Chapter 435

1963 REPLACEMENT PART

Contraceptives

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CROSS REFERENCES

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Advertising cures for venereal diseases, 434.250 to 434.270

435.010 Advertisement and dispensation of contraceptives prohibited without license; exceptions. (1) No appliances, drugs or medicinal preparations intended or having special utility for the prevention of conception or venereal diseases, or both, shall be advertised, displayed, sold or otherwise disposed of in this state without a license issued by the State Board of Pharmacy, as provided in this chapter, which licenses shall be in addition to other licenses required by law.

(2) The prohibitions of subsection (1) of this section do not apply to:

(a) Physicians and medical practitioners regularly licensed to practice medicine or osteopathy in this state by the State Board of Medical Examiners.

(b) Advertisements in periodicals, the circulation of which is substantially limited to physicians and the drug trade.

435.020 Kinds of licenses; display. (1) The following two types of licenses shall be issued by the State Board of Pharmacy under this chapter:

(a) Wholesale licenses.

(b) Retail licenses.

(2) The licenses shall be in writing and one such license shall be obtained by the licensee for each store, loft or salesroom from which sales are to be made. Such licenses shall not be publicly or conspicuously displayed, but they shall be at any time exhibited by the licensee or holder thereof to any peace officer, health officer or other authorized person who shall demand an inspection thereof.

435.030 Wholesale licenses; to whom issued; sales authorized. (1) Wholesale licenses shall be issued only to wholesale druggists, wholesale drug sundries jobbers, surgical supply houses, distributors or to manufacturers of the appliances, drugs or medicinal preparations mentioned in ORS 435.010.

(2) A wholesale license authorizes sales only to those persons holding licenses to sell under this chapter or to physicians and medical practitioners, as provided in ORS 435.010.

435.040 Retail licenses; to whom issued; sales authorized. Retail licenses shall be issued only to retail drug stores operated by or employing one or more registered pharmacists. Sales thereunder shall be made only from the prescription counter of such drug stores and only by a registered pharmacist. No articles of the class specified in ORS 435.010 shall be sold, offered for sale or given away through the medium of any vending machine, or by any house to house or street solicitation.

435.050 License application; fees; duration. (1) All licenses shall be issued by the State Board of Pharmacy on written application and payment of an annual license fee of $50 for each wholesale license and $3 for each retail license.

(2) Each licensee shall obtain as many licenses and pay the fee prescribed in subsection (1) of this section for each license required where the sales are to be made from more than one store or salesroom.

(3) Licenses shall be in effect for one year from January 1 of each year.

[Amended by 1963 c.96 §2]

435.060 Procedure for revocation of licenses and seizure of equipment. (1) The State Board of Pharmacy may revoke any license for violation of this chapter by notice in writing to the holder of such license, stating specifically the reasons for revocation.

(2) The board shall transmit a copy of such revocation to the Attorney General, who shall thereupon instruct the sheriff of the county in which such licensee is doing business thereunder:

(a) To seize the written license.

(b) To seize any vending machine, advertising or display matter which constitutes a violation of this chapter, and any appliances, drugs and medicinal preparations embraced within the scope of the goods described in ORS 435.010 found in the establishment of the licensee.

(c) To impound the seized articles pending a reasonable opportunity for judicial review according to law by the affected party of the revocation and seizure in question.

435.070 Procedure for appeal of revocation and seizure orders. (1) A licensee may, within 30 days from the date of the service of notice of revocation, appeal to the circuit court of the county in which the licensee is doing business under the license for a review of the action of the State Board of Pharmacy in revoking his license and of the action of the sheriff in making a seizure thereunder.

(2) The appeal shall be taken by filing in the circuit court a copy of the notice of revocation and a denial or statement in

writing and sworn to by the licensee putting in issue such facts in connection therewith as the licensee may desire to dispute or put in controversy. A copy of this sworn statement shall be served upon the State Board of Pharmacy by the licensee at the time of filing the same.

(3) The court may then proceed to hear and dispose of the matter in a summary manner upon such testimony and evidence as the licensee and the State Board of Pharmacy, the Attorney General or the district attorney of the county in question shall offer.

(4) If the court finds that the action of the State Board of Pharmacy in revoking such license or in making such seizure was without sufficient grounds, it shall order the license to be reinstated and the property seized to be restored. If the court finds that the licensee has been guilty of a violation of this chapter and that the revocation of license was justifiable, the property seized shall be ordered by the court to be destroyed and the sheriff shall carry out such order.

435.080 Publication of licensing regulations. The State Board of Pharmacy shall prepare, print and distribute rules and regulations not inconsistent with law, for the conduct of proceedings for the issue, enforcement and revocation of the license provided in this chapter.

435.090 Requirements regarding identification, standards and other information on contraceptives. (1) Goods of the class specified in ORS 435.010 shall be sold at wholesale or at retail in this state only if they:

(a) Specifically identify the manufacturer and the distributor thereof by firm name and address on the appliance and on the container in which the goods are sold or are intended to be sold.

(b) Comply with the standards as to such goods, respecting grade and quality, which may be prescribed by the State Board of Pharmacy and approved by the State Board of Health.

(2) Relative to mechanical prophylactics, which includes diaphragms, rubbers and skins, each individual diaphragm, rubber and skin manufactured for sale in Oregon must bear the name and address of the manufacturer and distributor, date of manufacture and brand name.

435.100 Promulgation of standards; rules and regulations regarding enforcement. The State Board of Pharmacy may adopt and promulgate from time to time and have jurisdiction over the establishing of such standards relating to and governing the articles and medicinal preparations mentioned in ORS 435.010 as may be deemed necessary by the board in the interest of disease prevention. The board may adopt all necessary and reasonable rules and regulations to enforce and carry out the provisions of this chapter in cooperation with the State Board of Health.

435.110 Display and advertising of contraceptives prohibited; exceptions. (1) No person shall:

(a) Display or expose for sale any of the articles described in ORS 435.010 or any containers or packages containing or advertising the same.

(b) Publicly advertise the sale or uses of the articles described in ORS 435.010 on any placards, billboards, handbills, newspapers, periodicals, signs or other printed matter or by radio.

(2) The prohibition of subsection (1) of this section respecting advertising shall not apply to medical and drug publications, the circulation of which is confined substantially to physicians and the drug trade, or to literature enclosed in or around the original package.

435.120 Apportionment and disposition of fines and license fees. All costs collected from offenders convicted under this chapter and one-half of all fines collected from such offenders, shall be retained by the county in which the conviction takes place. The remaining half of such fines, less necessary prosecution costs, shall be remitted by the county clerk forthwith upon payment thereof into his hands, to the State Board of Pharmacy, to be paid by it into the General Fund of the state. All license fees collected under this chapter and the share of fines to be paid to the board under this section shall be retained and used by the board in carrying out and enforcing this chapter, except as provided in this section.

435.130 Jurisdiction over prosecutions. Justices of the peace and district courts have concurrent jurisdiction with the circuit courts over all violations of this chapter.

435.140 to 435.980 [Reserved for expansion]

435.990 Penalties. Violation of any of the provisions of this chapter is punishable, upon conviction, by a fine not to exceed $200 or imprisonment in a county jail for not exceeding 60 days, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel