MEDICAL CERTIFICATION FOR MARRIAGE

AN ACCOUNT OF THE ADMINISTRATION OF THE WISCONSIN MARRIAGE LAW AS IT RELATES TO THE VENEREAL DISEASES

BY

FRED S. HALL

OF THE RUSSELL SAGE FOUNDATION

NEW YORK
RUSSELL SAGE FOUNDATION
1925

WM. F. FELL CO · PRINTERS
PHILADELPHIA

ACKNOWLEDGMENT

BECAUSE of the technical character of certain parts of this study, Dr. John H. Stokes, until recently chief of the Section of Dermatology and Syphilology at the Mayo Clinic, Rochester, Minnesota, now professor of these subjects in the Medical School of the University of Pennsylvania, and Dr. William F. Snow, General Director of the American Social Hygiene Association, were asked to read the manuscript. Both consented to do so, and the author would express his indebtedness to them for thoughtful criticisms and suggestions. They should not be held responsible, however, for any of the statements made or opinions expressed in this pamphlet.

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I

INTRODUCTION

IN AUGUST, 1913, Wisconsin enacted a law popularly known as the "Eugenic Marriage Law." Under its terms no man applying could receive a marriage license unless provided with a physician's certificate which attested that he was free from acquired venereal diseases.

For many years before this certain states had forbidden the marriage of persons physically unfit to marry, but until 1909 no state was bold enough to require all men candidates for marriage licenses to present medical certificates to prove that they were physically fit to marry. The Washington law passed in that year was repealed, however, a few months after it went into effect. Similar laws were enacted in Oregon and North Dakota a few months before the Wisconsin law was passed, but these have attracted little attention outside their own state boundaries, whereas the Wisconsin law has been widely discussed, its provisions being unsparingly denounced by some and resolutely defended by others.

Controversy as to the value of legislation of this type has been keen also in England and on the Continent. It has been successfully opposed in England so far by Havelock Ellis and others.[1] The situation in Germany in 1921 was the subject of a comprehensive review by eight writers whose papers are published together.[2] These relate to the general subject of compulsory medical certification for marriage—not merely to certification in relation to the presence of a venereal disease. Nearly all the writers are opposed more or less strongly to compulsory examinations. Dr. Max Hirsch of Berlin, the editor of the assembled papers, strongly favors compulsory examinations but holds that

[1] See *British Medical Journal*, May 12, 1923.

[2] Hirsch, Max, Herausgeber: Das Aerztliche Heiratszeugnis, Seine Wissenschaftlichen und Praktischen zur Frauenkunde und Eugenetik. Monographien zur Frauenkunde und Eugenetik, Sexualbiologie und Vererbungslehre, No. 2. Leipzig, Kabitsch, 1921. 72 pp.

there should be no prohibition of marriage except in cases where marriage is sought under conditions of publicly known [offenkundiger] sexual infection. Otherwise, candidates should be required only to know their condition, it being left to them to decide whether or not they are fit to marry. In 1923 G. Schreiber, secretary of the Eugenics Society of France, urged the importance of compulsory medical examination prior to marriage, but without any prohibition of the marriage of those found to be diseased.[1] Norway and Turkey are apparently the only European countries which have passed certification laws.

Since the passage of the Wisconsin law similar certification laws have been passed in the United States in four other states, so that seven states now have such a requirement—Oregon, North Dakota, and Wisconsin since 1913, Alabama since 1919, North Carolina and Wyoming since 1921, and Louisiana since 1924. On the other hand, since 1901, 37 legislatures have voted down 90 proposals of the same general character. In 1923 such bills were defeated in 14 different states.

In 1919 the United States Public Health Service took an active interest in promoting such legislation. A tentative bill was submitted for criticism to state health officers and others known to be interested, and a second bill, embodying many of the suggestions received, was submitted subsequently to the same group. In accordance with the policy which this activity indicates, representatives of the United States Public Health Service have endeavored to obtain the passage of certification acts in several states where such legislation has been included as a part of the venereal disease program and where the assistance of the Public Health Service has been sought.

The opposition which has defeated most of these bills represents, in part at least, not so much disapproval of their requirements in principle as an unwillingness to act until more information is at hand concerning the operation of existing laws. Even the All-America Conference on Venereal Diseases held in 1920—which was outspoken on many controversial questions relating to the prevention of venereal disease infection, and was in favor of restrictions to that end upon marriage—took no definite stand upon the advisability of a compulsory medical certificate. The

[1] A review of "Eugénique et Selection" in *The Journal of Heredity*, September, 1923, p. 275.

Conference merely expressed its approval of state action in this direction "without discussing the detail of how such a plan may best be carried out."[1]

In 1919, in collaboration with Elisabeth W. Brooke, the author compiled a digest of the marriage laws of the several states, in which was included a summary of the proposals for marriage law reform made by four recognized authorities.[2] No one of these authorities recommended a compulsory medical certificate for marriage, but because of the widespread interest in the subject and its recognized importance, announcement was made that the operation of medical certification laws would be the subject of future inquiry.

This study was first undertaken in 1920, about the time that the author was entering upon a more general inquiry in collaboration with Mary E. Richmond. This latter, which is not yet completed, is to be an extended study of many different aspects of the present-day administration of marriage laws in the United States. Material gathered on medical certification for marriage proved to have so little in common with the subject matter of the general inquiry that it was set aside temporarily and not taken up again until a good deal later. Its publication now, with supplementary material, is wholly independent of the other study.

The facts that follow have been gathered by means of field investigations, correspondence, and an examination of the literature on the subject. While visiting five Wisconsin county seats in 1920, on behalf of the Russell Sage Foundation, Alice M. Hill interviewed social workers, license officials, judges, health officers, and others as to the operation of the Medical Certification Law. Information so obtained was supplemented in 1921 and again in 1923 by personal inquiries made by the author in Milwaukee and Madison, Wisconsin, and in Waukegan, Illinois, a city in which many Wisconsin applicants obtain marriage licenses.

The results obtained by the field visits in 1920 and 1921 were disappointing. Few of the persons interviewed could offer much more than general opinions, favorable or unfavorable to the law. Individual cases were cited in which it seemed to have failed

[1] Bolduan, Charles: All-America Conference on Venereal Diseases, Reprint No. 685 from the United States Public Health Reports, July 15, 1921, p. 22.

[2] Hall, Fred S., and Brooke, Elisabeth W.: American Marriage Laws. Russell Sage Foundation, New York, 1919. This digest is limited to the more important features of existing marriage laws from a social point of view.

completely, and others in which its benefits were as confidently asserted. Most of these cases were related at second hand, and as they were not only conflicting in character but few in number, no conclusion could be drawn as to the success or failure of the law. Evidence of a more direct sort was obtained late in 1921 and early in 1922 through form letters sent to all male members of the State Medical Society, and also in 1921 through letters to all men belonging to the Wisconsin Conference of Social Work. Evidence of a still different character was obtained in Milwaukee in 1921, when several hundred marriage licenses were examined and a record made of the physicians who signed the required medical certificates. By that means it was possible to note whether any physicians were signing an unduly large number of certificates.

While the evidence obtained may not be conclusive either in favor of the Wisconsin law or against it, it emphasizes the importance of the subject as one of gravest social concern, and brings out its significant features more concretely than was possible in earlier and more general discussions. In the opinion of the author the law has been of value and is capable of being made much more effective by amendment at certain points and by the adoption of higher standards of administration. Readers who do not share this view may shape their own opinion from a study of the facts here presented, which are given in greater detail than would have been necessary had they been of a more conclusive character.

In considering the inadequacy of the law a number of suggestions offered for improving it have been considered. Most of these seem either impractical or to have slight prospect of adoption by any legislature. A stand has been taken on these points with hesitation. The administrative feasibility of a procedure, or the possibility of obtaining the passage by a legislature of any particular requirement, varies greatly with the characteristics of the state in which the experiment is tried or the legislation attempted and with the time when the effort is made. The views expressed on these matters are therefore subject to modification.

Two closely related subjects are not covered in the present study. These are the operation of certification laws now in force in six other states,[1] and the operation of laws in 14 states which

[1] For a list of these states see page 8. The text of their laws is given in Appendix A, page 84 sq.

aim to prevent venereal infection through marriage without requiring all marriage license candidates, or at least all men candidates, to present medical certificates.[1] Such laws are of three kinds: some merely forbid the marriage of a venereally diseased person; others require marriage license candidates to take oath that they are not so diseased; still others require such candidates, if they have ever been infected, to present medical certificates showing freedom from any venereal disease. Since by this last type of measure medical certificates are ordinarily necessary only when candidates inform the marriage license issuer that they have previously been infected, the requirement is not very different in character from the routine affidavit which is sworn to by all candidates. To judge by such evidence as happens to have come to the author's attention during the last four years, laws of these three kinds accomplish little.

As to the operation of certification laws in the six states, exclusive of Wisconsin, that have them, some information has been obtained incidentally, but not enough to justify conclusions in a field in which the evidence is so conflicting. In Alabama the law seems to have operated under unusually favorable circumstances. It was enacted six years after the Wisconsin law, and the State Board of Health in sponsoring it was able to profit by the early mistakes made in Wisconsin. Thus from the start free laboratory service was provided by the Alabama Board of Health for the use of examining physicians, a $5.00 examination fee was allowed, and the co-operation of the medical profession was facilitated through the fact that under the state constitution the Alabama Medical Association is the State Board of Health.

The Wisconsin Certification Law, like the corresponding laws in four other states, relates only to the venereal diseases.[2] In North Dakota and North Carolina, however, certification laws relate also to tuberculosis and to mental deficiency. The wisdom

[1] These states are Delaware, Indiana, Maine, Michigan, Nebraska, New Jersey, New York, Oklahoma, Pennsylvania, Utah, Vermont, Virginia, Washington, and Wisconsin. The law in Wisconsin is in addition to the Medical Certification Law of that state.

[2] Specialists in this field maintain that syphilis and gonorrhea should not be classed together since they have only one feature in common—the fact that frequently, though not always, they have their origin in the organs of generation. For this reason the generic term "venereal disease" is avoided throughout this study, though the specific terms "a venereal disease" and "the venereal diseases" are employed. It is recognized, however, that in the opinion of certain physicians of high standing even these terms are inadmissible.

of these more comprehensive laws is not considered in the following pages. It may be noted, however, that certification as to mental deficiency presents even greater administrative difficulties than appear in connection with the venereal diseases. If a law requiring such certification were in successful operation in a state, applicants refused medical certificates because of mental deficiency would be permanently excluded from marriage there. This is ordinarily not true when applicants are refused because of a venereal disease, and refusal of certificates under the former circumstances becomes a much more serious step and one which physicians would be less willing to take. Furthermore, in borderline cases mental deficiency is something which calls for examination by specialists, and these are not available in many places in which marriage licenses are issued.

II

HISTORY OF THE WISCONSIN LAW

THE bill which became the Medical Certification Law of 1913 was introduced by Senator William L. Richards. It originated with Mrs. Gustav A. Hipke, acting as president of the Maternity Hospital and Dispensary Association of Milwaukee. To Mrs. Hipke's efforts was due, in large measure, its passage. Dr. George E. Hoyt—then a state senator, and later appointed deputy state health officer—was also actively interested in furthering it.

Two changes made in the bill by members of the legislature are significant of the general attitude of legislators toward such proposals. The bill as introduced applied to both sexes, but the Senate limited it to males. An attempt was made in the Assembly to extend its provisions to include females again, but this was unsuccessful. The original bill also provided that the required examinations should be made by specially appointed physicians. This provision was stricken out. Even with these changes made by the legislature the bill passed in 1913 was very different from the law of 1915, which remains substantially unchanged today. It is necessary, nevertheless, to examine the history and provisions of the earlier law in some detail, for much of the opposition which exists today to the later law may be ascribed to the bad start made in 1913.

1. The Law of 1913

The law of 1913 provided that all men applicants for marriage licenses, within fifteen days prior to their application, must be examined by a licensed physician. No marriage license might be issued unless a certificate was presented stating that the applicant had been so examined and found "free from acquired venereal diseases so nearly as can be determined by physical examination and by the application of the recognized clinical and laboratory tests of scientific search." A maximum fee of $3.00 for the ex-

amination was established, and county physicians were required to make examinations without charge for indigent applicants.[1]

In addition to these general requirements administrative procedures were prescribed in some detail, but it was about the examination provisions that the controversy raged. The law seemed to oblige physicians to make expensive laboratory tests in every case, or have them made by specialists, and yet only $3.00 could be charged for their services. Some medical societies, including the Medical Society of Milwaukee County, called for the repeal of the law on this ground, and others expressed themselves in opposition on the further ground that the law failed of its purpose and was discriminatory in that it applied only to men. Finally, according to Dr. C. A. Harper, the state health officer of Wisconsin, certain medical cults, together with such groups as those opposed to compulsory vaccination, criticized the law and held that it was devised merely for the profit of regular practitioners.

The organized medical profession was apparently given no opportunity to consider the proposed bill before it was presented to the legislature. In its report to the State Medical Society in February, 1915, the society's Committee on Public Policy and Legislation stated that the law of 1913 "was drafted and passed without having been reviewed by any of the members of the committee of the State Medical Society charged with the responsibility of keeping track of questions of health and sanitation measures."[2] A month later the Wisconsin *Medical Journal*, the organ of the society, declared editorially that "the law was passed without anything even remotely resembling consultation with the medical profession." It added: "Probably 98 per cent of the physicians in Wisconsin had never heard of the bill until it . . . was about to go into effect."[3] A social worker in a very favorable position for observing the situation states that the movement "got in wrong with the profession at the start."

The attitude of the State Medical Society toward the law was expressed editorially in at least three issues of the Wisconsin *Medical Journal*. An examination of these statements, parts of which are here quoted, shows clearly that the society's opposition

[1] The law of 1913 is given in full in Appendix A, page 81.

[2] Wisconsin *Medical Journal*, February, 1915, p. 370.

[3] Ibid., March, 1915, p. 411.

faults of the present law by minor changes which would not sacrifice any of the important features. With these corrections made the measure could then be given a longer trial and its possibilities for good or for evil could be determined much more definitely than can be done at the present time. (March, 1915, p. 411.)

According to the Committee on Public Policy and Legislation of the State Medical Society, three courses under the law were open to conscientious physicians: "to refuse to conduct the necessary examinations, to pay for them from their own funds, or to insist upon the applicant paying for them, the latter practice being the one employed by the great majority, thereby co-operating as far as practicable to afford unsuspecting prospective brides the protection which the Act was intended to insure, and at the same time manifesting due respect for the Wisconsin statutes."[1]

The early opposition to the law was somewhat lessened when an opinion was rendered by the Attorney General on December 22, 1913, nine days before the law took effect, that the legislature did not intend to require the Wassermann test.[2] This opinion was in part as follows:

It is, of course, apparent that physicians can be found who will issue the required certificates no matter what tests the law may be deemed to require, so that unless the reputable physicians will co-operate to make the law effective (and if they will not, no law of the kind can be successful) the law must largely fail to accomplish any good. But I am convinced that the great mass of the reputable physicians will desire to save the law and their profession from disrepute and will therefore endeavor to carry out the spirit of the enactment and hold themselves ready to give such examinations and tests as the ordinary reputable physician of scientific attainments is equipped to make and may reasonably be expected to make for the fee prescribed. Otherwise, it is plain that the charlatans of the profession will seize on this law as a new source of revenue and thus bring the law into disrepute and dishonor to their profession. . . . I am of the opinion that the law must be given a practicable and workable construction, rather than one that will defeat its purpose and possibly render it unconstitutional and void; that its obvious purpose was to require only such an examination and test as the ordinary reputable licensed physician of scientific attainments is equipped to make, capable of making, and could reasonably be expected to make for

[1] Wisconsin *Medical Journal*, February, 1915, p. 371.

[2] Opinions of the Attorney General of Wisconsin, April 1–December 31, 1913, p. 552.

was not to the requirement of a medical certificate for marriage, but to the type of examination specified. In the second editorial quoted, written over a year after the law had taken effect, there is full recognition of its educational benefits.

The medical profession has been and always will be ready to do whatever lies within its power to lessen the ravages of the venereal diseases, and the theory of the Eugenic Marriage Bill might well receive our hearty endorsement, but in its present form the act asks impossibilities of the medical profession and the only loophole of escape is through insincerity and evasion. This is an intolerable situation, and the united profession should rise in protest. But as the state has seen fit to enact this law, let it, and not the over-burdened medical profession, devise and provide ways and means of carrying it into effect. (December, 1913, p. 237.)

The examination of applicants for a marriage license is a perfectly reasonable measure in itself. Unfortunately there is no known way of making such an examination infallible or fool-proof. The trouble with the present law is that it attempts this impossible feat. If the authors of the law had been satisfied to accept a statement from the examining physician that he had made a careful examination of the applicant and found him free from evidence of venereal disease, some good would have been accomplished and no great opposition would have been roused. Under such a law some cases of latent infection would of necessity slip past the examining physicians, some would be missed on account of lack of thoroughness or lack of equipment for microscopical examinations. Some instances of misrepresentation and fraud would undoubtedly occur. But under such a law the physicians would be able to try conscientiously to co-operate with the state authorities in checking the spread of venereal infection. . . . Under the existing circumstances it is no wonder that the examinations have degenerated into a mere perfunctory routine in many cases. Nothing else could be expected. Undoubtedly the discussion of the subject has had an educational effect in the community. Without question there is a more wide-spread knowledge of the dangers, present and remote, which accompany venereal infection. If this good effect is to be maintained, if this law is to be kept on the statute books, and if the co-operation of physicians is desired in making it effective, it is certainly only fair to ask for such a modification of its requirements as shall do away with conscientious objections of the medical profession. (January, 1915, p. 324.)

