CHAPTER 43-05
PODIATRISTS

43-05-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of podiatric medicine.
2. "Clinical residency" means a formal, structured postdoctoral training program approved by the board, which is sponsored by and conducted in an accredited institution approved by the board or conducted by a college of podiatric medicine accredited and approved by the council on podiatric medical education, American podiatric medical association, or other accrediting agency approved by the board. The term also includes a preceptorship approved by the board until January 1, 1995.
3. "False or misleading statement or advertising" includes a statement, claim, or advertising that:
   a. Contains a misrepresentation of fact;
   b. Is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts;
   c. Is intended or is likely to create false or unjustified expectations of favorable results;
   d. Appeals to an individual's anxiety in an excessive or unfair way;
   e. Contains material claims of superiority that cannot be substantiated;
   f. Misrepresents a podiatrist's credentials, training, experience, or ability;
   g. Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or be deceived; or
   h. Represents that a manifestly incurable condition, sickness, disease, or injury can be cured.
4. "Health care facility" means a medical hospital, skilled nursing care facility, intermediate care facility, basic care facility, boarding house, or swing-bed hospital approved to furnish long-term care service, or any other facility licensed to provide health care services.
5. "Podiatric medicine" means:
   a. The medical and surgical treatment and diagnosis of ailments of the human foot, ankle, and other related soft tissue structures below the tibial tuberosity that govern the functions of the foot and ankle, not including extra articular osseous injuries above the distal metaphyseal scar. Podiatrists may treat and diagnose conditions of the foot and ankle by any medically accepted system or method necessary;
   b. The amputation of the toes, parts of the foot, or foot in its entirety, indicated as medically necessary;
   c. The use of such preparations, medicines, and drugs as may be necessary for the treatment of such ailments;
   d. The performance of history and physical examinations upon admitting patients to facilities where they are recognized with requisite credentials and privileges;
   e. That podiatrists may function as assistant surgeons in nonpodiatric procedures; and
   f. That podiatric medical residents working under a temporary permit may fully participate in rotations and assist and perform treatments and diagnosis beyond the foot and ankle, under appropriate supervision within an approved residency program as part of their medical surgical training.
6. "Podiatrist" means a person who is qualified to practice podiatric medicine in this state.
7. "Preceptorship" means a formal, structured postdoctoral training program approved by the board and conducted by a podiatrist primarily in an office setting and controlled and supervised by a college of podiatric medicine accredited by the council on podiatric medical education, American podiatric medical association, or another accrediting agency approved by the board.

8. "Provider" means a licensed person, homecare provider, medical or health services clinic, hospital, or health care facility, organization, institution, or agency that furnishes health care services.

43-05-02. Exceptions.

The provisions of this chapter do not apply to the following:

1. Physicians and surgeons licensed by the North Dakota board of medicine.
2. Physicians and surgeons of the United States armed forces and of the United States public health service.
3. Duly licensed chiropractors.
4. The sale of shoes or preformed arch supports in the stores of this state.

43-05-03. Board of podiatric medicine - Appointment of members - Term of office - Qualifications - Vacancies - Duties - Quorum - Records.

The board of podiatric medicine consists of six persons appointed by the governor for a term of four years each with the terms of office so arranged that no more than two terms expire on the thirteenth day of June of any year. A member of the board may not serve for more than two successive terms. A member may not be reappointed to the board after serving two successive terms unless at least two years have elapsed since the member last served on the board. Four members of the board must hold doctor of podiatric medicine degrees and must have practiced podiatric medicine in this state for at least two years before their appointment, one member must be a doctor of medicine who holds a doctor of medicine degree and has practiced in this state for at least two years before the appointment, and one member, who is designated as a public member, must be a resident of this state, be at least twenty-one years of age, and may not be affiliated with any group or profession that provides or regulates health care in any form.

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

A majority of the board constitutes a quorum to transact business, make any determination, or take any action. The board shall keep a record of its proceedings and of applications for licenses. Applications and records must be preserved for at least six years beyond the disposition of the application or record or the last annual registration of the licensee, whichever is longer.

