

things and help others to see with us for the betterment of our profession and our fellow men. These things we ask not so much for ourselves, but grant our conduct, our efforts shall be such, they may be inspiration to some of those among us and to those

who may come after, that when our day is done, it may be said, we gave of ourselves to make things better for those who remain." Amen.

The meeting was adjourned.

CONFERENCE OF PHARMACEUTICAL LAW ENFORCEMENT OFFICIALS

ABSTRACT OF PROCEEDINGS

The Fourteenth Annual Meeting of the Conference of Pharmaceutical Law Enforcement Officials was convened by Chairman R. P. Fischelis at 11:30 a. m., in the Lincoln Room, immediately following the morning session of the National Association Boards of Pharmacy.

ADDRESS OF PROFESSOR ARTHUR.—Chairman Fischelis introduced Professor William R. Arthur, Professor of Law, University of Colorado, who addressed the Conference and the members of the National Association Boards of Pharmacy on the subject entitled "Rights and Liabilities of the State Board of Pharmacy as Construed by Our Courts." Professor Arthur spoke as follows:

"Mr. Chairman and Law Enforcement Officials: It is a privilege to have this opportunity of addressing you at the Fourteenth Annual Meeting of the Conference of Pharmaceutical Law Enforcement Officials. My subject is 'Rights and Liabilities of the State Board of Pharmacy as Construed by Our Courts.'

In attempting to listen to me this morning please realize that I have not written a paper to read to you, but instead shall speak from notes containing digests of cases, comments and a few quotations, the result of my labors in culling through the many court decisions contained in our state and Federal reports bearing directly on my subject.

Also let me explain my boldness in being willing to appear before a trained and experienced body of officials when I am not a pharmacist, but merely a law lecturer on real property and allied subjects at the University of Colorado. However, more than twenty-five years ago Colonel H. C. Washburn, Dean of the College of Pharmacy at the University, invited me to give a short course of lectures on some phase of drug laws to his senior class. In preparing material for these lectures, I was surprised to discover that there is a great deal of law on the subject, that much of it is quite conflicting, and that it is very poorly classified and arranged in the regular law books. As a result of these facts, Dean Washburn and I commenced to select and arrange suitable material for our use in pharmacy classes. Later, this material was made available for use in other schools.

In time I became interested more in the liability of the practicing pharmacist, than in the law enforcement side, and my prior addresses have been for the most part along this line. It has taken some readjustment of notes, and additional reflection to view the problems from the angle of enforcement officers.

As suggested by the topic assigned me, the sources of my information are the decisions of our American courts, both state and Federal, and I have been fortunate in having access to all American cases involving State Boards in any way, either civilly or criminally. In classifying and arranging the many cases it was easy to discover that the law relative to State Boards of Pharmacy has developed in a well-defined period of time in America. These laws were enacted in a more or less crude form between the years of 1880 and 1890. As these acts were a departure in the field of legislation, some mistakes were made in passing them, and as the purpose of them was to regulate the drug business, they naturally interfered with and restricted some persons in their manner of doing business. As a consequence, from about 1890 to 1900 the constitutionality of this legislation was vigorously assailed from many angles. The unconstitutional provisions were weeded out during this period of litigation. Then in the third stage of growth, from about 1900 to 1910, the litigation centered around the interpretation, construction and application of the many valid provisions. With the enactment of the Federal Food and Drugs Act of 1906, a new factor entered into the legal situation. The statute has had an interesting history, and has been much litigated.

At the present time about one-half of the litigation concerning drugs and druggists is in the Federal Courts and in relation to U. S. Statutes. In a little less than half of the remaining cases, State Boards are involved. We are not exaggerating the picture then in stating that today there are a very large number of cases involving State Boards, and that some of these cases concern important issues.

Many of the problems I shall try to discuss today have been suggested to me by board members, and especially those recently placed in the responsible

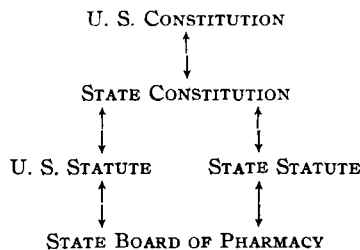
position. They have seemed to be at a loss to know what principles of law should guide them in making decisions and judgements. They are keen to know what liabilities are involved, and what litigation may follow if errors and mistakes are made.

