

SECTION ON COMMERCIAL INTERESTS AND SECTION ON EDUCATION AND LEGISLATION

DESIRABLE LEGISLATION AS AN AID TO MAINTAIN PHARMACY.*

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The above topic, expanded to fit the complete idea in the mind of the Chairman at the time he requested me to make it the subject of a paper, would probably read about as follows: To what extent can legislation be utilized to advance the calling of the pharmacist and at the same time sufficiently conserve the interests of the whole community?

We desire to advance our professional and business interests because we are human, but we desire also to advance the general public interest, first, because we are good citizens, and, second, because we realize that class advantage gained at the expense of the general welfare can have only ephemeral existence, and that in the end the holders of special privilege must come to disaster.

In my salad days I wrote an essay with the sophomoric title "Education, Organization, and Legislation, the Means of Pharmaceutical Salvation," in which I allotted to legislation a very liberal share in the work of regeneration. I still believe in the saving force of this trinity, but have learned to regard legislation as a corrective of initiative rather than as a prime motive power to force initiative.

I have no patience with the theory that the law may be used to make profitable the business of any particular class of individuals, except in so far as such profit may be incidental to the result of measures which tend to bring the greatest good to the greatest number.

Pharmacy ought not to have, and I believe does not want, coddling legislation or special privileges gained at the expense of the remainder of the community. If the art of the pharmacist survives, it will be because it is able to serve the material interests of society better than the instrumentalities which seek to supplant it. Unless it can justify its existence by serving some useful part in the grand purpose of things we must expect it to pass like other arts that have outlived their usefulness.

It is easy enough to quote such high-sounding phrases as the "general welfare," the "public good," etc., but the question is: What do we mean by them, and how far are we sincere in coupling such phrases with measures that mean to serve our own particular advantage?

It is also easy enough to exalt ourselves into a state of mind which will enable us to regard our professional functions of such public importance that we can believe that whatever advances them is an agent for advancing the general welfare; but to make the facts square with these pretensions is a different proposition.

The only logical foundation for a law regulating admission to the practice of pharmacy is the necessity of protecting society against the consequences which might be expected to follow the dispensing of drugs and poisons by ignorant persons, or by persons so morally perverted that they will readily lend themselves to the service of evil, which, owing to the peculiar nature of the business, can be carried on with comparative immunity against detection. If the above reason be

* Read before the Section on Education and Legislation, A. Ph. A., San Francisco meeting.

the true one, and the imposition of certain educational and moral tests upon those who desire to engage in the business of selling drugs and poisons does really minister to public security, then existence of the law is justified, and the only important problem is to determine the height of the educational wall which must be climbed by those seeking admission. Doubtless the public advantage would be served by raising this wall to such a height that only those who were educated to the very highest degree of efficiency and of the very highest type morally would be granted the privilege of compounding and dispensing drugs, medicines, and poisons.

Such would be the character of the tests imposed in a theoretically perfect state, but we do not have a theoretically perfect state to experiment with, and therefore must fit our requirements to the present imperfect one. In other words, our ideals are subject to the practical limitations imposed by the necessity of fitting them into the social state in its present imperfect condition.

So far are theory and practice remote from each other in political and social spheres that to speak of a condition as ideal is virtually the same as declaring it incapable of realization. Not only is it impossible to impose upon the state the laws which we to-day would regard as ideal, but it is unlikely that we could devise statutes which would meet the views of future generations as to what ideal legislation should be. What might be regarded as highly desirable to-day might be regarded as the opposite by the next generation, because by then the direction of progress may have so altered that old ideals would no longer be applicable. The ideal stage-coach never reached fruition, because before the time came for it the stage-coach had been supplanted by other methods of transportation.

What may be regarded as ideal under one set of conditions might be regarded as the reverse of ideal under a different set of conditions. The practical limit always set to our efforts at reform is to make them fit into the conditions as they now exist, yet giving them a slant towards conditions as we would like to see them become.

In every step we take toward the future we must compromise with the present. Compromise is invariably the price of progress. It may sound fine and grand to declare that we will accept no compromise for what we believe to be the correct thing in legislation, but if we stand by this position we must give up the hope of progress. The present stubbornly insists upon its rights, and will yield concession only in return for concession. The uncompromising reformer is a clog on progress, by retarding the separate short advances which in the aggregate make great ones.

The Personal Interest of the Pharmacist in the Pharmacy Law.—We have said that the only logical ground upon which the state can impose restrictions upon the practice of pharmacy is the necessity of protecting the public health and general welfare, and not the pharmacist's private interests.

But, having imposed these restrictions upon one class of citizens, the state must impose them upon all. If only those who call themselves pharmacists are required to pass a special educational test, while others are permitted to exercise the same functions without supervision, then the state has not only imposed an unjust burden upon the pharmacist, but has failed in the effort to protect the public health, since the bulk of business will eventually flow to those who have the least extra burdens to bear and are therefore freest to meet competition.

The pharmacist's demand, then, is not that the state shall provide him with the means of livelihood, but that he shall not be discriminated against by the granting of special privileges and immunities to his competitors. He asks noth-

ing more than the fair requirement that the same test be imposed upon all who seek to perform the same functions.

