

ready, but we believe something of the kind can be done and ought to be done in the interests of those charged with the enforcement of the laws.

To summarize these, three suggestions are offered: 1. That we oppose any further deletion of the so-called simple remedies which are purchased without physicians' prescriptions, but very often on the doctor's order. 2. That we urge recognition of as many synonyms as possible in the official books. 3. That we divide the items in the Pharmacopœia into sections based on their therapeutic activity so as to separate active drugs from mere adjuvants, technical preparations or flavors.

Discussion was entered into by Messrs. Walton and Swain, and the Chairman instructed Mr. Fischelis to prepare suitable resolutions and present them to the Conference at the next session.

Chairman Swain appointed a nominating committee consisting of L. L. Walton, Arthur Lee Phelps and Robert P. Fischelis.

At 12:00 o'clock noon, upon motion duly seconded, the Conference adjourned.

ROBERT L. SWAIN, *Chairman*

M. N. FORD, *Secretary*.

The Second Session of the Conference of Pharmaceutical Law Enforcement Officials was convened at 2:00 P.M. by Chairman Swain.

J. W. Slocum of Iowa presented a paper on "The Restrictive Features of the Iowa Pharmacy Laws." The paper made reference to the recent decision of the State Supreme Court in which the Board of Pharmacy was sustained in the decision that Aspirin may be sold only by registered pharmacists. The paper was discussed from the floor with a great deal of interest.

THE RESTRICTIVE FEATURES OF THE IOWA PHARMACY LAW.

BY J. W. SLOCUM.*

The power to regulate the practice of pharmacy is vested in the State Legislature, and is in the same category as the power to regulate the practice of Medicine, Dentistry, Veterinary Science and other professions. This is commonly known as the police power of the state.

The term "police power" is not capable of exact definition, but it is exercised and defended on the ground of public welfare. It is intended to mean the power and function of government under a system of rules and administrative organization. Its purpose and aim, directly is to secure and promote public welfare, and it does so by restraint and compulsion.

It seeks to preserve order and prevent offenses against the state. As one of our able Iowa jurists has said, "to establish for the intercourse of citizens with citizens, those rules of good manners which are calculated to prevent conflict of rights, and to insure to each the uninterrupted enjoyment of his own, so far as it is reasonably consistent with the enjoyment of the rights of others."

When the legislature of a state exercises this power, there are certain limitations which are defined by the courts, and indicated by the fundamental law, the constitution of the state, and the constitution of the United States.

The question of equality is of paramount importance, so that in its operation it will affect all citizens alike in the class in which it operates. Some states differ from others in the interpretation of the statutes within their respective jurisdictions. When exercising police power the restrictions and regulations enacted must be proper and reasonable, and it is always a question for the courts of last resort to decide.

The word "law" as generally defined refers to the written law, but the great body of law which controls human conduct is not written at all. From time immemorial there have been customs which by common consent have come to be regarded as a part of the law, and which is known as the common law. An old maxim states, "One must use his own property so as not to injure that of his neighbor." This is not written law but, because of generally recognized difference between right and wrong, it is a part of the unwritten law of the land. It is not very often that a state legislature abrogates any principle of common law, if it is in harmony with the spirit of our institutions.

The common law is elastic and is adaptable to new conditions. A judge of our Supreme Court has said "That the common law has grown with civilization and kept pace with the march

* Chairman Iowa Board of Pharmacy.

of events, so that to-day it is as virile in our advanced state of civilization, as it was when the race was emerging from the dark ages of the past."

What is known as statutory law relating to pharmacy, has reference to the details of the practice of pharmacy, but the great body of substantive law which defines the obligations and liabilities of the pharmacist is a part of the common law. A wrong has been defined as the deprivation of a right, and public wrongs are those which affect society as a whole, and if of a very serious character are called crimes. Crimes are divided into two general classes, felonies and misdemeanors. Any crime less than a felony is a misdemeanor. In the state of Iowa, if the penalty does not exceed a fine of \$100 or imprisonment for more than 30 days, it is triable without indictment.

In the regulation of human conduct, the law recognizes man's fallibility and the fixing of responsibility, impossible or unreasonable standards are seldom set. It is a generally conceded fact that one should not be held responsible for the inevitable, nor be expected to perform the impossible, but in order to properly safeguard the public, certain restrictive laws have been deemed necessary in every state of the Union.

