that->> <<+for optometric services, materials and fees by that optometrist which+>> appears near or next to the advertisement of any other entity shall be clearly delineated and set apart by bold lines or a box;

5. Employ, supervise, pay and maintain responsibility for training assistants and employees. If any personnel services are included as part of a rental agreement, such as a receptionist's services, the terms shall be included in the written lease;

6. Furnish his or her own equipment, instruments, and materials; or if these are leased, it shall be for fair market value and the terms shall be included in a written lease;

7. Establish all patient fees for <<-goods->> <<+ophthalmic materials+>> and services;

8. Maintain his or her own patient treatment and billing records, separate and apart from any ophthalmic dispenser records, and be responsible for the confidentiality and security of all patient <<-files and electronic records->> <<+treatment and billing records, whether electronic or hard copy+>>;

<<-9. Take no instruction from a landlord or ophthalmic dispenser with regard to any aspect of optometric practice;->>

<<-10.->><<+9.+>> Establish hours of availability of optometric services and retain responsibility for suitable coverage in an emergency, during vacation, or during hours when the office is closed;

<<-11.->><<+10.+>> Display registration certificate(s) and <<- outside->> signs <<+so as to be read on the outside of the office+>> as required by N.J.S.A. 45:12-8<<-; and->>

<<-12. Not have any ownership interest, directly or indirectly, in the business entity from which the space is rented->>.