The law as it stands upon the statute books today is thoroughly unsatisfactory and unworkable from the standpoint of the practitioner of medicine. . . . It is possible to correct the glaring

the fee of $3.00, and that the "recognized clinical and laboratory tests of scientific search" do not include the so-called Wassermann test, nor such tests as can be made only by specialists, nor such as require special and expensive equipment or long-continued laboratory experiments.

On receiving this opinion the Medical Society of Milwaukee County adopted a report which contained the following recommendations:

That the members of the Society, as physicians and as good citizens, should co-operate in carrying out the provisions of the law in so far as their individual consciences will permit;

That the members of the Society who can conscientiously sign the certificates without the application of the recognized clinical and laboratory tests of scientific search should of course do so. . . .

That those who cannot conscientiously issue a certificate without having applied the recognized clinical and laboratory tests of scientific search should explain the circumstances to all those applying to them and refuse to pass upon their eligibility to a marriage certificate under the law unless they shall submit to and pay for such tests as modern and scientific diagnosis and the letter of the law require; or exercise their privilege of refusing to issue certificates under any and all circumstances.[1]

2. Constitutionality of the Law

It is apparent from these "recommendations" that some physicians felt that they could not conscientiously omit Wassermann tests, as the Attorney General stated might legally be done. To obtain a more conclusive opinion a test of the constitutionality of the law was arranged. For that purpose several Milwaukee physicians refused to examine a man who had applied for a certificate, their contention being that they could not afford to give the thorough examination which the law required for the prescribed $3.00 fee. On the ground that the law required a technical and expensive test in all cases, and that this unduly restricted the right of men to marry, a lower court in Milwaukee declared the law unconstitutional on January 20, 1914, twenty days after it took effect. But this decision was reversed by the Supreme Court of the state on June 17, 1914, by a vote of three to two.[2] That

[1] Wisconsin *Medical Journal*, January, 1914, p. 267.

[2] Peterson vs. Widule, 147 Northwestern Reporter, 966. This decision is printed also in Reprint No. 342 of the United States Public Health Service Reports, Washington, 1916, p. 57. The majority and minority opinions together contain about 10,000 words.

court held that the legislature could not have intended to prescribe tests which the great majority of the specified examiners, the licensed physicians of the state, were not able to make, and it therefore ruled that the "recognized tests" required by the law referred to "the tests recognized and used by the people who were to make them." The more significant parts of the prevailing opinion are as follows:

The principal objection made to the act and the objection which the circuit judge found to be fatal is the objection that it requires in every case the use of a very delicate and expensive blood test, known as the Wassermann test, before the certificate required can be signed. It is claimed, and rightly claimed under the evidence, that this test is a highly technical test, requiring special training and the use of complex laboratory equipment not possessed by more than 25 practitioners in the state; that no physician could make such a test for the statutory fee of $3.00 or anywhere near that sum, on account of the time, technical knowledge, and equipment required; and that to require a physician to make the test for that fee would be an unreasonable requirement. All this was substantially conceded by the state in the present case, and the concession seems to have been advisedly made. . . .

In view of all these facts and in view of the fact that the legislature wished to reach practical and possible results, it seems unreasonable to suppose that they intended to prescribe tests which the great majority of the official examiners were not able to make. We prefer to construe the words "recognized tests" as intended to refer to the tests recognized and used by the people who were to make them. This construction sustains the law, makes it reasonable, accomplishes its evident purpose, provides for a guard to marriage fully as effective in the vast majority of cases as the application of the Wassermann test. . . .

It is said that the fee provided by the law is entirely insufficient, even if the Wassermann test be not required. Upon this question there is a difference of opinion among the physicians. We incline to the opinion that the fee is a very meager one; we should not, however, feel justified in holding the law unconstitutional on this ground. . . .

The dissenting opinion, supported by two justices, contained the following recapitulation:

The act unduly casts suspicion of immorality and criminality of most serious nature upon every male candidate, present, prospective, or possible, for the marriage state. It imposes such an oppressive burden upon all such candidates as to proving

competency to enjoy the natural right of marriage, or so takes such right away without justification in many cases and restrains its exercise generally, as to efficiently discourage an institution which is absolutely essential to public welfare and so recognized and protected by the fundamental law. By so oppressively interfering with the constitutional right of marriage as to partially or wholly destroy that right, the tendency will inevitably be to promote immorality and social and racial retrogression. . . .

3. Confusion Caused by Conflicting Opinions

The period during which the original law was in force (January 1, 1914 to August 12, 1915) was one of much confusion. The opinion of the Attorney General that a Wassermann test was not required was overruled in less than a month by the Circuit Court in Milwaukee County. Seven months later this decision was in turn reversed by the Supreme Court of the state. The demoralizing effect of these conflicting opinions, according to the Wisconsin *Medical Journal*, was "a feeling of helplessness followed by indifference on the part of the medical profession; and in some quarters, at least, a degeneration of the examination into a mere perfunctory formality."[1]

Under such circumstances it was natural that some physicians should ignore the terms of a law which they felt was an impossible one to observe, and should sign certificates—for some applicants at least—without giving even a physical examination. How extensive such issuance of medical certificates was no one knows, but that it existed is evidenced by very definite reports. Two of these are the following:

In 1914 a young man now engaged in social work in another state applied for a certificate in Milwaukee. The physician asserted that the law was converting the physicians of the state into perjurers since they could not possibly make the required examination for $3.00. Nevertheless, he added, as all others were perjuring themselves, why should he not do the same? Therefore he ordinarily asked each applicant if he had been infected, and made an examination only in case previous infection was admitted. On this basis the young man referred to was given a certificate without an examination.

This case was reported to the author by the young man concerned. The facts as to the following case were extensively

[1] Wisconsin *Medical Journal*, May, 1914, p. 403.

reported in Milwaukee newspapers at the time and have since been verified by correspondence and interviews:

A young woman, dressed as a man and giving the name of Ralph Kerwineo, applied for a physician's certificate in order to obtain a license to marry another young woman. The license was issued, the physician certifying that "Ralph Kerwineo" had been examined and was found to be free from any venereal disease. The story had much publicity when the applicant's sex was subsequently discovered.

4. The State Medical Society's Bill

Realizing the unsatisfactory character of the law the physicians of the state, through the State Medical Society, took steps in 1915 to propose changes which they believed to be necessary. At a meeting of the society's council in January, 1915, the existing law was discussed, the stand of the society with regard to amending it being left to the Committee on Public Policy and Legislation.[1] In February that committee presented a report, which was printed in the Wisconsin *Medical Journal* together with a recommended bill.[2] The report contained this statement:

It is the opinion of the Committee who drew the bill that no measure can be drawn which will afford the complete protection desired, that the principal benefit accruing from any such measure lies in its educational value, . . . that, inasmuch as the present law is on the statutes, an effort should be made to amend it to the end that the attempt to protect and improve the race by legislative means may be given further observation and trial.

The society's bill extended the law to women and applied it to persons suffering from tuberculosis as well as the venereal diseases. It required the examining physician to set forth that the applicant had been examined and that so far as the physician could determine "by the application of the usual and ordinary tests and methods of examination" was "free from active pulmonary tuberculosis and communicable venereal diseases." If in the opinion of the physician it should not be possible "by ordinary methods to exclude with sufficient certainty the existence of syphilis," he might refuse to issue a certificate until the applicant had submitted to the "higher laboratory tests" and such tests had proved

[1] Wisconsin *Medical Journal*, February, 1915, p. 377.

[2] Ibid., February, 1915, p. 370.

negative. Such tests might be made by "any properly qualified laboratory specialist or by the State Laboratory of Hygiene." A $5.00 maximum fee was specified. In the following month the attention of physicians was called to this bill by means of an editorial in the Wisconsin *Medical Journal*, the statement being made that "the change . . . would do away with the conscientious objections of most physicians and would permit the more thorough trying out of the merits of the law."[1] This bill was apparently never introduced, though one of its features—the provision for laboratory tests at the discretion of the examining physician—was embodied in the new law.

5. The Law of 1915

Four bills were introduced in the legislature in 1915 to repeal the law or to eliminate the compulsory examination feature. All of these failed of passage. After many changes had been made in it by the legislature a fifth bill, amending the original law, was finally passed.[2] Though this bill as introduced did not require Wassermann tests in all cases, it specifically required microscopical examinations for gonorrhea in all cases. That provision, however, was stricken out. During the bill's course through the legislature, unsuccessful attempts were made to extend its scope to include women and to substitute an affidavit for the examination except where previous infection was admitted.

The most important changes made by the revised law provided for free laboratory service by the state, and required clinical and laboratory tests only when the examining physician believed them to be necessary. The fee was also reduced from $3.00 to $2.00. In addition to the fundamental changes with reference to the prescribed examination there were a number of administrative changes. This law, which is still in force, is hereafter referred to as the "revised law" or the "law of 1915."[3]

6. The Required Examination

The revised law has met with no such opposition from physicians as was shown when the original measure took effect. Never-

[1] Ibid., March, 1915, p. 411.

[2] For the text of the law of 1915, see Appendix A, page 82.

[3] The law was amended in 1917 so as to allow physicians not residents of the state to issue medical certificates under specified circumstances.

theless, very contradictory opinions have been expressed as to its accomplishments, including the charge that large numbers of physicians, or even most physicians when they have no reason to suspect the presence of infection, give applicants no physical examination, and that other physicians never give physical examinations. One physician writes as follows:

> We used to charge $2.00; then the county clerk and some doctor would go "fifty-fifty," and we had but a few applications; so now we do it for nothing, but you can judge how much of an examination they get. *These are facts.*

Before considering the extent to which medical certificates are issued without physical examination, it may be noted that there is some ground for the contention that such a course is legal. The revised law requires that freedom from the venereal diseases is to be determined "by a thorough examination and by the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary." It is the word "clinical" in this provision which leaves the meaning of the law somewhat in doubt. The original, etymological meaning of the word was limited to processes performed by a physician on the body of a patient in bed or in an office or clinic—processes which a layman, at least, would regard as a "physical examination" in contrast to "laboratory tests." This was substantially the interpretation adopted by the Supreme Court of the state in 1914. If the legislature meant to use the term clinical in this sense, then a physical examination is not required except when a physician thinks one necessary. But if, as seems more reasonable to the author, the term "clinical tests" is used in its more modern sense, according to which it includes laboratory tests or is identified with them, it is possible to argue that only laboratory tests are discretionary, and that the "thorough examination" required in every case means both a careful taking of the history and a thorough physical examination. So far as known no opinion has been given by a court or by the Attorney General as to the meaning of these terms in the revised law.

It is unfortunate that a word was used in the revised law which in the medical profession has these two different meanings, for the result has been to perpetuate to some extent the confusion caused

by the original law as to the examination requirements.[1] If the wording of the bill proposed by the State Medical Society had been accepted for the revised law this serious ambiguity would not have appeared. That bill, it will be recalled, made no use of the word clinical. It required in every case the use of "the usual and ordinary methods of examination." The "higher laboratory tests" were to be applied if in the opinion of the physician they were necessary.[2]

7. Unsuccessful Efforts to Amend or Repeal the Law

Before consideration of the evidence obtained as to the operation of the revised law it is necessary to record the unsuccessful attempts at amendment or repeal. Reference has already been made to the attempts made in 1913 to apply the bill to both sexes and to have all examinations given by specially appointed physicians; also to the four bills introduced in 1915 to repeal the law or eliminate the examination requirement.[3] In 1915 also, as well as in 1923, amendments for the inclusion of women were defeated. The attack upon the law which came nearest to success occurred in 1923 when a bill for its repeal was passed by the Assembly. No votes were recorded against the repeal bill, but there was no formal roll call. As this action seemed like a reversal of the very positive attitude of previous legislatures, careful inquiry was made to learn how significant the vote was.

The bill originated with the very popular member of the Assembly who introduced it, and several hundred letters advocating its passage were received by assemblymen. The author was permitted to examine a large package of these letters. Among 35 read, four urged the repeal of the law because it violated "medical freedom"; one referred to it as providing "graft for

[1] Apparently the word clinical is at present in course of transition from its original meaning to its more recent and broader meaning. So new is the latter meaning that as late as 1921 it was not recognized in any of the nine medical dictionaries to which the author had access. Only the original meaning was given. Many physicians still use the term exclusively in that sense, while most physicians who have accepted the broader meaning frequently use the word in the original sense also when it is clear from the context that such a meaning is intended. They speak, for example, of interpreting laboratory tests in the light of "clinical findings." Thus the broader meaning of the word cannot yet be regarded as generally accepted by the medical profession, but it is so widely accepted by the leaders of the profession that its general acceptance in the near future seems assured.

[2] See page 20.

[3] See pages 13 and 21.

the medics" and another as assisting the "power of allopathic domination." Still another writer denounced the law because of its connection with "regular medicine."

In general a hostile attitude toward physicians as a group was indicated in the Assembly throughout the session. A bill was passed in that house abolishing the right of public schools to exclude unvaccinated children for a specified period after the outbreak of smallpox, and also a bill specifically abolishing the compulsory employment of public health nurses by county boards. These bills were defeated in the Senate. A member of the State Board of Health stated that this attack upon the vaccination law was made "with an intensity shown in no previous session of the Legislature, and there have been many such fights before."[1]

When the repeal bill reached the Senate it was rejected by a vote of 15 to 12. Later that body passed a substitute bill which, while retaining the requirement for medical examination of males, added a clause requiring an affidavit from females as to freedom from venereal diseases. The Assembly refused to accept this substitute and it was lost in conference. The existing law was accordingly unchanged.

The medical profession, through the State Medical Society, neither favored nor opposed the repeal of the Medical Certification Law, though the assemblyman who introduced the repeal bill stated that ten physicians had urged its passage, specifying that their names should not be disclosed. In general the repeal bill attracted but little attention in Wisconsin. Though an article a column and a half long concerning it appeared in a New York City newspaper when it passed the Assembly, Milwaukee newspapers barely mentioned the incident. An editorial, however, from which the following extracts are taken, appeared in the Milwaukee *Journal*:

Wisconsin has had a eugenic marriage law since 1913. It has not, in general, had the support to which it is entitled from the medical profession. Nor has it had the support of some self-styled social workers. There have been plenty of cases, in its application, that gave opportunity to those who were seeking a chance to laugh. So the anti-eugenists misread public opinion and decided that at this session of the legislature the law was due for repeal. . . . No sooner was the repeal bill in than they got a surprise. They found that people have begun to think in

[1] Wisconsin *Medical Journal*, July, 1923, p. 97.

III

EVIDENCE AS TO THE OPERATION OF THE LAW

IN THIS study Wisconsin physicians have been the chief sources of information. As the testimony obtained by means of interviews had been conflicting, co-operation of the State Medical Society was solicited and a form letter was sent to its male members. This letter aimed primarily to learn to what extent medical certificates were being granted without physical examination. The physicians were asked, however, to make other comments, if they desired, concerning the operation and value of the law. The letter was sent to 1,878 physicians and 1,110 replies were received. This large response was undoubtedly due in part to the fact that the letter suggested that replies need not be signed. In 317 cases, however, signed replies were received. The evidence obtained by means of this letter, supplemented by other evidence concerning the operation of the law, is presented in this and the next following section. For the convenience of the reader the detailed presentation of this evidence is preceded by a brief summary in the following paragraph.

Out of 1,027 physicians who indicated their procedure in the matter of clinical examinations, 785 stated that they gave such an examination to every applicant, while 242, or 23.6 per cent, reported that they did not always do so. However, many of the latter group added comments which indicated that it was only in exceptional cases that they omitted these examinations. Moreover, our investigation in Milwaukee County of 1,267 medical certificates filed in the marriage license office showed no marked centralization of issuance in the hands of a few men who might have established a reputation for easy examinations. Twenty-six physicians volunteered the information that in order to induce applicants to give a truthful history they always or usually had a frank talk with them as to the seriousness to wife and children of infection from a venereal disease. Out of 169 physicians who referred in their comments to the adequacy of the legal fee, 155

terms of eugenics. The statute has kept this subject before them. . . . If it has prevented marital disaster in a single life, it has been worth while. And if it has made our new home builders more familiar with the responsibilities that come with marriage, it has been an agency of great good.[1]

This is the only editorial on the subject which came to the author's attention while the repeal bill was pending in the legislature.

[1] Quoted in the Wisconsin *Medical Journal*, July, 1923, p. 84.

declared it to be inadequate. There were 33 physicians who reported that they sometimes or always charged more than the specified fee. Comparatively little use seems to have been made of the state's free laboratory service for examinations under the Medical Certification Law, though in general medical practice that service was quite extensively used. Of the 364 opinions expressed by physicians concerning the value of the law, 233, or 63.8 per cent, were generally favorable and the others unfavorable. The criticisms most frequently made were that the law does not require women to be examined, and that the fee was inadequate. The evidence here summarized will now be considered more fully.

1. Issuance of Certificates Without Physical Examinations

The letter of inquiry to Wisconsin physicians is shown in full in Appendix B.[1] It was sent in October, 1921, and January, 1922, to practically all male members of the State Medical Society, the only omissions being a few men whose testimony had already been obtained through correspondence or interviews.[2] A stamped return envelope was enclosed. Of the 1,110 replies, 33 were from physicians who had retired or who were not in general practice.[3] Though these 33 physicians were unable to report as to their own procedure, many of them made comments of value. With the replies of 50 others excluded because they were not explicit enough to tabulate, there remained 1,027 definite replies to the principal question which aimed to learn whether physicians interpreted the law as permitting the issuance of certificates *in any cases* without examinations. The replies were not entirely conclusive on this point, since for reasons which will be considered presently the letter was misunderstood by some physicians. It was, however, the many and often detailed comments contained in the replies which proved to be the most valuable part of the information furnished. Such comments were received from 896 physicians and liberal quotations are made from them in the following pages.

[1] See page 89.

[2] The letter was first sent to physicians outside of Milwaukee County and three months later to those in that county, the division being due to a plan finally abandoned to get the information from the latter by other means.

