

Chapter 435

2017 EDITION

Birth Control; Termination of Pregnancy

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CONTRACEPTIVES; CONDOMS**435.010 License required for manufacture or 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 manufactured or sold at wholesale 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 practitioners as defined in ORS 689.005. [Amended by 1969 c.328 §1; 1977 c.328 §1; 1979 c.777 §47]

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

- (a) Wholesale licenses.
- (b) Manufacturing licenses.

(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 or manufacturer. 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; 1975 c.285 §1]

435.030 Wholesale and manufacturer license. 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. [Amended by 1969 c.328 §3; 1977 c.328 §2]

435.035 [1973 c.104 §2; repealed by 1975 c.285 §8]

435.040 [Amended by 1969 c.328 §4; 1973 c.104 §6; repealed by 1975 c.285 §8]

435.050 License issuance; fee; duration; rules. (1) All licenses shall be issued by the State Board of Pharmacy on written application and payment of an annual license fee for each manufacturer or wholesale license, which fee shall not exceed \$300.

(2) Licenses shall be in effect for one year from January 1 of each year or such date as may be specified by board rule. [Amended by 1963 c.96 §2; 1967 c.183 §1; 1973 c.104 §4; 1975 c.285 §2; 1993 c.18 §109; 1993 c.571 §23; 2007 c.768 §3]

435.060 Revocation of licenses and seizure of equipment. (1) Notwithstanding ORS chapter 183, 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 to seize the written license. [Amended by 1969 c.328 §5; 1971 c.734 §49; 1975 c.285 §3]

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 the 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 licenses provided in ORS 435.010 to 435.130. [Amended by 1995 c.79 §222]

435.090 Labeling; standards; expiration date. (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, date of manufacture or an expiration date and the distributor thereof by firm name and address on the container in which the goods are sold or are intended to be distributed. All such goods manufactured after December 31, 1994, shall bear an expiration date.

(b) Comply with the standards as to such goods, respecting grade and quality, prescribed by the Oregon Health Authority under ORS 435.100.

(2) Relative to drugs or medicinal preparations intended or having special utility for the prevention of conception, each individual container manufactured for sale in Oregon must bear the date of manufacture or an expiration date. All such drugs or medicinal preparations manufactured after December 31, 1994, shall bear an expiration date. [Amended by 1975 c.285 §4; 1977 c.328 §3; 1993 c.571 §24; 2009 c.595 §689]

435.100 Standards; rules regarding enforcement. (1) The Oregon Health Authority shall 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 authority in the interest of disease prevention.

(2) The State Board of Pharmacy may adopt other rules to enforce and carry out the provisions of ORS 435.010 to 435.130 in cooperation with the authority.

(3) The authority shall cause to have published the brand names of all goods of the class specified in ORS 435.010 that comply with the standards prescribed under subsection (1) of this section. [Amended by 1975 c.285 §5; 2009 c.595 §690]

435.105 Inspection program of certain stock of vendors. In lieu of its own inspection program, the State Board of Pharmacy may enter into an agreement with the Oregon Health Authority or a local public health authority, as defined in ORS 431.003. The agreement shall authorize the Oregon Health Authority or the local public health authority to make inspections of the condom stock to determine that the stock consists only of brands that comply with standards promulgated under ORS 435.100 (1). The agreement shall include authority to enforce applicable rules of the State Board of Pharmacy. [1973 c.104 §3; 1975 c.285 §6; 2009 c.595 §691; 2015 c.736 §85]

435.110 [Amended by 1969 c.328 §6; repealed by 1975 c.285 §8]

435.120 Disposition of receipts. All license fees collected under ORS 435.010 to 435.130 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. [Amended by 1987 c.905 §23]

435.130 Jurisdiction over prosecutions. Justice courts have concurrent jurisdiction with the circuit courts over all violations of ORS 435.010 to 435.130.

FAMILY PLANNING AND BIRTH CONTROL

435.200 Interference by public body with right to obtain and use safe and effective methods of contraception prohibited. (1) A public body as defined in ORS 174.109 or, except as provided in ORS 435.225, an officer, employee or agent of a public body may not:

(a) Deprive a consenting individual of the right to obtain and use safe and effective methods of contraception; or

(b) Interfere with or restrict, in the regulation or provision of benefits, facilities, services or information, the right of consenting individuals to obtain and use safe and effective methods of contraception.

(2) Nothing in this section is intended to prevent the application of laws, rules, ordinances or taxes that affect the method or manner of sales or distribution of contraceptive devices, provided the laws, rules, ordinances or taxes are designed to promote public health and safety and do not unreasonably burden public access to contraception.

(3) As used in this section:

(a) "Contraception" means the use of any process, device or method to prevent pregnancy, including steroidal, chemical, physical or barrier, natural or permanent methods for preventing the union of an ovum with the spermatozoon, or preventing the subsequent implantation of the fertilized ovum in the uterus, and includes all postcoital methods, drugs or devices approved by the United States Food and Drug Administration to prevent pregnancy.