In making such a demand, however, it must be remembered that general rules cannot be made to fit all special conditions and circumstances, and that theoretical consistency must sometimes yield to practical necessity.

It is easy enough to say that the inhabitants of sparsely-settled districts are as much entitled to the best of medical attendance and to the best of dispensing service as those who dwell in the cities, but, since it is confessedly impossible for them to obtain such services, they must be given the opportunity to provide themselves with the next best services obtainable.

It would be a fine thing for the physician if no one could obtain a dose of medicine without his order, and a fine thing for the pharmacist if he could have an absolute monopoly in supplying these doses, but both physician and pharmacist had better conserve their breath for the refrigeration of their porridge rather than to waste it in crying for something they are not likely to get.

There is no use butting our heads against the logic of circumstance. Physicians who practise in the country districts must be permitted to carry their own medicines with them; the people who live in communities distant from a drug store must have the privilege of satisfying their wants for simple drugs and package remedies at the nearby general store, and these privileges must continue until the state is ready to assume responsibility and supply medicine and medical attendance by parcel post, along with the catalogues of mail-order houses.

Not only must the physician be accorded a reasonable liberty in dispensing, but he must be ready to accord the pharmacist a like reasonable liberty, and not threaten him with a medical practice act for recommending simple cures for simple ailments.

There is a zone in medicine where the functions of physician and pharmacist have always overlapped, and always will overlap, regardless of codes and formal resolutions. Just where the division should come between the respective functions of physician and pharmacist is a matter of dispute, and the line is likely to shift with the interests and prejudices of the disputants. As located by the pharmacist it is likely to extend well into the domain which the physician claims as his own, and when located by the physician is likely to extend clear over the domain of the pharmacist and into the regions beyond.

One way of settling this dispute is for each profession to strive to set the boundary line as far over into the territory of the other as possible, in which case the side having the best politicians will probably obtain the most advantage, and this is the method to which physicians and pharmacists have been accustomed to settle their differences in the past.

It may sound like a paradox, but it is nevertheless true that physicians and pharmacists quarrel most when they remain separate, and agree best when they come together. When they come together in good faith and discuss their differences with open minds, many of the supposed grievances disappear into thin air, other points of disagreement are removed by explanations, and some fair ground for compromise can nearly always be found upon points concerning which exact agreement cannot be had.

The rational way, then, for pharmacists and physicians to determine the location of the boundary line to be established in the pharmacy law is by mutual agreement between representatives of their respective national, state, and local associations.

The first, or "Donnybrook," method has been tried without satisfaction to either side; why not give the second method a trial?

The Standardizing of Pharmacy Laws.—One of the first steps toward desirable legislation as an aid to pharmaceutical progress should be an effort to standardize, or bring about substantial uniformity in the principal features of the laws pertaining to pharmacy, and food and drugs in all of the states. This movement can be inaugurated by the preparation of a series of model forms, or patterns, based upon a careful study of existing laws, and modified to correct admitted defects which have been exposed by experience, in the preparation of which pattern-laws all of the associations, national, state and local, should be invited to take part, so that when they reach completion we may feel confident that they represent the best ideas capable of practical realization.

It is true that various so-called model laws have appeared from time to time, but usually they have been the work of a single committee and under the auspices of only a single association. That they have been of value is shown by the fact that subsequent legislation has been largely patterned after them; that they were not sufficiently discussed in advance is evidenced by the fact that in many cases they were largely amended before being offered to the various legislatures. If all of the associations had been consulted in the preparation of these models, it is reasonable to presume that they would have been considered satisfactory in a larger number of instances, and that there would now be substantial uniformity in the principal provisions of these laws, with only such minor differences in details as would naturally be necessary to meet the requirements of local conditions.

The Drafting of Pharmacy Legislation.—It is not possible to expect too much care in choosing the phraseology of pharmacy laws. Every word and phrase should be scanned with a jealous eye until it is certain that it expresses just what it is desired to express and nothing else.

No one can perfectly realize the possibilities of the English language until he has seen a name or phrase which he thought meant one thing construed by a court or administrative official to mean some quite different thing.

The measure should be made as far as possible self-interpreting. Such general terms as "derivatives," "synthetic substitutes," "physiological equivalents," "habit-forming drugs," "narcotic drugs," "poisons," "poisonous drugs," etc., should be avoided as pestilential, unless accompanied by qualifications and definitions which clearly limit the sense in which they are to be understood. The prime requisites of good statute law are definiteness and certainty, and these are impossible with the use of terms which are used in half a dozen different senses by different authors or by the same author at different times.

All of the intended requirements should be expressed in the law, and they should be made specific. It should not be left to some official bureau to read into the law, under the guise of rules and regulations, provisions and requirements which would have been objected to if they had been plainly stated in the original measure.

To construct a statute upon this plan means that more or less repetition will be necessary, that much detail must be introduced, and that the completed statute will not be easy reading. A statute devised for literary enjoyment will be cut up into crisp paragraphs of convenient size, each theoretically completely disposing of a phase of the subject by means of a few general terms, and the whole draft will be free from embarrassing exceptions and parenthetical clauses. Such a draft may be a literary joy, but after it has been twisted in the legislative mill by the injection of numerous exceptions into the midst of those general terms, and then has been rolled flat by the decisions of the Supreme Court, it will be a sight calculated to make angels weep.