[3] For the sake of identification an arbitrary number was given to each reply. Additional numbers, from 1,111 to 1,119, were given to comments quoted from interviews or statements made in general correspondence with physicians to whom the letter of inquiry was not sent. These numbers are used wherever quotations are made from the replies.

It is undisputed that the Medical Certification Law operates in marriage license offices substantially as was intended. Apparently no licenses are granted unless medical certificates in proper form are filed. The controversy relates to the physician's part—the thoroughness of the examination. The situation was stated as follows in a paragraph in the author's letter of inquiry to physicians:

> In view of the fact that the maximum fee of two dollars is generally regarded as inadequate to cover a complete examination, some physicians tell us that they give only an oral examination. If the applicant admits he has been infected, they give a clinical examination and possibly make laboratory tests, but not otherwise. Other physicians report that they give a clinical examination in every case.

Later in this letter the physician was asked to state if he gave or did not give "a clinical examination in every case." As indicated in the paragraph quoted, where clinical examinations are contrasted with oral examinations on the one hand and laboratory tests on the other, the term "clinical examination" was employed as substantially equivalent to physical examination. It was assumed that this meaning was accepted generally by physicians—at least in Wisconsin, where it had been accepted by the Supreme Court of the state, after hearing the testimony of several practitioners, when the constitutionality of the Medical Certification Law was being considered. This, however, proved to be an erroneous assumption. In 24 replies it was plain that the physicians, adopting the more modern use of the term "clinical," had reported that they did not give clinical examinations in all cases when they meant that they did not always give laboratory examinations. The misunderstanding in these replies was readily detected from remarks made, and the replies were properly recorded since it was plain that the physicians in question did give physical examinations in all cases. It is impossible to be sure how many other physicians may have misunderstood the inquiry for this reason, but in view of the contrast between clinical and laboratory tests expressed in the letter, it seems likely that this number is not a large one.

Out of the 1,027 replies in which the inquiry as to their own examinations was definitely answered, 242, or 23.6 per cent, indicated that a clinical examination was not given to every

applicant. The same point, though from a somewhat different angle, was covered by an inquiry made by Dr. Harper, the state health officer.[1] This letter which also enclosed a stamped envelope for reply, was sent in 1922 to 700 newly married men. It asked this question, among others: "Did the physician simply ask you a few questions without a personal examination and issue you a permit on your replies?" There were 212 replies, of which 26, or 12.3 per cent, were "Yes" and 186 "No." Thus, 12.3 per cent of the 212 certificates were reported to have been issued without a physical examination. This 12.3 per cent is not quite comparable with the 23.6 per cent based on replies to the author's letter of inquiry, since the latter percentage shows what proportion of the reporting *physicians* stated that they did not always give clinical examinations, while Dr. Harper's figures show what proportion of the 212 *applicants* received certificates without a physical examination. These 212 applicants were probably examined by less than 212 physicians. Moreover, it is necessary to raise the question whether the replies made to Dr. Harper, if regarded as representative of the general experience of applicants, do not considerably understate the proportion of cases in which physical examinations were omitted, because of the fact that the first item called for on his questionnaire was the name of the physician who gave the examination. If the receivers of the letter—in spite of the fact that it was marked "Confidential" and no signatures were required to the replies—had reason to suppose that their answers would cause trouble to the physicians who examined them, there may have been a reluctance to reply. The proportion of cases in which no replies were received in spite of the stamped envelopes enclosed—438 cases out of 665 letters sent and delivered[2]—suggests that this motive for silence may have been effective with some or even many of those who received the letter.

Additional evidence on the point here considered was furnished by replies made to the writer by men belonging to the Wisconsin Conference of Social Work who were questioned on this point. Out of 57 men who had received medical certificates, 23 reported that no physical examination was given.[3] Though not much

[1] For this letter and further details, see Appendix B, page 91.

[2] There were 35 letters returned because the men addressed were not found. There were also 15 men who replied to other inquiries, but not to this one.

[3] Not all of these men were members of the Conference. For a fuller discussion of their replies see Appendix B, page 90.

weight can be attached to a proportion where the total is so small as this, it is nevertheless evident that the proportion of these cases in which no physical examination was given is very much larger than that reported to the state health officer.

Because of statements to the effect that any man who really wanted a certificate could readily find a physician who would grant him one, an effort was made to learn whether any physicians were conspicuous because of a large number of certificates issued. Consecutive medical certificates to the number of 1,267 filed in Milwaukee County during May and June, 1921, were examined, and the number issued by each of the 467 certifying physicians recorded. This test gave the following results:

1	physician	signed 21	certificates
1	"	signed 16	"
2	physicians	signed 13	"
2	"	signed 11	"
4	"	signed 10	"
5	"	signed 9	"
11	"	signed 8	"
9	"	signed 7	"
22	"	signed 6	"
27	"	signed 5	"
182	"	signed 2 to 4	"
201	"	signed 1	certificate
467	physicians	signed one or more	certificates

The tabulation apparently indicates that no physicians had established a reputation which brought large numbers of applicants to them. The man highest on the list, whose name indicated foreign nationality or parentage, and whose office was in a foreign section of the city, signed 21 certificates. At this rate[1] he would have issued approximately 84 certificates a year—not a very remarkable number.

The names and addresses of the 84 physicians who had signed five or more certificates were sent to two persons active in public health work in Milwaukee, with a request for comment. Excerpts from their replies are as follows:

I am delighted to see how well the Milwaukee physicians as a class uphold the standards of ethical practice. Even at a glance through the list, the impression is given immediately that apparently no physician is signing these certificates from a dollar and cents viewpoint.

[1] The 1,267 certificates examined were about one-fourth of the number issued during the year.

The list . . . represents a cross section of the medical profession in the city. . . . It contains no physicians who are very high in the profession, but is in general a group of general practitioners scattered throughout the city. The addresses indicate that physicians of the local neighborhoods are being used to a large extent.

As evidence that a reasonably thorough examination is usually anticipated by applicants, one physician refers to the exodus of Wisconsin people to other states to get their marriage licenses. In a later section it is shown that most of this exodus is probably not to be charged to the Medical Certification Law. But in so far as that law is the impelling force, applicants must anticipate a real examination in Wisconsin. Otherwise, they would not feel it necessary to leave the state to get their marriage licenses.

If the several facts mentioned on the preceding pages are taken into consideration—the proportion of physicians who reported that they did not give a clinical examination in every case, the proportion of men who reported to the state health officer and to the author that no physical examination was given them, the extent to which medical certificate issuance was distributed among physicians in Milwaukee County—it seems probable that failure to give physical examinations of any sort is not so extensive that, for that reason alone or for that reason primarily, the law should be declared of no value.

2. Physicians Who Sometimes or Usually Omit Physical Examinations

Before this phase of the subject is dismissed, one further fact should be noted. A large number of the physicians who report that they do not always give physical examinations make it clear in their remarks that under certain circumstances they do require such examinations. With some of these physicians the physical examination is the rule and the mere taking of a history the exception. With others the reverse practice seems to be followed, reliance ordinarily being placed upon the applicant's word. Samples of the replies, purposely not classified in any way, in which these different practices are indicated, are the following:

155. If the applicant says he has never had any venereal disease of any kind, I go no further. If he admits he has had, I examine the organ, and if I find no evidence of a present disease, I go no further.

567. In cases of applicants very well known to me their word of honor is accepted.

789. If I am so intimately acquainted with the applicant as to be morally certain of his freedom from venereal disease I occasionally accept his word of honor. But it is only in rare instances.

795. I examine all but close personal friends, and from what I know of other physicians they do about the same.

836. When strangers apply, I examine. If I know the party personally I do not examine if history shows no possibility of infection.

840. We rely mostly on the honesty of our clientèle and find out by propounding questions to them and explaining why they are in duty bound by law to answer them honestly. I swear all applicants and as yet have had no one lie to me. When a patient comes to swear upon his honor before his Maker and his fellowmen, he must be a pretty bad-minded fellow who will deliberately tell a falsehood. If a patient claims to have contracted syphilis, I send him to the state laboratory, and at least have him stand the test, and withhold the certificate until I am convinced that he is in sound bodily health.

855. The people in my country practice are well known to me and their word of honor is sufficient. If I suspect dishonesty I insist upon a clinical examination.

874. This is a small place. I know most men very well, and know those that will tell the truth. Others are examined.

878. We feel that we can take the word of applicants with whom we have been acquainted for years and have been their medical advisors when occasion requires. All strangers are given a clinical examination and laboratory tests when necessary.

891. The doctor must take the patient upon his honor. In my opinion that is the only way one has to determine venereal disease except through laboratory findings. The average patient is shrewd enough to mask even acute conditions about himself so that there would be really no clinical signs if information was not present.

892. In our country section we usually know people and we do not need the examination except in exceptional cases.

914. In a city of about 4,000 population, where I am acquainted with the moral conduct of everybody, I know when to examine and when not.

932. Personally I am called upon very rarely, and then usually in cases which I have been observing for some other condition. I believe most men get the certificate from family physicians. In the case of a stranger no doubt we would all make an examination.

938. My work is among farmers far removed from a large city. We have very little venereal trouble here. I always carefully examine any case I might have reason to suspect.

947. I have every reason to believe that a clinical examination is seldom given. I depend upon applicants' statements.

1018. I usually give a clinical examination. In my practice there isn't much chance of not knowing who need the tests. With people of character and those whom I know their word goes. In all cases the matter is put to them in this way—that it is for their own interest to be honest and I show why, and explain that

Nature is a swift avenger and that there is no passing the buck. In doubtful cases they are sent to a genito-urinary man for opinion. We follow the "Rule of Reason." To date I have not seen an instance of failure—infection of a wife.

1023. I give a clinical examination in every case except where I am well acquainted, then simply an oral examination.

1026. The man whom I know personally and am his physician, the man whose ways I know, I do not give an examination. Those whom I do not know I do give a clinical examination.

1032. I give a clinical examination in most cases. Occasionally, being intimately acquainted with an applicant and being fully satisfied that he is a clean, healthy case, examination may be dispensed with. Strangers and doubtful cases are examined carefully.

1044. If I know the applicant, I make report on his testimony alone. If in doubt I refuse to sign.

1050. The fee is so small that I generally give only an oral examination.

1056. I nearly always give a clinical examination. Having practiced here for 12 years I do not always give an examination to those whose physician I have been.

1066. I examine very thoroughly if I am not absolutely sure that the applicant tells the truth and I have known him for years.

1097. I give a physical examination only in questionable cases.

3. Types of Examinations Reported

There were 215 physicians who described their examination procedures more or less completely.[1] Twelve of these men mentioned only an inspection of the mouth and nose for scars, spots or mucus, of the skin for rash, and the pupils of the eyes to note their reaction to light, or a visual examination of the urine. The genital organs were not examined, so far as indicated. All of the remaining 203 physicians reported an examination which included these organs or included one or both of the recognized laboratory tests for syphilis and gonorrhea respectively. There were 144 physicians (or 67 per cent of the 215) who reported that one or both of these tests were made. A few physicians stated that this was their practice in all cases, but the others indicated that the tests were made only in cases where they seemed necessary. They were divided as follows:

Wassermann tests	32 physicians
Microscopic tests for gonorrhea	35 physicians
Either test as needed	26 physicians
Laboratory tests not otherwise specified	51 physicians
Total	144 physicians

[1] Of the 215 physicians, 189 reported that they gave a clinical examination to every applicant and 26 that they did not always do so.

The fact that more than two-thirds of the physicians here considered reported the use of laboratory tests, at least for cases in which such tests seemed necessary, may be compared with the fact that of the 227 men who reported to the state health officer on these points, 45.4 per cent stated that steps were taken to have microscopic tests performed, while 10.2 per cent indicated that blood was taken for a Wassermann test.[1] A few of the examination procedures reported to the author by physicians are quoted at this point, an effort being made to select statements which are typical of varying degrees of thoroughness applied to the examinations given.

a. Laboratory tests mentioned

459. My clinical examination consists of inspection of throat for mucous patches or scars, palpation of superficial glands, inspection of genital organs, and macroscopic examination of urine. In the event of anything suspicious I use the microscope on smears or send a specimen of blood to the state laboratory for a Wassermann; otherwise no certificate is given.

551. I examine every applicant for gonorrhea and primary and secondary lesions. If there is a urethritis, I use a microscope; if suggestive of syphilis, I have a Wassermann made. I have done so a great many times. I believe that every fellow practitioner in the district does likewise.

378. When a scar is present or when the applicant confesses to specific infection, I demand a certificate showing a "negative" Wassermann, and refuse to give a certificate until it is produced.

458. If a preliminary examination suggests trouble, a full laboratory examination is given regardless of fee.

578. My custom is to make a microscopic examination and a prostatic smear.

b. Laboratory tests not specifically mentioned

1099. I always examine urine for evidence of gonorrheal infection; also examine the genitals for scar of old chancre, and if any, make deeper inquiry.

334. I give a very cursory examination, viz., inspection of genitals and inspection of urine. If normal, this concludes the examination.

1112. I "make a bluff" of giving a thorough examination, testing the urine, etc. . . I never go further unless some signs of disease are noticed. Formerly I made smears and examined them with the microscope, but my supply of stains has run out, and I have not taken pains to get a new supply. I do not let the applicant know how slight an examination is being given.

272. The clinical examination includes examination of nose, mouth, and genitals, with use of tools to demonstrate if possibly [there is] a stricture.

[1] For a fuller discussion of the replies received to the state health officer's letter see page 29.

c. Other procedures

339. My practice is to ask if there has ever been an infection. I inspect the genitals, have applicant urinate in a glass, and note the presence of shreds, etc. . . . I have never examined an applicant in whom I suspected venereal disease.

535. I give a clinical examination for the reason that a Milwaukee practitioner gave a certificate to a female who had masqueraded many years as a man—which fact, after the woman's marriage to another woman, caused untold comment on the physician.

1034. I look over the patient. I do not make any tests. I have turned down some who later received certificates from other physicians.

677. I make no Wassermann test but go over my applicant for old scars, skin lesions, etc. . . I make a two glass test and examine urethra and regional glands.

597. I have applicant strip, look over his whole body for any sign of venereal disease, and make the two glass urinary test, in addition to close questioning.

4. Efforts to Obtain a Truthful History

Twenty-six physicians refer to a feature of their procedure which is of great importance, though not ordinarily thought of when the processes of examination are considered. These physicians, realizing how large a part of the success of an examination depends upon the truthfulness of an applicant's statements regarding himself, take pains in conversation with him to lay a foundation which will induce perfect frankness. Some of the statements made by physicians in this group are the following:[1]

609. I always say a few words to impress on the man that the woman he is marrying is the one who will suffer, if he is not free from venereal disease. Hence it is wise for him to be honest—for often a clinical examination is negative, even when the latent disease exists.

342. I take about 10 minutes to explain that examination is required to protect his wife and children, . . . and that deception on his part will only cause distress to himself first and his family next.

896. If the medical man questions the applicant closely and at the same time tells him that if he is still infected or ever has been infected he may infect an innocent wife and make of her an invalid for life, this argument usually prevails, and we are able to get the truth.

23. Even for $2.00 a physician can inform the patient of the dangers, and few would wish to infect their wives or offspring.

44. I have met but one instance where co-operation was refused. All that I find necessary is to explain danger of latent infection, chance of infecting wife, etc.

153. I give a talk on the importance of being free from disease—concerning the mate especially.

[1] See also statement numbered 1018, page 32.

The amount of the higher charges was usually not mentioned, but three physicians reported that it was $5.00, one $7.00, two $8.00, and one $10. Eight physicians reported that when a higher charge than the legal fee is to be made because a laboratory test is necessary, they inform the applicant of that fact before the test is made. Four of these men stated that if the applicant is unwilling to pay the higher charge they refuse to issue the certificate, while one physician under such circumstances issues the certificate, but without a laboratory test.

6. Free Laboratory Service

One of the most important provisions of the revised law is that requiring the state laboratories at the request of physicians, to make the laboratory tests called for without charge, the aim of the requirement being to meet the complaint that the legal fee is inadequate. Out of 59 physicians who stated explicitly that the fee was inadequate for laboratory tests, 54 showed by their replies that they were either unaware of the state's free laboratory service or were disinclined to use it for medical certificate examinations. The following are selections from a few of these replies:

626. Nothing more than a clinical examination can be done because the laboratories charge much more than fee allowed for this work.

34. A laboratory examination (fairly complete) is made in each case, for which I am glad to pay the laboratory the two dollars in question.

1040. A fee of $10 would cover a complete laboratory test, including a Wassermann test and physical examination. Many physicians cannot make the necessary tests because they cannot afford to equip their offices with modern laboratory instruments. The fees are so small it hardly pays.

943. Nearly all doctors do not do microscopical work and could not afford to study up and carry out details of examining, considering price paid and time consumed.

1,029. We have difficulty in collecting fees for laboratory work when required. . . . Personally I reject applicants when they won't pay for examination.

293. The Wassermann and other laboratory tests cannot be made by the average physician, and cannot be obtained for the fee allowed.

151. Not many physicians are prepared to make a microscopical examination of smears. For so small a fee the state has no right to expect a greater service.

The statements quoted seem to represent ignorance of the state's free service, and yet it is inconceivable that this can be so in other than very exceptional cases. Many communications concerning that service have been sent by the State Board of

173. The importance of the subject is impressed on prospective grooms, and as a rule co-operation is obtained so that clinical tests of a more complete nature may be asked for and given. The law is a good one, as it stimulates thoughtfulness in this matter.

185. I ask, "Have you had lately or ever had venereal disease? It is a matter that affects you and your wife and not me."

231. Most applicants are honest and tell the truth when the result from deceit on their part is fully explained to them.

504. I give a few facts concerning the possibility of ruining a woman's life by infection from her husband.

841. I find all young men willing to do their part when the seriousness of venereal disease is explained to them.

5. The Legal Fee and the Fees Charged

The legal fee was mentioned by 208 physicians. Of these, 169 made statements regarding its adequacy, all but 14 stating explicitly or clearly implying that they regarded it as inadequate.[1] The difference in this particular between Milwaukee County and the remainder of the state is significant. Of the 48 physicians in Milwaukee County who commented upon the adequacy of the legal fee, only one regarded it as adequate; while of the 121 physicians from the other and less urban counties who commented upon the fee, 13 referred to it as adequate.

