THE CONFERENCE OF PHARMACEUTICAL LAW ENFORCEMENT OFFICIALS

MINUTES OF THE SESSIONS HELD IN SHOREHAM HOTEL, WASHINGTON, D. C., MAY 10 AND 11, 1934.

The sixth annual meeting of the Conference of Pharmaceutical Law Enforcement Officials was convened by Chairman R. L. Swain at 9:30 A.M. in the Card Room, with the following present: Messrs. J. W. Slocum, W. F. Mead, Iowa; R. C. Reese, W. Mac Childs, Kansas; Hugo Schaefer, George W. Mather, F. C. A. Schaefer, C. P. Wimmer, New York; Robert C. Wilson, W. S. Elkins, Georgia; A. L. I. Winne, Virginia; J. Lester Hayman, G. O. Young, West Virginia; C. T. Gilbert, Connecticut; Joseph Burniak, Michigan; J. B. Pilchard, L. L. Walton, R. R. Gaw, Pennsylvania; N. N. Brakke, North Dakota; Rowland Jones, South Dakota; C. S. Pierce, B. K. Murdock, L. H. Marr, Maine; W. C. Muesing, J. P. Jellinek, Minnesota; Henry F. Hein, Texas; P. R. Loveland, New Jersey; W. Bruce Philip, J. W. Lee, A. C. Taylor, R. A. Veitch, Washington, D. C.; F. V. McCullough, Indiana; Frank C. Purdum, W. F. Reindollar, R. L. Swain, Miss B. Olive Cole, Maryland; M. N. Ford, Ohio.

Chairman Swain made a verbal address and then called for the report of the Secretary-Treasurer.

THE REPORT OF SECRETARY-TREASURER.

BY M. N. FORD.

Since the last annual meeting of the Conference, the Secretary has had considerable requests from different states for information which was promptly furnished. There being no particular court decisions furnished the Secretary, there have been no bulletins sent out since the last meeting. Proceedings of the last annual meeting were published in the JOURNAL and it has been recommended by the Chairman that reprints be secured and made available to the Conference members as soon as possible.

There have been no expenditures of money since our last annual meeting, therefore, we have on hand a balance from the last meeting of $170.67. We have received from Chairman F. C. A. Schaefer, of the Finance Committee, $110.00, therefore, we have on hand at this time $280.67.

Upon motion of Mr. Winne, seconded by Mr. Jones, the report of the Secretary-Treasurer was approved.

The Conference also approved obtaining reprints of the proceedings of the last annual meeting and that they be made available to the members as soon as possible.

REPORT OF FINANCE COMMITTEE.

The Finance Committee appointed by Chairman Swain, sent out an appeal to the Boards of Pharmacy for contributions of ten dollars for the Conference. This Committee, not having been appointed until recently, did not have ample time to get many replies from their appeal; however, the Committee did receive $10.00 contributions from the states of Maryland, Ohio, Kentucky, Connecticut, North Carolina, North Dakota, New Jersey, West Virginia, Arkansas and Wisconsin, and $5.00 contributions from the Board of Pharmacy of Pennsylvania and from the West Virginia State Pharmaceutical Association, making a total of $110.00. The Committee has had favorable replies from other states who will forward their contributions a little later.

ROWLAND JONES
W. MAC CHILDS
WM. HANKINS
HUGO SCHAEFER
F. C. A. SCHAEFER, *Chairman.*

Upon motion by Mr. Mead, seconded by Mr. Gilbert, the report of the Committee was approved.

A question was raised as to the legality of the fee being paid by the Board of Pharmacy and a discussion was entered into by Messrs. Wilson, Childs, Winne, Mead and Hayman.

At this time Chairman Swain introduced the **Hon. Herbert Levy** of the Maryland Bar who addressed the Conference on the subject of "The Place of the Attorney-General in the Legislative and Law Enforcement Program." Mr. Levy spoke, in part, as follows:

Some of you may recall that I spoke to this group at its meeting in Baltimore some two or three years ago. Since that time, laws have been enacted with such bewildering rapidity and of such sweeping effect that an examination of the rôle of the Attorney-General brings to light new possibilities of useful service on the part of the person holding that office. In general it should be said that the place of the Attorney-General is traditionally at the head of the law enforcement division of government; whereas on the other hand he has no place traditionally in the legislative program.

The Attorney-General of the United States has the duty of representing the government in law suits in the Supreme Court and in the Court of Claims; and in addition is head of the Department of Justice, having as such, as Bryce has remarked in his analysis of the American Commonwealth, powers comparable to those of a minister of justice in a European cabinet. Further, the Attorney-General has the important duty of advising the President and the heads of executive departments by opinions on questions of law submitted to him. Significant is the inability of the Attorney-General to render opinions to either of the houses of Congress and equally so is the limitation whereby the Attorney-General cannot give opinions except upon questions actually arising in the department requesting the opinions. Finally, the Attorney-General may at times act as draughtsman of legislation to be proposed in Congress.

The actual duty of prosecuting offenders against the federal laws is not performed unless and until the appellate courts are reached. But the connection between the district attorneys and the Attorney-General gives the Attorney-General contact with and responsibility for the prosecution of offenders even in the lower courts. The duties of the various State Attorneys-General vary in each state.

A contrast between the United States Attorney-General and the Attorney-General of Maryland, as an example, may be found in the fact that the local States' Attorneys are not subject to the control of the Attorney-General of the state who can only participate in a prosecution in a lower court when required by the Governor or the General Assembly to aid the States' Attorneys.

In summary, therefore, of the place of the Attorney-General in the law enforcement program, it may be said the United States Attorney-General occupies through the district attorneys a most responsible position in this regard whereas the State Attorney-General holds one of much less importance.

