

"I may get a little sun in my windows in the early morning here, but in the late morning and all afternoon when people are shopping those fellows on the other side of the street have that sun beating down, ruining their window displays and driving people over to this shady side. You can't have a cool store with the sun streaming in the windows and doors all through the hottest part of the day.

"And I don't think a corner location would be worth the extra money to me. About all it would give me would be some extra window display space. Most of my people are shoppers. What little side street transient traffic I might get would be from people who already had passed one or two good drug stores on their way down town.

"I think I'll tell old Josiah Magruder that I'll be his tenant for another 10 years."

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## FUNDAMENTAL FACTORS IN THE APPLICATION OF PHARMACY LAWS.\*

BY ROBERT L. SWAIN.

As Deputy Food and Drug Commissioner for Maryland and charged among other things with directing the enforcement of the pharmacy and other drug laws of the state, I have come into intimate contact with all phases of pharmaceutical practice, and have had unusual opportunities to study the practical results following the application of law. This activity has been extended over a period of six years, and has enabled me to come to some rather definite conclusions as to the most potent factors underlying and controlling a satisfactory status. In this work, as in all others, certain fundamental considerations present themselves and must be thoroughly understood and properly evaluated as constituting the starting point in all enforcement activities.

Briefly, it may be stated that in so far as the enforcement of the pharmacy laws is concerned, the most effective work is dependent upon four fundamental factors. *First*, the law must be enforceable and must be applicable to the purposes which it is designed to serve; *second*, the attitude of the profession toward law enforcement must be sound; *third*, the attitude of the public must be favorable; *fourth*, the enforcing agency must be well suited to the work and in full sympathy with the purposes of the law. At first glance none of these factors which I have designated as fundamental appear as controversial. Nevertheless, each of them admits of extensive elaboration, and a brief examination of their true significance will constitute the observations and suggestions comprising this paper.

In discussing the law we shall devote ourselves to a consideration of pharmacy laws in particular and shall make no excursions into the great body of the law except in so far as this may be essential to an understanding of the subject. Pharmacy laws, and this applies with equal force to the laws governing all of the professions, vocations and trades regulated by the state, spring from the police power of the state, a power which is a residual, inherent and irrevocable attribute of the state. Now the police power is a tangible and yet an intangible thing; it is a definite and yet a most indefinite thing; it is that very elastic power which the

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\* Section on Education and Legislation, A. PH. A., Portland meeting, 1928.

state possesses and which it applies in safeguarding the welfare, health and morals of the people. From this it follows that pharmacy laws have been passed in the various states because the welfare and security of the people demand that only persons of training and experience be entrusted with the responsibilities of compounding and dispensing drugs and medicines. This general statement applies with equal force to the provisions of all pharmacy laws, irrespective of the language employed, and should be one of the governing motives not only in the construction of the law, but in all efforts to make its application effective. When new laws are proposed or when an existing law is amended, the public welfare should be the guiding principle and should be very clearly set forth either in direct expression or by definite implication. Such a foundation will anticipate many difficulties in the way of enforcement. The laws should be so conceived and so worded that a violation will consist of an act fraught with a certain danger to the community. Conversely, any infraction of the law which is of a purely technical character and which by no possible reasoning can be construed as subversive to the purposes of the law should not be construed as in violation of the statutory provisions. Pharmacy laws are public health laws designed to give a certain definite protection to the public. In all cases where this objective has been clearly set out, or where the legal phraseology has been designed, even by implication, in the interest of the community, pharmacy laws have been upheld by the courts. The only instances where these laws have failed to meet constitutional demands are those in which the provisions of the law, while admittedly contrived in the public interest, have been found by the courts to have no relationship to the welfare of the state. The police power, vast and vague as it is, has its limitations and cannot be invoked to abridge or abrogate any basic or constitutional right. Our pharmacy laws must, therefore, be *bona fide* police measures, taking us back to our first consideration that these laws must be enforceable and directly applicable to the purpose underlying them.

