CONFERENCE OF PHARMACEUTICAL LAW ENFORCEMENT OFFICIALS

ABSTRACT OF THE PROCEEDINGS.

The First Session of the Tenth Annual Meeting of the Conference was convened at 8:45 P.M., August 22nd, with 72 present.

CHAIRMAN'S ADDRESS.—President Swain read the following address, which was received:

"This meeting may, in a certain sense, be looked upon as the tenth anniversary of the Conference, as the suggestions from which it originated were first presented at the meeting of the AMERICAN PHARMACEUTICAL ASSOCIATION in Portland, Maine, in 1928.

In a paper which I presented before the Section on Education and Legislation at that meeting, entitled 'Fundamental Factors in the Application of Pharmacy Laws,' it was suggested that 'there be set up in the AMERICAN PHARMACEUTICAL ASSOCIATION, a Department of Legal and Legislative Reference which, when fully organized, should collect and tabulate all matters of a legal and legislative character pertaining to pharmacy.'

In the same paper, the following suggestion was made: '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 AMERICAN PHARMACEUTICAL ASSOCIATION, at least once a year. 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 AMERICAN PHARMACEUTICAL ASSOCIATION recognize this condition and adopt some plan whereby the work may be developed along the proper lines.'

The movement took definite form at the 1929 meeting of the AMERICAN PHARMACEUTICAL ASSOCIATION held at Rapid City, South Dakota, and among the resolutions adopted at that convention was the following:

'*Be It Resolved*, that all encouragement be given to the Conference of Pharmaceutical Law Enforcement Officials in order that it may collect and correlate the law enforcement procedure of the several states, thus making available a uniform legal and legislative policy.'

In my address as chairman of the Conference at the meeting held in Baltimore in 1930, the following comment was made:

'The field of study to which the Conference is dedicated is a most extensive and difficult one. The very magnitude of the project and the difficult work ahead emphasize the importance of the Conference. It is indeed doubtful if any single movement in Pharmacy in recent years has been devoted to a task of more far-reaching consequences or one which offers more in the way of successful outcome. It is certainly true that in dealing with such vital matters the Conference is dealing with the most practical phases of pharmaceutical work. If it does no more than stimulate the civic consciousness of the profession, the Conference will have amply justified itself.'

I think it can be said that the Conference has greatly stimulated the civic consciousness of the profession and that a more alert mental attitude has been created with respect to the purposes which the Conference was meant to serve. From the very outset, the meetings of the Conference have been well attended and have been looked upon as among the most interesting and valuable features of these annual conventions. In fact, the comment has been frequently made that the meeting of the Conference was the highlight of these annual occasions. At any rate, the sessions have often lasted until far into the morning and it has been suggested that additional time be allotted to the Conference so that there might be further opportunity for a discussion of the highly interesting topics to which the Conference has given its attention.

The Conference idea has been held to throughout this ten-year period. No effort has been made to adopt a constitution and By-Laws, or to burden the work of the Conference with rigid rules and procedure. The meetings have been more or less informal and every opportunity presented for free and unlimited discussion of the topics on the program.

The proceedings of the Conference have all, with the exception of one year, been published in the JOURNAL OF THE AMERICAN PHARMACEUTICAL ASSOCIATION and reprints have been sent to every pharmaceutical law enforcement officer in the United States. The effect of this

has been to widen the sphere of influence of the Conference and to make its work known to many who have not been able to attend the annual meetings.

In addition to this, several bulletins have been issued, dealing with judicial interpretations of pharmacy laws, opinions of attorney-generals, and Board rulings with respect to matters germane to activities of the Conference. There have been important amendments to state pharmacy acts directly attributable to the work which we have carried on. I think it can be said that those in charge of the affairs of the Conference have always been mindful of their responsibilities and have diligently sought to make it as effective and valuable as possible.

The Conference has also adhered to its original idea and has given the entire time of the annual meetings to a discussion of those administrative and enforcement problems met with in the pharmaceutical field. It has scrupulously refrained from encroaching upon the prerogatives of other organizations and from duplicating the work which was already in progress. In spite of this, or probably because of it, the Conference has undoubtedly affected the thinking of other branches of pharmaceutical work and has brought about a pronounced stimulation in the interest manifested in pharmaceutical legislation.

It is my feeling that the work now being carried on by the Committee on the Modernization of Pharmacy Laws of the AMERICAN PHARMACEUTICAL ASSOCIATION, received its first stimulus in the programs of this Conference. At any rate, it must be admitted that pharmaceutical opinion is much more critical of pharmaceutical law to-day, than ever before, and that much serious thought is being given to ways and means of making it conform to the advancement made in pharmaceutical education and public health in general.

While there may be some who will contend that this is a logical development in pharmaceutical thinking, I believe that those most closely familiar with the situation will be more inclined to give the Conference major credit for the more alert attitude which now prevails. It is to be hoped that the next ten years of the conference will be still more productive as there is a vast amount of work yet to be done.

I have no desire to dwell further upon the history of the organization or upon the work which it has done up to this time. I am much more concerned with its program in the years immediately ahead. While undiminished attention should be given to pharmacy laws and ways and means of securing modern pharmaceutical legislation, the Conference should also devote itself to a thorough study of the poison laws of the various states, so that these too may be cast in a modern mold. Many of these laws are static, in that there is no elasticity given to them and thus no way of keeping them abreast of the times except by legislative action. In many instances their basic definitions are unsound and no attempt made to enforce them. In few instances do these laws place the proper responsibility with the purchaser himself and thus to that extent do not afford proper protection to the pharmacist through whom the sale is made. In few instances do the laws provide for restricting the sale of poisons to physicians' prescriptions, even though this might be highly desirable from the standpoint of public health under emergencies which may conceivably arise. While further comment would undoubtedly show the inadequacy of the present system of poison laws, this is sufficient to support the contention that these laws are in need of careful study and revision. Simply as a matter of interest, the opinion may be expressed that the Poison Law of Great Britain is much more intelligent in its conception, much more comprehensive in its terms and much more practical in its objectives, than any poison law in effect in the various states.

Some work has already been done in this field, particularly in the National Drug Trade Conference. For the past several years a Committee on Poisonous and Toxic Substances has been working under the chairmanship of Dr. James H. Beal, and has accumulated much highly valuable data with respect to the labeling of poisons and the conditions under which they should be sold. This compilation should be carefully studied as it has a direct bearing upon the direction in which this type of legislation should proceed. Unfortunately Dr. Beal was compelled to relinquish the directorship of this committee and thus the work cannot be finished under his supervision. It is fortunate that his mantle has fallen upon the shoulders of Dr. Robert P. Fischelis, a member of this Conference, and this alone is sufficient to guarantee that the work will be pushed along as rapidly as possible and continued on the same high plane.

Simply as an interesting observation it might be said that if there could be set up in the United States Pharmacopœia or National Formulary, a table of poisonous and toxic substances,

based upon the work of the committee in the National Drug Trade Conference, the table would be made the subject of revision and thus brought up-to-date at such times when the United States Pharmacopœia or National Formulary were revised. This would appear to be a practical method of giving elasticity to the state poison laws and would meet the objection that the poison laws are too rigid and at the same time would avoid the embarrassment of attempting a definition of the word poison in the state laws.

Simply in passing, it might be said, too, that this thought has already been expressed in the National Drug Trade Conference and no doubt has been brought to the attention of the proper authorities having to do with the United States Pharmacopœia and National Formulary.

The final passage of the Federal Food, Drug and Cosmetic Act also precipitates many problems of importance to this Conference, as the act will be found to have a direct bearing upon the pattern of pharmaceutical legislation in the immediate future. This law greatly expands the meaning of the word 'drugs' and brings within the purview of this term many items and products not heretofore regarded as such. Inasmuch as the term 'drugs' is given a much greater significance in the Food, Drug and Cosmetic Act, it would seem that the pharmacy laws should include the same definition so that the necessary degree of regulation and control might be given to them.

The inclusion in the Federal Law of therapeutic devices also suggests the desirability of studying these products from a new attitude with the view of determining whether these products should be brought within the purview of state pharmacy laws and thus given the same regulation and control as given to drugs.

