

# Chapter 436

## 1973 REPLACEMENT PART (1979 reprint)

### Sterilization For Social Protection

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### CROSS REFERENCES

Juveniles, medical treatment by order of court, 419.511  
Physicians employed by state participating in Medical Excess Liability Fund, 752.170

436.020  
State agencies, general provisions, Ch. 182

436.110  
Administrative procedures governing state agencies, 183.310 to 183.500



**436.010 Definitions.** As used in this chapter, "board" means the State Board of Social Protection. [Amended by 1967 c.441 §1]

**436.020 State Board of Social Protection; qualifications and appointment of members; compensation and expenses.** (1) There is established in the Health Division a State Board of Social Protection.

(2) The board shall be appointed by the Governor and shall be composed of:

(a) One physician member of the State Board of Health who is licensed by the State Board of Medical Examiners.

(b) One physician member from the faculty or staff of the University of Oregon Medical School who is licensed by the State Board of Medical Examiners.

(c) One member who is a clinical psychologist.

(d) One member who is licensed by the State Board of Medical Examiners and who specializes in psychiatry.

(e) One member who is engaged in social work.

(f) One member who is a member of a state-wide organization concerned with problems of mental deficiency.

(g) One other member.

(3) Persons appointed under paragraphs (c) to (f) of this subsection may be selected from panels of qualified persons whose names are submitted to the Governor by state-wide organizations representing the profession or interest specified in paragraphs (c) to (f) of this subsection.

(4) Members are entitled to compensation and expenses as provided in ORS 292.495.

[Amended by 1955 c.556 §1; 1955 c.660 §29; 1967 c.441 §4; 1969 c.314 §43; 1971 c.650 §16]

**436.025 Petition alleging person within jurisdiction of board.** Any two persons or any person licensed to practice medicine and surgery by the State Board of Medical Examiners may file a petition with the State Board of Social Protection alleging that any other person within the state is within the jurisdiction of the board as provided in subsection (1) of ORS 436.070. [1967 c.441 §3(1)]

**436.030** [Amended by 1955 c.651 §11; 1955 c.660 §30; 1961 c.173 §1; repealed by 1965 c.264 §12]

**436.035 Immunity of board members and petitioners from liability.** Any person filing a petition pursuant to ORS 436.025 and

the members of the board or any other person participating in or connected with a proceeding conducted pursuant to this chapter shall in no way be held criminally or civilly liable provided he acts in good faith, on probable cause and without malice. [1967 c.441 §3(2)]

**436.040** [Repealed by 1965 c.264 §1 (436.041 enacted in lieu of 436.040)]

**436.041 Notice of hearing to person or others; service on Public Defender.** (1) Following the filing of a petition pursuant to ORS 436.025, the board shall cause written notice to issue, signed by the chairman or secretary of the board setting forth the time and place where the board will hear and consider the matter of the sterilization of the person named in the notice. The notice shall state in clear and concise language the reason why it appears that such person should be examined for the purpose of sterilization, the type of sterilization recommended, and shall direct that the persons upon whom such notice is served shall appear and show cause, if any he has, why an order of sterilization should not be entered by the board. The original of the notice shall remain on file with the board and a copy of such notice certified by the chairman or secretary of the board as being a true copy of the original shall be delivered to the person to be examined or shall be served by registered mail not less than 20 days prior to the time of hearing specified in the notice and on the proper persons as designated in ORS 436.090 as for service of an order.

(2) In all cases a copy of the notice must be served on the Public Defender. [1965 c.264 §2 (enacted in lieu of 436.040); 1967 c.441 §5; 1971 c.734 §50]

**436.050 Hearing; order.** At a hearing held for that purpose the board shall consider the mental and physical condition, the personal records and the family history of a person examined by the board for purposes of sterilization, so far as the same can be ascertained. If, in the judgment of a majority of the board, procreation by such person would produce children described in ORS 436.070 and there is no probability that the condition of the person investigated and examined will improve to such an extent as to avoid such consequences, the board shall make an order embodying its conclusions with reference to such person. The order shall specify the type of sterilization deemed by the board best suited to the condition of the person. [Amended by 1961 c.173 §2; 1965 c.264 §3; part renumbered 436.055; 1967 c.441 §6]

