Section on Commercial Interests

Papers Presented at the Fifty-Ninth Convention

MATERIA MEDICA MONOPOLY A HINDRANCE TO MATERIA MEDICA SCIENCE.

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I have recently returned from an extended trip to the Pacific coast, going by way of the Santa Fe and Grand Canyon of Arizona on the A. M. A. special to attend the meeting of the American Medical Association at Los Angeles, and from thence up the coast to San Francisco, Portland, Seattle and Vancouver, and returning via the Canadian Pacific Railroad, stopping over at Glacier, Field, Laggan and Banff, thence on to Minneapolis and St. Paul, to Chicago and from there back to Philadelphia by the Pennsylvania Railroad.

As chairman of your Committee on Patents and Trademarks, I took occasion to confer with physicians and pharmacists at the Los Angeles meeting, and all along the way. And, as I was constantly traveling with prominent physicians, many your personal acquaintances, and thrown into close daily association with them during the trip both on the train and in the hotels going and coming, I had abundant opportunity to learn their views.

One of the subjects upon which we frequently conversed, is the disgraceful state of affairs existing in our materia medica supply business. Tens of thousands of alleged new remedies have been introduced and advertised as therapeutic inventions and discoveries during the past fifty years, and not one tenth of one per cent of them have proved of any special remedial value. These introductions represent hundreds of thousands of useless experiments on the sick by physicians in hospital and private practice, and many more such failures in domestic practice by the self-medicating public. The result has been very disastrous to medical and pharmacal practice, for the people, disgusted with this lamentable history of failures, are turning to the many drugless cults for relief. Now what is the cause of this disgraceful condition? When one considers that medical and pharmacal ethics require physicians and pharmacists to donate the inventions and discoveries made in the practice of their professions to the common fund, and realizes that every one of those tens of thousands of alleged inventions were during the history of their introduction controlled by patents, so-called trade-marks or secret processes, the cause is not hard to discover. The condition is largely due to the ethical lapses of the medical and pharmaceutical professions. This fact was generally recognized by all concerned.

We have departed so far from the professional ideal that it is believed by some that we can never return. Why donate our inventions and discoveries to the common fund? Why not appropriate them for personal gain? Why not individually

monopolize them and reap a financial reward by advertising their virtues? To return to the professional ideal would spell ruin to the medical and pharmaceutical press depending for an income upon the advertising patronage of the manufacturers, and force us all to pay more for our journals. It would spell ruin to the manufacturing houses, depending as they do largely, upon the commercial introduction of these so-called new remedies.

This objection has a very poor foundation. Monopoly of products is not necessary to the existence of advertising. On the contrary, monopoly means only one advertiser for each product. Competition means many advertisers—as many advertisers as there are brands of products.

Neither is monopoly of products necessary to the existence of manufacturing houses who advertise. On the contrary, when there is no monopoly of products cooperation between the medical and pharmaceutical professions and their educational institutions—professional societies, colleges and press—in developing the knowledge of new products, is rendered possible. Such cooperation divides the burden of expense between professional and commercial interests, and thus greatly decreases the cost of commercial introduction imposed upon manufacturers under existing conditions.

When products are monopolized and introduced by advertising, progress in materia medica science and in the arts of preparing and applying medicine to the healing of the sick is greatly hindered. The press can hardly be expected to publish articles in their reading pages which create a demand for monopolized products. Such articles belong in the advertising columns. And it is not to be expected that publishers of medical journals will injure their advertising patronage by publishing untoward reports. Furthermore, it is because materia medica science is not promoted by such discussions that the appalling condition of the materia medica supply business exists.

If the professional press continues to refuse to discuss monopolized products, what shall we do about it? Shall we take measures to force the press to discuss monopolized products? Or shall we take measures to put an end to the monopolies? Or shall we leave things as they are and let them take care of themselves? The latter plan has been tried long enough judging from the disastrous and disgraceful history of the so-called "new remedy" business.

In dealing with this subject, it is important to recognize the distinction between products and brands of products. Quinine is a product. There are as many brands of quinine as there are manufacturers of that product. I believe that every materia medica product—medicinal drug, chemical or preparation—and the currently used name of the same, should be placed on the same basis as quinine. Just as we are in position to discuss quinine without discussing any particular brand of quinine, so we should be in position to discuss every new product introduced to the materia medica.

