

425.0000 PRESCRIPTION MEDICINES—Regulation 1591

(a) GENERALLY

425.0004 Acupuncturist. SB 1558 (1980), Chapter 1313, provides that an acupuncturist's certificate authorizes the holder thereof to “. . . prescribe the use of . . . nutrition, including the incorporation of drugless substances and herbs as dietary supplement to promote health.” The meaning of “prescribe” under the above law does not fall within the context of the word “prescribe” pursuant to section 4036 of the Business and Professions Code. This section provides that, “no person other than a physician, dentist, podiatrist, or veterinarian, . . . shall prescribe or write a prescription.” Therefore, the provisions of SB 1558 (1980) will not change the application of the sales tax to sales of herbs and drugless substances by acupuncturists.

If an acupuncturist is a licensed physician or other person specified in section 4036 of the Business and Professions Code, and prescribes drugless substances and herbs which he furnishes to his patient for treatment, or which are dispensed on prescription filled by a registered pharmacist in accordance with the law, such acupuncturist is not required to hold a seller's permit and the sales to the patient are exempt from tax. 12/12/80; 5/14/96.

425.0007 Board Staff and Review of Prescription Records. The 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 three years . . . ” (underscoring added).

Since Government Code section 15618 authorizes the Board through its staff to examine records of persons having knowledge of the affairs of those required to report to it, the Board may review prescription records for the purpose of determining compliance with the Sales and Use Tax Laws. 9/23/85.

425.0008 Catheter Supplies. Sales tax applies to sales of coronary guide wires, coronary guiding catheters, inflation devices, syringes, homeostatic valves, guide wire introducers, sheath introducer systems, torquing devices, and other related supplies and accessories. 1/18/96.

425.0010 Catheters. The determination of whether or not the sale of a particular medical item is subject to tax is based on the use of the item. Accordingly, if a catheter is used in a manner coming within Regulation 1591.1(b)(4), the sale of the catheter is not subject to tax. 10/18/95. (Am. 2003-1).

425.0010.001 Catheters. Pacing, ventricular and cardiac catheters are exempt from tax if they are intended to remain in the body for a period of six months or longer. These include:

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| Goetz Pacing Catheter | Ducor Catheter Fem. L. Coronary |
| Ducor Catheter Fem. Ventricular | Goetz Pacing Electrodes |
| Zucker Pacing Catheter | |

Catheters used as pressure monitors, diagnostic tools, or to inject substances into the human body are taxable. These include:

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|------------------------------------|------------------------------------|
| Gensini Teflon Catheter | Introducer |
| Gensini Dacron Sones Catheter | Gerlin Electrode Catheter |
| Arterial Catheter | Sones Catheter |
| Arterio-Venous Cath Introducer Set | Venous Retura Catheter |
| Desile-Hoffman Percutaneous Cath | Judkin Coronary Catheter. 8/14/78. |

425.0011 Catheters—Nonexempt. Catheters used for diagnostic purposes, for administration of fluids, drugs and blood products, for patient monitoring, and for pain management are not within the definition of “medicine” under Regulation 1591.1(b)(4), unless they are permanently implanted in the patient's body. 4/13/94. (Am. 2003-2).

425.0011.100 **Central Line Catheters.** A central line is a special intravenous (IV) line that, generally, is surgically inserted through the chest and threaded into one of the large veins that lie close to the heart. Central line catheters, including tunneled catheters and PICC lines, can be either “single lumen” or “multiple lumen” types. In multiple-lumen central line catheters, each lumen individually connects to a singular catheter body. These lumens remain outside of the body and the end of each lumen’s access port is color-coded. Each lumen is used for a separate purpose such as blood sampling, drug infusion, pain management infusion, Total Parenteral Nutrition (TPN) infusion, and other purposes. Singlelumen central line catheters, on the other hand, are used for a single purpose only.

Regulation 1591(b)(5) defines as “medicines” catheters used primarily to dispense TPN. Therefore, tax does not apply to sales of single lumen catheters sold for the purpose of delivering TPN. Sales of multiple line catheters are subject to tax under the regulation. Such catheters are not used primarily for the delivery of TPN. Multiple-lumen central line catheters would be classified as appliances and devices for all purposes and their sale is subject to tax. 10/28/03. (2004–2).

425.0014 **Chiropractor—Cervical Collar.** For the purposes of section 6018.4 of the Revenue and Taxation Code, the term “orthotic devices” has the same meaning as it does in section 6369(c)(3), that is, a device fully worn on the body of the patient for the correction of the body structure.

Thus, furnishing of a neck brace (cervical collar) by a chiropractor in connection with the furnishing of services does not result in a sale. Rather the chiropractor is the consumer of the neck brace and must pay tax or tax reimbursement on his/her acquisition. Over the counter sales by chiropractors (i.e., no professional services provided) are sales and subject to tax. 11/3/94.

[425.0018](#) **Chiropractor Selling Nutritional Supplements.** A retailer of nutritional supplements sells these supplements to chiropractors, some of whom sell these products as part of the treatment of patients. The charge, including any markups, is separately stated on the patient bills. The products may also be sold to the general public. The retailer asks whether the fact that the chiropractor separately charges for the nutritional supplement mean that all sales to him/her are excluded from tax as being for resale.

Since chiropractors are not “physicians or surgeons” sales of these products are not exempted from sales tax as prescription medicines. When dispensing the supplements in the course of rendering professional services, the chiropractor is the consumer of the supplements. When selling supplements on a general basis without rendering professional services to the purchaser, the chiropractor is treated as a retailer of those products. A chiropractor who sells nutritional supplements at retail must have a seller’s permit and may purchase the products free of tax by issuing a resale certificate at the time of purchase. If a chiropractor issues a resale certificate and it is accepted in good faith, the chiropractor will have to pay use tax on the supplements consumed in providing services and sales tax on the supplements sold at retail. 9/10/90.

[425.0020](#) **Chiropractor-Naturopath** is not a “physician and surgeon” as that term is used in section 6369. 10/6/64.

425.0021 **Claimed Violation of Taxpayer’s Equal Protection Rights.** A claim for refund was filed because the taxpayer claimed a violation of its equal protection rights. The California Department of Health Services (DHS) maintains that sales of creams and washes for incontinent persons are medical items and, thus, does not reimburse medical supply houses for sales tax that they pay on their sales of such items. The Board interprets section 6369 to mean that sales of these items by supply houses are taxable.

The issue in this claim concerns an apparent conflict of opinions issued by two state agencies. As a state agency, the State Board of Equalization has no power to declare a state law unconstitutional. (Cal. Const. Art. III, section 3.5) Therefore, the Board must enforce the statute as written and deny the claim. 1/10/96.

425.0022 **Cleaning of Dialysis Equipment.** Machines used to purify water for dialysis machines or to clean artificial kidneys after they have been used on a hemodialysis machine are not necessary and integral to the operation of the dialysis machine nor are they “related supplies.” They are not exempt “medicines” under Regulation 1591(j). 8/29/94.

[425.0022.700](#) **Cold Compression Therapy.** These units apply controlled compression to minimize hemarthrosis (blood filling joint cavities) and swelling along with cold to minimize pain. They do not qualify as “medicines.” 10/15/96.

[425.0022.800](#) **Colon Irrigation Devices.** A colon irrigation device is a closed system that pulses warm water into the colon through a cuffed speculum, hydrating stool and allowing it to evacuate by gravity into a containment bag. The gently pulsing water stimulates the natural peristaltic action of the colon. Inflow and outflow is controlled and adapted to each patient and application. Inflow is under low pressure, 3 psi. Outflow is to gravity only. At no time is material suctioned out of the patient.

Items like the colon irrigation device, which inject liquid to stimulate the body’s natural elimination system, apply treatment to the patient. They are neither implanted in nor worn on the body nor are they made necessary as a result of a surgical procedure by which an artificial opening is created to eliminate natural waste. For these reasons, they do not qualify as medicines under Regulation 1591. As a result, they are excluded from the term “medicines” under subdivision (c)(2). Sales of colon irrigation devices are subject to tax. 10/24/02. (2003–3).

[425.0023](#) **Confidentiality—Prescription Records.** The prescription medicine exemption contained in section 6369 of the Sales and Use Tax Law for sales by pharmacies is conditioned on certain requirements, which are that the prescribed item be a medicine prescribed for the treatment of a human being by a person authorized to prescribe the medicine and dispensed by a registered pharmacist in accordance with law. section 6091 establishes a presumption that all gross receipts are subject to tax until the contrary is established. Under this section, it is up to the pharmacist to establish that the sales for which he claims exemption have met all of the requirements. A pharmacist who withholds information contained on prescriptions he has filled has not established his right to the exemption and the Board may estimate the value of the merchandise sold from whatever information it may have in its possession or which may come into its possession, including the “street value” of drugs not accounted for by the sales records. The authority of the Board or its representatives to inspect the records of a pharmacy is not limited by the sections of the Business and Professions Code dealing with the inspection rights of other state agencies. 12/20/85.

425.0025 **Dental Supplies, Devices and Appliances.** The gross receipts received from the sale of dental items, dispensed by prescription bearing a legend such as “Caution: U.S. Federal law restricts this device to sale by or on the order of a dentist” are not automatically exempt from sales tax. In order to be exempt, the item must satisfy the definition of a “medicine” and it must be sold as specified by the statute or regulation. 4/26/91.

[425.0025.500](#) **Device not Permanently Attached.** Subdivision (b)(2) of Regulation 1591 explains that the exemption it covers requires the items to be “permanently attached.” There is no such requirement to qualify for exemption under Regulation 1591(j) [now Regulation 1591.1(b)(2)], “Mammary Prostheses and Ostomy Appliances and Supplies.” 3/10/94. (Am. 2002–3).

(Note: Subdivision (j) of Regulation 1591 was deleted effective March 10, 2000 and moved to new Regulation 1591.1(b)(2), effective the same date.)

425.0026 **Dialysis Machine Accessories.** Kidney dialysis machines and necessary supplies are exempt. However, accessories such as a computer and software used as data management system and a dialyzer reprocessing system are taxable. They are not an integral part of the dialysis machine. The machine can operate without either, and neither are substances or preparations intended for internal or external application to the body of the patient. 3/24/86.

425.0027 **Doctor’s Professional Corporation.** Sales by a doctor’s professional corporation are, for the purposes of Regulation 1591, regarded as sales by the doctor. 7/18/95.

425.0028 **Drugs and Placebos Used in Clinical Trial.** A drug company purchases “raw materials” to specifically develop a new drug. The “raw materials” are drugs each of which could be purchased as a prescription drug in its own right. The “raw materials” are purchased in bulk quantities and shipped to an independent laboratory located out of state. Syringes are purchased from another firm and also sent to the lab. The lab combines two of the “raw materials” in one syringe and a third “raw material” is placed in a separate syringe. The lab then returns the drugs and syringes to the drug company in California. The company then packages the drugs and syringes into clinical trial kits and distributes the kits at no charge to various clinical sites. The final product is to be administered to the patient by a doctor who is running a clinical trial. The company pays the doctors to participate in this human clinical trial stage of the FDA’s drug approval process.

As part of the clinical trial phase, the company uses placebo injections which contain the same ingredients as the other injections except one of the three ingredients is inactive. These clinical trials are double-blind.

First, the drug company’s purchases of the “raw materials” and the placebos are subject to sales or use tax. A placebo is an inactive substance which is not sold or used for treatment of the patient but rather to test effectiveness of another drug in treating a human being. These placebos, therefore, do not qualify as “medicines” under Regulation 1591(b)(1). The “raw materials” themselves are also not purchased for the treatment of a human being, but for incorporation into another product, and it is that product which is used to treat human beings. The raw materials cannot be purchased for resale at this time since they are not being resold but rather are being consumed by the company through the agency of the physician.

Second, under these facts, the combination of drugs are not “medicines” under Regulation 1591(b)(1). They are still being developed and tested for effectiveness as part of the FDA approval process. Thus, they cannot be said at the stage to be “commonly recognized as [substances or preparations] intended for the [diagnosis, treatment, etc., of disease].”

Third, the lab’s “services” are part of the manufacturing process of materials furnished by the consumer (the company) and subject to sales or use tax. (Regulation 1526(a).) Since the lab operates out of state, the drug company is subject to use tax on the charges made by the lab for the lab services for those drugs consumed in California.

This conclusion is distinguishable from Annotation 425.0050. In Annotation 425.0050, the drugs at issue were “medicines” at the time of purchase by the drug company and withdrawn from an ex-tax resale inventory. Here, the raw materials are being purchased specifically to develop a new drug. 6/13/94. (Am. 2003-2).

(Note: Statutory change effective 1/1/95 which added paragraph (a)(6) to section 6369 is not reflected in this opinion.)

425.0030 Durable Medical Equipment (DME) Company. A question was posed regarding the charging of sales tax by a durable medical equipment (DME) company which is under contract to nursing homes, long-term care facilities, and intermediate care institutions. Items sold to these institutions are listed as “medicines” under Regulation 1591.

As long as these facilities qualify as “health facilities” under Regulation 1591(g), DME may sell to them free of tax by accepting either a resale (if some items are resold) or exemption certificate. (Regulation 1668.) Even though a facility does not qualify as a “health facility” the exemption may still be available if the purchaser complies with the other terms of Regulation 1591(a) e.g., furnished by a physician for treatment of a patient. 10/22/91.

425.0038 Ear Protection. Products such as ear putty or medco-mold which are used to temporarily seal ears to protect the middle ear from the entry of foreign material after eardrum surgery do not qualify as exempt prescription medicines. 8/23/85; 5/29/96.

425.0040 **Esophageal Dilators.** Esophageal dilators are not permanently implanted in the body of the patient and are in the nature of devices, appliances, etc. Tax applies to their retail sale. 10/6/93.

425.0041 **Exercise Tubes and Cervical and Lumbar Pillows.** Even though cervical and lumbar pillows are corrective devices, they are not designed to be worn nor are they fully worn on the person of the user and, as such, are not orthotic devices which are classified as “medicines.” The same rationale applies to the exercise tubes. Accordingly, tax applies to the sale of such items. 7/22/88.

425.0045 **Experimental Medicines.** A taxpayer is in the business of developing new medicines. Initially, the medicines are used in controlled studies to investigate their safety and efficiency. The experimental medicines are administered by licensed physicians. No charge is made to the patients. While the experimental medicines qualify as “medicines,” the raw materials are not resold because the medicines are not resold. The raw materials are consumed by the taxpayer in the process of developing new medicines. Accordingly, tax applies to the raw materials. 4/2/94. (Am. 2002–2).

(Note: Statutory change effective 1/1/95 which added paragraph (a)(6) to section 6369 is not reflected in this opinion.)

[425.0050](#) **Experimental Drug.** An experimental drug dispensed by doctors who are being paid by a drug company to participate in the study of an experimental drug is “prescribed for the treatment of a human being . . .” and “furnished by a licensed physician and surgeon . . . to his own patient for treatment of the patient.” When the experimental drug is sold by a manufacturer to a drug company which pays doctors to participate in the experiment, an exempt sale of medicine occurs since the sale is in the manner prescribed in Regulation 1591(a)(1) and (2) and tax will not apply to such sales. The use of the drug made by the doctors is attributable to the drug company, for whom the doctors act as agents. 9/8/78.

[425.0051](#) **Federal Food and Drug Administration Classifications.** The fact that the Food and Drug Administration classifies a product as a medicine has no bearing on the classification of the product as a medicine under the California Sales and Use Tax Law. The appropriate classification of an item as a “medicine” for sales tax purposes is based on the interpretation of “medicine” as contained in section 6369. 5/1/95.

[425.0052.800](#) **Foley Catheters and Arm Supports.** Some hospitals elect to use products which generally may not qualify as a “medicine” in an application which is exempt by statute. For example:

(1) Foley catheters. Although customarily these catheters are attached to anatomical opening in the human body to drain waste (taxable), they are sometimes used for post-operative insertion through an artificial opening to drain waste (exempt).

(2) Arm supports. These are sometimes used as orthopedic supports in the nature of splints (exempt).

It was asked whether the hospitals should buy these items under an exemption certificate and accrue tax based on a ratio representing the taxable use of these products.

It would be proper for a hospital to use an exemption certificate for the purchase of items which will be exempt from tax under section 6369. To the extent any items purchased under an exemption certificate are used or sold in a manner so as to make them subject to tax, the hospital should pay tax on such items. 9/29/80.

[425.0053](#) **Food Products as Prescription Medicines.** Products such as granular diet products which are not defined as “food products” under Regulation 1602(a) may be “medicines” under Regulation 1591(b)(1) if furnished by physicians to their patients during the course of treatment. Under these circumstances, the physician’s purchases and sales of these products would be exempt from tax under Regulation 1591(a). 2/28/91.

425.0053.100 **Food vs. Medicine.** The Sales and Use Tax Law provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. “Food products” do not include medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplement or adjuncts. A product is either a food, medicine, or a supplement or adjunct; these classifications are mutually exclusive. For purposes of this exemption, “medicine” has the same meaning as defined in Regulation 1591. A product that does not meet the definition of a medicine in Regulation 1591 is not a medicine for purposes of this exemption Regulation 1602. A product cannot be classified as a medicine solely on the basis of medicinal claims on the product’s label or in its brochures.

Except where taxable for all uses as provided in subdivision (c) of Regulation 1591, when determining if a product is a medicine, it must first be determined if the product is approved for use by the U.S. Food and Drug Administration to diagnose, cure, mitigate, treat or prevent any disease, illness or medical condition. If a product is so approved, it is a medicine under Regulation 1591, subdivision (a)(9)(A) and is not a food product.

To determine whether a product qualifies as a medicine under Regulation 1591, subdivision (a)(9)(B), we look to whether it is “commonly recognized” as a substance or preparation for use in the mitigation, treatment, or prevention of disease. “Commonly recognized” as a medicine means general acceptance indicated by either: (1) the greater weight of opinion in the medical community, as reflected, for example, by refereed medical journals or similarly authoritative scientific publications or pronouncements from authoritative regulatory institutions; or (2) constitutional, statutory, or controlling case law authorities establishing that the substance or preparation in question is a medicine as a matter of law. (11/17/08).

425.0054 **Intravenous Devices.** In general, sales of intravenous tubing and poles, blood glucose monitors and test strips, needles, syringes and catheters are regarded as taxable sales of devices and not exempt sales of medicines. Sales of infusion pumps that are programmable and fully worn on or implanted in the human body and which automatically cause the infusion of measured quantities of medicine into the body of the wearer of the device are exempt sales of medicines. Pumps that gravity feed or which are not fully worn on or implanted in the body of the patient do not qualify. 11/23/94.

425.0055 **Medicare Part A, Medicare Part B and Medi-Cal.** Under Medicare A, health care providers must enter into a contract with the federal government to provide services under that program. Sales of tangible personal property for which payment is made under Medicare A are sales to the United States and are exempt from tax. Sales for which payment is made under Medicare B, Medi-Cal, or private health insurance companies are subject to tax unless exempt pursuant to Regulation 1591. 7/11/91.

425.0060 **Homes for the Aged.** Homes for the aged maintaining licensed nursing beds and a medical staff are hospitals for purposes of the medicine exemption. 12/2/63.

425.0080 **Hospital.** There is no distinction between hospitals of less than 100 beds not having a full-time pharmacist and other hospitals for purpose of exemption. 11/1/63.

425.0100 **Hospitals Aboard Ocean Liners.** Ocean carriers which comply with federal requirements that a licensed physician and surgeon be carried on each voyage and also maintain hospital beds, equipment and registered nurses for passengers and crew can claim tax exemption for any medicines dispensed from such facilities aboard ship because these ships qualify as hospitals under section 6369. 5/11/64.

425.0120 **Hospitals—Exemption Certificates.** A suggested form of exemption certificate to be furnished by hospitals to suppliers of medical gases is as follows:

TAX EXEMPTION CERTIFICATE (HOSPITALS)

I hereby certify that _____
(Name of hospital)

qualifies as a hospital under provisions of section 6369 of the California Revenue and Taxation Code.

I further certify that all medicines (as defined in the above cited section of the law) purchased from

(Name of vendor)

will be either sold or used for the treatment of a human being as provided by Regulation 1591 of the California State Board of Equalization. 4/10/64.

425.0130 Hospital's Purchases of Exempt Items. Wheelchairs, crutches, canes, quad canes and walkers ordered by a hospital on behalf of a specific patient can be considered to be purchased by an individual for his own use at the direction of a physician and are, therefore, exempt from tax under Revenue and Taxation Code section 6369.2. The fact payment for the equipment is made by a hospital plan insurance or Medicare does not cause the exemption to be lost. 11/26/79.

425.0131 Hot Tubs. A hot tub or similar hydrotherapy device for the treatment of arthritis does not qualify as "medicine" even though recommended by a doctor. 1/31/97.

425.0132 Impregnated Dressings. If a dressing has been impregnated with a medicine, the dressing is treated as a medicine. Petroleum jelly is a medicine. Thus, a dressing impregnated with petroleum jelly would qualify as a medicine if sold under the conditions prescribed by the statutes. 7/11/96.

425.0135 Insulin and Insulin Syringes. Insulin and insulin syringes sold by the Diabetes Society to a patient are subject to the tax if the society is not a registered pharmacy. (Regulation 1591(h) [now 1591.1 (b)(5)].) 1/24/92. (Am. 2001-3).

(Note: Regulation 1591 was amended effective March 10, 2000. Reader should note changes to the subdivisions indicated above.)

425.0140 House Physicians. Sales of medicines to persons who employ full or part-time physicians who use the medicines in the treatment of other employees are considered exempt sales under section 6369. 11/20/64.

425.0142 Items Provided to Patients by HMO. The following covers the application of tax to items furnished to patients by a HMO.

(1) Prescription Medicines

The patient is not required to make a co-payment or a fee for prescribed medicines. The patient takes the prescription to the HMO owned pharmacy which will dispense the medicine or reimburse for said purchases from another pharmacy.

The HMO owned pharmacy is considered the retailer of the medicines, containers, and labels. It may buy those items ex-tax for resale. The subsequent sales of medicines to patients will be exempt if they qualify under Regulation 1591 (a). Also, the subsequent sales of the containers and labels containing medicines will be exempt if they qualify under Regulation 1589 (b). If the HMO does not own the pharmacy, the pharmacy is the retailer with the same results. It matters not if the patient must make a co-payment.

(2) Durable Medical Equipment (DME)

The HMO provides DME (wheelchairs, crutches, etc.) to members when ordered by physicians. The HMO retains title to the DME products even though the products may never be returned. The HMO does not charge the patient for the DME.

Since the HMO is not the patient and is providing the DME free of charge, the HMO is the consumer of the items. Tax applies to the sale of the DME to the HMO.

(3) Cervical Diaphragms

Cervical diaphragms are not considered a medicine, but rather a device. (Regulation 1591 (c)(2).) 1/8/93.

425.0142.010 **Items Provided to Patients by HMO.** An HMO provides durable medical equipment (DME) such as wheelchairs, oxygen dispensing equipment, etc., to members at no charge when ordered by physicians. The HMO retains title to the DME products and the member must return it or pay the HMO the fair market price when it is no longer prescribed.

Since the HMO is not the patient and is providing the DME free of charge, the HMO is the consumer of the items. Tax applies to the sale of the DME to the HMO.

An out-patient of the HMO is not required to make a co-payment or a fee for prescribed medicines. The patient takes the prescription to the HMO-owned pharmacy which will dispense the medicine.