In order to have something to guide us, let us divide our assignment into three general heads: (a) the source of the power conferred, (b) the form in which such power is conferred and (c) the proper exercise of the power of the Board. Divisions (b) and (c) are so intimately related that they will be considered together. If we wished to quibble, we might question what is meant by the word Board. The courts have tried to use names in relation to 'Boards' which more or less designate the legal status of the group. These qualifying terms have been 'Quasi, Quasi Judicial, Corporate Body, Quasi Corporation' and the like. All of these terms are more confusing than helpful and call for definitions which are more troublesome than the word 'Board' itself. It is true that the powers of Boards differ greatly in the different states, but for the most part, the intent of the various legislatures has been the same in creating these boards and in conferring powers upon them.

As a general thing, Pharmacy Boards exercise powers which have been designated as legislative, executive and judicial. The scope of such powers is more fully explained in the second division of this discussion. A recent New Hampshire opinion entitled 'In re Opinion of the Justices' (1935, 87 N. H. 492; 179 Atl. 344; 179 Atl. 357) states the law for that state to be that judicial power cannot be conferred upon administrative boards on account of a Constitutional restriction. A few lines from this opinion are: 'An administrative officer in the discharge of his duties may have occasion to interpret and apply a law in order to enforce it, but he can have no such occasion in order to determine the rights of private litigants, since he may not be constitutionally authorized to take jurisdiction in respect to them.' The court construed the State Constitution as conferring strict judicial powers on regularly constituted courts only, and explained carefully the necessity of keeping separate and apart the three departments of government.

The holding of this case is called to your attention, merely to illustrate that the powers of the Boards vary considerably in the different states.

Let us consider for a few minutes the first division of our subject: 'Source of power of the State Board.' Observe if you will this brief outline attempting to show in proper order the various sources of power. From it we see that the Constitution of the United States restricts the scope of state constitutions as well as both Federal and state statutes. Our object is illustrated better by starting with the Board and tracing upward, which shows that the Board must operate within the limits set by state statutes, state constitutions, Federal Statutes and Federal Constitution.



As already stated, during the years from 1890 to 1900 the constitutionality of the various state drug acts was thoroughly tested in the courts on the theory that such acts violated the inhibitions of either Federal or state constitutions. One of the first cases testing the validity of such an act was *State v. Heinemann*, Wisconsin, 1891, reported in 80 Wis. 253, 49 N. W. 818 and 27 Am. St. Rep. 34.

The defendant was convicted of having conducted a pharmacy for retailing, compounding and dispensing drugs, medicines and poisons, and not being and not having in his employ a registered pharmacist. The defendant was fined \$50 and costs, and in default of payment, imprisonment in jail for thirty days. The only defense was the unconstitutionality of the drug act. The Supreme Court of Wisconsin held the act constitutional, declaring that it was within the power of the legislature to protect the health and lives of citizens throughout the state from improper, dangerous and destructive compounds, put up by incompetent and inefficient persons, and also that the police power of the state extends to all regulations affecting the lives, limbs, health, comfort, good order, morals, peace and safety of society.

This being a pioneer case on the subject the court called attention to similar statutes in other lines; that the state may require engineers to be examined and licensed; that the state may regulate the manufacture and sale of oleomargarine; that the state may require practitioners of medicine to secure a license and that similar laws have been passed to govern dentists.

In testing the constitutionality of a state act in relation to the Constitution of the United States, the supposed protection of the Fourteenth Amendment has been appealed to, under the guise of the 'Due Process' and 'Equal Protection' clauses. The supposed protection of the Fourteenth Amendment has been invoked many times in this type of problem.

The pertinent paragraphs of Article XIV Section I are: 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

It is not difficult to discover that if a state drug law when enacted prescribes certain standards and imposes restrictions when such had not existed before the law was passed, the person affected thereby

could decide very quickly that he was denied some of the guarantees of the Fourteenth Amendment. He would be willing to hire lawyers and spend his money to protect his supposed rights.