Fifty-nine physicians specified that the fee was inadequate *for a laboratory examination,* but the statements of the 96 others who regarded the fee as inadequate—considerably the larger number—were not qualified in this way. While it may be that many physicians in the latter group had laboratory cases in mind when they referred to the inadequacy of the fee, the large proportion of replies in which no mention of laboratory tests was made in this connection suggests that a considerable number regard the fee as inadequate even for examinations in which a laboratory test is not necessary.

Sixteen physicians reported that $3.00 was their regular or their minimum charge for each examination—the fee provided for under the act of 1913. It is impossible to tell whether or not they were aware that the fee had been reduced to $2.00 in 1915. Seventeen other physicians stated that they always or sometimes charged more than the $2.00 fee, all but one of these men specifying, however, that this higher fee was to cover a laboratory examination.

The adequacy or inadequacy of the legal fee is further considered on page 61.

Health to physicians. Moreover, the directors of the state laboratories report that physicians use these facilities extensively in their general practice. During the two years ending June 30, 1922, 7,259 gonorrheal examinations were made at the State Laboratory of Hygiene and its seven branches, while at the Psychiatric Institute during the same years 41,052 Wassermann tests were made for physicians outside of hospitals and institutions.[1]

Despite this important use of the service by physicians for their other practice, the directors of both laboratories agree—though necessarily on the basis of indirect evidence since the purpose for which tests are requested is not regularly stated by physicians—that the use of the service for medical examinations preceding marriage license issuance is small.[2] Dr. W. F. Lorenz, until recently director of the Psychiatric Institute,[3] where the Wassermann tests are made, comments on the situation as follows:

I originally advocated this [free laboratory] service not for the sole purpose of helping out in the discovery of syphilis in the case of those seeking marriage, but rather to help the physician in his handling of syphilis in general. However, at the time I thought that by offering to do Wassermann examinations free of charge it might result in our physicians taking blood samples frequently from those who apply for marriage licenses. . . . The failure on the part of the physicians in general to make use of our free service for the examination of marriage applicants is really a sad situation. On the other hand, at least 65 per cent of the active practitioners in Wisconsin use our service, and use it very extensively in their general practice.

It is difficult to understand why physicians should be reluctant to use the state laboratory service in connection with the Medical Certification Law. It may be due to a conviction that even with free laboratory service available the $2.00 fee is inadequate where laboratory tests must be made. To take advantage of that service requires time and attention for which no additional compensation is allowed.

[1] Report of the Wisconsin State Board of Control, 1921–1922, p. 130.

[2] Dr. Lorenz estimates that of the total number of Wassermann tests made at the Psychiatric Institute, not over 5 per cent are requested for the sake of medical certification for marriage. Dr. W. D. Stovall, Director of the State Laboratory of Hygiene, points out that though the Medical Certification Law requiring free state service was passed in August, 1915, it was not until after the passage of a law in 1917 for the reporting of all cases of venereal diseases to the state that the number of microscopic examinations made for gonorrhea was important enough to be recorded separately.

[3] Now President of the State Board of Control.

IV

OPINIONS OF PHYSICIANS AS TO THE VALUE OF THE LAW

BOTH through interviews and general correspondence, as well as through the letter of inquiry sent to physicians in Wisconsin, numerous opinions regarding the value of the law have been received. The opinions of several public health officials will be considered first:

1. Public Health Officials

The views of Dr. C. A. Harper, the state health officer, are as follows:

I am confident that a large percentage of physicians make quite a thorough physical examination. Undoubtedly there are some who still simply ask a series of questions and rely upon the answers of their patients. This latter class, however, is a small minority. When a physician is discovered who has signed a certificate without an examination, the State Board of Health endeavors to show him the necessity for being more careful. The average physician makes a reasonable local examination, covering the lymphatic glands and throat and all parts of the body on which there may be or may have been sores resulting from a venereal disease. In practically all cases where an applicant admits a previous infection or where the physician's examination reveals evidence of infection laboratory tests are applied.

In the main the law has proved of inestimable value. Even in its present imperfect form I am prepared to recommend it for adoption in other states on the ground that a more desirable law would probably be hard to pass at first. It is true that no examination will detect the presence of a venereal disease with certainty, but it is better to detect 85, 90, or 95 per cent of the cases where infection exists than to have no law and detect no cases whatever.

One of the most valuable results has been the publicity attendant upon the bill's introduction and the later attack upon the constitutionality of the law. An appropriation of $100,000 for educational propaganda concerning the dangers of infection from venereal diseases could have done no more. Many men have written to the State Board of Health or have called at its office

because they wished to be sure that they were in a safe condition to marry. The law has also caused men who were planning to marry, but not in the immediate future, to go to private physicians for examination. Even men who live outside Wisconsin have come to the state board's office for examination before marriage in their own states, although no laws there required such examinations. The improved condition of the state in recent years in the matter of infection from venereal diseases is in part due to this law. During the war Wisconsin had one of the smallest percentages of venereally diseased men examined for military service.

The following is the opinion of Dr. George C. Ruhland, until recently the health officer of Milwaukee:

'At the beginning I was opposed to the law as I did not think it would work, but I am now much in favor of it. It has educated the people of the state in this matter. In some cases where men would otherwise have married while they were infected, it has been a deterrent. I know of men who, as a result of the law, have postponed their marriage until they have been cured. Many men also, knowing that they are diseased, do not try to get certificates. There is a general impression that some men have obtained certificates while diseased, but I know personally of no such cases.

Dr. W. F. Lorenz writes[1]:

The law does not operate as a strict preventive to the marriage of those suffering from an inactive form of syphilis, but I am firmly convinced that it has had a tremendous educational value.

2. Opinions of Other Wisconsin Physicians

In their replies to the letter sent them, 364 physicians expressed or clearly implied opinions as to the success of the law in accomplishing its purpose. These opinions have been classified as generally favorable or unfavorable to the law. If a physician clearly indicated that in his opinion the law had accomplished good—at least sufficient good to warrant its retention—his reply was classified as "generally favorable." In some cases this opinion was apparently held in spite of more or less severe criticisms of certain features of the law. On the other hand, if physicians were opposed to retaining the existing law their opinions were classed as unfavorable, even though in some cases they expressed themselves in favor of a differently drawn medical certification require-

[1] See earlier reference to Dr. Lorenz on page 38.

ment. A few physicians declared the law to be "a farce" or "a failure" because it did not include women. Such replies, if no further indication of the correspondent's attitude was given, were not included in either group on the ground that the writers expressed no opinion as to the success of the existing law in accomplishing its main purpose—the protection of women from venereal infection through marriage. But replies which simply called the law a farce or a failure without qualification, or described it thus because it failed to do things it aimed to do, were classed as unfavorable. For example, statements were regarded as unfavorable in which without other qualification it was asserted that the law gave a false assurance of safety. All important criticisms of the law, whether expressed by those who are here counted as for or against it, are considered in a later section. The favorable and unfavorable replies were as follows:

	Generally favorable	Generally unfavorable	Total
Physicians whose opinions of the law were received	233	131	364
Reported that they *gave* clinical examinations to all applicants	194	78	272
Reported that they *did not give* clinical examinations to all applicants	33	39	72
Gave no definite answer as to clinical examinations given	6	14	20

Of the 364 replies, 233, or 63.8 per cent, were favorable. It will be noted that of those who reported giving clinical examinations to all applicants a much larger proportion were favorable to the law than of those who reported to the contrary. Of the former group 71.3 per cent were favorable as compared with 45.8 per cent of the latter. This contrast is not surprising if it is assumed that most of those who reported that they did not give clinical examinations to all applicants meant that they did not give physical examinations to all applicants. It is from this group that the smaller percentage of favorable replies was received.

3. Favorable Professional Opinions Quoted

For the sake of allowing the reader to note their general character, liberal quotations are made from the opinions of physicians in the following pages. Within both the favorable and unfavorable groups the replies have been roughly classified so as to bring together comments of a somewhat similar character, the more

striking ones being placed first usually. The generally favorable opinions are quoted first, classified as follows:

a. Marriages postponed or abandoned when infection was shown
b. Treatment taken in preparation for the examination
c. A general deterrent influence
d. More general comments

a. Marriages postponed or abandoned when infection was shown

651. I think this law has exerted a wholesome influence. I recall one young man who had signs of recent infection; he did not get a certificate although he tried every physician in town. His wedding was postponed for over a year.

636. I do urological and venereal work. The anticipation of an examination makes those infected more anxious for a real cure, and I believe the law does help. I have had one or two postpone marriage until blood Wassermann and smears could be made.

449. That our law has educational and preventive influence is illustrated by the young man who called on me this summer. His urethritis seemed no drawback to his marriage until I had gone over the whole matter carefully. After his recovery he returned for examination.

257. I believe in this law and its workings. Of course it is incomplete, but I think it is much better than no law. Applicants take it much more seriously and gracefully than when it first was enacted. The parents of the bride-to-be have in many cases shown an interest in the outcome of the examination. Now no one whom I have seen objects to the examination. I feel certain of its value as an educational force, and think that ere long we shall be able to enact and enforce without trouble a more valuable and comprehensive law. Of course a dishonest applicant and an easy physician would make the law of no value, but these elements will in combination defeat the purpose of any law. I have seen some cases where a clinical examination demonstrated the applicant's unfitness for marriage, and the applicants have shown themselves anxious to get right before marriage.

526. We are working in the right direction. I know I have stopped a few men from being married, and they were pleased after I made an explanation to them.

986. The law stops a lot. From inquiry of the family doctor I knew that two men had not recovered from venereal infection though they gave a clean history. I wrote to their clergymen to accept no other doctor's certificates. In each case the marriage was indefinitely postponed.

b. Treatment taken in preparation for the examination

1,113. [A laboratory specialist] the law has been of real value. I have reached this conclusion not from the comments of physicians but from contact with laymen; so many of them come to me long before marriage in order to get a diagnosis, and to get time for treatment if treatment is necessary.

692. Wisconsin's marriage laws are certainly worth while. Every young man, the moment he contemplates marriage, has his attention directed to the subject of venereal disease; and in my experience all who have ever had any sexual disease

are extremely anxious to learn if they have been cured. The law is valuable in preventing the obviously diseased from being married, in stimulating the desire of those who are diseased to be cured, and in giving general publicity to the whole matter.

3. The law is a good one. A physician can inform the patient of the dangers. A noteworthy result is the frequency with which a man comes in to find out if he is fit before he plans his wedding day.

497. There is no question but that the candidate makes a much greater effort to get cleaned up before he takes an examination.

478. The law is O. K. Men who have had venereal trouble make it a point to have their condition cured before they enter matrimony.

438. The law has the effect, in this community at least, of keeping men from seeking a marriage license when they have venereal disease, or until they are clinically or at least symptomatically cured.

405. The law is a great improvement. I find many men who are detected as diseased, and who receive treatment and cure themselves before getting married.

349. The law is effective in doing good. Applicants who were unfortunate in the past and were pronounced cured after treatment come in for an examination to be sure they are O. K.

17. Applicants generally either avoid venereal infection in advance or seek a cure before marriage. The general moral value to the public of the Eugenic Law is great, and this alone justifies it with all its defects.

93. The law has a splendid moral effect. Few if any individuals will present themselves for examination, knowing they are infected, until they have undergone thorough treatment. Almost invariably the applicant who has ever been infected will give an accurate history and demand a careful examination. The educational influence is important.

399. Applicants will not present themselves unless they are sure they will pass.

922. Many patients (wishing to marry) who have a venereal disease, get treatment who otherwise would not.

985. Every man who comes to me and admits he has had a chancre, I advise by all means to have a Wassermann test before marriage, and I find there are very few who complain of the extra expense. Very few applicants want a license when they have evidence of the disease, and can see it for themselves. In fact I have not had one, but have had a great many men who had the disease but could not detect it themselves, nor could the ordinary physician detect it. These cases properly handled by physicians will do a great deal of good.

c. A general deterrent influence[1]

36. The fact that a man knows he must be examined is a deterrent to marriage where venereal disease is present.

[1] In some of the statements included in this group the law in addition to its general deterrent effect may also have caused postponement of a contemplated marriage for the sake of treatment, or treatment may have been taken in anticipation of the marriage, but the physicians did not refer definitely to the fact that this was so.

256. The value of the law is its deterrent influence, inasmuch as the applicant knows that at least a gross lesion cannot pass.

656. The marriage law has a decided influence in eliminating venereal disease in its acute and sub-acute forms in those entering the marriage state.

365. The law prevents an applicant with an acute disease from obtaining a license.

598. Surely the law can do no harm. It brings before candidates conditions very little thought of before. It deters some unfit ones from entering into this sacred contract.

361. No one with venereal disease can get a license for marriage from the majority of physicians, *I am sure.*

588. It is an excellent law. At least it stops people with active lesions from marrying at that time.

544. It is a very good law. It could be made better by requiring a Wassermann. Many applicants have asked for a Wassermann and have paid extra for it. The law has helped to educate people regarding the danger, and also to scare away others so they will not risk being turned down at the last minute. I am very much in favor of the law.

48. The law helps at least in keeping those with active venereal disease from getting married.

42. The law has great educational and preventive influence.

320. The law is good; it has a deterrent effect on young men who have had venereal disease because of the fear of a clinical examination.

549. The law works out fine. I have not had a case of gonorrhea in a young married woman since it went into effect.

632. I have never found evidence of active venereal disease in applicants, with but one exception, and he was not trying to "get by" with it, hence I think the law is somewhat deterrent in effect. Some men do get by and infect their wives, but I believe fewer than before.

973. The law has done a lot of good, because a man with an acute infection hesitates to come to a doctor for a marriage certificate until the infection has cleared up. A great many physicians in our community are unable to take blood for a Wassermann examination. This being the case, no matter what the law is, it cannot be properly enforced.

1,111. While the examination is not reliable, the very fact that an examination is demanded has exercised an undoubted educational and preventive influence which has not failed to do a great deal of good. While I realize its limitations, I am a strong advocate of the law even in its present form.

d. More general comments

667. The anticipation of a clinical examination has a wholesome influence, but of course that is about all there is to it except that if applicants have a flagrant case they wait until symptoms have subsided.

493. The law is undoubtedly of service.

443. I know and every doctor knows of cases that have "gone through" where

it certainly was not a credit to the doctor. But take it "all in all or all round," as they say here, "it ain't such a worse law."

464. The law ought to be adopted by every state.

403. It is an excellent law, and should be carefully followed.

387. The law is of considerable value both to the man who is to be married and to the doctor, to keep in his mind the need of spreading information and his responsibility toward his patients.

327. Our law, while imperfect, has been very valuable. Physicians try to carry out its spirit.

326. The law works out successfully—but not ideally.

325. I consider the law O. K.

293. The clinical examination alone is of value.

226. I believe the law is a protection to the prospective bride.

77. I believe that 95 per cent of the examinations made are of value.

238. It has been a good move and other states will make no mistake in adopting the law.

265. A splendid law.

494. The law has done much good. Very few of our applicants have ever been infected.

574. This statute is a wonderful aid. It is working nicely with little or no objection. Every state should have it.

618. Very few applicants realized the inadequacy of the examination, and I think the law has done a great deal of good.

1,031. The law has been beneficial, very decidedly so.

918. I am decidedly in favor of the law.

102. This law did very much toward education of the laity. Men are now more careful in their sexual relations before marriage than they were.

241. The law has an educational and preventive influence upon prospective applicants.

1,117. While we as physicians were very much against the law as it stood on the books at first, the wording has been changed so that we have become reconciled to it, and it has become of great educational value. I have had a few instances where I have refused certificates of health, but in these cases the candidates denied venereal infection and went away in apparent anger. I never found out whether the marriage was postponed or not.

4. Unfavorable Professional Opinions Quoted

One physician's reply was particularly difficult to classify. Since he believes the law should be retained because it is "better than nothing," he has been included among those holding a favorable opinion of it, but he points out salient weaknesses of the law so forcibly that his reply is quoted at this point.

1,062. Because the fee is inadequate the busy practitioner has refused to make the examinations and the work frequently has been done by the less qualified men. It is my opinion, formed after talking with several hundred physicians, that in less than 10 per cent of the cases there has been a proper examination, even where a microscopic examination has been made. In most cities of any size no one who desires to marry has difficulty in securing the necessary certificate, regardless of his physical condition. The law has accomplished much through its educational influence, and has without doubt prevented some men who were infected from getting married, but so far as fear of the examination deterring many from taking the chance, I have seen too many innocent girls who had been infected by their newly married husbands to believe that it has very much of an influence of this nature. This is true among all classes of society, and is not confined to the more ignorant. The law is better than nothing, but it has many glaring defects.

Typical of the replies classified as unfavorable are the following, grouped thus:

a. The infected marry because of incompetent, careless, or dishonest examiners
b. Prevention is limited to active cases
c. Those who take treatment before marriage would do so even were there no law
d. A false feeling of security is given
e. General criticisms

a. The infected marry because of incompetent, careless, or dishonest examiners

1,114. The law is a farce. It is regarded merely as a joke. The smallness of the fee is not the chief difficulty. I formerly thought it was, but now I doubt it when I see how many physicians sign liquor prescriptions. In one case I found an applicant in a diseased condition. He began treatment with me, but before he was cured he obtained a health certificate from another doctor.

581. I very much doubt if any benefit is derived from the examination as at present made, for when I have found a doubtful condition I could only refuse a certificate (and get no fee) and the applicant would straightway obtain a certificate elsewhere.

914. One or two men who were infected with gonorrhea to whom I refused a permit, obtained permits from a physician at our county seat.