Under this plan, the HMO would be the consumer of those items it dispenses that are not billed to the patients. The HMO would owe tax on the purchase price of nonmedicine items including containers for prescription medicines, but not on prescription medicines as provided under Regulation 1591. However, the HMO (pharmacy) would be the retailer of items excluded from the term medicine under Regulation 1591 sold to the patient, even though the patient may be subsequently reimbursed by the HMO. 10/5/95.

425.0143 **Items without Prescription.** Items which are purchased without a prescription such as liniment, aspirin and milk of magnesia are not exempt when sold over the counter to purchasers without a doctor's order. The same items are exempt when sold to a health facility and later furnished to patients in that facility pursuant to the order of a physician. This exception does not apply to items which cannot be regarded as medicines. An example of the latter would be a germicidal solution used for sterilizing medical equipment. 3/23/78.

425.0143.600 **Kidney Dialysis Supplies.** Gloves, face masks, isolation gowns, shoe and hair covers, and other such articles used by technicians during the dialysis process are not "related supplies" within the meaning of Regulation 1591(j). Therefore, sales of such item to dialysis clinics are subject to sales or use tax. Sterile gauze dressings which are used directly on the dialysis patient during and after treatment are one of the items mentioned specifically in Regulation 1591(c)(2) as being excluded from the definition of medicines. Thus, the sales of them to dialysis clinics are taxable. 4/24/96.

425.0144 **Laparoscopic Surgery—Products Used.** Products used in laparoscopic surgery such as trocars, tubes, lighting, camera devices, surgical instruments, etc., are not "medicines," but rather are "appliances, etc." Sales of these items are taxable. 3/27/91.

425.0146 **Management Fees.** The company enters into an agreement with various providers to furnish medical equipment and supplies to the provider's customers. Under the agreement, it purports to purchase and sell the property to the provider for resale and it receives a "management fee" for its services.

According to the agreement, the company:

- (1) takes the orders directly from the customers
- (2) delivers the items to the provider's customers
- (3) sets up the equipment
- (4) trains the customers, as necessary, to use the equipment
- (5) handles providers customers' complaints
- (6) bills the provider's customers or insurance company, showing the providers as the sellers or lessors
- (7) receives checks from customers and deposits them in the provider's bank account
- (8) takes necessary collection action, and

(9) maintains an inventory “as is necessary” to fill orders

Under the agreement, the company appears to be the sole contact point with the customer. It acts as if it is purchasing for its own account rather than on behalf of others. Under these circumstances, it is the retailer of the equipment and supplies. The “management fees” are part of the company’s gross receipts. 3/22/93.

425.0147 Manufacturer of Prescription Medicine. A manufacturer of prescription drugs, exempt from the sales and use taxes under section 6369, requested information regarding the application of tax to certain materials some of which are physically incorporated into the finished product, and some of which are only used and consumed in the process.

The list of materials including serum, yeast extracts, and nutrients are used in the inoculation, cell growth and fermentation processes which form the bulk proteins from which the medicines are formulated. Although only minute traces of these materials are found in the finished product and are not visible, they are purchased for the principal purpose of becoming a part of the finished product and are not subject to tax.

The list of materials including buffers, separating agents, cleaning agents, agents that kill cells or detach the cells from a flask, pH control agents, and anti-foam agents are not for the purpose of incorporation into the final product, but are for use in the manufacturing process and are consumed during that process. These materials are taxable to the manufacturer, as the consumer, when the items are purchased. 2/16/93.

425.0148 Medical Devices. The following applies to the sale of articles which are implanted in the human body:

(1) Difference between “implanted in the body” and “worn in the person:”

The term “worn in the person” is broader in scope than the term “implanted.” The term “implanted” is generally accepted to mean the insertion or the grafting into the intact tissues of the recipient and usually requires some sort of surgical operative procedure. Devices which are “worn in” the body of the user are not necessarily implanted.

(2) Difference between “natural organ” and “natural part of the body:”

A “natural organ” is generally defined to be a differentiated structure performing some specific physiological function, such as a heart, an eye, or a kidney. The term “natural part” is much broader in scope and includes any part of the body whether or not such part constitutes a differentiated organ.

(3) “Medicine” as defined under 1591(b)(2) and 1591(b)(5):

Sections (b)(2) and (b)(5) of Regulation 1591 provide separate and distinct definitions of the term “medicine,” and apply independently to the sale of the medical devices. Although sections (b)(2) and (b)(5) somewhat overlap in their scope, effective October 1, 1977, a medical device may separately qualify as “medicine” under one or both of these sections. A device which is “temporarily” implanted in the body does not qualify as an exempt medicine under Regulation 1591(b)(2). The same temporary device, however, can qualify as exempt “medicine” under Regulation 1591(b)(5) since this particular subsection does not require the device to be permanently implanted. 10/27/83.

425.0149 Medical Devices. Neither a cervical pillow, placed on a hospital bed to support the patient’s spine, nor a balanced suspension sling which is attached to the hospital bed for the purpose of suspending the patient’s entire leg qualifies as an exempt orthotic device.

Regulation 1591(b)(4) includes within the definition of medicines those orthotic devices designed to be fully worn on the person of the user. Neither of these devices meet this test. 12/9/92.

[425.0150 Medicines.](#) ‘‘Medicines’’ within the meaning of Revenue and Taxation Code section 6369 and Sales and Use Tax Regulation 1591 include not only items applied directly to patients but also items, such as surgical scrubs, applied by hospital personnel to their own bodies to benefit the patient and which constitutes a critical component of the patient’s treatment.

The definition of the term ‘‘medicines’’ was not changed by the court’s decision in *Purdue Frederick v. State Board of Equalization*, 218 Cal.3d 1021 (1990). It merely expanded the Board’s previous interpretation of what constitutes the treatment of a human being within the context of a hospital/health facility. Under the court’s view, an item must still be a ‘‘substance or preparation’’ and there must be a causal connection between its use and the treatment of a human being. 10/17/90.

[425.0152 Medicines—Nutritional Products.](#) Ex-tax sales of vitamins, minerals and nutritional products to pharmacists, chiropractors and nutritionists must be supported by a valid resale certificate taken in good faith by the seller. There is no other basis for exemption for sales to these type of buyers.

Ex-tax sales of such products to doctors, surgeons, dentists, and podiatrists may be supported by either a valid resale certificate taken in good faith, or an exemption certificate authorized by Regulation 1667. An exemption certificate would be appropriate only if exempt medicines are sold or if products are furnished in conjunction with the treatment of a patient, regardless of whether a separate charge is made for such products. 9/2/92.

425.0160 Medicines Dispensed by Out-of-State Pharmacists. A substance or preparation otherwise qualifying as a medicine may qualify as an exempt prescription medicine under section 6369 as long as it is prescribed by a person authorized to prescribe the medicine, a licensed physician, dentist or podiatrist, and it is dispensed by a registered pharmacist in accordance with the law of the state where the pharmacist operates.

An example would be a taxpayer, a Washington corporation, selling a prescription drug or medicine to patients in California from its place of business located in the State of Washington. The medicine is prescribed by ophthalmologists or physicians in California to patients. The patient mails an order form with payment to the taxpayer. The order form is processed at the taxpayer’s place of business in Washington and the medicine is sent to the patient by United Parcel Service. The processing activity is under the supervision of pharmacists employed by the taxpayer, who are duly licensed by the Washington State Board of Pharmacy to engage in the practice of pharmacy. 5/30/90.

[425.0161.400 Medtronic AneuRx Endovascular Prosthesis and Delivery System.](#) The Endovascular Prosthesis is itself permanently implanted in the body to shore up the walls of the blood vessel into which it is inserted and to bypass the aneurysm to relieve the pressure on it. The Endovascular Prosthesis qualifies as a medicine under Regulation 1591(b)(2). The delivery system and the deployment handle are, however, used for inserting the Endovascular Prosthesis into position and do not remain with the body, and they do not fit any statutory exemption. The sales of the delivery system and the deployment handle are thus subject to tax. If all three items are sold together as a kit, a segregation is required to ascertain the correct measure of tax. 10/22/96.

425.0161.5 Miscellaneous Medical Supplies. Items such as egg crate mattresses, egg crate chair pads, ortho pillows, ortho heelbos, and sheepskins are not included in the definition of medicines under section 6369. 10/5/90.

[425.0161.775 Nonexempt Devices.](#) The following items are not regarded as exempt ‘‘medicines’’ because they are not designed to be worn on the person of the user or are items used to conduct tests:

| | |
|-----------------------------------|-----------------------|
| Air Purifiers | Hemocult Slides |
| Traction Devices | Aspirator |
| Alternating Pressure Pad and Pump | Humidifiers |
| Glucose Test Systems | Blood Glucose Monitor |
| Apnea Heart Monitor | Nebulizers |
| Glucose Test Strips | Ultrasound Devices |

Paraffin Baths
Air Compressor
Percussor
Continuous Passive Motion Devices

Fetal Monitors
Pulse Oximeter
Exercise Equipment
Tent Mist. 10/13/94.

425.0161.885 **Noninvasive Temporary Pacemaker.** The noninvasive temporary pacemaker (NTP) is a self-contained cardiac pacing device weighing approximately 18 pounds which delivers an electric pulse to the heart via two specially designed electrodes. It is the size of a small portable television and measures 6"Hx12"Wx15"D. In addition to serving as a pacemaker, it also is a portable ECG machine and contains a recorder for monitoring cardiac response. The NTP is not fully worn on the body of the user but is attached by means of the electrodes. Therefore, the NTP does not qualify as an exempt prosthetic device under Regulation 1591(b)(5). If any part of the device is not worn on the person, it will not qualify as an exempt prosthetic device. 12/6/89.

[425.0162](#) **Orthotic Devices.** Certain items which might otherwise be considered as devices, are defined as medicines in Regulation 1591(b)(4). Only those devices designed to be worn on the person of the user as a brace, support, or other correction of the body structure are so classified. Splints may be so classified if they are used in this manner.

Supports, slings and immobilizers for the shoulder, elbow wrist, hip, knee, lower leg, ankle, and arm, and finger splints, knuckle benders and leg splints are all within the definition of medicines. Also included in this category are knee sleeves, patella stabilizers, shoulder cuffs and sleeves, wrist and elbow supports, ankle braces and rehabilitation knee braces.

Not included as exempt orthotic devices are abduction cushions, tension pillows, leg boots, post-op shoes, rocker cast shoes, Reed cast belts, cast boots, heel and elbow protectors, bandages, restraints and padding. 12/9/92.

[425.0163](#) **Permanently Implanted.** An item is considered to be permanently implanted if the intent was that it remain in place for at least six months even if for some reason it had to be removed sooner. 10/6/93.

425.0163.100 **Pharmacist in Another State.** A substance or preparation otherwise qualifying as a medicine may qualify as an exempt prescription medicine under section 6369 as long as it is dispensed by a registered pharmacist in accordance with the law of the state where the pharmacist operates. The sales of ophthalmic medicine through a pharmacist located in another state will be considered exempt sales of prescription medicine under section 6369. 5/30/90.

425.0163.200 **Professional Medical, Dental, or Podiatry Corporations.** Sales of medicines to a professional medical, dental, or podiatry corporation are entitled to the exemption provided in Regulation 1591(a)(4) to the same extent as sales to individual licensed practitioners. 1/30/89.

425.0163.285 **Protonics Device (Knee Brace).** A Protonics Device, which is used in functional active resistance knee rehabilitation, serves as the exercise system to increase muscle strength and neuromuscular function. The device is worn by the user allowing him/her to exercise and perform daily activities. The device is strapped to the patient's leg both above and below the knee. Its joint can be set for different resistance to allow the patient to perform a rehabilitation program and daily activities without pain.

Hinged knee braces that are fully worn on the body of the patient, such as Protonics Device, qualify as orthotic devices under Regulation 1591(b)(4). Therefore, sales of such devices are exempt from tax when sold pursuant to the written order of a licensed physician or podiatrist [Regulation 1591(I).] Sales of the device pursuant to the order of other persons, such as physical therapists, are subject to tax. 3/3/97.

425.0163.300 **Pulse Oximeters.** Pulse oximeters are used by hospitals and physicians to measure the amounts of certain gasses in a patient's bloodstream. They are not permanently implanted in the patient. They are appliances, not medicines, and sales of these units are not exempt. 11/30/93.

[425.0163.450](#) **Related Supplies.** The concept of “related supplies” applies only to ostomy devices under section 6369(g). 7/2/97. (M98–3).

425.0163.500 **Repairs to Vehicles Used by Physically Handicapped Persons.** Regulation 1591(l) exempts “items and materials” used to modify a vehicle. This language is broad enough to cover repairs to equipment used to modify and which become part of the vehicle since repair parts are “items and materials” and, once installed, are “used” to modify the vehicle for transportation of physically handicapped persons. Additionally, any charges to have these parts installed is also excluded from tax under Regulation 1546(a). 10/18/90.

425.0163.600 **RIA-Mat Angeotension I I125 Kit and Res-O-Mat T3I125.** These two items are used exclusively in laboratory specimen tests and no part is applied to the human body either internally or externally.

“Medicines” are limited to those substances “intended for use by external or internal application to the human body.” Items used in laboratory testing performed “externally to the patients body” do not qualify as items externally applied to the human body within the meaning of Regulation 1591. 1/17/77.

425.0163.825 **Sale of Orthotics and Prosthetic Devices.** Taxpayer is in the business of providing orthotic and prosthetic devices which are custom fit by the taxpayer’s licensed professionals to meet the needs of each individual patient. All sales are made under prescription from the patients’ physician. The direct material costs equal or slightly exceed direct labor costs, but the charges are commingled for acceptance by Medicare/Medicaid and private insurance carriers. That the taxpayer’s customer may be reimbursed by a medical insurer is not relevant to the determination of whether taxpayer is making an exempt sale. If the sale does qualify for exemption, the taxpayer should obtain from the purchaser an exemption certificate conforming to the requirements of Regulation 1667 and retain it in its own records to support the exemption. If the sale is to Medicare A, it is a sale directly to the United States and is exempt from tax. However, if the patient is reimbursed under Medicare B, that is a sale to the patient, the normal taxation rules apply to determine if the sale was subject to tax. When the sale is not exempt, the taxpayer’s entire charge is subject to tax. Whether separately stated or not, the taxpayer may not deduct its charges for fitting because the fitting devices are part of the taxable sale of taxpayer’s tangible personal property. 4/19/96.

425.0164 **Sales to Insured Persons.** A health maintenance organization (HMO) which operates a number of hospitals and clinics forms a subsidiary which purchases equipment and supplies for the hospitals and clinics. The purchasing subsidiary issues resale certificates to suppliers on the basis that it will resell the equipment and supplies to the hospitals and clinics and will report and pay tax at that time.

Suppliers of certain types of equipment, such as wheelchairs, beds, walkers, commodes, and oxygen deal directly with patients rather than the subsidiary. Billings are sent to and are paid by the purchasing subsidiary. These sales are regarded as taking place between the supplier and the patient. The sales are not made to the subsidiary for resale. The subsidiary pays for the equipment on behalf of the insurer. The subsidiary may not issue a resale certificate for such property. 1/26/95.

[425.0165](#) **Samples of Medicines.** A taxpayer is in the business of manufacturing and wholesaling prescription drugs and medicines which may not be lawfully dispensed to a patient-consumer without a prescription and are intended only for human use. The company’s representatives distribute free samples of the prescription drugs to licensed physicians who dispense these drugs to their patients. Federal law prohibits the company from selling the samples.

The gift of medicine for promotional purpose creates a taxable use of the medicine by the manufacturer in California even in circumstances where the sale of the product under specific conditions would have been exempt. The company owes use tax measured by the cost of the materials which are used to manufacture the sample medicines. 2/5/91.

(Note: Subsequent statutory change.)

[425.0165.350](#) **Sequential Gradient Pumps.** These units are designed to prevent blood clots from forming in the veins of the lower leg and to treat lymphedems, venous ulcers, and associated complications. They do not qualify as orthotic devices since the pump itself rests on a table beside the patient. Sale of such items are subject to tax. 10/15/96.

[425.0166.800](#) **Specimen Collection Kit.** Specimen collection kits are not medicines since they are not for use by external or internal application to the human body. (Regulation 1591(b)(1).) California sellers of such items are required to hold a California seller's permit. 7/3/86.

425.0167 **Speech Therapy Device.** A speech therapy device providing fluencyenhancing auditory feedback to enable the user to speak fluently does not replace or assist in the functioning of any part of the body and is therefore excluded from the definition of medicine. As a result, sales of this device are not exempted by the prescription medicine exemption. 8/23/94.

425.0167.200 **Splints and Orthotic Devices.** In general, in determining whether an item is a "splint" or an "orthotic device," a splint is a device designed primarily to immobilize bone pieces in relation to each and which provides no support for the body structure or some support as an incidental effect. On the other hand, an "orthotic device" is designed to provide support to the body structure while the broken bones are healing. Splints do not qualify as "medicines" while orthotic devices do. 10/15/96.

425.0167.500 **Sterile Water—Bubble/Silent Humidifier.** Sterile water is sold in bulk or in unitized containers for use in a humidifier. Its purpose is to aid the administration of oxygen and other medical gases by means of humidification. The sales would be nontaxable if sold under the conditions prescribed by the statutes regarding prescription medicines. 7/11/96.

425.0168.030 **Sutures.** Stainless steel clips which are similar to wire staples and which are used for the occlusion and ligation of vessels or body tissue in the course of surgical procedures in the same manner as a suture qualifies as a "medicine." Accordingly, "Surgicap" and "Clip-A-Matic" qualify as medicines. 7/10/86.

[425.0168.145](#) **Urine Drain Bags.** Drain bags connected to a catheter to collect urine are "medicines" when they are leg bags used for ambulatory patients. Drain bags used for bedside purposes (bed bags) are not "medicines" since they are not fully worn on the body. 6/11/90.

[425.0168.165](#) **Vehicle Modified for Use to Transport Handicapped Persons.** A leasing company leases and sells vehicles to a firm (Corporation) engaged in the business of transporting handicapped persons. After the purchase and prior to the lease and sale, the leasing company modified these vehicles to accommodate the needs of the handicapped persons.

Under subdivision (a) of section 6369.4, an exemption from sales and use tax measured by the gross receipts of materials purchased or used to modify a vehicle to accommodate handicapped persons is only available at the time the modifications are performed. If there is a subsequent sale or resale of the vehicle after the modifications have been performed, the exemption is available for the portion of the sales price attributable to the modifications **only** if the purchaser of the vehicle is a disabled person eligible to be issued a license plate or placard for parking privileges accorded to disabled persons pursuant to section 22511.5 of the Vehicle Code. Since the transportation firm, as a corporation entity, cannot be considered a "disabled person who is eligible to be issued a distinguishing plate or placard," the transfer of the vehicles to the corporation do not qualify for the exemption. 6/24/97.

425.0168.175 **Vehicles for Physically Handicapped Persons.** The following items are exempt when necessary to enable the vehicle to be used to transport a physically handicapped person.

- (1) Upper torso restraint (similar to shoulder harness)

- (2) An interlock system (a safety mechanism to prevent the transmission from going into drive or reverse while the doors are open and/or ramp is out for loading/unloading)
- (3) An airbag of a unique type to raise or lower vehicle for loading/unloading
- (4) Running boards on the lower side of the vehicle to allow a nonwheelchair-bound physically handicapped person into or out of van
- (5) A bolt cam used to restrain a wheelchair in place inside a van
- (6) Seat belts
- (7) A tire carrier to hold spare tire (in a different place than initially installed by the vehicle manufacturer)
- (8) AC lights used for illuminating the ramp/elevator area
- (9) Hardware for curtains on window for privacy purposes
- (10) An air compressor for use with medical equipment
- (11) A 12-volt receptacle to supply power to medical equipment
- (12) A 4-point tie-down system to restrain a wheelchair in place inside the van
- (13) A gas tank installed in a new location made necessary by other modifications requiring removal of the original tank
- (14) Allocable portion(s) of the various interior packages, interior materials, and conversions necessary to enable the vehicle to be used to transport physically handicapped persons

The following items are considered not to be necessary to enable a vehicle to be used to transport a physically handicapped person and are not exempt.

- (1) An "upper torso durable pad" (unless it is part of an upper torso restraint)
- (2) Portable ramps (telescopic). These are not used to modify a vehicle, but are separate objects only temporarily placed on the vehicle to be used elsewhere
- (3) Air conditioners which are a luxury in the absence of a physician's prescription
- (4) A fire extinguisher
- (5) A CB radio
- (6) Leather seat covers
- (7) Windows and their accessories
- (8) Upgrade/fancy interior.
- (9) Engine cover. 8/29/95.

[425.0168.260](#) **Wheelchair Baskets and Pouches.** Wheelchair accessories such as baskets and pouches come within the definition of "replacement parts" as used in the statute. Therefore, sales of such items under the conditions required by statute are exempt from tax. 5/29/97.

425.0168.280 **Wheelchair Repairer.** The sale of wheelchair replacement parts sold to an individual for personal use of the individual as directed by a physician is exempt from the sales tax. 2/9/88.

[425.0168.300](#) **Worn On or In the Body.** Worn on or in the body of a person means the item is either completely below the surface of the body or is attached to the body. “Implanted” and “worn in” are nearly synonymous terms. The difference is one of location and attachment. Implanted generally means inserted or grafted into the tissue versus being placed below the surface of the skin. “Worn on” the person requires some physical attachment and must be fully worn on the person. This attachment need only consist of being taped on the body and may be of a temporary nature as long as part of the item is attached and the entire device is fully worn on the person. If any part of the device is not on the person of the user, it will not qualify. 10/4/84; 7/10/96.

(b) SPECIFIC ITEMS CLASSIFIED.

(Note: Section 6369, as amended operative July 1, 1971, includes within the definition of “medicines” the following: “sutures, whether or not permanently implanted, bone screws, bone pins, pacemakers, and other articles permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolves in the body.”)

[425.0168.450](#) **Abduction and Fracture Pillows.** These pillows are used to support, control, restrict motion, provide limited exercising, and/or elevate the leg after hip or knee surgery or in conjunction with traumatic injury to the hips and/or leg. The flyer states that the pillow is for femoral traction. The pillow is strapped to the patient’s leg while the patient is lying on the bed.

Traction devices not fully worn on the body do not constitute orthotic devices. Despite the fact that the pillow is strapped on, rather than the patient simply lying on it, this pillow is no different than others that are placed under the neck or a limb while the patient lies on the bed. Thus, such products are excluded from the definition of medicines under Regulation 1591(c)(2). 7/29/96.

425.0168.5 **ADA Brace.** The ADA Brace is a brace used for the correction of ankle injuries. As such, it qualifies as an orthotic device under section 6369 (c)(3), and its sale is not subject to tax when sold or furnished in accordance with Regulation 1591(a). 8/1/89.

[425.0169](#) **Agee-Wristjack Kit.** The Agee-Wristjack is “designed to biomechanically complement the anatomy of a fracture of the distal radius”, and is fully worn on the patient’s body. The external fixator, bonepins, caps and wrist jacket are all part of the Wristjack. The device and its component parts are an orthotic device. When sold or furnished under conditions set forth in Regulation 1591(a), its sales are exempt from tax. The hex “L” wrench, however, is not part of the system. It is an adjustment tool that is stored on the Wristjack main beam for convenience. Thus, the drill guides, screwdriver, hex wrench and surgeon’s manual are excluded from the definition of “medicines” and their sales are subject to tax. When the kit is sold for a lump-sum price, a segregation of the selling price must be made between taxable and nontaxable items. 11/24/97. (Am. 99–2; Am. 2000–2).