436.055 [Formerly part of 436.050; repealed by 1967 c.441 §7 (436.056 enacted in lieu of 436.055)]

**436.056 Right to counsel; duty of Public Defender to represent person.** All persons appearing before the board for a hearing pursuant to ORS 436.050 shall be notified of their right to be represented by counsel. The Public Defender shall appear at all hearings conducted by the board pursuant to ORS 436.050 unless notified prior to any hearing that the person to be examined is represented by other counsel. The defender is authorized to represent all persons subject to a hearing under ORS 436.050 who are financially unable to secure counsel. The defender may act at the request of the person to be examined or, if no such request is made, at the request of the State Board of Social Protection. The Public Defender is authorized to represent such person and act as counsel in all proceedings had pursuant to the provisions of this chapter including final determination on appeal. [1967 c.441 §8 (enacted in lieu of 436.055)]

436.060 [Repealed by 1965 c.264 §4 (436.061 enacted in lieu of 436.060)]

**436.061 Subpena of witnesses and records; administration of oaths; effect of failure to comply.** The board may subpoena witnesses, including the person to be examined, and shall subpoena and compel the attendance of such witnesses as the person examined may reasonably designate and shall produce or require the production of any book or paper relating to the matter under investigation at any such proceeding. Any member of the board may administer an oath to any witness whom it is desired to examine. The subpoena shall be issued by the board and served in the same manner and with the same effect as subpoenas in criminal cases in the circuit court. If any person fails to comply with any subpoena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the board or of a designated representative of the board, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1965 c.264 §5 (enacted in lieu of 436.060); 1967 c.441 §9]

**436.070 Sterilization as protective measure.** (1) The investigation, findings and orders of the board under ORS 436.050,

436.056 and 436.080 shall be made with the purpose in view of avoiding the procreation of children:

(a) Who would have an inherited tendency to mental retardation or mental illness; or

(b) Who would become neglected or dependent children as a result of the parent's inability by reason of mental illness or mental retardation to provide adequate care.

(2) An order entered under ORS 436.050 is not a punitive measure. [Amended by 1965 c.264 §6; 1967 c.441 §10]

**436.080 Findings and orders.** After fully inquiring into the condition of each person reported, the board shall make separate written findings and conclusions for each person into whose condition it has examined, including its findings, conclusions and order thereon as provided in ORS 436.050 and 436.056. These shall be preserved in the records of the board and a copy thereof shall be furnished to the official who reported the case.

**436.090 Service of copy of order on person, counsel and guardian.** If an operation is deemed necessary by the board for any person investigated under ORS 436.050, 436.056 and 436.070, then a copy of the order of the board recommending an operation shall be forthwith served personally or by registered mail on:

(1) The person investigated;

(2) The Public Defender or the person's attorney; and

(3) The guardian of the person investigated, if any, or if he has no guardian, his spouse, if known, or his nearest known kin or personal friend in this state. [Amended by 1965 c.264 §7; 1967 c.441 §11; 1973 c.823 §138]

**436.100 Consent required for operation.** (1) If any person, whose condition has been examined and reported upon by the board and an order of sterilization has been made, as provided in this chapter, consents in writing to have the operation specified in the order of the board performed, the operation shall thereupon be performed upon such person by or under the direction of the chief medical officer of the institution in which he is confined, if such person is an inmate of Oregon State Hospital, F. H. Dammasch State Hospital, Eastern Oregon Hospital and Training Center, Fairview Hospital and Training Center or the Columbia Park Hospital and

Training Center, or under the direction of the superintendent of Oregon State Penitentiary, MacLaren School for Boys, Hillcrest School of Oregon, Oregon State Correctional Institution or any other like institution if he is an inmate of such institution. If he is not an inmate of any of those institutions, the operation shall be performed by a physician licensed by the Board of Medical Examiners for the State of Oregon who, in the judgment of the board, is deemed competent to perform the operation.

(2) All operations shall be performed with due regard for the physical condition of the person upon whom it is performed and in a safe and humane manner.

(3) If the person to be operated upon is mentally ill or mentally retarded, the consent under subsection (1) of this section shall be construed to mean not only the written consent of the person to be operated upon but, in addition thereto, the written consent of one of the following, in the order indicated:

(a) His guardian.

