

Section on Education and Legislation

Papers Presented at the Sixty-Second Annual Convention

A FORM OF LAW PROPOSED FOR THE REGULATION OF THE ITINERANT VENDING OF DRUGS, MEDICINES AND POISONS.*

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The regulation of the distribution of drugs, medicines and poisons by unqualified itinerant vendors is a subject of perennial interest.

Pharmacists and physicians are naturally indignant at the discrimination of the law which imposes many burdensome conditions upon the conduct of their respective callings, but permits itinerant vendors to sell without let or hindrance, not only the so-called domestic or household drugs but also any other combination of drugs, provided their vendors are adroit enough to clothe them with some fanciful title not found in the United States Pharmacopœia or National Formulary.

This discrimination bears with especial hardship upon the pharmacist located in the small town or village. The law requires him to be especially educated for his business, and to be registered by examination. His goods are subject to both Federal and State inspection, and he is liable to severe penalties if they are deficient in quality. He is specially taxed for the enforcement of the laws regulating the practice of pharmacy, in addition to the tax which he pays for the maintenance of the government of the local community. It is small wonder, therefore, that he raises a protest when he sees his business taken away from him by itinerant vendors who contribute nothing to the support of the community in which they do business, who are not qualified by education to judge of the character of the products which they offer for sale, and which products are frequently dangerous to life and health, and still more frequently are of inferior quality.

Numerous efforts have been made to enact legislation restraining or regulating such itinerant vending, and occasionally acts for that purpose have been placed upon the statute books, but have generally been declared void by the court of last resort when attempts have been made to enforce them.

The fault of such attempted legislation has been that it has almost invariably tried to accomplish too much. Under the guise of regulation, it has imposed conditions that practically would have amounted to extermination: and under the pretense of protecting the public health has really attempted to legislate against the business of the man whose store was upon wheels in favor of the business of the man whose store occupied a permanent location. To make such legislation

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valid there must be a logical connection between the requirements which it imposes, and the general public good, and not merely the particular good of the retailer who has a fixed place of business. If this connection with the public welfare be plainly shown, then such legislation will stand a good chance of being sustained by the courts, even if it shall amount to practical prohibition of the itinerant vending of drugs and medicines.

In other words, the only warrant for the imposing of special requirements upon the itinerant vendor of drugs and medicines is the necessity of protecting the public against the sale of fraudulent or dangerous preparations or the collection of necessary taxes; and this necessity must be real and in line with the requirements imposed upon the non-itinerant vendors of the same class of articles, and must not be designed merely to interfere with the business of those who travel from place to place in favor of the interests of those who do business in one place.

The following is proposed as a form of law which the writer believes meets most of the constitutional objections which have been offered to such legislation in the past, and at the same time provides the means of bringing under proper control and subjecting to proper regulations, a variety of itinerant traffic, which without proper regulation, is likely to be dangerous to public health besides being unfair to the qualified and registered pharmacist and physician.

The form given below would, of course, need modification to fit it to local conditions in the states when it was proposed for enactment, as for example, by substituting the name of the state official charged with the enforcement of the food and drug laws, where these are not enforced by the state board of pharmacy, etc.

A BILL

To regulate the itinerant vending of medicines, and nostrums, and of compounds and mixtures containing dangerous or habit-forming drugs, and to provide for the licensing of vendors of the same.

Be it enacted by the General Assembly of the State of

Section 1. Any person, firm or corporation desiring to engage, either as principal or as agent, in the business of selling, or vending by peddling, or by canvassing from house to house, or by vending from valise, pack, bundle, wagon or other vehicle, or by public out-cry, or upon the street or public highway, any drug or medicine, or any combination or mixture of drugs and medicines recommended for the cure, treatment or mitigation of disease, injury or deformity, either of man or other animals, shall apply to the state [board of pharmacy] for a license, or for a certified copy thereof, as provided in section two of this act, authorizing such peddling, canvassing, selling or vending.

Every application shall be in the form prescribed by the state [board of pharmacy] and shall particularly set forth the drugs, medicines, or combinations or mixtures thereof desired to be vended or sold, and shall be accompanied by samples of such drugs, medicines, combinations or mixtures, sufficient in quantity for analysis, the quantity to be such as may be determined by the state [board of pharmacy] and by a true statement of the quantity or proportion of any alcohol, opium, morphine, codeine, heroin, or cocaine, or of any salt, alkaloid, derivative, preparation or compound of any such drugs contained therein, and by copies of the circulars, labels or other printed matter by which such articles are to be accompanied or advertised.