[425.0170](#) **Air Compression Pumps and Pneumatic Garments.** Air compression pumps used to inflate pneumatic garments and the garments worn for the treatment of lymphedema do not qualify as prosthetic devices, since they are not fully worn on the bodies of the patients. 10/14/93.

425.0172 **Air Purifiers.** Although a patient purchased an air purifier “at the direction of a physician”, the sale is subject to sales tax. Such medical equipment, even though prescribed or ordered by a physician, is excluded from the definition of medicine. 9/6/89.

425.0173 **Alco Wipes.** Alco wipes and pads which are pre-impregnated pieces of cotton, gauze, or swab containing medications and/or sterile water are “medicines.”

Baby Wipes. Baby Wipes when furnished or used by a medical facility in the treatment of a human being qualify as exempt “medicines.”

Athletic Supports. Athletic supports for vasectomy, penile and testicular surgery, and hemorrhoidectomy patients are orthotic devices which qualify as “medicines.” 4/30/92.

425.0175 **Ameri-Guide Stairway Lift.** The Ameri-Guide Stairway Lift is used by a person to get to the second level of a home and was purchased by prescription. As a result of a stroke, the person is paralyzed on one side and is unable to walk. The stairway lift was prescribed by a doctor due to the person’s limited mobility, which was the purpose of the devices listed for the exemption provided by section 6369.2. However, the legislature did not enact a generic exemption, but rather exempted certain items. Stairway lifts were not included. Sales of stairway lifts are subject to tax. 1/13/92.

425.0175.125 **Amino Acids.** Amino Acids sold separately or combined in a mixed formula with vitamins and minerals are included in the definition of the term “medicines” under Regulation 1591. Tax does not apply to sales of amino acids or amino acids combined in a mixed formula with vitamins and minerals when they are sold to a physician who furnishes these products to patients. Even if no claims are made regarding the effectiveness of these products in the treatment of human beings, it would not affect the exemption from tax. 11/27/89.

[425.0175.575](#) **Antimicrobial Agents Used by Hospital Personnel.** The following antimicrobial cleaning products qualify as medicines when used by hospital/medical staff personnel prior to any patient contact:

Accent Plus Skin Cleaner

Accent Plus Perinal Cleanser

Bacti-Stat

Cida-Rinse

Medi-Scrub

The following nonantimicrobial products are not commonly recognized as substances intended for use by external or internal application by the medical staff personnel in the diagnosis, cure, mitigation, treatment, or prevention of disease. Thus, these products do not qualify as medicines when used by medical personnel:

Derma San

Derma Soft

Epi-Fresh

Germa-Care

Liquia San T

Wash

Although the following products are antimicrobial, they are not used for handwashing. These products are used as a lotion and killing germs is incidental to their use. Thus, the sales of these products are taxable when used by medical personnel:

Accent Plus 1 Skin Lotion

Accent Plus 2 Body Massage

Accent Plus 2 Skin Creame

Accent Plus Total Body Shampoo. 3/12/96.

[425.0176](#) **Antitoxic Serum.** An antitoxic serum is sold to a city owned facility to be stocked for emergency use to neutralize venomous snake bites. The antitoxic serum is a “medicine.” The sale of the medicine to the city (a California political subdivision) is exempt pursuant to section 6369(a)(5). 7/8/87.

[425.0178](#) **Artificial Hearts/Other Externally Connected Devices.** These devices are used in lieu of a transplant heart or other body part until one is made available and include blood tubing, mobile pump and other mechanical contrivances. Such devices are taxable. 10/2/89.

425.0178.5 **Artificial Larynges and Voice Amplifiers.** Artificial larynges are electronic speech aids for persons who have suffered a temporary or permanent loss of voice. They consist of electronic circuitry and batteries contained in a packet which can be put in a pocket or fastened to a belt. A cord connects the packet to a tone generator which is held in the hand. Sound from the packet is delivered directly into the user’s mouth through a plastic tube connected to the tone generator. A voice amplifier is a pocket size battery powered electronic amplifier used to increase the loudness level of weak or esophageal voices.

These items and their related supplies are devices excluded from the definition of medicines pursuant to section 6369 (b)(2), and their sale is subject to tax. 7/8/86.

425.0178.800 **Athletic Supporter for Surgical Patients.** Athletic supporters prescribed for patients recovering from genital or rectal surgery qualify as orthotic devices worn on the person as a brace support or correction of a body structure under Regulation 1591 and the sales thereof to such patients are exempt. 5/1/86.

[425.0179](#) **Autotransfusion Systems.** Autotransfusion systems do not qualify as “medicines”. These devices are used to reinfuse the patient’s own blood rather than to provide drainage of waste products from the body. 3/6/89.

[425.0180](#) **Baby Powder and Lubricating Jelly.** Baby powder and lubricating jelly when furnished or used by a physician or medical facility in the treatment of a human being are exempt medicines. 6/10/65.

425.0188 **Baby-San.** Baby-San is a liquid castile soap for newborns. When furnished or used by a physician or medical facility in the treatment of a baby, the sales of Baby-San are exempt from tax because the use is on babies as patients. 3/12/96.

425.0200 **Bacteriological Culture Medium.** A prepared bacteriological culture medium is not exempt from the sales tax because it does not qualify as a medicine to be used for external or internal application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease. 6/29/66.

425.0201 **Balectrode.** Balectrode is indicated as being used in “any clinical situation requiring temporary pacemaking.” When its use is merely to temporarily replace or assist during a surgical procedure or operation for treatment, it does not qualify as a “medicine.” 1/28/91.

425.0202 **Baltherm.** This item is described as being used for “all procedures where myocardial performance testing is appropriate.” Since its use is limited to testing, its sales are taxable. 1/28/91.

425.0204 **Balwedge.** This item is described as used in “all procedures where myocardial performance testing is appropriate.” Since use is limited to testing, it does not qualify as a “medicine.” 1/28/91.

425.0205 **Barium Enema Bags.** Generally, medicine administration equipment such as enema bags, tubing and tips do not qualify as medicines under section 6369. However, when barium enemas are sold as units including disposable nonmedicinal items for their administration, the entire unit is considered to be a medicine as long as the medical portion of the unit is the major component. The sale of barium enemas in bags with tubing and tips is considered the sale of an exempt medicine. 6/5/78.

425.0206 **Bee Pollen Products.** Each of the bee pollen products submitted refers the reader to a statement that ‘We recommend you start with small amounts to insure against allergic reactions. As with any nutritional supplement, you may wish to first consult your physician.’ Bee Pollen products are food products exempt from tax so long as they are not described as food supplements or as having medicinal qualities. If the labels do not contain such statements, the products also must not be otherwise marketed as such. The brochure pages supplied stated that Forever Living Bee Pollen products in question are ‘‘food supplements.’’ These bee pollen products are excluded from the definition of ‘‘food products.’’ Sale of these products are subject to tax. 2/20/91.

425.0210 **Betadine Surgical Scrub.** Betadine Surgical Scrub is exempt as a ‘‘medicine’’ within the meaning of Revenue and Taxation Code section 6369 and Sales and Use Tax Regulation 1591 as a result of the court’s decision in *Purdue Frederick v. State Board of Equalization*, 218 Cal.3d 1020 (1990). It is an antiseptic, microbicidal, sudsing skin cleanser distributed and sold to hospitals for preoperative use on patients, preoperative scrubbing by doctors, nurses and other operating personnel, and for hand cleansing by hospital personnel caring for and treating patients. 10/17/90.

425.0211 **Betadine Products Qualifying as Medicines.** Betadine is an antiseptic product and the following Betadine products are within the definition of ‘‘medicines’’ pursuant to Regulation 1591(b):

- (1) Betadine Antiseptic gauze and bandage—these are dressings impregnated with the Betadine Antiseptic for the purpose of preventing infection;
- (2) Betadine medicated douche;
- (3) Betadine whirlpool concentrate; and
- (4) Betadine aerosol spray—this product is for use in cleansing wounds as part of a treatment. 3/7/91.

425.0211.750 **Biogran.** Biogran is a resorbable synthetic graft for use in repair of bony defects. It is a bioactive glass of narrow size range which has been shown to accelerate the healing of bone tissue in oral defects. As Biogran stimulates the healing of bone tissue and is permanently implanted, the sales of Biogran are exempt from tax under Regulation 1591. 2/25/97.

425.0212 **Biologics System 800 Air Lift.** The Biologic System 800 Air Lift is described as a bed designed specifically as a therapeutic device for treatment of persons with decubitus ulcers. The brochure does not describe how the bed treats the syndrome other than refer to the bed’s ‘‘no air loss’’ technology.

The bed in question appears to merely support the patient in such a manner as to prevent further injury to the skin and to assist the natural healing process. As it is not worn on the body, it does not qualify as a ‘‘medicine’’. The bed is an appliance for applying treatment to the patient. The sales of this bed are subject to tax. 5/8/91.

425.0213 **Birth Control Devices.** Condoms and diaphragms, because they are temporarily used externally or internally as needed, are not within the definition of ‘‘medicines.’’ 7/10/92.

[425.0214](#) **Blood Collection Supplies.** Section 6364.5 provides an exemption for certain sales of blood-related items that are exempt from taxation pursuant to Revenue and Taxation Code section 33. Section 33 limits its exemption to blood products that are held in a blood bank for medical purposes. Therefore, sales of blood collection supplies to health facilities for use during surgical procedures are not covered by section 6364.5 and are subject to tax. 3/25/98. (M99–1).

[425.0215](#) **Blood Monitoring Equipment.** Blood monitoring equipment used by diabetic patients to determine blood sugar levels do not qualify as ‘‘medicines’’ under any provision of section 6369. The sale of such items is subject to sales tax although the items may be prescribed by the patient’s physician.

Any glucose solution either taken by or applied to the patient to determine glucose tolerance qualifies as a medicine. As such, tax does not apply to the glucose itself and any substance or preparation used to cleanse the patient's skin prior to performing tests. 8/20/85; 12/5/90; 8/29/91. (Am. 2007-1).

(Note: Regulation 1591.1, effective March 10, 2000, regards the use of glucose test strips and skin puncture lancets, under specified conditions, as a necessary and integral part of the use of insulin and insulin syringes.)

[425.0220](#) **Blood Plasma.** A unit of blood plasma is exempt even though the unit includes an administration set constituting under 2 per cent of the total price of the unit. In general, however, administration equipment will not be regarded as included within the prescription medicine exemption. 9/13/62.

425.0225 **Branemark Bone Screw Device.** Branemark Bone Screw Device does not qualify for the prescription medicine exemption because it is a necessary component of a dental prosthetic device and has no independent significance. Revenue and Taxation Code 6369 (b)(1). 2/18/93.

425.0226 **Broach.** This item is used to ream out bone so that an artificial hip joint can be implanted in a patient. The "Broach" is not designed to be worn on or in a person and does not serve to support a body structure, replace a part of the human body, or assist in the functioning of a natural part of the human body. Therefore, the "Broach" does not fall within the definition of medicine and its sale is subject to sales or use tax. 1/25/96.

425.0227 **Bubble Humidifiers.** Bubble humidifiers are described as a humidifier adapter "with safety alarm pressure release and . . . bottle of sterile water," all in a unitized package. The bubble humidifier comes in two sizes; has self cutting caps on wide-mouth bottles; flonometer nuts to resist cross-threading; a diffuser to create high humidity output for maximum patient comfort; a baffling system to cause large particle drain-back into the reservoir, reducing rain out in oxygen tubing; and a brass poppet pressure relief system. The items are sold for a single price.

Sterile water qualifies as a medicine. Humidification kits, which contain the sterile water are exempt based on the fact that bottles and caps are items used to contain and apply medicine. Thus, they are exempt from tax on sales of containers when the sale of the contents are exempt from tax. 11/25/91.

425.0227.600 **CapSure Contingency Shield.** The CapSure Contingency Shield is a nipple-shaped medical device that assists the female bladder to prevent accidental leakage of urine. It is worn external to the body and is applied and removed by the patient. This product keeps urine in the bladder until the patient removes it to urinate. This product is discarded in the trash at the first sign of wear or after 7 days of use, whichever comes first. Thus, CapSure Contingency Shield is a urinary incontinence device. Unlike the typical catheter and collection bag, the shield does not allow the urine to drain in a sanitary manner, but rather keeps it in the bladder until the patient is ready to urinate. It operates much like panty shields or diapers, which are not medicines. The CapSure Contingency Shield is a device or apparatus excluded from the definition of "medicine" under Regulation 1591, and its sales are subject to tax. 11/5/97. (M99-1).

425.0228 **Cardio-Cool.** Cardio-Cool is a moldable myocardial protection pouch used to protect the isolated heart during cardiopulmonary bypass surgery. It is designed and sold as a one time disposable product. Cardio-Cool's special insulation pad provides a barrier to the cold in order to protect the phrenic nerve. None of the specific exemptions for prescription drugs or various medical devices are applicable to this product as provided by Regulation 1591. Therefore, sales of this product are subject to tax. 11/16/88.

425.0229 **Cast Shoes and Boots.** Cast shoes and boots are orthotic devices designed to be worn as support for the feet and toes; and are not an integral part of a leg brace, artificial leg or a custom-made biomechanical foot orthoses. Accordingly, they do not qualify as medicines. 3/9/93.

[425.0229.015](#) **Cast Shoes, Cast Sandals, and Post-Operative Shoes.** Cast shoes, cast sandals, and post-operative shoes are not part of a leg brace or artificial foot. These are not orthotic devices. The sales of these items are subject to tax. 5/28/92.

[425.0229.700](#) **Catheter Leg Strap.** This is a strap that secures an indwelling Foley to patient's upper thigh without tourniquet action, eliminating the need for tape. Since the sales of Foley catheters have previously been determined to be exempt from tax, so then, are sales of straps used to secure such catheters to patients. 12/20/93.

[425.0232](#) **Catheters.** The following named catheters are used for dilation rather than drainage and, thus, are appliances or devices excluded from the term "medicine" under Regulation 1591(c)(2).

Finalyson Ureteral Access Set

Balloon Ureteral Dilator Set

Omega Balloon Ureteral Dilation Set

Prostatic Dilation Catheter

Fogarty Arterial Embolism Catheter

This opinion assumes that these catheters are not permanently implanted in the patient. 4/15/94.

[425.0232.001](#) **Catheters.** Laser angioplasty catheters are not "medicines" but rather are "instruments" excluded from the definition of "medicines" under Regulation 1591. Their sales are subject to tax. 9/24/97. (M98-3).

[425.0233](#) **Catheters and Other Devices.** Pursuant to Regulation 1591(i) [now 1591.1(b)], tax does not apply to ". . . appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste . . ." Therefore, sales of Pleural Cavity Evacuators, General Evacuators, Cranial Evacuators, Bronchial Tubes and Evacuators, Stomach Evacuators, and Emoloectomy Catheters are not subject to tax only where they are used in post-operative situations. Tax will apply when they are used temporarily during surgical procedures or when they are used for the administration of medication. 7/14/78. (Am. 2002-2).

(Note: Regulation 1591 was amended effective March 10, 2000, and further amended effective April 12, 2001. Reader should note the change to the subdivisions indicated above.)

[425.0234](#) **Catheters-Post-Surgical Use.** Catheters which are used during surgery for drainage purposes and which also remain with the patient for post-surgical use may qualify as a "medicine" under Regulation 1591(b)(4) or (5). The catheter would qualify if it is intended to remain with the patient for some indefinite period. For example, surgery for hemorrhoids causes the urinary sphincter to close up. As a result, a urinary catheter is inserted prior to the surgery and remains with the patient until such time as he recovers control of the sphincter. The catheter would qualify as a medicine under Regulation 1591(b)(5) because it assists the patient with a natural function post-surgically even though, should the patient recover function quickly, it could be removed less than 24 hours after the surgery.

This example is distinguished from one in which the catheter used during surgery is intended to, and does, remain with the patient for only a short period of time and is replaced by a longer term catheter. 5/9/95.

[425.0237](#) **Ceprate SC Cell Concentration System.** The CEPRATE SC System is used in a process called immunoabsorption which removes specific cells from the bone marrow or blood of human beings. The product will be used for the removal of stem cells from patients prior to their undergoing myeloablative (extremely high dose) chemotherapy. After the chemotherapy, the stem cells are returned to the patient. The CEPRATE SC System has been shown to significantly deplete tumor cells from blood prior to stem

cell transplantation. Also, other impurities are removed from the patient's extracted blood as a result of this immunoadsorption procedure.

The CEPRATE SC System will be used by hospitals that perform transplant procedures and may only be used pursuant to the prescription of a licensed physician. The CEPRATE system is not a hemodialysis system within the meaning of Regulation 1591(j). It is not used in conjunction with artificial openings surgically created for the elimination of natural waste. Rather, it is an instrument for administering to a patient which is excluded from the definition of medicine under Regulation 1591(c)(2). Sales of the system are subject to tax. 10/28/96.

425.0242 **Chair Back Braces.** Chair back braces are orthotic devices and are exempt from tax if they are fully worn on the body of the user and used pursuant to a doctor's prescription. 2/9/78.

425.0245 **Chemical Intrauterine Contraceptives.** Sales of intrauterine contraceptives that operate by releasing chemicals within the uterus are exempt from tax when the devices are prescribed and furnished as required by section 6369 of the Revenue and Taxation Code. 1/9/76.

[425.0247](#) **Chemoport Implantable Fluid System.** This is an implantable system consisting of a portal and a catheter with a permanently locking connector. It allows for venous and arterial access for the infusion of medication, fluids, parenteral nutrition and sampling of blood.

It does not qualify as an implanted device because it is not permanently (i.e. for six months or more) implanted. It is not a prosthetic device because it does not replace or assist the function of a natural part of the human body. Additionally, it does not qualify as a programmable drug infusion device because it is not programmable. Therefore, its sale is taxable. 7/5/89.

425.0247.5 **Chempads.** Chempads used in conjunction with a Transcutaneous Electrical Nerve Stimulator (TENS) are considered exempt prescription medicines when they are sold in one of the two following ways:

- (1) The dosage is sufficient in strength to require a prescription; or,
- (2) If the TENS machine will not operate without the pads, the pads would be nontaxable as part of an exempt prosthetic device. 3/14/90.

425.0247.670 **Cholangiograph 4FR, Urethral Catheter Round Tip, and Roth Grip-Tip Future Guide.** Cholangiograph 4FR is a disposable product used for dye injection during gall bladder surgery. Once x-rays are taken, the device is removed and discarded.

Urethral catheter round tip is a disposable urethral catheter used for dye injection for x-ray during cystoscopic examination. It is sometimes left in place for temporary drainage of the kidney or urethral.

Roth Grip-Tip Suture Guide is designed to grip and fixate enough of a transected urethra to perform a clean bladder neck reanastomosis during radical prostatectomy.

All of these items are used temporarily during surgery and are not "medicines." 5/17/95.

425.0247.700 **Chondroitin Sulfate (CDS).** CDS is a substance extracted from shark cartilage. It is used during ophthalmic surgery as a therapeutic agent and as a protective agent in surgical procedures involving the eye. CDS qualifies as medicine under section 6369 as it is used for internal or external application to the human body in the treatment of eye disease. Tax does not apply to the sale or use of this product as provided in Regulation 1591. 1/24/84.

[425.0248](#) **Cleaning Products.** Products that cleanse the skin, treat skin disorders, or prevent adverse skin conditions are "medicines" within the meaning of Regulation 1591. The courts have held that the exemption also applies to cleansers when hospital personnel use them to wash their hands prior to treating

patients, *Purdue Frederick Co. v. State Board of Equalization* (1990) 218 Cal.App.3d 1021, 267 Cal.Rptr. 482. Therefore, these products are “medicines”, the sales of which under appropriate conditions are exempt from tax. 8/21/91.

425.0250 Cleansing Agents. For sales of cleansing agents by medical supply houses to qualify for the prescription medicines exemption (section 6369(a)(1), the sellers must qualify as “registered pharmacists”. Accordingly, a medical supply house which employs registered pharmacists may qualify for the exemption under section 6369(a)(1). Sales by those supply houses who do not employ registered pharmacists would be taxable unless sold under conditions described in section 6369(a)(2), (3), (4), and (5). 4/8/92.

425.0252 Cloverleaf Cath Lab Pacing Probe. This product is used for “any clinical situation requiring temporary pacemaking.” When used as a temporary assist during a surgical procedure or operation, for either treatment or testing, it is taxable. 1/28/91.

425.0255 Collagen Corneal Shield. Collagen Corneal Shield is a transparent, thin, pliable film of bovine collagen which is used to help reduce post surgical corneal trauma and stress in patients with compromised corneal or acute epithelial defects.

This product is considered to be a temporary biological dressing whose function it is to protect the cornea while it is healing. As a result, its sales are subject to tax. 10/8/91.

425.0256 Collastat. Collastat is an absorbent sponge which is applied to the site where homeostatic (arrest of bleeding) is desired. The basic material of this product is collagen obtained from the achelther tendon. It is used in surgical procedures to control bleeding.

Collastat performs the same functions (i.e. stopping bleeding) as do traditional dressings or bandages and so is in the nature of a temporary biological dressing. Therefore, it is not a medicine and, thus, the sales are subject to tax. 10/8/91.

425.0257 Colles Fracture Splint. This specialized splint is attached to the wrist and long fingers of the hand by use of metal pins inserted into the bones of these body parts. This device is fully worn on the person and qualifies as an orthotic device which is classified as a “medicine.” 1/10/84.

425.0259 Colostomy Care Kits and Tracheotomy. These care kits contain the supplies required by the patient to administer self-care, and, as such, they fall under the “necessary related supplies” language in section 6369(g) and are medicines. 10/2/89.

425.0260 Colostomy Drain Bag. A colostomy drain bag is an exempt medicine pursuant to Revenue and Taxation Code section 6369(g) and Sales and Use Tax Regulation 1591(j). 5/10/88.

425.0265 Components of Drug Infusion Devices. Components of an infusion system such as tubing, catheters, filters, infusion bottles, bags, pumps, intravenous poles, needles and syringes are devices which are excluded from the definition of “medicines” under Regulation 1591 (c)(2). 10/3/90.

425.0267 Computerized Ambulatory Drug Delivery Pump. The Computerized Ambulatory Drug Pump is a programmable drug infusion device and is an exempt medicine under 6369 (c)(6). 6/12/89.

425.0269 Condom. Sales of condoms at student health centers are subject to tax. Condoms are not exempt as “medicines” even if furnished pursuant to a prescription. 6/4/90.

425.0269.800 Continuous Passive Motion Device. Continuous passive motion units are specially designed electrically powered apparatuses fitted for the ankle, knee, hip, elbow, or finger. They are worn for a period of one to four weeks and stimulate healing or regeneration of articular tissues, prevent joint stiffness, and permit normal healing of arthrotomy incisions. They are designed to assist the functioning of a natural body part. Thus, when fully worn on the body, they qualify as “medicines.”

Tax applies as follows to specific units:

Elbow, shoulder and finger units. These units are to be fully worn on the person or user and, therefore, they meet the definition of orthotic devices pursuant to Regulation 1591(b)(4).

Knee and hip units. The use of these devices is restricted to patients who must lie in bed while the device is attached to a stationary object such as the patient's bed frame. Therefore, the device does not permit ambulatory movement and is not fully worn on the person or user. Thus, it does not meet the definition of orthotic devices pursuant to Regulation 1591(b)(4). 11/8/85; 12/13/88.

