

# Control of the Sale of Sleeping Pills

Charles E. Waldron

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## CURRENT LEGISLATION

**CONTROL OF THE SALE OF SLEEPING PILLS.**—Since barbiturates were first prepared in 1903 by the German Nobel Prize winner, Emil Fischer, more than 1,500 derivatives of barbituric acid have been discovered. These drugs have proved of the utmost value to the medical profession, especially useful in the treatment of neurotic ills.<sup>1</sup> During recent times, particularly during the war years, many persons have come to rely upon the barbiturates in the form of sleeping pills to provide untroubled sleep for minds besieged with worries. The ease with which these pills could be obtained made them an ever-popular home remedy for the treatment of “war-nerves” and insomnia.

Recent investigations have revealed an alarming increase in the use of barbiturates<sup>2</sup> as well as a surprisingly large number of instances where the undesirable effects of the drug have outweighed its medicinal value.<sup>3</sup> Disclosures point to the fact that these sleeping pills are frequently a factor in delinquency,<sup>4</sup> the commission of crimes, suicides and accidental deaths.<sup>5</sup> Medical reports have stressed the fact that the barbiturates are potentially habit-forming,<sup>6</sup> that they have a cumulative toxic effect upon the body, and have been known to cause serious mental disorders when taken over an extended period without proper medical supervision. In addition, an extensive “black-market” in barbiturates has appeared on the scene catering principally to the narcotic addict who has found it increasingly difficult to obtain his usual supply of “dope”.<sup>7</sup>

These revelations have caused medical groups and public health committees in numerous localities to demand stricter measures of control over the sale and distribution of these drugs.<sup>8</sup> The problem of enacting legislation which will adequately meet this rising menace and yet not interfere with the freedom of the physician in his practice has become the responsibility of legislative bodies throughout the

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<sup>1</sup> *PHYSIOLOGICAL REVIEWS*, Oct. 1939, p. 472.

<sup>2</sup> It has been estimated that more than a billion and a half grains of barbiturates are consumed annually in the United States. *HYGEIA*, June 1945.

<sup>3</sup> *CONN. MED. J.*, Feb. 1942: “Report of study made by Society’s Committee on Drug Addiction.”

<sup>4</sup> *N. Y. Times*, Feb. 3, 1944, p. 36, col. 7.

<sup>5</sup> “The national incident of suicide by means of the barbiturates in large cities averages up to 16 per cent of all poisons except gases.” *PA. MED. J.*, Feb. 1944, p. 451. Also see *JOURNAL OF THE AMERICAN MEDICAL ASSOC.*, April 8, 1939, p. 1340.

<sup>6</sup> *ANESTHESIOLOGY*, May 1943, p. 238.

<sup>7</sup> *N. Y. Times*, July 24, 1945, p. 25, col. 5.

<sup>8</sup> *JOURNAL OF MEDICINE*, Feb. 1940, p. 12: “Symposium of Barbituric Acid.”

country. Because of the medical aspects of the problem many medical associations have conducted their own investigations and submitted their own reports and recommendations to the various legislatures.<sup>9</sup>

As an answer to the general clamor for the enactment of legislation of this type, the New York State Legislature has enacted Section 1366-a of the Education Law.<sup>10</sup> The effect of this law is to prohibit the dispensing of barbital and other hypnotic and somnifacient drugs except by those persons authorized by law to do so and, further, to prevent the sale of these drugs except to persons who are taking them upon the advice of a physician, as evidenced by a prescription. The law also makes provisions for the recording of all sales made by the retail dispenser of the drugs.

It must be noted that the drugs covered by this law are for the most part not included within the term "narcotic drug" as defined in the Public Health Law,<sup>11</sup> nor are they covered by the provisions of the Federal Narcotic Laws.<sup>12</sup>

The provisions of Section 1366-a are as follows:

1. No barbital or other hypnotic or somnifacient drug may be sold except on the prescription of one authorized to issue same.
2. The prescription must be compounded by a licensed pharmacist or druggist.
3. The dispenser must affix to the container a label containing:
  - a. The name and address of the owner of the establishment dispensing same.

<sup>9</sup> Tentative report of the Committee on Public Health Relations of the New York Academy of Medicine, Nov. 19, 1945.

<sup>10</sup> N. Y. Laws 1945, c. 664, effective April 10, 1945. A similar provision, § 1060-a of former Article 51, was added by Laws 1939, c. 778, and repealed by the general revision of Article 51 by Laws 1939, c. 869.

<sup>11</sup> "It is a matter of common knowledge that there are certain substances which would be classified as narcotic under the dictionary definition, but would not be included within the term 'narcotic drug' as defined in the Public Health Law." *People v. Lee Foon*, 294 N. Y. Supp. 872 (1937).

Public Health Law § 421 defines narcotic drug "as coca leaves, opium, cannabis and every substance neither chemically nor physically distinguishable from them."

Article 22 of the Public Health Law is known as the "Uniform Narcotic Drug Act." § 420, added by Laws 1933, c. 684. "The purpose of this article is to parallel and supplement federal narcotic laws." *People v. Gennaro*, 261 App. Div. 533 (1941), *aff'd*, 39 N. E. (2d) 283 (1942).