(b) "Pregnancy" is the period of time from implantation of a fertilized ovum in the uterus to delivery. A woman shall be presumed pregnant if she is premenopausal and exhibits signs of pregnancy, including missed menses, until disproved by a laboratory test or until delivery. [2007 c.182 §7]

435.205 Family planning and birth control services by public agencies; fees.

(1) The Oregon Health Authority and every local 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 the Oregon Health Authority or a designee shall initiate and conduct discussions of family planning with each person who might have an interest in and benefit from such service. The authority shall furnish consultation and assistance to local health departments.

(2) Family planning and birth control services may include interviews with trained

personnel; distribution of literature; referral to a licensed physician, physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390 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 local public health authority as defined in ORS 431.003, the local health department may adopt a fee schedule for services provided by the local health 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 local 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; 2001 c.900 §159; 2009 c.595 §692; 2014 c.45 §56; 2015 c.736 §86; 2017 c.356 §65]

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, medical assistance, as defined in ORS 414.025, or 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 the reason for refusing the offer of family planning and birth control services. [1967 c.491 §3; 1971 c.779 §66; 1987 c.158 §81; 2013 c.688 §91]

435.225 Refusal by employee to offer services. Any employee of the Oregon Health Authority may refuse to accept the duty of offering family planning and birth control services to the extent that such duty is contrary to the personal or religious be-

liefs of the employee. However, such employee shall notify the 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 employee. Such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in employment, or for suspension from employment, or for any loss in pay or other benefits. [1967 c.491 §4; 1971 c.779 §67; 2009 c.595 §693]

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 constitutional rights. [1967 c.491 §5]

EMERGENCY CONTRACEPTION

435.250 Policy. The Legislative Assembly declares that:

(1) It is the public policy of this state that all Oregonians' right to freedom from unreasonable government intrusion into their private lives, and specifically the right of consenting individuals to obtain and use methods of contraception without interference by governmental entities, shall be safeguarded; and

(2) The laws of this state must be interpreted and construed to recognize and protect these rights. [2007 c.182 §1]

435.252 Definitions for ORS 435.252 and 435.254. As used in this section and ORS 435.254:

(1) "Care to a victim of sexual assault" means a medical examination, procedure or service provided by a licensed medical provider to a victim of sexual assault.

(2) "Culturally competent" means sensitive to the patient's faith, race, ethnicity and national origin.

(3) "Emergency contraception" means the use of a drug or device that is approved by the United States Food and Drug Administration to prevent pregnancy after sexual intercourse.

(4) "Hospital" has the meaning given that term in ORS 442.015, excluding institutions described in ORS 441.065.

(5) "Sexual assault" means any unwanted sexual contact as defined in ORS 163.305.

(6) "Victim of sexual assault" means:

(a) An individual who states that a sexual assault has been committed against the individual or who is accompanied by a person who states that the individual is a victim of sexual assault; or

(b) An individual who hospital personnel have reason to believe is a victim of sexual assault. [2007 c.182 §4]

435.254 Hospital duty to provide information about emergency contraception and to make emergency contraception available to victim of sexual assault; informational materials; rules. (1) A hospital providing care to a female victim of sexual assault shall:

(a) Promptly provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception;

(b) Promptly orally inform the victim of her option to be provided emergency contraception at the hospital; and

(c) If requested by the victim and if not medically contraindicated, provide the victim with emergency contraception immediately at the hospital, notwithstanding ORS 147.397.

(2)(a) In collaboration with victim advocates, other interested parties and nonprofit organizations that provide intervention and support services to victims of sexual assault and their families, the Oregon Health Authority shall develop, prepare and produce informational materials relating to emergency contraception for the prevention of pregnancy in victims of sexual assault for distribution to and use in all hospital emergency departments in the state, in quantities sufficient to comply with the requirements of this section.

(b) The Director of the Oregon Health Authority, in collaboration with community sexual assault programs and other relevant stakeholders, may approve informational materials developed, prepared and produced by other entities for the purposes of paragraph (a) of this subsection.

(c) All informational materials must:

(A) Be clearly written and easily understood in a culturally competent manner; and

(B) Contain an explanation of emergency contraception, including its use, safety and effectiveness in preventing pregnancy, including but not limited to the following facts:

(i) Emergency contraception has been approved by the United States Food and Drug Administration as an over-the-counter medication for women 18 years of age or older and is a safe and effective way to prevent pregnancy after unprotected sexual intercourse or after contraceptive failure, if taken in a timely manner.

(ii) Emergency contraception is more effective the sooner it is taken.

(iii) Emergency contraception will not disrupt an established pregnancy.

(3) The authority shall respond to complaints of violations of ORS 435.256 in accordance with ORS 441.057.

(4) The authority shall incorporate the requirements of this section in rules adopted pursuant to ORS 441.025 that prescribe the care to be given to patients at hospitals.

(5) The director shall adopt rules necessary to carry out the provisions of this section.