The advertising of brands of quinine in medical journals in no way hinders progress in science because the journals accepting the advertisements can impartially discuss quinine in their reading pages without being accused of being purchased by quinine manufacturers if they admit paper recommending that product, or running the risk of reprisal if they publish papers dealing with its untoward effects.

On the other hand, monopoly of products gives the commercial introducers control of the publication of knowledge concerning the products, and we have an anomalous condition created in which persons, firms and corporations engaged in the manufacture of monopolized products—ignorant alike of the nature of disease and its treatment—are engaged in teaching the medical profession drug-therapeutics. It is the blind leading the blind. Is there any wonder that both fall into the ditch?

Personally, and after more than a quarter of a century of experience behind the scenes, I am satisfied that with possibly a few exceptions, materia medica monopoly is not only contrary to ethics and a menace to science, but is likewise unnecessary to the success of honest commercial service.

Diphtheria antitoxin was introduced to science as a free product. Almost simultaneously, several brands appeared on the market. Thus cooperation between professional and commercial interests was secured in promoting knowledge concerning it. Knowledge of the methods of preparation and of its therapeutic properties, was rapidly developed by impartial discussion in medical and pharmaceutical societies, colleges and press. The advertising of brands of diphtheria antitoxin in medical and pharmaceutical journals in no way hindered the free discussion of the product itself in the reading columns of the journals. The manufacturers of the several competing brands, through their experts, contributed a large amount of knowledge concerning the product, which promoted progress in science and in the art of manufacturing and using diphtheria antitoxin as a therapeutic agent. At the same time, the manufacturers contributed a large fund to the medical press itself through their advertising patronage, which naturally aided in disseminating accurate knowledge concerning it to the medical profession.

Here we have in marked contrast the commercial and professional systems as applied to the materia medica supply business. The commercial system with its monopoly of product and control of knowledge concerning it by persons interested in its sales is not to be for a moment compared with the professional system with its cooperative research by many impartial investigators working under conditions of environment which eliminate local influences and errors due to the personal equation.

Contrast the history of adrenalin with diphtheria antitoxin. The former was introduced as a monopolized product; the latter as a free product. Prior to the commercial introduction of adrenalin, Von Fürth, Abel and others demonstrated many of the properties of derivatives from the active principle. The investigations of Oliver and Schaefer demonstrated the physiological action of this substance and indicated its usefulness in medicine. Aldrich, independently of Takamine (the patentee of the process under which its sales are now to be monopolized) isolated the active principle from the adrenal glands. All of this work, except the work of Aldrich, was done prior to the investigations of Takamine. Aldrich's work was done simultaneously with that of Takamine.

Prior to the granting of the Takamine patent, the knowledge of the adrenal secretion as a therapeutic agent was being developed by the cooperative work of men of science in various parts of the world, and the published results were accepted in scientific literature without question. This cooperative work was immediately rendered impracticable by the granting of the patent and the knowledge

of the prior art is now in a sense the property of the patentee and his agents. The Takamine patent has been sustained by the courts, and from now on, as the monopoly will be complete, future publications regarding the product will be largely discredited because of the commercial control over information concerning the product exercised by the manufacturer.

One of the evils of the commercial system now in vogue is the control over materia medica products and information concerning them obtained by registering as trade-marks names to be afterward used as the names of the products themselves. This attempt is now being made in regard to adrenalin. By use, the word adrenalin has become a noun of the common language and is therefore synonymous with all other names used to describe the product or that may be hereafter used. As stated by a well-known author on patent and trade-mark law:

"No one can claim protection for the exclusive use of a trade-mark or trade-name which would practically give him a monopoly in the sale of any goods other than those produced or made by himself. If he could, the public would be injured rather than protected, for competition would be destroyed. Nor can a generic name or a name merely descriptive of an article of trade, of its qualities, ingredients or characterists, be employed as a trade-mark, and the exclusive use of it be entitled to protection.

"The policy that the mere use of a name to designate an article would give to those employing it the exclusive right to designate such article by such name, would be giving a copyright of the most odious kind, without reference to the utility of the application or the length of the title and one that would be perpetual. Neither the Trade-Mark Law nor the Copyright Law, nor the Patent Law affords any such right, or, under the pretense of the same, allows any one to throttle trade under the alleged sanction of law."

The real question at issue before which all other questions sink into insignificance, is this, namely—are the manufacturers of monopolized materia medica products to continue to teach therapeutics? If so, let us adopt some kind of a plan to insure the teaching of truth instead of error. That error is the principle thing taught is manifest by the history of the tens of thousands of materia medica failures, which like wrecks strew the beach of the therapeutic ocean. The spectacle should prove a terrible warning to the medical and pharmaceutical professions alike. The public is taking it as a warning, and we have no one to blame but ourselves for the loss of public confidence in drugs, unless it be that drugs are in fact valueless as remedial agents.