It may be consoling from our angle to note that the many cases testing the constitutionality of the laws passed are merely evaluating the wisdom and ability of the state legislatures to prepare and pass proper legislation, and in no way reflect upon the ability of the Board, except possibly when the manner in which the Board has attempted to enforce the statute has been called to the attention of the courts.

It is by virtue of the police powers of the state that this and similar legislation is enacted. But broad as the police power may seem to be, it has its restrictions and limitations. The state cannot use its police power to violate or infringe upon the rights guaranteed by the Fourteenth Amendment unless such laws bear a relation to the public health, safety, morals or some other phase of general welfare.

A person might well consider that he is deprived of his liberty when he is arrested for a crime, or put in a pest house for a contagious disease; but since the public health, safety or morals is concerned, the state has a right to act under its police power.

One of the first cases to be carried to the Supreme Court of the United States seeking protection under the supposed rights guaranteed by the Fourteenth Amendment, construed a Louisiana statute regulating the sale of drugs by itinerant vendors, 'of any nostrum, ointment or any application for treatment of disease' (*J. C. Baccus v. State of Louisiana*, 1914, 232 U. S. 334; 58 L. ed. 627; 34 S. Ct. 439). The Supreme Court held that this law does not violate the equal protection or due process of law clauses of the Fourteenth Amendment to the Federal Constitution, although the sale of such articles by other persons is permitted, and that the act had a direct relation to public health of the community. One of the strong arguments presented in the case was that the law prevented a person from engaging in a lawful vocation. This argument has been often urged, and has a very strong appeal, but such a denial is often necessary in order properly to protect the public. It is clearly within the police power of the state, and under this power, the state may prohibit all things hurtful to the comfort, safety and welfare of society.

Of course we are all familiar with the rather recent case interpreting a Pennsylvania Act. This statute provided that, 'every pharmacy or drug store shall be owned only by a licensed pharmacist and no corporation, association or copartnership shall own a pharmacy or drugstore unless all the partners or members thereof are licensed pharmacists. The Supreme Court of the United States held the statute unconstitutional and that it violated the due process and equal protection clauses of the Fourteenth Amendment; that there is no substantial relation to the public interest in the owner-

ship of a drugstore where prescriptions were compounded; and also that it was not reasonably calculated to promote public health.

This case settled a point of law which had been before several state courts and some of which had decided in favor of the constitutionality (*Liggett Co. v. Balbridge*, 1928, 278 U. S. 105, 49 S. Ct. 57, 73 L. Ed. 204).

As already stated there have been many cases in which aid of the Fourteenth Amendment has been implored. A brief digest of three will be given to illustrate the scope of the application involved. In Wisconsin (1907) the statute permitting an assistant pharmacist to conduct a drugstore in towns having a population of less than 500 people was held constitutional. In this case the 'Rule of Necessity' was developed. This rule has been referred to with favor in some subsequent cases (*State v. Evans*, 130 Wis. 381; 110 N. W. 241).

Then in 1924 a license tax of \$100 per year on itinerant vendors of drugs was held valid by the Supreme Court of Oregon in that it did not violate the Fourteenth Amendment of the United States Constitution (*State v. McFall*, 112 Ore. 183, 229 Pac. 79).

In Kentucky the application of a rule of the Board was carried to the Supreme Court of the state. This rule required that an applicant for reciprocal registration must have been a bona fide resident and engaged in the retail drug business for one year next preceding his examination. This rule also was held not to be in violation of the provisions of the Fourteenth Amendment (*King v. Kentucky Board of Pharmacy*, 160 Ky. 74, 169 S. E. 600).

