

Robert A. Clarkson was elected Local Secretary for the 1922 convention which will be held in Springfield June 27, 28 and 29, 1922.

Leo Mrazek of Chicago was nominated for

the Advisory Board of the University of Illinois School of Pharmacy.

A budget amounting to \$3013 was adopted for the year 1921-22.

THE PHARMACIST AND THE LAW.

CONSTRUCTIVE CRITICISM ON A RECENT RULING OF THE COMMISSIONER OF INTERNAL REVENUE, REGARDING SALES OF NARCOTIC DRUGS.

George M. Beringer, by request, has submitted his interpretation and views to the Department regarding a recent ruling of the Commissioner of Internal Revenue. The ruling referred to follows:

1. A retail druggist who purchases 100 tablets containing narcotics taxable under the Harrison Narcotic Law, and sells the package as purchased with narcotic stamps attached, to a physician, on an order form, incurs additional liability as a wholesale dealer in Class 2.

2. If the same druggist buys an original stamped package of 200 tablets containing narcotic drugs, breaks the package and from it sells 100 tablets pursuant to an order form to another registered person, he is regarded as the producer of a new package and must stamp same, thereby incurring liability as a member of Class 1.

In other words a retail dealer who wishes to sell non-exempt narcotic drugs to any person duly registered in one or more of the classes 1 to 4, must pursue one of the following procedures, bearing in mind that all narcotic transactions between registered persons must be pursuant to order forms and in general nothing less than an original stamped package may be sold pursuant to an order form, there being one exception to this last rule, that of aqueous narcotic solutions noted in Article 25, Regulations 35, revised:

1. If he desires to sell taxable narcotic drugs to registered persons in original stamped packages he should register and pay additional tax as a wholesale dealer (see Article 28).

2. If he sells anything less than an original stamped package to a registered person he must register and pay additional tax as a producer in Class 1, and stamp all the newly created packages (see Article 28).

It, therefore, follows that with the exception of aqueous solutions above noted persons registered as retail druggists only must confine their narcotic transactions to the filling of

bona fide prescriptions written by reputable physicians for patients.

However, this statement should under no circumstances be construed to indicate that a physician may obtain narcotic drugs on prescriptions in order that he may dispense same in the practice of his profession.

Mr. Beringer's expressed desire is to cooperate with the Department. He believes that the carrying out of the laws for the suppression of the drug habit can and should be done without placing the pharmacist in the category of a violator of the law where he is only performing his proper professional service in accordance with the intent of the Congressional enactment. The greater part of Mr. Beringer's communication follows:

"The Act of December 17th, 1914, commonly known as the Harrison Narcotic Act, and especially the amendments thereto introduced as sections 1006 and 1007 of the Revenue Act of 1918, differentiate between the various classes of producers of and dealers in narcotic drugs, and define with proper limitations the terms importer, manufacturer, producer, wholesale dealer, retail dealer, and dealer in exempted narcotics. It is not within the province of any governmental bureau or officer to change such classifications and definitions as are fixed by law.

"Paragraph 1 sets forth that 'a retail druggist who purchases 100 tablets containing narcotic drugs, taxable under the Harrison Narcotic Law, and sells the package as purchased with narcotic stamps attached, to a physician on an order form, incurs an additional liability as a wholesale dealer in Class 2.' I am compelled to criticize the language of this paragraph in several directions.

"The words 'retail druggist' should read 'retail dealer,' as the phrase used in the Act is the latter, and a dealer other than a druggist would not be exempted although such a suggestion might be drawn from the wording used in this paragraph. It is questionable in my opinion if a physician who dispenses an original stamped package does not incur the same liability as a wholesale dealer.

"Why should this ruling specify '100 tablets?' If strictly construed, this wording would exempt a package containing more or less than 100 tablets. Packages containing 500, 1000, 5000, etc., of tablets are recognized trade packages that are necessarily stamped by the manufacturer if they contain any of the specified narcotics in excess of the exempted quantity. Likewise, hypodermic tablets are commonly put up in stamped packages containing 20 or 25 tablets, and such might be construed as exempted from the provisions of this ruling under this wording. The evident intent was to further impress the fact that the wording of the Act makes every person who sells, or offers for sale, such drugs in the original stamped packages a wholesale dealer, and limits such transactions to those who register under Class 2.

"This paragraph (1) states 'sells the packages purchased with narcotic stamps attached, to a physician, on an order form.' I cannot find in the Act itself any reason for such a limitation of the sale to a physician. If the sale is made to another retail dealer, or to a veterinarian, or to a dentist of an original stamped package, the same liability, as a wholesale dealer, would undoubtedly be incurred. The implied limitation that such 'sale must be made to a physician' would permit of the erroneous construction that the retail dealer could make such sale to any other person than a physician, and not incur the same liability. The words 'with narcotic stamps attached' suggest that he could by the removal of the stamps escape this liability.

"In paragraph 2, I note other statements which permit of a construction different from what appears to the writer to be the intent of the Act.

"This paragraph states that if 'the same druggist buys an original stamped package of 200 tablets containing narcotic drugs, breaks the package and from it sells 100 tablets on a narcotic order, he becomes a producer of a *new package* of a narcotic drug and must stamp same as the producer.' Why should the provision of this ruling be limited to '*same druggist*,' and not apply to any retail dealer under the Narcotic Act?