From this brief review of the Conference in retrospect and also in prospect, it must be clear that there is a vast amount of work ahead of us and work of such a serious character that it will call for the closest attention on the part of those engaged in the administration and application of pharmacy laws.

It is to be hoped that this Conference will assume leadership in this movement to a still greater extent in the future than in the past, as necessarily the legislation in this field must proceed from the knowledge possessed by its members and the peculiar experience which comes to them in the discharge of their official duties.

I think it can be said that the success of the Conference so far is a reasonably satisfactory guarantee that it recognizes its responsibilities and will meet them as they should be met."

Chairman Swain called upon Dr. C. S. Ladd, Food Commissioner and Chemist for the State of North Dakota, who presented a paper on North Dakota's Food and Drug Act and its relation to Pharmaceutical Law Enforcement—as follows:

"When I accepted the invitation to present a paper on the above topic to this Conference the new Federal Food, Drug and Cosmetic Act had not been enacted. It was passed and signed by the President shortly after and due to the effective work of the Conference committee of the House and Senate the North Dakota law is not as unique as it was.

North Dakota has been a pioneer in the enactment of food law legislation. Its early food law was enacted a number of years before the Federal Act and during the intervening years it has been amended and revised so that it has been kept up-to-date. As is common elsewhere, food and drugs are dealt with in the same law, known as the North Dakota Food and Drugs Act but the provisions as to drugs have been far from satisfactory. Realizing this, it has been our intention to ask for a revision of the law but when the bill to revise the Federal Food and Drugs Act was introduced in Congress in 1933, arguments were presented that the states should not attempt to revise their laws until the new federal law had been enacted. After innumerable revisions of the proposed law, and years of waiting for its enactment, it appeared obvious that if a satisfactory law was to be obtained it was necessary that some of the states show the way by enacting some of the needed provisions. Thus in 1937, the North Dakota legislature amended the provisions of the North Dakota Food and Drugs Act as it applied to drugs. The result was a very satisfactory improvement in the North Dakota law as it relates to drugs. The provisions which caused the most comment and the most concern to some drug manufacturers is the one which classifies a drug as misbranded.

If it is not designated solely by a name recognized in the United States Pharmacopœia or the National Formulary, and its label fails to bear a common or usual name of the drug if such there be; or in case it is fabricated from two or more ingredients, the name of each active ingredient,

and the quantity, kind and proportion of any alcohol, provided, however, if such statement of the ingredients alone be insufficient to prevent fraud or deception or to convey to the purchaser the true nature of the product, the percentage of each ingredient shall in addition be required.

This requires that some very definite information, that is, the name of each ingredient be on the label of all drugs. In other words, no longer could Glauber Salts be designated under some fancy Crystal or Salts name and this 10 and 15 cents a pound item sold to an unsuspecting public for $1.50 a pound, nor could manufacturers of Stomach Tablets warn in their advertising against baking soda dosing when the tablets they were recommending and selling contained one-third baking soda, and if the instructions were followed more than twice the therapeutic dose of baking soda would be taken. For more than 40 years the department of North Dakota has been, along with other agencies throughout the country, exposing the fakes and frauds but was helpless to prevent the continued sale and gypping of the public by them.

As pointed out in the hearings before a sub-committee of the Committee on Commerce of the U. S. Senate, second session of the 73rd Congress on S. 1944:

This requirement is not new; it is not an innovation, there are a great many countries in the world at the present time that impose requirements of this sort. Among those nations that require a quantitative declaration—and that is essentially what is being proposed here—at the present time as revealed by a very brief and cursory review of the laws of the foreign countries are Chile, Denmark, Finland, Guatemala, Italy, Mexico, Nicaragua, Sweden, Uruguay, Yugoslavia and the Philippine Islands.

Those that require a qualitative declaration and enumeration of the ingredients without an indication of the quantity in which they are present, include Argentina, Belgium, Costa Rica, El Salvador, France, Panama, Peru, Portugal and Spain.

All manufacturers exporting medicinal products to the countries to which I have referred declare the formulas quantitatively or qualitatively.

Let me present to you an identical product in two different packages. One is to be marketed in the United States for the consumption of the people of this country. The other is for export. You will note that on one of these there is no disclosure of the ingredients. That is the one intended for home consumption. On the other there is a statement of the formula, in such terms as the country to which it is to be exported may require.

So far as the contention may be advanced that this is a property right on the part of the manufacturer, and that he should not be required to disclose it, I think the statement made by the Supreme Court in Corn Products Refining Co. *vs.* Eddy (249 U. S. 427) disposes of that argument once and for all. The Supreme Court said:

'It is too plain for argument that a manufacturer or vendor has no constitutional right to sell goods without giving to the purchaser fair information of what is being sold. The right of a manufacturer to maintain secrets as to his compounds and processes must be held subject to the right of the State in the exercise of its police power and in the promotion of fair dealing to require that the nature of the product be fairly set forth.'

Another case was decided by the United States Supreme Court in which the 'open formula' law applicable to the constituents of fertilizers sold in the state of South Carolina was construed. This act required the manufacturer of fertilizers to state his formula on the container of his product. This act was bitterly contested by fertilizer manufacturers on the ground that it was a violation of the due process clause of the constitution and thus was invalid. The act was sustained by the United States Supreme Court and in the course of the opinion, Mr. Justice McReynolds, speaking for the Court said:

'The right of a manufacturer to maintain secrecy as to his compounds and processes must be held subject to the right of the state, in the exercise of its police power and in promotion of fair dealing, to require that the nature of the product be fairly set forth.'

The principles laid down in these opinions are undoubtedly a precedent for legislation requiring the disclosure of ingredients of medicinal preparations.

Arthur in his Law of Drugs and Druggists in discussing the question of the disclosure of ingredients says in part:

'It is true that the patent laws give inventors exclusive rights to their inventions, but this does not imply a right to disregard laws enacted to promote the welfare of the whole people. Laws requiring the disclosure of ingredients are for this purpose, and are in no wise an unwar-

ranted interference with trade. Such disclosure of ingredients of medicines or remedies prepared or sold by druggists is for the prevention of fraud and the sale of worthless articles.' In the case of Fougera & Co. *vs.* New York (see readings) the Court says: 'The plaintiff is engaged in the importation and sale, both wholesale and retail, of proprietary and patent medicines. The names of many of the medicines are stated in the record. For some the plaintiff is the exclusive importer and sole distributor in the United States. It does not know the names of the ingredients, and cannot ascertain them. They are secrets closely guarded by foreign manufacturers. In these circumstances, it insists that the ordinance is void. There are two lines of attack. The ordinance so said in the first place to infringe rights secured to the plaintiff by the state and federal constitutions. . . The argument is made that the ordinance is an arbitrary exercise of the power of government. We do not think so. Its purpose and effect are well within the limits of the police power. The purpose is the preservation of the public health and safety. The form of protection is publicity. There must be disclosure of the truth to . . . prevent or punish the sale of fraudulent or noxious compounds. If that is not a legitimate public aim, we are at a loss to know where one may be found . . .'