We have just been discussing cases which were alleged to be in conflict with the United States Constitution. Now we will very briefly show that state statutes must not violate state constitutions. In a case in point, the Constitution of the state provided that, 'the Governor shall have power, by and with the advice and consent of the senate, to appoint . . . and such other officers as may be provided by law.' Subsequently a state statute was enacted which required the Governor to appoint members of the State Board of Pharmacy from a certain number of pharmacists elected by the State Pharmaceutical Association. The court here held that the legislative act was in conflict with the state constitution, stating that the powers conferred upon the Governor by the constitution are broad and unrestricted. When officers provided by law are to be appointed by him, the exercise of his judgment and his freedom of selection are not qualified or limited. A statute which thus interferes with the freedom of selection contemplated by the constitutional provision must be in conflict with its terms and with its intent and spirit.

We are ready now to consider the form in which power is conferred upon the Board and the manner in which the Board exercises its powers. The source of the power of the Board is the state legislature, and the legislature acts by virtue of its

police power. Police power of a state has been defined as the power vested in the legislature to enact such wholesome and reasonable laws, not in conflict with the state constitution, as may promote the public good. But the exercise of the police power must be limited to such measures as are designed to promote the public health, the public morals, the public safety or the public welfare. Then as a mere restatement, if it can be seen from the provisions of a statute that it has no tendency to promote the public health, safety, morals, comfort or welfare, the courts are authorized to declare it invalid. Pharmacy by reason of peril to health or life of people generally, which may result from incompetence therein, is a legitimate field for police regulation.

No one has a vested right to continue in the practice of pharmacy merely because licensed. He is subject to such reasonable regulations and restrictions as the legislature may from time to time impose. The courts have repeatedly declared that no one can acquire a vested right to continue, when once licensed, in a business, trade or occupation which is subject to legislative control and regulation under police power.

Recent cases show a growing tendency to classify the powers of a Board as the departments of government are divided, being legislative, executive and judicial. As this classification is a helpful guide we will adopt it. In fact it seems that much confusion has arisen from a failure to classify properly the various powers of a Board. It appears to me that a Board will be able to act more safely by keeping in mind this classification, and to know how each official act is classified.

If the act of a Board is judicial it must observe due process as interpreted by the courts; if the act is legislative, then legislative procedure must be adhered to; and finally if the Board is acting in its executive capacity, the limitations and restrictions imposed upon an executive must be followed.

Briefly stated, a judicial act is construing the law, or applying it to a particular state of facts for the determination of the rights and liabilities of designated parties before it. Here there are specific parties before the Board and there is a problem for analysis and decision. In other words a judgment is to be rendered.

The act of the Board is legislative when a rule of law is made to be applied to cases which may arise in the future, at the time there being no statement of facts or controversy before the Board for determination. Finally, an act relating to the execution or enforcement of laws is executive.

The official acts of the Board may change from one of these classifications to another, as from executive to judicial. As the classification shows, preparing to enforce laws is a different function from the actual trial of a case.

As already outlined, in its judicial acts the Board must accord due process as defined by the courts. Due process in a general way means an orderly proceeding, in which a person is served with notice,

actual or constructive, and has an opportunity to be heard and to protect and enforce his rights, before a body or court having power to hear and determine a cause. The essential elements are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. The failure to grant a fair hearing has been the cause of much trouble. Due process for the most part involves questions of procedure but occasionally it reaches out into substantive law.

It has been firmly emphasized in our law that proper notice and fair hearing constitutes a bulwark of our democratic principles. Bound up in them are our freedoms of speech, religion, press and assembly as well as others. As long as the protection of notice and fair hearings are strictly observed, we will have one of the foundation stones of democracy to rest upon.

Reasonable notice means in general such notice as would give the opposite party time and opportunity to prepare his case to meet the testimony opposing him, to be present himself, procure the attendance of witnesses to establish or strengthen his case, contradict the testimony of the opposing party, or impeach his testimony.

In satisfying the requirement of a fair hearing a few general principles must be observed: (a) the defendant should be advised of the nature of the cause; (b) he has a right to be represented by counsel whom he has selected to represent him; (c) he has a right to present his argument; (d) he has a right to the proper reception of his evidence; (e) neither the defendant nor his witnesses may be intimidated.