43-05-04. Meetings - When held - Officers.

The board shall hold an annual meeting and at that meeting shall elect from its members a president, vice president, and secretary-treasurer. The president of the board or any two members of the board may call a special meeting at any time if written notice of the meeting is given to all the members. At any special meeting at which a quorum is present a waiver of the notice of the meeting may be executed in lieu of the original notice. The officers shall perform such duties as the board prescribes. If a member of the board is absent from two consecutive regular or special meetings, the board may declare that member's position to be vacant. The governor shall fill all vacancies.

43-05-05. Secretary-treasurer - Bond - Allowance.

The secretary-treasurer of the board must be bonded for the faithful discharge of the duties of the office in the sum of not less than one thousand dollars. The secretary of the board shall receive such allowance for clerical and other expenses of the board as determined by the board.

43-05-06. Compensation of members of board.

Each member of the board shall receive fifty dollars per day for each day employed in the actual discharge of the duties of the board, and the member's necessary expenses. The mileage and travel expense allowed may not exceed the amount provided for in section 54-06-09.

43-05-07. Secretary-treasurer of board - Duties - Record - Reports.

The secretary-treasurer of the board shall have the following duties:

1. Keep a full record of the proceedings of the board.
2. Repealed by S.L. 1971, ch. 510, § 15.
3. At such times as may be required by the board, furnish a complete statement of receipts and disbursements under oath, together with vouchers, receipts, and such other evidence of the receipts and disbursements as may be required by the board.

43-05-08. Rules and regulations - Board to make.

The board may make such rules and regulations not inconsistent with the provisions of this chapter as may be necessary to give it full force and effect.

43-05-09. License to practice podiatry required.

1. A person may not practice podiatric medicine unless that person first has obtained a license or permit to do so.
2. A person may not do any of the following unless that person holds a valid license or permit:
   a. Advertise, hold out to the public, or represent in any manner that that person is authorized to practice podiatric medicine.
   b. Use the designation "doctor of podiatric medicine", "podiatrist", "D.P.M.", "podiatric physician", "chiropodist", "foot specialist", or "foot doctor", or use any title, degree, letters, symbol, or words that would tend to lead the public to believe that that person is authorized to practice or assume duties incident to the practice of podiatric medicine.
3. A license to practice podiatric medicine is effective for one year subject to the terms and conditions for renewal established by the board.

43-05-10. Application - Examination fee.

To obtain a license to practice podiatric medicine, a person shall submit an application and any other documentation required by the board to the board in the manner prescribed by the board. The applicant shall submit evidence that the applicant has the required qualifications and shall pay to the board a fee of not more than five hundred dollars.

43-05-11. Qualifications of licensee.

An applicant for a license to practice podiatric medicine must possess the following qualifications:

1. Be at least eighteen years of age;
2. Be of good moral character; and
3. Be a graduate of a podiatric medical school approved by the board based upon its faculty, curriculum, facilities, accreditation by a recognized national accrediting organization approved by the board, and other relevant factors.

All persons holding a license to practice podiatric medicine in this state on July 1, 1991, continue to be eligible for a license to practice podiatric medicine under this chapter.

Upon renewal of any license, the board may require the applicant to show sufficient proof of continuing medical education since the last application, which may include seminars or podiatry meetings. The board may waive the continuing education requirements in case of illness or other extenuating circumstances.

An applicant for a license must not have engaged in conduct warranting disciplinary action against a licensee or permittee in this state or another state. The board may issue a license or

permit to an applicant who has engaged in conduct warranting disciplinary action if the board determines that the public will be protected through the issuance of a license or permit with conditions and limitations considered appropriate by the board. Applicants graduating after July 1, 1991, from a podiatric medical school shall present to the board evidence of the successful completion of a program of clinical residency.

43-05-11.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify an applicant from licensure under this chapter unless the board determines that the offense has a direct bearing upon an applicant's ability to serve the public as a podiatrist, or determines that an applicant, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1.