In the rendering of opinions there is also some contrast to be noted. In Maryland, for example, the Attorney-General may render opinions when required to do so either by the General Assembly or by one of its houses.

The rendering of opinions and the analogous duty of drawing proposed legislation may be described as functions midway between law enforcing and actual "legislating." A strict construction of existing statutes may for example directly bring about the passage of supplementary acts by the legislature. A liberal construction may bring about restrictive legislation by the law-making body. Or the injection of some personal point of view in a law being framed for a governmental department may directly affect legislation.

The very possibility of influencing the character of legislation by either of these methods raises the interesting question of the separation of powers. Needless to say any attempt on the part of the Attorney-General directly to color legislative changes through the use of his services by those charged with legislative duties, presents the same problem in a form in which the separation of the governmental powers can be studied as more strikingly productive of good or evil. The actual proposing and advocating of particular legislation by an attorney-general is so unusual, and so unlikely, because of the resentment it would cause to legislators, that it need only be regarded as the extreme to which this particular combination of governmental functions may ever proceed.

"Separation of Powers" is a phrase familiar to even the most casual student of civics who has heard from school-boy days of the division of the government into executive, legislative and judicial parts. The origin of the phrase appears to go back to the "Spirit of Laws" written by the French nobleman Montesquieu in the middle of the Eighteenth Century. It has been said of this

versatile writer (whose "Persian Letters" are known to many not the least interested in government) that his gift of generalization was so happy that from a mass of incomplete or even totally inaccurate information he could extract a principle of the widest application. With his other great gift of forceful and epigrammatic expression he could then express the principle in terms of terse lucidity.

At the time when he was writing, the Hanoverian monarchs of England had been on the throne only a few years. And the cabinet system of government, made necessary by their inability to speak English and their ignorance of English affairs, to say nothing of their frequent absences on visits to their German kingdom, was only slightly known to Europeans. But the division of the government already definitely marked was not lost on Montesquieu when he analyzed the British constitution. It is in this analysis that he uses the phrase "Separation of Powers." And he there says:

> "When the legislative and executive powers are united in the same person or in the same body of magistrates, there can be no liberty."

The idea had already come to America and was embodied in most of the state constitutions at the time of the drawing of the Federal constitution. But the words of Montesquieu, quoted by Madison in the *Federalist*, kept the principle clear in the minds of the members of the constitutional convention.

It may be appropriate to notice that Madison particularly comments upon the force of the statement of the principle in Article 8 of the Maryland Declaration of Rights:

> "That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

Interesting as may be the study of the origin of the idea it is still more interesting to observe with what force the principle has been adhered to through all the successive changes both in Federal and state forms of government.

Applied to the activities of the Attorney-General as a member of the executive department of the government it obviously prevents his voting in any legislative body, as does the Attorney-General of England, who is a member of Parliament. It also prevents any close official connection with the law-making power.

His problem is not to influence the legislature. I learned from practical experience that legislators are very jealous of their prerogatives. A wise Attorney-General should never show too much zeal in advocating departmental legislation; for immediately he does so, he is suspected of attempting to encroach upon the legislative domain.

He should thoroughly familiarize himself with the governmental problems to be dealt with so that, if called upon, he can draft the laws in clear and succinct language and then present to such as may inquire the explanations and reasons for the law. Beyond this he cannot go except at the peril of his offiial client's cause.

That does not mean his legislative activities are of no value in influencing the passage or defeat of legislation in which his official clients are interested. On the contrary, a dignified, semi-judicial presentation of the arguments in favor of the department's position usually carries considerably more weight than an argument to like effect made directly by the official involved.

Those of you who must resort to legislatures in connection with your work, take heed.

Use your Attorney-General. He can be of great help to you in the presentation of your case, but do not make too much use of him.

In other words, enforcement work, like every other kind of work in life must be administered with common sense and the Attorney-General can be of great help if you take his nose out of the law books and fully familiarize him with your problem from a practical point of view.

The lofty impartiality of the Attorney-General, who best fulfils his duties, derived as it is from principles long studied and understood finds no more useful function than in connection with the governmental changes of to-day.

Acting because of the critical condition of the country in the spring of 1933 Congress passed a series of extraordinary measures producing the most wide-spread effects, yet short and simple in

their language. The most frequently discussed of these are the NRA; and the AAA. The power which these acts placed in the hands of individuals is almost incredible. The ability of individuals to vary the meaning of the law by executive orders has given practically law-making power to executives charged with the administration of these and numerous other acts. A committee on administrative law appointed by the American Bar Association says in its report, "To a greater extent than ever before, the lawyer must look to the President's executive orders and to the releases and announcements of the several administrative agencies for accurate and up-to-date knowledge of the existing state of the law."

With no disposition whatever to criticize the bold and comprehensive program of President Roosevelt which has breathed life into an industrial civilization previously believed by many to be dying, and has truly replaced the despair of almost an entire world with hope, it seems the effect of concentration of power in administrative officials is bound to tend at least to a desire for increased power on the part of state and Federal officials generally.

The proposed Copeland-Tugwell Bill, with which, I believe, you gentlemen have some familiarity, is drawn with the highest purposes in mind: to protect the public health. But here, too, extraordinary powers are proposed to be given to individuals.

The Secretary of State may promulgate regulations governing conditions of manufacture, processing or packing, and he may in effect close a factory and then decide whether his action was justified. Meanwhile at all times any officer or employee duly designated by the Secretary shall have access to inspect any factory of the group described.