303. An applicant whom I refused a certificate was granted a marriage license. Draw your own conclusions.

564. Our law is not as defective as some of our physicians. Frequently when I refuse to give a certificate the applicant secures a certificate from another physician.

973. I have known men to report at my office with an acute Neisser infection, to whom I have refused to issue a certificate, and the same applicants, for a slight sum of money, have bribed another physician to give them certificates.

815. Last year I refused a man a certificate, but two days later his license was in the paper.

1,092. "Clinical examinations" which consist of a superficial inspection are

entirely without value. While I was treating a young man for syphilis he asked for a certificate that he might marry. This I refused and explained to him the dangers to his intended wife. A few weeks later he was married, having obtained his certificate in a neighboring town, where his condition was not known to the doctor.

547. A man whom I knew to have an acute infection was granted a certificate. I do not know of any in this community who have been refused.

580. There are those who do not give an examination, but from observation they are a small portion. This, however, has its effect on the enforcement of the law, as the wary know the quack.

235. In nearly every city there are physicians who will pass any case for a consideration. If a man has come to fear a clinical examination, he goes to a doctor who will pass him without a clinical examination.

500. Any man can get a certificate. I know of several men who were turned down in this office but had no difficulty in obtaining a certificate elsewhere. The law is more or less of a farce.

1,098. A man can urinate before the examination or use an "astringent" and avoid signs of gonorrhea, but he can't hide a chancre. As a whole the law is useless. You just lose a patient. He goes to other doctors until he finds one who can't see.

666. What can be done when the bride is five to eight months pregnant and the groom is diseased? Such men I refuse and notify the judge or district attorney, but 90 per cent of these marriages go through.

418. I have knowledge of several diseased cases that were passed. One had a chronic discharge.

242. I personally have never known of any one refused the health certificate.

99. The practical operation of the law to my mind is a joke, because most men contemplating marriage go to their own family physician, have a good laugh, tell a story or two, and the doctor signs the certificate without even looking at the patient's tongue, much less making a decent physical and serological examination.

b. Prevention is limited to active cases

1,112. The law is not of much account. It possibly stops the marriage of some who have a venereal disease in an active stage, for most physicians probably give a physical examination, but the dangerous chronic cases are not stopped.

829. Without provision for a Wassermann and microscopic examination of sedimented urine or prostatic massagings I consider the examination is a farce, as only the most frankly open or at least sub-acute conditions could be detected by ordinary examination, and even these might be hidden by a shrewd applicant However, it is not probable that an applicant would appear for examination during an acute condition. As to the assumption that because the applicant does not know the inefficiency of the examination he will fear to appear for examination and consequently will be less likely to expose himself to infection, I do not believe that members of the medical profession can afford to maintain a farce from which they are exacting a fee and from which the public has no escape.

1,115. Physicians in Milwaukee have never yet taken the law seriously. Probably most of them give a physical examination, but only a very small proportion

46. This is a vicious law, as are most of these anti-American laws now being foisted on the people.

812. The law was written by one or two women and is a farce.

854. The law is a farce, as its only effect is to give physicians a really unearned fee of $2.00.

344. The law is all rot; it gives us a chance to make $2.00 in a half criminal way.

373. The prevailing tendency is to give oral examinations, and only in rare cases are laboratory tests made.

556. Our law fails to accomplish the ends for which it was enacted. Physicians are the only ones who make anything out of it.

1,118. There is a general feeling that our law is misleading and dishonest. As to whether the end justifies the means depends largely upon the "temperament" of the witness.

It is evident from the tone of their quoted statements that some physicians whose replies are included in this "unfavorable" group may be in favor of retaining the existing law despite their statements as to its failure to accomplish its purpose in general or in a specific case. Such physicians were not, however, classified as favorable to the law, because their only statements were the critical ones quoted.

Before reading the 364 statements from which the foregoing selections have been taken, the author had the impression that the physicians of the state were very largely hostile or at least indifferent to the law. That impression has given place to a conviction that a strong group in the medical profession—possibly a majority group—believes in the law and is endeavoring to make it as effective as possible.

give more than that, for they have neither the laboratory equipment nor the necessary knowledge. Many of them do not know how to take a blood specimen for a Wassermann test.

c. Those who take treatment before marriage would do so even were there no law

640. If at all responsible, the applicant for marriage who has had venereal disease goes to a physician of his own accord, has a complete examination and pays for it, in order to see that he is free from the disease. The other fellow slips by anyway.

264. The law is a joke. Very few men will try to get married if they suspect having gonorrhea. If they are bound to do it they can wash up and irrigate well enough to get by some physician.

375. The law aids only those who are honest in their desire to be clear before marriage, and they do not need such a law.

374. The law is unpopular with the public and the physicians. I question that it is of the slightest benefit, as only the actively acute case is likely to be discovered, and he will not present himself for examination.

d. A false feeling of security is given

797. I consider the law practically valueless. It may prevent a very few from running the danger of becoming infected, and may cause some to secure a more perfect cure; but otherwise is of little value, and is a detriment in so far as it gives the bride a wrong feeling of security.

808. I see little value in the law. It tends to give a sense of security without such security.

88. There is no known method by which any one can determine positively whether or not a man has syphilis or gonorrhea in such a state that he might infect others.

1,116. Since the Cora Anderson case all physicians probably give enough of an examination to determine whether the applicant is a man. If a man wishes to conceal a diseased condition, it will not be revealed surely even with a Wassermann or stain examination. The law is not worth a damn. For those who do not attempt to conceal their condition the usual superficial examination gives a false feeling of security. The law, however, may have some preventive effect through the fact that laymen do not know how little a physican can detect from a merely physical examination, and therefore some of those who have been diseased may take pains to clean up before applying for certificates. On the other hand, fear is not an important preventive in such matters. Physicians understand the dangers of venereal diseases and yet I believe the proportion of physicians who are diseased is as great as it is among the general public.

e. General criticisms

484. I consider the methods pursued as big a farce as prohibition.

28. The law as it stands is of little value, and is considered a nuisance by a majority of the laity. It's time people again became sane, and stop trying to correct evils and intemperance of all sorts by legislation.

V

CERTAIN CRITICISMS OF THE LAW CONSIDERED

ALTHOUGH the evidence presented in the preceding pages is conflicting, one fact stands out conspicuously—the refusal of the legislature to repeal the law during the ten years that it has been in force in its two somewhat different forms. This fact cannot be explained on the ground of indifference to a dead letter law, for its provisions are directly felt each year by a large number of men—by all, that is, who apply for licenses to marry. Unless there were a reasonable degree of conviction that the law is necessary and of benefit, the inconvenience it causes these men would have aroused a protest to which the legislature would probably have been responsive. The survival of the law for this length of time raises a presumption in its favor. Before a more definite conclusion is expressed, however, some of the criticisms encountered, offered chiefly though not entirely by Wisconsin physicians, should be considered in more detail. Those which do not appear to be justified will be considered first; attention will afterward be directed to those which seem to be well taken.[1]

1. Women are not Examined

The criticism that women are not included in the law was more frequently met with in the field study than any other, and was oftener mentioned or implied by physicians in their replies to the letter of inquiry. Out of 896 physicians who made comments in reply to that letter, 240 expressed criticism on this ground. Sample statements in this group are the following:

155. I believe that the examination of males only spells at least 50 per cent failure of the law. I know of several instances where I found no evidence of disease in the male, and it turned out later that the woman was infected before marriage. I have known of cases of both gonorrhea and syphilis like this. So until the law requires the examination of women, it is a farce.

188. I have seen several cases where a previously sound man was infected by his wife after marriage. The law should work both ways.

[1]See page 61.

309. I have had two cases where applicants returned to me soon after marriage, infected by their wives.

516. Where the law only requires the examination of the male it is like washing one hand prior to performing an operation.

533. We know of several cases where a "burned" woman got a clean man.

535. A great many females are spreading disease.

557. Venereal diseases are about as numerous in females as in males.

10. I have personally observed cases wherein an examination of the female in the case would have prevented transmitting a Neisserian infection to the husband and a most unhappy marriage.

108. I had six cases of gonorrhea transmitted from wife to husband in the first two weeks of married life.

440. In the lower classes I believe that there is an equal amount of disease in each sex.

473. The woman is often the guilty party and infects a man who was clean before marriage.

638. I know several young women who were infected with venereal disease and were married.

1,045. Females are more liable to have the disease without knowing it.

654. Venereal disease is just as prevalent among females as among males.

It is true that women previously infected do infect the men they marry, but it is generally admitted that such cases are much more rare than cases in which men previously diseased infect the women they marry. Though statistics on this subject are very incomplete, they are probably not much more incomplete for one sex than for the other.[1] The following figures give the number of cases of venereal diseases among unmarried white persons reported to the state health authorities in Indiana in 1918, 1919, and 1920 up to March 1.[2]

Diseases	Unmarried white males	Unmarried white females
Gonorrhea	2,986	478
Syphilis	1,367	381
Chancroid	238	12

[1] Some authorities contend that unmarried women seek treatment for gonorrhea less frequently than unmarried men. If so their infection is less completely reported, but the difference can hardly be as great as that shown in the figures for the two sexes. It may also be held that physicians who examine and treat prostitutes—the most diseased group of unmarried females—in largest numbers are of a type less willing than most physicians to report their cases. Even if this were true, its importance is not great in connection with the law here studied; for prostitutes, at least while engaged in their occupation, do not ordinarily desire marriage licenses.

[2] King, Mary L., and Sydenstricker, Edgar: Venereal Disease Incidence at Different Ages, A Tabulation of 8,413 Case Reports in Indiana. United States Public Health Service, Reprint No. 630, pp. 12, 14, 15, 17. Washington, 1921.

A similar contrast is shown by figures covering 6,115 cases of infected unmarried persons reported in New Jersey during the two years ending July 31, 1922. Of the single male population of the state six-tenths of one per cent were reported as infected with syphilis or gonorrhea (5,187 cases), but only one-tenth of one per cent of the single females (928 cases), were so reported.[1]

Extension of the law to women has been opposed chiefly, however, because of the practical difficulty of administering a law applicable to both sexes. In the case of gonorrhea the result of an examination is less trustworthy for women than for men.[2] More important is the fact that many places in Wisconsin, as in other states, have no practicing women physicians; in such places the proposed requirement would often necessitate the examination of women by men, and there is an instinctive aversion on the part of many legislators as well as other citizens to a requirement that would subject women to an examination under such circumstances. This feeling has shown itself several times in the Wisconsin legislature, first when the original bill was pending, and later when amendments to the law for the inclusion of women have been attempted.[3] Such an amendment was defeated in 1915 in spite of the fact that representatives of women's organizations were reported to have "poured" into the capitol when the repeal of the entire law was threatened, insisting that the measure be made to apply to women if this were necessary to keep it in force. In Oregon, amendments extending the law to women have been defeated in five different legislatures, the opposition on at least two of these occasions coming, as in Wisconsin, from men rather than from women. No one of the seven states which have certification laws has yet required women to be examined to determine the presence or absence of a communicable venereal disease, though two of them, North Dakota and North Carolina, require women to be examined for tuberculosis and mental disabilities.

In view of this demonstrated attitude it would seem wise for some time to come to strengthen the legislative and administrative features of laws requiring medical certification for men, instead

[1] Casselman, A. J.: An analysis of 10,628 New Jersey Reports of Gonorrhea and Syphilis. United States Public Health Service, Reprint No. 794, pp. 3 and 4. Washington, 1922.

[2] Stokes, John H.: Today's World Problem in Disease Prevention, p. 53. United States Public Health Service, Washington, 1919.

[3] See pages 13 and 21.

of attempting to extend their operation to women. This conclusion is not materially affected by the fact that no objection on the score of modesty could be made to a law which required women to submit to a Wassermann test without a complete physical examination, for such a law would provide no test for gonorrhea.

2. Examinations Fail to Give Protection to Women

The contention that the examinations given fail to give protection to women is justified if by protection is meant absolute protection. Specialists agree that the absence of syphilis or gonorrhea cannot be conclusively determined by any known type of examination. A certification law is justified, however, if it affords a reasonable degree of protection to women and their offspring; and that degree of protection is afforded if practitioners in considerable numbers are able and willing to give such an examination as will usually reveal or suggest the presence of a venereal disease in the communicable stage, and if in cases where possible infection is thus indicated they are able and willing to have the necessary laboratory tests applied. To the extent that Wisconsin physicians have not yet acquired the skill required for the needed physical examinations or for obtaining samples of blood or secretions, a serious limitation is placed upon the effectiveness of the law. It is a limitation, however, which can and will be removed as present practitioners acquire experience or as a new generation of physicians trained in the modern methods of diagnosis replaces them.

3. False Assurance of Safety is Given

Allied to the last mentioned criticism is another—that since the type of examination required may be successfully passed by a man who is diseased, the law in such cases gives a false assurance of safety. Within certain limitations which need not be discussed, this is a valid criticism. But even though the men examined or the women they marry are given such a false assurance of safety, are they worse off on that account than they would have been if no such law had been in existence? To hold that they are worse off it is necessary to assume that without such a law the men concerned would voluntarily have had a complete examination made at regular professional rates, or that the women they married would have insisted upon such an examination or would have re-

fused to marry these men because of general suspicions. It is not believed that this is true in an important number of cases.

4. Public Examiners or Other Specially Designated Examiners are not Required

Another criticism, made quite frankly by physicians as well as by laymen, relates to the failure of what is assumed to be a large number of physicians to enforce the law conscientiously. Some of these critics contend that the law should therefore be changed, either to allow examinations to be made only by public officials—city or county health officers or their assistants—or by a limited number of specialists designated by the State Board of Health or by the State Medical Society.

Unquestionably this criticism is justified with reference to a considerable number of physicians. It was to determine how large that number is that the somewhat unsatisfactory evidence presented in Section III was assembled. After a careful study of the closely typewritten manuscript of 123 pages containing the comments made by 896 physicians, only a few of whom it has been possible to quote in the preceding pages, the author was impressed that much more careful attention is being given to the examinations than he had supposed from the general assertions previously heard. Furthermore, it should be recalled that an adequate trial has not yet been given of the existing law. Some of the handicaps, in part removable, under which it operates have already been mentioned and others will be referred to in a later section.[1] Until experience has been made available under the operation of a more carefully worded law, commanding the best obtainable co-operation of the medical profession, it is premature to assume that the licensed physicians of Wisconsin have been tried and found wanting.

In addition to this fundamental consideration stands the fact that in obtaining and in administering a law based on either of the proposed plans—public health officials as the only examiners or private physicians specially designated for the purpose—the political and other difficulties involved are very great. These difficulties need no elaboration to anyone who has had experience in legislative campaigns, or who is familiar with public administration in this country, particularly with county administration.

[1] See page 71.

As to the first plan, the type of men often chosen as city or county health officers gives no assurance that if they alone could examine applicants for certificates any higher average of professional service could be expected than is now attained, while the danger that in many cases certificates might be granted or withheld because of personal influence suggests that the standard easily might be lowered.[1] Only with great difficulty could a legislature be induced to adopt the plan of public examiners. It arouses in the minority party a fear that patronage will be increased for the benefit of the party in power, and consolidates in a united opposition all who are opposed to "state medicine" or who take a conservative view of measures regarded as socialistic.

The alternative plan, by which there should be appointed a limited number of practitioners of demonstrated experience in this field, is ideal in theory, but it has serious practical difficulties. Legislators are exceedingly loath to give to any body—either to the State Board of Health or the recognized medical associations of a state—the right to appoint the physicians favored. The fact that a provision calling for a limited number of examiners, appointed by the State Board of Health, was stricken from the original Wisconsin bill before its passage, and that no bill with such a provision in it has passed any legislature, would seem to indicate an instinctive opposition to such a proposal. By either method of appointment, moreover, the medical profession would be divided into two groups—those permitted and those not permitted to give the required examinations. This would manifestly be a misfortune in a situation in which the united backing of the profession is so essential to success. To avoid the dangers referred to it is conceivable (although this suggestion, so far as known, has never been made) that qualified physicians might be selected by civil service examination. But under such a plan there might be counties in which no physicians could qualify or would be willing to qualify under such circumstances. This would impose a hardship upon applicants in such counties, for

[1] The tentative draft first proposed by the United States Public Health Service for a medical certification law provided that all examinations should be made by county health officers. This provision was so much criticized by those to whom it was submitted that it was later proposed that an official health examiner be appointed in each county by the State Board of Health and paid a specified amount by the state for each examination made. County and district health officers might be designated, in which case no extra compensation would be received because of this work. (See page 8.)

they would be obliged to go to neighboring counties for their examinations.

5. Marriage of Men Found Diseased is not Prevented

In a number of the physicians' replies already quoted the law is criticized because it provides no machinery by which a man who has been refused by one physician because found diseased can be prevented from receiving a certificate from another physician who may possibly be more lenient or less competent. The fact that the law may be evaded in this way is one of its weaknesses, but it is a weakness limited to applicants who are willing to marry even when they have been told that they are infected. It is not believed that this number is large. In most cases such men will spread infection in spite of any laws which can be framed. It is not for them that medical certification laws are passed. Such laws are intended primarily for those who are willing to be guided by medical advice or may become willing to do so when they learn what it means to transmit infection through marriage.