43-05-12. Examination - Temporary permit.

1. The board may issue a license or permit to an applicant who has received a passing score on each section of the national board of podiatric medical examiners licensing examination or such other licensing examination as determined by the board. The board shall determine the requirements for a passing score. An applicant shall appear in person before the board or its designated representative to complete an oral practical examination and show that the applicant satisfies the requirements for licensure. The board may accept a national clinical examination prepared and graded by the national board of podiatric medical examiners in lieu of the oral practical examination. The board may establish the procedures or requirements for the applicant's personal presentation and the subject matter of the oral practical examination.
2. The board may issue a temporary permit to practice podiatric medicine to a person engaged in a clinical residency or preceptorship for a period not to exceed twelve months if the person meets all the conditions and qualifications for licensure established by this chapter and rules of the board. The applicant for a temporary permit shall submit a fee of not more than two hundred fifty dollars, as determined by the board.

43-05-13. Re-examination when applicant fails in first examination.

Any applicant who fails the examination and is refused a license, within one year after such refusal, may be re-examined upon paying an additional fee of three hundred dollars. Only one re-examination exhausts the applicant's privilege under the original application.

43-05-14. When license issued without examination.

The board may issue a license without examination to a podiatrist of another state or Canadian province if:

1. The other state or Canadian province grants like privileges to podiatrists of this state;
2. The other state or Canadian province maintains equal statutory requirements for practicing podiatric medicine;
3. The applicant pays a fee of not more than five hundred dollars as determined by the board;
4. The applicant has been engaged legally in the active practice of podiatric medicine for at least two years immediately preceding the date of application;
5. The applicant presents satisfactory evidence to the board indicating the current status of a license to practice podiatric medicine which has been issued by the proper agency in another state or Canadian province;
6. The applicant has not had a license suspended or revoked, or has not engaged in conduct warranting or which would have warranted disciplinary action against a licensee if the conduct was committed in this state or elsewhere, or has not been subjected to disciplinary action in another state or Canadian province. If an applicant does not satisfy the requirements of this subsection, the board shall refuse to issue a

license unless the board determines that the public will be protected through issuance of a license with conditions or limitations considered appropriate by the board; and

7. The applicant submits with the application the following information for the five-year period before the date of filing the application:
   a. The name and address of the applicant's professional liability insurance carrier in the other state or Canadian province; and
   b. The number, date, and disposition of any podiatric medical malpractice settlement or award made to the plaintiff relating to the quality of podiatric medical treatment.

43-05-15. Renewal of license - Fee - Established by board - Failure to pay - Reinstatement.

Each licensed and practicing podiatrist shall pay the annual renewal license fee established by the board. The license fee may be increased in accordance with the number of years licensed and practicing in North Dakota, but may not exceed seven hundred fifty dollars. The fee must be paid on or before the renewal date established by the board. The person is entitled to an annual certificate or license upon payment of the fee. If the renewal fee is not paid within six months after the date established by the board, the license of the delinquent licensee must be considered expired and may be revoked and may not be reissued except upon a new application and the payment of the renewal fee established by the board plus the late fee established by the board not to exceed two hundred fifty dollars and the costs of any hearing held concerning revocation of a license for nonpayment.

43-05-16. Grounds for disciplinary action.