It is apparent that interpretations of this Act, which determine its ultimate scope, will vitally affect the thousands of manufacturers subject to its terms. The many questions which will arise in the minds of the army of enforcing officials will call for opinions from the Attorney-General's office, which will react upon every member of the pharmaceutical profession. Wise opinions by an Attorney-General, aware of the problems sought to be solved by the Bill, and not attempting to extend the already far-extended confines of the law, will do much to carry out the beneficent purpose of the Act while safeguarding the rights of the individual.

The Attorney-General who understands the problems of government, well serves those whom he represents by impartially giving opinions to department heads to keep them within their scope and assist them in the execution of the powers that they have been given by the legislature; and by accurately reflecting in bills prepared by him the views of the legislative officials whom he assists.

If the new type of legislation such as that recently passed, is to be permanent, the Attorney-General can do much to make the change in governmental theory less unpalatable by bringing about through his counsel and advice, tact and discretion in administration.

Following Mr. Levy's address, he submitted to questions from the Conference, after which he was given a rising vote of thanks for his splendid address.

Chairman Swain next called upon **George W. Mather,** secretary of the New York Board of Pharmacy, who presented a paper on "The Enforcement of the Poison Laws." Before submitting his paper, Mr. Mather gave a verbal report of his activities which were discussed by Messrs. Childs, Wilson, Purdum, Winne, Reese, Jones, Elkins, Gilbert, Walton and Swain.

ENFORCEMENT OF THE NEW YORK STATE POISON LAWS.

As early as 1880 the State of New York placed upon the statute books a limited type of control which surrounded the sale of medicines regarded as poisonous. This law was amended several times and in 1910 enforcement of the Pharmacy Law was placed under the Department of Education of the State of New York.

At that time the word "poison" was defined as follows:

"Poisons, where not otherwise limited, means any drugs, chemical, medicine or preparation liable to be destructive to adult human life in quantities of sixty grains or less."

The New York State Board of Pharmacy functioning under the Department was by law given the power to regulate the practice of pharmacology and to make rules approved by the Department for the supervision over the sale of drugs and medicines. In conformity with that law certain schedules known as "A" and "B" were adopted.

Schedule "A" consisted of the articles listed below: "Schedule A. Arsenic, atropine, corrosive sublimate, potassium cyanide, chloral hydrate, hydrocyanic acid, morphine, strychnine

and all other poisonous vegetable alkaloids, and their salts, oil of bitter almond containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce."

Schedule "B" consisted of the following:

"Schedule B. Aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophantus, oil of savin, oil of tansy, veratrum, viride and their pharmaceutical preparations, arsenical solution, carbolic acid, chloroform, creosote, croton oil, white precipitate methyl or wood alcohol, mineral acids, oxalic acid, Paris green, salts of lead, salts of zinc or any drug, chemical or preparation which is destructive to adult human life in quantities of sixty grains or less."

Each item of medicine which was defined as poison by reason of the rule is required by law to have the name of the article and the place of the seller noted on the package or container and the label shall be printed in red ink.

Violations for infractions of the above laws are punishable as a misdemeanor and may carry a penalty ranging from $25.00 to $200.00 for each offense.

"1. 1360 Poison schedules; register. It is unlawful for any person to sell at retail or to furnish any of the poisons of schedules A and B without affixing or causing to be affixed to the bottle, box, vessel or package, a label with the name of the article and word poison distinctly shown and with the name and place of business of the seller all printed in red ink together with the name of such poisons printed or written thereupon in plain, legible characters.

"2. Wholesale dealers in drugs, medicines, pharmaceutical preparations, chemicals or poisons shall affix or cause to be affixed to every bottle, box, parcel and outer inclosure of any original package containing any of the articles of schedule A, a suitable label or brand in red ink with the word poison upon it.

"3. Register. Every person who disposes of or sells at retail or furnishes any poisons included in schedule A shall before delivering the same enter in a book kept for that purpose the date of sale, the name and address of the purchaser and the name and quantity of the poison, the purpose for which it is purchased and the name of the dispenser. The poison register must be always open for inspection by the proper authorities and must be preserved for at least five years after the last entry. He shall not deliver any of the poisons of schedules A or B until he has satisfied himself that the purchaser is aware of the poisonous character and that the poison is to be used for a legitimate purpose. The provisions of the paragraph do not apply to the dispensing of medicines or poisons on physicians' prescriptions."

The labeling of poisons also applies to proprietary remedies if they come within the scope of the rule.

Section 1354 provides as follows: "Every place in which drugs, chemicals, medicines, prescriptions or poisons are retailed, or dispensed or compounded, shall be a pharmacy, a drug store or a store; shall be under the personal supervision of a pharmacist, a druggist or a storekeeper and shall be annually registered in the month of January by the board as conducted in full compliance with law and the rules."

Prior to April 19, 1934, the control of the manufacture and sale of proprietary remedies were not within the jurisdiction of the New York Board of Pharmacy. However, on that date this section was amended placing under the supervision and control of the New York State Board of Pharmacy the manufacture and sale of articles which are poisonous.

It is anticipated that in the near future the Board of Pharmacy will formulate rules with the sanction of the Department for the control of proprietary remedies which will conform to the above amendment.

Chairman Swain next introduced **Frank C. Purdum** a member of the Maryland State Legislature, who presented a paper "Is Pharmaceutical Legislation Best Served by a Pharmacist Member of the Legislature?" as follows:

IS PHARMACEUTICAL LEGISLATION BEST SERVED BY A PHARMACIST MEMBER OF THE LEGISLATURE?

The Chairman has assigned to me a rather unusual subject. However, I think it is an important one, and am very glad to contribute what I can to this Conference of Law Enforcement

Officials. At the same time, I am aware of the fact that, unless I can tell you something you do not already know, this paper will be of very little value.

