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State of Florida
COMMISSION ON ETHICS
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"A Public Office is a Public Trust"

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MEMORANDUM

TO: Commission Members
FROM: Gray Schafer, Assistant General Counsel 
DATE: August 28, 2024
RE: Rule Hearing on amendments to Chapter 34-17

The Commission is being asked to consider and approve rulemaking involving a necessary update to two rules found in Chapter 34-17, Florida Administrative Code (F.A.C.). The rule amendments have been duly noticed and materials have been provided to the Joint Administrative Procedures Committee.

This rulemaking is intended to update certain rules regarding the referral process at the Commission on Ethics, and will reflect recent changes made by Ch. 2024-253, Laws of Florida. The updates are necessary to implement statutory amendments made by the law to Section 112.324, Florida Statutes. The particular amendments in question will take effect October 1, 2024. Rulemaking authority for these changes is found in Section 112.322(9), Florida Statutes, which allows the Commission "to make such rules not inconsistent with law" regarding its practices and procedures. (emphasis added).

In particular, Ch. 2024-253 amended Section 112.324 to remove the requirement that at least six members of the Commission must determine an allegation in a referral to be legally sufficient to indicate an ethics violation before it can be investigated. The law was also amended to require the Commission to transmit a copy of the referral to the alleged violator within 5 days of receipt. The rules need to be updated to reflect these changes.

First, Rule 34-17.004, which concerns how Commission staff should procedurally handle a referral once it is received, needs to be updated to reflect that a copy of the referral needs to be sent to the respondent (i.e., the "alleged violator") within 5 days. This language will be inserted into Rule 34-17.004(2), and will require the subsequent subsection to be renumbered.

Second, Rule 34-17.005, which concerns how the Commission's Executive Director needs to review a referral upon receipt for legal sufficiency, needs to be updated to remove any indication that the Commission must approve an investigation. Subsection (1) of the Rule will remove any reference to the Executive Director making a "recommendation" concerning legal sufficiency, as the Executive Director can now find a complaint legally sufficient on their own. Subsection (2) of the Rule will remove any language indicating a six-member majority of the Commission must approve a referral for investigation, meaning the Rule will now indicate that an investigation can be conducted if the Executive Director on their own finds the allegations sufficient for investigation. And Subsection (3) of the Rule will adjust language concerning how a referral should be treated if it is legally insufficient. In particular, Subsection (3) will now parallel language used in Rule 34-5.002(3), which addresses how ethics complaints should be handled when they are legally insufficient. The changes to Subsection (3) are not substantive; its language is simply being rephrased.

The Notice of Proposed Rulemaking and the text of the proposed amended rules are attached. You will be asked to approve this proposed rulemaking at your September 13, 2024, Commission meeting.

Attachments

(5) No change.

(6) No change.

~~Rulemaking Authority 112.322(9) FS, Law Implemented 112.317(7)(8), 112.322, 112.324 FS. History—New 2-16-95, Amended 7-28-98, 7-30-00, 9-4-12, _____.~~

~~NAME OF PERSON ORIGINATING PROPOSED RULE:
Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864.~~

~~NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerrie J. Stillman, Executive Director, Florida Commission on Ethics~~

~~DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2024~~

~~DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 14, 2024~~

COMMISSION ON ETHICS

RULE NOS.:	RULE TITLES:
34-17.004	Staff Procedures upon Receipt of a Referral
34-17.005	Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation

PURPOSE AND EFFECT: This rulemaking is intended to update certain rules within Chapter 34-17, F.A.C., to reflect amendments made by Ch. 2024-253, Laws of Florida, to Section 112.324, Florida Statutes. These statutory changes become effective on October 1, 2024. The effect of the change, all of which are in accordance with the statutory amendments, will be to set a timeline for the Commission to send a copy of a referral to a respondent, to allow the Commission's Executive Director to order that a referral be investigated, and to clarify the procedure if a referral is not found legally sufficient for investigation.

SUMMARY: Rule 34-17.004(2) will be amended to reflect that the Commission's staff must send a copy of a referral concerning a violation of a prohibition over which the Commission has jurisdiction to the alleged violator within 5 days of its receipt. Rule 34-17.005(2) will be amended to remove the requirement that at least six Commissioners must find a referral legally sufficient in order for it to be investigated. This subsection also will be updated to reflect that a referral can be investigated if the Commission's Executive Director finds it to be legally sufficient. And Rule 34-17.005(3) will be amended to reflect that if the Executive Director does not find a referral legally sufficient for investigation, the Commission must approve that finding during executive session.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly

regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: considering that these changes pertain only to the internal processes of the Commission (i.e., the procedural handling of an ethics referral and the manner in which the Commission internally reviews and chooses to investigate a referral), the adverse impact or regulatory cost, if any, do not exceed and would not be expected to exceed any one of the economic criteria set forth in Section 120.541(2)(a), FS.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 112.322(9), FS.

LAW IMPLEMENTED: 112.324, FS. (as amended by Ch. 2024-253, Laws of Fla.)

