(5) Every registered pharmacist compounding, dispensing, filling or selling a prescription must place the original written prescription or the prescription as recorded by the pharmacist, in case of telephoned, telegraphed or other communicated orders from practitioners, in a file kept for that purpose.

(6) The registered pharmacist must affix to the container of every prescription dispensed a label bearing the name and address of the pharmacist, the date on which the prescription was compounded and an identifying number under which the prescription is recorded in his files. The label must also bear the name of the licensed practitioner writing or communicating the prescription and the directions for the use of the prescription by the patient, as directed by the licensed prescriber.

(7) It is a violation of the Act if a prescription is found to contain more or less than the quantity of the several or combined ingredients ordered by the prescriber.

(8) It is a violation of this Act if the prescription contains ingredients other than those ordered in writing by the prescriber. The addition of such inert ingredients as are required in the art of compounding is permissible when such ingredients are not used in any manner to replace the several or combined constituents ordered by the prescriber. No replacements can be made without the prescriber's permission.

The final weight or volume of a prescription must not be more or less than the original prescription calls for. The quantities of individual ingredients must not deviate from the weights or volumes prescribed. A reasonable tolerance may be permitted to account for manipulative procedures and normal variations due to unaccountability for accurate weighing and measuring and for the use of drugs of standard strength as well as for strict accuracy in all operations involving subdivision of bulk quantities into the individual doses prescribed. "Eye measurements" in subdividing capsules, powders and similar dosage forms are not to be relied upon in place of accurate weighing and measuring devices.

(9) The Board of Pharmacy has the power to make rules and regulations for the enforcement of this act and is authorized to establish tolerances to allow for deviations from the amounts of ingredients prescribed due to manipulative procedure or deterioration.

(10) All violations of this act are punishable by penalties ranging from a minimum of $25 for the first offense to $100 for third and subsequent offenses.

We believe this to be the first State law which specifically grants authority to a Board of Pharmacy to establish tolerances for prescription work.

Rowland Jones, of South Dakota, next presented a paper on "What Privileges Should Be Granted the Unregistered Dealer under the Pharmacy Laws?' The paper was received and discussed by Messrs. Fischelis, Monias, Wilson, McCullough and Philip.

## WHAT PRIVILEGES SHOULD BE GRANTED THE UNREGISTERED DEALER UNDER THE PHARMACY LAWS?

BY ROWLAND JONES, JR.

The question of what privileges should be granted unregistered dealers under the pharmacy laws is indeed an important and vexatious one. The pharmacy laws of the forty-eight states differ in wide range in the treatment of this problem. Examination of pharmacy laws of the various states indicate that we have an almost complete absence of uniformity in the methods evolved in the treatment of the evils these laws were designed to mitigate. The laws of the several states extend in scope from almost complete freedom from restraint of the unregistered dealer, as embodied in the six- and ten-mile qualifications in some states to rigid restriction on nearly all drug products in others.

For the reason that my experience in pharmacy law enforcement and the development of changes in pharmacy laws in genera' has been limited to a strictly agricultural area in which comparatively long distances separate registered pharmacies, I shall treat the subject in the light of such experience and depend upon subsequent discussion by the group to develop the phases of the problems as they exist in more thickly settled and in urban districts.

In South Dakota, the evolution of the pharmacy laws since statehood was attained in 1888, has been confined to the last six years. As in many states the territorial pharmacy law, which was usually written by pharmacists, was carried into the statutes subsequent to admission

to the union. This law was drawn in such a manner as to definitely restrict practically all drugs and medicinal preparations to the pharmacist. It is regrettable that during this period of rugged individualism, which now seems definitely on the wane, the opinions arising therefrom were reflected in the decisions of the courts of the states in such manner that the law was emasculated by the "original package" decisions as was the case in many states. There can be no questions that these decisions made by courts, to whom the merest whisper of monopoly was abhorrent, resulted in enormous diversion in the sale of drug products into channels foreign to pharmacy. It is also true that these decisions which left glaring defects in pharmacy laws generally, resulted in strong efforts to correct some of the evils arising therefrom. Such efforts have met with varying success in the different states.

In South Dakota in 1927, a case was carried to the state supreme court upon the question of the constitutionality of the pharmacy law controlling the sale of patent and proprietary medicines in original packages which resulted in what we know as the Wood's Decision. This decision held that a section of the pharmacy law was unconstitutional in its restriction of the sale of patent and proprietary medicines in original packages to the pharmacist. This decision immediately resulted in a great deal of confusion and difficulty in the administration of the law by the Board of Pharmacy for the reason that the average mind of the layman seemed unable to differentiate between patent and non-patent preparations and between poisonous and non-poisonous proprietary preparations. Cases were lost which involved the sale of U. S. P. and of poisonous preparations through the erroneous applications of the "original package" formula laid down by the Supreme court. This condition became so serious that it became necessary to go to the legislature for relief.