If the state [board of pharmacy] is satisfied that such application is in the proper form and that the drugs, medicines, combinations or mixtures proposed

to be sold or vended do not contain poisonous or habit-forming drugs in greater proportion than is permitted by law, or alcohol in greater proportion than is necessary to preserve or hold the essential ingredients of such drugs, medicines, combinations or mixtures in solution, and that such preparations cannot be used as alcoholic beverages nor to create or satisfy a drug habit, and that they are not dangerous to life, or health, nor intended for unlawful or immoral purposes, and that the circulars, labels or other printed matter by which such articles are to be accompanied or advertised do not contain any statements that are false and fraudulent, [the State Board of Pharmacy] shall upon receipt of the fees hereinafter described, cause to be issued to such applicant a license authorizing the selling, peddling or vending of such drugs, medicines, combinations or mixtures thereof.

Such license shall particularly describe the drug, medicine, combination or mixture authorized to be sold thereunder, the name of the person, firm or corporation to which the license is issued, the date when such license expires, and shall be signed by the [Secretary of the state board of pharmacy].

Nothing in this or in any other section of this act shall be construed to affect the operation of any provision of law regulating the practice of pharmacy, medicine, dentistry or veterinary medicine, or regulating the sale of alcoholic liquors, habit-forming drugs, or of food and drugs, nor shall it be construed to suspend or avoid the operation of any legal ordinance of any municipality regulating the itinerant vending or peddling of drugs, medicines or other articles.

Section 2. The state [board of pharmacy] shall be authorized to charge and collect the sum of ten dollars (\$10.00) for each such license, and if the sale of more than one drug, medicine, compound or mixture is authorized thereunder, they shall be authorized to charge and collect the sum of one dollar (\$1.00) for each additional drug, medicine, compound or mixture. No person, firm or corporation shall be required to procure more than one license for the sale of any preparation, but each agent shall be required to carry with him the license obtained by his principal, or a certified copy thereof, and to produce the same for inspection when requested to do so by any officer of the law, or by any inspector of the state [board of pharmacy] and when more than one agent or canvasser is employed by any person, firm or corporation, the state [board of pharmacy] shall furnish certified copies of such license for each of such agents or canvassers and shall be authorized to charge the sum of one dollar (\$1.00) for each copy thereof. No license shall be issued for a longer period than one year.

The state [board of pharmacy] shall cause a record to be kept of the licenses issued under this act, to whom issued and of the dates of expiration thereof, which licenses shall be consecutively numbered, and all drugs, medicines, combinations or mixtures thereof, authorized to be sold or vended thereunder shall bear a label upon which is printed in plain and easily read letters the words, "Sale authorized by [name of state] License No. _____," accompanied by the serial number of such license and the date when such license will expire.

Section 3. Any person, firm or corporation, who, either as principal or agent, shall sell or offer for sale, by peddling, or by canvassing from house to house, or by vending from valise, pack, bundle, wagon or other vehicle, or by public outcry, or upon the street or public highway, any drug or medicine, or any combination or mixture of drugs or medicines recommended for the cure, treatment or mitigation of any disease, injury or deformity, either of man or other animals, without first having obtained a license from the state [board of pharmacy] as hereinbefore provided, or any one who in any application for license under this act shall state falsely the composition of any drug, medicine, combination or mixture, or when vending by public outcry shall make or utter any statement regarding the articles offered for sale which shall be false or misleading, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than fifty

dollars (\$50.00) nor more than two hundred dollars (\$200.00) for the first offense, and on any subsequent conviction for the same offense shall be fined not less than two hundred dollars (\$200.00) nor more than five hundred dollars (\$500.00).

All licenses and other fees and all fines collected under this act shall be paid to the state [board of pharmacy] and by [them] shall be paid into the state treasury, where they shall be disposed of according to law.

Section 4. It shall be the duty of the state [board of pharmacy] to administer the provisions of this act, to investigate charges of violation of any of the provisions, to prosecute or cause to be prosecuted any person, firm or corporation guilty of such violation and to make such proper and lawful regulations as may be necessary to carry the provisions of this act into effect.

In case it is desired to regulate also the itinerant practice of medicine, the writer suggests the insertion between Sections 2 and 3, of another Section something like the following:

Section 3. Any physician or person having or claiming authority to practice medicine under the laws of this state, and who, not being a legal resident, shall desire to begin or continue the itinerant practice of medicine in this state, shall first obtain authority so to do from the state board of health which (or who) upon proper application in writing may issue a permit for such practice covering a period of one year from date upon the payment of a fee of dollars and the filing of a bond for with good and sufficient sureties residing in this state, to insure against the improper performance of medical service.

Any physician having or claiming authority to practice medicine under the laws of this state, and who being a legal resident of this state, may desire to begin or continue the itinerant practice of medicine may obtain a permit in the same manner as prescribed for a non-resident, but shall not be required to file the bond described in this section.

The state board of health shall upon a proper showing of authority of the applicant to practice medicine in this state, and upon the performance of the other acts named herein, issue the permit for an itinerant physician, provided no permit shall be issued to such physicians as offer to treat diseases of a venereal nature, nor to any physician of known immoral character or intemperate habits.

