

in narcotic drugs, this should be a source of congratulation on the part of the pharmacist, is entirely aside of the point involved. Those who have sincerely and actively been advocating proper Federal regulation, which should include the Drug Trade Conference, have been interested and engaged in this effort for the purpose of securing efficient regulation which would curb the narcotic evil for the common welfare of all, not for the purpose of giving one class of men an opportunity to proudly strike their chests proclaiming that the evil doers are not among them. To the person who is interested in preventing illegitimate traffic in narcotics; it can be but of small satisfaction to know that his effort has succeeded only in transferring part of the traffic from one class entirely to another class. Of course, there is nothing in the bill which would restrict further state legislation. It is, however, the opinion of many, and more than likely the opinion of those who first agitated proper Federal regulation, that state legislation, no matter how thorough and complete, would always fail because of insufficient enforcement by the state authorities.

Tenth: There must be error in the claim, that the phrase "Registered Under This Act" was carried over from several earlier forms of the bill, for the writer has industriously studied such earlier forms of the bill and has not found the phrase *in connection with the subject matter* in which it is found in the present Harrison Bill. To impose upon the pharmacist under a penalty of \$2000.00 and five years' imprisonment the duty to know that a prescription which he would fill is written by a physician who is registered as a dealer in narcotics, is certainly going just a little beyond sound reason. That those who are responsible for this provision did not really intend it, must be granted by any fair-minded man, but that it continues to be defended after being pointed out, is to be regretted. It certainly would be far more in keeping with the sound judgment of those who are responsible for it, had they graciously said "It is an error and we will see that it is corrected."

In making these comments it has been my purpose to touch only upon the more important features of the editorial in question. It, however, may not be out of place to say that, I cannot believe that Congress will ever stultify itself by enacting into law that so-called Harrison Bill in its present form. So long as certain special interests seek advantages and exceptions, the difficult problem of securing proper effective and enforceable legislation will not be solved, unless those who are entrusted with the task decide that all shall be treated with equal fairness, and none with special favor. As soon as this can be agreed to, the inherent difficulties will become far less difficult.

FRANK H. FREERICKS.

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#### THE EDITOR'S REPLY TO MR. FREERICKS.

**W**HEN the discussion of so technical a matter as is involved in the Harrison Bill is unduly prolonged there is always danger that it may become a mere exercise in verbal dialectics, and what was intended as serious debate degenerate into fruitless quibbling over words and definitions.

While desirous of avoiding responsibility for such a result in the present in-

stance, the Editor feels that circumstances require him to make some reply to the very interesting comments submitted by Mr. Freericks in the preceding paper. For convenience of reference, the several sections of this reply are numbered to correspond to the sections of Mr. Freericks' argument to which they refer.

*First.* The Harrison Bill does not propose to interfere in the police regulations of a state any further than is necessary to insure the collection of the tax levied. The tax is laid upon the handling of certain drugs by dealers, and having power to levy the tax the Congress has also power to adopt such regulations as will insure its collection from those who should pay it, even though these incidental regulations operate wholly within a state.

The tax is not levied upon the purchase of the drugs for consumption, but upon the business of dealing in such drugs, and dealing in them includes both a purchase and a resale, either to a customer or to a patient.

In order to distinguish between those who are dealers and those who are not, the former are required to register and use an official order blank for their purchases of the drugs. The production of the order blank is legal evidence of their having registered and paid the tax.

The physician's patient, however, is not a dealer and not liable for the payment of any tax, and the bill simply provides that the physician's prescription shall be sufficient evidence to the seller that the drug is intended for consumption and not for resale. The requiring of order blanks and prescriptions is not an interference with the state's police powers, but only the requiring of evidence of certain facts: in the case of the order blank that the dealer has paid the tax; in the case of the prescription that the drug is required for consumption, for which no tax is necessary.

*Second.* The editorial which Mr. Freericks reviews stated plainly that the practical effect of the Act would be to require all physicians to register as dealers, whether they were of the class commonly known as dispensing physicians or not. As this point was not in controversy it did not seem to the Editor to be necessary to point out all of the reasons why every physician would be compelled to register.

