

his own credentials and procures his permit. The non-pharmacist who wants to engage in the drug business must obtain his permit through the registered pharmacist employed in charge of his pharmacy. That means that he must have a registered pharmacist employed, and no bluffing goes about that phase of the matter because an additional affidavit executed by the pharmacist in charge becomes a part of the application. We do not accept the statement of a non-pharmacist that he has such and such a pharmacist employed. We allow that pharmacist, so employed, to make affidavit to the fact that he is employed in that particular pharmacy, and state his hours of employment. In order to secure a permit we require that the pharmacist in charge put in at least half the number of hours the place is open for business. Otherwise he comes within the definition of temporary employment. Chain stores and corporations must procure their permits through the registered pharmacists in charge of each particular store. Two permits are not issued simultaneously to any one pharmacist. If he holds one permit that bars him from obtaining another. He therefore may not be in charge of two pharmacies. Do not confuse our use of the term "in charge of" as here used. We have no reference to the business management of a store. We have reference to the responsible man in charge of that intangible portion of the place of business that brings it within the definition of a pharmacy.

We believe that the annual registration of pharmacists and pharmacies also keeps the men in pharmacy in the state in contact with their board of pharmacy and its work, and that is useful in many ways in promoting harmony and securing a measure of cooperation on the part of those practicing pharmacy in the state.

Through the annual registrations we are able to keep records in the office of the board, that through cross indexing, enables us to compile lists of various sorts, as desired. We can list the names of the registered pharmacists by examinations, those registered by reciprocity, the assistants, or the stores in the state, or those in any particular city. We can take a particular city and list the men in the stores in that city without much trouble. We can list up a county or a section of the state, if that is desired. While these things may not often serve any useful purpose, when they are desired they are available, and such lists can be kept up to a reasonable degree of accuracy at all times.

The annual registrations entail considerable work, and the keeping of the records of men and stores is a never-ending job, but it is a source of a great deal of satisfaction in many instances, aside from the revenue aspect. We believe that it is a material aid in securing a better observance of the pharmacy laws, considered from many angles. We do not know what the feeling is in other states where the annual registration is carried out, but we would not want to abolish it in my own state.

P. H. Costello presented a paper on "The Board of Pharmacy Should Designate the Medicinal Preparations to Be Sold by General Merchants." This paper was discussed by Messrs. King, Wilhelmi, Mather, Swain, Walton, Costello and Dargavel.<sup>1</sup> The paper was then received for publication.

#### THE BOARD OF PHARMACY SHOULD DESIGNATE THE MEDICINAL PREPARATIONS TO BE SOLD BY GENERAL MERCHANTS.

BY P. H. COSTELLO, COOPERSTOWN, N. D.

If it is the desire of this group to discuss and determine the advisability of attempting to confer on Boards of Pharmacy, through legislation, the authority to designate what drugs and medicines may be sold by other than pharmacists, I am only prepared to give you our experiences in North Dakota. We have such authority by legislative enactment; factors leading up to the enactment of this legislation, and it would seem more acceptable and a better weapon for enforcement officials (Boards) than the vague exemptions, general exemptions over a certain distance or enumerated lists of exemptions generally found in statutes. I suppose the fact we have been granted such authority is the reason I have been asked to say something about it. I do not know if ours is the first instance of a legislature granting this authority to a Board of

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<sup>1</sup> The decision of the Minnesota Supreme Court, restricting to pharmacists the distribution of Milk of Magnesia, was discussed by Mr. John W. Dargavel, secretary of the Minnesota Board of Pharmacy. This paper created a great deal of interest, and was discussed fully. Editorial reference will be found in the August JOUR. A. PH. A., pages 738, 739.

Pharmacy and, since it is a new measure with us, anything I might say is based upon conclusions previously drawn, which caused me to work for its enactment.