As before mentioned, the activities of a Board may quickly pass from one division of powers to another and in doing so it is not difficult to fail to observe proper precautions to safeguard against errors. As an illustration of this, a Board may make independent investigations, both before and during the continuation of a hearing and as a result, the findings may be based on facts secured by the independent investigations. This is an error, as the findings must be based on the evidence produced at the hearings, all of which is made a part of the record of the Board and from which the accused may appeal. The independent investigations may be highly valuable in bringing to light the salient facts on the hearing.

Nowhere does there seem to be an analysis of the type of state statutes conferring powers on the Board and it may prove worthwhile to make a beginning now. A statute may enumerate the powers of a Board governing a given situation, such as causes for revocation of a license. This confers only judicial power, to try cases for the designated infractions only, and a Board has no power to add to the conferred powers. To do so would be exercising legislative powers in a situation without such power conferred by the legislature.

This may be illustrated by a case in which the legislature had set the standards and requirements

for a certificate. The Board, on its own motion, added the additional requirement of four years of college training. The Board had exceeded its authority, and mandamus would lie to compel compliance with the requirements of the statute only. Thus we see that the Board was exercising both legislative and judicial functions when only judicial was conferred.

The legislature may confer both legislative and judicial power upon the board in relation to a particular duty. By statute, the Kentucky Board of Pharmacy was authorized to exchange certificates of registration with other states allowing registered pharmacists of such other states to practice pharmacy in this state under such rules and regulations as the Kentucky Board of Pharmacy may prescribe. One rule which the Board prescribed was, 'that the applicant must have been registered in the state from which he applies at least one year before reciprocal registration is granted.' The applicant could not satisfy this requirement and registration was denied. He then remained in Kentucky one year and his application was again denied. The applicant filed mandamus but failed, the court stating that the rule of the Board was not arbitrary, but instead was reasonable. The legislature in this law conferred upon the Board the so-called legislative power to make the rules governing future cases, and the judicial power to apply its own rules to future situations as they might arise. Many courts have not seen fit to designate these powers as legislative, executive and judicial. Some courts prefer to refer to them as merely administrative regulations.

A case which was decided this summer illustrates legislative action by a Board. The legislature conferred power upon the Board in these terms: 'The Board of Pharmacy is hereby authorized to prescribe and promulgate such rules and regulations as may be deemed necessary for the proper enforcement of this act.' Acting apparently by authority thus conferred the Board passed a ruling that all vitamin preparations may be sold only in drugstores operating under a drugstore permit issued by the State Board of Pharmacy. The Supreme Court of the State held this rule invalid, and that the Board of Pharmacy had acted beyond its authority. The Court explained that Kroeger's A. B. D. G. Vitamin Capsules are accessory food factors and do not contain any chemical drug or medicine which contains poison. The rule of the Board was legislative, attempting to state a rule of the Board to govern future transactions, but it passed beyond the authority delegated to it (*Department of State v. Kroeger's Grocery and Bakery Company, 1942, 40 Northeastern-2d-375*).

It was my desire to discuss at some length mandamus which is the usual remedy invoked to regulate and control the discretionary acts of a Board. The purpose of the writ, generally, is to determine whether the Board has acted properly or not. As my time is now getting short, permit me to merely state a few deductions. First, if the performance

of the act rests in the discretion of the Board, mandamus will lie to compel the Board to act, but the court cannot guide the Board in the exercise of its discretion. Second, if the act remaining by the Board to be done is purely ministerial, the writ will lie to compel performance. Third, if the act is beyond the power of the Board, of course, the writ will not lie. Under this third division there is an interesting illustration. A pharmacist through misconduct had forfeited his certificate and as the Board had no authority to issue a certificate under such circumstances, mandamus would not lie to compel the Board to take any action. The writ of mandamus has been much used and the law that has been developed and stated in handling these problems opens up an interesting field for investigation.

The problem of legal liability of a Board for its acts is not very difficult and may be summarized in a few sentences. There is some form of appeal from all decisions of a Board, which is the ordinary action taken by a dissatisfied party. A member of a Board is not liable for the acts of the Board, as his liability is merged into the liability of the Board, but a member of a Board may be held liable in damages if he acts viciously and corruptly in the performance of his official duties.