The amended North Dakota law became effective July 1, 1937, at which time attention was called to the provisions of the law and warning issued that it must be complied with. In order to permit a reasonable length of time in which to comply, no drastic action was taken immediately after it became effective but as the months passed it was apparent that the requirements of the law were being ignored. It was, therefore, decided that it would be necessary to stop the sale of the items which were not properly labeled in order to impress upon the manufacturers the need for their compliance. During the early part of December 1937, nearly six months after the effective date of the law, we started carrying out this policy. During the next few weeks sale was stopped on approximately 225 items manufactured by 186 companies in 83 drug stores located in 21 towns in North Dakota. As the druggists were not responsible for the manner in which the manufacturers labeled their products, we did not wish to work undue hardship on them. For that reason the sale on only three or four items was stopped in a single drug store and in order to obtain proper action the druggist was advised to notify the manufacturer by wire that the sale of his product had been stopped but would be released upon receipt of stickers which could be attached giving the required information and that future shipments must be properly labeled. The coöperation received from drug stores and manufacturers was splendid. Within 24 hours after the sale of the product had been stopped, we, in many cases, received from the manufacturer his intention to revise his labels to comply with the North Dakota law and that stickers were being supplied for stock in the state and for shipments until labels could be revised. According to our records, only three concerns selling nationally advertised products refused to comply. A few very small concerns selling little known items stated that they did not sell enough in North Dakota to justify revising their labels and would discontinue the sale in our state. The big majority indicated their prompt and full coöperation. This was the attitude until apparently the Proprietary Association got busy, then in two days the Governor of the State of North Dakota obtained letters from 18 drug manufacturers urging that the law be not enforced. Many of these had already indicated their intention to comply but apparently they had been persuaded to use their influence to prevent the enforcement of the law. They were perhaps hopeful of preventing the inclusion of similar provisions in the Federal law. In this they have been sadly disappointed. As the bill passed the House, among a considerable number of jokers, it contained the joker applying to the statement of the active ingredients, that the provision requiring active ingredients on the label, 'Shall not apply to any drug, the ingredients of which are fully and correctly disclosed to the secretary' and elsewhere in the bill the secretary was prohibited from revealing such secret information. As finally revised by the Conference Committee of the Senate and House and enacted, the provision is worded very similar to the North Dakota law but is even more stringent in its requirements, as a quantitative statement of a considerable list of drugs must, in addition to the list of active ingredients be given. As finally enacted it reads:

Sec. 502. A drug or devise shall be deemed to be misbranded:

(*e*) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind and proportion of any alcohol, and also including, whether

active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

These manufacturers also apparently had overlooked the possibilities in the Wheeler-Lea Act which earlier became a law.

While the Federal Trade Commission has thus far moved very slowly in enforcing that law against the advertising of drugs, the Commission has apparently indicated that the law may require the revealing of considerable more information than has generally been expected. This was pointed out in an editorial in the May 9th issue of the *Oil, Paint and Drug Reporter*, entitled, 'Drug Formulas Must Be Told:'

Philosophers and other seekers after basic information have been puzzled many times down the centuries with some or other application of the question posed ages ago by Pilate: 'What is truth?' At none of these earlier times was this question more perturbing than it is to-day under the mandate of the Wheeler-Lea Federal statute that the advertising of foods, drugs and cosmetics be truthful.

To some who must be fully informed with respect to the application of this law its mandate apparently is a simple one, requiring only that whatever is said in an advertisement shall be true. But, analysis of the law's language and such knowledge as is yet available in respect of the interpretative policy of the Federal Trade Commission destroys this conception of simplicity. It seems that, not only must what is said in the advertising affected be true, but also there must not be left unsaid in the advertising any fact that is material to thorough identification of the article advertised. Not only must such advertising tell nothing but the truth; it must also tell the whole truth.

To some even this broad mandate may seem simple. But, if statements of administrative policies are to be taken at their face value, the Wheeler-Lea act requires much more than might reasonably be regarded as adequate definition of an advertised article. It requires, so stated interpretation indicates, that in the case of a compound drug, or cosmetic or food, every advertisement shall disclose fully and quantitatively the composition of the article. In other words, this act is not merely a mandate against false or misleading advertising; it is a demand for formula disclosure.

In North Dakota the State Food Commissioner and Chemist is responsible for the enforcement of the North Dakota Food and Drugs Act, which of course includes the provisions as to the purity, quality and freedom from adulteration or misbranding of drugs, while the Pharmacy Laws are under the supervision of the Board of Pharmacy with your Mr. P. H. Costello as secretary actively in charge. For at least the past 12 years these two agencies have coöperated in order to obtain more effective enforcement of the laws. Our drug inspector has coöperated with the Board of Pharmacy in checking up on and in enforcing the Pharmacy Laws. This coöperation has been very effective and satisfactory but the enactment of the amended drug provisions of the North Dakota Food and Drugs Act has accomplished more than was originally thought of in the interest of Pharmacy and in the effectiveness of the pharmacy laws. It would appear that in years gone by some one was very effective in obtaining exemption from the pharmacy laws, for the sale of so-called proprietary medicines in original packages. Thus while the laws restricted the sale of potent drugs to the supervision of registered pharmacists, anyone could take two or more potent drugs, combine them, offer them under a fancy name and such products were permitted to be sold in original packages by any store or person even though the mixture might be even more potent and dangerous than either one of the drugs sold separately and which were required to be sold only in establishments under the supervision of registered pharmacists. Thus so long as the composition of these products was secret these laws permitted this to be done. The term "Patent Medicine" used so widely years ago is used but little to-day. In the early days it actually was a misnomer as it did not refer to medicines that had been patented but rather to those whose names had been registered and copyrighted in the United States Patent Office. While patents for mixture of drugs have been issued in the past there are none to-day and there is not much danger now of abuse in the sale of true patented medicines, that is, in the case of

drugs on which a patent for the process of manufacturing has been issued. The North Dakota Law does not say that medicines sold under proprietary names shall be only proprietary medicines. Thus so long as the composition of these products was secret they could rightfully be known as proprietary medicines. The enactment of legislation requiring the revealing of information with regard to the composition of drugs in effect eliminated the sale in North Dakota of secret formula remedies. Thus it has been possible to more closely restrict the sale of drugs than in the past. This policy has been upheld by an opinion from our Attorney-General's office as follows:

RE: DEFINITION OF PROPRIETARY PREPARATIONS.

This is in reply to your request of December 18th, for an opinion upon the above subject, and pursuant to our previous conversation relative thereto.

In addition to the ruling of this office under date of June 19, 1929, to the effect that aspirin is a drug and not a proprietary preparation or remedy, we find that the distinction between drugs and proprietary remedies has been passed upon by the courts of several other states, and by the U. S. Supreme Court. In State *vs.* Zotalis, 162 Minn. 132, 214 N. W. 766, and in State *vs.* Jewett Market Co. (Ia.) 228 N. W. 288, it was held that aspirin is not a proprietary medicine, but is a drug.

Considering these cases, and that of Board of Pharmacy *vs.* Abramoff (N. J.) 141 Atl. 587, and Ferguson *vs.* Arthur, 117 U. S. 482, 6 Sup. Ct. 861, 863, 29 L. ed. 979, and other federal decisions, it is our opinion that 'proprietary medicines' within the definition of our statutes, refer only to those patented preparations or others which, though not patented, consist of a secret formula, which is a sole ownership and can be used only by one individual, corporation or association, which is the owner thereof.

It is therefore our opinion that aspirin cannot be sold in combination with phenacitin, caffeine, acetanilid or other drugs, compounded in a method which is known to and usable by all except licensed druggists, and by a licensed drug store, unless, and until such combinations are placed upon the permitted list by the Pharmacy Board, for retailing by rural general stores.

While effective control of the sale of drugs is now possible there is actually no control of manufacturers within North Dakota. This situation has recently been referred to in an example quoted by J. J. Taylor, State Chemist of Florida, which applies fully to the situation in North Dakota. We have had many similar cases and have assumed the same attitude. Mr. Taylor states:

A few days ago I received a letter from a man who stated that he was a traveling salesman, that he was a citizen of Florida and a taxpayer, that he wanted to manufacture and market a headache powder as a side-line because business was not so good; and would I please send him a formula for a good headache powder—one that was not too expensive—and advise him what steps he would have to take to begin business and would the medicine have to be put up under the supervision of a registered pharmacist. The sad part of it was that I had to tell him that there was practically no restriction in Florida to going into such a business—there was no license or bond required by the state; no minimum or maximum requirements for a manufacturing plant; no approval necessary on the product; only that certain labeling requirements must be met; the product was not even required to be put up under the supervision of a registered pharmacist. The only way in which I could discourage this budding new industry was to decline to furnish him the requested formula which I did in no uncertain language. This man evidently had been listening to radio programs advertising some of our 'sure shot, quick relief remedies' and decided it was a good way out of the depression.