Any group charged with the enforcement of a law is interested in the privileges granted and restrictions imposed by that law so it can perform their duties. Pharmacy laws may be very specific or very vague but they should be specific, if enforcement is to be carried out without having to resort to the courts to interpret the intent of the law. Resorting to courts is a slow and uncertain method of establishing one's position, if it can be done otherwise. Referring to our own state it would seem our sections 475 and 476 are specific enough in that dispensing, compounding and sale of drugs are restricted to pharmacists. Drug stores are well defined and require a registered pharmacist in charge. Advertising by, or the use of, the word "drug" is restricted to pharmacists and drug stores. In section 499 we have some exemptions such as physicians supplying their own patients, and the manufacture and sale of proprietary medicines in original packages. These are specific enough and possibly there should be no other exemptions. The fact that we are discussing what drugs should be sold by general dealers is evidence that it is being permitted or the privilege is being demanded, and, if laws do not provide for it, recourse to legislation is taken. Such was our case. An amendment, reading "provided dealers over two miles from a drug store shall be exempted from the restrictions of this act," was before the legislature. We had to recognize that distances between drug stores had increased. Many towns which previously had had a drug store and could no longer support one were forced to purchase all their drugs at another town, sometimes many miles distant. Our restrictions worked a hardship on residents of many localities. In a village ten to fifteen miles from a drug store one could purchase a proprietary medicine but such preparations as, Tincture of Iodine, Aromatic Spirit of Ammonia or Aromatic Cascara, which might be termed emergency needs, required on short notice, could not be purchased. Our problem, therefore was to have this corrected by the legislature in such a manner that we would still have a restrictive law, specific and enforceable, instead of what had been proposed. As finally amended our exemptions now provide for dealers over five miles from a drug store to secure an annual license to sell emergency drugs in original packages and authorizes the Board to designate these and add to or remove from the list.

"§ 499. **Who Exempt.** Nothing in this Act shall apply to or interfere with any practitioner of medicine who is duly registered as such by the State Board of Medical Examiners of this State, with supplying his own patients, as their physician, with such remedies as he may desire, nor does this Act apply to the exclusively wholesale business of any dealer, nor do general dealers come under the provisions of this Act so far as it relates to the keeping for sale of proprietary medicines in original packages, and such simple household remedies as may from time to time be approved for such sale by the State Board of Pharmacy; nor does this Act apply to registered or copyrighted proprietary medicines registered in the United States Patent Office, nor to the manufacture of proprietary remedies or the sale of the same in original packages by persons other than pharmacists; provided further, that any person of good moral character, over twenty-one years of age, who conducts a retail business at a place more than five miles from a drug store employing a registered pharmacist, may procure a license from the Board of Pharmacy upon application and payment to said Board of a fee of Three Dollars (\$3.00) annually which shall permit such retailer to keep for sale and sell in original packages, in addition to the simple household remedies hereinbefore referred to, such other emergency medicines and poisons as may be deemed necessary and in the public interests, and which have been designated by the State Board of Pharmacy as saleable under such license. The license hereinbefore referred to shall be for a period of one year, commencing on July 1st, and ending on June 30th, following the date of the application, and shall apply to the location for which the same is issued and shall be posted in a conspicuous place at such location, and upon satisfactory proof to the State Board of Pharmacy of any violation of any law of the State of North Dakota, by such licensee in or upon said premises, it shall be the duty of the State Board to revoke same. The State Board of Pharmacy may likewise from time to time add to or eliminate from the approved list of simple household remedies and they may add to and eliminate from the approved list of emergency medicines and poisons, saleable under the license aforesaid, and notice of such alterations shall be given by publication in such manner as said Board may deem proper."