As members of the medical and pharmaceutical professions, it is our duty to investigate and scientifically classify the newer materia medica and protect it from pretense and error. It is our duty to give to each materia medica product a name compatable with scientific nomenclature under which all who have the right may manufacture and deal in it. It is our duty to provide tests for its identification, character, quality and strength. It is our duty to adopt proper methods for its preparation and standardization of finished product. It is our duty to ascertain its true therapeutic value in comparison with other products recommended for the same therapeutic purposes. With the exception of therapeutics, it is the especial duty of the American Pharmaceutical Association to do this work. As for therapeutic properties, we can cooperate with the medical profession in determining the true remedial value of each product introduced. And, as for the patenting of

the product, we can cooperate with the Patent Office in deciding whether it is in fact a *new* and *useful* invention. While the process or method of manufacture may be new and useful, the product itself must not be so considered as a therapeutic agent until so determined by the cooperative investigations of many competent observers, sufficiently extended in time and carried on under circumstances that insure the elimination of undue influence from those who are commercially interested in its sale. As it is the duty of the medical and pharmaceutical professions to prevent its being misused, and as the public look to us to exercise our functions in this regard as members of these professions, a solemn obligation rests upon us in this regard.

Can the evils described in this paper be eliminated without changing our patent and trade-mark laws? It is believed by the Council on Pharmacy and Chemistry of the American Medical Association that this is possible. On my way from California I stopped off in Chicago and had several conferences with the secretary of the Council and the editor of the Journal of the American Medical Association. In their opinion the difficulty is one of interpretation and administration of the law rather than one of fault in the law itself. Patent lawyers and the Patent Office are not educated in medicine or in medical ethics. They regard the subject entirely as one of chemical inventions and do not realize the importance of the subject from a humanitarian standpoint.

It is evident that what we need above all things is a strong central board of control or bureau of materia medica to act as a clearing house for material medica information especially in relation to the newer materia medica products—a board that will act in cooperation with the medical and pharmaceutical professions and the U. S. Patent Office.

The banks have their clearing houses, the merchants their boards of trade, the producers of good their produce exchange. Even the turf has its boards of control. It is realized by all persons engaged in business life that such boards are necessary to prevent selfish exploitation of common interests. Shall we as physicians, pharmacists and manufacturers dealing in products which seriously affect the public health for good or for evil allow selfish, commercial interests to throw these vocations into disrepute with the public by not providing some method of control to prevent it?

We have an organization already existing peculiarly fitted to act as a board of control over the introduction of the newer materia medica products. I refer to the committee having charge of the revision of the United States Pharmacopœia, which was chosen by a very representative convention and is itself peculiarly representative in character. Its function is to investigate materia medica products for the purpose of deciding what products are best adapted for the use of the medical profession in treating the sick. The Pharmacopœial convention very properly limited the work of the committee to the selection of free products because under existing circumstances it is impossible to know the true therapeutic value of controlled products. Possibly for that reason the committee has not the power to do any work on controlled products. However, the American Pharmaceutical Association has the power to appoint a committee for the purpose referred to, and to name as members thereof the same individuals now comprising the committee for revising the United States Pharmacopœia.

It is not my intention to advocate that such a committee or board of control should take upon itself the rendering of therapeutic verdicts relative to the newer materia medica products. As already stated, therapeutic verdicts are the product of cooperative investigation by many competent observers. Such verdicts cannot be obtained except by years of investigation, carried on under conditions which would exclude all local influences, and insure impartiality. But the committee could do the necessary work required for a scientific classification of the products from a pharmacological point of view, and then send them out to the medical profession for a collective investigation of their therapeutic properties.

As the manufacturers of the new products would primarily be benefited by this investigation, they should be willing to cheerfully meet the expense. I, of course, refer to monopolized products.

The proposed collective investigation would be greatly facilitated by the working bulletin system, devised by me in 1882, to act as an organ of the scientific department of the manufacturing houses. As the Scientific Department plan is also one of my own devising, I have had an opportunity to witness the value of the working bulletin system in obtaining information in regard to the newer materia products.