That this constitutes a serious lack in our laws is admitted by all. It is one that should be promptly corrected, not alone in North Dakota but in most of our states. Anyone desiring to compound or manufacture drugs who is not a registered pharmacist should be required to obtain a license and the manufactured product should be required to be submitted to the enforcing agency for check-up as to composition and labeling before it is offered for sale. This, together with the incorporation of the provisions as to new drugs similar to those in the Federal Food, Drug and Cosmetic Act should be enacted in most of the states before another year passes.

NON-OFFICIAL PRODUCTS LABELED WITH OFFICIAL NAMES.

We have found on the market in North Dakota a considerable number of drug preparations bearing official names but not of the official formula which we considered were in violation

of the North Dakota Food and Drugs Act. If they were in violation of the North Dakota law it appeared to us that they were also in violation of the Federal law. It was our intention to take action against them but in order to make sure that our belief was not in conflict with the attitude of the Federal Food and Drug Administration, we took the matter up with them first. The reply of Mr. W. G. Campbell, Chief of the Administration, summarizes this situation and gives their attitude, which is in agreement with our own:

It is unfortunate that there are on the market a considerable number of drug products having non-official composition but sold under official names or under names so closely simulating the official names as to be confusing. In a few instances manufacturers are marketing what they really consider improvements over the official preparations; in the great majority of cases, however, debased products are being sold to increase the manufacturers' profit or to attract business on the basis of price. Among these are such products as Brown Mixture, Elixir of the Hypophosphites, Elixir Phenobarbital, Elixir of the Five Bromides, Elixir of Iron, Quinine & Strychnine, Elixir Lactated Pepsin and numerous others. This is a matter to which we are giving continuous, even though not very intensive, attention. Some progress is being made in this field.

As you state, the terms used in the variation clause are 'strength, quality and purity.' In particular, no variation in identity is provided for. As our legal advisers interpret the Act, the omission of any ingredient required by the Pharmacopœia or the National Formulary or the incorporation of any ingredient not permitted by the official specifications, constitutes a form of adulteration which cannot be cured by any kind of explanatory labeling so long as the article is designated on its label by official title.

I have not seen the label for Upjohn's 'Elixir Three Bromides,' but under the policy stated above we would regard this article as adulterated by reason of the substitution of caffeine bromide for ammonium bromide even though the label carries the complete formula and in addition the phrase 'Not to be confused with N. F. Elixir of same name.'

We do not regard the term 'quality' as synonymous with 'identity.' Quality, in our opinion, has to do with characteristics of the article named, color, taste and odor, for example. The Pharmacopœia sets up a definite color standard for cod liver oil. It is entirely possible that a pure, full strength oil may fail to meet this quality standard.

Our discussion of this subject has been primarily on the basis of administrative legal rulings from the Solicitor's office of the Department. Unfortunately, there have been no court decisions which substantially clarified the variation clause.

The action which we took is given in the following letter. Similar letters referring to other products were sent to a number of drug manufacturers marketing this type of product.

In our enforcement of the North Dakota Food and Drug Act, we find a considerable number of drug items on the market designated with an official name recognized in either the United States Pharmacopœia or National Formulary, in most cases the latter, the composition of which is not in accordance with the official preparation. That is, other ingredients have been substituted for or used in addition to the official ingredients. This is in violation of the North Dakota law and we have found it necessary to take steps to stop the sale of some of these items in order to bring the matter to the attention of the manufacturer and to affect the proper correction. The many complaints from physicians, druggists and patients, particularly in the case of prescription refills on account of extensive substitution of non-official preparations sold under official names makes this action justified and fully in the interest of the ethical manufacturers as well as the professions and their patients and customers.

We have taken this action in connection with the sale of your Elixir Saw Palmetto and Santal Compound, on sale at the Cowan's Drug Store, Bismarck, North Dakota, and your Elixir Glycerophosphates Compound (No. 39), on sale at Lenhart's Drug Store, Bismarck, North Dakota. This action is taken not because of a difference in the standard of strength, quality or purity from that laid down in the National Formulary, but because other ingredients than those named in the official formula have been added or substituted for some of the official ingredients. A preparation such as the above must be sold under a name which is not recognized in the official compendiums.

As there are other preparations you are marketing which are adulterated for the same reason, that is, they are designated with an official title but not composed of the official ingredients, we ask that you take steps to discontinue the sale of all such items in North Dakota until

such time as they are sold under a label designating them with a name which is not recognized in the U. S. P. or N. F. and thus not in violation of the North Dakota law.

Kindly notify us that you are correcting the labeling so that further action in the case of these items will not be necessary.

The result was that the American Drug Manufacturers Association requested that they be permitted to send a committee to confer with us at Bismarck, which we willingly granted. A special sub-committee of the Contact Committee of the American Drug Manufacturers Association and the American Pharmaceutical Manufacturers' Association was appointed and as a result of the conference this committee and the Committee on Catalog Simplification of the American Drug Manufacturers Association agreed to revise the names or eliminate the objectionable products which are in violation of the law. Some companies have instructed their salesmen to discontinue the sale in North Dakota of the violative products. We have asked the druggists, in the interval necessary for this change and revision, to order only official products under official names.

SALE OF RUBBER PROPHYLACTICS RESTRICTED.

The North Dakota Food and Drugs Act has been effective in making it possible to restrict the sale of rubber prophylactics to establishments under the supervision of registered pharmacists. The Federal Food and Drug Administration deserves primary credit for this accomplishment. As pointed out recently by W. R. M. Wharton, Chief of their eastern district:

In March 1936, the Food and Drug Administration instituted a case in the Federal district court for the southern district of New York, involving a charge of misbranding an article known as 'gauze bandage,' labeled as 'sterilized' and as 'scientifically prepared for surgical use under most sanitary manufacturing conditions.' This case was contested by the defendant. The manufacturer denied that the bandage came within the statutory definition of drug and averred that the Food and Drugs Act does not apply to a mechanical device such as a gauze bandage. Verdict was rendered by the Court declaring the article labeled 'sterilized' and 'scientifically prepared for surgical use under most sanitary manufacturing conditions,' to be a drug. In passing on the case the Judge stated the Government has proved that these bandages so seized were not 'sterilized.' That the statement on the cartons that they were so 'sterilized' is false. That accepted definition of 'sterilization' means that all bacteria are absent, and the court went on to say that Congress surely intended to exclude from interstate commerce an impure and misbranded bandage pretending to be sterilized and prepared for surgical use. This position has been upheld by the Circuit Court of Appeals.

For many years prior to this time, the Food and Drug Administration has been fully aware of the fact that rubber prophylactics, more popularly known as condoms, as well as so-called skins, though practically always labeled 'To be Used Only for Prevention of Disease,' were so largely defective that they would not surely protect against infection, syphilis and gonorrhea. Until the judgment applicable to gauze bandages was rendered, the courts had not clarified the status of such devices so labeled. However, the court decision classifying gauze bandages labeled as 'sterilized' and 'for surgical use' as drugs, opened the way for the control of mechanical prophylactics labeled as 'disease preventives,' on the theory that they are drugs because they are sold and used for the prevention of disease and therefore fall with sterilized gauze bandages for surgical use within the Food and Drugs Act definition of drugs, namely, 'Any article used for the cure, mitigation, prevention of disease.'

An active campaign has been instituted to protect the public health by applying the Food and Drug Act to mechanical prophylactics labeled as disease preventives so as to remove from the market by seizure those found defective.

Up to the present time more than 150 seizures have been made of defective condoms, aggregating a total of approximately 1,500,000 individual condoms.

A most important factor in the campaign to prevent the sale of defective prophylactics is that such devices be sold only by responsible parties. As under the North Dakota law they are classed as drugs as well as under the Federal law and as the Pharmacy law restricts the sale of drugs to the establishments under the supervision of registered pharmacists it became possible with the support of an opinion from the North Dakota Attorney General's office to so restrict the sale of rubber prophylactics. This opinion reads as follows:

This is in response to your request of yesterday for an opinion from this office, as to whether or not rubber prophylactics are drugs, within the definition of our statute.

Chapter 132 S. L. 1937 defines the term 'drug' as used in the food and drug act, relative to branding, adulteration, sale, etc. The statute provides that not only are the substances listed in the Pharmacopœia and the National Formulary drugs, but it also includes in that term, 'any substance or mixture of substances intended or designed to be used for the cure, mitigation, prevention or treatment of disease of man or other animal, and all substances and preparations, other than food, intended to affect the structure or any function of the body.