Corpus Juris defines narcotic as "a medicine which in medicinal doses relieves pain and produces sleep, but which in poisonous doses produces stupor, coma or convulsions, and when given in sufficient quantity produces death." 45 C. J. 391.

<sup>12</sup> 26 U. S. C. A. §§ 2550-2606, commonly known as the HARRISON ANTI-NARCOTIC ACT.

- b. The date compounded and the file number of the prescription.
- c. The name of the person issuing the prescription.
- d. Directions for use of the drug as contained in the prescription.

4. Where the prescription provides that it is not to be renewed or refilled the pharmacist may not do so.

5. Duplicate prescriptions may not be issued.

The term "barbital" as used in the section includes salts of barbituric acid, also known as malonyl urea, or any derivatives or compounds of any preparations or mixtures thereof possessing hypnotic properties or effects.

The term "other hypnotic or somnifacient drugs" includes sphenal, trional, tetronal, cabromal or any derivatives or compounds or preparations or mixtures thereof, and chloral or chloral hydrate or chlorobutanor or any mixtures or preparations thereof to be used internally.

The Act does not apply to a person "duly authorized to use hypnotic and somnifacient drugs in connection with his practice," but such a person is required to keep "a record of the date, the drug and the quantity thereof dispensed and the name and address of the patient."

Further, the Act does not apply to any preparation to be used as a spray, gargle or liniment or for external application provided such preparation contains some other drug or drugs "rendering it unfit for internal administration," and provided that such preparation is not sold for the purpose of evading the provisions of the Act.

It does not require a very close inspection of the new law to discover its many weaknesses and loopholes. In the first place the Act is designed to cover the dispensing of the specified drugs by the pharmacist or druggist only. It does not apply to the distribution of the drugs by the manufacturer or wholesaler, nor are such persons required to keep records of sales and purchases. Consequently, it does not prevent the drug from being diverted from legitimate medical and pharmaceutical channels into illicit traffic. Further, the new law permits a prescription, once obtained, to be refilled without limit unless otherwise provided in the prescription and also fails to limit the quantity of the drug that may be procured on a single prescription. Thus, it does not adequately safeguard against the practice of passing on the empty container to a friend who may have the same refilled when the patient no longer has need of the drug. Although a blanket prohibition on refilling prescriptions has been almost unanimously opposed by medical and pharmaceutical associations on the ground that it would be an undue financial burden upon many patients to require them to return to the physician every time their supply of pills became exhausted, nevertheless, most groups advocate

the placing of an expiration date on each prescription so that it could not be refilled indefinitely. The practice of permitting the patient to obtain a large supply of barbiturates on one prescription has likewise been disapproved. It is felt that such a practice might provide the "black-market" with an easy source of supply.

It is undoubtedly true that the many weaknesses and loopholes in Section 1366-a will have to be eliminated before it can accomplish its purpose of minimizing the dangers of the widespread use of sleeping pills.<sup>13</sup> In New York City, where provisions similar to those of Section 1366-a have long been contained in the Sanitary Code,<sup>14</sup> the situation today is no less threatening than in jurisdictions where no restrictions whatever are enforced.<sup>15</sup> It is the general opinion that enforcement of existing provisions is insufficient and that stricter regulations are necessary.<sup>16</sup>

The enactment of Section 1366-a is apparently only the first step towards strict state control of these dangerous drugs. It does not seem entirely remote that subsequent legislative action on this subject will eventually result in classifying barbital and other hypnotic and somnifacient drugs as "narcotic drugs," hence bringing them within the stricter provisions of the Public Health Law,<sup>17</sup> a solution that has been strongly advocated and one that has already been enacted in some jurisdictions.<sup>18</sup>

CHARLES E. WALDRON.

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<sup>13</sup> State Senator Thomas C. Desmond of Newburgh is at present drafting a bill shortly to be introduced in the Senate. Mr. Desmond proposes additional provisions among which are: 1. Possession of the drug by any person other than the one named in the prescription would be illegal. 2. Prescriptions not refillable. 3. Manufacturers and wholesalers would be required to keep records of sales and purchases.

The Board of Health of the City of New York at a meeting held on December 11, 1945 urged the adoption of measures similar to those advocated by Senator Desmond.

<sup>14</sup> SANITARY CODE §§ 117(2), 118.

The Sanitary Code was formulated by the Board of Health of the City of New York pursuant to authority conferred by § 558 of the New York City Charter.

The Charter has long provided that any violation of the Sanitary Code shall be treated and punished as a misdemeanor. *People v. Blanchard*, 228 N. Y. 145 (1942).

<sup>15</sup> In 1944 there were five times as many deaths caused by sleeping pills in New York City than were recorded in 1937. *BUSINESS WEEK*, March 24, 1945, p. 88.

<sup>16</sup> Letter, Commissioner of Health, City of New York, Dec. 17, 1945, and encl.

<sup>17</sup> PENAL LAW § 1751 provides that violations of Article 22 of the Public Health Law (Uniform Narcotic Drug Act) may be punished as felonies.

<sup>18</sup> Vermont Public Laws § 5371 classifies barbital as a narcotic drug and prohibits the refilling of a prescription unless authorized by the prescribing physician.