The state board of health shall at once revoke the permit of any itinerant physician who shall be proven to be of immoral character or intemperate habits, or who shall offer to treat diseases named herein, and in the event of such revocation no portion of the fee paid shall be refunded.

The words "itinerant physician" within the meaning of this act shall be deemed to mean any physician who being a non-resident of the state shall practice medicine from place to place within the state and who shall offer his services in the various localities through public advertising of any nature, or by word of mouth in any street or public place, or who being a resident of this state shall so practice or advertise outside of the county of his legal residence.

The provisions of this section shall apply to any physician so practicing or advertising whether acting as principal, agent or employee.

Each itinerant physician shall carry with him his permit for the current year and shall produce the same for the inspection of any officer of the law or any agent of the issuing authority.

DISCUSSION.

Mr. F. H. Freericks, of Cincinnati, said he desired to express his pleasure at having been present at the meeting a year or two ago of the Academy of Medicine and Ohio Valley Druggists Association of Cincinnati, where Mr. Beal had discussed this question of the itinerant vendor. It became apparent at that time that the physicians were equally interested with the pharmacists of the country in this question, and, subsequent to that meeting, he had met

some fifteen or twenty of the prominent physicians of Cincinnati, who had been present at the meeting, who assured him—and possibly through him the Association—that any effort of this kind would have their very hearty approval. A bill had been introduced at the last session of the Ohio Legislature which, to a great extent, embodied the views here expressed by Mr. Beal. He agreed with Mr. Beal that any effort in this direction must be based primarily on the public good and welfare; it could not be a question of what was best for the druggist, but must always be a question of whether it served the public welfare. He expressed the hope that some method might be found by the author of this bill under which it would be possible to make it applicable to the unqualified vendor, who had a fixed place of business, as well as to the unqualified vendor who traveled around, because there was some doubt as to whether a distinction made as to the itinerant vendor that was not applicable to the vendor at a fixed place, would be constitutional.

Mr. Nixon thought one of the strongest assets the itinerant vendor had was in that clause of the Pure Food & Drugs Act allowing a multiple standard. In his section of the country they had found that these vendors were selling tincture of iodine containing three per cent., which the law allowed. He had a customer to whom he had sold tincture of iodine to bring it back because it stained (!) his hand. It was easy to see where he had been buying the article. He had had physicians tell him the same thing, that they were able to obtain tincture of iodine which would not stain the skin, and that their patients preferred it. Another instance was peppermint. He thought the percentage of essence of peppermint, which was 10, was too high. A lady had brought him back a bottle not a great while ago, saying she had given her child a teaspoonful of this essence of peppermint, and it had nearly strangled the child. She had been buying of an itinerant vendor, and he requested her to bring him the bottle, which she did, and he found it contained only 2½ percent. of oil. Personally, he expressed himself as being strongly in favor of the single standard for Pharmacopœial preparations.

Mr. Cassaday said that, in Indiana, they had had quite an experience at Indianapolis, at the last session of the Legislature, in getting their narcotic law passed. When it began to be apparent that the bill was to be enacted into law, the question arose as to where the authority to enforce its provisions should lie. Some contended that the Board of Pharmacy was the proper authority, others that it was the Board of Health. The Press took the side of the Board of Pharmacy, as it had control of the sale of medicines, and argued that it was rather out of the sphere of the Board of Health. As had been suggested here, these itinerant vendors were becoming "drug-stores on wheels." The question was, who was going to look after the enforcement of the law as to the sales of medicines and the licensing of those who should sell medicines in the State? Was this authority to be turned over to the Board of Health? It was generally conceded that these boards had enough to do already, and he was ready to enter his protest against any supervision of the sales of medicines in any way by the Board of Health. Druggists were the people best qualified to do this. He thought this could be properly regarded as a matter pertaining to the public health, which should properly be administered through the Board of Pharmacy. If not, druggists might as well turn the matter over to some other association that knew less or nothing about it. He thought the people themselves should make it their business to study and know about these things.

GOVERNMENT AID TO FRENCH CHEMICAL INDUSTRIES.

The French Government, by presidential decree, created a special bureau in the Department of Commerce, for the duration of the war, charged with matters touching the production and supply in France of chemical and pharmaceutical products.

The decree (see *Journal Officiel* for Oct. 19, p. 8355) provides that the duties of the office shall be to determine the amount of existing stocks of chemical and pharmaceutical products, to estimate the present volume of production, and to secure production and distribution for the future. "It is equally its duty," the decree continues, "to develop in France a more intensified production of these same products and to encourage the manufacture of new products." Mr. Behal, professor in the *Ecole Supérieure de Pharmacie* and member of the Academy of Medicine, is named director.—Consul General A. M. Thackara, Paris, Oct. 22.