

LEGISLATIVE OBSTACLES IN OBTAINING ADEQUATE MEDICAL LAWS

BY

J. R. NEAL

Chairman, Legislative Committee, Illinois State Medical Society.

(Introduced by B. K. Richardson)

In a small Quaker college located somewhere in the United States there is a student association which controls the athletic policies and activities of the institution. Conventional collegiate fraternities are prohibited from the campus, but there is a secret society which calls itself the "Rabbit Foot Club." Out of a student body of more than 300, only 20, or less than 7 per cent can be members at any one time. Members who graduate, however, can and do continue to exercise an influence over the club.

This Rabbit Foot Club has dominated the athletic association of the college for six generations and it will probably continue to do so indefinitely. For every student office that relates to athletics, that club nominates a candidate, works for him, and votes solidly for his election. For every proposed policy or activity subject to student control, that club chooses a definite plan and stands behind it to a man.

Members of that club are a homogeneous group. Additions are admitted only after the most deliberate and careful consideration. Each new member must possess qualities and attributes which harmonize and fit in with those of the group.

The athletic association is made up of members from every class, every literary society, and every other student organization on the campus. Candidates for office are often brought forward by genuine well-wishers and also by reformers, malcontents, and others, but most of them fall by the wayside except those selected by the Rabbit Foot Club. New policies are advanced, changes of the by-laws are recommended, and reforms promoted, but nearly always everything not sponsored by the club dies in committee or gets lost in the election. A very few members of that student body usually control matters, because they know exactly what they want and go after it with a united front.

In the world of affairs the Rabbit Foot Club at that Quaker college would be a lobby organization and the athletic association would be a state general assembly. The situation in that student body illustrates

how a small minority of the population, bound together by a common purpose and driven forward in unified strength by the overpowering motive of self-profit, is able to get statutes written upon the books when spokesmen for a far larger and infinitely more rational group often fail miserably to impress the lawmakers. A good illustration of applied lobbyism to legislative affairs is the present experiment in governmental agrarian relief, a project born in the minds of the lobby experts of the American Farm Bureau Federation, engineered on its initial trip to the Senate by the elder LaFollette through the now famous "Farm Bloc," and finally converted from a plank in a party platform to a law of the land. Another example is the so-called "bonus" granted by the Federal government to veterans of the World War at the behest of the American Legion. Advocates of neither of these measures constituted more than one per cent of the population, but solidarity of purpose and effort coupled with a divided and lethargic opposition led to legislative enactments which affect the whole people. Conflict of opinion and unsteady support of an adopted policy are mortal to the legislative ambitions of any organization which champions so controversial a subject as that of the healing art.

The very nature of our form of government makes it impossible for significant proposed laws to find their way upon the statute books without powerful support. Take an average general assembly in Illinois, for example. Every two years various interests will seek to have enacted into law some 2,000 or 3,000 different measures. No less than 1,500 of these will be reduced to the form of bills and presented to the assembly. About 500 will become laws. Manifestly, with an average mortality rate of 66 per 100 bills introduced, there is small chance of survival for those which deal with such controversial subjects as the practice of medicine unless they show evidence of strong organized support. They die of inanition.

There is a great diversity of opinion about medical matters among the profession and even more among the laity. Take the question of alcohol. Physicians of national repute have publicly expressed opinions favorable to the judicious use of that intoxicant, even aside from what might be called medical purposes. Others no less prominent violently oppose even the medicinal prescribing of alcohol. Again, outstanding members of the medical profession strongly favored the Sheppard-Towner Infancy and Maternity Act although the American Medical Association vigorously opposed it and ultimately succeeded in defeating its continuity, at least for the time being.

On the other side of the picture is that heterogeneous group known as the general assembly. Doubtless the legislature of Illinois provides a

fair sample of what these bodies are like from the standpoint of education and experience. Out of 204 members of a recent general assembly there were 63 lawyers, 24 farmers, 18 real-estate dealers, 10 merchants, 8 insurance agents, 7 bankers, 6 newspaper editors, 6 teachers, 6 clerks, 6 housewives, 5 professional politicians, 4 contractors, 4 doctors, 3 manufacturers, 2 grain dealers, 2 oil dealers, 2 grocers, 2 stock raisers, 2 laborers, 2 jewelers, 2 salesmen, 2 undertakers, 1 business man, 1 machinist, 1 coal miner, 1 engineer, 1 linotype operator, 1 hotel manager, 1 painter, 1 druggist, 1 teamster, and 1 cigar maker. The others had no trade or profession worthy of recording.

Furthermore, less than one-half of these assemblymen had more than a common school education. Doubtless the great majority of the membership were individuals of unusual resourcefulness in their communities, but only 83 had ever matriculated at a college or university, 16 more had been in high school, while 105 had never gone beyond the common schools in pursuit of a conventional education. Nine of the group were born in foreign countries, while a larger number were removed from foreign birth by only a single generation. In religious faith the diversity was no less great than in occupation.