425.0270 Continuous Positive Airway Pressure Machine and Humidifier. The continuous positive airway pressure machine is an oxygen delivery system. This machine supplies a small amount of positive air pressure through a hose connected to the nasal airway, which keeps the airway from collapsing. An oxygen system such as this, which delivers air or oxygen into the breathing system of the patient is a medical oxygen delivery system within the meaning of Regulation 1591(m). Sale of this product in accordance with Regulation 1591(m) is exempt from tax. On the other hand, devices that only assist the patient in breathing and do not deliver air or oxygen directly to the patient do not qualify as medical oxygen delivery systems. Sales of CPAP humidifiers which are an integral part of the CPAP system, delivering humidified air directly to the patient (as opposed to room humidifiers), are also exempt from tax. 3/8/91; 5/13/96.

425.0275 Coronary Stents. Coronary stenting is a technique which mechanically props open the artery through implementation of a small, latticed stainless steel tube at the site of the narrowing. The stainless steel tube, the stent, is premounted on a coronary angioplasty balloon catheter. As the balloon catheter is inflated during angioplasty, the stent expands and is compressed against the artery walls. When the balloon is deflated, the expanded stent remains implanted in the artery. This technique of mechanically propping open the artery with the stent greatly reduces the rate of clinical restenosis.

Since the stent remains permanently implanted in the body and assists the circulatory system by holding the affected artery open after the angioplasty procedure, it qualifies as "medicine" under Regulation 1591(b)(2). Its sales are exempt from tax. 11/21/97. (M99-2).

425.0280 Corrective Appliances. Chiropractors are required to pay sales tax on the fair retail value of corrective appliances furnished to patients. 11/7/60.

425.0290 Corrective Pessaries. Corrective pessaries, which are placed in a uterus in order to reposition it in cases of backache, abnormal bleeding, dysmenorrhea, post partum retroversion, post partum involution, sterility, pregnancy and a prolapsed ovary and worn by patients for varying lengths of time (i.e., for a week, month or for the rest of the patient's life) according to the specific condition for which they are prescribed, are "orthotic devices." As such, tax would not apply to the sale of these items. 12/6/77.

425.0292 CPM Pads and Hypothermia Blankets. Both items are used in conjunction with Hot/Ice Machines, as part of the orthopedic surgical process, to promote post operative healing and are only available on a prescription basis. In addition to acting as a "brace, support, or correction", for the body structure, they are also used after implantation surgery to control body temperature.

These two items are not functional without the Hot/Ice Machines and thus cannot be fully worn on the patient. Therefore, neither qualifies as an exempt orthotic device under Regulation 1591 and the sale of such items are subject to tax. 8/1/89.

425.0292.500 Cranial Prostheses Accessories (Hat, Caps, Turbans, etc.). A prosthetic device must assist or replace a natural part of the body. Under strictly defined circumstances, a wig can do that. On the other hand, a hat does not assist or replace a natural part of the body. It covers the head. Wearing apparel is not listed in Regulation 1591 among items deemed to be "medicines," nor does it even qualify as "related supplies." Its purposes are generally cosmetic, or fashion, or to supply protection for the head in addition

to that supplied by hair. Therefore, hats and caps, etc., do not qualify as medicines and their sales are subject to tax. 8/18/97. (M98-3).

425.0293 Cryomat and Cryopak. Cryomat and Cryopak are both reusable liquid filled therapeutic ice products used by medical doctors, physical therapists, and others for the treatment of such injuries as contusions, sprains, strains, etc. Both products are externally placed on the part of the body where treatment is desired. The only difference between Cryomat and Cryopak is in their configuration. Cryomat consists of an 11x16 sheet of liquid filled pouches and Cryopak has pouches individually separated from each other to allow greater ease and versatility in treating acute contours of the human body.

The use of Cryomat and Cryopak is not an external application of a substance or preparation as contemplated by section 6369(b). The injured area being treated will experience a cold sensation resulting from the cold liquid pouches, however, no ingredient or comparable component of Cryomat or Cryopak is absorbed by the body. Therefore, Cryomat and Cryopak are not “medicines” and their sale is subject to tax. 4/6/88.

425.0295 Custom-Made Foot Orthosis. As a result of “Charcot’s Joint”, defined as a neurogenic joint disease caused by diabetes, a doctor prescribed shoes which were built from casts of the taxpayer’s feet to enable the taxpayer to walk and to prevent infection and amputation.

The shoes qualify for the exemption under Regulation 1591(b)(4) as “custom-made foot orthosis” even though the shoes may be sold by the vendor of such devices rather than a medical organization. 1/13/92.

425.0298 Denis Browne Bar. Denis Browne Bar is a device worn on the leg that does not allow motion of the feet; it prevents the feet from movement as a splint would. Therefore, it is not a brace under section 6369(c) and, thus, is not entitled to the exemption from the sales or use tax provided under section 6369(c). 4/21/95.

425.0299 Devices. Walking heels utilized in conjunction with leg or ankle casts are exempt as a necessary part of the cast. Head halters are not medicines unless they are fully worn on the person of the user. If they are attached to a bar or other device, they are taxable. Elastoplast and Pegolastic are medicines if the purpose of their use is to brace, support, or correct the body structure. 7/14/78.

425.0300 Dialysis Fluid. Dialysis fluid, which is prescribed by a physician and is used in an artificial kidney machine to remove impurities from the patient’s blood, is a medicine within the meaning of section 6369. 5/31/68.

425.0310 Dialysis Machine Peripherals. “Dialyzer reprocessing system” cleans, tests and sterilizes the kidney dialysis machine (dialyzer), allowing it to be used again rather than discarded. “Data management system,” a mini computer with software, is connected to the dialyzer and records its reuse and prints dialyzer labels.

Although Regulation 1591(j) includes in the definition of “medicine” certain “. . . appliances and related supplies . . .,” the two systems described above do not meet the requirement that they be an integral part of the machine itself since the dialyzer can operate effectively without either one. 3/24/86.

425.0315 Dialyzers. Dialyzers allow filtration of the blood while a patient is undergoing treatment on an artificial kidney machine and are, therefore, exempt as a related supply used in conjunction with that machine. 7/6/78.

425.0320 Diaperene Powder, Ethyl Alcohol and Baby Oil. Sale of Diaperene powder, ethyl alcohol and baby oil to state hospitals is not taxable. The items are considered medicines under the Revenue and Taxation Code and Regulation 1591. 11/28/69.

425.0325 Disposable Adult Diapers, Pant and Pad Systems. Incontinent supplies such as disposable adult diapers, pant and pad systems are excluded from “medicines” under Sales and Use Tax Regulation

1591(c)(2). Accordingly, tax applies to the sale of such items notwithstanding the fact that they are sold on a prescription basis. An exception to taxation would be ostomy appliances and supplies described in Regulation 1591(j). 2/29/84; 11/17/92.

425.0330 Disposable Automatic Clip Appliers. The application of tax to disposable automatic clip appliers is as follows:

(1) Disposable automatic clip appliers used to bind (ligate) vessels or body tissue with an absorbable substance similar to thread are a type of “suture” and would be included within the term “medicine” pursuant to Regulation 1591(b)(2). These instruments contain an integral cartridge containing absorbable copolymer ligating clips, and together with the applicator are sold as one disposable unit. It has applications in many types of surgical procedures where an absorbable or radiopaque ligature is indicated or desired.

(2) Disposable automatic clip appliers primarily used for procedures such as cutting or stopping the flow of blood are in the nature of surgical appliances or devices and as such would be excluded from the term “medicine” pursuant to Regulation 1591(c)(1). These instruments contain stainless steel clips, and both clip cartridge and applicator are sold together as one disposable unit. It has applications in many types of surgical procedures to provide hemostasis and occlude vessels or tissue structures and other tubular structures and for vagotomy, sympathectomy, and radiographic markings. 1/13/86.

425.0334 Disposable Dye Packs. Dye packs are used to surgically implant dyes in a patient’s eyelids to form a permanent eyeliner for cosmetic purposes in cases where the patient is allergic to commercially sold eyeliner or in cases of reconstructive surgery. The dye packs fail to meet the definition of “medicine” as they are not administered to diagnose, cure, mitigate, treat, or prevent a particular disease, including allergies. 7/3/85.

425.0335 Disposable Dye Packs. The dye packs contain highly sterile dye that is surgically implanted into the eyelid of patients, producing a permanent eyeliner and are distributed to ophthalmologists and plastic surgeons. The disposable pack is used once during this procedure. This product is often used for cosmetic purposes, in cases where patients have allergic reactions to commercial eyeliner, or in cases of reconstructive surgery. The disposable dye pack is available only to licensed medical doctors and is not sold to the general public.

The disposable dye pack is not administered to diagnose, cure, mitigate, treat or prevent a particular disease. It is used for cosmetic purposes and is not included within the definition of “medicine.” In situations where the dye pack is utilized in reconstructive surgery, further information would be needed for consideration as to whether the dye may have a medical function. However, if the dye is used for cosmetic purposes, even though as part of reconstructive surgery, it will not be within the definition of “medicine.” 7/3/85.

425.0340 Distilled Water. Although used to prevent digestive problems, distilled water is not entitled to exemption as a medicine. 2/17/65.

425.0352 Dynowalker. The primary purpose of this product is the immobilization of the lower leg and foot in relation to each other rather than support of the body structure. Therefore, this item is considered to be in the nature of splints under Regulation 1591(c)(2) and is excluded from the definition of “medicine.” 7/29/96.

425.0355 Electric Three-Wheel Scooter. A durable medical equipment company sells an electric three-wheel scooter that can be utilized as an electric wheelchair. The scooter appears to be similar in both design and function to a conventional four-wheel electric wheelchair, except that the scooter is smaller, more compact, and has only three wheels. It was indicated that Medicare recognizes this device as a covered item if medically necessary.

Electric three-wheel scooters such as the described scooter qualify for the medical exemption under Regulation 1590(k). [Now Regulation 1591.2]. Tax does not apply to the sale or rental of an electric three-

wheel scooter to an individual for the personal use of that individual as directed by a physician. In order to ensure that the sale or rental of electric three-wheel scooters meets the criteria for exempt status, the retailer should obtain a written statement from either the customer or the physician that the scooter is for the personal use of the customer as directed by a physician. The written statement should be retained. 10/25/85. (Am. 2005-2).

(Note: New section reference effective March 10, 2000.)

425.0360 **Electrocardiographs.** Electrocardiographs, metabulators, and their related accessories do not qualify as exempt “medicines.” 10/30/62.

425.0365 **Electronic Speech Aid Devices and Accessories.** Electronic speech aid devices are electronic devices for those who suffer temporary or permanent loss of voice from such causes as laryngectomy, illness, injury or paralysis. The electronic circuitry and batteries are contained in a packet which can be put in a pocket or fastened to a belt. A cord connects the packet to a Tone Generator which is held in the hand. Sound from the packet is delivered directly into the mouth through a slender plastic tube (connected to the Tone Generator) which is placed in the mouth when the user wants to speak. A push button on the Tone Generator starts and stops the packet’s sound which results in a speech effect by the user.

The electronic speech aid device cannot be considered a “substance or preparation intended for the internal or external application to the human body” pursuant to Regulation 1591, since the item is a device or its component parts used to facilitate human speech. Therefore, the electronic speech aid device more accurately reflects items in Regulation 1591(c)(2) which are specifically excluded from the definition of medicine. Thus, the sale of the electronic speech aid device is taxable. 7/8/86.

425.0370 **Emergency Transmyocardial Pacing Unit.** This kit is used in “Emergency situations where cardiac electrical activity or sufficient blood flow is not present.” When used as described it is regarded as an “appliance, etc.” of which sales are taxable. 1/28/91.

425.0380 **Enema Preparation.** The sale of an enema preparation in a container which also serves as a disposable tube applicator is exempt from tax. The enema preparation is an exempt medicine (§6369); the container is an exempt container (§6364) regardless of it also serving as an applicator. 3/12/65; 5/15/85.

425.0382 **Entriflex, Keofred, and Enteral Tubes.** All of these are feeding tubes and are rarely ever used for any other purpose. Thus, they are taxable. 10/2/89.

425.0384 **ErecAid System.** The ErecAid System is a vacuum tumescence/constriction therapy device used in the treatment of male impotence. The system consists of a vacuum cylinder, elastic tension rings and a special vacuum pump. The pump and the cylinder are removed after engorgement and rigidity are achieved and the tension rings remain. As such, this device cannot be considered to be fully worn on the person of the user when it is replacing or assisting the function of a natural part of the human body. Therefore, it does not qualify as a prosthetic device under Regulation 1591(b)(5) and its sale is subject to tax. 2/16/90.

425.0385 **Ewald Tube.** This tube is inserted through the bowel into the large intestine and is used primarily for diagnostic purposes. Thus, Ewald tubes are taxable. 10/2/89.

425.0386 **Ferris PolyMem Dressing.** This dressing is described as being four products in one. It is made of a biocompatible and absorbent polyurethane base which contains “F68 surfactant” to cleanse the wound, glycerin to moisturize and soften “necrotic” (dead) tissue and provide nonadherent release from the skin, and superabsorbent polymer to draw, absorb, and hold exudate away from the wound. PolyMem provides “Autolytic debridement” (excision of devitalized tissue and foreign matter from a wound). It also contains moisturizing and cleansing agents that help the wound release necrotic tissue.

It appears from the description that the primary purpose of the glycerin and F68 surfactant is to draw fluids out of the wound, to permit the release of the scab, and to prevent the dressing from adhering to the wound

itself. Such characteristics are designed to make the dressing work better. They do not provide treatment for the wound over and above that provided by nonmedicated dressings. Therefore, this dressing is not a “medicine” under Regulation 1591. 10/24/95.

425.0388 **Fogarty Embolectomy Catheters.** A facility which provides hemodialysis treatment to patients purchases the Fogarty embolectomy catheters solely for use in this treatment.

The Fogarty embolectomy catheters qualify as tax exempt “medicines” when they are used in the treatment of patients undergoing hemodialysis. Accordingly, the purchase of this item is not subject to tax. 5/11/84.

425.0390 **Artificial Limbs—Training.** Tax applies to sales of artificial limbs to medical training facilities for the purpose of training a prosthetist. 10/30/72.

425.0391 **Fecal Collection, Leg Drainage Bags, Biliary Drainage Bags and Urinary Incontinence Pouches.** If bags are worn on the person of the user (a taped on bag is fully worn), they are exempt prosthetic devices. When a bag is not worn because of mobility problems, they are taxable unless exempt under section 6369(g) which relates to supplies for ostomy devices. 10/2/89.

425.0393 **Five-In-One Pace-Jector.** This item is used to inject medication into the heart during periods when the pulse beat drops below (20) beats per minute or during emergency asystole or symptomatic bradycardia. Since it is used to administer medication during emergencies, it is regarded as an “appliance, etc.” sales of which are taxable. 1/28/91.

425.0395 **Flaxedil.** Flaxedil used in conjunction with most anesthetics in surgical operations to reduce bucking, coughing, and bronchospasm caused by the introduction of an anesthetic is an exempt medicine. 5/31/74.

425.0397 **Full Cranial Prosthetic Devices.** Sales of wigs for treatment of hair loss due to alopecia, burns, chemotherapy, and radiation qualify for exemption when the wigs are sold pursuant to the order of a physician, even though the wig may be sold by a person other than a medical organization. Persons claiming such exemption on their sales and use tax returns must retain a copy of the doctor’s order and a record of the name of the purchaser, date of sale, item sold, and the sales price. Sales of wigs which are not sold pursuant to the order of a physician and surgeon for treatment of a medical condition are taxable. 4/27/90.

425.0398 **Futurplex Flower Essence.** The brochures states: The Futurplex Flower combinations have been formulated to act in and regulate human bioenergy. These combinations are catalysts for the release of entrapped and stagnated energy, allowing previously blocked or suppressed energies to be available for use. The formulas help provide the bioenergetic environment through which one can evolve toward one’s full emotional spiritual potential.

There is no indication that these products do anything specific to promote health or prevent disease; general statements such as the one quoted above do not elevate these products to the status of a “medicine”. Sales of these products are subject to tax. 11/25/91.

425.0400 **Glucose Tolerance Test.** Substances used in the “glucose tolerance test” are exempt when used by a physician for internal application to the human body in the diagnosis of disease. 8/27/65.

425.0405 **Goat, Sheep, Bovine Sera.** These are blood products of animals of a kind whose products constitute food for human consumption. They are used in laboratories as a test medium.

The exemption provided by section 6358 applies only to the sale of live animals and not to sales of the products of animals when the product is not otherwise exempt. Thus, the sales of these products are taxable. 10/2/89.

425.0408 **Hearing Aid Supplies.** Eargene, Dri-Aid and forced air blowers are not necessary accessories or component parts of hearing aids. They simply assist in the function of the hearing aid. Thus, sales of these products by a hearing aid center are subject to tax measured by the sales price to the customer. 10/30/87.

425.0408.300 **Heel and Elbow Protectors.** Heel and elbow protectors are taxable unless necessary as a result of a prosthetic or orthotic device. 5/2/80.

425.0408.500 **Heimlick Chest Drain Valve and Under Water Drainage Set.** Both of these products qualify as medicines under Regulation 1591.1(b)(4)(C) because they are appliances and related supplies necessary as the result of a surgical procedure by which an artificial opening is created in the human body for elimination of natural waste. Therefore, the sale of these products is not subject to tax. However, in order to qualify as medicines under Regulation 1591.1(b)(4)(C), they must be used in post-operative situations. 5/17/84. (Am. 2005-2).

425.0409 **Hemodialysis Products.**

(1) Mahurkar Kit. Described as a dual lumen polyurethane central venous catheter with kit containing items needed for catheter placement via Seldinger technique and used for short term use for kemodialysis or abperesis (pheresis).

Tubing and catheters are necessary and integral supplies used in conjunction with artificial kidney dialysis machines and are not subject to tax.

(2) Perm Cath Repair Kit. Described as a kit containing external catheter replacement section and accessory items to repair a damaged Perm Cath. Used to repair damaged external portion of Perm Cath, it is a "related supply" for hemodialysis and not subject to tax.

(3) Peri-Patch Peritoneal Catheter Extension Set. Described as a silicone rubber replacement section for repair of peritoneal catheters, one of three parts used to repair the damaged external portion of the peritoneal catheter. It is considered "related supplies" for hemodialysis and not subject to tax.

(4) Silicone Adhesive, Type A, Medical Grade. Described as silicone adhesive, sterile, provided in 8gm tubes, and used in the repair of various catheters (along with other components). It is a "related supplies" for hemodialysis and not subject to tax.

The exemption for "related supplies" and hemodialysis products is broad enough to include repair or replacement parts, described in 2, 3, and 4 above, since these parts are "products" and are necessary and integral to the proper functioning of the dialysis machine and other related items. This exemption only applies to parts used to repair or refurbish items the sale of which are not subject to tax. Tax applies to sales of repair or replacement parts for items the sale of which are taxable.

(5) Peri-Patch Glue Mold. Described as a hinged polypropylene mold with locking ring, one of three parts used to repair the damaged external portion of a peritoneal catheter.

(6) Beta-Cap Adapter. Described as a ultem adapter. Placed in the proximal end of peritoneal catheters to allow the catheter's connection to other mating parts (Beta-Cap Cap), injection sealing cap (transfer set).

(7) Beta-Cap Cap. Described as part Beta-Cap closure system which provides an infection barrier for peritoneal catheters when used with providone-codeine solution. Placed in the proximal end of peritoneal catheters to allow the catheters connection to other mating parts (Beta-Cap Cap) injection sealing cap (transfer set).

(8) Beta-Cap Clamp. Described as peritoneal catheter clamp. Used to "clamp-off" the external portion of a peritoneal catheter.

As with repair parts, with respect to items 5, 6, 7 and 8 above, the taxability of the sales of parts used to adapt an item to use depends in part on the taxability of the sale of the items being used. Sales of parts sold for the purpose of adapting catheters for use are exempt from tax if the catheter is put to exempt use.

(9) Infusion T. Described as a closed vascular access made of three components: a double beveled connector with protective claps, an injection, and 63 length of polyvinylchloride tubing. The infusion T connects to an A-V cannula to provide access to the blood system for the administration of meds, fluids, or blood sampling.

If the medicines, fluids, or blood sampling is administered as an integral part of the dialysis process, the infusion T used to administer them would be considered a “related supply” the sales of which are exempt from tax. If used in day to day patient care, the sales would be taxable. 12/31/90; 5/14/91.

425.0410 **Herbs and Supplements.** A licensed acupuncturist in the state of California, with a doctorate in oriental medicine, is considered a primary health care practitioner in the state of California. The acupuncturist dispenses herbs and supplements to patients.

The Legislature, in adopting the language in section 6369(a)(1) Revenue and Taxation Code chose to adopt the limiting definition of “prescription” found in section 4036 of the Business and Professional Code rather than the broader interpretation implicit in section 4937 Business and Professional Code. The reference in Revenue and Taxation Code section 6369(a)(1) to “person authorized to prescribe medicine” means that person must be a physician, dentist, or podiatrist. Unless the acupuncturist is also licensed as one of these entities, his/her prescriptions are not exempted from the sales and use taxes as being within the prescription medicine exemption. In addition, the prescription must be filled by “a registered pharmacist in accordance with the law.”

Since the sales are made for medicinal purposes, the herb and supplement sales also do not qualify under the food product exemption. 12/31/91.

425.0413 **High Voltage Pulsed Galvanic Stimulator.** High Voltage Pulsed Galvanic Stimulator (trade name “GVII”) is designed to be fully worn on the body of the user and is used to promote pain control or neuromuscular stimulation via the passage of small electrical current through the patient’s skin. “GVII” performs the same function as a transcutaneous electrical nerve stimulator (TENS) and is a prosthetic device under Regulation 1591(c)(5). Since “GVII” is designed to be fully worn on the body of the user, tax does not apply to its sale when sold pursuant to a physician’s prescription. 8/31/88.

425.0415 **Hospital Beds.** Regulation 1591(b)(4) and (5) explains that certain orthotic or prosthetic devices may be within the definition of “medicine,” if they are designed to be worn in or on the person of the user. Hospital beds, regardless of how specialized or beneficial, are not includable because they are not worn on the body of the patient. To wear something means to have it physically on the person. The test is not whether the patient is always in contact with the item because the patient cannot move, but rather whether the item accompanies the patient on the patient’s body when the patient does move. 4/29/94.

425.0416 **Hoveround Four-Wheeled Scooters.** Under Regulation 1591.2(b), electric three-wheel scooters that are similar in both design and function to a conventional electric wheelchair, qualify as a wheelchair for the purposes of Revenue and Taxation Code 6369.2. The fact that the Hoveround scooter has a fourth wheel does not preclude it from qualifying as a wheelchair pursuant to section 6391.2 and Regulation 1591.2(b).

However, for electric scooters to qualify for exemption from tax, Regulation 1591.2(b) also includes two requirements: 1) the scooter must be sold to an individual for that individual’s personal use; and 2) the individual’s purchase of the scooter must be directed by a licensed physician. 7/30/05. (2005–2).

[425.0417](#) **Human Sperm.** The sale of human sperm to medical personnel for use with their clients and directly to women for self insemination is exempt. 6/15/93; 8/20/96.

425.0418 **Hydrocephalus Devices.** The following items used in the treatment of hydrocephalus are exempt from tax since they are permanently implanted in the human body to assist the functioning of the brain:

Pressure Regulating Components:
Cruciform Slit Valve

Ventricular Access Devices:
Ventricular Catheter
Catheter Reservoir
Slotted Catheter Reservoir
Slotted Frontal Horn Catheter Reservoir
Slotted Ventricular Catheter
Frontal Horn Catheter Reservoir
McComb Neonatal Catheter Reservoir

Proximal and Distal Components:
Rickham Type Reservoir
Fixation and Joining Connectors
Burr Hole Catheters Support

Distal Catheters:
Atrial Catheters
Peritoneal Catheters. 3/1/84.