1. The board may refuse to grant a license or permit or may impose disciplinary action as described in this chapter against any podiatrist. The following conduct, whether occurring in this state or elsewhere, is prohibited and is a basis for disciplinary action:
   a. Failure to demonstrate the qualification or satisfy the requirements for a license or permit under this chapter or rules of the board.
   b. Obtaining a license or permit by fraud or cheating or attempting to subvert the licensing or permit examination process, the use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice in connection with any of the license or permit requirements.
   c. Conviction, during the previous five years, of a misdemeanor or felony reasonably related to the practice of podiatric medicine, or determined by the board to have a direct bearing upon a person's ability to serve the public as a podiatrist. A license may not be withheld contrary to chapter 12.1-33.
   d. Revocation, suspension, restriction, limitation, or other disciplinary action against the person's podiatric medical license in another state or jurisdiction, failure to report to the board that charges regarding the person's license have been brought in another state or jurisdiction, or failure to report to the board that the person has been refused a license by another state or jurisdiction.
   e. Advertising that is false or misleading, or the making of any false or misleading statement about the podiatrist's skill, training, experience, or ability or the efficacy of any treatment or remedy.
   f. Violating a rule adopted by the board; an order of the board; any provision of this chapter; any action, stipulation, condition, or agreement imposed by the board; a state or federal law that relates to the practice of podiatric medicine; or a state or federal narcotics or controlled substance law.
   g. Engaging in any unethical conduct; conduct likely to deceive, defraud, or harm the public; demonstrating a willful, careless, or negligent disregard for the health, welfare, or safety of a patient; or podiatric medical practice that is professionally incompetent, in that it may create unnecessary danger to any patient's life, health, or safety regardless of whether an actual injury is proved.
   h. Failure to supervise a preceptor or resident.
   i. Aiding or abetting an unlicensed, incompetent, or impaired person in the practice of podiatric medicine.

j. Adjudication by a court of competent jurisdiction as mentally incompetent, mentally ill, chemically dependent, a person dangerous to the public, or a person who has a psychopathic personality.
k. Engaging in unprofessional conduct that includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing podiatric medical practice.
l. Inability to practice podiatric medicine with reasonable skill and safety to patients because of physical or mental illness, a substance use disorder, or as a result of any mental or physical condition or disability.
m. Revealing a privileged communication from or relating to a patient except when otherwise required or permitted by law.
n. Improper management of medical records.
o. Accepting, paying, or promising to pay a part of a fee in exchange for patient referrals; obtaining any fee by fraud, deceit, or misrepresentation; or paying or receiving, directly or indirectly, any fee, commission, rebate, or other compensation for services not actually or personally rendered, except for the lawful distribution of compensation or fees within a professional partnership, corporation, or association.
p. Engaging in abusive or fraudulent billing practices.
q. Habitual use of, or becoming addicted or habituated to, alcohol or drugs.
r. Prescribing, administering, or distributing a drug for other than medically accepted therapeutic purposes, experimental, or investigative purposes authorized by a state or federal agency.
s. Engaging in sexual misconduct, sexual abuse, or exploitation with or of a patient; conduct that may reasonably be interpreted by the patient as sexual; or in verbal behavior which is seductive or sexually demeaning to a patient.
t. The failure to furnish the board or representatives information legally requested by the board.
u. A continued pattern of inappropriate care as a podiatrist.
v. The practice of podiatric medicine under a false or assumed name other than a partnership name containing the names of one or more of the licensed partners.
w. Maintaining a professional office in conjunction or relation with any business not engaged in the practice of the medical sciences.
x. Treating any disease, sickness, illness, malady, or defect that is outside the scope of the practice of podiatric medicine.

2. In disciplinary actions alleging a violation of subdivision c or d of subsection 1, a copy of the judgment or proceeding under the seal of the clerk of court or of the administrative agency that entered the judgment or proceeding is admissible into evidence without further authentication and constitutes prima facie evidence of the contents of that judgment or proceeding.
3. The board shall keep a record of all of its proceedings in the matter of suspending, revoking, or refusing licenses or permits together with the evidence offered.

43-05-16.1. Forms of disciplinary action - Dates - Automatic suspensions - Reissuance.

When the board finds, pursuant to chapter 28-32, that a podiatrist has violated this chapter or a rule of the board, the board may do one or more of the following:

1. Revoke the license or permit.
2. Suspend the license or permit.
3. Institute probation with or without any of the following terms:
   a. Impose limitations or conditions on the podiatrist's practice of podiatric medicine.
   b. Impose retraining or rehabilitation requirements.
   c. Require practice under supervision.
   d. Condition the continued practice on demonstration of knowledge or skills by an appropriate examination or other review of skill and competence.

