# Chapter 435

## 2005 EDITION

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**435.035** [1973 c.104 §2; repealed by 1975 c.285 §8]

**435.040** [Amended by 1969 c.328 §4; 1973 c.104 §6; repealed by 1975 c.285 §8]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

**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, pre-

scribed by the Department of Human Services 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]

**435.100 Standards; rules regarding enforcement.** (1) The Department of Human Services 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 department 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 department.

(3) The department 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]

**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 Department of Human Services or a county or district board of health. The agreement shall authorize the department or the board 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 and the department and such rules of the board shall be considered rules of the department or the county or district board of health. [1973 c.104 §3; 1975 c.285 §6]

**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

**435.205 Family planning and birth control services by public agencies; fees.** (1) The Department of Human Services 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 Services 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 Department of Human Services shall furnish consultation and assistance to county health departments.

(2) Family planning and birth control services may include interviews 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 county 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 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; 2001 c.900 §159]

**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 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]

**435.225 Refusal by employee to offer services.** Any employee of the Department of Human Services 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 beliefs 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]

**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]

## 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 by the Board of Medical Examiners for the State of Oregon.

(2) No physician or hospital may 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 subsection (1) 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. [1967 c.441 §15; 1969 c.31 §1; 1973 c.479 §1; 1975 c.591 §1; 1987 c.158 §82; 2005 c.471 §5]

**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) No physician is 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 so advises the patient.

(2) No hospital employee or member of the hospital medical staff is 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]

**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 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]

## PENALTIES

**435.990 Penalties.** (1) 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.

(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]