I shall cover, as briefly as possible, my outstanding experiences and impressions, particularly in connection with pharmacy, while serving as a member of the Maryland Legislature during the past eight years. I am a graduate in pharmacy; have been registered in Maryland for thirty-two years; and have been and am now, engaged in the operation of my own drug store.

The question is: Is pharmaceutical legislation best served by a pharmacist member of the legislature? This subject immediately suggests other questions. For instance, assuming for the moment that it is to the advantage of the profession to have a pharmacist in the law-making bodies, what type of pharmacist should be encouraged and sponsored by the profession to enter the field of politics? Can a clean, high class professional pharmacist seek an elective office without sacrificing some of his ideals? In what way can a pharmacist, as a member of the legislative body, be of most service to the profession of pharmacy?

The question has been raised as to whether he should take the leadership as a trained professional man, and introduce and sponsor all bills that the pharmacists may desire, be ready to boldly take the floor in opposition to all unfavorable legislation or whether he should somewhat submerge himself, and work in the background through well-selected leaders.

Obviously, this question, presenting both views of so large and important a matter, might be discussed at great length. The mere statement of the question indicates that there are advantages on both sides. Certainly, all efforts must be taken to disarm the criticism that when you, a pharmacist, introduce and sponsor legislation in the interests of pharmacy, you are largely concerned in a selfish venture. However, a discussion of what place the pharmacist should play is largely theoretical because his interest and influence are certain to become known whether he acts as a principal or as an accessory, so to speak.

As I see the whole matter, there can be no fixed rules in this respect. It depends upon the circumstances and the character of the legislation being considered. If it is of rather a technical nature such as is embraced in the adoption of experience and educational standards, or in bills dealing with specific chemical or pharmaceutical terms, undoubtedly the pharmacist should be thoroughly familiar with the subject, and be prepared to explain and answer intelligently any questions that may arise. In such a case, there is every reason why he should be the leader in favoring or opposing the measure. Here he is on solid ground, and should be regarded as the best qualified to express an expert view of all the facts involved.

If on the other hand, the legislation is more economic than technical, the pharmacist legislator may better serve by keeping in the background. This thought can be made clear by considering a bill designed to restrict the sale of household remedies to registered pharmacists. In spite of our firm belief that such a bill has a direct bearing upon public health, the average legislator is certain to regard it as a mere selfish effort to give pharmacists a monopoly of the business. In such a case, real statesmanship is demanded, and, even with the best laid plans, the thing is mighty apt to get into a snarl and possibly result in defeat, or a compromise measure just about as bad.

The pharmacist members of the legislature should seek a place upon the committee to which all health bills are referred. In Maryland, this committee is known as the Committee on Sanitation and Hygiene. I have been chairman of this committee for some years. The mere fact that I was selected for this important position carries with it the recognition that my training and experience, as a pharmacist, will have a direct bearing upon the matters which automatically are referred to this committee. Here the pharmacist sits in a strategic position. He is really on the inside. He hears both sides of the question, attends all committee hearings, may cross-examine those for or against a measure, and may present his professional and technical views to the committee. He is in position to see to it that a proper report is made by the committee, and he has all the facts should it be necessary to discuss the bill on the floor. In every instance, I strongly urge pharmacist legislators to be members of the committee to which pharmaceutical and health legislation is referred.

The right type of pharmacist can so impress himself on his colleagues that his judgment will count heavily. They begin to regard him as the best posted man in certain respects. More or less subconsciously they look to him when certain questions come up. With this, so I have found, comes a heavy responsibility. Members of the legislature have frequently told me that I should

take the responsibility in matters dealing with pharmacy and other health legislation. They feel that this is my line, and just as frankly, not theirs. Unless the matter is highly controversial, I have found a strong disposition to make me take the lead in legislation affecting the whole health field.

Recently, a bill was introduced in the State Senate, which would have granted registration as a pharmacist to one who was entitled to register in 1902, simply by filing the required affidavits, but who was not in the State at the designated period. On the surface the bill was harmless, and was designed to serve a really deserving case. However, such an act would have established a precedent which could have been, and probably would have been, very troublesome. There was no disposition to take any action on the bill until my views had been obtained. Even though I am a member of the House, the Senate wanted my views on a matter directly concerning pharmacy. I mention this incident simply to illustrate the point that a pharmacist in the legislature finds himself in position of speaking for the profession, and in a position also, to further its general standing not only in a legislative sense, but in matters dealing with its professional and technical service.

Again, when the Maryland Legislature was considering the provisions of an act to regulate the sale and distribution of alcoholic liquors, I was able to convince the body that alcohol used exclusively for the manufacture of medicinal, toilet and antiseptic preparations, flavoring extracts and other preparations unfit for beverage purposes, should not carry any state excise tax. Also that whisky and other intoxicants, when dispensed on physicians' prescriptions were medicines and thus the pharmacist should not be required to take out any State liquor license to fill such prescriptions. Let it be understood that this was not a personal victory. I was there, a pharmacist who understood the problems, and who was on the ground floor, so to speak, throughout the whole discussion.

Let me emphasize a point that is of the greatest importance. While I am fully convinced that a pharmacist as a member of the legislature can be of very great aid in furthering the legislative program of the profession, I am just as convinced that he must be given real backing by the group as a whole. I have constantly sought to have the endorsement and active support of the state associations, the board of pharmacy and other organized groups. Perhaps it would be more accurate to say that I have tried to have passed, bills which organized pharmacy has sponsored and approved. I have more nearly regarded myself simply as their spokesman.

