



STATE BOARD OF EQUALIZATION

916-445-6493

September 23, 1985

Re: X-----
Prescription records – audit examination

Dear X-----:

In his July 22, 1985 memorandum to the Board's Legal Section Mr. X----- of the Board's X----- audit staff, enclosed your letters to him dated July 5, 1985, and July 12, 1985. Mr. X----- has asked for our opinion on whether the Board is entitled to inspect and record, for its audit purposes, information from prescriptions filled by your client, X-----, including the names and addresses of the patients and the medications prescribed by the doctor.

In summary, the facts are that during a Board audit of X-----, the auditor, X-----, sought to record a list of patients' names and the medications prescribed by their doctors, taken from prescriptions filled by X----- pharmacy. The purpose was to determine if the sale of the prescription medicines qualified for the exemption from sales and use tax provided by Revenue and Taxation Code 6369.

You have not permitted the auditor to record this information and contend the information is confidential among the patient, the doctor, and the pharmacist. You requested that our auditor get a letter from the State Board of Pharmacy, the Attorney General, or the Auditor General stating what information our auditor was entitled to take from the prescriptions.

Opinion

Our opinion is that X----- is required by law to provide this information to the Board. Business and Professions Code Section 4331 provides in part:

All prescriptions filled shall be kept on file and open for inspection by duly constituted authorities for a period of at least 3 years, and any person who willfully fails to do so is guilty of a misdemeanor....(Emphasis added).

In interpreting and applying Section 4331, the State Board of Pharmacy has adopted Regulation 1764 (Title 16, California Administrative Code), which provides in part:

No pharmacist shall exhibit, discuss, or reveal the contents of any prescription...with any person other than the patient or his authorized representative, the prescriber or other licensed practitioner then caring for the patient, another licensed pharmacist serving the patient, or a person duly authorized by law to receive such information. (Emphasis added).

The phrases emphasized above are not further defined or limited either in the Pharmacy Law (Business and Professions Code Sections 4000 et seq) or in the regulations of the State Board of Pharmacy.

Our opinion is that the Board of Equalization is both a “duly constituted authority” and a “person duly authorized by law” within the meaning of Section 4331 and Regulation 1764, because the Board has independent statutory authority to examine the records of taxpayers and other persons to ensure compliance with Sales and Use Tax Law. Government Code Section 15618 provides:

The board may examine, as a board, individually, or through its staff, the books, accounts, and papers of all persons required to report it, or having knowledge of the affairs of those required so to report.

Revenue and Taxation Code Section 7054 provides:

The board or any person authorized in writing by it may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

We note that it is a misdemeanor for any person to fail or refuse to furnish data required by the Board. Revenue and Taxation Code Section 7151. Also, the information which a Board auditor obtains by an examination of taxpayer’s records is required by law to be kept confidential, with certain exceptions not relevant here. Government Code Section 15619(a); Revenue and Taxation Code Section 7056.

I have discussed this matter with X-----, State Board of Pharmacy, 1020 N Street, Sacramento, CA 98514, and X-----. We cannot of course give you a written opinion on behalf of the Board of Pharmacy, but you are invited to call or write X-----, in addition to the undersigned, if you have any questions or comments about this letter.

Very truly yours,

John Abbott
Tax Counsel