It is not true, however, that Wisconsin has no law providing for the restraint of infected applicants. Though the Medical Certification Law is silent in regard to such cases, two provisions are very much to the point in the law which requires the reporting of cases of venereal infection. That law states that physicians shall advise persons against marriage who are found to be infected, so long as the disease is in a communicable form, and that such persons shall be reported to the State Board of Health for commitment to an institution if they refuse treatment. The provisions referred to read as follows:

> Section 1417m. 1. . . . Any physician . . . who is called upon to attend or treat any person infected with gonorrhea or syphilis in its communicable state, shall report to the state board of health in writing, at such time and in such manner as the state board of health may direct, the age and sex of such person and the name of the disease with which such person is afflicted. Such report shall be made on blanks furnished by the said board.
>
> 2. Every physician treating venereally infected individuals shall fully inform such persons of the danger of transmitting the disease to others and he shall advise against marriage while the person has such disease in a communicable form.
>
> 3. Whenever any person afflicted with gonorrhea or syphilis

ceases taking treatment before he or she has reached the state of the disease where it is no longer communicable, or whenever any individual is afflicted with gonorrhea or syphilis in the communicable stages and the person so afflicted refuses to take treatment, the physician shall forthwith notify the state board of health, giving the age, sex, and conjugal condition of the person afflicted and the nature of the disease. The state board of health shall, without delay, take such steps as shall be necessary to have said person committed to a county or state institution for treatment until such individual has reached the stage of the disease where it is no longer communicable, and the person so committed shall not be released from treatment until this stage of the disease is reached unless other provisions satisfactory to the state board of health are made for suitable treatment.[1]

The law was strengthened in 1923, through the efforts of the State Board of Health, by a provision which states that all questions regarding the presence of the disease and the date from which the treatment was neglected shall not be regarded as privileged information if the patient or physician is called upon to testify before any court of record.[2]

The operation of this law has not been studied by us. The state health officer states that he has warned several men that they would be committed to an institution unless they accepted treatment. If it is held that because the words "attend or treat" are used (in the first line quoted) the law does not apply to cases where the physician merely examines a marriage license applicant, the needed broader application should be made clear by amendment.

Among the more direct requirements which have been suggested in order to compel a man to postpone marriage if he is found by a physician to have a communicable venereal disease, the simplest one administratively is that which was proposed editorially by the Wisconsin *Medical Journal* in its issue of January, 1914. It was urged that "rejected candidates should be registered [presumably with the marriage license issuer] so that they cannot go from one physician to another until they find one who is 'caught napping.'" To complete such a requirement it would be necessary to provide that the marriage license issuer should accept subsequently the certificate of no physician other than the original examiner or one designated on the applicant's demand by the

[1] Laws of 1917, Chapter 235.

[2] Laws of 1923, Chapter 250.

operation has not been studied, but it seems clear that, in so far as they are enforceable, it must be through the complaint of the one who has been infected. There is some ground, however, for believing that that person without any such laws may more effectually punish the offender by means of a damage suit.[1] From such a suit, if successful, cash damages will be received, while a successful prosecution for exposing another person to venereal infection would result merely in a fine or imprisonment, from which the injured person would derive no real benefit.

7. The Law is Evaded through Marriages Outside of the State

Many critics have called the law a failure because it can be evaded by having the desired ceremony performed in another state. Without doubt a considerable number of Wisconsin candidates for marriage licenses obtain them in Illinois and other neighboring states. Moreover, on May 4, 1920, the Supreme Court of Wisconsin held that marriages by its residents outside of the state are valid even when contracted in violation of Wisconsin's Medical Certification Law.[2] On the other hand, there is evidence that the number of such marriages, as well as the proportion of them due to a desire to evade that law, has been considerably exaggerated.

At the hearing on the repeal bill of 1923 it was stated by a prominent critic of the law that in 1918, 40 per cent of the persons in Milwaukee County who married went to Waukegan, Illinois, a city near the Wisconsin line, for their ceremonies. No basis for that assertion appears in figures furnished to the author by the Wisconsin Board of Health for marriages in Milwaukee County, and by the county clerk in Lake County, Illinois, of which Waukegan is the county seat, for marriage licenses issued in that county.[3] During the year referred to—which was also the year in the last decade in which the Lake County figures were largest in comparison with those of Milwaukee County—3,351 marriages

[1] A woman in Charlotte, North Carolina, recovered $10,000 damages from her husband who had infected her with a venereal disease. North Carolina State Board of Health, *Health Bulletin*, January, 1921, p. 5.

[2] Lyannes vs. Lyannes, 177 N. W. 683.

[3] The Lake County figure needed for exact comparison is the number of marriages performed—a figure which in most counties is slightly smaller than the number of licenses issued. This was not obtainable.

state health officer. This right of appeal to the state health officer is needed to protect applicants against the possibly mistaken diagnosis of the physician who refuses the certificate.

The most serious objection, however, to this proposal is the strong and well-recognized opposition in most states to the passage of laws which require the names of persons infected with a venereal disease to be a matter of record in a public office. In spite of the provision that the record is usually declared to be confidential, this opposition has made it necessary in most states to require that the reporting of such cases be by number only unless treatment is refused by the patient. Reporting of all cases by name has been required in a few states, however, and the suggested reporting of those who have been refused medical certificates for marriage may be required before long in certain states. By such a requirement, it is true, lists of men who have had a venereal disease would be established in a large number of local offices, the marriage license offices of the state, whereas the confidential information now specified is filed in many states with the state board of health. The public has become somewhat accustomed to the latter scheme, but it would probably hesitate longer to require the scattering of such information in local offices about the state.

6. Infection is not Prevented by the Prevention of Marriage

Another criticism frequently offered is that the law fails to prevent a diseased man from spreading infection, though it may prevent his marrying. This is not an objection to the Medical Certification Law. That law does not attempt to protect women who become infected through illicit sex relations. While protection for such women is socially desirable, it is not for them but for those women who may become infected through marriage that the law is intended.

Methods of checking the spread of venereal diseases through illicit intercourse present an entirely different problem. In at least 33 states there are laws, or state health regulations having the effect of law, which make it unlawful for a person who has a venereal disease to expose another person to infection either within the marital relation or through illicit intercourse. Of the seven states which have medical certification laws, all but Wisconsin have also laws or health regulations of this character. Their

were performed in Milwaukee County and 2,613 licenses were issued in Lake County, Illinois, a total of 5,964. The 2,613 Lake County licenses constituted a little more than 40 per cent of this total. It is possible that this is the basis of the assertion quoted. But these figures do not mean that 40 per cent of the Milwaukee County people who married did so in the Illinois county referred to. Such a conclusion could be reached only if all applicants who received licenses there were Milwaukee County people. To gain information on this point, 205 Lake County licenses were examined by the author as a test.[1] Only 49 of them, or 23.9 per cent, recorded both bride and groom as from Milwaukee County. On this basis it may be estimated very roughly that of the marriages of Milwaukee County people in 1918, about 16 per cent, instead of the alleged 40 per cent, were performed in Lake County, Illinois.

For the marriages outside of Wisconsin there are indications that a desire to evade the Medical Certificate Law is the least of the causes. This conclusion is suggested in the first place by the fact that practically no increase was shown in Lake County marriage licenses in 1914, on January 1 of which year the Medical Certification Law took effect in Wisconsin. The figures for 1913 were 1,599, and for 1914, 1,605. Furthermore, subsequent to July 1, 1915, because of the so-called "marriage evasions act" of Illinois, examinations in accordance with the Wisconsin law have been required in Lake County, Illinois, of all men candidates from Wisconsin. The license issuer there reports that Wisconsin candidates are usually aware of this requirement, sometimes bringing medical certificates with them. This official, furthermore, on the basis of remarks made by Wisconsin applicants, is convinced that most of them do not apply at his office because of the Wisconsin Certification Law, but rather because of the Wisconsin law which requires marriage license applications to be filed five days in advance of the issuance of the license, and in many other cases merely because of a desire to be married away from their homes in order to avoid being subjected to the facetious attentions of their friends. The license issuer in Rockford, Illinois, also near the Wisconsin line, stated that "of the

[1] This inspection was made when the author was in Waukegan. The period covered by licenses examined, January, 1921, was chosen at random, since it was not known at that time for which year the comparison between Milwaukee County and Lake County needed to be made.

two reasons for Wisconsin applicants [at his office] the desire to avoid publicity far exceeds the desire to avoid the Eugenic Law," and added: "Many bring with them the eugenic certificate." Substantially the same opinion, though from the standpoint of Wisconsin officials, was expressed by license issuers in two Wisconsin cities near the border of the state.

It must be remembered also that in many and possibly most cases marriages solemnized in another state are not easily arranged. Unless a special dispensation is obtained for good reason shown, Roman Catholic brides violate a strict rule of their church if the ceremony is performed outside of their parish. Moreover, unless for some other reason the prospective bride wishes to abandon a wedding at home or in her church with friends and relatives about her, it is more embarrassing for her fiancé to explain why he must have the ceremony in another state than it was before the provisions of the Medical Certificate Law were so well known. This view was expressed a few days after the Oregon law was passed in the following editorial which appeared in a Portland (Oregon) newspaper with reference to the many Portland people who were then leaving the state to be married:

Miss June Bride, a physician's certificate will cost your bridegroom $2.50. If he is unwilling to pay that sum for a clean bill of health, is it worth while to marry him? If he is unable to pay the price, is it advisable to marry just now? If he refuses to submit to the examinations, is it safe to marry him? The Oregon law was enacted in the interest of brides. If they decline its protection they should remember that the state did what it could to make brides happy.[1]

It is clear from the preceding paragraphs that the marriage of Wisconsin people outside of their state for the sake of evading its laws is due not only to the medical certification requirement, but also to other provisions of the marriage law of the state. A means to reduce these evasions to a minimum should be found, and probably will be found, as soon as the public gives the serious attention to marriage laws and their administration which the subject deserves.

8. The Inadequate Legal Fee

In the opinion of the author, as expressed in the preceding pages of this Section, the criticisms of the law so far considered

[1] The Oregon *Journal*, June 9, 1913.

are not justified, and the amendments suggested to meet some of these criticisms either do not seem desirable or are not believed to be obtainable from any legislature. The four criticisms which remain to be discussed seem, however, to be well taken. They represent defects in the law, and possible amendments to remedy the situation are considered.

The most serious objection which has been made to the law, and the one about which most discussion has developed, is the fact that the fee for the examination is inadequate. Critics contend that only a very incomplete examination is possible for a $2.00 fee, and that such an examination will rarely reveal whether infection exists or not. It is not necessary to discuss the manifest inadequacy of the fee prior to the law of 1915, during the months when laboratory tests were apparently required for all certificates issued and when free laboratory service was not provided by the state. Although the meaning of the present law, as has been indicated, is not at all clear, the examination which the legislature probably intended to require comprises a thorough taking of the history and a thorough physical examination in every case, with the application of the appropriate laboratory test in cases where either the history or the physical examination indicates that there may have been previous infection. In cases of the latter type, even when the state's laboratory service is utilized, it is necessary for the examining physician to take a sample of the blood for a Wassermann test or of the secretion needed for a microscopic examination for gonorrhea. To obtain the latter it may be necessary to give the applicant a prostatic massage. The physician must be sufficiently experienced to perform these operations satisfactorily and must keep on hand a supply of the equipment, which is provided free, for sending blood samples and smears to the proper laboratory. Furthermore, the case must be "continued" until a report from the laboratory is received. All of this is required for a $2.00 fee.

In an earlier section the opinions of physicians who commented upon the legal fee have been summarized, 155 of them indicating that the fee was inadequate, and only 14 that it was adequate.[1] A large proportion of those in the first group seemed to regard the fee as inadequate even for cases in which no laboratory test was necessary. This opinion, in the judgment of the author, is amply

[1] See page 36.

justified. The establishment of so small a fee by law is properly a reason for protest by the medical profession.

The fact that no physician is obliged to examine applicants for certificates is not a sufficient answer to this protest. As it is unlikely that all physicians would refuse to make examinations, the result of refusals by some physicians might be to limit examinations very largely to physicians least qualified to bear this responsibility. That this situation does not exist to an important extent today is due to the fact that many Wisconsin physicians are making a contribution of their time and service to the cause of public health—a contribution represented by the difference between their usual charge for such an examination and the $2.00 legal fee. These men have assumed a burden which the state has no right to demand. The responsibility for the continuance of so unsatisfactory a situation must rest with the public, particularly with that part of the public which has given special attention to public health questions.

From the point of view of those who believe in the law the inadequacy of the fee is the most serious feature of the situation, for it is apparently the most difficult to remedy. Legislators have usually been insistent that if a law of this sort is to be passed at all only a nominal fee shall be imposed. This is partly because of a reluctance to place financial burdens upon those who wish to marry, and partly because of a feeling, which has shown itself in charges in Wisconsin and in several other states where similar bills have been considered, that they have been devised for the financial benefit of physicians. Legislatures are very sensitive to such a charge and hesitate to establish a requirement which may seem to justify it. It was presumably in response to these two considerations that the $3.00 fee provided for in the original law was reduced to $2.00 in 1915 when the requirement, or supposed requirement, of laboratory tests for all cases was removed. In the other states in which a maximum fee is specified in medical certification laws it is as follows: in Louisiana, $2.00; in Oregon, $2.50; and in Alabama, $5.00. A notary's fee is necessary in Oregon because the physician's signature must be witnessed, and whenever this is paid by the physician the net amount he receives is reduced by that much.

At least a $3.00 fee should be provided for in Wisconsin. With a proper presentation of the subject to the public and to the

legislature by public-spirited laymen it may be that a $5.00 fee can be established. With such a fee allowed, an adequate general examination and a Wassermann test in every case could reasonably be expected. On this point a specialist from another state expresses his opinion thus:

> For a five dollar fee the average doctor could afford to draw blood and make a smear. His judgment plus his manipulations are seldom worth more (or as much). The expert can afford to be pinched for the good of society and give his superjudgment gratis.

There are indications that the establishment of a $5.00 fee is not equally difficult in all states. For example, such a fee was established in Alabama without noticeable opposition.

A few physicians have suggested that no fee be fixed by law, examiners being at liberty to adjust their charge to the character of the examination needed in each case. Such a system is in force in North Carolina, North Dakota, and Wyoming. On its face the proposal for fees established by the examining physicians seems likely to undermine any law of this character. A careful physician who charged regular rates might soon have few applicants, while physicians willing to give superficial examinations for a low fee might issue most of the certificates. Furthermore, it is not improbable that an attempt by physicians to apply a sliding scale of charges would seriously interfere with a very important part of the examination procedure—the obtaining of a truthful history from applicants—particularly if the fact of exposure to infection as well as infection itself were covered by the questions asked. If an applicant knew that to admit an old infection which he felt sure was cured, or to admit an exposure which he thought had caused no infection would subject him to a more expensive examination, a reason for concealment would be created which might result in a false and misleading history.

9. Marriage of Men is Forbidden Even When Their Disease is not Communicable

The law has been further criticized because it goes too far. The physician must certify that the applicant is "free from all venereal diseases." Since there is no qualification absolute freedom is implied, and the marriage of infected men is forbidden even when their disease is no longer communicable. In the laws of Oregon, North Dakota, and Wyoming medical certificates relate only to

venereal diseases in their communicable stages. Such a limitation seems wise.

While arrested or latent venereal diseases are subject to dangerous recurrences, the fact seems to be generally accepted that ultimately a stage of syphilis may be reached in which it is not communicable. One group of physicians, it is true, asserts that in the present state of medical knowledge no one can be absolutely sure when this point of safety has been reached. But if it has probably been reached, even these physicians would not usually advise their private patients against marriage. To accomplish the desired purpose medical certification laws must be framed to agree with the usual practice. It is not necessary, therefore, to require physicians to certify that an inactive venereal infection is no longer communicable. They might be unable to make so absolute a statement. All that reasonably can be asked is a statement that the specified examination has disclosed no evidence of a venereal disease in a communicable stage. A certificate form which incorporates this provision is suggested on a later page.[1]

While a law so limited to the communicable stages of a venereal disease is justified under existing circumstances, a more comprehensive law may be possible in the future. Latent syphilis is not often communicable, but its possible effects on the afflicted man in later years as a breadwinner, and indirectly, therefore, upon his family, may be very serious. As one specialist has put it:

> Is it not a matter of potential interest to the bride to be, that though her children may be individually sound, they may be dependent upon the labor of a man with an active neurosyphilis which will bring him to book just when his family has the greatest need of his best effort?

Such a possibility suggests the propriety of requiring a man in this condition to postpone marriage until he may reasonably be assumed to be free from all forms of syphilis, even when not communicable. Increasing reliance upon examinations of the spinal fluid, in searching for traces of syphilis that are not revealed by Wassermann tests, suggests that the technique on which to base such a requirement may be at hand by the time public opinion has reached the point which would make its adoption possible.

[1] See page 72.

10. Laboratory Tests are not Required in Every Case

The preceding criticisms have been considered on the basis of an examination of the type assumed to be required by the present law—laboratory tests being made only when they are regarded as necessary by the examining physicians. A more fundamental criticism denies the wisdom of this discretionary feature of the law, the contention being that a Wassermann test should be required in every case. It is asserted that many cases of syphilitic infection would thus be discovered which now escape detection, no matter how thoroughly the physical examinations are made.

The position taken by these critics is entirely sound. Few if any authorities on the subject deny the advisability of a routine Wassermann test for any group whose freedom from communicable syphilis it is desired to establish with reasonable assurance. The sole question is the possibility of obtaining such a requirement from a legislature, with a legal fee large enough to make its administration practicable. No state except Wisconsin has ever specified it; and the Wisconsin requirement of 1913, soon set aside by the Supreme Court, gives no basis for conclusions, since free state laboratory service was not then available. In Alabama, where such service exists and a $5.00 legal fee is established, a proposal made in 1923 by the state health officer that a Wassermann test be required in every case was rejected by the legislative committee appointed to codify the state laws. In states where opposition to "regular medicine" is strong, anything larger than a nominal fee for the examination will be obtained from a legislature with great difficulty. If a $5.00 fee can be fixed in Wisconsin, as previously suggested, it will not be unfair to require a Wassermann test in every case, but for anything less than a $5.00 fee such a requirement, in addition to a thorough physical examination in every case, would be so unfair to members of the medical profession that attempts to obtain their co-operation would be severely handicapped.

It is true that a compulsory Wassermann test might be opposed by physicians who are not able to take a blood sample, but opposition from such physicians can be met without fear. In fact, unless they are willing to subscribe to a falsehood, they would be automatically eliminated from the issuance of certificates by their ignorance of this fundamental procedure. This would tend to raise the general standard of administration.

