

# Chapter 435

## 1973 REPLACEMENT PART

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### CROSS REFERENCES

Administrative procedures governing state agencies, Ch. 183	Birth control information, physicians providing to minors, 109.640
Advertising and distributing of cures for venereal diseases, 434.250 to 434.270	435.010 to 435.130
	Moneys deposited in Health Division Account, used for enforcement and administration, 689.596

**CONTRACEPTIVES; CONDOMS**

**435.010 License required for sale of contraceptives; exception.** (1) No appliances, drugs or medicinal preparations intended or having special utility for the prevention of conception or venereal diseases, or both, shall be displayed, sold or otherwise disposed of in this state without a license issued by the State Board of Pharmacy, as provided in ORS 435.010 to 435.130, 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 licensed medical practitioners as defined in subsection (7) of ORS 689.010.

[Amended by 1969 c.328 §1]

**435.020 Types of licenses; application; display.** (1) The following four types of licenses shall be issued by the State Board of Pharmacy under ORS 435.010 to 435.130:

- (a) Wholesale licenses.
- (b) Retail pharmacy licenses.
- (c) Manufacturing licenses.
- (d) Vendor license.

(2) The license application shall be made in writing on a form prescribed and furnished by the board and one such license shall be obtained for each wholesaler, manufacturer, retail pharmacy or vendor from which sales are to be made. Such licenses shall be publicly or conspicuously displayed, and open to inspection by the board or other authorized persons.

[Amended by 1969 c.328 §2; 1973 c.104 §5]

**435.030 Wholesale and manufacturer license.** (1) Wholesale and manufacturer licenses shall be issued only to persons authorized to sell or distribute the appliances, drugs or medicinal preparations mentioned in ORS 435.010.

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

[Amended by 1969 c.328 §3]

**435.035 Vendor licenses for sale of condoms.** Vendor licenses shall be issued to applicants therefor upon payment of the fee established under ORS 435.050. A vendor license authorizes its holder to sell condoms and such other products as are determined by the Health Division to be efficacious in the prevention or control of venereal disease by vending machine in other than licensed

pharmacies. Vendor licenses are not transferable.

[1973 c.104 §2]

**435.040 Retail licenses; sales authorized.**

(1) Retail pharmacy licenses shall be issued only to licensed pharmacies.

(2) No articles of the class specified in ORS 435.010, except condoms and such other products as are determined by the Health Division to be efficacious in the prevention or control of venereal disease, shall be sold, offered for sale or given away through the medium of any vending machine.

(3) No articles of the class specified in ORS 435.010 shall be sold, offered for sale or given away by any house to house or street solicitation.

[Amended by 1969 c.328 §4; 1973 c.104 §6]

**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 \$5 for each retail license.

(2) Each licensee shall obtain as many licenses and pay the fee prescribed in subsection (1) of this section or the fee established pursuant to subsection (4) of this section for each license required where the sales are to be made from more than one store or salesroom or from more than one vending machine.

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

(4) The state board shall establish the fees for vendor licenses in amounts necessary to fund the inspection program required by ORS 435.105.

[Amended by 1963 c.96 §2; 1967 c.183 §1; 1973 c.104 §4]

**435.060 Revocation of licenses and seizure of equipment.** (1) Notwithstanding ORS 183.310 to 183.500, the State Board of Pharmacy may revoke any license for violation of ORS 435.010 to 435.130 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 and any appliances, drugs and medicinal preparations included 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.

[Amended by 1969 c.328 §5; 1971 c.734 §49]

**435.070 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 ORS 435.010 to 435.130 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 ORS 435.010 to 435.130.

**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 Health Division.

(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 ORS 435.010 to 435.130 in cooperation with the Health Division.

**435.105 Inspection program of premises and certain stock of vendors.** In lieu of its own inspection program, the State Board of Pharmacy may enter into an agreement with the Health Division or a county or district board of health. The agreement shall authorize the Health Division or the board to make inspections of the premises and condom stock of holders of vendor licenses. The agreement shall include authority to enforce applicable rules of the State Board of Pharmacy and such rules shall be considered rules of the Health Division or the county or district board of health.

[1973 c.104 §3]

**435.110 Display of contraceptives prohibited; advertising regulations.** (1) No person shall display or expose for sale any of the articles described in ORS 435.010.

(2) No person shall advertise the articles described in ORS 435.010 in a manner that is not discreet and tasteful.

[Amended by 1969 c.328 §6]

**435.120 Disposition of fines and license fees.** All costs collected from offenders convicted under ORS 435.010 to 435.130 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 ORS 435.010 to 435.130 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 ORS 435.010 to 435.130, 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 ORS 435.010 to 435.130.