[425.0420](#) **Hypodermic Needles.** Generally, intravenous sets, syringes and needles (whether disposable or not) are devices or appliances and are not exempt medicines. Effective January 1, 1983, insulin syringes qualify as exempt medicines provided they are furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician. 11/13/62; 4/10/84.

425.0422 **Hypodermoclysis Administrative Sets.** These items are used for subcutaneous injection of a saline or other solution. The set consists of two roller clamps, two flash tubes, two male adapters, and two unattached 22 gauge needles. Appliances to administer saline and other solutions are excluded from the definition of “medicines” under Regulation 1591(c)(2). Thus, sales of these items are subject to sales or use tax. 5/23/95.

425.0425 **Hypo-Hypertherm Pads.** Hypo-hypertherm pads are placed upon the bedridden patient to regulate the patient’s body temperature. Hot/ice machines are used in conjunction to regulate body temperature. Such items do not qualify as “medicines” since they can not be fully worn on the patient. 6/16/93.

[425.0427](#) **Hypothermia Blankets.** Sales of hypothermia blankets to a hospital are subject to tax as durable pieces of medical equipment. The fact that some may be used in conjunction with kidney dialysis machines does not affect this conclusion. 3/1/89.

[425.0430](#) **Implantable Defibrillator and Related Devices.** The microprocessor based programmable implantable defibrillator is a device which is implanted in a patient with a heart dysfunction for up to seven years. The device monitors the patient’s heart signals and detects abnormal heart rates. Once detected, the device provides a defibrillation energy to correct the heart rhythm. The implanted defibrillator is connected to the heart via leads which are also implanted with the device. Both the implantable defibrillator and the implantable leads qualify as exempt medicines under Regulation 1591(b)(2).

The implanted defibrillator is inoperable without first being programmed by the doctor. This is done with a receiving and transmitting defibrillator programmer which is not implanted in or on the body.

A high voltage stimulator is an electronic instrument used during the implantation surgery for the defibrillator device to evaluate the proper pacing and defibrillation setting and therapies to be programmed into the device by the programmer. It is not implanted in or on the body.

Both the defibrillator programmer and the high voltage stimulator do not qualify as exempt medicines because they are not implanted in the human body. They are in the nature of medical devices or appliances specifically excluded from the term “medicine” under Regulation 1591. 11/30/89.

[425.0435](#) **Incontinence Creams and Washes.** Incontinence creams and washes qualify as exempt “medicines” when sold under conditions set forth in Regulation 1591(a) (e.g. sale under prescription by a registered pharmacist). On the other hand, over the counter sales are subject to tax. 6/16/92.

[425.0440](#) **Influenza Vaccine Administered to Employees.** A company purchases influenza vaccine for inoculation of its employees. The sale of the vaccine to the company is made pursuant to the authority of a licensed physician and the employees consent to be the patients of the employer’s doctor for the purpose of being inoculated. The sale of the vaccine for such purpose is an exempt sale of medicine under section 6369(a)(1) and (a)(2). 7/21/67.

[425.0460](#) **Insulin.** Sales of insulin by druggists for treatment of diabetes will be presumed to be furnished upon the direction of a physician so as to fall within the exemption provided by section 6369 in the absence of evidence to the contrary. 10/28/64.

[425.0462](#) **Insulin and Insulin Syringes.** Since the statute does not mention “related supplies”, test devices such as glucose monitors and glucose test strips do not qualify for the exemption.

As the legislature has seen fit to exempt sales of insulin syringes only when sold to diabetics by registered pharmacists, it follows that sales of other syringes are subject to tax. 3/31/92.

425.0463 **Insulin Syringes.** Sales of insulin syringes to a patient by a pharmacy qualify for the prescription medicine exemption. However, sales of insulin syringes to medical facilities for their own consumption are subject to tax. 3/31/92.

[425.0470](#) **Interceed Barrier.** An Interceed Barrier is a sterile knitted fabric used to reduce adhesion formation in pelvic surgery. It is absorbed by the body within a few weeks. It is regarded as a “medicine” and its sale is exempt if sold or furnished pursuant Regulation 1591. 11/4/93.

[425.0473](#) **Interferential Stimulator.** Interferential stimulators use electromagnetically induced current to promote the union of mandibular fractures without the necessity of surgery. Sales of these devices qualify for the prosthetic device exemption and tax does not apply when prescribed under the conditions described in section 6369 and the device prescribed is to be fully worn by the patient. 2/13/91.

[425.0480](#) **Intravenous and Irrigation Solutions.** Intravenous and irrigation solutions constitute medicines and when furnished as described under (a) of Regulation 1591 are exempt. 9/13/62.

[425.0481](#) **Intravenous (IV) Sets.** An IV set is used for the purpose of introducing drugs, nutrients, and diagnostic substances into a patient. They are made of metal or other durable components and so are not “substances or preparations”. They are not worn on the person of the patient. They also do not depend on being metabolized within the body to achieve their intended purposes.

IV sets are devices or appliances within the meaning of section 6369 (b)(2). Sales of such devices are thus subject to tax. 1/11/93.

[425.0483](#) **Intravenous Tubing.** Intravenous tubing is not a medicine and is, therefore, subject to tax even when used only according to a physician’s orders. 5/1/78.

425.0483.200 **Items Excluded from the Term Medicine.** The following items are excluded from the term medicine pursuant to Regulation 1591(c)(2) and, therefore, the gross receipts from their sales are subject to tax:

| | |
|------------------------|----------------------|
| Airway (Adult) | Labels |
| Airway (Infant) | Laceration Tray |
| Airway | Mook |
| Adapter | Needle |
| Apron | Needle Counter |
| Arm Board | Pillow Cover |
| Blade | Scissors |
| Blade and Needle Guard | Shoe Covers |
| Bandage—Elastic | Sponge |
| Bandage—Esmark | Staple Extractor |
| Bandage—Kling Elastic | Stethoscope |
| Cabinet 42C7 | Stopclock |
| Disposable Bed Pan | Syringe |
| Dust Cover | Table Paper |
| EZ Prep Tray | Tape |
| Forceps | Tongue Blade |
| Gauze | Tourniquet |
| Glove | Tray |
| Gown | Wash Basin |
| IV Pole | X-ray Cape. 3/17/88. |
| Kleenex | |

[425.0483.400](#) **IV Sets.** IV sets are used to deliver as many medications or solutions into a patient through the same tubing as is practical. They are designed to allow multiple entry ports for injections of different drugs. Included within this general category (IV sets) are “blood sets” used to deliver blood and blood products; “hyperclmentation sets” used to deliver food into the patient through an incision in the stomach; “nasogastric sets” used for artificial feeding through the patient’s nose and down into the stomach; “gastroonomy parts” which are surgically implanted in a patient for use when injecting “meal replacements” into the body; “anesthesia sets” to introduce anesthetics into the body; “radiology sets” used to introduce contrast media to the body for diagnostic imaging purposes; and “face covers and tubing” used to deliver gases via the respiratory system.

IV sets are not “substances and preparations.” In general, they are “appliances, devices or other . . . equipment” of the type specifically excluded from medicines under section 6369(b)(2). 4/22/97.

425.0484 **Karaya Gum Powder.** This item qualifies as a medicine as “necessary and integral” to the operation of an ostomy device. Therefore, the sale of this item is exempt from sales or use tax. (Regulation 1591(j).) 5/23/95.

[425.0487.100](#) **Knee Scooters.** This device is described as “a durable medical equipment option that allows freedom to a patient otherwise restricted to crutches for a foot or ankle injury.”

Under Revenue and Taxation Code section 6369.2, the knee scooter is an alternative to crutches for persons with foot or ankle medical problems. The sale of knee scooters qualifies for exemption from tax if sold pursuant to the requirements of Regulation 1591.2(b). In order to ensure that the rental or sale of a knee scooter meets these requirements, a retailer should obtain a written statement from either the customer or the physician that the knee scooter is purchased for the personal use of the customer as directed by a physician. This statement should be retained by a retailer in its records. 3/7/05. (2006–1).

425.0487.550 **Kunzli Ankle Support.** The Kunzli Ankle Support is designed as one piece, with the brace portion built into the shoe portion. Each Kunzli Ankle Support system is custom fitted to the patient, according to a doctor’s prescription, by the use of four removable custom moldable stabilizers.

The Kunzli Ankle Support is an off-the-shelf, pre-made item that allows for modification by customizing the four moldable stabilizers. It appears clear that the device is an orthopedic shoe. There is no evidence that the legislature intended to limit its exclusion of “orthopedic shoes” from the definition of “medicine” to those designed to support only the foot and not those designed to support only the ankle. It would be too narrow a reading of the statute and regulation. The phrase “for the foot” in the statute modifies “supportive devices,” not “orthopedic shoes.” All orthopedic shoes are excluded from the medicine exemption except those conforming to the exceptions in section 6369(3)(A). Since the Kunzli Ankle Support does not meet these exceptions, it does not qualify as a medicine for purposes of the exemption. 1/11/96.

425.0488 **Laparoscopy Supplies.** Items used temporarily during laparoscopic surgery are devices, appliances, etc., which are excluded from the definition of “medicine” under Regulation 1591(c)(2). The sales of such items are subject to tax. 10/6/93.

[425.0489](#) **Ligation Click Applier.** The applier is a reusable instrument utilized to put a clip on blood vessels to connect them. The clip remains in the body.

The applier is a reusable device and excluded from the definition of the term medicine. Tax applies to the sale of this item. However, the “ligation clip” is exempt. 2/10/93.

425.0489.890 **Liquid Castile Soap.** Liquid castile soap used as enema preparation qualifies as medicines. Therefore, tax does not apply to its sale to hospitals for use as enema preparation. 5/17/84.

[425.0490](#) **Liquid Nitrogen and Carbon Dioxide.** Cryotherapeutic agents such as liquid nitrogen and carbon dioxide are considered to be medicines and exempt from sales and use taxes when sold to or by a dermatological practitioner for the treatment of cutaneous skin lesions such as skin malignancies and warts. 4/7/76.

[425.0492.500](#) **Lossing Orthopedic Back Trac and Neck Trac.** This device is part of a traction device in which the patient’s leg, neck, or back is supported or suspended from a stationary object, such as a bench or the patient’s bed frame. This device does not qualify as an exempt orthotic device pursuant to Regulation 1591(b)(4) since it does not permit ambulatory movement nor is it fully worn on the body of the user. 11/8/85.

425.0493 **Low Air Loss Beds.** A low air loss bed is used by long-term bedridden patients who develop decubitus ulcers. Such beds do not qualify as medicines. In fact, hospital beds are specifically excluded from the definition of a medicine under Regulation 1591 (c)(2). 7/23/93. (Am. 2000–2).

[425.0494](#) **“Lumex” Chair.** The “Lumex” chair is a three-position recliner with specially designed features for all day patient comfort. Attached to the rear legs of the chair are two five-inch ball bearing swivel casters with brakes and attached to the front legs of the chair are two five-inch wheels. The casters and wheels allow for easy maneuverability for transport. The chair can only be operated from the rear by an attendant and the brakes cannot be released by the patient.

The Lumex chair as describe above is not a wheelchair under Regulation 1591. This section describes items that assist their users as they move themselves from one point to another. The Lumex chair is not designed to be operated by the user alone to achieve any significant mobility and does not perform the same function as a wheelchair. A second person, or attendant, is needed before the chair can function as a means of movement from one point to another. The Lumex chair is in the nature of an apparatus, contrivance, device, or other mechanical piece of equipment and, therefore, expressly excluded from the definition of “medicine” pursuant to Regulation 1591. 3/24/86.

425.0494.250 **Lympha Press Device.** The Lympha Press Device consists of a sleeve or stocking, a cover, and a pneumatic pump. In order to be effective, both the sleeve or stocking and cover must be attached to the pneumatic pump which is a large mechanical device. The term “medicines” includes devices that must

be fully worn on the person of the user. The device is not “fully worn” as the pneumatic pump is part of the device. Accordingly, tax applies to the sale of the Lympha Press Device. 3/14/90.

[425.0495](#) **Magnevist.** This is described as a contrast media for enhancing M.R.I. (magnetic resonance imaging) image of the brain and spine. Magnevist is a clear, colorless to slightly yellow solution which is injected into the patient in doses up to 20 ml. The labels state that Federal law prohibits dispensing the product without a prescription.

Diagnostic products that are intended for use by internal application to the human body in the diagnosis of disease qualify as “medicines”. Magnevist qualifies as a “medicine.” However, to qualify for the exemption, the medicine must also be sold or furnished in accordance with Regulation 1591(d).

The company, besides selling to doctors and hospitals, also sells the products to clinical laboratories and diagnostic facilities. Sales of prescription medicines to medical facilities which do not admit patients for stays of 24 hours or longer are not covered by the prescription medicines exemption. Clinical laboratories and diagnostic facilities generally do not admit patients for stays of 24 hours or longer. As a result, sales to doctors and hospitals are exempt from tax while sales to clinical laboratories and diagnostic centers are not exempt from tax. Whether or not sales of a product are exempt from tax as a prescription medicine depends on both the nature of the product and its use. 11/20/91. (Am. 2005–2).

[425.0498](#) **Meadox Cardiovascular Fabrics.** Described as various knits, felts, meshes, pledgets and fabrics which are used to repair an opening or reinforce a closure in the heart or in blood vessels. These items appear to assist and strengthen the heart and blood vessels. When permanently implanted in the human body to assist the function of, the heart and blood vessels, they qualify as prosthetic devices which are exempt from tax when sold or furnished pursuant to Regulation 1591(d). 4/23/92. (Am. 2005–2).

[425.0500](#) **Measles Vaccine.** Measles vaccines, administered by a doctor to a large group of persons, are exempt “medicines.” The single dosage containers in which the vaccine is sold are exempt under Regulation 1589. 8/26/66.

[425.0505](#) **Medical Devices Used During Heart/Lung Bypass Surgery.** The following medical devices are used by doctors for heart/lung bypass surgery and long-term respiratory support. The devices are single-use, disposable products:

- (1) Blood oxygenators and related blood reservoirs. This equipment is used to add oxygen and store the blood while blood is outside the body during open heart bypass surgery.
- (2) Cardioplegia delivery system. This system is used to infuse specially formulated solutions, which often include oxygenated blood, directly into the patient’s coronary arteries while the heart is stopped during bypass surgery.
- (3) Custom tubing packs. These packs contain all the devices used in a heart/lung bypass procedure. The exact contents of each pack are determined by each customer.

Blood oxygenators and reservoirs, the cardioplegia delivery system, and the custom tubing packs are devices, instruments, or appliances excluded from the definition of “medicines” under Regulation 1591(c)(2). Thus, their sales are subject to tax. However, infusion systems may qualify as “medicines” if used as set forth in Regulation 1591(b)(7). 9/16/96.

[425.0506](#) **Medical Dialysis Products.** Tax does not apply to the sale or use of the following items used in connection with a patient receiving hemodialysis.

- (1) Stop/Start Kits. These kits contain supplies needed for initiating and discontinuing the hemodialysis procedure. They contain such items as syringes, needles, alcohol wipes, betadine swabs, 4x4’s underpads and band-aids.

(2) Carry Pouch for CAPD. The pouch is used by the CAPD patients to carry a bag around their waists between exchanges (treatments).

(3) Beta Cap System. This is a group of supplies used by the CAPD patient when the abdominal catheter is capped and disconnected from the line that transfers the solution into the abdomen.

(4) Cysto Flo Set ‘‘S’’ Hook. This hook is used by the CAPD patient to hook his solution bag on a door or other object while infusing new solution into the abdomen.

(5) Replacement Parts for the Dialysis Machine. This includes any part necessary for maintenance and repair of the kidney machine. 6/9/83.

425.0508 Medical Gases and Delivery Systems. The medical oxygen delivery system exemption does not apply where direction and control of the equipment never passes to the patient—e.g., the patient merely use the hospital’s system. For equipment to qualify as a medical oxygen delivery system, it must deliver air or oxygen into the breathing systems of the patient. In general, devices that only assist the patient in breathing and do not deliver air or oxygen directly to the patient do not qualify as medical oxygen delivery system. Delivery systems for other medical gases are considered to be appliances for delivering treatment to a patient and are excluded from the term ‘‘medicine.’’

Anesthetics for internal or external application to the human body are ‘‘medicines’’ since they are preparations for the treatment of disease. Both oxygen, including liquid oxygen, and nitrous oxide are ‘‘medicines’’ when used for internal or external application to the human body. A surgery center is not a health facility as defined in Regulation 1591, but a convalescent home is, with the result that sales of medicines for the treatment of a human being to a nursing or convalescent home are not subject to tax but that sales to surgery centers are subject to tax. 6/17/91.

425.0511.010 Medical Oxygen Delivery Systems. The items listed below are not subject to tax when sold or rented to an individual for the personal use of that individual, as directed by a physician.

- (1) Liberator/stroller liquid oxygen system, liberator vessel and portable stroller.
- (2) Oxygen Concentrator Unit including any necessary accessories to the unit such as an oxygen mask or tubing.
- (3) High pressure oxygen cylinders, ‘‘K’’ or ‘‘K’’ and ‘‘E’’ sizes.
- (4) Oxygen regulators to control flow.
- (5) Oxygen humidifiers to moisten oxygen vapor.
- (6) Oxygen cylinder stands for safety.
- (7) Oxygen cylinder carts, for ambulating, with cylinder. 6/3/83.

425.0512 Medical Supplies. A taxpayer requested information regarding the application of tax on the following items.

Wheelchair Accessories and Ambulatory Aids Accessories.

To qualify for exemption under Regulation 1591(k), these items must be sold to an individual for the use of that individual on the direction of a licensed physician.

Specialty Chairs, Pneumatic Compression Units/Accessories, Alternating Pressure Pads and Pumps, Physical Therapy Miscellaneous.

These items have previously been determined to be excluded from the definition of “medicines”. The sale or use of such items in California is subject to tax.

Total Parenteral Nutrition.

This is a type of liquid nutrition prescribed for tube feeders and is available by prescription of a licensed physician. This item has previously been determined to be a medicine, the sale or use of which, under the conditions set forth in Regulation 1591(a), is exempt from tax. 3/22/93.

[425.0513](#) **Medicated Bandages and Medicine Filled Syringes.** Although bandages and dressings are not medicines, those which are impregnated with medicinal compounds for the purpose of medicating are medicines. Similarly, syringes are devices not included in the exemption but syringes sold with the injectables inside are exempt as nonreturnable containers pursuant to Regulation 1589(b)(1)(C). 4/30/91.

425.0513.200 **Medicated Drape.** A medicated drape is applied to the skin prior to making an incision in emergency situations where there is not sufficient time for proper skin preparation. The drape is impregnated with an iodine-based substance which applies an antimicrobial film to the skin. The drape adheres to the skin when applied and the incision is made directly through the drape. Bandages or dressings which are impregnated with medicines are themselves regarded as medicines. The sale or use of the drape is therefore exempt. 3/7/95.

425.0514 **Medicated Skin Creams.** Medicated skin creams prescribed by a licensed physician and sold by him/her as a part of a skin-treatment program for his/her patients are exempt from tax. (Regulation 1591(a).) 2/19/92.

[425.0514.5](#) **Medication Containers.** Items used to insert medication into patients are generally regarded as appliances or devices under Regulation 1591(c) (2). Thus their sale is subject to sales tax. However, such items may qualify as “nonreturnable containers” if they are prefilled (e.g. with medication), disposable, and may only be used on one patient. If so, their sale is not taxable when meeting the requirements of Regulation 1589. 3/28/94.

[425.0514.800](#) **Medifast 70 and Pro-Call 100.** Medifast 70 and Pro-Call 100 are furnished by a medical doctor who maintains a medical weight control practice. These products are furnished to patients for the treatment of obesity. Both products are packaged in powdered form and are mixed with water for consumption. The label for Medifast 70 describes the product as a “modified fasting supplement,” while the label for Pro-Call 100 describes the product as a “Balanced Dietary Food Supplement.” The labels for these products also indicate that these products provide the user with a daily intake of 500 calories or less per five servings. Both products are not sold over the counter but are sold only to physicians.

Obesity is a disease and substances and preparations intended for internal application to the human body used to treat obesity qualify as medicines. These products are described as products to be ingested to reduce weight. Accordingly, the gross receipts from the physician’s sale of these items furnished to his patients for treatment of obesity are not subject to tax. 1/26/89.

[425.0517](#) **Medi Lift Chair.** A Medi Lift Chair is not exempt as a wheelchair, crutch, cane, quad cane or walker since the chair does not perform the same function as these items. It is a lift chair which allows the patient to stand or sit and become mobile as their disease or condition allows and merely facilitates the ability of the user to get into and out of a chair. It can more accurately be described as an article which is in the nature of an apparatus, contrivance, device or other mechanical piece of equipment and therefore expressly excluded from the definition of “medicine” pursuant to section 6369(b)(2). 1/22/86.

[425.0518](#) **Membrane Oxygenator.** The Membrane Oxygenator, which is part of a larger system used only during surgery, is not a “medicine” under Regulation 1591(c)(2). Its sales are subject to tax. The oxygenator is used to add oxygen to and remove carbon dioxide from the patient’s blood solely during surgery. It is used primarily during open-heart surgery procedures, and substitutes for the patient’s lungs during the operations. The unit cannot be reused and is discarded after each procedure. While there is no

requirement for a prosthesis to be permanently implanted, it must be used for more than the temporary assistance of an organ during surgical procedures. Additionally, for a device to be considered a drainage device, it must operate on its own. If connected to another device, it is related to that device and qualifies for the exemption only if the device does. 2/15/91.

425.0519 Microfoam Surgical Tape. This product is tape utilized to hold dressings in place during surgery. It is a “pressure dressing.” Since dressings are specifically listed in Regulation 1591(c)(2) as being a device, they are excluded from the definition of medicine. Sales of this item are subject to tax. 11/16/94.

425.0519.800 Miscellaneous Items. The following items are not within the definition of “medicine:” Electrode jelly, spray-on bandage, instant ice bag, silver nitrate/potassium nitrate application stick. 7/14/78.

425.0520 Miscellaneous Medical Supplies. Disposable trays, cast materials, rib belts, elastic bandages, and plastic splints are not included within the definition of medicine. 6/26/64.

425.0521 Miscellaneous Medical Devices. Grasping forceps, ERCP catheters, stricture measuring catheters, Cunningham-Cotton sleeves, biliary stent sets, combined procedure sets, nasal biliary and pancreatic drainage sets, liquory catheters, stent retrievers, wire guides, papillotomes/sphincter otomes, extraction devices, needles/injections, dilation devices, snares and active cords, Savary- Gilliard dilators and cytology devices are used temporarily during surgery or other treatment and are not “medicines.”

Esophageal prostheses which replace or assist the natural function of the esophagus and which remain in the body are “medicines.” Colonoscopy devices which are used to administer treatment to the patient are not “medicines” unless they remain in the body for a period of six months or longer. Similarly, gastrostomy devices are not “medicines” if used for percutaneous feeding. However, if they remain in the body for a period of six months or longer, they are regarded as “medicines.” 2/24/95.