"Why should a package of 200 tablets be specified, when such a package is not a customary trade package of tablets?

"Why should the fact that he 'sells from it 100 tablets' make him a producer of a 'new package?' If the retail dealer purchased a

package of 500 or 1000 or 5000 compressed tablets, sold therefrom any other number than 100 tablets, would he not equally be the producer of the 'new package,' irrespective of the number of tablets contained therein?

"The wording of this ruling overlooks the fact that hypodermic tablets and other potent narcotic tablets are commonly sold by the manufacturers in stamped packages containing 15, 20 or 25 such tablets, as well as larger packages containing 100, 500, etc. The wording of this ruling would permit of a retail dealer producing a 'new package' without stamp taxing same, provided as distinctly stated he did not buy a 200 tablet package and sell therefrom a 100 tablet package.

"Every time the pharmacist or physician dispenses from a stamped package he produces a 'new package' no matter what amount it may contain.

"As I have studied the provisions of this law, it appeared to my lay mind that the purport of Congress was readily perceived, and that the Act provided that only a bona fide importer, manufacturer, compounder or producer for sale of any of the prescribed drugs or non-exempted preparations thereof, was deemed to be an importer, manufacturer, or producer, and that such only would be classified under Class 1, and that registrants under this class only were required to and had the sole liability of attaching the tax stamps. Moreover, the wording of the Act is distinctly that it is the importation or production for sale and distribution of any of the 'aforesaid drugs' and not the 'producing of a new package' that defines Class 1 and the liabilities thereunder.

"The law provides further that the retail dealer, be he a druggist, or physician, or other registrant under Class 3, must sell, dispense or distribute the aforesaid drugs from an *original stamped package*. It in no wise specifies that in so doing he becomes a producer and must qualify under Class 1, paying the special tax required of that class, and affix the tax stamp to such packages as he may dispense. It would appear that the intent of the law was directly to the contrary of this ruling.

"The law distinctly provides that every person who sells or dispenses from an original stamped package shall be deemed a retail dealer. Under this provision, it would seem fair to believe that Congress had in mind the practice of the retail pharmacist, and that it was the intent to permit him to sell on prescription, or on narcotic order form to physi-

cians or other retail dealers, less than the full stamped package of a narcotic drug, whether this was in the form of the drug or of a preparation thereof, such as tablets or a tincture.

"The Department, by Article 25, has aimed to exempt the retail dealer from incurring the liability as a manufacturer or compounder when he prepares solutions of narcotics for use in compounding prescriptions only and in the supplying of aqueous solutions of narcotics to practitioners. Even here it is doubtful if the Department has not perverted the intent of the section of the law relating to the retail dealer, as in the preparation of such solutions for dispensing the pharmacist is but performing his professional duty of compounding and *dispensing from the original stamped package.*

"In the new ruling, the Department takes a further advanced step that if he sells anything less than the original stamped package to a registered person, he must qualify and pay an additional tax as a producer in Class 1, and stamp the newly created packages.

"The Law does not provide for the *creation of packages* but for 'the import, manufacture, compounding or production of drugs' in any form and not of a package."

"In the Law and likewise in Regulation 35, Article 65, it is provided 'that the tax on imported *goods* is to be paid by the importer, and the tax on domestic *goods* is payable by the domestic manufacturer, compounder or producer.' A retailer who simply dispenses from the stamped package complies with the requirements of the law defining such a transaction as the function of the retail dealer, and is in no wise a producer of the 'drugs' or 'goods.'

"It has been the universal practice of the retail drug trade to supply to physicians, dentists and veterinarians, on narcotic order forms for legitimate medicinal purposes, small quantities of narcotic drugs and to provide

that such customary service is illegal and subjects the dispenser to liability as a manufacturer would appear to be beyond the intent of the Law, detrimental to legitimate medical and pharmaceutical practices and without any benefit whatever to the enforcement of the Law."

PROVISIONS FOR TAX-FREE ALCOHOL PERMITS.

Under the provisions of Regulations No. 61, issued pursuant to Title III of the National Prohibition Act of October 28, 1919, permits granted for tax-free alcohol on Form 1447 expire on December 31 of the calendar year in which issued. Therefore, persons holding such permits, issued during the present calendar year, who wish to procure tax-free alcohol for use during the ensuing year or who carry over to the ensuing year alcohol procured during the present calendar year, should, as required by Article 76 of said regulations, file applications for new permits before December 31, 1921. The date of expiration of a permit issued on Form 1447 is written in the upper right hand corner of the application, beneath the number of the permit. In order to facilitate the issuance of renewal permits applications should be filed as far in advance of December 31, 1921, as may be practicable.

New bonds are not required with renewal applications where the bonds previously filed are in sufficient penal sum to cover the needs of the applicants and the security afforded thereby has not become in any way impaired.

In the body of applications filed on said Form 1447 the uses to be made of tax-free alcohol for the ensuing calendar year should be set forth in the blank space of the paragraphs.

Care should be exercised to see that the jurat is properly executed on all copies of applications before they are forwarded for final approval.

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