A Board must respect its own decisions in the same manner that a regularly constituted court of law does. Judicial or quasi judicial acts are as final and conclusive as though determined in the regularly constituted courts of law. This rule was clearly stated in a case where the Board delayed in issuing a certificate to an applicant apparently on the theory that there may have been a change in the moral character of the applicant since a prior certificate had been issued to him as an assistant. In issuing the prior certificate the Board had determined that he was of good moral character and no subsequent charges had been filed or hearing held relating to his misconduct. Quoting the Court: 'An officer performing judicial functions shall not be heard to impeach a judgment rendered by him, by testimony that he failed to perform his duty in rendering the former judgment. It is no more competent for a Pharmacy Board to attempt to set aside its former judgment, than for a judge of a court, after adjournment of the term to set aside one of its judgments on the ground of insufficient evidence. Quasi judicial records must rest on a sound foundation.'

Looking back over sixty years of court decisions in relation to drugs and druggists, and especially in reference to the rights and liabilities of Boards, we must concede that mistakes have been made in passing laws, as well as in construing and applying them. Yet we have arrived at a stage where a pretty good foundation has been laid both in state and Federal Laws. True there are many problems which as yet have not been answered by our courts, many new problems will arise, and also we must be able to adjust ourselves to the new and changing

conditions ahead. In the years to come it is hoped that by appeal to the courts we will be able to clarify, classify, refine and perfect the law of drugs and druggists."

The meeting then was adjourned.

SECOND SESSION

The adjourned session reconvened at 4:40 p. m. on Tuesday, August 18, Chairman Fischelis presiding.

SECRETARY'S REPORT.—Chairman Fischelis called for the Secretary's report which was read as follows by Secretary Ford and received.

RECEIPTS

| | | |
|---------------------------------------|---------------------------|----------|
| 1942 | | |
| July 6..... | Ohio..... | \$ 10.00 |
| July 6..... | New York..... | 10.00 |
| July 6..... | Florida..... | 10.00 |
| July 6..... | District of Columbia..... | 10.00 |
| July 6..... | Oregon..... | 10.00 |
| July 6..... | Vermont..... | 10.00 |
| July 6..... | West Virginia..... | 10.00 |
| July 17..... | Connecticut..... | 10.00 |
| July 17..... | North Dakota..... | 10.00 |
| July 17..... | Missouri..... | 10.00 |
| July 17..... | Virginia..... | 10.00 |
| August 8.... | Maryland..... | 10.00 |
| August 8.... | New Hampshire..... | 10.00 |
| August 8.... | New Jersey..... | 10.00 |
| August 28... | Minnesota..... | 10.00 |
| August 28... | Arizona..... | 10.00 |
| September 4.. | Kansas..... | 10.00 |
| October 14... | Idaho..... | 10.00 |
| Total receipts..... | | \$180.00 |
| Balance cash on hand Aug. 18, 1941... | | 786.01 |
| | | <hr/> |
| | | \$966.01 |

DISBURSEMENTS

| | | |
|---------------------------------|---------------------------------|----------|
| Nov. 13, 1941, | The F. J. Heer Printing Company | |
| | Letterheads and envelopes..... | \$ 17.00 |
| Dec. 19, 1941, | The Master Reporting Company | |
| | Reporting 1941 Proceedings..... | 60.60 |
| July 17, 1942, | Mrs. Elizabeth K. Schaefer | |
| | Typing and Postage..... | 5.00 |
| Total..... | | <hr/> |
| | | \$ 82.60 |
| Total cash balance to date..... | | <hr/> |
| | | \$883.41 |

APPOINTMENT OF NOMINATING COMMITTEE.—Chairman Fischelis asked Mr. Fred Schaefer, Mr. L. M. Kantner and Mr. P. J. Callaghan to act as the Nominating Committee. He requested that a new chairman be selected in view

of the fact that he was unable to continue to serve because of other duties. The Committee was then requested to retire to make their selections.