This, of course, is much broader than the ordinary layman's conception of the meaning of the word 'drug,' which included little but medicines. However, the legislature very clearly has a right to define the term as used in its statute.

In several cases you have brought to my attention, the Federal Courts have held that surgical gauze, adhesive tape and absorbent cotton were drugs, within the meaning of the Federal statute, which give the definition therefore of 'any substance or mixture of substances,' used for the 'cure, mitigation or prevention of disease.' I note, also, that the government has seized faulty mechanical prophylactics on the ground that they are misbranded drugs under the Federal act.

Considering the Federal decisions, and the fact that our statutory definition for drugs is even broader, since it includes all non-food substances, 'intended to affect the structure or any function of the body,' and since these mechanical prophylactics clearly do affect the function of the body, and are also sold under the designation that they are for the prevention of disease, I am of the opinion that they are drugs, within the scope of our statutory definition, and that, therefore, they are subject to the requirements of our laws relative to labeling, and under the law, can only be sold in accordance with the provisions of section 2889b1 et seq. of the 1925 Supplement, as amended, and in drug stores, as required by Chapter 212 S. L. 1931.

A few states have special laws requiring the licensing of dealers selling rubber prophylactics, but as our experience demonstrates where laws are carefully drawn there is seldom need for a new law to cover an individual item such as this. There are really only two advantages to the enactment of a special law covering these devices, 1st, as a source of revenue through the issuance of licenses and 2nd, more effective enforcement is possible and better observance usually results where licenses and revenue are concerned.

We feel that the North Dakota Food and Drugs Act has given valuable assistance to Pharmacy and in the enforcement of the Pharmacy Law in controlling the sale of drugs and in restricting them, as they should be restricted, to establishments under the supervision of registered pharmacists."

The paper was discussed by Messrs. F. O. Taylor, R. K. Snyder, R. L. Swain and Dr. Ladd.

The chairman next called upon Secretary A. L. I. Winne of the Virginia Board of Pharmacy, who spoke on the different sections of the recently enacted Virginia Drug and Cosmetic Misbranding and Adulteration Law with respect to Labeling, Advertising, Patent and Proprietary Medicines. Mr. Winne pointed out that a preparation that did not contain directions for use, etc., could not be classed as a proprietary and therefore the sale must cease. The label must also show the ingredients and he stated that the drug manufacturers commend the law which also provides for False Advertising, Seizure, Forfeiting and Power of Injunction, with the enforcement in the Board of Pharmacy.

COMMITTEE ON NOMINATIONS.—Chairman Swain appointed Chairman H. S. Dretzka, A. C. Taylor and Fred Schaefer and requested that the Committee report at the next session.

Chairman Swain next called upon Secretary E. J. Prochaska of the Minnesota Board of Pharmacy, who presented a paper on "Law Enforcement in Minnesota and Ambitions for the Future Development of the Pharmacy Law."

"Members of the Minnesota Board of Pharmacy for some years have been attending the meetings of the National Association Boards of Pharmacy and we are happy to have this meeting in our state. The meetings have been of a great deal of value and we have benefited from our association with your group, thereby enabling our Board to better serve the profession in Minnesota by raising the standards, passing improved legislation and adopting regulatory measures

under our new pharmacy law. Our ambition has been to enforce the pharmacy law through a campaign of education by publicity and intelligent personal contact with outlets that are selling drugs contrary to our pharmacy act. We have had convictions in practically every case brought to court but have not generally insisted on large fines. It is very necessary, of course, to get the coöperation of prosecutors, judges, mediums of public opinion, such as the press and the public itself to get a successful enforcement of a pharmacy law, or, in fact, any law. The stressing of public health is a most important factor in getting this coöperation. Intelligent enforcement is largely a job of salesmanship and education. We know that it is desirable to get expressed opinions from judges on different types of cases, interpretations of the various sections of the law, both on the part of judges on the bench and the office of the Attorney General, especially if they are friendly and public-health conscious. In this respect we have been fortunate in having received friendly coöperation which has helped to strengthen our pharmacy law. The Attorney General's opinions, outlawing Hydrogen Peroxide, Aspirin Compound Tablets, 'Kreo,' a preparation similar to Compound Cresol Solution, have all been valuable. (The three opinions are as follows):

Dear MR. PROCHASKA: June 2, 1937.

We herewith acknowledge receipt of your letter of May 26th, in which you state:

'We are finding an abuse very prevalent, especially in beer parlors all over the state, in the sale of preparations known as Aspirin Compounds. These compounds are usually a combination of Aspirin with different drugs, such as Acetanilid, Phenacetin and Caffeine, either one or two combined with the Aspirin. The same are being called by different names, to-wit: Asperline, Aspertain, Aspercyn, etc.'

You ask whether the retail sale of Aspirin Compound Tablets by other than a registered pharmacist is contrary to law. We answer your question in the affirmative, subject to the recognized exceptions contained in the pharmacy act.

Section 16 (*a*) of Chapter 354, Laws of 1937, makes it unlawful 'for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals and/or poisons in any place other than a pharmacy, except as hereinafter provided.'

Section 27 (*a*) of Chapter 354 exempts physicians, dentists and veterinarians from the operation of the act. Section 27 (*d*) contains further exemptions from the act as follows: 'Nothing herein shall apply to or interfere with the manufacture, wholesaling, vending or retailing of non-habit forming, harmless proprietary medicines when labeled in accordance with the requirements of the State or Federal food and drug act; . . . . .'

Section 27 (*e*) provides for the licensing of stores in municipalities where there is no drug store, in which stores certain drugs may be sold.

The question is whether Aspirin Compounds are proprietary medicines within the meaning of Section 27 (*d*)

It is our opinion that they are not proprietary medicines and consequently do not come within the exception stated in Section 27 (*e*). In the case of State *vs.* Zotalis, 172 Minn. 132, 214 N. W. 766, our Supreme Court held that aspirin was not a proprietary medicine. The Court said: 'Aspirin is a coal tar product commonly kept in drug stores and is used and sold for medicinal purposes. It is a drug or medicine within the statute. It is not a proprietary or patent medicine.'

The aspirin compounds referred to in your letter are mere subterfuges to evade the decision of our court in the Zotalis case. A very excellent statement is found in the cases referred to in your letter in which cases Judge Poirier of the Municipal Court of Minneapolis held that aspirin compounds are not proprietary medicines. Judge Poirier said: 'The sale of preparations of the type of aspirin under a different name or aspirin compounds, I consider a subterfuge which nullifies the fundamental purposes of the Minnesota Pharmacy Law, and it was not the intent of the legislature to permit the sale of U. S. P. drugs or adulteration of same with drugs, which adulterations, in some cases are dangerous to health. . . . . Acetanilid, phenacetin, drugs sometimes combined with aspirin in these tablets, are recognized as heart depressants and the indiscriminate sale of it is often dangerous to the health of our citizenry. We must protect public health.'

One of the fundamental reasons for the rigid requirements of the pharmacy law is found in the following statement of the court in the case of State *vs.* Woolworth Co., 184 Minn. 51, 237 N. W. 817: 'But the examination of the quality of medicines sold is not the sole purpose of

having a pharmacist in charge. Many poisonous drugs and medicines may be sold in original packages. The pharmacist knows what drugs are poisonous. He is required to keep a record of sales of numerous poisonous preparations. If attentive to his duties, he will in some degree guard against mistakes and misuse. He must in the first instance determine whether an article called for is a poison requiring registry of the sale. He should know whether an article sold is a standard preparation made according to the U. S. P. formula or an adulterated and harmful preparation.'

Respectfully yours,
WILLIAM S. ERVIN,
Attorney General.

By ROY C. FRANK, *Asst. Atty.-Gen.*

May 20, 1938.

Dear MR. PROCHASKA:

We herewith acknowledge receipt of your letter relative to the sale of Hydrogen peroxide in which you ask whether or not hydrogen-peroxide is exempt from the application of the pharmacy law as a patent or proprietary medicine. We answer your question in the negative.