425.0522 Miscellaneous Items. Summarized below is the application of tax to the sales of the following items by a licensed pharmacist pursuant to a prescription by a doctor. In some cases a prescription is not required as noted.

| | |
|---|--|
| Alcohol, Isopropyl | exempt |
| Aspirator, nasal | taxable |
| Bandages, dressings, and gauzes (nonmedicated) | taxable; generally exempt if for ostomy patient |
| Sanitary napkin/tampon type | taxable |
| Bandages, dressings, and gauzes (medicated) | exempt |
| Breast pump | taxable |
| Catheters, external male, intermittent suction | nonspecific suction catheters are external and generally taxable. External male and intermittent catheters when used post-surgically for purposes of urinary drainage through either a natural or artificial opening are exempt. |
| Condoms | taxable |
| Contraceptive creams, foams, jellies, and suppositories | exempt |
| Diabetic test supplies: glucose test strips and skin puncture lancets | exempt |
| Diabetic test supplies: tablets, tape, etc. | taxable |
| Diaphragms | taxable |
| Fountain syringe, general use | taxable |
| Disposable gloves | taxable |

| | |
|--|---|
| Hearing aid batteries generally taxable; | exempt if dispensed by a hearing aid dispenser licensed by the Board of Medical Quality Assurance (tax is due on the sale to licensed hearing aid dispensers) |
| Hot water bottle | taxable |
| Hypodermic needles, general use | taxable |
| Hypodermic syringes, general use | taxable |
| Incontinence supplies: disposable briefs, diapers (adult and infant), pads, shields, underpads for beds, pant systems including reusable briefs and liners. | taxable |
| Incontinence supplies: skin care creams and washes | exempt |
| Intravenous solutions administration set | taxable if indicated that billed lumpsum |
| Invalid cushions, not fully worn on the body | taxable |
| Lubricating jelly | exempt |
| Nebulizer, bulb type | taxable |
| Ostomy supplies: adhesives, adhesive removers, colostomy, fistula and ileostomy bags, urostomy bags, skin protectives, peristomal coverings, skin care creams and washes, tubes, clamps, connectors, tracheostomy supplies | exempt, prescription not necessary for ostomy patient |
| Sheeting, waterproof | taxable |
| Suspensory (athletic supporter) | exempt, orthotic device |
| Swabsticks, saturated | exempt |
| Syringe, bulb types (general use) | taxable |
| Syringe, hypodermic (insulin): disposable and reusable with and without needles, various capacities | exempt |
| Syringe, irrigation | taxable |
| Thermometers | taxable |
| Urinary drainage/irrigation supplies: | exempt if fully worn on the body |
| Urinary drainage collection units—leg bags | |
| Tubes, clamps, connectors | exempt if fully worn on the body |
| Vaporizer | taxable. 3/3/95. (Am. 2004–2; Am. 2005–2). |

425.0530 Miscellaneous Medical Supplies. Blood tubing sets, cannula systems, declotting trays, declotting catheter sets, declotting aspirators, and accessories and instrumentation are not considered prosthetic devices and tax would apply to their sale. Where “cannula systems” are implanted in the human body, they are tax exempt. 12/7/77.

425.0531 Miscellaneous Supplies. The following items are included in the definition of “medicines” under Regulation 1591.

- (1) Dressings impregnated with medicines.
- (2) Surgical fabric that remains in and is absorbed by the body.
- (3) Skin care. Incontinence products are exempt only if the use of the product is made necessary due to an ostomy operation. 10/6/93.

425.0540 Mouthwash/Gargle—Betadine. This product is an aromatic mouth freshener which may be used as a refreshing mouth rinse and to help provide soothing temporary relief of dryness and minor irritations of the mouth and throat. This mouthwash/gargle is to freshen breath and is generally recognized as a cosmetic preparation. Its purpose is not to diagnose, cure treat, mitigate or prevent disease and therefore it does not fit the definition of “medicines” under Regulation 1591(b). 3/7/91.

[425.0542](#) **Multicom 500, Lympha Press Mini.** These systems share similar characteristics. The patient wears a sleeve or legging which is attached to a pump by a series of hoses. The pump sits on a table or stand and applies pressure gradient therapy to relieve the edema. These systems do not qualify as “orthoses” under Regulation 1591(b)(4) because they are not fully worn on the body by the patient. Sales of these devices are subject to tax. 12/28/93.

425.0544 **Nasal Splints.** Soft-Form External Thermo Plastic Splint and Soft- Form External Aluminum Nasal Splint are external splint/dressings used following surgery and removed 7–10 days after surgery. They are not implanted. Bivalve and Custom-Cut Splints are put in the nose temporarily after rhinoplasties to keep the air passages open. They are also removed after 7–10 days and are not permanent. These splints immobilize the nose area to permit healing and do not otherwise support the body structure. Splints are one of the items listed in Regulation 1591 as being devices, appliances, etc., excluded from the definition of “medicine.” Therefore, sales of these items are subject to tax. 06/05/96.

425.0545 **Neurological Refill Kit.** This refill kit is sold to and used by health care personnel to refill a drug (drug not included) into a Drug Administrative Device. The care center then bills the patients separately for the refill kits. The centers are consuming the product in the course of providing a service. Even though the refill kit is billed separately to the patient, possession, dominion, and control of it never passes to the patient. Thus, the sale of these kits to the centers are at retail and are not sales for resale. The sales to centers are subject to sales or use tax. 7/29/96.

[425.0546](#) **Neuromuscular Electrical Stimulators.** Respond II units are used for rehabilitation of muscle groups on multiple sites and can assist in the reduction of post-traumatic edema and muscle spasm.

When fully worn on the body, the Respond II qualifies as a prosthetic device under Regulation 1591 (b)(5) and is classified as a medicine. A prosthetic device which is obviously designed to be used while being worn on the body of the user qualifies for the exemption even though it may, at the convenience of a particular user, be set on a table or a bed while the user is undergoing therapy. 5/17/91.

[425.0547.300](#) **Nonadhering Dressings and Packing Strips.** Adaptic nonadhering dressing and nonadhering packing strips are surgical dressings impregnated with a specially formulated petroleum emulsion to permit rapid wicking of wound exudates through the dressing. This petroleum emulsion is not a substance or preparation intended for use by external application to the human body in the diagnosis, cure, mitigation, treatment or prevention of disease and therefore is not within the definition of medicine under Regulation 1591. Rather, the material seems intended only to impart certain characteristics to the dressing itself. 5/30/75.

[425.0547.400](#) **Noninvasive Temporary Pacemakers.** The Noninvasive Temporary Pacemaker (NTP) is a self-contained cardiac pacing device weighing approximately 18 pounds which delivers an electric pulse to the heart via two specially designed electrodes. It is the size of a small portable television and measures 63Hx123Wx153D. In addition to serving as a pacemaker, it is also a “portable”/moveable ECG machine and contains a recorder for monitoring cardiac response. The NTP is not fully worn on the person of the user but is attached by means of electrodes.

The NTP was designed to be moveable so that it would remain with the patient. However, it was not designed to be worn on the patient. As such, this product does not qualify as an exempt prescription medicine. 12/6/89.

[425.0548](#) **Nutri-15 Plus.** This product is produced in powdered form and described on the label as a portion supplement and may also be used for weight loss. Thus, it is excluded from the definition of “food products” under Regulation 1602(a)(5). 11/18/92.

[425.0560](#) **Opaques—“Radiopaques.”** The following are considered “medicines”:

| | | |
|--------------------------|----------------------------|------------|
| Barium Sulfate | Conray Angio Solution, 60% | Microtrast |
| Barium Sulfate Redi-Flow | Cystokon, 30% | Mulsopaque |
| Baridol, Powder | Dionosil | Neo-Cholex |

| | | |
|----------------------------|---------------|--------------------|
| Baridol, Gastric, Liquid | Esophotrast | Neo-Cholex, Powder |
| Baroloid | Ethiodol | Pantopaque |
| Barosdense | Gastriloid | Rugar |
| Barospense | Gastrografin | Renografin |
| Barotrast | Gastropaque | Salpix |
| Basolac | Intropaque | Telepaque |
| Bilevac | Lipiodol | Ultrapaque |
| Cholex | Lipospense | Visciodol |
| Cholografin Meglumine | Modopaque | Borden's X-Neg |
| Conray Angio Solution, 80% | Micropaquette | X-Prep |

Any radiopaque used in the diagnosis, cure, mitigation, treatment or prevention of a disease is considered medicine. 11/4/69.

[425.0580](#) **Opaques and Dyes.** Opaques and dyes used by hospitals and doctors in examination of patients are given internally to the patients and facilitate the taking of diagnostic x-ray photographs. Since such opaques and dyes are intended for use by internal application to the human body in diagnosis of disease they qualify as medicines under section 6369 of the Revenue and Taxation Code. 9/1/65.

[425.0590](#) **Optifast 70 and Optifast 800.** Optifast 70 and Optifast 800 are used as a total meal replacement in connection with a weight loss program. Patients participating in the weight loss program are medically supervised by a physician. Optifast products are available by prescription only and are not available to the general public. Even though Optifast 70 and Optifast 800 do not qualify as “complete dietary foods” under Regulation 1591(b)(1). Accordingly, because these products must be furnished to patient by physicians pursuant to a medically supervised program for treatment of obesity, they are nontaxable under Regulation 1591(a)(2). 3/16/92.

425.0600 **Oral Contraceptives.** Liquid, pill, tablet, and capsule preparations used as oral contraceptives are within the definition of medicines when sold in drugstores on prescriptions of physicians or when dispensed in hospitals under the direction of physicians. 7/20/64.

[425.0602](#) **Oral Screw.** An oral screw used in conjunction with a mouth gag is taxable. 5/2/80.

[425.0607](#) **Origin Tacker System.** The Origin Tacker is an endoscopic stapling system designed to permit stapling or fixation of tissue and prosthetic mesh during surgical procedures. The system consists of a limited reuse handle and disposable delivery tubes which hold the tacks used in fixation of the tissue and or prosthetic mesh. The tacks are implanted into the body as a permanent implant.

The tacks qualify as sutures under Regulation 1591. As a result, the sale of the tacks are exempt from tax. The tubular delivery system is not shipped preloaded. Also, the handle is reusable. Therefore, the delivery system and the handle are instruments excluded from the definition of “medicine” under Regulation 1591 with the result that their sales are taxable. 6/5/96.

425.0615 **Orthoderm Convertible and Orthodum CAT Bed.** The Orthoderm Convertible is described as a truly portable low air loss system that replaces any conventional mattress on any conventional hospital bed.

The Orthoderm CAT Bed is pictured as an adjustable hospital bed. The flyer describing it states, in part “The CAT Bed is adaptable for full-body skeletal traction to service the needs of trauma or orthopedic patients.”

Hospital beds, including traction beds, are appliances excluded from the definition of “prescription medicines.” Therefore, sales of these items are subject to tax. 1/18/91; 7/3/91.

[425.0615.350](#) **Orthotic Devices.** The following items qualify as exempt orthotic devices when sold to a physician for treatment of a patient or sold directly to a patient pursuant to a doctor’s order or prescription:

Dricast Orthopedics

Miracle Knee Supports—TH109, TH209, TH309, TH409, TH509, TH609

Neoprene and Felt Buttress Pads—TH190, TH191

Stabilizer Brace—TH192

Brace Hinge w/hyperextension stop TH193 B

Interior Patellar Pull Component—TH193 B

Lateral Release Pad—TH195

Lumbro—Sacral Back Supports—TH101, TH201, TH301

Rib Belt—TH401

Abdominal Support—TH501

Thigh Calf Support—TH104

Magic Wrist Support—TH107

Ankle Elbow Support—TH108 A&B

Tennis Elbow Support—TH108 C

Wonder Straps—TH197—Exempt if sold as part of a support item.

Pressure Dots—TH198—Exempt if sold as part of a support item.

Flexible Ice Inserts—FI4—Exempt if sold as part of a support item.

Ezy Wrap (Professional Product Inc.)

840 Ankle Brace

Arm Sling—#2341

Velcro Elastic Bandage's—#4792

Wrist/Forearm Supports—#901, 903, 905, 907

Thumb/Finger Splints—#2552

Hinged Knee Brace—#1267

MediUSA

Genumedi—Elastic Knee Support

Levamedi—Elastic Ankle Support

Epicomed—Elastic Elbow Support

OMNI Scientific

OMNI II Bi-Lateral Knee Support

Anderson Knee Stable Knee Brace

OS-5 Off—The Shelf Custom Knee Brace

TS-7—Custom Knee Brace

Orthoglass

Orthoglass Fiberglass Splinting (Casting) Material

Orthoglass Elastic Bondage

Swede—O Padded Ankle Support

The following items do not qualify as exempt orthotic devices:

Orthopedic Product Sales

Healers Heel Silicone Support

Kool Kubes

Kool Kube Ice Cubes and Mats

Orthoglass

Fishers Razor—Edge Scissors

Parker Medical Support

UCO 4PF Heal Bed Foot Orthotic System

UCO Pre-Molded Foot Orthotics

Chattanooga Corporation
Viscolas Foot Orthotics
Full-Cushion Insoles
Heel Cushions
Heel Spear Cushions
Metatarsal Pads
Longitudinal Arch Pads
Corrective Heel Wedges
Neuroma Pads
Toe Crest Pads
Viscolas Hand Exerciser
Viscolas Waffle Pattern Fabric. 6/1/90.

425.0618 **Other Supplies.** The term “other supplies” in Regulation 1503 (b)(2) includes property for which the hospital has made a separate charge to the patient, provided title or possession of the property passes to the patient. It does not include consumable supplies which are consumed by the hospital in rendering its services. Property constitutes consumable supplies when title or possession of the property does not pass to the patient. Hospitals are the consumers of such property even when a separate charge is made for these consumable items. 4/15/94.

[425.0619](#) **OvuSTICK Self Test.** The OvuSTICK Self Test is an in-home diagnostic kit that is a simple urine test to aid the user in predicting the time of ovulation. This test kit is not used to diagnose, cure, mitigate, treat or prevent a disease and, therefore, is not a “medicine” as defined in Regulation 1591(b)(1). Sales of “OvuSTICK” to consumers are subject to tax. 4/15/86.

[425.0620](#) **Oxygen.** Medical oxygen and other gases sold to hospitals for treatment of human beings are exempt. 12/3/63.

[425.0640](#) **Oxygen.** Medical oxygen sold by a medical supply house to an individual who uses the oxygen under a doctor’s prescription is “furnished by a physician to his own patient for treatment of the patient.”

A sale of medical oxygen to State-aided individuals under the “Casey Bill” (i.e., the retailer bills the California Physicians Service which acts as fiscal agent for the State) is regarded as a sale of medicine to this State for use in treatment of human beings within the meaning of section 6369. 7/18/66.

[425.0660](#) **Oxygen.** Oxygen sold to an individual for use in treating a human being pursuant to a doctor’s prescription is regarded as a “medicine” furnished by a licensed physician to his own patient for treatment of the patient. Accordingly, sales of oxygen for such purpose by distributor’s of compressed gases are exempt from sales tax under section 6369. The exemption is not limited to sales of oxygen by medical supply houses. 9/8/67.

425.0680 **Oxygen.** Sales of oxygen to municipal fire departments are exempt. 1/28/69.

[425.0683](#) **Oxygen Concentrators.** An oxygen concentrator is a device that concentrates oxygen by pumping air through a separating unit containing a unique sieve material. This sieve retains the oxygen content of the air and permits the oxygen to be separated and concentrated into a reservoir for breathing by the patient. The oxygen flows through a meter dosing device and is delivered to the patient via nasal cannulae. Nearly pure oxygen is produced (ninety two percent at 2 liters, for example). The components of an oxygen concentrator consist of oxygen tanks, regulators, humidifiers, cannulae, masks, oxygen stands, oxygen carts, and tubing. Each of the above items constitutes a part of the medical oxygen delivery system and is exempt when sold, leased, or rented to an individual for the personal use of that individual as directed by a physician as set forth under Regulation 1591(m). 3/9/83.

[425.0686](#) **Oxygen Delivery Systems Sold to Health Care Providers.** Sales of medical oxygen delivery systems are exempt only when they are sold to an individual for his or her own use under the direction of a

licensed physician. The exemption does not apply to sales to hospitals, physicians, or dentists for use on their premises. 11/7/94.

425.0690 Oxygen Storage Tank. Rental of a medical oxygen storage tank to a hospital is exempt from tax when the tank is then sold, leased, or rented to an individual for the personal use of that individual as directed by a physician. However, to qualify for this exemption, the transaction between the hospital and the individual must constitute an actual sale, lease, or rental.

Where the patient's use of the storage tanks is limited to the hospital's premises, the direction and control of the equipment never transfers to the patient. Accordingly, there can be no lease or rental of the storage tank to the patient under these conditions. Therefore, the medical oxygen delivery systems exemption under Sales and Use Tax Regulation 1591(m) would not apply to the rental of storage tank to the hospital. 4/8/91.

425.0695 Parts for Wheelchair Lifts. A government transportation district, which purchases and maintains wheelchair lifts for transporting handicapped people on its buses, requested information as to whether the district's purchases of parts to maintain the lifts are exempt from sales or use tax.

While the statute does not expressly refer to repairs, both the statute and the regulation exempt the purchase of "items and materials when used" to modify a bus or van. The language is broad enough to cover repairs since repair parts are "items and materials" and once installed are used to modify the vehicle for transportation of physically handicapped persons. 12/05/91.

425.0695.300 Passy-Muir Trach Valve. The Passy-Muir Trach Valve is a prescription device which attaches to a tracheotomy tube to temporarily block the passage of air to the lungs, allowing tracheotomy patients to speak. The Passy-Muir Trach Valve is sold only to medical facilities and physicians.

The Passy-Muir Trach Valve qualifies as "related supplies" for the reason that it is designed to be worn in conjunction with a tracheotomy tube which is necessary as a result of an artificial opening created in the human body for the elimination of natural waste. Therefore, sales tax does not apply to the sale of the Passy-Muir Trach Valve. 9/18/85.

425.0695.875 Pedialyte. Sales of Pedialyte are nontaxable. 5/29/96.

425.0696 Pediatric Urinary Specimen Container. A pediatric urinary specimen container is a plastic bag which is attached by an adhesive to an infant for direct collection of urine. It is used to obtain an infant's urine sample for test purposes. The bags are not prosthetic or orthotic devices. They are neither worn on the person nor do they assist the body in a natural function. The sale or use of them is not exempt. 4/3/95.

425.0697 Pelvic and Cervical Traction Devices. Traction devices must be designed to be fully worn on the body of the patient to qualify as an exempt orthosis under Regulation 1591(b)(4). Those pelvic and cervical traction devices which qualify as "medicines" are devices such as cervical collars which are fully worn on the body of the patient.

Devices which are attached to the bed, and the patient is then strapped to the device, are considered stationary devices and do not qualify as medicines. Therefore, their sales are subject to tax. 10/22/91.

425.0699 Pharmaceutical Products. Certain pharmaceutical products are outside the prescription drug classification, but they are products sold by licensed dermatologists to their patients specifically for the treatment of skin disorders or the prevention of adverse skin conditions. The following pharmaceutical products which treat skin disorders or prevent adverse skin conditions are considered to be medicines. Accordingly, a dermatologist's gross receipts from the sale of these products to patients for the treatment of those patients are exempt from tax:

Skin Cleaners and Antiseptics
Nu-Soap Lotion (Cetaphil)

Chlorhexidine Gluconate 4% Cleanser (Hibiclens)

Antipsoriates

Coal Tar Solution 20% USP

Psorigel Solution

Antibiotics

Neomycin, Polymyxin Bacitracin Ointment (Neosporin)

Antiseborrheic

Selenium Sulfide Lotion Shampoo 1% (Selsun Blue)

Antiviral

Zostrix Cream 0.025%

Emollients

Therapeutic Bath Oil (Alpha Keri)

Lubriderm Lotion (unscented)

Eucerin Cream

Aquacare/HP Cream

Lacticare Lotion

Minon Moisturizer

Keratolytics

Salicylic Acid 40% Plaster

Sunscreen

Neutrogena paba free

Ti-Screen SPF 30. 7/1/88.

425.0700 **Phisohex.** The sale of Phisohex to a political subdivision of this State for use in the treatment of a human being qualifies as a medicine and, accordingly, is exempt from tax. 7/11/68; 16/68.

425.0710 **Pig Skin.** Pig skin, called porcine skin, used as a temporary dressing on persons suffering burns is not tax exempt since it does not meet the definitions of "medicines" as stated in Regulation 1591. 1/24/75.

425.0713 **Pill Containers.** Pill containers are sold by the hospital when prescription medicine is placed therein when filling an out-patient prescription. However, when prescription medicine is placed in a container for an in-patient, the medical staff retains complete control and the container is being used in hospital operations. When the medicine is sold to the in-patient, it is sold by the dose. Accordingly, the sale takes place at the time of administration and the container is used by the hospital.

Although in some cases the remainder of the prescription may be delivered to the patient upon release from the hospital, the container has been "used" by the hospital and a tax paid purchases resold deduction is not available. 11/24/76.

425.0720 **Pollen Extract** furnished to patients by a doctor, administered by the doctor, and included in his charge for services, (not separately stated) is consumed rather than sold by the doctor. Where, however, the doctor furnishes the extract but does not administer the same to patient, he makes a sale and the tax applies to his receipts. 11/5/53.

425.0723 **Porcine Grafts.** Although porcine grafts may, to some extent, facilitate skin growth, their primary purpose is as a temporary biological dressing on burn patients. As such, they do not qualify as exempt prosthetic devices and tax applies to their sales. 10/2/89.

[425.0724](#) **Port-A-Cath.** The Port-A-Cath is described as consisting of two-to-three components which are implanted in the body; they are the portal, the catheter and, depending on the model, a catheter connector. A huber, noncovering needle is used to access the port. The Port-A-Cath is permanently implanted into the body to maintain venous access. Without this system, the patient may suffer from collapsed veins making it impossible to receive any medication which would normally be injected into the vein. The brochure also describes the Port-A-Cath as a totally implantable device designed to permit repeated access to the venous circulation. The brochure also states the use of the product is indicated when a patient requires repeated venous access for injection or infusion therapy and/or blood sampling. The Port-A-Cath is sold primarily for the purpose of chemotherapy infusion.

To be considered as a “medicine”, the prescription sales of which are exempt from sales tax, the item must be sold for the purpose of replacing or assisting the functioning of a natural part of the human body. The purpose of the Port-A-Cath is to provide venous access when repeated injections are prescribed. The natural function of the vein remains the maintenance of blood flow. Delivery of the chemotherapy agent into the vein may facilitate rapid dispersal of the vesicant drug, but rapid dispersal of drugs is not the vein’s natural function. Sales of the Port-A-Cath system for drug infusion purposes are not exempt from tax. 6/12/89; 12/14/90; 2/20/91; 4/26/91.

[425.0725](#) **Posey Vests.** Posey vests are worn by patients to prevent or mitigate initial or additional injury. Since they are worn to prevent injury and do not support the body structure nor replace or assist the natural function of a human body part, they do not qualify under the definition of “medicines”. 6/16/93.

[425.0726](#) **Post-Op Cryotherapy Product.** This product is used to apply heat or cold therapy to the body. Such products are devices or appliances and are excluded from the definition of “medicines” under Regulation 1591(c)(2). 7/29/96.

[425.0727](#) **Posture Chair.** The Congleton Neutral Posture Chair is a patented, posture support system recognized for its therapeutic value in reducing pain and speeding the recovery/return to work for its users.

The Congleton Neutral Posture Chair is an apparatus, contrivance, and/or appliance used for supportive purposes and accordingly is not a “medicine” as defined in section 6369. Consequently sales tax applies to the sales of the Congleton Neutral Posture Chair. 4/5/88.

[425.0730](#) **Preps.** Idophor preps which is a medicated pad or wipe applied to a patient’s body qualifies as a “medicine”. 5/17/89.