CHAIRMAN'S ADDRESS.—Secretary Ford took the chair while Dr. Fischelis presented a summary of the annual address of the Chairman as follows:

"I would like to present for the consideration of the Conference three matters which are of paramount interest to Pharmacy law enforcement officials at this time.

In the first place there have been numerous suggestions that inspection activities of Pharmacy law enforcement officials should be modified in some respect during the war emergency. Careful consideration of these suggestions leads me to recommend definitely that no reduction in the number or type of inspections be made in the public interest during this emergency. We all know that the quality of drugs sold is directly affected by the extent of the inspection activities of enforcement agencies. As soon as inspections are relaxed, there is a corresponding decline in the quality of drugs offered for sale. When inspections are regular, the number of violations is relatively small.

In order to keep up the inspection activities, we must, of course, see that enforcement officials are supplied with transportation facilities that are adequate. In the East gasoline and tires are rationed rather severely. However, the rationing boards have classified activities of the Boards of Pharmacy under the heading of necessary public health work, and no questions have been raised with respect to supplying inspectors with sufficient tires and gasoline. I believe it can be stated that adequate supplies of both have been allotted when the functions of the Board and its inspectors have been made clear.

A second point which I wish to call to your attention is the suggestion that has been made by at least one Federal Agency that inspectors of Boards of Pharmacy and other Food and Drug Law Enforcing Agencies be requested to report violations of price regulations and possible other violations of orders issued by the Office of Price Administration. In turn, this Federal Agency has offered to report to the Boards of Pharmacy and Boards of Health such violations of Pharmacy and Food and Drug laws as may come to their attention. In this connection, it is well to bear in mind that quality and price have a distinct relationship. Under the price regulations it is quite possible that some manufacturers may endeavor to reduce quality as a method of circumventing price regulations. This should be carefully guarded against, and the inspection of cost-of-living items is very much in order.

Finally, there is the question of adequate supervision of pharmaceutical activities in pharmacies due to wartime conditions. There have already been suggestions that inspectors of Boards of

Pharmacy and Boards of Pharmacy themselves exercise greater leniency in permitting unregistered help to carry out some of the functions of registered pharmacists, so as to permit these pharmacies to follow the usual schedule of hours and yet give the single registered pharmacist who may be operating the establishment the opportunity to take time off.

It seems to me these are all factors involving very serious consideration on the part of the enforcement agencies, and as we view them in the light of our legal function, which is to protect the health and welfare of the public, they are functions which should not be allowed to lapse, but rather they are activities which should be definitely maintained even though it may be difficult to do so in an emergency.

These topics are now before you for discussion."

DISCUSSION ON CHAIRMAN'S ADDRESS.—The following discussion was held on the topic of Chairman Fischelis' address:

"*Mr. Paul Molyneux* (Alabama): Do I understand the Government wanted us to check on prices? I don't think that is the Board's function. I think that is a different field from what we are supposed to be in, and I wouldn't favor it. I think as far as the quality of merchandise is concerned that is in our jurisdiction, but when it comes to violation of price schedules, I don't think that is our function. As far as the quality of merchandise is concerned, there might be some manufacturers furnishing substitutes.

Chairman Fischelis: That is the thing we have to guard against. That is why I think we should increase our inspection work, rather than to decrease it, and strain every point to maintain inspection activity on a high plane.

Dr. Swain: I think it would be a mighty fine idea if this Conference could adopt a resolution on the point you just made, because next year is a general legislative year and anything that comes out of an authoritative body like this would carry weight.

Mr. Dretzka: A number of State Board secretaries who have the enforcement function have been deputized by the Food and Drug Administration to assist in the various states. Do you know how many of these cooperate with the Food and Drug Administration?

Chairman Fischelis: As far as I know, it has been the policy of the Federal Food and Drug Administration to request the cooperation of all Boards of Pharmacy which have any function whatsoever with respect to the supervision of the quality of drugs.

Mr. Dretzka: I am referring to the specific deputization of certain individuals, such as Board secretaries. I think you are deputized in your state.