In order that the public may be properly protected, the dispensing and compounding of drugs and medicines is specifically delegated to registered pharmacists. In Iowa the pharmacy law states that persons, who assist in the selling or dispensing of drugs and medicines, under the supervision of a registered pharmacist, are not engaged in the practice of pharmacy. This is undoubtedly intended to protect the assistant or apprentice from personal prosecution, and places the responsibility for his actions squarely upon the shoulders of the pharmacist in charge.

Another section says that "No licensed pharmacist shall allow anyone who is not a licensed pharmacist to sell or offer or expose for sale, or dispense drugs and medicines, or fill the prescriptions of licensed physicians, dentists or veterinarians, unless the same be done under the supervision of a licensed pharmacist."

This section of the law is probably more often violated than any other. The word "supervision" is sometimes construed to mean, that the store itself is under the supervision of a registered pharmacist and that this does not necessarily mean that the pharmacist should be present when each individual sale or act of compounding is actually performed. We had one attorney general who placed such a construction upon this section, and the Pharmacy Board was handicapped in enforcing this provision of the law.

We hold that the intent and purpose of the legislature was to protect the public from unrestricted dispensing. We have in mind an amendment for this section which would insert the words "immediate supervision" thus making it mandatory that no such dispensing be done unless the pharmacist be present in the store.

In this connection we are convinced that our law is not as restrictive as it should be. In some states the law is plain that when a drug store is open for business that a pharmacist must be in charge at all times, except for temporary absence, and then by defining the term "temporary absence" the law in its intended provisions are obvious and not subject to extravagant interpretations in order to protect some violator.

The fact that proprietary medicines may be sold unrestricted and in addition to this a limited number of package drugs, known as household or domestic remedies, makes it difficult to draw the line and determine just how far a merchant can go without violating the law. Unfortunately, our law does not state who shall determine the limitations of the list known as "domestic remedies" and in the absence of this provision the final decision must necessarily be made by a lawyer or a judge who makes no claim to any knowledge of drugs, whatsoever.

In our estimation the law should provide that the Board of Pharmacy should be given the power to make a list of domestic remedies and limit the sale, by merchants, strictly to this list. Otherwise pharmaceutical and wholesale houses might put up potassium iodide or bismuth subnitrate and kindred drugs, in their package lines and sell them to grocers and so-called drugless drug stores throughout the state. At one time our attorney general ruled that aspirin was a domestic remedy and that its sale could not be restricted. This made it difficult to confine the sale of such drugs to drug stores, and not until the U. S. P. X came into force and effect on January 1st of 1926 did we have an opportunity to secure any recognition of the rights of the pharmacist in restricting the sale of this and similar drugs.

As soon as this became effective the Board of Pharmacy felt justified in making a fight

to restrict the sale of aspirin to drug stores. One neighboring state had succeeded, and others failed, but we were determined that we could prove that acetyl salicylic acid could not now be construed to be a domestic remedy or a proprietary medicine.

Evidence was gathered from various sources to substantiate our contention. The medical profession backed us up in our conclusions and rendered substantial aid. With this evidence in our possession we made our first assault on the attorney general's office, presented our evidence and requested a ruling.

The fact that aspirin was now recognized by the United States Pharmacopœia was the final convincing evidence. The attorney general rendered an opinion upholding our contention and we thought that we could restrict the sale of aspirin when we were backed up by this opinion. But we were sadly mistaken as we met determined opposition almost immediately from the Grocers' Association, who proceeded to notify their members that the Pharmacy Board could not enforce such a ruling and urged them to continue the sale of aspirin with the injunction that if litigation was brought, the Grocers' Association would provide attorneys to fight the case for them.

The attorney general suffered a relapse for some unaccountable reason and attempted to withdraw the decision. We became aware of this and when he appeared before the Board to argue the case, he was faced by about thirty men, who had been hurriedly summoned. This group was composed of pharmacists, chemists and one or two prominent physicians who were prepared to present definite and substantial evidence that we were right, and that the sale of aspirin should be restricted.

He allowed the opinion to stand but informed us that if we brought action to enforce it he feared we could not win in the courts. This virtually rendered us powerless to proceed. After about a year and a half of delay in which we held many conferences with attorneys, we were advised that a test case would be necessary, as arguments *pro* and *con* would continue until the courts decided it. The test case was finally filed against a grocer who was induced to be the victim. The case was filed in the District Court of Polk County, Iowa, and was prosecuted by the county attorney. The courts were crowded, and despite all our efforts an assignment could not be secured for many months. In the meantime the defendant in the test case became financially embarrassed and went into the hands of a receiver. This placed us in the peculiar position of bringing suit against a merchant who was not even in business. However, after several conferences with the defendant's attorney this was ironed out and he was authorized to proceed.