[425.0740](#) **Pressure Garments.** Pressure garments for burn and skin graft medical patients qualify as exempt orthotic devices under Revenue and Taxation Code section 6369(c)(3). As such, sales of pressure garments to hospitals for resale to patients are exempt from tax. In addition, sales made directly to patients are exempt from tax if they are furnished pursuant to a written order by a licensed physician. 8/10/90.

[425.0741](#) **Products Regarded as Exempt Medicines.** The following is a categorization of items sold to a hospital.

The following items are classified as taxable nonmedicines within the definition of Revenue and Taxation Code section 6369 when sold to a hospital:

Taxable “Nonmedicines”

Arch supports
Auditory devices
Bacteriological culture medium
Bandages (other than those used for ostomy patients)
Bed pads
Bed traction units
Blood pressure kits

Cervical pillows
Compresses
Contrivances
Dental prosthetic devices and appliances
Distilled water use for drinking
Electronic equipment
Electrocardiographs, metabulators and related accessories
Exercise weights
Foot orthoses
Hospital needles
Hypodermic needles
Instruments
Intravenous equipment and tubing
Mechanical equipment
Microlet devices
Mucolytic reagents for vitra testing
Nonmedicated dressings (other than those used for ostomy patients)
Ocular devices or appliances
Ophthalmic devices or appliances
Orthodontic Devices and Appliances
Orthopedic shoes and supportive devices for the foot
Physical equipment
Plastazote shoes
Pollen extract
Seven-Up and other carbonated drinks
Space blankets
Spinal anesthetic trays
Splints (not otherwise qualifying as orthotic devices for exempt foot splints are taxable)
Stethoscopes
Syringes
Thermometers
Traction units (other than those fully worn on the patient)
Uroscreen
Water conditioning systems

The following items are classified as exempt medicines within the definition of Revenue and Taxation Code section 6369 when sold to a hospital:

Abduction pillows
Alcohol (Ethyl)
Anesthetic gases
Artificial kidney dialysis machines and supplies
Artificial limbs or replacements
Baby oil
Baby powder
Blood plasma
Bone screws
Cast materials
Colostomy bags and supplies
Contraceptive pills, creams, liquids, tablets, and capsule preparations
Corsets
Diaparene powder
Distilled water, sterile nonpyrogenic and Sterile pyrogenic (specially processed)
Dyes given internally for x-ray diagnosis
Elastic bandages
Enema preparations in disposable container

Evacuators (post operative)
Glucose and substances used for tolerance tests
Humidification kits
Immobilizers
Influenza vaccine
Insulin
Intrauterine contraceptive devices
Intravenous solutions
Lubricating jelly
Mammary prostheses
Measles vaccine
Medicated dressings
Opagues given internally for diagnostic x-ray photography
Orthotic devices
Oxygen
Pacemakers
PhisoHex—for patients' treatment
Prosthetic devices
Radiopaques
Rib Belts
Rubbing alcohol
Sabin oral polio vaccine
Slings
Splints, plastic or other
Stump shrinkers
Stump socks
Support hose
Supports
Surgical cellulose hemostats
Sutures
Tracheostomy tubes (post-operative)
Transcutaneous nerve stimulators (only if fully worn on or in the body of the user)
Trusses
Vaccines
Vitamins for treatment of human being
Walking heels. 9/20/85.

[425.0743](#) **Prosorba Used in Hemodialysis.** Prosorba is used in a process called immunoadsorption which removes specific molecules from the blood of human beings. The substances are normally excreted in urine. In the usual process, blood is circulated from a vein in an arm of a patient through a tube to an apheresis machine which separates blood cells from blood plasma. The cells are immediately returned to the patient's body through another tube attached to a needle in the other arm. The plasma flows from the machine through another tube into Prosorba. The undesired molecules are absorbed by the Prosorba and the purified plasma flows through another tube back to the blood cell tube. This process can be used for kidney dialysis, a type of hemodialysis, but it can also be used for other types of hemodialysis. The Prosorba and equipment related to its use are exempt as hemodialysis products pursuant to section 6369.1. 3/15/94.

[425.0744](#) **Prosthesis Consisting of Several Inter-Dependent Components.** A prosthesis consisting of several inter-dependent components is considered to be one item. All the components of this system must be worn on the person of the patient in order for the sale of the system to be exempt from tax under Regulation 1591(b)(5). 3/6/91.

[425.0745](#) **Prosthetics and Orthotics.** To qualify for the exemption, these items must be capable of being fully worn on the patient. Such items must be implanted for a long term. Devices implanted for temporary use during surgery do not qualify for the exemption. 3/31/92.

425.0750 **Pulmo-Aides.** A Pulmo-Aide is basically an air compressor. It is sold to patients under prescription to break up medication into aerosol (mist) form so it can be carried to the patient's lungs.

This device does not qualify as an oxygen delivery system nor a part of such a system under section 6369.5. Also it does not qualify as an exempt prescription medicine under section 6369(b)(2) which excludes apparatus, contrivances, appliances, and devices. Accordingly, tax applies to the sale of this product. 11/15/90.

[425.0765](#) **Radioactive Application Equipment.** The radioactive items, such as miniaturized cavitary cesium-137 sources for radiotherapy afterloading devices, eye therapy system using strontium-90 and cesium-137 tube sources, do not constitute medicines but are devices or physical equipment and hence taxable. 9/2/77.

[425.0770](#) **Radioactive Pellets.** Radioactive Pellets even though leased, qualify as an exempt medicine. 11/30/76.

[425.0771](#) **Radionuclide Generators.** Radionuclide generators produce radioactive materials which can be administered to the patient by ingestion or injection for the purpose of diagnostic imaging. While the products of the generator may be classified as prescription medicines under proper conditions, the generator itself is nothing more than a piece of equipment and it is not within the definition of "medicine" for sales and use tax purposes. 3/14/94.

[425.0772](#) **Radiopharmaceuticals.** Sales of radiopharmaceuticals are medicines and exempt from tax if they are sold to a health facility as defined in Regulation 1591(g) for internal or external application to the patient for use in a nuclear imaging diagnostic procedure. 11/9/92.

425.0773 **Reagents.** When a person is ill, a sample of cells, tissues or organ is removed from the body and tests are performed on the body sample. Diagnostic substances (reagents) are applied to the sample taken from the patient's body to assist in diagnosing the disease.

Since reagents are not applied internally or externally to the body of the patient, they do not come within the definition of medicines contained in Regulation 1591(b)(1). Accordingly they are subject to tax. 1/11/93.

[425.0774](#) **Renting Medical Ventilators to Hospitals.** A lessor rents ventilators to hospitals, usually on an hourly or daily basis. The lessor only rents to hospitals because the expertise of a respiratory therapist is needed to correctly operate the equipment. The hospitals use the ventilators for patients who need assistance to breathe. Possession or control of the equipment is not passed to the hospital's patients since the ventilators are too complicated to be operated by anyone but a trained respiratory therapist.

The hospital is not considered to be sub-leasing or reselling the ventilator to the patient merely because it bills the patient for use. The equipment is being used by the hospital in providing a service. Also, this transaction does not qualify for exemption under section 6369.5 since it must be rented to an individual, not to a hospital, in order to qualify for the exemption. Accordingly, the rental charges to the hospital are subject to tax. 3/11/92.

[425.0775](#) **Res-O-Mat and Ria-Mat Kits.** Res-O-Mat and Ria-Mat kits are diagnostic systems which are used to analyze blood samples in the laboratory. Tax applies to their sale or use even if they are prescribed by a physician because they are used in the laboratory and not by application to the human body. The application of substances to blood samples is not application to the human body. 3/2/79.

[425.0780](#) **Rubbing Alcohol** qualifies as a medicine under Regulation 1591. 2/26/64.

[425.0800](#) **Sabin Oral Polio Vaccine.** The prescription medicine exemption includes the Sabin oral vaccine dispensed at clinics. The contributions or donations which the recipients make upon receipt of the

vaccine may be regarded as payment and the presence of a licensed physician in charge of the clinic fulfills the statutory exemption requirement that it be supplied by a physician. 9/27/62.

[425.0810](#) **Scrub Brushes.** Sales of scrub brushes impregnated with a preparation recognized as a medicine are “medicines” when used by physicians to scrub prior to surgery. 5/28/92.

425.0815 **Semi-Floater—Silicore.** This item is described as used during “any cardiac emergency where temporary external pacemaking is needed.” When used as a temporary assist during a surgical procedure or operation, for either treatment or testing, it is taxable. 1/28/91.

425.0820 **Seven-Up Beverages Given to Hospital Patients.** Although Seven- Up, a beverage, is given by a hospital to certain patients pursuant to a physician’s directions, it does not qualify as medicine under section 6369, inasmuch as it is not commonly recognized as a prescription intended for use in the treatment or prevention of disease. 12/2/66.

425.0821 **Ship’s Medical Personnel and Sick Bay.** Federal and international law does not require that a licensed physician and surgeon be carried on each voyage for vessels with less than thirty or forty persons aboard. The master or first mate of the ship who is specifically schooled in the dispensing of drugs for the need of the ship’s crew acts as the physician and pharmacist on the ship. The master or first mate of the ship is not a “licensed” physician nor a “registered” pharmacist within the meaning of the “licensed” physician or “registered” pharmacist used in Regulation 1591.

A sick bay aboard a vessel is not a qualifying health facility unless it is within such meaning as set forth under Regulation 1591(g). This section provides that the term health facility has the meaning provided by Health and Safety 1250. Such facilities as defined therein are required to be licensed and regulated by the State of California. 5/20/81; 5/20/96.

[425.0821.935](#) **Silicone Drain.** Silicone drain used to drain waste as a result of an artificial opening created in the human body, as required under Regulation 1591.1(b)(4)(B), qualifies as a medicine and is not subject to tax when used post surgically. 5/17/84. (Am. 2005–2).

[425.0822](#) **Silicone Flat Drain 10mm, CWTReservoir 15cc, Silicone Flat Drain.**

These items are used for post operative drainage of an incision site and are subsequently removed. Assuming that the bodily fluids drain into the reservoir, these items qualify as “appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste”, the sale of which are exempt from tax when sold or furnished pursuant to Regulation 1591.1(b)(2). 4/23/92. (Am. 2005–2).

425.0822.350 **Simplate Products.** Simplate Products are sterile, disposable devices that are used to make uniform incisions for bleeding time tests. The spring-loaded blades are contained in a convenient, easy to use plastic housing. When triggered on the forearm, a Simplate is designed to provide one or two incisions. The device is available in four configurations:

Simplate with a single blade

Simplate II with dual blades

Simplate R with a single retractable blade

Simplate II R with dual retractable blades

The Simplate products are in the nature of instruments, apparatus, contrivances, appliances, and devices which are specifically excluded from the definition of the term medicine. Therefore, the Simplate products do not qualify as exempt medicines. 5/10/90.

[425.0822.750](#) **Skiing Systems.** The ‘Arroya’ downhill skiing system consists of a maneuverable sled sold with a special strap system that secures the skier to the sled. It is designed to let disabled persons ski. None of the exemptions in Regulation 1591(b) cover this type of item. Accordingly, sales of ‘Arroya’ downhill skiing systems are subject to tax. 11/29/83.

[425.0823](#) **Skin Closures.** Adhesive skin closures are not sutures and do not fall within the definition of “medicines”. They would qualify as medicines if such adhesives are permanently implanted in the body and are absorbed by it. 5/28/93.

[425.0823.100](#) **Skin Creams and Lotions.** The following products which are used for cleansing and otherwise caring for the skin of patients, protecting and otherwise treating skin disorders or preventing adverse skin conditions are considered to be “medicines:”

- (1) PVP Iodine Prep Solution and Scrub Solution
- (2) Acu-dyne ointment
- (3) Eucerine Skin Lotion
- (4) Cream Skin Care. 5/28/92.

[425.0823.5](#) **Skin Products.** The sale of the following products by a dermatologist to patients, for the treatment of skin disorders, is exempt from tax pursuant to Revenue and Taxation Code section 6369(a)(2). However, when sold over-the-counter, the sale of these products is subject to tax.

Lynda—Sy Cleansing Lotion

Lynda—Sy Facial Soap

Lynda—Sy Moisture Lotion for Normal/Combination Skin

Lynda—Sy Moisture Lotion for Dry Skin

Lynda—Sy Superior Cream

Lynda—Sy Extra Rich Face Cream

Lynda—Sy Optimal Sunscreen Moisturizing Lotion

Lynda—Sy Optimal II Sunscreen Lotion for Oily Skin

Lynda—Sy Liquid Make-up with Sunscreen

Lynda—Sy Souffle’ Make-up with Sunscreen

Lynda—Sy Essential Make-up with Sunscreen

Lynda—Sy After Shower Body Oil. 10/27/89.

[425.0825](#) **Sofnet Cleaner and Chix Cleansers.** These two products are similar to dry towelettes and used in the same manner as cotton balls or gauze and are excluded from the definition of “medicines” in Regulation 1591(c)(2). 9/23/93.

[425.0827](#) **Spa.** Even though a spa was purchased under a prescription issued by a patient's doctor to mitigate the patient's arthritis, its sale is subject to sales tax. A spa does not fall within the definition of a device that is exempt from the sales or use tax under Regulation 1591. 6/14/94.

[425.0828](#) **Speech Pathology Devices.** Speech devices which assist stutterers to speak more fluently are appliances or devices excluded from the definition of medicines, even though the device must be professionally fit by a speech pathologist who marks up the cost of the instrument.

Speech pathologists are not made consumers by statute. The furnishing of devices to patients by speech pathologists are retail sales subject to tax. 7/15/94.

[425.0829](#) **Speech Therapy Devices for Stutterers.** Stutterers have normal ears, lungs, larynxes, jaws, lips, etc. Thus, speech therapy devices for stutterers such as biofeedback systems of the body do not replace any organ. They administer therapy to help develop normal speech patterns. They are, therefore, not "medicines." 11/7/94.

[425.0830](#) **Sphincter.** An artificial sphincter permanently implanted in patients suffering partial or total paralysis in order to normalize bowel movements is an exempt medicine. 11/30/76.

[425.0850](#) **Splints.** Splints (and their replacement parts) designed to be fully worn on the person of the user as a brace, support, or correction for the body structure are exempt from tax pursuant to Revenue and Taxation Code section 6369(c)(3) and Sales and Use Tax Regulation 1591(b)(4). 5/10/88.

425.0853 **Skin Staples and Staplers.** "Sutures," meaning items such as silk, thread, wire or catgut used in the surgical uniting of two pieces of skin, are specifically included in the term "medicines," Regulation 1591(b)(2). Disposable loading units, as well as the disposable instruments and loading units (when sold together), that are used to join skin tissue also qualify as "sutures."

Disposable staplers and staples qualify as "medicines" because they are sold and used as a unit, and when sold or furnished under the conditions set forth in Regulation 1591(a), their sales are exempt from tax. Non-disposable staplers, as well as removers, are durable pieces of medical equipment and so are "appliances, etc.," specifically excluded from the term "medicines" by Regulation 1591(c)(2). Their sales are subject to tax. 6/11/91. (Am. 2002-3).

425.0854 **Sterile Water—Concha 1500.** Sterile water if specially processed and labeled "Caution: Federal (U.S.A.) law prohibits dispensing without a prescription" qualifies as a "medicine". 5/17/89.

[425.0854.5](#) **Sterile Stockinette.** A sterile stockinette is a medicine when used as a cast component or as a wrapping for fractures. Under these circumstances, it functions as a support or correction device for the body structure and is exempt from tax pursuant to Regulation 1591(b)(4). However, when the stockinette is sold as a "dressing," it does not qualify as a "medicine" and its sale is taxable. 10/6/86.

425.0855 **Steri-Strips.** Steri-strips are also called cover strips, suture strips and suture strips plus. Industry literature clearly states that steri-strips are not sutures and therefore do not fall within the definition of "medicines". 5/28/93.

425.0855.5 **Steri-Strips.** Steri-strips, which is an elastic tape used as a wound closure, are in the nature of bandages and dressing rather than sutures. Therefore, they do not qualify as a prescription medicine. 9/12/90.

425.0856 **Sternum Support.** A post-surgical sternum support harness is fully worn on the body of the patient and assists the natural function of the sternum to support the rib cage while the ribs are re-attaching themselves to the sternum following surgery. The product is sold only by prescription or directly to hospitals for treatment of patients pursuant to physician's orders.

The sternum support harness qualifies as a prescription medicine under Regulation 1591(b) (4); thus, the sales of this product are exempt from tax. 10/9/91.

425.0857 Subarachnoid Screw. A subarachnoid screw is a device inserted in the skull for direct measurement of intracranial pressure. It is a device pursuant to section 6369 (b)(2) and is excluded from the term medicine. As such, the sale of subarachnoid screws are subject to tax. 12/23/88.

425.0858 Supplies. Coveralls, nurses caps and bouf caps do not qualify as medicines. 5/17/89.

425.0859 Supplies Used with Urinary Incontinence Devices. The following items qualify as tax exempt medicines under Regulation 1591 when sold under a physician's prescription for use with an exempt urinary incontinence device:

- (1) topical antiseptic solutions
- (2) adhesives (used to hold the device in place)
- (3) adhesive removes (remove the adhesive)
- (4) lubricants (used to insert the urinary device)

The following items do not qualify as exempt prosthetic devices or otherwise qualify as exempt medicines under Regulation 1591, even though such items are used with exempt urinary incontinence devices:

- (1) cleaners and equipment which are used to remove contaminants from the urinary incontinent device
- (2) insertion kits which are used to insert the catheters
- (3) irrigation syringes which are used to clean the catheter. 1/4/85.

425.0860 Surgical Cellulose Hemostat. Surgical, a knitted fabric made from oxidized regenerated cellulose, used as a hemostat to halt bleeding, is applied by pressure or suturing. When saturated, it forms a coagulated mass which stops further bleeding. Since it need not be removed because it is absorbed by the body, it qualifies as a medicine under section 6369. 11/15/66.

425.0870 Surgical Replacement Lenses. Intraocular lenses and their replacement parts are exempt from tax pursuant to Revenue and Taxation Code section 6369(c)(5) and Sales and Use Tax Regulation 1591(b)(6). 5/10/88.

425.0880 Surgical Soap. Surgical soap qualifies as medicine if it is used by application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease. Soap used in sterilizing surgeons' hands is also exempt. Laboratories selling soap to hospitals should obtain a resale or exemption certificate from the hospitals who must report the tax on the purchase price of soap which is not tax exempt. 6/26/64.

425.0881 Temporary Myocardial Pacing Lead. A temporary myocardial pacing lead is a temporary disposable heart wire which is implanted during heart surgery, and generally stays implanted following surgery in the event of complications during recovery. Provided the lead is used in a post-surgical setting and is attached to a temporary pacemaker which is fully worn on or in the body of the user, it is an exempt prescription medicine, the sale of which is not subject to tax. However, if it is only used during a surgical procedure or is used with a bedside pacemaker or (heart) pacing machine, which is not fully worn on the patient, it is not a prescription medicine and its sale is taxable. 9/11/90.

425.0881.300 Tendon Implants. Hunter tendon implants are used in reconstructive hand surgery and are exempt as “. . . other articles permanently implanted in the human body to assist the functioning of . . . any natural organ, artery, vein, or limb . . .”. 7/6/78.

[425.0883](#) **Therapeutic Shoes.** Sales of therapeutic shoes and inserts supplied under the Medicare Therapeutic Shoe Demonstration do not qualify as either the sale of an exempt medicine under Revenue and Taxation Code section 6369 or as an exempt sale to the United States Government.

The Demonstration provides for the furnishing of custom molded shoes and extra depth shoes and inserts which do not meet the criteria set in section 6369(c)(3). As such, even though the shoes are furnished under a physician's prescription, tax will apply to the sale of such shoes and inserts absent another provision of law.

It was previously determined that the sale of an item insured pursuant to Part B of the Medicare Act where the claim of the person for reimbursement is assigned to the supplier and the supplier files a claim with a carrier are not exempt sales to the United States. As such, tax properly applies to the sale of the shoes and inserts by authorized shoe suppliers. 10/26/90.

425.0883.200 **Thrombosis Prevention.** Anti-embolism stockings qualify as exempt prosthetic devices if they are worn on the patient and they operate separately from a compression system. However, if used only during compression therapy, they do not qualify.

A system which provides compression therapy which is comprised of a compression sleeve, pump, and tubing connecting the sleeve and the pump is not a "medicine." 3/2/95.

425.0883.5 **Tiltable Back Traction Table.** A tiltable back traction table consists of a platform with a base, which has balancing means positioned at the top and a series of retainers attached to the bottom. The platform tilts and has supports positioned near the foot end in order to prevent the patient from sliding off the platform. Such a table is in the nature of a device pursuant to Regulation 1591(c)(2) and its sale is subject to tax. 3/14/90.

[425.0883.700](#) **Top Cat.** "Top Cat" is an electric car-top hoist that appears to be specially designed to enable a physically handicapped person to load or unload a wheelchair onto or from a motor vehicle without assistance from another person.

The term "physically handicapped" person includes only those disabled persons described in California Vehicle Code section 22511.5 as qualified for special parking privileges. Therefore, tax does not apply to the sale or use of items and materials when used to modify vehicles to be used in the transport of such physically handicapped person(s). This exemption applies to vehicles which are owned and operated by physically handicapped persons as well as to vehicles which are used in the public or private transport of physically handicapped persons. The "Top Cat" qualifies for the exemption provided under section 6369.4. Tax does not apply to the sale or use of this device when it is used to modify a vehicle for physically handicapped persons. 2/23/84.

425.0883.810 **Tracheostomy Care Kits.** Tracheostomy tubes are considered medicines only when used post-surgically. Because of this, certain sales of tracheostomy tubes will be exempt and others taxable depending on the use. These care kits are "necessary and integral" to the patient administering home care and qualify as "related supplies" under Regulation 1591(j). (See Annotation 425.0259.) Consequently, the tax status of each kit will depend on the tax status of the particular tube to which it is a "related supply." 5/23/95.

[425.0883.875](#) **Tracheotomy Appliances and Supplies.** A tracheotomy is defined in Dorland's Illustrated Medical Dictionary, 24th edition, as a "surgical creation of an opening into the trachea through the neck, for insertion of a tube to facilitate the passage of air to the lungs, or the evacuation of secretions." Tracheotomy appliances and supplies used to facilitate the evacuation of secretion are exempt from tax as qualifying appliances under Regulation 1591(j) [now 1591.1(b)(2)]. Those used to facilitate the passage of air would not qualify under this section. 2/22/91. (Am. 2002-2).

(Note: Regulation 1591 was amended effective March 10, 2000, and further amended April 12, 2001. Reader should note the changes to the subdivisions indicated above.)

[425.0883.900](#) **Tracheostomy and Endotracheal Tubes.** Lantz tracheostomy and endotracheal tubes are inserted by means of an incision in the trachea for the purpose of respirating the patient and removing metabolic waste and are exempt only if used post-operatively. 7/6/78.

425.0884.5 **Traction Devices.** Traction devices which do not permit ambulatory movement do not qualify as “medicines.” On the other hand, cervical and pelvic traction devices which are worn by the user and permit ambulatory movement qualify as medicines. 8/30/91.

[425.0885](#) **Transcutaneous Nerve Stimulators.** Transcutaneous electrical nerve stimulators, which are fully worn on the body of the user, are prosthetic devices as that term is used in section 6369(c)(4) and tax does not apply to their sale; however, transcutaneous electrical nerve stimulators which are not fully worn on the body of the user do not qualify as prosthetic devices and tax applies to their sale. 4/11/83. (Am. M99-1).