In a legal requirement for a routine Wassermann test there is always the danger that this test will be relied upon to the entire or partial neglect of the physical examination. Such a danger might be guarded against by warnings to physicians from the State Board of Health, and possibly also by means of reports of observations based on the physical examination. These reports might be required in connection with all requests made by physicians for laboratory tests.

Some critics in the group here considered contend that a microscopic test for gonorrhea should also be required in every case. There is no doubt that such a requirement is very desirable. Dr. Stokes, for example, has stated that "any agency . . . which is treating gonorrhea without the use of the microscope is playing a gambling risk against the patient, trading on luck, and contributing directly without excuse or extenuation to the aid and comfort of the enemy."[1] Nevertheless the routine requirement of a microscopic test does not seem a practical one unless the legal fee can be increased proportionately. In many cases there must be a prostatic massage before a smear can be made for microscopic examination. Such a requirement, moreover, would involve mailing and recording smear slides in addition to blood samples for Wassermann tests. If physicians, as suggested in another connection, endeavor to obtain a truthful history of exposure as well as infection, and have both Wassermann and microscopic tests applied whenever exposure is admitted, the danger through the absence of routine microscopic tests is much reduced.

11. Failure of the Law to Provide for State Supervision

The law has been justly criticized for its failure to provide for any supervisory machinery. The duty imposed upon marriage license officials is clear and simple, and no complaint has been heard that there is any failure of the law to function at that point. But the obligations imposed upon physicians are necessarily discretionary to some degree, a situation which makes it very desirable that the State Board of Health be given general authority to see that the law is understood by physicians and conscientiously observed. No such authority is given in the Wisconsin Medical Certification Law, and the contact of the Board in general with

[1] Stokes, John H., previously cited, p. 51.

the administration of the law has been slight. With general supervision by the State Board of Health specifically authorized the way would be open for the exertion of an influence which should be of decided benefit in increasing the efficiency of the measure.

Moreover, in amendments needed in the future to make the law effective there are likely to be points at which it is necessary to give administrative powers to some state official, such as the state health officer. A provision of the type referred to is mentioned in an earlier connection where it is suggested that the state health officer might designate physicians by whom rejected applicants may be examined if they are dissatisfied with the examination originally given.[1] Of a similar character is the suggestion that the state health officer might be required to furnish the prescribed certificate forms to physicians and to prepare and furnish a statement for applicants intended to induce the giving of a truthful history.[2] A constructive critic of the law has suggested also that the State Board of Health be authorized to prescribe more explicitly the character of the certificate form, so that the physician might enter the results of his examination on it in the way in which insurance examination forms are used. Furthermore, under the general powers suggested, the State Board of Health could make inquiries as to the operation of the law, on the basis of which needed changes might be presented to the profession for suggestions and criticism and then to the legislature. Under such circumstances suggestions would also be appropriate to the Board of Medical Examiners that among the questions put to those who apply for licenses to practice medicine some reference be included to the procedure required by law (or that is advisable at least) in examining applicants for medical certificates for marriage.

[1] See page 57.

[2] See pages 74 and 75.

VI

GENERAL CONCLUSIONS

FEW will deny that persons who have a contagious venereal disease should not be allowed to marry. Most states, however, have hesitated to require medical examinations as a means of preventing marriage in such cases because of the administrative difficulties involved. Wisconsin was one of the first states to pass an examination law, and it is not surprising that serious mistakes were made. If these have been stressed in the preceding pages, the purpose has been merely a desire to allow other states to profit by the Wisconsin experience. That state deserves great credit for its pioneer action in this important field. Its course has drawn attention to the subject throughout the United States with an effectiveness impossible in any other way. During the ten years that the law has been in force, and despite its defects, it has built up for itself a support which has so far made repeal impossible.

1. Educational Effects

A proposal of this kind exerts its influence first of all through inevitable discussions in the press when it is before a legislature in bill form, and later in connection with its administration as a law. The fact that strong opposition ordinarily appears gives the subject news value. The State Health Officer of Wisconsin has already been quoted as believing that the expenditure of thousands of dollars for educational work in this field could have been no more effective than the free publicity resulting from the controversy over this law in the early days of its history.

The extent to which such discussions have made an impression seems to vary in different parts of the state. In a large city like Milwaukee, where the newspaper discussion has attracted considerable attention and where social contacts spread information more rapidly, the law is apparently best known. In that city very

few candidates for marriage licenses now fail to bring the required medical certificates with them to the marriage license office, and most physicians keep a supply of the necessary blanks on hand. But in Oshkosh, a county seat in which marriage licenses are issued for a more rural population, the license issuer stated in 1921 that comparatively few candidates from outside of the city brought such certificates when applying for marriage licenses. Many were apparently unaware of the law, while some supposed it had been repealed. It was necessary in most cases for the marriage license issuer to furnish the blanks, which applicants then took to the examining physicians.

The fact that every man who marries within the state must first obtain a medical certificate is itself an important educational influence. The requirement is a formal warning to all who marry that the legislature regards infection from a venereal disease as a serious matter. It cannot fail to have an influence for good. Furthermore, the law gives medical practitioners an opportunity, which some of them have already welcomed, to impress upon applicants the meaning for wives and children of venereal disease infection and the importance of being sure before marriage that no communicable trace of it remains.

2. Other Results

But if this were all the law had accomplished, the wisdom of retaining it might be open to doubt. There is a considerable body of evidence, however, that the law has been effective in preventing the spread of venereal diseases through marriage. It is not possible to ignore the cases reported in an earlier section in which discovery of infection by physicians led to a postponement of marriage, even though in cases reported by other physicians marriages of infected men took place, either after examination by a second Wisconsin physician or in another state.[1]

More important are the indications that many men, because they have come to realize to some extent what venereal infection means, are presenting themselves for examination well in advance of their contemplated marriage in order to give time for treatment if it should prove to be necessary. On this point the testimony of the state health officer and of other physicians is very specific.[2]

[1] See Favorable Professional Opinions Quoted, page 41sq.

[2] See pages 39 and 42.

One physician answers the doubt which naturally arises as to whether this improved condition is to be credited to the Medical Certification Law. He writes as follows:

692. When young men voluntarily consult their physicians and ask for a Wassermann test for syphilis or a provocative injection to help determine if their urethritis is cured, and this before asking young women to marry them, surely something has been accomplished. To be sure, this was done before any eugenic marriage laws were passed, but vastly more frequently since their passage.

3. Defects of the Law

In weighing the accomplishments of medical certification in Wisconsin it is important to recall that they have been possible under a defective law which has had behind it no public agency charged with its enforcement and few private agencies actively interested in its success. The most damaging defect of the original law has already been pointed out—its apparent requirement of laboratory tests in every case at a time when free laboratory service was not available. The damage done by that requirement to the cause which the sponsors of the law had at heart was very great.

The defects of the revised law have also been stated and several suggestions have been made for its revision. The more important of the latter may be summarized as follows:

1. The law should not deny marriage licenses to men who have a venereal disease in a non-communicable stage.
2. The examination procedure should be more clearly defined. It should be made plain that physicians are required to obtain a thorough history and to make a careful physical examination in every case; if a $5.00 legal fee can be established, a Wassermann test should be required in every case.
3. The required certificate form should state the examination procedure that has been followed; namely, that a thorough physical examination has been given and a thorough history taken in every case, that any laboratory test required by law in every case has also been made, and that any such tests not required in every case have been made when believed by the physician to be necessary.
4. The State Board of Health should be given general supervisory powers with reference to the law.

In addition, if the procedures for reporting and quarantine required under the compulsory reporting law of 1917 are held

not to cover cases where physicians make examinations merely for marriage license certificates, that law should be amended to include such cases explicitly.

In the existing stage of medical knowledge regarding the venereal diseases the exact form the certificate should take is a difficult matter to prescribe. A form should of course be agreed upon which will be as satisfactory as possible to the physicians who must use it, but practical considerations, what form can be obtained from a legislature, must also be taken into account. The following forms are suggested, therefore, not as the only satisfactory ones that a state might adopt, but primarily for the sake of directing attention to this feature of the problem more definitely than is otherwise possible. The first of these forms is for use in case a requirement can be enacted that a Wassermann test shall be given in every case. The form includes a suggested wording of the law itself regarding the required examination procedure.

I ....., being a physician legally licensed to practice in the state of ....., my credentials being filed in the office of....., in the city of ....., county of ....., state of ....., do certify that on (Date or dates) I gave ....., (Name of person) an examination of the kind prescribed by the Act of....., as follows:

> "Every physician who issues a certificate called for by this act shall take a thorough history of the applicant and give him a thorough physical examination covering all parts of the body upon which indications of a present or past venereal disease might be observed, and shall make or have made a Wassermann test of a sample of the applicant's blood. If the history indicates previous infection from gonorrhea or exposure thereto, or if the physical examination indicates that there may have been such an infection the physician shall in addition make or have made a microscopic test of smears for gonococci";

and I further certify that through this examination I have found no evidence of the existence of a venereal disease in a communicable stage.

_____ (Date)

_____ (Signature of physician)

The following is suggested as a form of certificate if a Wassermann test is not required in every case:

I ....., being a physician legally licensed to practice in the state of ....., my credentials being filed in the office of....., in the city of ....., county of ....., state of ....., do certify that on (Date or dates) I gave ....., (Name of person) an examination of the kind prescribed by the Act of ....., as follows:

> "Every physician who issues a certificate called for by this Act shall take a thorough history of the applicant and give him a thorough physical examination covering all parts of the body upon which indications of a present or past venereal disease might be observed. If the history indicates previous infection from a venereal disease or exposure thereto, the physician shall make or have made a Wassermann test of a sample of the applicant's blood and a microscopic test of smears for gonococci, or if the physical examination indicates that there may have been such an infection the physician shall make or have made the particular laboratory test appropriate to the disease indicated":

and I further certify that through this examination I have found no evidence of the existence of a venereal disease in a communicable stage.

(Date) (Signature of physician)

4. Co-operation of Physicians Needed

A serious obstacle to the successful operation of the law has been the fact already mentioned that the measure has never had the medical profession actively behind it.[1] The antagonism aroused among physicians by the terms of the original law is the most unfortunate feature of its history. In 1915, when the first opportunity offered itself for amending that law, the State Medical Society acted in a thoroughly public-spirited manner. The provisions of the bill which the society's committee drafted at that time were much clearer than the ambiguous amendment which the legislature finally adopted.[2]

Without the hearty support of physicians a law of this character can accomplish little. But such support must be voluntarily given. The law can prescribe the character of the examination, but practitioners may interpret its provisions as liberally or even as dishonestly as they please with practically no danger that the legal penalties will be inflicted. It is evident that public sentiment does not yet demand fines or imprisonment when physicians do

[1] See page 14 sq.

[2] See pages 20, 21, and 22.

not take the law seriously. Out of seven states in which there are medical certification laws prosecutions have been reported in but one, Alabama.

The medical profession has a great responsibility in relation to such a measure as this. The state has declared its purpose, namely, that men who are venereally diseased should not marry, and has left to its physicians as a public trust the task of making this purpose effective. There is evidence that this responsibility is being conscientiously accepted in Wisconsin by quite a large number of practitioners, but unfortunately there are many others by whom it has not yet been accepted.

With the profession formally supporting the Medical Certification Law through state and county organizations, there would undoubtedly be an increasing use of the opportunity which the law affords for frank, friendly conversation between physician and applicant. The importance of this cannot be overstated. In spite of large expenditures of money for the purpose most men are probably unreached by the general educational propaganda relating to the venereal diseases. A few words spoken by a physician to a man when applying for a medical certificate for marriage are more impressive than they could be at any other time in his life. A Milwaukee physician relates the following experience:

1,111. A young man who was badly diseased came to me in a very jaunty frame of mind. I talked to him of the effects of marrying while suffering from gonorrhea and showed him several pictures. When he left the office he was white and trembling. He postponed his marriage for a year and a half. He was a rather fast young man of a good family.

Every means should be used to encourage physicians to deliver such a warning as this one. If they hesitate to speak out on the ground that to do so is to imply that applicants may have been infected, the State Board of Health might make the approach easier by supplying all physicians with copies of a very brief printed statement giving a few facts as to the danger of venereal disease infection and its persistence, and bearing across the top some such announcement as this:

In all cases where application for a certificate is made for the purpose of obtaining a marriage license, it is requested by the State Board of Health that this statement be given to the applicant to read before the examination is given.

Such a statement might even be printed on the back of certificate forms supplied to physicians by the State Board of Health. Its intent, whether printed or oral, would be to induce applicants to be entirely honest in admitting either infection or exposure. It is not enough that the applicant should be encouraged to admit previous infection. The fact that a considerable number of men are infected with syphilis without knowing it justifies the making of tests for this disease in all cases where there has been exposure through sexual intercourse.

5. Conclusions Summarized

The major conclusions reached on the basis of the evidence presented, including those expressed in this and the preceding sections, may be summarized briefly as follows:

1. The law has had marked educational value, first through newspaper discussion in the early years of its history, and continuously through the fact that large numbers of men receive a warning as to the dangers of venereal infection at the time when they are most likely to heed it.[1]

2. The law has been a real factor in inducing men who expect to marry to make sure that they are fit, even before applying for a medical certificate. This has perhaps been the greatest gain attributable to the measure.[2]

3. There are also indications that to some extent the required examination has revealed contagious conditions and has caused postponement of marriage.

4. While the evidence for the two conclusions last stated is considerable, it is not as strong as it should be, owing to the fact that an apparent minority of the physicians of the state, in spite of the requirement of the law for a "thorough examination" in every case, issue certificates sometimes without any form of physical examination.[3] Many of these physicians, however, appear to do this only when applicants are personally known to them.

5. When physical examinations are given they appear as a rule to be as thorough as the physician is able to make them, and when these examinations yield evidence of previous infection the physician usually seeks further evidence through laboratory tests.

[1] See page 39 sq. [2] See page 42 sq. [3] See page 27 sq.

6. The state's free laboratory service is used for marriage certificate examinations, but not so generally as it should be.

7. The co-operation of the organized medical profession was not sought in drafting the legislation, and its co-operation in administering it has never been gained.[1] Nevertheless, nearly two-thirds of the 364 physicians who commented as to the value of the law expressed generally favorable opinions, while some others who were unfavorable to the existing law because of its terms were generally favorable to a requirement for medical certification.[2]

8. Even with the state's free laboratory service now available the legal fee of $2.00 is quite inadequate for the examinations required.[3] In spite of that fact the law has been loyally supported by many physicians who have gladly given more than they have been paid for in order to make their examinations effective.[4]

9. The administration of the law has been handicapped by the very defective requirements of its first form, by ambiguity and inadequacy in the revised form now in force, and by the absence of any provision for state supervision.[5]

10. The many critics who assert that the law should apply to women as well as men fail to recognize the much more frequent infection among unmarried men than among unmarried women, and fail also to realize that in the present state of public opinion it is practically impossible to subject women to compulsory examination in order to establish their freedom from venereal infection.[6]

11. The claim that the law has failed because it does not give protection to women who marry is valid only if complete protection is meant. No known examination can give complete protection. Some protection is surely given in Wisconsin now, and the law provides machinery by which that protection may be gradually increased.[7]

12. The further claim that the law cannot be effective unless all examinations are made by public health officials or by specially designated physicians assumes what is not a fact—that the system of examinations by any licensed physician has been adequately tested. Until the obvious defects of the existing law have been removed, it is not fair to assert that the licensed physicians of the state have failed.[8]

[1] See page 73 sq. [2] See page 40. [3] See page 67. [4] See page 63.
[5] See pages 67 and 71. [6] See page 50 sq. [7] See page 53 sq. [8] See page 54 sq.

13. The factor operating most seriously today to undermine the law is the apparent satisfaction of its friends with the existing situation. So far as is known, no attempt is being made by social or other agencies to eliminate the defects and ambiguities of the law or to bring about better administration, and no steps are being taken to win the co-operation of the medical profession in a program of law revision and enforcement. The narrow margin by which repeal was avoided in 1923 indicates a sentiment which may easily succeed, unless those who believe in the law organize their forces and demonstrate that the measure is capable of achieving much more good than has been possible up to the present.[1]

[1] See page 23 sq.

APPENDICES

APPENDIX A

TEXT OF MEDICAL CERTIFICATION LAWS

The Wisconsin Law of 1913[1]

1. All male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or non-existence in such person of any venereal disease, and it shall be unlawful for the county clerk of any county to issue a license to marry to any person who fails to present and file with such county clerk a certificate setting forth that such person is free from acquired venereal diseases so nearly as can be determined by physical examination and by the application of the recognized clinical and laboratory tests of scientific search. Such certificate shall be made by a licensed physician, shall be filed with the application for license to marry, and shall read as follows, to-wit:

I,.....(name of physician), being a legally licensed physician, do certify that I have this .....day of....., 19..., carefully and thoroughly examined.....(name of person), having applied the recognized clinical and laboratory tests of scientific search and find him to be free from all venereal diseases so nearly as can be determined.

.....(Signature of physician).

2. Such examiners shall be physicians duly licensed to practice in this state, shall be persons of good moral character and of scientific attainments and at least thirty years of age. The fee for such examination, to be paid by the applicant for examination before the certificate shall be granted, shall not exceed three dollars. The county physician of any county shall, upon request, make the necessary examination and issue such certificate, if the same can properly be issued, without charge to the applicant, if said applicant be indigent.

3. Whenever there is a dispute or disagreement regarding the findings of any medical examiner, laboratory tests shall be made in the state laboratory of hygiene from material submitted by such examiner, and the findings of the said laboratory shall be accepted as evidence of the presence or absence in the person examined of any venereal disease.