4. Impose a civil penalty not exceeding ten thousand dollars for each violation, the amount of the civil penalty fixed so as to deprive the podiatrist of any economic advantage gained by the violation or to reimburse the board for attorney's fees and the cost of the investigation and proceeding.
5. Order the podiatrist to provide unremunerated professional service under supervision at a designated public hospital, nursing home, clinic, or other health care facility or institution.
6. Reprimand the podiatrist.
7. Censure the podiatrist.
8. Send the podiatrist a letter of concern.

43-05-16.2. Suspension or revocation of license.

1. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend the license or permit of a podiatrist if the board finds as a matter of probable cause based on verified evidence that the podiatrist has violated this chapter or a rule of the board and that continued practice by the podiatrist would create or be likely to result in a serious and imminent risk of harm to the public. The ex parte temporary suspension order is effective upon written notice to the podiatrist, specifying the law or rule violated. The ex parte temporary suspension remains in effect until the board issues a final order in the matter after a hearing unless otherwise ordered by a district court. When the board issues the ex parte temporary suspension notice, the board shall schedule a disciplinary hearing to be held pursuant to chapter 28-32. The hearing must be scheduled to begin no later than sixty days after the issuance of the ex parte temporary suspension. Within three days after the issuance of the ex parte suspension order, the board shall serve the podiatrist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing. The podiatrist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of this appeal, the district court shall decide whether probable cause reasonably requires the temporary suspension to adequately protect the public interests. The court shall give priority to the appeal for prompt disposition thereof. Unless ordered by the district court, an appeal by the podiatrist of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary suspension.
2. A suspension, revocation, condition, limitation, qualification, or restriction of a license or permit is in effect pending determination of an appeal unless the court, upon petition and for good cause shown, otherwise orders.
3. A license or permit to practice podiatric medicine is automatically suspended if a guardian of the person of a licensee or permittee is appointed by order of a court under chapter 30.1-28 or other similar provisions in this state or elsewhere for reasons other than the minority of the licensee or permittee, or the licensee or permittee is committed by order of a court under chapter 25-03.1 or other similar provisions of law in this state or elsewhere. The license or permit remains suspended until the licensee or permittee is restored to capacity by a court and, upon petition by the licensee or permittee, the suspension is terminated by the board after a hearing.
4. The board may restore and reissue a license or permit to practice podiatric medicine and may impose as a condition of the license or permit any disciplinary or corrective measure.
5. The board may revoke the license of any podiatrist who fails to renew a license. A revocation may occur after six months from the date when all renewal fees and other conditions must be paid or completed and be in effect before any hearing upon written notice to the podiatrist of the revocation. A hearing must be held within sixty days of the service of the notice of revocation upon the podiatrist.

43-05-16.3. Powers of the board - Podiatrist cooperation.

1. In investigating a podiatrist under this section, the board may subpoena the podiatrist and medical records relating to the practice of the podiatrist under investigation. The

confidentiality of the subpoenaed records under any other law does not affect the validity of the board's subpoena nor the admissibility of the records in board proceedings; however, the proceedings and records of the board which are exempt from subpoena, discovery, or introduction into evidence under chapter 23-34 are not subject to this subsection. Records of the board which are medical records subpoenaed under this subsection are confidential.

2. A podiatrist or applicant for license under this chapter who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by the board relating to the subject of the investigation and providing copies of patient medical records or other documentation to assist the board in its investigation. The board shall pay for the copies requested. Except in the case of subpoenaed records, if the board does not have written consent from a patient permitting access to the patient's records, the podiatrist or applicant for license shall delete any data in the record that identifies the patient before providing the record to the board.
3. The board may subpoena witnesses relating to the practice of any podiatrist under investigation.
4. The board may employ independent investigators when necessary.
5. The board may hold confidential conferences with any complainant or podiatrist with respect to any complaint.
6. If the board determines a violation of section 43-05-16 may have occurred, the board may issue a formal complaint against a licensed podiatrist.

43-05-16.4. Mental examination - Access to medical data.

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or an addiction evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or an addiction examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or an addiction evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

43-05-16.5. Reporting obligations.