[425.0887](#) **Treatment Tubes.** The following covers the application of tax to specific treatment tubes:

- (1) Penrose Drain. Precut tubes used to drain fluids from a wound are taxable (unless utilized post surgically as a result of an artificial opening created in the human body for the elimination of human waste).
- (2) Cantor Intestinal Tube. A mercury weighted tube for intestinal intubation is taxable.
- (3) Stomach Tube. A tube for feeding or washing stomach is taxable.
- (4) Feeding Tube. A tube for introducing food into stomach is taxable.
- (5) Maso-gastric Tube. A disposable stomach decompression evacuation tube with an x-ray tip, 2 lumens, and a balloon which is inflated and positioned at esophago-gastric junction without tension is taxable (unless utilized post surgically as a result of an artificial opening created in the human body for elimination of natural waste).
- (6) Trach Speaking Tube. A tube that helps tracheostomy patient to speak is exempt (when used in conjunction with a tracheostomy tube which is necessary as a result of an artificial opening created in the human body for the elimination of natural waste).

Generally, tax does not apply to tubes which are necessary as a result of surgical procedures by which an artificial opening is created in the human body for elimination of waste. Tubes implanted permanently in the human body (i.e., for more than six months) to assist the functioning of, as distinguished from replacing all or any part of, any natural organ, artery, vein or limb and which remain or dissolve in the body are not subject to tax while those implanted for a lesser period are taxable. 5/2/80.

425.0890 **Trocar Catheters.** The trocar catheter is used in an emergency to relieve pressure on the lungs. The catheter is inserted or thrust into the wall of the chest (with no prior incision). It is attached to a drainage and suction system to drain fluids from the chest cavity. The trocar catheter is a supply item on crash carts which are located throughout the hospital to treat patients in emergencies.

As described, the use of these devices indicates that they are used temporarily during emergency procedures and also appear to be surgical devices as they must make their own incision into the chest. Used as described, these items are taxable. 2/24/93.

425.0895 **Tubular and Bias Stockinettes.** These items are only considered medicines when they are used as orthotic devices designed to be worn on the patient as a brace, support or correction for body structure.

Tubular or bias stockinettes which are used as chaps or as a headdress in the operating room would not qualify as exempt orthotic devices. 10/2/89.

425.0900 Tucks Pads and Fuller Shields. Tucks pads are pre-moistened towelette(s) used to clean and disinfect following episiotomy or hemorrhoid surgery and Fuller Shields are pre-moistened, used to clean and protect perineal area.

Under Regulation 1591(c)(2), towels and dressings are “medicines” when they are impregnated with a product which is recognized as a “medicine.” Therefore, tucks pads and the Fuller Shields are medicines, the sale of which to hospitals are exempt from sales and use tax under Regulation 1591(a)(3). 6/14/94.

425.0905 Urinary Bags and Meters. Urinary bags are necessary and integral to the operation of a urinary catheter and are exempt along with the catheter under Regulation 1591(b)(5). The meter appears to be used during treatment and so is a device under subsection(c)(2) and the sale of which is subject to tax. 10/6/93.

425.0906 Urinary Incontinence Devices. Urinary incontinent devices are used to collect urine from patients in the nonsurgical treatment of urinary incontinence. This device is composed of a catheter (indwelling, intermittent, external, or suction) and a collection bag together with any connectors and caps which are necessary to complete the fluid track. Since it is designed to be fully worn on the body of the user and assists in the functioning of the user’s bladder, urinary incontinent devices are nontaxable prosthetic devices under Regulation 1591. 1/4/85.

425.0907 Urinary Incontinence Products (Female). The Innova female urinary incontinence product causes involuntary contractions of the pelvic musculature and urinary sphincter in order to treat or cure incontinence. This device is composed of an externally worn, microprocessor-based electrical neuromuscular stimulator that activates a tampon-like vaginal electrode worn internally. While these devices are not akin to TENS units, they do qualify as prosthetic devices if they are fully worn on the body of the user. Typically, a TENS unit is designed to relieve pain through the use of electrical impulses which are emitted from the unit directly to the area of the body in which the patient is experiencing pain. By contrast, the female urinary incontinence device appears to assist the vaginal sphincter in performing its natural function, staying closed in order to retain urine, and opening to evacuate the bladder under the control of the patient. This use fits precisely the regulatory definition. The Liberty Female Urinary Incontinence Product, if fully worn on the body of the user, is thus a prosthetic device within the meaning of Regulation 1591(b)(5) with the result that furnishing such products to patients pursuant to the written order of a licensed physician is not subject to tax. (Regulation 1591(I).) 10/4/96.

425.0907.500 Vacuum Erection Device. The Vacuum Erection Device (VED) is used to treat impotence of men. The VED consists of a Softtouch™ Constriction Seal and a vacuum pump. The Softtouch™ Constriction Seal remains on the body for approximately thirty minutes.

The only part of the VED that is worn on the body is the Softtouch™. Since both parts of the VED are not fully worn on the body, it is an appliance excluded from the definition of “medicines” under Regulation 1591 and its sales are subject to tax. 5/29/97.

425.0908 Vascular Intervention Devices. This device is used temporarily during surgery to remove and collect lesion tissue which is blocking the blood vessel. It also retains the tissue for analysis. It is, therefore, an appliance or device excluded from the definition of medicine under Regulation 1591(c)(2). Thus, sales of these devices are subject to tax. 4/15/94.

425.0909 Vehicle Modified for Use by Handicapped Person. A handicapped person purchased a van from a unlicensed person, intending to modify the van to her needs. The previous owner of the vehicle had modified it to some degree for use by the physically handicapped. However, the purchaser was unable to adapt it further to meet her needs and sold it prior to registering it.

A person who purchases a vehicle is liable for use tax even though the person sells the vehicle prior to transferring registration. However, the part of the transfer price attributable to modifications made to enable

the vehicle to be used to transport a physically handicapped person is excluded from the amount subject to tax. 10/20/94.

[425.0915](#) **Vents and Sumps.** Vents and sumps are used during heart bypass surgery to keep the operating area clear of blood. Items used temporarily during surgical procedures are excluded from the term “medicines” under Regulation 1529(c)(2). Consequently, sales of vents and sumps are subject to tax. 2/22/06. (2007–1).

[425.0920](#) **Veterinarians.** Pursuant to Revenue and Taxation Code section 6018.1, licensed veterinarians are consumers and not retailers of drugs and medicines, as defined in section 6018.1, which are used or furnished by the veterinarian in the performance of the veterinarian’s professional services. Accordingly, the gross receipts from the sale of such drugs and medicines to licensed veterinarians are taxable while the gross receipts from the veterinarian’s sale of such drugs and medicines are not taxable. 5/10/88.

[425.0926](#) **Visistat Skin Staplers.** This product is sold pre-filled and is not reusable. Therefore, the cartridge containing the staplers constitutes a container sold with contents which are medicines and the sales of the pre-loaded staplers are exempt from sales and use tax. (Regulations 1591 and 1589(b)(1)(C).) 9/26/95.

425.0930 **Vitajet.** Vitajet is described as an insulin injection system that injects an ultra fine stream of insulin through the skin without the use of a needle. As such, Vitajet qualifies as an insulin syringe under section 6369 (e); however, in order for the sale to be exempt from tax, it must be furnished by a registered pharmacist. Sale by a nonpharmacist to a consumer is subject to tax. 2/8/88.

[425.0940](#) **Vitamin Sale to Physicians.** Sales of vitamins to a physician and surgeon for the treatment of a human being are not taxable. 7/3/64.

425.0960 **Water Pills and Appetite Suppressants.** Water pills and appetite suppressants provided to customers of a weight reducing facility as part of a supervised weight reducing program did not qualify as exempt medicines because they were not prescribed or furnished for “the diagnosis, cure, mitigation, treatment or prevention of disease.” 1/8/69.

[425.0970](#) **Wheelchair Lift Added to Vehicles.** A manufacturer makes busses whose standard base does not include a wheelchair lift. At the purchaser’s request, the manufacturer will add an optional wheelchair lift, which requires modifying the configuration of the bus and putting in different wiring and control connections. The portion of the sales price of the modified bus which is attributable to the price of a wheelchair option is exempt from tax under Revenue and Taxation Code section 6369.4. 3/12/82.

[425.0974](#) **Wheelchairs, Crutches, Canes, and Walkers Purchased by a Hospital.** A hospital purchases wheelchairs, crutches, canes, and walkers for the purpose of renting them to patients. Payment for the rentals is made by Medicare or by an insurer. The hospital may purchase the items for resale. If the item is rented or resold to a patient covered by Medicare, and Medicare makes the payment under Part A, tax will not apply because the sale will be an exempt sale to the United States. If the payment is made under Part B or by other insurers, tax will apply to the items resold or rented unless they are exempt as prescription medicines. Item billed under Medicare Part B are treated the same as any other sale. 10/16/79.

[425.0975](#) **Wheelchairs, Canes, Crutches, Walkers and Quad Cones.** Tax does not apply to the sales of these items when sold to an individual as directed by a licensed physician. Sales of these items to medical facilities for the use of patients while at the facilities are subject to tax. 3/31/92.

425.0976 **Wheelchair Pads and Cushions.** Wheelchair pads and cushions which are purchased separately from the wheelchair on the order of a physician to replace or supplement the basic seats that come with the chair qualify as “replacement parts.” Sales of these items are exempt from tax when sold to an individual under the conditions set forth in Regulation 1591. 7/11/91.

[425.0977](#) **Wheelchair Restraint.** This product is a vest worn by the patient and has a couple of straps that go around the back of the wheelchair. Such restraints are generally appliances excluded from the definition of medicines under Regulation 1591(c)(2). This restraint is not a part of the wheelchair and, thus, the sale of the wheelchair restraint is subject to tax. 7/29/96.

425.0980 **Wigs and Hairpieces.** Sales of wigs and hairpieces by a beautician or barber qualify as exempt if they are sold pursuant to the order of a doctor for the treatment of hair loss due to alopecia, burns, chemotherapy, or radiation. The retailer claiming these sales as exempt must retain a copy of the doctor's order and a record of the name of the purchaser, date of sale, item sold, and sales price. 4/13/90.

425.0985 **Worn Fully Traction Materials.** Traction materials must be fully worn on the person of a user to be classified as a medicine. Some sling arrangements (e.g., an arm sling worn around the neck or shoulder) would be considered fully worn on the person of the user. 10/2/89.

[425.0987](#) **Wound Dressings and Wound Packing.** These types of items are utilized on serious, open wounds and although they are not medicated, they are made of material that actually speeds up the healing process which generates new cell development. They also help keep the wound moisturized which promotes accelerated healing. Dressings are specifically excluded from the definition of medicine under Regulation 1591(c)(2), with the result that sales of such items are subject to tax. 8/25/94.

425.1000 **Wright Linear Pumps.** Wright Linear Pumps are used to reduce the size of an arm or a leg (swollen due to intractable edema) by squeezing the fluid back into circulation by using a sleeve or trouser like appliance. All treatment is pursuant to a doctor's order and may be done in a clinic or away from the clinic.

It has previously been determined that such compression devices are neither orthotic or prosthetic devices as defined in Regulation 1591 (b)(4,5). They do not serve as a brace, support, or correction, for the body structure nor replace or assist in the functioning of a natural part of the body nor are they fully worn on the body. Therefore, they are appliances, devices, or articles described in Regulation 1591(c), sales of which are subject to tax. 5/20/93.

[425.1045](#) **Zbar.** This product is marketed as "part of your diabetes dietary management regime . . . a clinical study . . . shows Zbar may regulate blood glucose levels up to nine hours in many people." It appears that Zbar is designed to regulate blood sugar levels and is a "medicine," not a food product or dietary supplement. Thus, although it is in bar form, its sale is taxable unless sold in a manner which would entitle the sale to be exempt as a "medicine." Over-the counter sales of the products are subject to tax. 2/24/97.

[425.1060](#) **Amigo Deluxe/Hoverground Motorized Wheelchair.** The Amigo Deluxe and Hoverground are electric three-wheel devices which are used for the same purposes as wheelchairs. Therefore, they also qualify as wheelchairs. Thus, when the Amigo Deluxe or the Hoverground is sold to an individual for that individual's personal use as directed by a physician, sales to that individual are exempt from the sales or use tax under section 6369.2. 12/15/95.

[425.1065](#) **Classification of Specific Medical Products.** The following items would be considered "medicines" when purchased pursuant to the direction of a physician. Tax would apply if the items are "self-prescribed."

Custom-Made Venous Pressure Gradient Elastic Supports
Burn Pressure Garments and Special Elastic Supports—Anti/Burnscar
Knee Length Anti-Embolic Elastic Stockings—Anti-Em
Thigh Length Anti-Embolic Elastic Stockings—Anti-Em
Anti-Em Waist-Hi Tights
Knee Length Seamless Anti-Embolic Elastic Stockings
Thigh-Length Seamless Anti-Embolic Elastic Stockings
Mammary Support—Fredricks

Abdominoplasty—Freeman
Elastic Supports—Facioplasty
Elasticized Stockinette—Elastic-Net
Mastectomy Brassiere—Feminique Long-Line
Mastectomy Brassiere—Enchanta
Mastectomy Brassiere—Feminique— Custom Made
Ladies Elastic Support Hose—Jobst-Stridette
Ladies Elastic Support Panty Hose—Jobst-Stridette
Elastic Support Pregnancy Panty Hose—Jobst—Relief
Men’s Elastic Support Hose—Jobst-Stride
Jobst Jet Air Splints

The following items would be ‘‘medicines’’ as they are necessary and integral elements of support hose:

Garter Belts—Custom Made and Standard
Garter Belts for Thigh-Length Anti-Em Elastic Stockings

Tax would not apply to the following items as they are deemed to be dispensed on prescription.

Breast Prosthesis—Feminique
Breast Prosthesis—Yours Truly—All Silicone

Tax would apply to the following items as they would not be considered ‘‘medicines’’:

Jobst Extremity Pump Intermittent Compression Unit
Major Components—Anti/Shock Airpants
Minor Components—Anti/Shock Airpants
Nylon Pneumatic Appliances—Heavy Duty
Amplastz—Siegel Radiology Pneumatic Pressure System by Jobst
Plastic Pneumatic Pressure Bandages
Blood Pressure Device
Plastic Patching Kits
Jobst Surgical Air-Boot
Inflating Devices
Jobst Cyro/Temp System—Combination Cold and Pressure Unit
Automatic Rotating Tourniquet—Auto Quet
Special Washing Solution—Jolastic
Accessories—Auto-Quet
General Body Lotion—Com-Pat
Partial Occlusion Inferior Vena Cava Clips, Teflon-Mortez
Stasis Pads
Partial Occlusion Inferior Vena Cava Clips, Teflon-Adams-De Weese
Artificial Wool Decubitus Pad* (for wheelchair)
Jobst Surgical Tourniquets—Tourni-Cuff
Floatation Devices—Hydro-Float
Jobst Leg Elevator
Floatation Devices—Hydro-Float Wheelchair cushion*
Anti-Em Extremity Pump
Accessories—Anti-Em Extremity Pump
Floatation Devices—Accessories Hydro-Float
Anti/Shock Airpants
Rigid Wheel Chair Seat, Std.*
Rigid Wheel Chair Seat, Jr.*

*If these items are sold as a part of a wheelchair, they could be nontaxable. If they are sold separately, tax would apply. 11/15/77.

425.1070 Grab Bars, Van Ramps, Parts for Wheelchairs, and Bath Benches.

The application of tax to sales of items sold to an organization that aids muscular dystrophy patients follows:

Grab Bars. Grab bars are subject to tax unless part of a modification to a vehicle used to transport physically handicapped persons as set forth under Regulation 1591(l).

Van Ramps. Van ramps are subject to tax unless part of a modification to a vehicle used to transport physically handicapped persons as set forth under Regulation 1591(l).

Parts For Wheelchairs. The following items for wheelchairs are not subject to tax if all the conditions set forth under Regulation 1591(k) are met:

- (1) Batteries for electric wheelchairs but not battery chargers
- (2) Belts for wheelchairs
- (3) Cushions
- (4) Lap boards and trays are not subject to tax if they are actually attached to the wheelchair and are a part of the wheelchair itself.
- (5) Mechanical devices to aid in eating and writing are subject to tax unless they are actually attached to the wheelchair itself.

Bath Benches and Shower Attachments. Bath benches and shower attachments are items subject to tax and are not within any exemption provided by Regulation 1591. 7/14/81.

425.1100 Yankaver Suction Tube. This tube is used for oral suctioning and is hand held rather than worn. Thus, it is taxable. 10/2/89.

425.1103 Kidney Dialysis Supplies. Dialysis fluid additives such as Sorb cartridges, Redy K-1 and Redy Ca (D-50) are not subject to tax.

Equipment cleaning supplies such as formaldehyde, Klenzade XY-12, Veshpene, and vinegar are not medicines.

Items which are part of the dialysis machine such as tie guns, tie straps, and latex tubing are medicines.

Tax applies to hydrogen peroxide if used to clean machinery or clothing. It is a medicine if used for external application to a person.

Substances used to test dialysis concentrates, such as ammonia test paper, chloride kits, chloride indicator, mercuric nitrate, salt standard, nitric acid and standard solutions, are taxable. 9/28/78. (Am. M99-1).

425.1105 Legging Orthosis. The legging orthosis is worn around the lower leg from the knee to the instep. It is constructed entirely of 3.8 cm and 5.1 cm bands of woven nylon loop fastening tape. The legging supports the venous and lymphatic structure and it is prescribed when the physician determines that the patient's limb has lost the ability to function properly without orthotic support.

The legging orthosis qualifies as an orthotic device because it supports the internal leg structure and is fully worn on the body of the patient. As a result, sales of this item are exempt from tax. 12/28/93.

[425.1110 Medicines—Specific Items.](#) Items used temporarily during surgery or therapy or to apply medicine to the patient are not considered to be medicines. Based on these standards, the following items are not exempt from sales tax:

- (1) Lemon Glycerin Swab Stick,
- (2) Thiortic Cannula,
- (3) Suction Catheter. 9/17/92.

[425.1115 Medifast.](#) Medifast is a weight control program closely monitored by a physician with related lab work. It involves the controlled intake of nutrients providing 486 calories a day and are sold on prescription. When sold under these conditions, Medifast products qualify as prescription medicines. 9/29/92.

[425.1117 Modification of Paratransit Vehicles.](#) A company manufactures a paratransit vehicle which is designed totally for use by handicapped persons. It wanted to know whether available options such as air conditioning, front lighted signs, special paints, safety kits and flares and transmission coolers are exempt from tax when built in conjunction with the paratransit vehicle.

The term “physically handicapped” persons as used in section 6369.4 includes only those disabled persons described in California Vehicle Code section 22511.5 as qualified for special parking privileges. Tax does not apply to the sale of items and materials which are used to modify vehicles in those instances where the modifications to the vehicles are necessary in order to transport such physically handicapped persons. This exemption includes vehicles which are owned and operated by physically handicapped persons as well as vehicles which are used in the public or private transport of physically handicapped persons. If modifications made to a vehicle are specifically necessary to enable the vehicle to be used to transport physically handicapped persons, they are exempt from tax under section 6369.4. In some instances, items such as air conditioning, insulation, and citizens band radio might be necessary to transport persons with certain types of disabilities while in other cases they would not be considered necessary.

Modifications involving roof extension, modified door, door operator, supplemental steps, floor lights and wires, seating, wheel chair lifts and controls and wheelchair restraints would appear to qualify. 3/11/81.

[425.1120 Norplant System Contraceptive.](#) The Norplant System is a contraceptive device that is implanted in the arm just under the skin and releases hormones similar to those in oral contraceptives. It appears to operate in the same manner as intrauterine contraceptive devices that release chemicals or hormones into the body and which have previously been declared to be “medicines.” Tax does not apply to sales of these devices to county health clinics for use in the treatment of a human being nor to the furnishing of the devices by the clinic to human beings. The county must issue an exemption certificate to its suppliers. The certificate must conform to Regulation 1667. 8/14/92.

[425.1130 Programmable Drug Infusion Devices.](#) The following listed items are not programmable drug infusion devices as defined in Regulation 1591(b)(7): General sets, automatic piggyback sets, filter sets, anesthesia/surgical sets, solusets, extension sets, pediatric/neonatal sets, and specialty sets.

These sets are in the nature of traditional I.V. administration equipment whereby fluids or medicine is administered to a patient through tubing. There is no mechanism available with the administration sets which automatically programs the delivery of the medicine to the patient other than through a traditional drip method and an on/off switch. Also, these are not fully worn on or implanted in the human body of the patient. Therefore, the retail sales of these items are subject to tax. 3/28/83.

[425.1135 Nancy Clips.](#) These clips are used during certain surgical procedures (i.e., neurosurgery, facelifts, etc.) as an external “suture” to temporarily control bleeding. The “clips” are made of plastic and are disposable.

The “Rancy Clips” are plastic clips that are designed temporarily to control bleeding on incision edges during surgery and, thus, are not “sutures” pursuant to Regulation 1591(b)(2). Therefore, their sale is subject to tax. 1/14/86.

425.1140 Skin Care Products. A line of skin care products is sold only to physicians and aestheticians for treatment of skin ailments. Three of the products of the line may only be sold to licensed physicians. None of the products require a medical prescription per se. The patient receives initial treatment by the physician followed by a prescribed regimen of home care.

Products sold or furnished by a physician for treatment of a patient are exempt. Sales by nonphysicians or to patients of physicians outside a prescribed regimen of treatment are subject to tax unless sold under a prescription. 11/16/94.

425.1141 Skin Care Products. To qualify for exemptions as medicines, creams and washes sold to incontinency and ostomy patients must be prescribed by a doctor. In addition, prescriptions for such items for incontinency patients must be filled by a registered pharmacist, while prescriptions for such items for ostomy patients may be filled by a medical supply vendor. There is no special exemption for the sales of such products to incontinency Medi-Cal patients by a nonpharmacy provider.

The disparity in the manner in which the exemption for these products is available to the two types of patients is due to legislative action. The Board staff has no authority to broaden the exemption, regardless of the inconvenience that may be caused to incontinency patients, their suppliers and insurers. 8/24/92; 10/8/92.

425.1150 Syringes, Disposable and Pre-Filled. Syringes are normally regarded as devices, and the amounts from the sale or purchase therefore are taxable. However, when a syringe is sold pre-filled with an exempt medicine, is disposable, and is for a one-time use only, the pre-filled syringe is regarded as a container sold filled with exempt contents. The price sold or paid for the syringe in this situation is exempt. 4/24/95.

425.1160 Temperature Monitoring Systems. The following products have a temperature sensor which is connected to a temperature monitoring system. The sensor is attached to or inserted into the patient:

Myocardial Temperature Sensor

Tympanic Temperature Sensor

Foley Catheter Temperature Sensor

Acoustascope Esophageal Stethoscope with temperature sensor

Esophageal/Rectal Temperature Sensor

Skin Temperature Sensor

Each product must be supplied by or on order of a physician.

These products are durable medical appliances and, thus, subject to tax when sold at retail. 2/1/94.

425.1165 Testicular Gel Implant. This is a silicon implant put into the testicles when replacement is necessary due to disease (example—cancer). Such implants are medicines under Regulation 1591(b)(2). Thus, sales of the implants are exempt from the tax. 8/25/94.

425.1170 Topical Creams/Ointments. Topical creams and ointments qualify as medicines when sold or furnished pursuant to Regulation 1591(a) and their sales are exempt from tax. 11/23/94.