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ISSUE DATE: **MARCH 7, 2016**  
**PUBLIC NOTICES**  
**LAW AND PUBLIC SAFETY**  
**DIVISION OF CONSUMER AFFAIRS**  
**NEW JERSEY STATE BOARD OF COSMETOLOGY AND HAIRSTYLING**

**N.J.A.C. 13:28-1A.1 and 6.27**

**Notice of Action on Petition for Rulemaking**

**Definitions; Clinical Work Prerequisites and Limitations**

Petitioner: The Association of Cosmetology and Hairstyling Schools of New Jersey.

**Take notice** that on October 9, 2015, the New Jersey State Board of Cosmetology and Hairstyling (Board) received a petition for rulemaking from Darlene Fox on behalf of the Association of Cosmetology and Hairstyling Schools of New Jersey, an organization of cosmetology and hairstyling schools that includes Artistic Academy; Christine Valmy; The Hair Design School (three locations); P.B. School of Beauty; Robert Fiance Schools (four locations); Rizzieri Institute; The Shore Beauty School; Capri Institutes (four locations); Empire Beauty Schools (four locations); Parisian Beauty Academy; PM The School Jersey Shore; Roman Academy; and The Lab.

The petitioner requests that the Board undertake rulemaking to interpret what is meant by the "cost of materials" referenced in the definition of "clinic" set forth in the New Jersey Cosmetology and Hairstyling Act (Act) at N.J.S.A. 45:5B-3.h. The Act defines "clinic" as "a designated portion of a licensed school in which members of the general public may receive cosmetology or hairstyling services from registered students in exchange for a fee which shall be calculated to recoup only the cost of materials used in the performance of those services."

The petitioner requests that the Board amend its current regulations at N.J.A.C. 13:28-6.27, the section of the Board's rules that sets forth clinical work prerequisites and limitations, to address the issue of what is meant by the "cost of materials." The petitioner urges the Board to apply a common sense interpretation to the statute and adopt a regulation that would define "materials used" to encompass a comprehensive statement of the types of costs associated with providing clinic services, keeping in mind that no services may be offered or materials used, except under supervision of licensed instructors, in licensed facilities, which must satisfy strict standards mandated by the Board. A notice acknowledging the Board's receipt of the petition was filed with the Office of Administrative Law and published in the New Jersey Register on November 16, 2015, at 47 N.J.R. 2888(a).

**Take further notice** that the Board considered the petition for rulemaking at the open public session of its November 10, 2015, meeting. The Board determined that this matter should be referred for 90 days for further review and analysis of the issues raised by the petitioner. A notice acknowledging the Board's action on November 10, 2015, was filed with

the Office of Administrative Law and was published in the New Jersey Register on December 21, 2015, at 47 N.J.R. 3165(a).

**Take further notice** that at the open public session of its January 12, 2016, meeting, the Board requested from the petitioner an extension of the 90-day period for the Board's review and analysis of issues raised by the petitioner. The petitioner agreed to grant the Board's request for extension.

**Take further notice** that the Board considered the petition for rulemaking at the open public session of its February 9, 2016, meeting and determined to deny the petitioner's request to initiate a rulemaking proceeding. The Board notes that two of the petitioner's member schools have been named as defendants in class action lawsuits pending before the New Jersey Superior Court. At issue in each lawsuit is whether the defendant school charged customers of the school clinic fees that exceeded the cost of materials used in the performance of the services provided to those customers. Because it is possible that the Board and the court could arrive at inconsistent interpretations of what "the cost of materials used in the performance of those services" means, the Board has determined that it will not initiate rulemaking before the conclusion of the lawsuits, unless instructed to do so by the court.

A copy of this notice has been mailed to the petitioner consistent with the requirements of N.J.A.C. 1:30-4.2.