THE CONFERENCE OF PHARMACEUTICAL LAW ENFORCEMENT OFFICIALS

MINUTES OF THE SESSIONS HELD IN HOTEL LORAINE, MADISON, WIS., AUGUST 31 AND SEPTEMBER 1, 1933.

The fifth annual meeting of the Conference of Pharmaceutical Law Enforcement Officials was convened by Chairman R. L. Swain, at 9:00 A.M. in the Colonial Room, with the following present: Messrs. H. H. Schaefer and F. C. A. Schaefer, of New York; Pierce, of Maine; McShane, of Vermont; Jones, of South Dakota; Childs, Milne, King and Reese, of Kansas; Hayman, of West Virginia; Bingham, of Alabama; Meads, Teeters, Slocum, Judisch, of Iowa; Hankins, of Florida; Costello, of North Dakota; Henry, Durham, of Michigan; Fischelis, of New Jersey; Nye, of Missouri; Monias and Christensen, of Illinois; Netz, Bender, of Minnesota; Wilson, of Georgia; McCullough, Russell, of Indiana; Wilcox, of Pennsylvania; Philip, California; Jelinek, of Minnesota; Kremers, of Wisconsin; Kelly, Eberle and Swain, of Maryland, Ford, of Ohio.

Chairman Swain delivered his address and upon motion duly seconded, same was received for publication.

THE CHAIRMAN'S ADDRESS.

BY R. L. SWAIN.

In presenting this address to the Conference of Pharmaceutical Law Enforcement Officials, I shall endeavor to establish one or two general propositions to which I think we should devote our earnest thought. First of all, I think it is our responsibility to point out the defects existing in the pharmacy laws, and to take the lead in having these defects corrected. Secondly, we should do all that we can, in our official capacity, to acquaint the public with the basic significance of pharmacy to public health. I couple these two thoughts together because I am not able to see any way of correcting the defects in pharmaceutical legislation unless our efforts are based upon the public function which pharmacy renders. The whole field of drugs and medicines is so closely connected with the public welfare that pharmaceutical legislation should seek to lodge its regulation and control with the pharmaceutical profession. I have no difficulty in feeling that proper and adequate pharmaceutical legislation is a logical and certain outcome of a due regard, on the part of the public, of the work which pharmacy does.

Assuming that these propositions are sound, and I doubt that any will contend against them, then it seems to me that enforcement agencies should carefully study existing laws, with the view of evaluating their effects upon the community.

Legislation, restricting the practice of pharmacy and the distribution of drugs and medicines to persons meeting lawfully established standards of education and experience, has long been a part of the public general laws of every state. The constitutionality of this legislation is no longer open to question. It is well established that such restrictive regulation and control is a proper exercise of the police power of the states. The police power of a state is the inherent sovereign authority under which its legislature may, within constitutional limits, prescribe the laws and regulations to safeguard the safety, health and morals of the people, prevent fraud and oppression, and promote the public convenience, prosperity and general welfare.

The purpose of these laws is to surround the distribution of drugs and medicines with certain definite legal precautions. Competency and skill are required of those seeking to engage in this important activity.

However, a casual study of the pharmacy laws discloses some major defects. While they do set up generally satisfactory standards for purely professional pharmaceutical practice, all of them recognize certain exceptions and exemptions which go far to defeat their public purpose. As a very general rule, pharmacy laws permit the free and unlimited sale of patent and proprietary medicines and the commonly used household or domestic remedies. True, the language varies, but the meaning and import are the same. This condition is far from new. It seems to have been coexistent with pharmaceutical legislation in this country. The first pharmacy law enacted in this

country was, so far as I have been able to learn, passed in South Carolina in 1817. Among its interesting provisions, was one stating that it should not apply to the sale of home-made remedies and such as were obtained from manufacturers in shape for lay use. From that early day, no pharmacy law has been passed without making liberal exceptions in behalf of patent and proprietary medicines.

It should be admitted, I think, that there was once some valid basis for the exceptions. Drug stores were not as easily accessible as they are now, and hence, general dealers were permitted to handle drugs and medicines. Transportation and the lack of the modern means of communication also had to be taken into consideration when legislation of this type was being considered. Also the pharmacist or druggist was not accepted as an educated man. In those early days, he was a merchant, carrying drugs and medicines as a side-line. As a logical result, drugs and medicines were looked upon simply as articles of merchandise, and as such, could be handled without restriction or control. This view finds recognition in early court decisions, in which all attempts at restriction were set aside. Being mere articles of merchandise, no reason was acceptable to justify permitting their sale by some and prohibiting it to others. Under the light of changed conditions, we may well question the wisdom of perpetuating the old points of view. For instance, good roads, telephones, automobiles have annihilated distance, and the drug store is, in most sections of this country, convenient to the people. Also, the pharmacist is now a man of college and university training, and well qualified to serve the public in a professional capacity and to advise in the use of drugs and medicines. Also, such salutary legislation as the Food and Drugs Acts has done much to drive the merchandise conception out of medicine, and to reserve the field for such preparations as are reasonably safe. Drugs and medicines are more and more becoming health adjuncts and thus perhaps more definitely belonging in the hands of persons of training and experience. The final report of the Committee on the Costs of Medical Care has focused attention upon medical problems, and has made the specific recommendation that the standardization, preparation and distribution of drugs and medicines be restricted to pharmacists in so far as this is possible and practicable.