### FAMILY PLANNING AND BIRTH CONTROL

**435.205 Family planning and birth control services by public agencies.** (1) The Department of Human Resources and every county health department shall offer family planning and birth control services within the limits of available funds. Both agencies jointly may offer such services. The Director of Human Resources may designate which divisions shall initiate and conduct discussions of family planning with each person who might have an interest in and benefit from such service. The Department of Human Resources through its divisions shall furnish consultation and assistance to county health departments.

(2) Family planning and birth control services may include interview with trained personnel; distribution of literature; referral to a licensed physician for consultation, examination, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, the initial supply of a drug or other medical preparation, contraceptive devices and similar products.

(3) Any literature, charts or other family planning and birth control information offered under this section in counties in which a significant segment of the population does not speak English shall be made

available in the appropriate foreign language for that segment of the population.

(4) In carrying out its duties under this section, and with the consent of the county governing body, any county health department may adopt a fee schedule for services provided by the department. The fees shall be reasonably calculated not to exceed costs of services provided and may be adjusted on a sliding scale reflecting ability to pay.

(5) The county health department shall collect fees according to the schedule adopted under subsection (4) of this section. Such fees may be used to meet the expenses of providing the services authorized by this section.

[1967 c.491 §1, 2; 1971 c.396 §1; 1971 c.779 §65; 1973 c.253 §1]

**435.215 Right to refuse services protected.** The refusal of any person to accept family planning and birth control services shall in no way affect the right of such person to receive public assistance or to avail himself of any other public benefit and every person to whom such services are offered shall be so advised initially both orally and in writing. Employees engaged in the administration of ORS 435.205 to 435.235 shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual and nothing in ORS 435.205 to 435.235 shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family planning and birth control services.

[1967 c.491 §3; 1971 c.779 §66]

**435.225 Refusal by employe to offer services.** Any employe of the Public Welfare Division may refuse to accept the duty of offering family planning and birth control services to the extent that such duty is contrary to his personal or religious beliefs. However, such employe shall notify his immediate supervisor in writing of such refusal in order that arrangements may be made for eligible persons to obtain such information and services from another employe. Such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in his employment, or for suspension from employment, or for any loss in pay or other benefits.

[1967 c.491 §4; 1971 c.779 §67]

**435.235 Construction of ORS 435.205 to 435.235.** ORS 435.205 to 435.235 shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs, to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to insure a complete freedom of choice in pursuance of his constitutional rights.  
[1967 c.491 §5]

### VOLUNTARY STERILIZATION

**435.305 Voluntary sterilization authorized.** (1) A person may be sterilized by appropriate means upon his request and upon the advice of a physician licensed by the State Board of Medical Examiners.

(2) No physician or hospital may be held liable for performing a sterilization without obtaining the consent of the spouse of the person sterilized.

[1967 c.441 §15; 1969 c.31 §1; 1973 c.479 §1]

### ABORTION

**435.405 Definitions for ORS 435.405 to 435.495.** As used in ORS 435.415, 435.425, 435.455 and 435.465, unless the context requires otherwise:

(1) "Felonious intercourse" means acts constituting a crime under ORS 163.355, 163.365, 163.375 or 163.525.

(2) "Hospital" means a hospital licensed under ORS chapter 441 but not including nursing homes or convalescent homes.

(3) "Physician" means a person licensed to practice medicine by the Board of Medical Examiners for the State of Oregon.

[1969 c.684 §1; 1971 c.743 §370]

**435.415 Justifiable termination of pregnancy by physician.** (1) A physician is justified in terminating the pregnancy of an Oregon resident if he has reasonable grounds for believing that:

(a) There is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother;

(b) The child would be born with serious physical or mental defect; or

(c) The pregnancy resulted from felonious intercourse.

(2) In determining whether or not there is substantial risk under paragraph (a) of subsection (1) of this section, account may be taken of the mother's total environment, actual or reasonably foreseeable.

(3) A justifiable termination of a pregnancy shall be performed only by a physician in a hospital.

[1969 c.684 §3]

**435.425 Physicians' certificate; copy to district attorney under certain circumstances; presumption on failure to comply.** (1) No pregnancy shall be terminated unless two physicians who are neither related to each other by blood or marriage nor associated with each other in the practice of medicine have certified in writing the circumstances which they believe justify the termination. A signed copy of the certificate shall become part of the hospital record. However, no pregnancy shall be terminated after the 150th day of pregnancy except in accordance with ORS 435.445.

(2) When there is reason to believe that the pregnancy was the result of felonious intercourse, the administrator of the hospital shall send a copy of the certificate to the district attorney of the county where the hospital is located.