A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 13, 2024, 8:30 a.m.

PLACE: First District Court of Appeal, Third Floor Courtroom, 2000 Drayton Drive, Tallahassee, Florida.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting: Diana Westberry, Office Manager, Florida Commission on Ethics, (850)488-7864. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864.

THE FULL TEXT OF THE PROPOSED RULE IS:

34-17.004 Staff Procedures Upon Receipt of a Referral.

(1) No change.

(2) A copy of the original referral shall be transmitted to the respondent by Commission staff within five (5) days of its receipt.

(3)(2) No change.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended _____.

34-17.005 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation.

(1) The referral shall be reviewed by the Executive Director in order to ~~determine~~ make a recommendation of whether or not it is sufficient to allege a breach of public trust or a violation of Chapter 112, Part III, F.S. A referral shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Executive Director may request additional information from the referring agency and may obtain information from public records.

(2) If the Executive Director finds believes that the referral is sufficient to invoke the jurisdiction of the Commission, a ~~written recommendation will be considered by the Commission in executive session. If at least six members of the Commission find that the referral is legally sufficient,~~ an order to investigate the referral shall be entered and transmitted to the Respondent within five (5) days of the Commission's determination.

(3) If the Executive Director finds recommends that the referral is not legally sufficient to invoke the jurisdiction of the Commission, the referral shall be brought before the Commission in executive session with the recommendation of the Executive Director and that it should not be investigated, ~~the recommendation will be considered by the Commission in executive session.~~ If a majority of the Commission accepts the Executive Director's recommendation that the referral is not legally sufficient, the referral shall be dismissed and the referring agency and the respondent will be notified of the dismissal. A summary of the reasons for dismissing the referral together with the referral itself and all documents related thereto shall become a public record and constitute a public report.

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History--New 11-24-13, Amended _____.

NAME OF PERSON ORIGINATING PROPOSED RULE:
Gray Schafer, Assistant General Counsel, Florida Commission on Ethics, (850)488-7864.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Kerrie J. Stillman, Executive Director, Florida Commission on Ethics

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 14, 2024

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 14, 2024

DEPARTMENT OF HEALTH

Board of Pharmacy

RULE NO.: 64B16-26.2031 RULE TITLE: Licensure by Examination (Non-U.S. Graduates); Application

PURPOSE AND EFFECT: The Board proposes the rule amendment to update language regarding the examination required for non-U.S. graduates.

SUMMARY: Language regarding the examination required for non-U.S. graduates will be updated.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein. During discussion of the economic impact of this rule at its Committee meetings and Board meetings, the Board, based upon the expertise and experience of its members, determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 456.013(1), 465.005 FS.

LAW IMPLEMENTED: 456.013(1), 456.025(3), 456.0635, 465.007(1) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Kelly Rogers, Executive Director, Board of Pharmacy, 4052 Bald Cypress Way, Bin C08, Tallahassee, Florida 32399-3258 or by email at info@Floridaspharmacy.gov.

THE FULL TEXT OF THE PROPOSED RULE IS:

64B16-26.2031 Licensure by Examination (Non-U.S. Graduates); Application.

In order for a foreign pharmacy graduate to be admitted to the professional licensure examination, the applicant must be a

34-17.004 Staff Procedures Upon Receipt of a Referral.

(1) No change.

~~(2) A copy of the original referral shall be transmitted to the respondent by Commission staff within five (5) days of its receipt.~~

~~(3)(2) No change.~~

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended _____.

34-17.005 Review for Sufficiency of Allegations of Breach of Public Trust and Order of Preliminary Investigation.

(1) The referral shall be reviewed by the Executive Director in order to determine ~~make a recommendation~~ of whether or not it is sufficient to allege a breach of public trust or a violation of Chapter 112, Part III, F.S. A referral shall not be insufficient because it is based upon evidence which would be hearsay evidence in a court of law. In order to make this determination, the Executive Director may request additional information from the referring agency and may obtain information from public records.

~~(2) If the Executive Director finds believes that the referral is sufficient to invoke the jurisdiction of the Commission, a written recommendation will be considered by the Commission in executive session. If at least six members of the Commission find that the referral is legally sufficient, an order to investigate the referral shall be entered and transmitted to the Respondent within five (5) days of the Commission's determination.~~

~~(3) If the Executive Director finds recommends that the referral is not legally sufficient to invoke the jurisdiction of the Commission, the referral shall be brought before the Commission in executive session with the recommendation of the Executive Director and that it should not be investigated, the recommendation will be considered by the Commission in executive session. If a majority of the Commission accepts the Executive Director's recommendation that the referral is not legally sufficient, the referral shall be dismissed and the referring agency and the respondent will be notified of the dismissal. A summary of the reasons for dismissing the referral together with the referral itself and all documents related thereto shall become a public record and constitute a public report.~~

Rulemaking Authority 112.322(9) FS. Law Implemented Art. II, Section 8, Fla. Const., 112.322, 112.324 FS. History—New 11-24-13, Amended _____.