After several postponements the case was set for hearing on January 14th of 1929. Two members of the Board of Pharmacy, two expert chemists and two prominent physicians were summoned to appear as witnesses for the state. The testimony showed conclusively that acetyl salicylic acid was a drug as defined by the law and could not be classed as a domestic remedy or a proprietary medicine. The defendant's attorney tried to convince the court that because the U. S. P. recognized it as a drug, that this was not sufficient, and pointed out the fact that the law said that, "drugs and medicines shall include all substances and preparations for internal and external use recognized by the United States Pharmacopœia and National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of diseases of either man or animals," and that such food products as honey, lard, suet, sugar and others, which were not classed as drugs are also recognized by the U. S. P. and because of the fact the state could not consistently claim that all such should be sold only by registered pharmacists.

It was this contention which was upheld by the courts of Nebraska and the pharmacy law was declared unconstitutional. However, we showed by evidence that pharmacists made no claim to the exclusive sale of food products, recognized by the U. S. P. and that the only reason they were so recognized was because they were included in this book of recognized authority in order to establish a standard of purity.

The court took the matter under advisement and after about ten days rendered a decision upholding our contention that aspirin is a drug as defined by the law. Under an agreement previously entered into with the defendant's attorney, he began preparing his brief for an appeal to the Supreme Court. It was filed for hearing in October of 1929, but did not reach a

hearing until November 21st. On December 13th the good news reached us that the Supreme Court had upheld the Lower Court and we had won a decided victory.

We proceeded to notify every wholesale grocery house in the state, which had been the source of supply for most of the aspirin, illegally sold, advising them of the decision of the Supreme Court. Notices were also sent to every county attorney, and to the 400 medicine venders who are paying licenses in Iowa. In addition to this the news of the decision was published in about 200 newspapers and broadcast from some of the radio stations. As a result a large part of the illegal handling of aspirin has been discontinued.

The members of the Board of Pharmacy are still handing out the notices and in every case so far, there has been no tendency to fight the decision and within a few months we hope to have the matter well in hand. In spite of the fact that many druggists said it could not be done, we continued the fight for three years and won by sheer persistent effort. It won for us not only great satisfaction but a wholesome respect for pharmacy law which was not evident before.

One result of this, however, has given us one cause for worry. This was a statement in the decision of the Supreme Court which stated, "We do not deem it necessary to pass upon the question as to whether or not section 2580 is constitutional. We expressly reserve any pronouncement upon said question." At least the inference is there that if called upon to pass on the constitutionality of this section they might be compelled to find it invalid. Therefore, we have it in mind to make an effort to change the wording of our law, so that it would withstand an assault, or a suit to test the constitutionality of this particular section.

We are glad to state, however, that the restrictive features of the Iowa law, in most instances have proven quite adequate and a vigorous campaign of enforcement is now in progress. In numbers of instances drug stores have fallen into the hands of unregistered owners and in many of these there are stocks of drugs which the owners cannot legally sell, without employing a registered pharmacist, which is apparently the last thing they expect to do.

By a peculiar twist of the law we cannot force them to remove these drugs from the premises, but we can prosecute them if they attempt to sell them. In some instances we manage this by telling them we will not attempt prosecution for violation if they will remove these drugs from the store.

During the month just past I personally saw to the removal of four different stocks by this method. One case was prosecuted for selling strychnine and other poisons, and fined \$100 and costs, and after this was over they requested a member of the Board to check the store and said they wanted to remove all drugs from the store which they could not legally sell. They had learned a rather expensive lesson. We construe our law to mean that unregistered owners cannot sell drugs in bulk because in the weighing up or measuring of drugs they are practicing pharmacy and the offense carries a minimum fine of \$100 and a maximum of \$1000. We instruct them as a rule to follow—that they purchase no goods labeled "poison," except insecticides. By being asleep at their posts the druggists permitted the exclusive sale of insecticides to be taken away from them.

We have a vendors' law which requires vendors of medicines to secure a license from our department which costs them \$100 per year. Regardless of the fact that some neighboring states require no license at all, or a very small one, we have more than 400 of them actively engaged in the business.