If some dangerous, or even debatable, bill is introduced by others than our own group, having a bearing upon pharmacists, I have invariably called it to the attention of the pharmaceutical leaders in the state, and we have sat down and talked it over. The course of action that I have then followed has been in accord with the conclusion reached by the group. Up to the present, we have had no family quarrels or dissensions, and we will have none, so long as the proper men lead and so long as there is the proper team work between them and the pharmacist member of the Legislature. However, let me emphasize, it is team work that is required. If our own ranks develop opposing camps, if we once let it be known that the group cannot agree among themselves, the legislative program may as well be shelved until we can express a collective opinion and stand squarely behind it.

In conclusion, let me digress briefly into a discussion of practical politics. Legislative experience and the ability to fraternize with other members of the legislature are really great helps. Every member has a few bills in which he is especially interested. Now, I have always felt that it was wise to introduce legislation early in the session, put a real kick back of it and get it through. By so doing, you escape the pitfalls of trading and dealing once the battle is really on. Most representatives are partly or wholly controlled by district leaders or bosses as they are generally called. These bosses are not always bad and their friendship is worth cultivating. It may only cost a cigar, highball or lunch. The most successful lobbyists work through these channels. This does not show up in pharmaceutical legislation bearing upon the educational or professional sides. Invariably, however, once it becomes economic or smacking of monopoly, you will find the "big boys" want to know what it is all about.

Another thing, pharmacists as a whole do not show sufficient interest in politics. It is my belief that, in the final analysis, we get as good government as we deserve. The best citizens of any state or municipality should be sufficiently interested in politics to assure good government. The pharmacist, being both a professional and business man, has a splendid opportunity, in his

daily contact with people, to have a say as to whom his representatives should be. But is he interested? To be more explicit, we should take time to become interested in issues; we should vote in primary elections; we should seek to learn the candidate's views while he is still a candidate; in every possible way consistent with decency and civic standards, we should seek to have our voices heard and our views considered.

During recent years, any number of bills have come before the Legislature having a bearing upon public health, or upon some public health profession: Anti-vivisection bill is a regular and biennial affair; bills favorable and unfavorable to pharmacists; bills seeking to permit Christian Science or faith healers to make a charge for their services; enlarging the scope of osteopaths and chiropractors; conferring the right of optometrists to use the title "doctor;" uniform state narcotic act, these and many more have found their way to the Legislature during my terms of office.

It is my opinion, regardless of the unsavory reputation of professional politicians, that a pharmacist can serve as a member of a legislative body without compromising his character or reputation. It is my opinion, too, that a pharmacist, as a member of the Legislature, is in position to greatly advance pharmaceutical legislation. In most cases, he should take a leading, courageous and frank position. If he is the proper type of pharmacist, his views will count heavily on all matters pertaining to the pharmaceutical profession and the drug business.

P. L. Loveland of New Jersey took the place of Harry E. Bischoff on the program and spoke on the same subject as Mr. Purdum.

At this time Chairman Swain appointed the following Committee on Nominations: *Chairman*, A. L. I. Winne, Virginia; Hugo Schaeffer, New York; L. L. Walton, Pennsylvania.

The following Committee on Resolutions was appointed: *Chairman*, J. Lester Hayman, West Virginia; W. S. Elkins, Georgia; Roy Reese, Kansas.

Chairman Swain next called upon **W. Mac Childs**, secretary of the Kansas Board of Pharmacy, who made an oral address on the subject of the "Public Health Council of Kansas and the Values of Its Principles to the Pharmaceutical Program."

At 12:45 P.M. upon motion duly seconded, the Conference adjourned.

Thursday, May 10th.

At 8:00 P.M. the Conference met in joint session with the Section on Education and Legislation and Conference of Pharmaceutical Association Secretaries, in the Club Room of the Hotel Shoreham.

SECOND SESSION.

The Second Session of the Conference of Pharmaceutical Law Enforcement Officials convened at 2:30 P.M., Friday, May 11th, in the Grill Room of the Shoreham Hotel.

Chairman Swain called the meeting to order and the first order of business was the discussion to collect court decisions with the idea of raising sufficient revenue to have same printed for distribution to members of the Conference. Both Mr. Mead of Iowa and Mr. Elkins of Georgia volunteered a subscription up to twenty-five dollars each in support of such a program either through the board or association.

The next question discussed was the time of meeting of the Conference, as many of those interested in the Conference meeting would like very much to have a meeting scheduled immediately after the National Association Boards of Pharmacy conclude their sessions. The chairman and secretary were directed to use their influence to have such an arrangement made.

Chairman Swain next called upon **A. L. I. Winne** of Virginia, who presented a paper on "Report of Special Committee to Define the Terms 'Patent Medicine' and 'Proprietary Medicine,'" as follows:

REPORT OF THE COMMITTEE ON DEFINITION OF "PATENT MEDICINE" AND "PROPRIETARY MEDICINE."

Your appointed committee to report on a study of adequate definitions for the terms "Patent Medicine" and "Proprietary Medicine" is unfortunately able at this time to render but a superficial report. The chairman of the committee acquainted the membership with the purpose of the study and received an informative response from one other member. The secretaries of all State Boards of Pharmacy were communicated with and information was returned by some thirty-

eight states. Of this number, thirty states reported as having no definition for the terms "Patent Medicine" and "Proprietary Medicine," although the terms were embodied in the pharmacy laws of the respective states. Several states have attempted to have the terms defined by their Attorney-Generals and some several have court decisions with rather vague interpretations of the terms. In no instance is there a clean-cut and satisfactory definition of the terms.