In managing their health affairs a great many families resort to every kind of makeshift and subterfuge before calling upon a physician to provide the necessary service. The high death rate from diphtheria or appendicitis indicates a tendency to use the doctor as an aid of last resort. In Illinois a study of the records shows that a doctor was not called until the third or later day after onset in over 40 per cent of the reported cases of diphtheria. Thus the favorable time for giving antitoxin had already passed. Likewise, appendicitis annually costs the lives of more than 1,200 individuals in Illinois, largely because in most cases someone involved has delayed resorting to the proper treatment. These are but two of many illustrations of long-delayed use of medical skill in connection with serious physical ailment.

The foregoing analysis shows that a state general assembly is likely to be of the common people. It suggests likewise that the great mass of common people are apt to utilize the medical profession after all other sources of alleged relief have been exhausted. Is it to be supposed that membership in the general assembly will transform the nature, habits, and beliefs of individuals so that the legislature as a body will forthwith of its own volition or at the suggestion of some enterprising citizen enact laws that will repose in the orthodox medical profession the sole and exclusive responsibility of ministering to the sick and protecting the health of the well?

State legislators come from small political units. It is a very common thing to hear the constituents of representative Doe are mostly Christian Scientists, that Senator Goodspeed has the support of the American Legion, that this one was elected on a dry plank and that one on a wet. Labor and dirt farmers send candidates to the Capitol, but seldom does one hear of a man being elected through support attributed chiefly to the medical profession. There is only one doctor per 700 citizens, and these are naturally divided in their political and frequently in their medical opinion. Thus the total number of medical voters in an average political unit is very small; but if the physicians—no matter how few—will cooperate, their influence will assert itself when the question of health is an issue.

Politicians are well aware of this situation. Politicians have a sensitive ear for any wave length that carries the joyful music of votes. They sometimes tune in on independent stations, but it is usually for entertainment only, when the broadcaster is known to control a paucity of votes.

Again, medical education is ultra-conservative. Individuals are taught to shun advertising and publicity as they would a bad name. The patient must inquire into the merits and ability of a doctor and search out his office to obtain what the physician has to sell. This situation is contrary to almost every other phase of modern life. Even the churches have united in a vigorous advertising program. Every industrial and commercial enterprise teaches its personnel that the "go-getter" is the fellow who wins. Every cult and 'ism schools its pupils in the fine art of advertising upon which their very livelihood depends.

Thus it appears that about 99½ per cent of the population get what they acquire by going after it with blasting horns, shouting from the housetops to announce the virtues of their wares. The legislators understand that method of doing things. When the public is a bit slow in making a "drive" for what it wants or what politicians decide is good for it, the politician goes out and organizes a demonstration to prove to the world that there is a demand for what he wishes to do. I have known a governor to direct the organization of one booster club after another which bore down upon the Capitol in specially chartered trains with banners flying and bands ablaze to wait upon the governor in order to persuade him to build a hard road where he wished to build it.

That situation creates a very large obstacle in the way of securing adequate medical legislation. As a general rule, doctors are individualists, and ultra-conservative at that. It took over 50 years for the medical profession in Illinois to get the first permanent medical practice act upon

the statute books of this state, although numerous attempts to that end were made during the intervening half-century. Even in the Territorial days of 1817 a law creating a medical society which should be its own judge and jury and providing for the registration of vital statistics was enacted but its life was brief. Two years later, in 1819, another somewhat similar law found birth but likewise perished in infancy, and the same fate overtook a third law which was passed in 1825. Subsequent attempts never succeeded in materializing into even a temporary statute until 1877, when upon one of those rare occasions the state medical society got solidly behind a program and brought it successfully through the general assembly. That law created a state board of health which kept alive the interest in the medical law from that time forward.

Appreciating these difficulties and profiting by the history of medical legislation in Illinois, the State Medical Society has manifested an unusual vigor and aptitude in legislative matters. Due largely to a handful of deeply interested leaders, a very definite legislative program has been planned, and the society has been united in its support. As a result Illinois is now one of the very few states which maintains a single board to supervise the licensure of practitioners. In 30 other states and the District of Columbia there are separate examining boards for chiropractors and other cults. The single-board plan makes possible the maintenance of the highest possible standards under any existing legislative requirements, while the multiple-board system tends to lower the standards under the most exacting legal specifications.

It is not surprising that the legislatures in the several states find themselves in a dilemma when attempting to arrive at the proper solution of this very perplexing problem, since it is quite obvious that, without the proper advice, it would be impossible for them to create a medical law which would be the best safeguard for the citizens of the state.

We observe that a considerable number of the states are adopting the so-called "basic science" law, which we believe is fundamentally wrong. But we do see the necessity for such measures in those states which, through their own error, have allowed a multiplicity of conflicting laws to be enacted, with the necessary number of separate boards to administer them. The "basic science" law is so adopted as a means to an end, for it is not debatable that the licensing of any profession should be supervised by others than members of that profession. To think that the "basic science" law under which laymen are the supervisors and the examiners solves the problem, is as unreasonable as to expect the legal profession to permit a committee of architects or engineers to examine lawyers; and yet there are many physicians who, without carefully studying the so-called "basic science" law, subscribe

to its efficacy. This again is another legislative obstacle in the many states where there is a controversy always existing between the cultists and the regular school. There are quite a few well-thinking members of the Illinois general assembly who believe that such a law should be enacted in this state.