*Third.* No doubt the advocates of Federal regulation of the traffic in habit-forming drugs had it in mind to supplement state laws and to make their efficient enforcement possible. There is no dispute on this point. It has been the constant claim of those who helped to formulate the Harrison Bill that this was the objective at which they aimed.

To advocate, however, that Federal legislation should be such as will effectually control the traffic irrespective of state laws and their efficient enforcement is to advocate the impossible. To do so would necessitate a far greater interference with the state's exclusive jurisdiction in police affairs than is involved in the most extreme proposition of the Harrison Bill. If the traffic in habit-forming drugs is to be touched at all through Federal law, it must be either through the expressed power of Congress to regulate interstate commerce, or through its power to levy taxes, and its implied power to make these regulations effective, even though they do incidentally affect the police powers of the state.

*Fourth.* The pharmacist may dispense either on an order blank or on a prescription. The first is preserved as a record to show that the drug was sold to a

dealer who has paid the tax, the second that the sale was to a consumer who is not required to pay the tax. If the physician, acting as a dealer, sells to one not his own proper patient he would have to preserve the same record as the pharmacist.

*Fifth.* To require that the physician write a prescription for what he dispenses, and then *himself keep the prescription*, as suggested by Mr. Freericks, would be fruitless, if not worse. It would cause the law-abiding physician some additional trouble, and would give the dope dispensing doctor something he would very much like to have, namely, the authority to manufacture evidence at will to cover his nefarious practice. When a physician has so far lost his sense of professional responsibility as to be willing to sell habit-forming drugs to habitues, a little thing like writing a fake prescription is not going to burden his conscience, especially when the law by recognizing his right to do so would make it still more difficult for the state officers to prove that the substance had been improperly dispensed.

He could write a prescription for a grain and deliver an ounce, or any other quantity, and the patient, if a "fiend" or one who is obtaining the drug for surreptitious sale to others, would do anything necessary to keep the doctor out of trouble, and thus preserve his source of supply unimpaired.

If the proposition was that the physician when he dispenses should deliver a prescription to a *third* party, who had the means of knowing that the amount delivered corresponded to the prescription, (as is the case when the pharmacist fills it) then it might prove effective; but such a proposition is not under discussion.

*Sixth.* To the objection that the law would discriminate between the wholesaler and manufacturer on the one hand and the retailer on the other in that it would require all to pay the tax, while only the latter, (i. e., the pharmacist registered under state law) could dispense on prescription would constitute such an inequality as to make the law invalid, it may be replied that wholesalers and manufacturers, acting as such, do not compound prescriptions for patients.

The bill does not divide dealers into wholesalers, retailers, etc. It classes them all as "dealers," and does not discriminate as to the amounts they may sell or the persons to whom they may sell. That the state law would permit some dealers to fill prescriptions and deny the privilege to some others is an incidental matter with which the Federal law would have nothing to do.

If any dealer, whether wholesaler, retailer, or physician, sells to another dealer, he must have an order blank to show that the purchasing dealer has paid the tax. If the dealer dispenses on a prescription, the latter is recognized as sufficient evidence that the sale was to a consumer who is not liable for the tax. If the state law permits wholesalers to fill prescriptions, these prescriptions would be accepted the same as those of the retailer.

The same reply applies to the objections that exceptions (a) and (b) constitute an invasion of the state's exclusive right to police powers.

These exceptions do not change the liabilities of the physician or other dealers to register and pay the tax. They only relieve the patients from the necessity of presenting an order blank to the physician or pharmacist before they can ob-

tain the medicine. If the drug is dispensed by a physician, dentist, or veterinarian when they shall personally attend upon such patient, this is accepted as sufficient evidence that the drug is for consumption and not for resale, and consequently that the person who gets it is not liable for the tax. The physicians's prescription when filled by the pharmacist is accepted as evidence of the same fact.

They are properly incidental to the exercise of the taxing power, since they relate to evidence regarding payment or non-payment of the tax. The fact that the law chooses to accept such evidence as sufficient to show that the sale is to a consumer who is not required to pay a tax could not, in the writer's opinion, be construed as an undue invasion of the state's police powers.

*Seventh.* In passing upon the constitutionality of an act, a court would most certainly take into consideration the rights of the party claiming relief. The claimant could not attack the validity of an act except by pleading that it abridged some of his rights under the Constitution. Unless his constitutional rights are abridged, he has nothing to plead, and consequently no standing in court.