As a result a patent and proprietary medicine license law was enacted early in 1933 without difficulty. This law was in the form of an amendment to that section of the law declared unconstitutional in the Wood's case and had the effect of curing the constitutional defect but which at the same time regained the elements which had been indirectly lost. The amendment provided that any merchant operating an established place of business (eliminating itinerant vendors) might apply to the Board of Pharmacy for a license to sell patent and proprietary medicines. The fee of $3 is retained by the Board for the purposes of inspection and general pharmacy law enforcement. In this amendment we defined patent and proprietary medicines as follows: "any medicine or drug which is prepared or compounded in proprietary form and sold in original packages, where the sale thereof is *unregulated under the laws of the state.*" Thereby, in one step, we eliminated the decision of the supreme court in the Wood's case as a precedent for the reason that we cured the defect in the law as pointed out in that decision and at the same time, brought the sale of these products back under our control. This definition, which had had no existence in statute before this time, resulted in a clarification of the statute on the dividing line between patent and proprietary medicines on the one hand, and U. S. P. and poisonous preparations on the other, the latter classification being adequately covered in the original law. Therefore, U. S. P. drugs and preparations and poisonous products may not be sold in other than registered pharmacies in South Dakota. We do not feel that any privilege whatsoever should be granted to unregistered dealers in these classifications.

Another result which has been advantageous in the enforcement of the pharmacy laws is the provision for the cancellation of the patent and proprietary licenses upon evidence of law violation. This gives the Board of Pharmacy a potent weapon in the fight for restrictions on the sale of drugs and medicines.

At the time when this legislation was being considered it was said by some that such a license would result in great multiplication of the outlets handling patent and proprietary preparations. The fact, as now established, is that a large number of small dealers such as restaurants, filling stations, billiard parlors, hardware dealers and grocers, who in the past have carried small stocks of these preparations have discontinued the sale of these rather than take out the license. In many places no licenses have been applied for while in the smaller towns without pharmaceutical service, the license has resulted in a quieting of the demand for more privileges for the unregistered dealer which is a force to be reckoned with at every session of the legislature.

As for the six- and ten-mile laws which have been passed in some states, I hold the opinion that this is bad law from the standpoint of pharmacy. From the standpoint of public health no differentiation in restrictions on this basis is even reasonable, and surely the public in the communi-

ties affected will lose sight of the importance of adequate pharmaceutical service. Also the prospective student of pharmacy will not be encouraged by the picture presented under such a system.

During the past ten years we have witnessed a gradual but distinct retrogression in the statutory protection of the field of pharmacy, mainly through judicial decisions, and during the same period we have advanced rapidly in educational facilities and requirements for the pharmacist. If this retrogression continues to such an extent that legal protection on U. S. P. drugs and preparations and poisons is lost as we have lost the protection in the patent and proprietary field, I feel grave concern as to our ability to maintain pharmacy at its present high level.

I believe, that as pharmacy law enforcement officials, it behooves us to oppose to the limit further modification of pharmacy law restrictions and to work toward licensing restrictions upon sales of drug products through other outlets. While in South Dakota, we were forced to accept a license fee of only $3 for the patent license, I believe that such license should be much higher. It would seem from the taxation standpoint, that the license for the sale of patent medicines should be at least as high as that required for the sale of non-intoxicating beverages.

Where funds for law enforcement are needed by Boards of Pharmacy, license fees should be allocated directly to the Boards for this work. Where funds are ample such license fee may be advanced as a source of tax income to the state which is badly needed in most states. Needless to say, the latter course offers a valuable lever in a successful legislative campaign.

The sale of biological products presents a problem, particularly in parts of the country where the treatment of veterinary diseases provides a lucrative source of income for the pharmacist. In many states such products are freely sold without restriction and even in some cases by itinerant vendors. The proper storage and handling of biological products and their intelligent dispensing is important. Biologicals for veterinary use have a definite public health relation. Ignorant use of biologicals constitutes a menace if handled without benefit of expert knowledge. Most pharmacy laws define drugs and medicines using the term "for man or for animal." With this in mind we have ample ground for insisting that the sale of veterinary biologicals by other than licensed veterinarians be restricted to the pharmacist. For example, the average uninformed storekeeper should not have the privilege of keeping for sale anthrax live spore vaccine.

In the field of insecticides and fungicides it seems evident, that we as pharmacists, cannot hope to control the general sale of such products which have become staple articles of commerce. I believe, however, that such sales by unregistered dealers should be accompanied by such regulations as license, registration of sales, labeling, etc. The pharmacist who will keep himself informed upon the technical aspects of this rapidly growing field, need have little fear from competitive outlets.

This paper is possibly misnamed. It should be "What Privileges Should *Not* Be Granted Unregistered Dealers." It is my contention that no privileges, with the exception of those herein discussed, should be granted in any case without a strenuous fight. If the sale of drugs which have been termed "simple household medicines" by those seeking to undermine pharmacy statutes, is allowed by unregistered dealers, it will only serve as an entering wedge and such action will be made a basis and a precedent for further encroachments.

U. S. P. drugs and preparations have always been and are now strictly within the field of pharmacy as have been poisons, with the exceptions heretofore noted. Let us be prepared to fight for that which is rightfully within the province of pharmacy and not grant privileges to laymen, the demand for which has so greatly increased due to the stringency of economic conditions. Without strict statutory protection, pharmacy as we know it and as we dream it for the future, cannot continue its logical progress. The health of the nations needs this progress.

Mr. Mac Childs of Kansas next gave an address verbally on the "Need for Strict Enforcement of Law," in which he suggested the Conference follow the method of the N. A. B. P. as to model laws for enforcement. The subject was discussed by Messrs. Meads, Judisch, Fischelis, Durham, Swain and Henry. An excerpt follows:

## THE NEED FOR STRICT ENFORCEMENT OF THE LAW.

BY MAC CHILDS.

"My speech is going to be a series of recommendations rather than the discussion assigned. The National Association Boards of Pharmacy was the conceived idea of several gentlemen and has