The states which report as having no definitions whatever are:

Alabama	Kansas	Oregon
Arizona	Kentucky	Pennsylvania
Delaware	Montana	Rhode Island
District of Columbia	Nebraska	South Carolina
Florida	New Jersey	Tennessee
Georgia	New Mexico	Texas
Idaho	North Carolina	Vermont
Illinois	North Dakota	West Virginia
Indiana	Ohio	Wisconsin
Iowa	Oklahoma	Wyoming

Communications directed to the United States Patent Office in Washington brought no response in the shape of a definition of either the term "Patent Medicine" or the term "Proprietary Medicine."

The State of Connecticut, while not expressly defining the terms "Patent and Proprietary Medicines," does throw some precautions around the selling of what is termed in the law "Proprietary and Patent and Medicinal Compound," but stipulates that such preparations must be put up separately in sealed containers and labeled and accompanied with directions for use, together with the name and address of the manufacturer or distributor.

Maine defines a "Proprietary Medicine" as one which certain individuals, firms, associations or corporations have the exclusive right to manufacture or sell.

New Hampshire defines the term "Proprietary Article" to mean any chemical, drug or similar preparation used in the treatment of diseases, if such article is protected against free competition as to name, product, composition or process of manufacture, by secrecy, patent or copyright, or by any other means.

While New Jersey used the terms "Patent and Proprietary Medicines" in its law, it does not define the terms, but the suggestion is made in a communication from New Jersey that the report of the Commission on Proprietary Medicine of the AMERICAN PHARMACEUTICAL ASSOCIATION be checked up for definitions. Your committee has not consulted this report and is therefore unable to embody in the present report the information that might be derived from that source.

New York reports that this problem has been given attention by the New York State Board of Pharmacy and after considerable thought the determination reached by that board was that a Proprietary Medicine is a medicine that any person or persons have the exclusive right to manufacture or sell.

South Dakota defines the term as follows: "For the purpose of this Act, patent or proprietary medicines shall be considered to include any medicine or drug which is prepared or compounded in proprietary form and sold at retail in the original packages and where the sale thereof is unregulated under the laws of the state."

Virginia attempts to define the terms as follows: "The term patent or proprietary medicines, as used in this chapter, shall include only medicines prepared according to a private formula or a secret process or under a trade-mark of the manufacturer or owner and sold under a trade name in an original package on which appear the disease or diseases for which the medicine is intended to be used and specific directions for its administration."

It will be observed that in the few instances where there has been an attempt made to define the terms as embodied in the laws the definitions are deplorably inadequate to control the situation which exists in most states. It would appear, therefore, that a further study of this subject should be made. In all instances where there has been an effort to define the terms, the definitions have failed to differentiate between that large class of products commonly regarded in the drug trade as classifiable under the term "Patent Medicine" from that other large and ever increasing group known to the drug trade as "Proprietary" products. The result is that in most states merchants

who know nothing of pharmacy are able to stock and sell many dangerous and potent proprietary products, and we believe that the public interest is not sufficiently safeguarded under such an arrangement.

While the definition in the Virginia law is largely inadequate and has been criticized as out of line with the Federal Pure Food and Drugs Act, it does at least have the merit of precluding the sale by general merchants of such proprietary products as do not have designated on their labels the disease or diseases for which the products are intended to be used. Such a provision in state law, while entirely out of line with the thoughts of many of those who are interested in an adequate Federal Act to control the sale of products for self-medication, may be useful until some better solution of the problem is suggested.

It seems to me that the situation would require a clean-cut definition for that group of remedies offered to the public for self-administration, and which we have loosely designated as Patent Medicines; and another clean-cut definition to embrace that group of proprietary products carried in drug stocks ostensibly for the filling of physicians' prescriptions, and commonly referred to as proprietary products. In other words these two groups should be segregated, clearly designated by adequate definitions and the suggestion then made to the several states for a revision of their state pharmacy laws in such a manner as to permit, if desired, the sale of patent medicines by general merchants and to prohibit the sale of proprietary products by that group.

It is common knowledge that the term "Patent Medicine" is a misnomer. Few of these remedies are protected by patents. Some are registered and some are protected by copyright and trade-mark, but these forms of protection are indiscriminately used in the patent medicine field and in the proprietary medicine field.

It is undoubtedly true that many dangerous proprietary products are stocked and sold by general merchants when as a matter of common protection of the consuming public, these products should be distributed only by pharmacists upon physicians' prescriptions. The situation is one which we believe worthy of further study and this inadequate report is presented with the hope that the questions will be placed in the hands of a competent committee for further study and a more definite and constructive recommendation.

Respectfully submitted,

GEO. W. MATHER, New York
JOHN M. WOODSIDE, Pennsylvania
M. N. FORD, Ohio
R. P. FISCHELIS, New Jersey
R. L. SWAIN, Maryland
A. L. I. WINNE, *Chairman*, Virginia.

Subsequent to the making up of the above report, the following letter was received from Secretary Baker of the Colorado Board of Pharmacy:

Mr. A. L. I. Winne, Secretary
Virginia Board of Pharmacy
105 State Office Building
Richmond, Virginia

Denver, Colo.
April 30, 1934.

Dear Mr. Winne:

Replying to your letter of the 18th, I wish to advise that our Board of Pharmacy has defined "Patent" and "Proprietary" medicines, as follows:

"A patent medicine is one the formula of which is registered in the United States Patent Office at Washington, D. C., which registration protects the inventor of the formula from duplication by any other or manufacturing company."

"A proprietary medicine is a medicine compounded according to a formula known only to the manufacturer and marketed under a trade name. This trade name does not necessarily have to be registered under the United States Trade-Mark Laws, as common law trade-marks exist in the United States, and a suit for infringement of a trade-mark may be brought by the original user thereof even though the original user may never have registered the same."