4. In any case wherein the certificate of health required by sub-

[1] Laws of 1913, Chapter 738.

section 1 of this section shall be refused and the applicant shall make and file with the county clerk of the proper county an affidavit setting forth the fact that such applicant has not had a fair and impartial examination and that he is entitled to such certificate of health, it shall be the duty of such county clerk to certify such proceedings, at once, to the county court of such county without formality or expense to such applicant. Such application shall be heard by a judge of said court, at the earliest time practicable, without a jury in court or in chambers, during the term or in vacation as the case may be. Notice of the time and place of such hearing shall be given to such applicant by mail. A certified copy of an order of such judge upon his findings in such matter determining that such applicant is entitled to such certificate of health presented and filed with such county clerk, shall have the same force and effect as such certificate and such county clerk shall thereupon issue a license to marry, to such applicant.

5. Any person a resident of this state, who with intent to evade the provisions of this act shall go into another state and there have a marriage solemnized and who within one year from date of such marriage shall return and reside in this state, shall upon information or knowledge to the district attorney of any county be required by him to file with the county clerk of any county in which such person may be then a resident, a certificate of examination from such physician as set forth in this section. Any person violating the provisions of this subsection shall be punished by imprisonment in the county jail not less than 30 days nor more than one year.

6. Any county clerk who shall unlawfully issue a license to marry to any person who fails to present and file the certificate provided by subsection 1 of this section, or any party or parties having knowledge of any matter relating or pertaining to the examination of any applicant for license to marry, who shall disclose the same, or any portion thereof, except as may be required by law, shall upon proof thereof be guilty of a felony, and shall be punished by imprisonment in the state prison not less than one year nor more than five years.

7. Any physician who shall knowingly and wilfully make any false statement in the certificate provided for in subsection 1 of this section shall be guilty of perjury and upon conviction shall be punished as for perjury, and a conviction under this subsection shall revoke the license of such physician to practice in this state.

The Wisconsin Law of 1915[1]

The most important points at which the law of 1913 was amended by that of 1915 were the following: The revised law pro-

[1] Laws of 1915, Chapter 525, and Laws of 1917, Chapter 212.

vided for free laboratory service by the state, and required "clinical and laboratory tests" to be made only when in the discretion of the examining physician such tests are necessary. Any physician licensed in the state was allowed to issue the certificates, whereas previously only physicians "of good moral character and scientific attainments and at least thirty years of age" had been qualified. The fee was reduced from $3.00 to $2.00. The very heavy penalties of the earlier law were softened, that for physicians being made a fine or imprisonment in place of revocation of his license to practice medicine, and subsections 3, 4, and 5 of the original law were repealed. These related respectively to appeals to the state laboratory of hygiene from the decision of an examining physician, to appeals to a court if a certificate were refused, and to the examination of males who might marry outside of the state to evade the provisions of the law. The original law, moreover, applied only to acquired venereal diseases, while the revised law applied to all venereal diseases. The law was further amended in 1917 to allow certificates to be issued by a physician licensed in the state of residence of the applicant, this change being made for the sake of men who lived outside of the state and wished to marry women who were residents of Wisconsin. Including the change made in 1917, the law of 1915 reads as follows:

1. All male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or non-existence in such person of any venereal disease, and it shall be unlawful for the county clerk of any county to issue a license to marry to any person who fails to present and file with such county clerk a certificate setting forth that such person is free from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. When a microscopical examination for gonococci is required such examination shall upon the request of any physician in the state be made by the state laboratory of hygiene free of charge. The Wassermann test for syphilis when required shall upon application be made by the psychiatric institute at Mendota free of charge. Such certificate shall be made by a physician, licensed to practice in this state or in the state in which such male person resides, shall be filed with the application for license to marry, and shall read as follows, to wit:

I,.....(name of physician), being a physician, legally licensed to practice in the state of....., my credentials being

filed in the office of....., in the city of....., county of ....., do certify that I have this.....day of....., 19.., made a thorough examination of.....(name of person), and believe him to be free from all venereal diseases.

.....(Signature of physician).

2. Such examiners shall be physicians duly licensed to practice in this state or in the state in which such male person resides. The fee for such examination, to be paid by the applicant for examination before the certificate shall be granted, shall not exceed two dollars. The county or asylum physician of any county, shall, upon request, make the necessary examination and issue such certificate, if the same can be properly issued, without charge to the applicant, if said applicant be indigent.

3. Any county clerk who shall unlawfully issue a license to marry to any person who fails to present and file the certificate provided by subsection 1 of this section, or any party or parties having knowledge of any matter relating or pertaining to the examination of any applicant for license to marry, who shall disclose the same or any portion thereof, except as may be required by law, shall, upon proof thereof, be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

4. Any physician who shall knowingly and wilfully make any false statement in the certificate provided for in subsection 1 of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

The Alabama Law[1]

1. All male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or nonexistence in such person of any venereal disease, and it shall be unlawful for the judge of probate of any county to issue a license to marry to any person who fails to present and file with such judge of probate a certificate setting forth that such person is free from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory test of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. Such certificate shall be made by a licensed physician, shall be filed with the application for license to marry, and shall read as follows, to-wit: I,.....(name of physician) ....., being a legally licensed physician, do certify that I have this .....day of.....19.., made a thorough examination of .....(name of applicant)....., and believe him to be free from all venereal diseases.....(name of physician). That no mar-

[1] Laws of 1919, No. 178.

riage shall be entered into in any manner whatsoever without the male party shall have first submitted to said antenuptial examination and having obtained a certificate from such physician of his freedom from said diseases.

2. Such examiners shall be physicians duly licensed to practice in this State. The health officer of any county, shall, upon request, make the necessary examination and issue such certificate, if the same can be properly issued, without charge to the applicant. The charge for such an examination shall in no case exceed five dollars.

3. Any judge of probate who shall unlawfully issue a license to marry any male person, who fails to present and file with the probate judge a certificate required by section 1 of this act shall be guilty of a misdemeanor and shall upon conviction be fined not less than $50.00 nor more than $100 or be sentenced to hard labor for the county not exceeding six months, one or both in the discretion of the court or judge trying the case.

4. Any physician who shall knowingly and wilfully make any false statement in the certificate provided for in section 1 of this act, shall be punished by a fine of not more than $100, or sentenced for not more than six months hard labor for county.

The Louisiana Law[1]

1. Be it enacted by the Legislature of Louisiana, That all male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or non-existence in such person of any venereal disease, and it shall be unlawful for the clerk of any court of any parish, or the Recorder of Births, Deaths and Marriages of the city of New Orleans, Parish of Orleans, or any other officer authorized to issue marriage licenses, to issue a license to marry to any person who fails to present and file with such officer a certificate setting forth that such person is free from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. When a microscopical examination for gonococci is required such examination shall, upon the request of any physician in the state, be made by the State Laboratory of Hygiene free of charge.

2. Such examiners shall be physicians duly licensed to practice. The fee for such examination, to be paid by the applicant for examination before the certificate shall be granted, shall not exceed two dollars. The parish or city or asylum physician, or coroner or health officer of any parish or city or other political subdivision, shall, upon request, make the necessary examination and issue such certificate, if the same can be

[1] Laws of 1924, No. 164.

properly issued, without charge to the applicant, if said applicant be indigent.

3. Any clerk of court or other duly authorized officer who shall unlawfully issue a license to marry to any person who fails to present and file the certificate provided by this act, or any party or parties having knowledge of any matter relating or pertaining to the examination of any applicant for license to marry, who shall disclose the same, or any portion thereof, except as may be required by law, shall upon proof thereof be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

4. Any physician who shall knowingly and wilfully make any false statement in the certificate provided for in this act shall be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

5. The form of medical certificate required by Section 1 of this act shall be substantially in the following form:

"I, (Name of physician) being a legally licensed physician, do certify that I have this.....day of....., 19.., made a thorough examination of (Name of person) and believe him to be free from all venereal diseases.

....."
(Name of Physician)

6. All laws or parts of laws inconsistent or conflicting with the provisions of this act are hereby repealed.

The North Carolina Law[1]

1. No license to marry shall be issued by the register of deeds of any county to a male applicant therefor except upon the presentation by the said male applicant of a certificate executed within seven days from the time of the presentation of said certificate to the register of deeds as hereinafter provided, showing the nonexistence of any venereal disease, the nonexistence of tuberculosis in the infectious stages, and that the applicant has not been adjudged by a court of competent jurisdiction, an idiot, imbecile, or of unsound mind. No license shall be issued to any female applicant who shall not present a certificate showing the nonexistence of tuberculosis in the infectious stages, and that she has not been adjudged by a court of competent jurisdiction to be of unsound mind.

2. Such certificate to be executed by any reputable physician licensed to practice medicine and surgery in the State and who shall reside within the county in which said license to marry shall be applied for, by certificate

[1] Laws of 1921, Chapter 129.

of the county health officer of such county, whose duty it shall be to examine such applicants and issue such certificates without charge.

3. Any register of deeds who issues a license to marry without the presentation of the certificate herein above provided for, or contrary to the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two hundred dollars, or imprisoned thirty days, in the discretion of the court.

4. *Provided further*, that any physician who shall knowingly and wilfully make any false statement in the certificate herein above provided for, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than two hundred dollars, or imprisoned for not more than six months.

5. No laws now in force relating to the issuance of licenses to marry shall be repealed or abridged by this act, except such as may be in conflict herewith.

6. All laws and clauses of laws in conflict with this act are hereby repealed.

7. This act shall be in force from and after its ratification.

The North Dakota Law[1]

The county judge, before a marriage license is issued, shall require each applicant therefor to file in his office upon blanks to be provided by the county for that purpose, an affidavit of at least one duly licensed physician other than the person seeking the license, showing that the contracting parties are not feeble-minded, imbeciles, epileptics, insane persons, common drunkards, or persons afflicted with pulmonary tuberculosis in its advanced stages, *provided*, that in addition, the affidavit as to the male contracting party shall show that such male is not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested, credible person, showing that said persons are not habitual criminals; the female is over the age of eighteen years and the male is over the age of twenty-one years, unless the consent in writing is obtained of the father, mother, or other guardian of the person for whom the license is required in cases where the female is under the age of eighteen years and the male is under the age of twenty-one years, *provided*, that no consent shall be given, nor license issued, unless such female be over the age of fifteen years. Said affidavit may be subscribed and sworn to before any person authorized to administer oaths.

Anyone knowingly swearing falsely to the statements contained in the affidavit mentioned in this act shall be deemed guilty of perjury and punished as provided by the laws of the State of North Dakota.

[1] Laws of 1913, Chapter 207, Section 3.

The Oregon Law[1]

1. That before any county clerk in this State shall issue a marriage license, the applicant therefor shall file with the clerk from whom such license is sought, a certificate from a physician duly authorized to practice medicine within the State made under oath, within ten days from the date of filing the same, showing that the male person thus seeking to enter the marriage relation is free from contagious or infectious venereal disease.

2. Any physician who shall knowingly and wilfully make any false statement in any certificate issued, as herein provided, shall be punished by the revocation of his license to practice his profession within the State.

3. All fees and charges of any physician making the necessary examination of and issuing the necessary certificate to any one party, as herein provided, shall not exceed the sum of $2.50.

4. The county physicians of the several counties shall, upon request, make the necessary examination and issue such certificate, if the same can properly be issued, without charge to the applicant, if indigent.

The Wyoming Law[2]

That every male person securing a marriage license must produce a certificate dated within ten days before the date of the application for such marriage license from a licensed physician practicing in the State of Wyoming showing applicant to be free from any venereal disease in a communicable stage.

[1] Laws of 1913, Chapter 187.

[2] Laws of 1921, Chapter 160, Section 16.

APPENDIX B

LETTERS OF INQUIRY

1. Letter to Wisconsin Physicians

The letter sent by the author to men who were members of the Wisconsin State Medical Society was as follows:

As part of a more general inquiry into the administration of marriage laws, we are interested in the operation of the law which requires all males in your state to be examined in regard to venereal diseases before they may receive marriage licenses.

Wisconsin was one of the first states to adopt legislation of this sort, and people all over the country are questioning whether they should not enact laws similar to yours. Since the publication of our volume, American Marriage Laws, which purposely made no recommendation on this point, many of these people have written to us for suggestions. But before they act they wish to know to what extent your law has proved practicable, and our desire is to get the facts for them and to do this entirely without bias.

In view of the fact that the maximum fee of $2.00 is generally regarded as inadequate to cover a complete examination, some physicians tell us that they give only an oral examination. If the applicant admits he has been infected, they give a clinical examination and possibly make laboratory tests, but not otherwise. Other physicians report that they give a clinical examination in every case.

We recognize that physicians are placed in a very difficult position on account of the small fee allowed for the examination. We recognize also the inadequacy of a clinical examination alone to give assurance that the applicant is "free from all venereal diseases"—particularly if the applicant is not honest. One point, however, seems quite clear, and that is that the average applicant does not realize the inadequacy referred to. Because of this, some people in your state contend that if he anticipates that he must submit to a clinical examination, that anticipation must have an educational and preventive influence of an important sort.

It is primarily from that standpoint that we are making our inquiry. We wish to learn whether the prevailing practice is such that license applicants ordinarily anticipate a clinical examination, or whether they expect that their word of honor will be sufficient.

On this one point, therefore, whether or not a clinical examination is given in all cases, can you tell me, first, what your own practice is; and second, what, from your conversation with fellow practitioners, you believe to be the usual practice? Since we do not wish the names of those who furnish this information, it is not necessary to sign your name to the slip which I enclose for your reply.

If we can have your assistance in this matter, together with any advice

or comments that you care to add, we shall be very appreciative. A summary of the information we collect will be sent to your State Medical Association as soon as it can be made public.

Because our study would be seriously interfered with by newspaper publicity at this time, may I ask you not to mention this letter in a way that might result in such publicity?

The blank enclosed for reply read as follows:

EXAMINATIONS FOR MARRIAGE LICENSES

1. I * a clinical examination in every case.
2. From conversation with fellow practitioners I conclude that most of those talked with * a clinical examination in every case.
3. Remarks:

* Insert "give" or "do not give."

In drafting this letter it was recognized that on so delicate a matter there would be reluctance by physicians to reply to questions asked by a layman in a distant state with whom they had no acquaintance. It was necessary to convince them that the writer was not intending to make an attack upon the profession. For that reason there was not an adherence to the colorlessness of style that is desirable in a rigid statistical inquiry. Expressions were used which are open to criticism from that standpoint, but they were apparently justified by the outcome. Few questionnaires to strangers receive so large a response as this letter obtained.

2. LETTER TO MEN SOCIAL WORKERS

In the letter sent in September, 1921, to 194 men, physicians excluded, who were members of the Wisconsin Conference of Social Work, the difficulty experienced in obtaining reliable data was explained and these men were asked to give information as to their own experience, if they had married in Wisconsin since the law took effect, or to get similar information from friends. The name of the examining physician was not asked for, but the men addressed were requested to give or get the approximate date of marriage and state whether the examination was "physical or merely oral."

Replies were received from 33 men in 15 cities and towns giving definite information as to 85 examinations. These correspondents reported 20 examinations they had themselves received, 37 examinations that had been reported to them in response to questions they asked for the purpose of answering the letter of inquiry, and 25 examinations which they recalled having had reported to them previously. Statements as to the last named examinations have been discarded because the evidence did not seem trustworthy. With three other examinations excluded for which the

answers were not clear, the remaining 57 examinations reported were as follows:

Examinations	At least a physical examination	Only an oral examination or no examination	Total
Of the men addressed	14	6	20
Of other men	20	17	37
Total	34	23	57

3. State Health Officer's Letter to Men who had Received Certificates

Early in 1922 the state health officer of Wisconsin sent a letter to recently married men whose names and addresses had been taken from copies of marriage certificates in the state files. The opening paragraph of this letter read as follows:

> This blank is being sent to about 1,000 men recently married in this state. The object is to obtain better information concerning the so-called Eugenics Marriage Law. This law provides for an examination on the part of the groom by a licensed medical man and for a certificate showing that he is free from Venereal Disease in the communicable stage before he can obtain a license to be married.
>
> Please fill out the blank as indicated and return to the Wisconsin State Board of Health in the stamped envelope enclosed. These reports will be treated as absolutely confidential.

Then followed a series of six questions the first of which was "1. Name and address of the physician making examination." The five other questions are shown in a later paragraph where the replies are summarized. Below these questions was a space for "Remarks" and for the signature and address of the man who replied, and finally the sentence, "Need not sign unless you so desire."

The original mailing list for the letter, selected from all counties in the state, included 1,000 men, but was later reduced to 700. Thirty-five letters were returned because the men addressed were not found. Though return stamped envelopes were enclosed only 227 replies were received, or 34.1 per cent of the 665 letters which presumably reached those to whom they were addressed. The small size of this return was probably due in part to the miscellaneous character of the mailing list, in part to reluctance to write regarding such a matter to a stranger, and in part to fear on the part of some men that their replies might get the examining physicians into trouble. The latter phase of the subject, in connection with the request for the physician's name which appeared at the beginning of the questionnaire, has been discussed on an earlier page.[1] For reasons there given it may be

[1] See page 29.

questioned whether the following figures, based on the replies received, do not understate the case against the physicians:

Inquiry	Yes	No	Total
Did the physician make a careful examination of your person?	194	27	221
Did the physician simply ask you a few questions without a personal examination and issue you a permit on your replies?	26	186	212
Was blood taken from your arm or some part of your body for laboratory examination?	23	203	226
Was an effort made to take some of the secretions from the genitals for examination?	103	124	227
Do you believe that your physician gave you such an examination that would reasonably well determine whether you had a venereal disease in the communicable stage or not?	208	19	227

The replies to the last inquiry are manifestly of little importance. The answers to the other inquiries, however, are valuable on points about which the available evidence is conflicting. Even with allowance made for a possible understatement of facts that might be to the disadvantage of physicians, the very small proportion of cases, 12.2 per cent, in which it was reported that a careful examination of the applicant's person was not given, and the large proportion, 45.4 per cent, in which the examination included an effort to obtain a sample of the genital secretion, should be considered in weighing the statements of those who report that certificates are granted without examination and imply that this procedure is the rule among physicians.