The attitude of the pharmaceutical profession to the enforcement of the pharmacy laws must be sound. It would be difficult to overestimate the importance of this statement. On the contrary, it may be stated that the enforcement of pharmacy laws will be an abject failure unless the earnest coöperation and support of the profession is accorded the project. Due to the serious nature of the work which he does and the professional training which he undergoes, the pharmacist occupies a preferential standing in the community in direct proportion to the degree to which he performs his duties in measuring up to the requirements of professional life. In other words, a pharmacist's standing in a community is unconsciously, but none the less definitely determined by his observance of the laws regulating his duties and governing his professional pursuits. Further than this, the attitude of the pharmacist to the pharmacy laws influences in profound degree the general attitude to these laws. A pharmacist simply cannot evade them and connive at their violation without undermining them in the public regard. In those communities where pharmacists are lax in their observance of the law and where drug stores are operated in a careless and slipshod manner, the most flagrant violations occur on the part of merchants of all kinds. The unwarranted practice of pharmacists leaving their places of business in charge of unregistered and incompetent assistants has done more to undermine the public regard for these

laws than any other influence. Such an attitude on the part of the profession simply cries that the practice of pharmacy is not so difficult and not so exacting and thus not so important as the law would seem to indicate. Observance of the pharmacy laws on the part of the public generally, even so far as to the selling of harmless products by the general trade, is a matter very largely in the hands of pharmacists themselves. This should not be construed as suggesting that the pharmaceutical profession is altogether responsible for the wide-spread tendency to violations of the pharmacy laws. However, it may be positively asserted that an earnest observance of the laws by pharmacists themselves exercises a most salutary effect upon others and greatly intrenches these laws in the public mind, and, in a very material way, reduces the tendency to violation. This brings us to our second principle that the pharmacist's attitude to enforcement must be sound. Strange as it may appear, many pharmacists utterly misconstrue the basis of the law in that they honestly think that the law is designed to protect them and to enable them to develop a prosperous business. To these, effective enforcement simply means additional financial return. Such an attitude is not only basically unsound, but endangers the enforcement of the law. Obviously from our consideration of the sources of the law, it is the purpose of these laws to protect and safeguard the public. Their enforcement is simply an activity to make effective and real the protection provided for by statute. A long step forward will have been taken when we as pharmacists realize fully that pharmacy laws are just as binding upon us as we wish them to be upon others. Some great public health administrator has said that public health is purchasable and that the death rate is largely a matter of public attitude. Progress springs from a state of mind. This thought may be applied to conditions surrounding any group. Conditions surrounding the practice of pharmacy find their inspiration in the attitude of the profession. These conditions will improve to the extent that the profession demands and merits this improvement. Let us see to it that our conception of the law and our attitude to its effective enforcement is constructive and basically sound.

Anyone who has been connected with regulatory or enforcement activities knows the full significance of the public attitude. The importance of this factor in securing observance of law cannot well be over-emphasized. Experience demonstrates that the public attitude in the final analysis is the determining influence in the application of law. This is an easily established fact in our present system of jurisprudence. A law backed by public consciousness of its value is easily applied, while one which runs contrary to public opinion sooner or later becomes impotent and ignored. Contemporary history abounds with evidence abundantly supporting a conclusion obvious in itself. For this very practical reason pharmacists should so conduct their affairs as to create a public attitude favorable to them and their work. This does not so much consist of making the public pharmacy conscious as it does in making the pharmacist pharmacy conscious. The public mind is pleasingly receptive, and shows an amazing aptitude for accepting a group, be it professional or what not, on the terms in which the group appraises itself. This would seem to indicate that ordinary business prudence would urge every profession to maintain the highest excellence in the application of its services. I am firmly convinced that in the operation of a pharmacy one can-

not afford to do other than maintain the highest standards; one cannot afford to do other than to deserve his own self-respect. To one who is thus conscious of his responsibility, the public attitude is of but little concern. Favorable reaction on the public mind comes as a matter of justice to one who stimulates it to a high appreciation of his work. I think it will be immediately agreed that a profound improvement in pharmaceutical affairs would follow a determination upon the part of pharmacists everywhere to strive earnestly and diligently for this improvement. These few generalizations would seem to establish that public regard for pharmacy is a matter very largely in the hands of the profession. I wish it could be brought home to each of us that the welfare of pharmacy and the public acceptance of the laws controlling and regulating the important functions of pharmaceutical practice is largely a matter of individual conduct. I wish every pharmacist could be made to see, what many of us have seen all too plainly, that in his own neighborhood he represents the profession; that the profession rises or falls in public esteem just as he meets or fails to meet his responsibilities. Whether we like it or not, once a man enters a profession he becomes committed to that profession and to a very definite degree the profession becomes committed to him. What an incentive for the highest conduct; what an impelling force for good in our business and professional life! Let us be forever mindful of public opinion and see to it that we build up rather than tear down. Let us face our responsibilities as men worthy of the ancient traditions which distinguish our profession. Let us indeed create that public attitude which is so largely in our hands.