Some near vendors evade the law by selling only toilet articles and merchandise, which changes their title to that of a peddler, but he is never-the-less a menace to the drug business. The state law provides for a peddler's license of \$75 per year but this provision does not come under the jurisdiction of the Board of Pharmacy and is not being enforced.

The restrictive features of the Iowa law regarding the displaying of signs using the words "drugs" or "pharmacy" are not very explicit but we have had no trouble in prohibiting it, simply going on the supposition that the law is adequate to our needs. We have not felt that we could legally prevent the use of the sign "drug sundries" as that term does not necessarily mean that the store is dealing in drugs.

One of the most difficult problems in our state is the question of one-man drug stores. By this I mean the pharmacist who owns his own store in the average small town and in which he puts in practically his entire time. His business does not admit of another pharmacist being

employed, and he must of necessity be absent for his meals, and for required business conferences, etc. To require him to employ a pharmacist in order that one shall be present during these temporary absences is prohibitory in numerous instances.

On the other hand city drug stores claim the same privilege, although conditions are considerably different, as they keep their stores open longer hours as a rule, and the clerks in the cities demand shorter hours. Hence, when the store is open for 17 hours and the registered man is only there for ten hours we have a store that is operated forty per cent of the time without a pharmacist on duty. Legislatures can hardly be expected to frame provisions of law to fit both cases, and for that reason we are of the opinion that the temporary absence clause will come as near solving the problem as any suggestion that has been made.

In the discussion which followed it was brought out that Iowa, through a vendors' license law, carefully controls the sale of medicinal preparations by itinerant vendors and confines such dealers to the sale of patent medicines. Those entering into the discussion were Messrs. George Judisch, L. L. Walton, M. N. Ford, the Chairman and the author of the paper.

ENFORCEMENT POWERS OF BOARDS OF PHARMACY.

BY M. N. FORD.

At the request of Chairman Swain "The Enforcement Powers of Boards of Pharmacy" was discussed by M. N. Ford, secretary of the Conference and also secretary of the Ohio Board of Pharmacy. This subject embraced a consideration of the general law enforcement powers vested in the boards, and also the broader aspects of law enforcement resulting from a merger of the boards of pharmacy with other branches of the state government or when vested in some department independent of the board of pharmacy. Secretary Ford reviewed the various pharmacy law enforcing agencies, and said that in many instances the boards possessed wide powers which could be called into play as a means of securing a more satisfactory observance of the pharmacy laws. It was stated, as a controlling principle, that the enforcing agency should be fully informed as to the purpose of the law and also sympathetic with this purpose. As a general thing the Board of Pharmacy is laboring under a load of administrative detail which would make it welcome a transfer of enforcement work to other agencies if this could be done without sacrificing efficiency. Experience, however, in many states has shown that this phase of the work suffers when it is removed from those directly interested in maintaining the proper legal status. Because of this basic principle, the speaker expressed the opinion that the public benefits to greater extent by vesting enforcement in the hands of the board of pharmacy. Mr. Ford urged every state to give serious attention to the powers which the boards possess and to extend them by legislation when this is required, or by board ruling, when this is provided for, so that better conditions may be brought about. The opinion was expressed that increased professional prestige and a more secure economic position would follow a satisfactory observance of the law.

In discussing Secretary's Ford's paper Robert P. Fischelis said: "Mr. Ford's remarks were very interesting to me. New Jersey has been giving attention to recommendations for reorganization of the state government. The recommendation was that the examining boards be consolidated in some way under the state department of education in the interest of economy. I could not see where the state would be the gainer if the activities were transferred to another department. We have only a sufficient number of clerks and other assistants to actually take care of the work which comes to our attention, and we know that if we go into enforcement work it would require additional help. To carry on the work there would have to be as many people in the Department of Education as we have, so I fail to see where there would be any economy. But it is my opinion that to turn over the enforcement activities to any agency who is not interested would seriously hamper the work. I am interested in knowing whether Mr. Ford or anyone can furnish me with any arguments outside of the one which I have given for retaining the enforcement by the Board of Pharmacy, and if there is anyone here who has had experience in the enforcement activities removed from the Board of Pharmacy and taken over by another department and whether the enforcement is less efficient. Of course, the case of Maryland I understand is a very sound one. But I don't know just how efficient it would be if the secretary of the Board of Pharmacy and the drug commissioner positions were held by anyone else."