1. A person who has knowledge of any conduct constituting grounds for discipline under this chapter shall report the violation to the board.
2. A hospital, clinic, or other health care institution, facility, or organization shall report to the board any action taken by the hospital, clinic, or other health care facility, institution, or organization to revoke, suspend, restrict, or condition a podiatrist's privilege to practice or treat patients in the hospital, clinic, or other health care facility or institution, or as part of the organization, any denial of privileges or any other disciplinary action. The hospital, clinic, or other health care facility, institution, or organization shall also report the resignation of any podiatrist before the conclusion of any disciplinary proceeding or before the commencement of formal charges but after the podiatrist had knowledge that formal charges were contemplated or in preparation. No report is required of a podiatrist voluntarily limiting practice at a hospital if the podiatrist notifies all hospitals at which the podiatrist has privileges of the voluntary limitation and the reasons for it.
3. Four times a year, as prescribed by the board, each insurer providing professional liability insurance to podiatrists shall submit to the board a report concerning any podiatrist against whom podiatric medical malpractice settlements or awards have been made. The report must contain at least the following information:
   a. The total number of podiatric malpractice settlements or awards made to the plaintiff.
   b. The date the podiatric malpractice settlements or awards to the plaintiff were made.
   c. The allegations contained in the claim or complaint leading to the settlements or awards made to the plaintiff.
   d. The dollar amount of each podiatric malpractice settlement or award.
   e. The regular address of the practice of the podiatrist against whom an award was made or with whom a settlement was made.
   f. The name of the podiatrist against whom an award was made or with whom a settlement was made.

   In addition, the insurance company shall report to the board any information it has that tends to substantiate a charge that a podiatrist may have engaged in conduct prohibited under this chapter.
4. The clerks of court of the district courts or any other court of competent jurisdiction shall report to the board any judgment or other determination of the court that adjudges or includes a finding that a podiatrist is mentally ill; mentally incompetent; chemically dependent; guilty of a felony; guilty of a violation of federal or state narcotics laws or controlled substances acts; guilty of an abuse or fraud under Medicare, Medicaid, or medical assistance laws or rules; appoints a guardian of the podiatrist; or provides for the civil commitment of a podiatrist.
5. Reports required by this section must be submitted no later than thirty days after the occurrence of the reportable event or transaction. The board may provide forms for the submission of reports required by this section, may require that reports be submitted on the forms provided, and may adopt rules necessary to assure prompt and accurate reporting.

43-05-16.6. Board immunity and privileged communications.

1. No member of the board, its committees, its employees, or its staff is liable for civil damages or subject to criminal prosecution for any action undertaken or performed within the scope of the functions of the board when acting without malice or gross negligence and in the reasonable belief the action was warranted.
2. Every communication, oral or written, made by or on behalf of any person, institution, agency, or organization to the board or to any person designated by the board to investigate or otherwise hear matters relating to any disciplinary action, is privileged. No action or proceeding, civil or criminal, is permitted against any person, institution, agency, or organization for submitting a report to the board under section 43-05-16.5.

For any report or communication not required by section 43-05-16.5, no action or proceeding, civil or criminal, is permitted against a person, institution, agency, or organization, except upon proof that the communication or report was made with malice.

3. The protections afforded in this section do not prohibit a respondent or a respondent's legal counsel from exercising the respondent's constitutional right of due process under the law, or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.

43-05-16.7. Costs of prosecution - Disciplinary proceedings.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a podiatrist, the board may direct the podiatrist to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the podiatrist's license may be suspended until the costs are paid to the board.

43-05-16.8. Loan for litigation expenses.

Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorney's fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. Notwithstanding section 43-05-15, the board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid, including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed one thousand five hundred dollars. Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. The notice of a proposed rule to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32.

43-05-17. Penalty.

A person violating any provision of this chapter for which another penalty is not provided is guilty of a class B misdemeanor. In addition, the civil remedy of injunction is available to the board to restrain and enjoin any violation of this chapter without the need to prove actual damages to any person.