Laws of 1937, Chapter 354, Section 16 (*a*) provides that: 'It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals and/or poisons in any place other than a pharmacy, except as hereinafter provided.'

Section 27 (*d*) exempts 'non-habit forming, harmless proprietary medicines when labeled in accordance with the requirements of the state of Federal food and drug act' from the provisions of Chapter 354. Consequently such medicines can be sold notwithstanding the provisions of Section 16 (*a*) above quoted.

The term 'drug' as used in Chapter 354 means: 'all medicinal substances and preparations recognized by the United States Pharmacopœia and National Formulary or any revision thereof, and all substances and preparations intended for external and internal use in the cure, mitigation, treatment or prevention of disease in man and other animal, and all substances and preparations, other than food, intended to affect the structure or any function of the body of man or other animal.' (Section 1 (*d*).)

The term 'medicine' means: 'any remedial agent that has the property of curing, preventing, treating or mitigating disease, or that is used for that purpose.'

Hydrogen-peroxide, within the above definitions, is a drug. The Pharmacopœias and Dispensaries unequivocally deal with the medicinal or therapeutic, or in other words, its 'drug qualities.' The question that then arises is whether this drug or medicine is a proprietary medicine. We do not think that it is. Hydrogen-peroxide is prepared in accordance with a formula contained in the United States Pharmacopœia, a standard work giving the formulas and ingredients of drugs and medicines. There is no secret about its manufacture or its ingredients. Any manufacturer can make exactly the same preparation under the United States Pharmacopœia formula. Consequently, it cannot be considered to be a patent or proprietary medicine. See State *vs.* F. W. Woolworth Company, 184 Minn. 51, 237 N. W. 817.

Respectfully yours,
WILLIAM S. ERVIN, *Attorney General.*

By ROY C. FRANK, *Asst. Atty.-Gen.*

March 26, 1938.

Dear MR. PROCHASKA:

We herewith acknowledge receipt of your letter of March 22nd to Attorney-General William S. Ervin in which you state that the sale of poisonous and harmful medicines through channels other than licensed pharmacists is becoming quite prevalent. These preparations are being sold in cafes, beer parlors, by wagon peddlers and in various other business places and by various persons. One of these poisons is known as 'KREO,' it being similar to 'Compound Solution of Cresol.'

Our opinion is requested as to the correct interpretation of the pharmacy law relative to the sale of poisonous medicines that might be classed as patent or proprietary medicines.

Section 16 (*a*) of Chapter 354, Laws of 1937, provides that: 'It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals and/or poisons in any place other than a pharmacy, except as hereinafter provided.'

The exceptions referred to in Section 16 (*a*) are found in Section 27 of Chapter 354. Sub-

section (*a*) of Section 27 provides that the restrictions contained in 16 (*a*) shall not apply to 'a person duly licensed in this state to practice Medicine, Dentistry or Veterinary Medicine' and permits such a person to compound or use drugs, medicines, chemicals or poisons in his practice and to furnish such articles to a patient in a course of treatment. Sub-section (*c*) of Section 27 permits the sale of drugs, chemicals or poisons for commercial purposes and also permits the sale of insecticides, common household preparations and other drugs, chemicals and poisons sold exclusively for non-medicinal purposes. Sub-section (*d*) excepts non-habit forming, harmless proprietary medicines when properly labeled.

None of the exceptions above stated apply to 'KREO' or other poisons used for medicinal purposes. This preparation is labeled 'poison' and is sold as an antiseptic disinfectant for the 'Sick Room, Minor Cuts, and General Household Use.' It cannot come under the exception stated in Subdivision (*c*) of Section 27 since it is sold for medicinal purposes. It cannot come under the exception stated in Sub-section (*d*) of Section 27 since it is not a harmless proprietary medicine.

We, therefore, advise you that the sale of poisons used for medicinal purposes is contrary to law unless sold in a pharmacy or used and furnished by licensed physicians, dentists or veterinarians as provided in Sub-section (*a*) of Section 27.

The purpose of this law is clearly set forth in a memorandum prepared by Judge Poirier of the Minneapolis Municipal Court, and in view of the soundness of his statement we set it out in this opinion as follows: 'The sale of poisonous medicines or drugs by persons not trained in the field of public health is certainly a menace to the public welfare. A great deal of concern is being shown all over the United States because of abuses in the patent and proprietary medicine field relative to the sale of preparations based to a much greater degree from the standpoint of making profits than for the beneficial remedial effects to the buyers of these products. This public sentiment is reflecting itself in Congress to-day, and will no doubt result in the elimination of some of the worse types of abuses.

The medical and pharmaceutical professions, I well realize, are opposed to these many abuses and have been endeavoring to coöperate with the Federal Pure Food and Drug Department in a program to eliminate these practices.

A great deal of public money is spent in training doctors and pharmacists and society should get the benefit of their trained services and protection from the sale of preparations such as poisons or medicines that might be harmful.

Respectfully yours,

By ROY C. FRANK, *Asst. Atty. Gen.* WILLIAM S. ERVIN, *Attorney General.*

Section 16 of our law limits the sale of drugs, medicines and poisons to pharmacies under supervision of registered pharmacists with exceptions. This is true in most states. The proprietary medicine groups have often been more influential in the passage of pharmacy laws in protecting their business interests so that their products could be sold through any outlet or channel, than the pharmacy profession in their ambition to protect public health interests, as was well demonstrated by Dr. Robert P. Fischelis in his most interesting article on 'What Is a Patent or Proprietary Medicine' which was presented at the meeting last year.

A feature of the Minnesota pharmacy law, which I believe is desirable for a model pharmacy law, is the exception referring to proprietary medicines, as follows: 'Nothing herein shall apply to or interfere with the manufacture, wholesaling, vending or retailing of non-habit forming, harmless proprietary medicines when labeled in accordance with the requirements of the State or Federal Food and Drug Act.'

Phraseology along this line might go a long way in eliminating patent or proprietary medicines which are poisonous, as for example, Lysol, Creolin and other preparations of this type also preparations containing Aspirin, Acetanilid, Bromides and so forth. The phrase 'non-habit forming, harmless proprietary medicines' has possibilities over a period of years in considerable intelligent development.

Section 26 of our law makes it unlawful for wholesalers to sell drugs to other than drug stores or places of business having a special permit from the Board of Pharmacy. We have had fine coöperation from our local wholesalers in respect to this requirement.

Section 6 giving the State Board of Pharmacy the power to regulate the practice of Phar-

macy, and also to regulate the sale of drugs, medicines, chemicals and poisons, should be an addition to every pharmacy law. Under this power granted our Board in our new pharmacy law, several regulatory measures have been passed, which I quote as follows:

1. Application for permit to operate a pharmacy in the future should be made before a new drug store is opened for business so that same can be reviewed by the Board of Pharmacy.

2. In the state of Minnesota the sale of Barbiturates and Sulfanilamide must be made in drug stores by registered pharmacists only.

3. The prescribing or sale in drug stores of preparations for venereal diseases, except on physicians' prescriptions, will be termed as illegal.

4. In future examinations, the applicants will be examined as to their knowledge of the requirements and provisions of the Minnesota Pharmacy Law, rules and regulations of the Narcotic and Marihuana Acts and Board of Health rules and regulations.

5. Whenever a pharmacy or drug store changes its location, it shall apply to the Board of Pharmacy for amendment of its annual permit to cover the new location. There shall be no charge for such amendment.

6. No permit shall be issued for a pharmacy or drug store which is kept open more than 56 hours per week, unless at least two registered pharmacists are employed in such pharmacy or drug store on a schedule that will assure the presence of one registered pharmacist at all times. This regulation shall not apply where the owner of a pharmacy or drug store is a registered pharmacist and is continuously and personally in charge of such pharmacy or drug store.

I believe as State Boards we can aid considerably in getting pharmacists into private and state hospitals and institutions.

While to a great degree we are living in an age of greater centralization by the force of economic necessity, I believe that the centralization of the different professional boards is a mistake.