The case cited of the difference in the burden placed upon the sale of alcoholic liquors for beverage purposes, and their sale when used as the constituents of a medicine is exactly in point. The tax is levied upon the traffic in alcoholic liquors for the purpose of raising revenue, but the law recognizes that the sale in the one case may be opposed to the public welfare and in the other case in aid of it, and hence places the tax upon the one and not upon the other.

The Harrison Bill does not go even so far as this. It requires the tax from every dealer alike, whether sold for the purpose of a medicine or for ministering to a previous habit.

All that exceptions (a) and (b) amount to, *when viewed in their true light*, is to relieve the consumer (i. e., the patient) from the necessity of registering as a dealer—which he is not—and using an order blank upon which to obtain the medicine which his condition requires.

*Eighth.* The writer is a pharmacist, his sympathies are with the pharmacist, and he yields to no one in his readiness to defend every moral and constitutional right that the latter is entitled to, but he denies that the bill would invade any such rights.

If the bill proposes an inequality of obligation as between the physician and the pharmacist it can be removed only by increasing the obligations of the former or by decreasing those of the latter. As to the futility of increasing the obligation of the physician by requiring him to preserve his own record without supervision or control by a third party the writer has already expressed himself, and will not repeat the argument.

When it comes to reducing the obligations placed upon the pharmacist by the bill, the writer claims that the requirements are already as light as they should be. The pharmacist's moral and professional obligations, and in many cases the state laws require that he dispense these drugs, (when in such form and quantity as to create or foster a habit) only on a physician's prescription. The bill requires no more than this, and hence does not increase the burden which is now imposed upon him both by moral and by state law.

*Ninth.* The dope dispensing doctor might "claim" that he dispensed the drugs in the conduct of a lawful business and in the course of the legitimate practice of medicine, but when confronted by a Federal court and jury he would discover that there is a vast difference between "claiming" and proving.

*Tenth.* There was no error in stating that the phrase "registered under this act" was introduced into one of the earlier forms of the bill. The Bill known as H. R. 28277, introduced January 20, 1913, after the first Drug Trade Conference, contains on page 9 the following: "That nothing contained in this section shall apply to the delivery of prescriptions of physicians, dentists and veterinarians duly registered under this act, compounded by a person duly registered under this act."

It is beside the point to say that it was not "used in the same connection as in the present bill." The first bill was a regulation of interstate commerce; the present one is a tax measure, and consequently the connection could not be the same. The intent of the phrase in both bills, however, was the same, namely, to give to drugs when dispensed on physician's prescriptions a different status under the law than when dispensed without a prescription.

As stated in the editorial, the writer considers the danger of harm to the druggist from filling the prescriptions of unregistered physicians as rather remote. As the bill will compel every physician to register as a dealer, even if he dispenses only on emergency, as all must do sometimes, there is not one in a thousand who will risk the penalties of the law by not doing so. If objection had been made to the phrase before the National Drug Trade Conference adjourned it is likely that it would have been eliminated, not because of any particular danger due to its presence, but from a desire to make the bill as satisfactory to as many persons as possible.

That Congress will not pass the bill in exactly its present form is quite probable. It would be equally safe to prophesy that Congress will never pass any other bill of equal length and importance without making changes in its phraseology as introduced.

J. H. BEAL.

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#### BRIGHTER PROSPECTS FOR PRICE PROTECTION.

**W**HEN the retail druggist stood alone, as until recently he did, in asking for the maintenance of the advertised retail prices on proprietary articles the rate of progress toward the legal and public recognition of his claim was slow, and at times the movement has even seemed to be in the reverse direction.

This ill success has been due to the world-wide and almost world-old popular belief, or more properly superstition, that there is an enormous profit in the sale of drugs, and the contest between the aggressive cutter and his fellows has generally been regarded as a dispute between robbers over their ill gotten gains, or if any sympathy was aroused it was betowed upon the cutter, who was looked upon as being, partially at least, in favor of giving the public a square deal.

When the druggist attempted to tell his customers that his average net profits were even less than those of some other retailers, he was met with polite incredul-