The exemption of proprietary medicines in our Pharmacy Law does not apply to official preparations listed in the United States Pharmacopœia and the National Formulary which are sold under a proprietary name.

Very truly yours,

(Signed) ARTHUR D. BAKER, *Secretary.*

At the conclusion of Mr. Winne's paper a motion was made and adopted, whereby a committee on Patent and Proprietary Medicines was ordered continued, and the report adopted.

Chairman Swain next reported that W. S. Frisbie of the United States Department of Agriculture could not be present and if he submitted a paper on "Coöperation between Federal and State Officials in the Enforcement of the Food and Drugs Acts," such paper will be published.

Chairman Swain next referred to a paper submitted by **William F. Reindollar** of the Bureau of Chemistry, Maryland State Department of Health on "Relationship of the Control Laboratory to Enforcement under the Food and Drugs Act," as follows:

RELATIONSHIP OF THE CONTROL LABORATORY TO ENFORCEMENT UNDER THE FOOD AND DRUGS ACT.

There is perhaps no phase of the enforcement of the Food and Drugs Act more fundamental than that involving the collection, inspection and examination of those products which are offered for sale within the scope of the Act. The very purpose of defining the terms "adulteration" and "misbranding," the very act of creating standards of purity, quality and strength, presuppose the existence of an agency, capable and qualified, to make analyses of the products in question, and to pass critical judgment upon them with respect to these provisions. Hence, the necessity of an adequate control laboratory as an integral cog in the machinery of law enforcement is a well-established and unquestioned fact. The presence of such units in the organizations of the several Municipal and State Health Departments, in addition to those of the Federal Government, is but another confirmation of their value.

The details of the operations of the Control Laboratory and the history of the "official sample" in its course of travel from vendor to analyst form an engaging narrative to those whose interests lie in this field. It isthe purpose of this article to outline briefly the procedures adopted to assure the integrity and safeguard the identity of the official sample, and to do this in such a manner that neither jury nor defending attorney may harbor doubts regarding its genuineness or its relation to the vendor.

Purchases of foods and drug products offered for sale on the open market are made in most cases direct from the wholesaler or retailer by an inspector, who is an agent of the Control Commissioner. No effort is made upon the part of this individual either to conceal or reveal his identity, or upon questioning to hide the purpose for which his purchase is being made. However, unless previous circumstances indicate a probable prosecution, or unless the vendor so requests, the samples are not sealed on the premises. The inspector makes notes concerning the places which he visits and when necessary puts an identifying mark on containers; this together with the labels on the package serves to identify the samples for him when he seals them at the end of the day. There is much to be said pro and con regarding this procedure. While in the past it was the custom to seal the sample in the presence of the vendor and although from the legal point of view, this is perhaps the more sound method, because of many disadvantages arising therefrom, it has been discontinued. To begin with it is time consuming, it involves the transportation of extra equipment and what is more important, it frequently creates an unfavorable impression upon the customers of the vendor, who enter and see a government agent engaged in collecting and sealing samples. Harmless though it may be, an unpleasant interpretation is usually placed upon it. Furthermore this procedure does not materially safeguard the identity of the sample, it is rather a challenge to the integrity of the inspector, and a device which is useless in any event if that integrity be lacking.

Inspectors are furnished with locked compartments, accessible only to themselves, wherein they may store their samples, until they are ready to be delivered to the laboratory. After an inspection of their labels by the Commissioner the samples are sealed by pasting a strip label over the stopper or lid of the container. This label bears on it, in ink, the date, name of inspector and

an identification or seal number. To further identify the specimen another sticker bearing this same I. R. No. (Inspector's Record Number) is attached. This I. R. No. corresponds to a numbered sheet in the inspector's record book on which is a complete description of information pertinent to the sample, such as name and address of vendor, time and price of purchase, proprietor of establishment, etc. The inspector then delivers his samples to the analyst who checks them against the records and signs for the number that he has received.

Once in the laboratory the samples are kept under lock and key until an examination can be made, at which time the seal is broken by the analyst. As the nature of the specimens usually varies, analytical precedence is given to those that are most unstable. Hence, a group of volatile spirits would be examined before a group of stable alkaloidal tinctures of the Nux Vomica or Belladonna type. In the case of extremely perishable products, such as spirit of ethyl nitrite, facilities of refrigeration are available and employed.

The great majority of the drug samples collected represent chemicals or galenicals official in the U. S. P. and N. F., simple prescriptions and those many common preparations that are prepared extemporaneously in the pharmacy. In addition to these groups and when circumstances warrant, a few proprietary preparations and cosmetics are samples. Those preparations which are official are examined by the official assay when one is given; if there be none, other standard methods such as those recommended by the Association of Official Agricultural Chemists, or those worked out in the Control Laboratories are employed. Simple chemicals are subjected to the tests for purity and identity recommended for them in the official books.

Extemporaneous preparations and prescriptions form an interesting group because they constitute an index of the accuracy and skill of the compounder and are more reliable in this respect than galenicals which in many cases are purchased from the manufacturer. Capsules of acetphenetidin, quinine or salol, percentage solutions of potassium iodide, permanganate or argyrol, mixtures of sodium bicarbonate with the bromides, and solutions of phenol in oil, are examples of this type which may be purchased with or without a prescription. Investigational work of this nature resulted in some rather depressing discoveries at first, but more lately has been compensated for by marked improvement in the majority of cases. In an early group of ten samples of Saturated Solution of Potassium Iodide, which should contain between 97 Gm. and 103 Gm. potassium iodide per 100 cc., the values were found to range from 45 Gm.–88 Gm.; now it is rarely that an illegal sample of this type is met with. Mixtures, as a rule, have been found to be more carefully compounded when ordered on a prescription than when the same combination is requested orally. There are occasional exceptions, however. Recently, a prescription calling for one dram of phenol in four ounces of olive oil was purchased and upon examination was found to contain liquefied phenol and cottonseed oil. In this case both of the ingredients had been substituted.

