



Regulations with plenty of loopholes – the doctors' prescription rights during the era of prohibition 1916– 1926

MEDICAL HISTORY

PER EIVIND HEM

Per Eivind Hem (born 1963) is a political scientist, and has published the biographies *Jørgen Løvland, vår første utanriksminister* [*Jørgen Løvland: Our first Minister of Foreign Affairs*] (*Samlaget 2005*) and *Megleren: Paal Berg, 1873–1968* [*The mediator: Paal Berg 1873–1978*] (*Aschehoug 2012*).

The author has completed the ICMJE form and declares no conflicts of interest.

Email: per.hem@vikenfiber.no

Solbergliveien 19

Oslo

ERLEND HEM

Erlend Hem (born 1970) is an MD, PhD, and Deputy Editor of the Journal of the Norwegian Medical Association.

The author has completed the ICMJE form and declares no conflicts of interest.

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BACKGROUND

In Norway, the sale of distilled spirits was prohibited from 1916 to 1926, and fortified wines were banned from 1917 to 1923. This period is often referred to as The Prohibition. The consumption of alcohol declined somewhat, but at a high price: Increased smuggling, moonshining and abuse of prescriptions. The latter was caused by the doctors' exclusive right to prescribe alcohol, which some doctors abused for the sake of personal gain.

KNOWLEDGE BASIS

The article is based on a review of the records of the Storting's deliberations concerning prescription practices in the period 1916–1926, as well as articles on alcohol issues in the *Journal of the Norwegian Medical Association* from the same period.

RESULTS

With the aid of increasingly strict regulations, the authorities sought to stem the activities of the so-called «whisky doctors». The restrictions and controls imposed on their prescribing rights turned out not to be very effective, however, since the doctors' rights were firmly established. In combination with weaknesses in the legislative base, this

hampered the criminal prosecution of doctors who wrote prescriptions in a big way. The abuse reached its climax in 1923. It was only with the enactment of the Prescription Act which came into force on 1 March 1924 that the authorities finally succeeded in gaining control of the abuse of prescriptions. The sale of spirits on prescription subsequently dropped sharply.

INTERPRETATION

The prescription of spirits had gradually spiralled out of control, and the repeated control measures enacted by the authorities proved insufficient. When the Prescription Act was finally adopted after three attempts in the Storting, time was in reality up for the prohibition.

The struggle over the prohibition of alcohol dominated political life in Norway from the end of World War I over a period of nearly ten years. It proved fatal to three governments, had a decisive effect on two parliamentary elections, gave rise to two referendums, and filled the newspapers, where it was discussed with more vehemence than any other issue since the dissolution of the union with Sweden (1).

The prohibition issue was not new, however. Throughout parts of the 18th century and the early years of the 19th, production of distilled spirits had been prohibited. The liberalisation of the right to distil spirits in rural areas after 1816 led to a flood of spirits which is unequalled in Norwegian history (2), and gave impetus to the formation of the organised temperance movement in the 1840s. After the turn of the century, there was a rising awareness of the fact that industrialisation and increasing migration to the cities brought with it growing abuse of alcohol, resulting in considerable social problems. The struggle against alcohol as a social evil, as a key element of social policy, became a cause that united liberals, trade unionists, the Labour Party and large segments of the Christian lay movement.

The alcohol issue provides a good illustration of the new community of interest between medicine and politics. In 1910, the Storting appointed an alcohol commission to combat drunkenness, chaired by Axel Holst (1860–1931), professor of hygiene and bacteriology, and with the doctor and temperance activist Johan Scharffenberg (1869–1965) as one of its members ((3), chapter 5). The strength of the temperance ideal is demonstrated by the fact that after the elections in 1915, the temperance advocates made up the majority of the Storting, although for the first and the last time. The membership of temperance organisations reached its peak at the end of World War I, when more than every tenth Norwegian citizen was affiliated with some organisation or other that promoted total abstinence.

It remains doubtful, however, whether a partial prohibition would have been introduced in this country if the world war had not broken out in the summer of 1914. Nervousness and uncertainty as to how the war would affect Norway immediately gave rise to temporary restrictions in many areas, including the admission to sell intoxicating beverages (3), chapter 7). The authorities wanted to establish control over a potentially important source of internal «disturbances and excesses» ((4). In addition, the supply situation was seen to call for a prohibition on using grain and potatoes to brew beer and distil spirits. Over the next couple of years, the restrictions were alternately loosened and then re-tightened again. But then, in 1916, events took a more definitive turn. Over summer and autumn, the abuse increased considerably, which caused a notable increase in the number of offences related to drunkenness. In December 1916, dreading excessive drunkenness during the Christmas season, the government introduced a total ban on all sales of spirits for purposes of indulgence, which was intended to last through New Year. However, this Christmas prohibition would come to last until 1 January 1927. In the spring of 1917 the prohibition was extended to apply also to fortified wine. At first people accepted it, but towards the end of the war discontent started spreading.