Chairman Fischelis: It isn't exactly being deputized. They call you a cooperating official and issue a commission to that effect. Any Board of Phar-

macy that does state enforcement work pertaining to drugs, and may pick up a sample which might have been in interstate commerce, would be placed on that basis. I don't know how many Boards are in that position, but undoubtedly there are a number.

Mr. Dretzka: Could any State Board that wishes be placed on that basis?

Chairman Fischelis: I think that if they could show any enforcement activity, they could.

We have several people with us this afternoon who have specific problems that I think we might be glad to hear about. *Dr. Britt*, do you want to say anything on the Oregon Pharmacy law promulgation?

Dr. L. C. Britt (Oregon): We attempted there to restrict the sale of vitamins in what we termed unit-dosage form, meaning by that, tablets and capsules of thiamine or ascorbic acid. We also took the position that a substance might be safe for indiscriminate use as mentioned this morning, but that did not mean indiscriminate sale. So we attempted to restrict the sale of preparations containing acetanilid, phenol materials and things of that type to registered pharmacists, and to further insure safety in their use, asking registered pharmacists to call attention to the warning statements involved. As you know, we met considerable opposition, and the present status is that a hearing is being asked for, briefs are being prepared, and we expect in time to get a decision on it. I don't believe this is the time to make any comments, particularly on the details of our work.

Chairman Fischelis: You haven't had a decision on your promulgations?

Mr. Britt: No, we haven't. In fact, the briefs have not yet been submitted."

RESOLUTION.—*Mr. Dretzka* offered the following resolution which was seconded by *P. H. Costello* and unanimously carried.

"*Resolved*, That the Conference of Pharmaceutical Law Enforcement Officials strongly urges all Boards of Pharmacy and Food and Drug Enforcement agencies to maintain their inspection activities on the highest level of efficiency and to increase rather than diminish their activities during the war emergency in the interest of the public health."

DEAN LAKEY'S ADDRESS.—*Dean Lakey* of the College of Pharmacy, Wayne University, then addressed the members of the Conference on apparent discrepancies in the wording of the Michigan Pharmacy Law which has been interpreted in some quarters to prompt the evasion of certain registration requirements. This subject was discussed, after which it was suggested by the Chairman that the question be referred to *Mr. Costello*, the Secretary of the National Association Boards of Pharmacy, for possible action.

RESOLUTION.—*Mr. Dretzka* then commented favorably upon the address of Professor Arthur

which had been delivered at the First Session and offered the following resolution which was duly seconded and unanimously carried.

“Resolved, That the thanks of the Conference of Pharmaceutical Law Enforcement Officials be extended to Professor William Arthur for his informative message on ‘The Rights and Liabilities of the State Board of Pharmacy as Construed by Our Courts’ and that Professor Arthur be urged to supply this address in a form for publication and dissemination to the members of the Conference.”

REPORT OF NOMINATING COMMITTEE.

—Mr. Frederick Schaefer reported that the committee regreted very much that Dr. Fischelis had decided that he was not in a position to continue to serve as chairman of the Conference. After due consideration the committee decided upon the following recommendations: *Chairman, S. H. Dretzka; Secretary-Treasurer, M. N. Ford, Delegate to the House of Delegates, F. Schaefer.*

The Chairman asked Mr. Callaghan to cast the ballot for the officers who had been nominated.

The ballot was cast, and Chairman Fischelis declared the new officers to be elected.

NEW CHAIRMAN'S ADDRESS.—Chairman Dretzka spoke briefly as follows:

“I want to thank you very much for the privilege of serving you in this capacity. I consider this Conference as being a very potent factor in pharmacy. It can become extremely important, and I think it is an opportunity for Boards of Pharmacy to do a real service and the crucial time for such service perhaps will be during the emergency. We will do everything possible to continue this as the live organization it has been under the leadership of Dr. Fischelis and under his predecessor, Dr. Swain. They are able men and I assure you I am extremely humble in being placed in the position of having to follow two such leaders. I look forward with great pleasure to the opportunity and I trust all of you will help me to present a year of activity, so that we will have something worthwhile to report and a good, interesting program at the next annual meeting. Thank you very much.”

The meeting adjourned at five-thirty o'clock.