While there may be objections to this type of measure or ways of improving its form we are pleased to have it rather than the one proposed, for many reasons. In the first place it provides that the dealer must be over five miles from a drug store. This means that where there is a drug store there are no dealers selling drugs. I can see no reason for making any exemptions where there is a drug store and a qualified licentiate in pharmacy to serve a community. The distance itself can be determined by the necessity in any state. If a license were granted a dealer just five miles from a drug store, the greatest distance anyone would have to the dealer would be two and a half miles. Personally, I think five miles should be the minimum distance. Secondly,

the measure provides for licensing the dealers; this is a very necessary feature. It not only provides revenue to defray inspection costs and other expenses incurred but also furnishes a record of where drugs are sold. It is necessary that it be known where drugs are retailed so collections of them for testing in compliance with drug standards can be made from all places by the regulatory department or food and drug commissioner. As a third point to consider, the dealers who secure licenses can sell only original packages. If dispensing were permitted it would merely be a step to compounding and we would, in effect, be licensing pharmacists. It would be an unsafe practice wherein the last safeguard to the public would be removed. I may say that the only opposition to the original package provision was voiced by representatives of seed houses, elevators and dealers in agricultural insecticides who desired to sell in bulk. Lastly, the Board of Pharmacy has authority to designate what drugs and medicines shall be sold under the license and to revoke licenses for violation. It must be admitted this is experimental, but every other means of designating has proven futile.

It is almost an impossibility to place a definite list in the statute itself and have it acted favorably upon without additions or deletions which are objectionable. If this occurs the only relief is further legislation. The list itself may displease many who could influence legislators against the entire measure. Any such designation as "simple household remedies" or "emergency drugs" is not specific enough. The term "simple household drugs" was found in our old law and no one knew what these were. Under advice of the Attorney General we designated what we thought constituted such a class which would force anyone disagreeing with us to take the matter to court for settlement, but as time for another legislature approached the attempt to amend our exemptions was made. When the term "emergency medicines" was proposed to designate the additional exemptions the provision authorizing the Board to designate these was the only solution. And since the list may be changed by the Board it would seem to be a flexible measure, one in which changes can be made without going to another legislature. I believe it is necessary to have such changes, as may be necessary, made without continually legislating. Any board of pharmacy that functions properly should be competent to designate such emergency drugs as may be deemed necessary and in the public interest, if they are fit to determine who are competent to practice pharmacy. This statement may subject me to ridicule since I have placed before you the determination made by our Board on this question. It is to be regretted that the survey undertaken by Secretary Ford last spring was not completed and available for our use as a guide, but wherever we sought information for this purpose, none was available and we were compelled to solve our own problem as then and of course we can make corrections as necessary. For this reason I will appreciate any comments, criticism or discussion and the attitude of this group on this question.

(Additional copies of our measure and the regulations covering it may be had by anyone desiring them.)—P. H. Costello, Cooperstown, N. D.

In the absence of Mr. Fischelis, his paper on "A Survey of State Pharmacy Laws with Reference to the Sale of Drugs and Medicines by General Merchants," was presented by Chairman Swain and he read a letter from the author of the paper. At the request of Chairman Swain, the paper was read by Mr. Oslin and it was discussed by Messrs. Walton, Hayman and Swain.

#### A SURVEY OF STATE PHARMACY LAWS WITH REFERENCE TO THE SALE OF DRUGS AND MEDICINES BY GENERAL MERCHANTS.

BY ROBERT P. FISCHELIS.\*

Regulation of the sale of drugs and medicines by persons who are not registered pharmacists or working under the immediate supervision of registered pharmacists constitutes one of the most perplexing problems confronting Pharmaceutical Law Enforcement Officials. The perplexity of the situation can be traced to a number of causes. Among these are faulty definitions or total absence of definitions for the loose terms used in many pharmacy laws; lack of uniformity in the provisions regulating the sale of drugs and medicines in the laws of various states, especially neighboring states; variations in the construction placed on such terms as household remedies, domestic remedies, grocers' drugs, commonly used drugs, etc., by the courts. The courts are in the same position as the Enforcement Officers, for they are endeavoring to in-

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