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MORE ABOUT THE HARRISON BILL.*

IN the December number of the JOURNAL, Editor Beal, in his customary interesting and lucid manner, discusses some of the objections made to the present so-called Harrison Bill. If there be any one thing which I regret in this connection, it is my inability to share the views of Dr. Beal on this oft discussed measure. In aid of a clear understanding of these comments, it is suggested that they be read together with the editorial.

First: It will hardly do to say that the National Drug Trade Conference in its draft of the Harrison Bill sought only the means to trace habit-forming drugs to the hands of the distributor, and to avoid interference with the police powers of the several states. The bill as drafted would supervise and control every grain of the narcotics as distributed to consumers by retail druggists, other than preparations containing minimum quantities. To say that the Harrison Bill does not undertake to regulate distribution to the consumer, in the face of a provision under which pharmacists may sell only on physicians' prescriptions, and are required to keep such prescriptions for a term of years, always subject to the control and inspection of Government officials, cannot well be. There are a number of other instances in which the bill would aim at police regulation without showing any connection with the taxing or inter-state commerce power of the Federal Government. The most curious part of it all is, however, found in the fact that the Conference deemed it necessary to ignore its own expressed intent when it came to consider distribution by the retail druggist.

Second: To contend that physicians are not required to register under the bill if they merely prescribe, is hardly correct, for Section II of the bill provides that the pharmacist may fill the prescription *only of physicians who are regis-*

*A reply to "Some Objections to the Harrison Bill" on p. 1498 of the December Journal.

tered under the Act. It will not serve the physician much to have the right to prescribe without being registered, if no one may lawfully fill his prescription. The point, however, is that a physician who does not assume the functions of a pharmacist, and who himself uses the narcotics only for administration by him in cases of emergency, should not be put upon the plane with the dispensing doctor.

Third: It is my opinion that those who have been advocating Federal regulation of the traffic in narcotics, have had in mind largely the inefficiency of the state laws, and the inefficiency of their enforcement. It is, therefore, aside of the question to say, that if state laws are inefficient, or if local authorities are lax in their enforcement, that then the interest of the Harrison Bill will be largely nullified. Those who have advocated proper Federal legislation, have sought something which would be effective in spite of the inefficient state laws, and the lax enforcement by local authorities.

Fourth: Of course, it is no hardship to require the pharmacist to preserve his prescriptions. This is not the point. The pharmacist is required to preserve them *as a record, and must keep them open for inspection and supervision.* If such a requirement for record, inspection and supervision is deemed essential from the pharmacist, then, why is it not essential for the man who as a dispensing physician assumes the function of a pharmacist? There can be only one sound reason advanced for the differentiation, and this would have to be based on the claim that the wrong doers are all in the ranks of pharmacy, and not in the ranks of the dispensing physician.

Fifth: It is difficult to understand why it would be unjust to require the dispensing physician to write a prescription for the narcotics which he would dispense, and then to keep such prescription as a record open for inspection and supervision, just as the pharmacist is required to do. If the dispensing physician assumes to act in a dual capacity, why should he not be required to comply with the requirements which are incident to each of said capacities? Of course, if the dispensing physician does not know how to write a prescription, it may be a little hard on him, but then, in the cause of humanity, it is high time that he learn. Incidentally, he might then learn to write other prescriptions. The requirement is not intended to be that some third person write the prescription for the dispensing physician. He is to write it himself, and thus establish the written record for inspection, just as the pharmacist is required to do.

Sixth: While it is true that inequality in the operation of the laws between the pharmacist and the physician gives some ground for questioning the constitutionality, this is not at all the only reason advanced. The important grounds upon which the constitutionality of the Harrison Bill is questioned are

(a) That it discriminates between those who are required to pay the same tax. A manufacturer and a wholesaler, who pay the tax and who are not pharmacists (created by state law) may not sell to the consumer, while the pharmacist may sell to the consumer and act also as a manufacturer and sell at wholesale. That the pharmacist is permitted to do this, is of itself no cause for complaint on the part of the writer, but under the law it produces such inequality and discrimination as to seriously affect the constitutionality of the bill. This

is said with full knowledge, that uniformity as specifically required by the Federal Constitution, has been decided to mean geographical uniformity, but aside from this, it is the first essential of every act to give the same rights to those who are required to pay the tax.

(b) Sub-Section (a) and (b) of Section II, are purely an exercise of the police power, without showing any connection whatever with either the taxing power or the interstate commerce power. If these provisions are not shown to be an incident to either the taxing power or the interstate commerce power of the Federal Government, then the Government has no authority to enact them.