(6) Information required to be provided under subsection (1) of this section is medically and factually accurate if the information is verified or supported by the weight of research conducted in compliance with accepted scientific methods and based upon:

(a) Reports in peer-reviewed journals; or

(b) Information that leading professional organizations, such as the American College of Obstetricians and Gynecologists, and agencies with expertise in the field recognize as accurate and objective. [2007 c.182 §5; 2009 c.595 §694; 2009 c.792 §36]

435.256 Civil penalty. The Oregon Health Authority may impose a civil penalty against a hospital for each violation of the rules adopted under ORS 435.254. A civil penalty imposed under this section may not exceed \$1,000 for each violation upon inspection or each substantiated complaint filed. [2007 c.182 §6; 2009 c.595 §695]

VOLUNTARY STERILIZATION

435.305 Voluntary sterilization authorized; advice; consent. (1) A person may be sterilized by appropriate means upon request and upon the advice of a physician licensed under ORS chapter 677, naturopathic physician licensed under ORS chapter 685 or physician assistant licensed under ORS 677.505 to 677.525.

(2) A health care provider described in this section, or a hospital, may not be held liable for performing a sterilization without obtaining the consent of the spouse of the person sterilized.

(3) Free clinics to sterilize males under subsections (1) and (4)(d) of this section may be conducted as a part of the program provided for in ORS 435.205.

(4)(a) A nurse practitioner licensed by the Oregon State Board of Nursing under ORS 678.375 and acting within the scope of practice authorized by the board may provide medical advice to any person about a sterilization procedure.

(b) A nurse practitioner may acknowledge and sign a consent to sterilization procedure form if, no fewer than 30 days before the procedure, the form is provided to and signed by the person on whom the procedure will be performed.

(c) A nurse practitioner may not acknowledge or sign a consent to sterilization procedure form if the form is provided to or signed by the person on whom the procedure will be performed fewer than 30 days before the procedure.

(d) A nurse practitioner may not perform a sterilization procedure on any person, except that a nurse practitioner may perform a vasectomy. [1967 c.441 §15; 1969 c.31 §1; 1973 c.479 §1; 1975 c.591 §1; 1987 c.158 §82; 2005 c.471 §5; 2014 c.45 §57; 2017 c.356 §66; 2017 c.381 §1]

435.405 [1969 c.684 §1; 1971 c.743 §370; repealed by 1983 c.470 §1]

435.415 [1969 c.684 §3; repealed by 1983 c.470 §1]

435.425 [1969 c.684 §4; repealed by 1983 c.470 §1]

TERMINATION OF PREGNANCY

435.435 Effect of refusal to consent to termination. 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; 1983 c.470 §5]

435.445 [1969 c.684 §8; repealed by 1983 c.470 §1]

435.455 [1969 c.684 §§2,5; repealed by 1983 c.470 §1]

435.465 [1969 c.684 §6; repealed by 1983 c.470 §1]

435.475 Refusal to admit patient for termination. (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. 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. 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 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. [1969 c.684 §9; 1983 c.470 §2]

435.485 Medical personnel not required to participate in termination. (1) A physician or naturopathic physician is not required to give advice with respect to or participate in any termination of a pregnancy if the refusal to do so is based on an election not to give such advice or to participate in such terminations and the physician or naturopathic physician so advises the patient.

(2) A hospital employee or member of the hospital medical staff is not required to participate in any termination of a pregnancy if the employee or staff member notifies the hospital of the election not to participate in such terminations. [1969 c.684 §§10,11; 1983 c.470 §3; 2017 c.356 §67]

435.495 [1969 c.684 §13; repealed by 1983 c.470 §1 and 1983 c.709 §14 (435.496 enacted in lieu of 435.495)]

435.496 Report to Center for Health Statistics; who has duty; report content.

(1) Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation, shall be reported to the Center for Health Statistics within 30 days by the person in charge of the institution in which the induced termination of pregnancy was performed. If the induced termination of pregnancy was performed outside an institution, the attending physician or the naturopathic physician shall prepare and file the report.

(2) If the person who is required to file the report under subsection (1) of this section has knowledge that the person who underwent the induced termination of pregnancy also underwent a follow-up visit or had follow-up contact with a health care provider, the person shall include the fact of the follow-up visit or contact, and whether any complications were noted, in the report. If the person filing the report is not personally aware of the follow-up visit or contact but was informed of the visit or contact, the person shall include the source of that information in the report.

(3) Reports submitted under this section shall not disclose the names or identities of the parents. [1983 c.709 §14a (enacted in lieu of 435.495); 1997 c.783 §46; 2017 c.356 §68]

PENALTIES

435.990 Penalties. (1) Violation of any of the provisions of ORS 435.010 to 435.130 is a Class C misdemeanor.

(2) Sale at wholesale or retail of any goods of the class specified in ORS 435.010 that do not comply with standards promulgated under ORS 435.100 (1) is a Class C misdemeanor. [Subsection (2) enacted as 1975 c.285 §7; 2011 c.597 §196]

