**RRC STAFF OPINION**

*Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.*

AGENCY: N.C. BOARD OF PODIATRY EXAMINERS

RULE CITATION: 21 NCAC 52 .0206

RECOMMENDED ACTION:

Approve, but note staff’s comment

X Object, based on:

Lack of statutory authority

Unclear or ambiguous

X Unnecessary

Failure to comply with the APA

Extend the period of review

COMMENT:

*This rule is unnecessary and reflects internal action. G.S. 143b-10(j)(3)specifies that such policies are internal matters and “shall not be adopted or filed“ as rules under G.S. 150B. This “rule” neither requires the applicant to take any action nor forbids the applicant from taking any action. To the extent that it binds the board or the agency it seems to bind them to act with common sense and take the steps an occupational licensing agency would be expected to take in issuing any license to practice that occupation. That is unnecessary and does not help the applicant.*

§ 143B‑10.  Powers and duties of heads of principal departments.

(a) …

(j)         Departmental Rules and Policies. – The head of each principal State department and the Director of the Office of State Personnel may adopt:

(1)        Rules consistent with law for the custody, use, and preservation of any public records, as defined in G.S. 132‑1, which pertain to department business;

(2)        Rules, approved by the Governor, to govern the management of the department, which shall include the functions of planning, organizing, staffing, directing, coordinating, reporting, budgeting, and budget preparation which affect private rights or procedures available to the public;

(3)        Policies, consistent with law and with rules established by the Governor and with rules of the State Personnel Commission, which reflect internal management procedures within the department. These may include policies governing the conduct of employees of the department, the distribution and performance of business and internal management procedures which do not affect private rights or procedures available to the public and which are listed in (e) of this section. Policies establishing qualifications for employment shall be adopted and filed pursuant to Chapter 150B of the General Statutes; all other policies under this subdivision shall not be adopted or filed pursuant to Chapter 150B of the General Statutes*.(Emphasis Added)*

Rules adopted under (1) and (2) of this subsection shall be subject to the provisions of Chapter 150B of the General Statutes.

This subsection shall not be construed as a legislative grant of authority to an agency to make and promulgate rules concerning any policies and procedures other than as set forth herein. (1973, c. 476, s. 10; c. 1416, ss. 1, 2; 1977, 2nd Sess., c. 1219, s. 46; 1983, c. 76, ss. 1, 2; c. 641, s. 8; c. 717, s. 78; 1985 (Reg. Sess., 1986), c. 955, ss. 97, 98; 1987, c. 738, s. 147; c. 827, s. 1; 1991 (Reg. Sess., 1992), c. 1038, s. 15; 2006‑203, s. 101.)