I have received much inspirational thought from these meetings, from the papers and discussions, but especially from those of Dr. Fischelis, Dr. Swain and our neighbor from North Dakota, past president of the A. PH. A., Pat Costello."

The paper was discussed by Messrs. Winne, Hugo Schaefer, Fred Schaefer and Dr. Lascoff.

The next paper presented by Mr. Sylvester H. Dretzka, Secretary of the Wisconsin Board of Pharmacy, was entitled "Pharmacy Law Enforcement in Wisconsin."

"When Dr. Swain asked me to present a paper, my first thought was to decline knowing that those attending these conferences are far more advanced in this work than I am. I tried to justify my appearance and found that justification in the thought that having received the inspiration for our Wisconsin Law Enforcement Campaign at the meeting of this Conference in New York City last year, it was my duty to return something to the Conference, be that something ever so little.

The next reason for my wishing to accept was to encourage the officers of other states by showing them that the Wisconsin Pharmacy Law could be enforced although it is one of the least modern. No state could have been in greater despair than we were over our prospects for law enforcement when the responsibility for the work was undertaken. This seemingly hopeless job was accepted as a challenge.

Except for that portion of the law which came with prerequisite legislation, our law has remained for the most part unchanged for many years. It was this dating and early opinions from the experts that made everyone in the pharmaceutical field feel that there was little hope for him in the law. The general impression given even by the Board inspectors was that what we needed was a complete new law and until that was accomplished there was nothing that could be done. This opinion was accepted everywhere and for that reason little attempt was made to enforce the law.

Everyone was certain that a victory could not be had in any court, but with the next legislative session two years away, a decision was made not to wait. If our law was as bad as assumed, we felt that this was a good time to find out. In order to prove the effectiveness of our law and to explore its weak points we wished to test almost every section. So we launched into a vigorous campaign of enforcement. This program totaled 2486 inspections (643 drug stores and 1843 other retail outlets). This resulted in the following:

(*a*) Illegal sales of drugs stopped in 694 outlets (without legal action).

(*b*) Several court cases, resulting in fines, ranging from $50.00 to $150.00. One fine for $700.00 against a pine board chain. Many cases resulting in $50.00 fines.

(*c*) One $250.00 fine against another national pine board chain with an order from the court to 'lock the store until the state inspection department felt that this store was ready to safely serve the public.' Knowing with what hopelessness the druggists themselves viewed the law, and in order to properly impress the public, we gave these cases as much publicity as possible and this had a wide-spread beneficial effect.

During this period of prosecutions we heard complaints from other dealers about the privileges accorded to the drug stores. It was claimed that potent drugs and poisons could be bought from untrained junior clerks without supervision. It was also claimed that in many instances prescriptions were being filled by unlicensed people. We were asked 'Why the protection.' To show our good faith, and for the public protection, we started a check-up of the drug stores by giving the following advanced warning.

As our applications for renewal of drug store permits arrived, we scrutinized them thoroughly, placing special emphasis on registered personnel. A special form was attached to every application blank which was not executed properly, and this form was returned immediately to the owner with his money and application. There was much uneasiness and some criticism of our straight-laced policy, but this feeling was somewhat dissipated because of the previous enforcement work that had been done on other retail outlets.

Everyone of the 1300 store renewals was given this treatment. This was an easy, effective and inexpensive way to let 1300 drug stores know just what was expected of them. Finally, when an application was approved, a renewal card was sent with a small notice telling each pharmacist that Pharmacy in Wisconsin would be just as good as the pharmacists themselves wished it to be and that they were expected to report any known violation at once. The result was two-fold:

(1) Many interesting cases were reported, a number of which resulted in court action. A few of these pertained to unprofessional practices in the drug stores, such as, filling of prescriptions by unregistered persons. All of these were promptly taken to court and convictions obtained.

(2) Much criticism was avoided. Those who did not report violations could no longer complain about the inadequacy of the law or the value of the Board. Anyone heard complaining was asked if he had followed through on the Board's invitation to report violations. With our limited force this was a quick means of bringing some order out of the existing chaos and of satisfying those who were carrying on according to the law.

The following procedure is used in checking general stores for sales of drugs:

(*a*) The Inspector calls. (*b*) The offenders are warned and given a printed slip notice by Inspector. (*c*) A letter of warning is mailed from the Secretary's office a few days after the Inspector's call. (*d*) The Inspector calls again about two months later. If the store is still violating, the case is taken to court.

We are then able to show the Court that every consideration had been given the defendant. In our law, the $50.00 fine is mandatory. This, if publicized, has a sobering effect on those dealers who read about a fine in their local newspapers. I need not tell you gentlemen how much business these defendants must do to make up that fine.

Another phase of our enforcement work has been to place limitations on practices in Rural Drug Permit stores. While our law allows the Board full discretion in this matter, we found that much abuse had crept in. Many of these outlets were advertised openly as drug stores, selling not only the few U. S. P. items originally permitted but also selling bulk drugs and chemicals as well as patent medicines and poisons. We are bringing these outlets back to their proper function and allow only the display of the permit as advertising. Many a large 'drug' sign has been removed.

We have a fairly good section on practical pharmaceutical training which if properly enforced will do much to help bring back Pharmacy as a profession. It was our *neglect* of this section that brought Soda Fountain Trainees to our Board for examination with the result that few knew anything about professional practice. We now visit every store having a trainee to see whether or not the training required by law is followed. The University of Wisconsin Extension Division has eight field men covering our state. One of these men is a pharmacist. We

have worked out a system whereby a series of visits to these boys in training is made by the field men, who try to interest the boys in pharmaceutical correspondence study. Through this method of study and practical application of the professional training in the store these boys are gaining a new and more thorough type of training.

Our entire enforcement program is helped by the fact that we placed our Inspector under Civil Service. The 'wire pulling' tactics tried in the beginning have almost disappeared. The store owners know there is no fixing and that in itself has tended to straighten out many an outlet which might otherwise feel 'privileged.' It can be said to the credit of our State Association that a strict 'hands off' policy has been maintained. When at times well-known people are involved and there may be a desire on the part of certain Association people to offer advice, they are constrained from doing so because there exists a general feeling of approval toward the work the Board is trying to do.

The majority of drug store owners realize that Pharmacy needs a 'face lifting' and that such an operation includes a thorough cleaning, even to washing behind the ears. The violators are in the minority, but this small group is giving us an unenviable reputation. Despite the grumbling of the offended minority, the fact is that Pharmacy in our state is in a far healthier condition to-day than it was a year ago. We have not reached all sections of our state in checking general stores but will do so soon, for our Civil Service is now examining candidates with a view to giving us another Inspector.

A feeling now exists among the state pharmacists that with a few changes our law will do very well. This attitude is almost a complete 'about face' from what it was twelve months ago. There are some features emphasized by Dr. Swain's Committee on 'Pharmacy Law changes' which we wish to add in order to modernize our law. Secretary Prochaska of Minnesota told us of the value of the word 'harmless' in their law as applies to Patent Medicines. We would very much like to add that feature. Mr. Costello's paper last year on 'State Inspection' has been valuable to us. On the whole, however, we feel we have learned this year that the hazardous road of an entirely new law may not be necessary and that a few amendments, as suggested by Dr. Swain's Committee, will give us a far better law than we had hoped we would ever have.

I recall that Dr. Swain, Dr. Fischelis and Dr. Christensen have often warned about attempting too ambitious a program unless we are assured of its passage through the dangerous shoals of political intrigue. The state of Wisconsin owes much to this Conference for the inspiration and encouragement brought to our Board. It is from this Conference and the individuals guiding it that we gained the courage to attempt a program which was once regarded as 'hopeless' by every pharmacist in Wisconsin.

My advice to the states is: 'Sit down and study what you have. Take the golden nuggets of your existing law and combine these with the splendid additions which have been worked out by this Conference and then enforce such a law with courage. Pharmacy in your state will then be on a basis of recovery.' "

The paper was discussed by Messrs. Swain, Cook, Winne, H. Schaefer and Ryan.

