

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 16 OPTOMETRIC PRACTITIONERS**  
**PART 17 ADVERTISING**

**16.16.17.1 ISSUING AGENCY:** New Mexico Board of Optometry.  
[10-14-95; A, 6-26-00; 16.16.17.1 NMAC - Rn, 16 NMAC 16.17.1, 03-15-2001; A, 07-06-2012]

**16.16.17.2 SCOPE:** Part 17 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.  
[10-14-95; 16.16.17.2 NMAC - Rn, 16 NMAC 16.17.2, 03-15-2001]

**16.16.17.3 STATUTORY AUTHORITY:** The authority for Part 17 of Chapter 16 is NMSA 1978 Section 61-2-13; Section 61-2-14; and Section 61-2-6.D and J. (1995 Repl. Pamp.).  
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.17.3 NMAC - Rn, 16 NMAC 16.17.3, 03-15-2001]

**16.16.17.4 DURATION:** Permanent.  
[10-14-95; 16.16.17.4 NMAC - Rn, 16 NMAC 16.17.4, 03-15-2001]

**16.16.17.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section.  
[11-17-73...10-14-95; 10-15-97; 16.16.17.5 NMAC - Rn, 16 NMAC 16.17.5, 03-15-2001; A, 07-06-2012]

**16.16.17.6 OBJECTIVE:** The objective of Part 17 of Chapter 16 is to set forth the requirements governing the advertising of optometric services, procedures, and ophthalmic materials in the State of New Mexico.  
[10-14-95; 16.16.17.6 NMAC - Rn, 16 NMAC 16.17.6, 03-15-2001]

**16.16.17.7 DEFINITIONS: [RESERVED]**  
[10-14-95; 16.16.17.7 NMAC - Rn, 16 NMAC 16.17.7, 03-15-2001]

**16.16.17.8 UNPROFESSIONAL CONDUCT IN ADVERTISING:** In accordance with NMSA 1978, Section 61-2-13.D and J (1995 Repl. Pamp.), the board may refuse to issue, suspend or revoke any license for advertising by means of knowingly false, misleading or deceptive statements or advertising. Any such action constitutes unprofessional conduct.

**A.** No optometrist shall use, participate in, or permit the use of his/her name in any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim related to the optometrist's examinations or professional services, eye glasses, ophthalmic lenses or frames, contact lenses, specific procedures, or ophthalmic devices.

**B.** Any advertisement which states the price on ophthalmic materials including, but not limited to, eyeglasses, spectacles, lenses, frames or mountings, shall affirmatively disclose whether the price includes eye examination services. All disclosures must be in type no smaller than ten (10) point type.

**C.** A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

(1) contains a misrepresentation of fact; or  
(2) is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or  
(3) represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will, in fact, be charged; or

(4) contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

**D.** Any advertisement of the price of any ophthalmic lens which does not meet the American national standards institute specifications, or which is purchased by the optometrist from a manufacturer or wholesaler who does not warrant that the lens meets the standards of the American national standards institute and has not been tested by the optometrist or has been tested and does not meet such standards, shall contain the statement: "Does not meet the American national standards institute Specification for the first quality prescription ophthalmic lenses." This statement shall not be abbreviated in any way.

[11-7-80; 6-24-94; 10-14-95; 16.16.17.8 NMAC - Rn, 16 NMAC 16.17.8, 03-15-2001]

**16.16.17.9 ADVERTISEMENTS:**

**A.** An optometrist may place advertisements in the yellow pages of the telephone directory. The advertisement must state the following information as provided in Section 57-21-3 of the Advertisement of Health Care Services Act:

- (1) the optometrist's name;
- (2) address and telephone number of the optometrist's practice location; and
- (3) the designation of the profession in which the optometrist is licensed to practice: O.D.,

optometrist, doctor of optometry, or optometric physician, as provided in Subsection C of this rule.

**B.** The advertisement may also describe the nature of the optometrist's practice such as, but not limited to, visual analysis, refraction, and eye examination.

**C.** New Mexico licensed optometrists shall be allowed to use the designation of "optometric physician" in their advertisements. The advertisement may be placed under the "physicians" title in the yellow pages under the following conditions:

- (1) The optometrist identifies his professional designation in his advertisement, and
- (2) The title heading does not limit the advertisement specifically. For instance: "physicians

M.D." limits the section only to M.D.s; "physicians - M.D., ophthalmologists" limits the section only to M.D.s and/or ophthalmologists.

[11-17-73; 11-7-80; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.17.9 NMAC - Rn, 16 NMAC 16.17.9, 03-15-2001; A, 03-02-2016]

**HISTORY of 16.16.17 NMAC:**

**Pre-NMAC History:**

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 5 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

Rule No. 5 - Advertising, filed 8-21-80.

Rule No. 13 - Advertising, Ophthalmic Materials, filed 10-8-80.

NMBO Rule 13 - Advertising, filed 5-25-94.

Rule No. 14 - Advertising, Ophthalmic Frames, Temples, Lenses And/Or Artificial Eyes, filed 10-8-80.

Rule No. 15 - Advertising, Ophthalmic Services, filed 10-8-80.

Rule No. 16 - Advertising, Contact Lenses, filed 10-8-80.

Rule No. 5 - Advertising, filed 5-22-81

NMBO Rule 5 - Advertising, filed 1-7-87.

NMBO Rule 13 - Advertising, filed 5-25-94

**History of Repealed Material:** [Reserved]

**Other History:**

16 NMAC 16.17, Advertising, filed 9-21-95, replaced that relevant portion of NMBO Rule 13, Advertising.

16 NMAC 16.17, Advertising, filed 9-21-95, was renumbered and reformatted to 16.16.17 NMAC, Advertising, effective 03-15-2001.