It would be possible to record other changes which have come about, and to show that the old bases of the exceptions no longer exist. However, perhaps the most significant development in the whole matter, and the one deserving of the most careful study at our hands, has been in the nature of the products which may be defined as proprietary. I think it can be said that the early use of the terms, patent and proprietary medicines, was in keeping with the general accepted meaning of the terms. While the words were "patent and proprietary medicines," the phrase had no implications beyond the usual patent medicine. The word, "proprietary," was synonymous with and descriptive of the word, "patent." Thus a proprietary medicine was no more than a patent medicine. That the conditions have changed is quite obvious. There has long been a marked drift away from manufacturing in drug stores, and to a concentration of production in the large pharmaceutical manufacturing plants. Concurrent with this change has come about the pharmaceutical specialty under special trade-marked names. Many complex and potent preparations can be obtained under short and easily remembered names. The great research laboratories of the pharmaceutical and chemical plants are turning out a continuous and ever-growing list of special preparations, the property rights to which are owned by the companies themselves. The chemo-therapy age, which now exists, is bending its every energy to the production of specialties for the treatment of disease. In most cases, these products are complex, potent, frequently dangerous and are invariably obtainable under short trade names. While these products vary tremendously in their nature, use, toxicity and adaptability to disease, they are all alike in that they are "proprietary products." Some concern has a property or proprietary right to the patent under which they are produced, and to the name and package in which they are sold. Thus, in an important sense, as soon as the most dangerous research product becomes available to the public, it also comes to the public as a "proprietary" product or medicine. There may be little general knowledge regarding it; the medical profession may consider it as in the experimental stage; the public may be totally unacquainted with it, and yet, under the pharmacy laws themselves, enacted in the public interest, such products may be handled and sold by anyone, irrespective of skill and training. In other words, the exceptions in the pharmacy laws still make it possible for the most dangerous products to be distributed to the public as merchandise.

To show the absurdity of the present conditions, it can be said that in one state camphor-

ated oil may be sold only by a registered pharmacist, while veronal, barbital, amytal and many others may be sold by anyone. In most states, no distinction is practiced, and patent and proprietary products and the usual domestic remedies are freely available from any and all kinds of retail dealers. The mere fact that the evident and obvious legislative intent was to permit free sale of patent medicines and the commonly used household remedies has not prevented dangerous proprietary preparations from being just as freely sold and distributed.

It must be apparent to all that such a condition is certainly not in the public interest. In fact, it seems greatly inconsistent with the main purpose of all pharmaceutical legislation.

As I see the matter, our whole system of pharmacy laws should be carefully studied. Many of the provisions should be entirely rewritten. An intelligent and earnest effort should be made to make them more stringent, and thus more effective. The broad, general exceptions in favor of general merchants should be removed and reconsidered in the light of prevailing needs and prevailing conditions.

I urge, as a beginning, that the Conference approve the appointment of a committee to carefully study the significance of the terms, "proprietary preparations" and "patent medicines," so that these may be defined in the light of present scientific knowledge, and with due regard to the demands of public health.

Upon motion of Mr. Childs, seconded by Mr. Milne, a motion was adopted that the incoming chairman appoint a committee to draft a suitable definition for patent and proprietary medicines.

Secretary and Treasurer M. N. Ford, of Ohio, presented his report as follows:

THE REPORT OF THE SECRETARY-TREASURER.

BY M. N. FORD.

Since the last annual meeting of the Conference of Pharmaceutical Law Enforcement Officials, your chairman, Mr. Swain and the secretary, have had numerous requests for information regarding enforcement of pharmaceutical laws and to each request, we have lent all possible aid.

On December 17, 1932, upon the request of Chairman Swain, we sent a letter to each Secretary of every State Board of Pharmacy as well as other departments having to do with pharmaceutical law enforcement, with regard to the sale of drugs and medicines by vending or slot machines. From the response that we had, it seems the letter was very timely in that a number of states have sought opinions and amendments to the law that would bar the distribution of drugs and medicines through vending machines.

On January 31, 1933, Chairman Swain also directed me to send a letter to all State Boards of Pharmacy, as well as other state departments having to do with pharmaceutical law enforcement, the letter dealing with amending the pharmacy laws to use the term "packaged medicines" in preference to the term "patent or proprietary medicines." The fact that the exemption clause of the law permitting the sale of patent or proprietary medicines by general dealers is sufficiently broad, we should exert every energy to see that the law is not changed to grant further exceptions.

We received numerous acknowledgments of receipt of this letter and assurance that no such legislation proposed would be sanctioned by enforcement officials.

The report of our last annual conference as you know, appeared in the JOURNAL OF THE AMERICAN PHARMACEUTICAL ASSOCIATION in the December issue and contained thirty-one pages of printed matter, and on February 17th, we obtained 300 reprints of the proceedings which were mailed out as first class mail, to the members of the Boards of Pharmacy, as well as others interested in pharmaceutical law enforcement.

On February 21st, we wrote to all the secretaries of the State Boards of Pharmacy, as well as other pharmaceutical law enforcement officials, regarding the annual five-dollar contribution to the Conference. This request was followed up by a letter on June 8th, and up to this time, the following 25 states have contributed the usual five-dollar fee. I list the states in the order in which the fees were received:

Ohio, Indiana, North Dakota, Kentucky, Colorado, New Jersey, Iowa, Georgia, West Virginia, New York, Alabama, Maryland, Pennsylvania, Arkansas, Michigan, Delaware, New Mexico, Kansas, Vermont, Oregon, Florida, Idaho, South Dakota, Minnesota and Wisconsin.

In addition to those already contributing, we have had acknowledgments from some of the States, stating their contributions would follow a little later on.