REPORT OF THE SECRETARY AND TREASURER.—The following report was read by Mr. Ford:

"This is the tenth annual meeting of the Conference and in reviewing the work of the Conference we can see that a great deal of good has been accomplished by aiding some of the state departments having to do with law enforcement in the pharmaceutical field. Many inquiries have come to the attention of the Conference and with the aid of our able Chairman we have been in a position to render the necessary information.

During the past ten years we have had little expense connected with the Conference, except for printing and mailing reprints of the proceedings of our meetings and other printed matter, such as court decisions and Attorney-Generals' opinions. While our finances are not so large, yet you may wonder just what we expect to do with the fees we are collecting from year to year. Chairman Swain has had in mind some very extensive work for the Conference when the finances will permit, therefore, we hope the Conference will continue to receive your financial support.

For your information I am listing herewith the receipts and expenditures of the Conference since it was established:

Year.	Receipts.	Expenditures.	Balance.
1928	0.0	0.0	0.0
1929	0.0	0.0	0.0
1930	0.0	0.0	0.0
1931	190.00	23.62	166.38
1932	175.00	68.94	243.94
1933	125.00	198.27	170.67
1934	110.00	0.00	280.67
1935	210.00	109.26	381.41
1936	120.00	10.70	490.71
1937	140.00	53.37	577.34
1938	135.00	114.68	597.00

Receipts since last annual meeting:

November 13, 1937	Idaho	$ 5.00	
June 16, 1938	Maine	5.00	
June 16, 1938	Kentucky	5.00	
June 16, 1938	Wisconsin	10.00	
June 16, 1938	North Dakota	10.00	
June 16, 1938	Dist. of Columbia	10.00	
July 30, 1938	Maryland	10.00	
July 30, 1938	Colorado	10.00	
July 30, 1938	Florida	10.00	
July 30, 1938	New York	10.00	
July 30, 1938	Ohio	10.00	
July 30, 1938	New Jersey	5.00	
July 30, 1938	Virginia	5.00	
July 30, 1938	Kansas	5.00	
July 30, 1938	Oregon	5.00	
August 18, 1938	Alabama	5.00	
August 18, 1938	W. Virginia	5.00	
August 22, 1938	Minnesota	10.00	
	Total	$135.00	
	Balance Cash on Hand 1937	577.34	$712.34

EXPENDITURES.

December 30, 1937	A. PH. A. Reprints	$ 4.68	
February 28, 1938	A. PH. A. JOURNAL	100.00	
June 14, 1938	Hugo Schaefer (Finance Committee expenses)	10.00	
			114.68
	Balance Cash on Hand to Date		$597.66"

COMMITTEE ON FINANCE.—Chairman Schaefer reported that his committee had appealed to all of the State Boards for a contribution and the Secretary's report just read checks with the amount of money received, although some other receipts are expected.

At 11:30 P.M. the session adjourned.

The Second Session of the Conference convened at 10:30 A.M. Friday, August 26th, in Joint Session with the Section on Education and Legislation, and the Conference of Pharmaceutical Association Secretaries, with Chairman George A. Moulton presiding.

Mr. Kenneth Jones, secretary of the Board of Pharmacy of South Dakota, gave a very comprehensive and interesting talk on "Pharmaceutical Law Enforcement" in his state. Mr. Jones said that under the Pharmacy Act of South Dakota all pharmacies operate under annual permits and that there had been some litigation under the law with respect to the validity of these permits.

Mr. Jones stated that sometime ago, an application was filed for a drug store permit and was denied on the ground that the past history of the applicant under the South Dakota Pharmacy Act and other laws in effect in South Dakota was such as to justify the Board in the belief that he was not a satisfactory person to operate a drug store. The Board's position was contested but was sustained by the trial judge and the opinion which he rendered seemed to be based entirely upon the fact that the Board had taken a position and that settled it. In other words, the opinion of the Court seemed to hold that the Board of Pharmacy of South Dakota was vested with discretionary powers with respect to the granting or withholding of permits. The case was not appealed and thus no final ruling on the subject is available. Mr. Jones said, however, that his Board was fully of the opinion that it did have discretionary powers under certain circumstances.

Mr. Jones also stated that the license fee under which general merchants handled certain drug products had worked satisfactorily and that the number of such dealers had been reduced and that it had become less and less a problem for the enforcing agency.

Mr. Jones's remarks were carefully followed as it was apparent that the Board of Pharmacy in his state was doing an effective piece of work in the administration of pharmacy laws and thus making its contribution to the public health of the state.

Mr. A. C. Taylor, president of the Board of Pharmacy of the District of Columbia, gave a very interesting discussion on the experience of his Board in seeking to obtain a modern pharmacy law for the District of Columbia, as well as the various provisions of the Uniform State Narcotic Act recently passed for the District.

The proposed pharmacy act would include annual registration of pharmacists, the operation of drug stores under permits, minimum equipment provisions, and wide administrative powers for the enforcing agency, as well as other modern requirements.

The Narcotic Act recently passed in the District of Columbia was in the nature of the Uniform State Narcotic Act but with some important modifications. The new law provides for the issuance of official written order forms to be used in connection with the purchase at wholesale of exempt narcotics and authorizes the Board of Pharmacy of the District of Columbia to make a reasonable charge therefor.

The law also makes it an offense for anyone legally entitled to deal in narcotics to have any exempt preparations in his possession unless they were obtained in pursuance of the state official written order forms. The law also restricts the distribution of paregoric to physicians' prescriptions.

Mr. Taylor's remarks were followed carefully as he has had long experience in the field and is well qualified to discuss the law under which his Board operates.

Dr. Robert L. Swain presented a paper entitled "The Newly Enacted Food, Drug and Cosmetic Act and Its Relation to Pharmaceutical Legislation." This paper appeared in the September issue of the JOURNAL OF THE AMERICAN PHARMACEUTICAL ASSOCIATION. It proceeded on the theory that state pharmacy acts were deficient in matters of basic definition and that the definitions in the recently enacted Food, Drug and Cosmetic Act should be incorporated in state pharmacy laws so as to bring about uniformity between pharmacy law enforcement and food and drug administration, in so far as this was practical and feasible.

In concluding his address Dr. Swain said:

"It is my judgment that an attempt should be made to bring about uniformity so that the pharmacy laws may be broad enough and comprehensive enough to encompass that field of drugs and medicines which is covered by the food and drugs acts. I believe this will result in greatly expanding the scope and authority of pharmacy laws, will have a tendency to more sensibly limit the distribution of drugs and medicines to pharmacists, and will afford the public a much greater degree of protection in this highly important matter. At any rate, it opens up a new field of study and one which should receive the very closest consideration of all interested in a modernization of pharmacy laws in a real and modern sense."

Following the presentation of this paper, Mr. J. H. Goodness of the Massachusetts College of Pharmacy raised several questions with respect to the meaning of certain provisions of the Federal Food, Drug and Cosmetic Act.

Mr. Goodness made the point that physicians' prescriptions were subject to some of the more burdensome requirements of the Food, Drug and Cosmetic Act and that, if this were true, the state laws seeking to follow the federal law should be very carefully studied as certainly it was

not consistent with the purpose and use of physicians' prescriptions to have them subject to the general labeling and misbranding sections of the law.

Mr. Goodness also raised the question as to whether the new drug section of the Federal Food, Drug and Cosmetic Act was not sufficiently broad as to embrace physicians' prescriptions as well as the diversified list of products compounded in the drug store and dispensed in routine practice. Mr. Goodness emphasized the necessity for studying this proposal when state laws are being drafted.

The points raised by Mr. Goodness were looked upon as of real interest as well as showing a close familiarity on his part with the provisions of the Federal act.

The Joint Session was declared closed and Chairman Swain of the Conference assumed the Chair and called for the report of the Nomination Committee. Chairman of the Committee, H. S. Dretzka, made the following report: *Chairman*, R. L. Swain; *Secretary-Treasurer*, M. N. Ford; *Delegate*, F. C. A. Schaefer.

Upon motion duly seconded the report was adopted and Chairman Swain asked Dr. Fischelis to cast the ballot for the election of the named officers. Dr. Fischelis cast a unanimous vote and the officers were declared elected.

Chairman Swain announced that the Committee on Finance would be continued and then declared the Conference adjourned.