We believe that the average member of the legislature is earnestly endeavoring to give support to the enactment of the proper and necessary laws, but undoubtedly propaganda from any well-organized group will have its influence. The anti-vivisectionists are extremely active throughout the United States at this time. They come into the legislative halls with their sympathetic half-truths, and paint a picture which is most difficult to correct after a false impression has once been formed in the minds of the legislators.

It is our belief that the blame should not be laid at the door of the legislator in the majority of cases, but is distinctly a responsibility of the medical profession, which through apathy has permitted a condition to be created which tends toward the lowering of educational requirements regarding those who are seeking the privilege of treating human ailments. A restricted medical-practice act which has to deal with the lower educational requirements of the cultists is not the ideal, but is far superior to a dual act and separate examining boards. Physicians, even in their own organization, at times fail to take cognizance of the fact that the legislature is a highly impressionable body; and despite the fact that the best safeguard for the people would be a single standard for all who seek the privilege of treating the sick, the attitude of organized medicine is frequently misunderstood in legislative bodies. The unwillingness of the physician to debate the merits of any suggested drugless therapy and to discuss the situation impartially with the lawmaker, tends to create a doubt in the legislator's mind as to the physician's contention, and the cult exploiter, of course, takes advantage of a situation of this kind to his profit. It is a well-known fact that a considerable number of intelligent people, including legislators, do at times seek the services of the cultists for minor ailments; and the physician does not show the tolerance and the effort to explain to his lawmaker patient the unfounded claims of the drugless healers, but all too frequently speaks lightly or in a vitriolic way regarding their shortcomings. This is contrary to the manner in which a banker speaks to the physician after his ascertaining that a physician's stock investment was unwisely placed with a resultant loss. The banker is tolerant and willing to advise the physician and show him how to avoid the pitfall; but the reverse is not always true when the banker makes an error in placing his faith in some patent nostrum or is enticed into the hands of an incom-

petent drugless healer. Our observations would lead us to believe, therefore, that the apathy of the medical profession is largely responsible for the many incompetent laws, and that many physicians do not acquaint themselves with the very law under which they themselves are permitted to practice the healing art.

Probably the greatest success in legislative matters that the cultists have had is the "personal liberty" argument. Since it frequently goes unchallenged by the medical man it has borne fruit in the legislative halls for the cultists, and Supreme Court decisions have even indicated that there is some merit to their claims upon this basis. Mr. Harry Eugene Kelly, of the Chicago bar, who wrote the present Illinois medical law, in a recent paper regarding the "personal liberty" element which is played up so successfully by the cultists, says in part:

"The state should not seek, and, so far as I know, never has sought in any way, to limit a person in his choice of a physician from practitioners legally determined by it to be familiar with diseases, competent to make scientific diagnosis on which to base treatment, and informed generally on the various curative agents. The state should see that the public shall not be imposed upon by persons who lay claim to knowledge of diseases and the laws of health which they do not possess. It should prevent the perpetration of the kind of dangerous fraud which not only costs the public its money but inflicts on men, women, and children sorrow, pain, and death, and which spreads disease among the people. . . .

"The first thing to do in every state is to procure an act of the legislature that will reflect wisdom and justice. The endeavors of all persons who are interested in progress along these lines should be directed toward inducing legislatures to understand the fundamental principles of the subject-matter involved, and to pass the laws that recognize those principles and give public officers, including the courts, power to enforce decency and proficiency in the profession of healing the sick. Such regulation must be done through the state governments; for the United States government has substantially no original control over this occupation."

There is still another obstacle in the way of securing adequate medical legislation. It is the very modernness of the present standards and scientific requirements of a well-qualified practitioner. The medical profession travels in the van of sociological betterment. The politician may trail ten or fifteen years behind public opinion. When a popular attitude or custom finds expression upon the statute books it probably has already become conventional practice among a very large block of the population. In seeking medical legislation the organized profession looks into the future and attempts to build solidly. Lawmakers examine the present and feel the popular pulse for its reaction to any proposed change. Thus the medical profession finds its very efficiency and improvement an impediment in bringing about the legal safeguards that

would result in the elimination of widespread abuse in the field of the healing art.

The success with which the Illinois Medical Society has carried out its legislative program in recent years, causing the defeat of several hundred bills which it deemed obnoxious and the enactment of a fairly satisfactory medical practice act in 1923, suggests that a well-organized legislative program, with sufficient resources to keep the profession at large informed and active in behalf of that program, is one means of meeting obstacles under present conditions. Ultimate solution depends upon general education of the public along medical lines. This can be facilitated in no better way than by medical organizations and public health agencies conferring and working together in close harmony of purpose and plan. If a state health department and a state medical society were to go to the legislature with divergent programs, that would be an invitation for defeat to any comprehensive medical legal code. Long ago Abraham Lincoln immortalized the biblical admonition that a house divided against itself cannot stand, and today no other expression can set forth more fully the reasons why legislators have not listened more attentively to the suggestion and advice of the medical profession.