If these two Sub-Sections are held unconstitutional, they do not merely affect some minor provisions, but do affect the constitutionality of the entire act, and they can be changed, if the dispensing physician is not exempted, to meet constitutional objection.

Seventh: In deciding upon the constitutionality of the Act, the Court could not take into consideration that the druggist has no business to sell habit-forming drugs direct to the general public. It would have to recognize, that in and of itself, such is not properly a concern of the Federal Government. The example sought to be cited of inequality between the druggist who buys a barrel of alcoholic liquor and sells it as such, and the druggist who buys a barrel of alcoholic liquor and uses it to make real medicines, and then sells it, is hardly an analogy. In the one case the druggist sells liquor and in the other he sells medicines. The druggist who sells liquor has exactly the same right as has the druggist who sells medicines, and if he does not sell his barrel of alcoholic liquor as such, then he is not required to pay the retail liquor dealer's tax.

Eighth: It has not become known to me, that any one has advocated that the dispensing physician should be required to demand of his patient that he register as a dealer. The thing that has been advocated is, that the dispensing physician make and keep exactly the same kind of a record as the pharmacist is intended to keep. If there be any absurdity in this, it can be found only in the mind of one who would favor the dispensing physician acting as a pharmacist, as against the pharmacist acting as a pharmacist. The question is not with reference to the administration of a dose by the physician to the patient, it is with reference to the physician who would dispense to his patient a quantity of narcotics for subsequent use.

Ninth: To claim that permission to the dispensing physician to distribute narcotics *only in the course of his professional practice*, is a safeguard against the abuse of the privilege is rather farfetched and not borne out by past experience. The latitude which of necessity would need to be given every physician is sufficient to cover most every possible abuse. To say that the danger of a \$2000.00 fine, in making use of the order blank to obtain the drugs for any other but a lawful business, would prevent abuse by the physician hardly serves to sustain the point which is sought to be made, for so long as it rests in the discretion of the physician to claim that he has dispensed the drug in the legitimate practice of his profession, it also rests with him to claim that it was a lawful business. To say that, if the exception and discrimination made in the bill in favor of the dispensing physician transfers to him all of the illegitimate traffic

in narcotic drugs, this should be a source of congratulation on the part of the pharmacist, is entirely aside of the point involved. Those who have sincerely and actively been advocating proper Federal regulation, which should include the Drug Trade Conference, have been interested and engaged in this effort for the purpose of securing efficient regulation which would curb the narcotic evil for the common welfare of all, not for the purpose of giving one class of men an opportunity to proudly strike their chests proclaiming that the evil doers are not among them. To the person who is interested in preventing illegitimate traffic in narcotics; it can be but of small satisfaction to know that his effort has succeeded only in transferring part of the traffic from one class entirely to another class. Of course, there is nothing in the bill which would restrict further state legislation. It is, however, the opinion of many, and more than likely the opinion of those who first agitated proper Federal regulation, that state legislation, no matter how thorough and complete, would always fail because of insufficient enforcement by the state authorities.

Tenth: There must be error in the claim, that the phrase "Registered Under This Act" was carried over from several earlier forms of the bill, for the writer has industriously studied such earlier forms of the bill and has not found the phrase *in connection with the subject matter* in which it is found in the present Harrison Bill. To impose upon the pharmacist under a penalty of \$2000.00 and five years' imprisonment the duty to know that a prescription which he would fill is written by a physician who is registered as a dealer in narcotics, is certainly going just a little beyond sound reason. That those who are responsible for this provision did not really intend it, must be granted by any fair-minded man, but that it continues to be defended after being pointed out, is to be regretted. It certainly would be far more in keeping with the sound judgment of those who are responsible for it, had they graciously said "It is an error and we will see that it is corrected."

In making these comments it has been my purpose to touch only upon the more important features of the editorial in question. It, however, may not be out of place to say that, I cannot believe that Congress will ever stultify itself by enacting into law that so-called Harrison Bill in its present form. So long as certain special interests seek advantages and exceptions, the difficult problem of securing proper effective and enforceable legislation will not be solved, unless those who are entrusted with the task decide that all shall be treated with equal fairness, and none with special favor. As soon as this can be agreed to, the inherent difficulties will become far less difficult.

FRANK H. FREERICKS.

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THE EDITOR'S REPLY TO MR. FREERICKS.

WHEN the discussion of so technical a matter as is involved in the Harrison Bill is unduly prolonged there is always danger that it may become a mere exercise in verbal dialectics, and what was intended as serious debate degenerate into fruitless quibbling over words and definitions.

While desirous of avoiding responsibility for such a result in the present in-