The Food and Drug Law of Maryland does not include the Shirley Amendment, neither does it provide for the control of cosmetics, hence not many patent medicines nor beautifiers are collected. However, the few that have been examined emphasize the need of such legislation. Bay Rum containing a substantial percentage of methanol has been encountered on the market. Two types of medical crystals sold at exorbitant prices have been shown to consist essentially of sodium sulphate or Glauber's Salt. A large quantity of mercury was present in a bleach cream which was purchased because a woman had been severely burned by using it. A compound purporting to be of value in the treatment of obesity was found to be essentially dextrose. Turpentine made up eighty per cent of the volume of a pneumonia cure. This sample was purchased by a housewife from an unknown peddler who appeared at her door one day, informed her he was a physician and assured her that his medicine "has cured the most severe cases of pneumonia." Although the lady did not have pneumonia, she applied the medicine and acquired second degree burns over a considerable portion of her thorax. The physician did not return.

Medicines for colds, coughs, lung fever, tuberculosis and all pulmonary complaints, canker, scurvy, all diseases arising from uric acid, gastritis, constipation, cramps of the motor nerves, liver, kidney and bladder troubles, pains in the breast and over the heart, all blood diseases, neuralgia, neuritis of the spleen, and swollen joints have from time to time been received. While in most cases they cure, in some the label modestly limits itself to the words "will relieve." And yet, unless the labels contain misstatements regarding the composition of the contents, little progress can be made in the prosecution of their vendors. Therapeutic claims are beyond the pale of food and drug legislation in Maryland.

Upon completion of the analysis duplicate records are prepared, one of which remains in the permanent files of the Bureau of Chemistry, the other is forwarded to the Commissioner. If the sample is legal it is "passed," that is, the records are filed and the sample destroyed. The office of the Commissioner contains in addition to a "daily purchase file," a complete record of products obtained from any one vendor. By this means the "sample history" of any establishment may be obtained immediately. If, however, the sample fails to meet the standards of purity, quality and strength, laid down for it, the seller is notified of the fact and summoned to appear and is thus "afforded an opportunity to present evidence either oral or written, in person or by attorney, showing any fault or error in the findings of the analyst or examiner, or establishing a guaranty from a party residing in this state" from whom he purchased the goods. The analyst is frequently requested to attend these hearings in order to answer technical questions pertaining to the analysis.

Should the case under consideration represent a wilful or flagrant violation of the law, the Commissioner may present the evidence to the Board of Health and request a prosecution of the offending party. Upon the sanction of that body a complete transcript of the case is forwarded to the State's Attorney and a criminal prosecution is initiated. Here begins one of the most important phases of the chemist's work. It is his duty to appear in court, to testify for the control agency and, if necessary, to defend his analyst against opposing experts. The necessity of the appearance of the chemist in person was emphasized recently in a case held in Western Maryland. This case involved the selling of a poison, mercuric chloride, without observing the regulations pertaining to the registration of such products. The chemist did not appear at this case; he sent the analytical sheet instead. The defendant's lawyer admitted the sale but demurred at the introduction of the analytical sheet. The judge sustained the objections, holding that in spite of the official nature of the document the analyst should have been present in person to present his testimony. The barring of this evidence left the state unable to identify the substance as mercuric chloride and the case was lost.

Thus it may be seen that the rôle of the Control Laboratory and its staff in the enforcement of the Food and Drugs Act is both fundamental and necessary. However, this work is not limited to the important functions described above. The staff of the Chemical Bureau engages in numerous researches which have for their purposes the development of new and better assay methods. Studies on preservation have been made to ascertain the optimum condition under which certain galenicals may be kept. An extensive investigation of this nature is being carried out at the present time with hydrogen peroxide. Samples are kept under varying conditions of temperature and sunlight and in different types of containers and their rate of deterioration is recorded. Another activity has been a statistical study of the weights of content of capsules and of powders with the hopes of establishing tolerances for preparations of this type.

In short, the efforts of the Control Laboratory are directed along two channels: (*a*) It aids by chemical analysis and court testimony in the enforcement of the law, (*b*) it endeavors by research to produce information, the utilization of which may make it easier for the manufacturer to produce legitimate products.

At this time A. L. I.Winne, chairman of the Committee on Nominations, made the following report: For *Chairman*, R. L. Swain of Maryland; for *Secretary-Treasurer*, M. N. Ford of Ohio; *Delegate to the House of Delegates*, Joseph P. Murray of Colorado.

Upon motion of Mr. Elkins, seconded by Mr. King, the report of the Committee on Nominations was accepted.

Chairman Schaefer of the Finance Committee made a further report at this time and reported that his Committee had decided to continue their request to individual board members in case the board had not contributed before and ask for any amount that they could contribute. Upon motion of Mr. King, seconded by Mr. Jones, the Committee was ordered continued.

Chairman Swain next reported the different opinions rendered by Attorney-Generals in regard to pharmaceutical law enforcement and it was the request of the Conference that copies of these opinions be mimeographed and furnished to the members.

Chairman Swain advised the Conference that it was his idea to secure from all state boards, blanks and enforcement records in order that they may be used in helping other states that may inquire for such assistance.

Upon motion duly seconded, the Conference then adjourned.

R. L. SWAIN, *Chairman.* M. N. FORD, *Secretary-Treasurer.*