(3) Failure to comply with any of the requirements of this section gives rise to a rebuttable presumption that termination of the pregnancy was unjustified.

[1969 c.684 §4]

**435.435 Consent to termination required; effect of failure to consent.** (1) No pregnancy shall be terminated without the written consent of the pregnant woman and:

(a) The written consent of a parent who has custody or the guardian if the pregnant woman is an unmarried minor.

(b) The written consent of the guardian if the pregnant woman has been judicially declared a mentally incompetent person.

(c) The written consent of the husband if the pregnant woman is married and the husband and wife have been living together.

(2) Copies of the consents required under this section shall become part of the hospital record.

(3) The refusal of any person to consent to a termination of pregnancy or to submit thereto shall not be grounds for loss of any privilege or immunity to which the person is otherwise entitled nor shall consent to or submission to a termination of pregnancy be imposed as a condition to the receipt of any public benefits.

[1969 c.684 §§7, 12]

**435.445 Exception in emergency.** (1) Nothing in ORS 435.405 to 435.495, 465.110, 677.188 and 677.190 prevents a physician from terminating a pregnancy without complying with ORS 435.405 to 435.495, 465.110, 677.188 and 677.190 if the physician believes in good faith that:

(a) The life of the pregnant woman is in imminent danger; and

(b) There is insufficient time to comply with the requirements of ORS 435.405 to 435.495, 465.110, 677.188 and 677.190.

(2) A physician who terminates a pregnancy under subsection (1) of this section must report within 48 hours thereafter the termination to the appropriate committee of the hospital in which the termination occurred or to the Health Division if the termination occurred other than in a hospital. The report shall include his certification of the circumstances, conditions and reasons for which the pregnancy was terminated and the reasons why he was unable to comply with ORS 435.405 to 435.495, 465.110, 677.188 and 677.190.

[1969 c.684 §8]

**435.455 Prohibited acts.** (1) A person who purposely terminates the pregnancy of another for purposes other than delivery of a viable birth, unless justified under ORS 435.415, shall be punished upon conviction by imprisonment in the penitentiary for not more than 15 years or by a fine not exceeding \$5,000, or both.

(2) Except as justified under ORS 435.415, a person who induces or knowingly aids a woman to use instruments, drugs or violence upon herself for the purpose of terminating her pregnancy other than by viable birth shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

[1969 c.684 §2, 5]

**435.465 Effect of ORS 435.405 to 435.495 on sale of certain substances.** Nothing in ORS 435.405 to 435.425, 435.455 and this section applies to the prescription, administration or distribution of drugs or other substances for avoiding pregnancy, whether by preventing implantation of a fertilized ovum or by any other method that operates before, at or immediately after fertilization.

[1969 c.684 §6]

**435.475 Effect of ORS 435.405 to 435.495 on hospital admissions.** (1) Except as provided in subsection (3) of this section, no

hospital is required to admit any patient for the purpose of terminating a pregnancy pursuant to ORS 435.415. No hospital is liable for its failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purposes of terminating pregnancies as provided in ORS 435.415. However, the hospital must notify the person seeking admission to the hospital of its policy.

(2) All hospitals that have not adopted a policy not to admit patients seeking termination of a pregnancy under ORS 435.415 shall admit patients seeking such termination in the same manner and subject to the same conditions as imposed on any other patient seeking admission to the hospital.

(3) No hospital operated by this state or by a political subdivision in this state is authorized to adopt a policy of excluding or denying admission to any person seeking termination of a pregnancy under ORS 435.415. [1969 c.684 §9]

**435.485 Medical personnel not required to act under ORS 435.405 to 435.495.** (1) No physician is required to give advice with respect to or participate in any termination of a pregnancy as provided in ORS 435.415 if his refusal to do so is based on an election not to give such advice or to participate in such terminations and he so advises the patient.

(2) No hospital employe or member of the hospital medical staff is required to participate in any termination of a pregnancy as provided in ORS 435.415 if he notifies the hospital of his election not to participate in such terminations.

[1969 c.684 §§10, 11]

**435.495 Reports to Health Division.** (1) The Health Division shall require reports from hospitals at such intervals and in such form as the division may require to assist the division in determining the operation of ORS 435.405 to 435.495, 465.110, 677.188 and 677.190.

(2) Reports submitted under this section shall not disclose the names or identities of hospital patients.

[1969 c.684 §13]

## PENALTIES

**435.990 Penalties.** Violation of any of the provisions of ORS 435.010 to 435.130 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, Thomas G. Clifford, 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 November 1, 1973.

Thomas G. Clifford  
Legislative Counsel