(b) His spouse, if known, or his nearest known kin or personal friend in this state, if he has no guardian.

(4) No consent of a mentally ill or mentally retarded person to have the operation, specified in the order of the board, performed shall be valid unless he is represented by counsel. [Amended by 1965 c.264 §8; 1967 c.441 §12; 1969 c.391 §12; 1973 c.823 §139; 1973 c.829 §51]

**436.110 Procedure for appeal from order; effect of failure to appeal.** (1) If, after an initial hearing and order of the board pursuant to ORS 436.010 to 436.100, consent to the performance of an operation is not given by the proper person as provided in this chapter, the person subject to the order may request a rehearing of the matter before the board as a contested case in accordance with ORS 183.310 to 183.500.

(2) The request for rehearing shall be made within 30 days from the date a copy of the order was served as provided in ORS 436.090, by serving a written notice upon the secretary of the board.

(3) Upon failure to request a rehearing in the manner and within the time provided in subsection (2) of this section, the order shall then be deemed valid, enforceable and conclusive upon all persons, and the order shall not thereafter be brought into question. Failure to request a rehearing shall be conclusively deemed the equivalent of consent to the per-

forming of an operation as required by the order, as though consent had been expressly given as provided in ORS 436.100. [Amended by 1965 c.264 §9; 1967 c.441 §13; 1971 c.734 §51]

**436.115 Procedure on request for rehearing.** (1) Upon receipt of a request for rehearing pursuant to ORS 436.110, an operation shall not be performed and the board shall issue a new notice the same as is required in ORS 436.041. Thereafter, the matter shall proceed anew in accordance with ORS 436.041 to 436.100 and this section provided that the hearing shall be conducted as a contested case pursuant to ORS 183.310 to 183.500 and chapter 734, Oregon Laws 1971.

(2) In a rehearing, an order of the board under ORS 436.050 shall be made in accordance with that section and ORS 183.310 to 183.500. [1971 c.734 §53]

**Note:** The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 436.115. Chapter 734, Oregon Laws 1971, enacted into law and amended ORS sections which may be found by referring to the 1971 Comparative Section Table located in volume 6A of Oregon Revised Statutes.

**436.120** [Amended by 1965 c.264 §10; 1967 c.441 §14; repealed by 1971 c.734 §21]

**436.125 Judicial review; effect of failure to seek review; extension of time of appeal.** (1) If, in a rehearing pursuant to ORS 436.110 and 436.115, consent to the performance of an operation is not given by the proper person as provided in ORS 436.100, the person subject to the order may seek judicial review of the order as provided for judicial review of a contested case under ORS 183.310 to 183.500.

(2) Upon failure to seek review in the manner and within the time provided in subsection (1) of this section and ORS 183.310 to 183.500, the order upon rehearing shall be deemed valid, enforceable and conclusive upon all persons, and the order shall not thereafter be brought into question. Failure to seek judicial review shall be conclusively deemed the equivalent of consent to the performing of an operation as required by the order, as though consent had been expressly given as provided in ORS 436.100. However, prior to the performance of such operation, the court may extend the time within which a petition for judicial review may be filed upon good cause shown if it appears to the court that the person's failure to timely file a petition was

not through his own inexcusable fault or neglect. [1971 c.734 §54]

**436.130** [Amended by 1965 c.264 §11; repealed by 1971 c.734 §21]

**436.140 Expenses of proceedings.** (1) Except as otherwise provided in this chapter, the state shall be liable only for the actual traveling expenses of the members of the board incurred in the performance of their duties, and the actual and necessary expense incident to the investigations of the board on appeal therefrom under this chapter.

(2) The members of the board shall serve without compensation.

**436.150 Interference with selection of physician or religious practices.** Nothing in this chapter shall be construed to authorize the board, or its representatives, or the superintendents of any of the institutions mentioned in ORS 436.030, or their representatives, to interfere in any manner with:

(1) The individual's right to select the physician of his choice, if such physician is, in the judgment of the board, competent to perform the operation.

(2) The practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means, if such practice, treatment or administration does not in any way interfere with the operation of this chapter and the carrying out of its purposes.

[Amended by 1973 c.829 §52]

#### 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,  
November 1, 1973.

Thomas G. Clifford  
Legislative Counsel