Such a board of control might cooperate with the Patent Office and with the courts in their interpretation and enforcement of the patent and trade-mark laws relative to newer materia medica inventions. I understand that the president of the United States has the right to appoint a commission for the revision of these laws, and presume therefore, that he also has the right to empower the Patent Office to cooperate with such a committee or board of control. Possibly, it would require an act of Congress to accomplish this object. The question is one for investigation.

After conferring with the secretary of the Council and the editor of the Journal of the American Medical Association, as aforesaid, I concluded that it would be wise on my part to bring this matter before you as the report of your Committee on Patents and Trade-Marks. I had already presented to the Section on Pharmacology and Therapeutics a series of resolutions on the subject of Patents and Trade-Marks at the Los Angeles meeting, which was presented by the Section to the House of Delegates and published in the Journal of the Americal Medical Association for July 8, 1911. These resolutions may be of service to the Association in discussing the proposition placed before it in the report of your committee. I have, therefore, appended them to this paper.

WHEREAS, Cooperation between the medical and pharmaceutical profession is essential for the development of materia medica science and the advancement of the art of preparing medicines and applying the same to the treatment of the sick; and

WHEREAS, Progress in materia medica science and in the pharmacologic and therapeutic arts is being hindered and cooperation between physicians, pharmacists and manufacturers engaged in the chemical and pharmacal industries prevented by product patents and the registration of names as trade-marks, which are afterward employed as generic or descriptive names of materia medica products; therefore, be it

Resolved, That we, the Section on Pharmacology and Therapeutics of the American Medical Association, representing the medical and pharmaceutical pro-

fessions do hereby request the House of Delegates to instruct the Council on Health and Public Instruction to draft amendments to the patent and trade-mark laws whereby no patents shall be granted on materia medica products, and the patents shall be limited to process and apparatus for manufacture, leaving the products themselves and the currently used names of the same free to science and commerce.

DISCUSSION.

C. B. LOWE: "Dr. Stewart is an authority on these subjects. You probably all know that when phenacetine was first exploited the medical profession was advised as to its valuable qualities, but as soon as the patent expired the exploitation stopped. Just as soon as the patent expired and the profits lapsed manufacturers dropped it as a dog would drop a hot potato. The article was selling wholesale at $1.00 an oz., in the United States, and at $1.75 a pound in Great Britain.

"I suppose it is too much to expect that men generally will take the position that Mr. Scheffer did—the inventor of pepsin who never patented the process—and I have always honored him for giving his discovery to the world.

"There is much more in Dr. Stewart's paper. We have been under the impression that we cannot do anything, and he says we can. According to U. S. law a chemist can patent a process for making a thing, can then patent the product made by that process. You can't copyright the name condensed milk, but you can copyright the name "Eagle Brand" of condensed milk.

"The Librarian of Congress has issued a circular No. 19, in which it is definitely stated that names of medicines cannot be copyrighted. They never were copyrighted."

MR. MAIN: "These things are not copyrighted but trade-marked. The patent office is constantly issuing trade-marks for coined names."

MR. FREERICKS: "Mr. Main is correct on the point he makes; names that are coined by the party first using them are his property. It seems to me there can be no question about that."

MR. STEWART: "Coining a name does not make it belong to you. The common law right is simply the right you have to sign your name to a deed."

C. A. MAYO: "The law is very well set forth in the Singer case and Ludlow valve case. Under his patent, no one could make a Ludlow valve and call it such, but must have on the label 'Not made by Ludlow.'"

MR. HOLZHAUER: "If the telephone had not been patented, but the name had been copyrighted and trade-marked, would not that have given the inventor the exclusive right to use the word 'telephone'? I could not make a telephone and call it by that name, but would be required to call it by some other name."

F. E. STEWART: "When you register the name as a trade-mark you do not get a grant of something as you do when you patent a thing. Under a patent you are given seventeen years' exclusive right to the use of the thing. When you register a word as a trade-mark it does not make a trade-mark out of it; it depends upon how you use it, if you use it generically the word enters language as a noun and becomes public property.

"The Singer sewing machine can be made by anybody and it is a Singer machine.

"Take the case of Angostura Bitters, cited by Curley, in Patent and Trade-Mark Law, in which he calls attention to the fact that the name and brand of an article are patentable as long as the secret is not divulged. The name is the name which has been given to it and used as its name by the producer, and that being so, there is no such right to the ownership or trade-mark which is simply your registration of a name so as to give notice that you make a claim.

"These are questions of common sense and we want to get them in such state in our materia medica that we can get them into the Pharmacopœia without turning the book into an advertising bureau."