This brings us to the matter of law enforcement. Methods of enforcing laws vary with the laws of the states, the make-up of the agency to whom this authority is delegated, as well as the attitude underlying the enforcement policy. In fact the attitude of the enforcement agency may well be considered one of the most important features of the entire project. This attitude must of necessity be based on a sound knowledge of conditions and a thorough training in the work to be carried on if the provisions of the law are to be effectively applied. It should require little of persuasion to show the wisdom of placing the enforcement of pharmacy laws in the hands of persons trained and experienced in the subject. This is essential if the work is to be undertaken and prosecuted in a fair and intelligent manner. Resolutions have been adopted by this ASSOCIATION urging that the enforcement of state and national laws of special interest and significance to pharmacists be placed in the hands of the pharmaceutical profession. One purpose of this paper is to urge that some steps be taken, wherever possible, to put these resolutions into practical effect. In many states reorganization of the state government is under way, looking to the consolidation of existing departments, and it is essential that pharmacy maintain her position and identity in bodies so complex and intricate. Experience not always of the most happy character has demonstrated the wisdom of taking the initiative rather than attempting to correct a situation once developed. The enforcement of laws in the public interest is becoming of greater significance, the public demanding enforcement of the highest and most intelligent character. Placing authority in the hands of persons in thorough accord with the purposes of the law, and sympathetically responsive to the public need, is in complete harmony with the public welfare, and should be brought about as soon and as widely as possible.

In order to stimulate this program as well as to contribute to the success of that phase already established, I believe that there should be organized in the AMERICAN PHARMACEUTICAL ASSOCIATION a Department of Legal and Legislative Reference. This department, when fully organized, should collect and tabulate all matters of a legal and legislative character pertaining to pharmacy. There is a great demand for some agency to familiarize itself with this field so that the laws of the different states, and more especially the court decisions thereunder, might be available to those to whom these matters are of deep concern. There is a great need for some agency to study the problems peculiar to the application of law, and it is just as important, in my judgment, that there be available a comprehensive collection of pharmaceutical laws together with all other data which might be available regarding them. In all of the pharmaceutical field, no part is so barren or so difficult as that of enforcement. So meager is the data that each agency must base its policy on individual experience, obviously a slow and laborious process. Those interested in the great body of the law have the Annotated Law Reports, Ruling Law Cases, Corpus Juris, etc., together with works dealing with specialized legal research. The subject of pharmaceutical law is much more confused and so far as the enforcing agency is concerned there is but little available. The development of a Department of Legal and Legislative Reference in this ASSOCIATION would be a most progressive and constructive movement and one in keeping with sound thought. Just recently there was founded at the Johns Hopkins University an institute for the study of law for the sole purpose of bringing the great body of the law, both in concept as well as in application, under the observation of great legal minds, so that the principles of scientific study might be applied to law. Such a department in the AMERICAN PHARMACEUTICAL ASSOCIATION, an association which has always been the nourishing ground for all that is fundamental and intrinsically fine in the profession, would prove of incalculable benefit to the entire pharmaceutical field, and would supply a want, the lack of which has been sorely felt. Furthermore it would greatly strengthen the profession in dealing effectively with many of the problems which to-day mar the horizon of to-morrow.

In connection with the Department of Legal and Legislative Reference, some provision should be made to bring enforcement officers together, under the auspices of the A. P. H. A., at least once a year. This could be most conveniently done at the annual convention. Such a policy would enable an exchange of ideas and opinions and, in my judgment, would greatly enhance the value of the work carried on. This feature of pharmaceutical work is becoming of greater importance and significance. It is most fitting that the A. P. H. A. recognize this condition and adopt some plan whereby the work may be developed along the proper lines.

In conclusion, let it be understood that nothing that I have said should be construed in other than the most friendly manner. I have had no desire to be critical except in so far as friendly criticism may stimulate us to meet our responsibilities, not only as members of an ancient profession, but also as citizens of the state.

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**Prepare for Pharmacy Week Beginning October 14th. Let It Be Representative of the Activities of Pharmacy.**