In this article we will discuss three issues: What kind of regulations did the doctors need to adhere to? The term «whisky doctor» emerged at a relatively early stage of the prohibition, as a designation for doctors who made a fortune from writing masses of prescriptions for spirits and fortified wine. Few doctors were convicted, however. Why did prosecuting them prove so difficult? By way of conclusion we will attempt to explain why the Prescription Act became such a success.

Knowledge base

The article is based on an analysis of the Storting's proceedings related to prescriptions (recommendations, proposals and debates) and articles about the alcohol issue in the *Journal of the Norwegian Medical Association* from the years 1916–1926. Information on the prosecution of Dr. Anders K. Meyer-Lie was collected from *Aftenposten's* digital newspaper archive (5). The doctors' attitudes to and practising of the regulations are described in another article (6).

An inadequate set of regulations

The Christmas prohibition of 1916 had exempted spirits for medical, technical and scientific use, but because of the temporary nature of the ban, nobody had initially considered any regulations for prescribing medications containing alcohol. If spirits were considered to be a suitable drug for the case in question, the doctor could write a prescription pursuant to a royal decree of 1904 (The Apothecary Regulations). As early as in winter 1917, the pharmacies started complaining that they were visited by some people who most certainly were not ill, but who held prescriptions for alcohol. These pharmacists protested against having to serve as brandy merchants.

A circular issued by the Ministry of Social Affairs on 8 May 1917 was intended to do away with this traffic in prescriptions. Inadequacies in the regulations had made things easy for people who craved strong drink and could deal with a sympathetic doctor. In principle, the doctor could provide his patient with a prescription for spirits in any imaginable quantity, and there were no clear restrictions on the number of times alcohol could be retrieved on a single prescription.

The new rules stipulated that the doctor could henceforth prescribe no more than one 3/4-litre bottle of spirits at a time, and a maximum of two bottles of fortified wine. The prescription should bear the name of the patient, and should explicitly state that the goods were to be used for medical purposes. The prescription was valid for a maximum of three retrievals. Until these rules came into force in the spring of 1917, it had been impossible to criticise a doctor for prescribing excessive amounts of alcohol. Things were now different, and the newspapers started to publish reports of abuse of prescriptions for spirits.

It soon turned out that the May 1917 regulations had failed to produce the intended effects. New and stricter rules were introduced in March 1918, but the absence of a legal basis prevented Lars Abrahamsen (1855–1921), Minister of Social Affairs in the government of liberal Prime Minister Gunnar Knudsen (1848–1928), from going as far as he would have wished. Six months later he nevertheless succeeded in amending the Spirits Act, but new regulations were not in place until December 1919. By then, the radical liberal Paal Berg (1873–1968) had replaced Abrahamsen as Minister of Social Affairs, and the referendum in October 1919 had returned a solid majority in favour of a permanent ban on the sale of spirits and fortified wines for purposes of indulgence – albeit with the precondition that Norway was able to establish viable trade agreements with the wine-producing countries Spain, Portugal and France, from which Norway imported alcohol and to where large amounts of dried cod was exported.

Berg's tightening of the regulations before Christmas 1919 looked good on paper, but failed to work as intended. The doctors did not prescribe less spirits in 1920, on the contrary, consumption increased considerably. The sales of spirits through the pharmacies nearly doubled from 1921 to 1923, which was the peak year not only for abuse of prescriptions, but also for smuggling. Berg's regulations plugged only some of the loopholes. For example, the prescription should as far as possible specify how often the medicine should be taken and in what dosage. The historian Per Fuglum (1924–2008) has pointed out that this should have had the form of an order ((2), p. 430). The same applies to the recommendation that the prescription should be stamped with the doctor's name, in addition to his (often illegible) signature. Therefore this failed to address a long-standing and growing problem: forged prescriptions for spirits. Nor was there any requirement that the prescription should state the illness for which the spirits had been prescribed. And finally, the doctor could still prescribe more than the permitted amount when special reasons so dictated.

The doctors' prescription rights had proven to have a strong legal base, and the legal proceedings initiated against some whisky doctors documented that large amounts had to be involved before the doctor would face any risk. Until 1924, only the most outrageous examples of abuse resulted in a (short) prison sentence and confiscation of accumulated funds. Patients could openly ask their doctor for a bottle of house medicine, and in order not to lose a patient, the doctor would be tempted to grant the request. The situation came to a head during the Spanish flu of 1918–19, when the demand for house medicine became massive and strongly emotionally charged. In late autumn 1918, Gunnar Knudsen's government was pressured to allow all households to purchase a half-bottle without prescription as a one-off measure – «The Løvland Half-Bottle» (Figure 1). Without an appropriate legal base, the erosion continued. Popular attitudes gradually changed, and during the years 1920–23 most compunctions people in general may have had about asking for prescriptions for spirits in case the need should arise (i.e. as a preventive drug) appear to have eroded completely, as had the doctors' restraint in writing them.



Figure 1: In the autumn of 1918, the government was pressured into allowing all households to purchase a half-bottle of spirits without prescription. The term «the Løvland half-bottle» stems from Jørgen Løvland (1848–1922), Minister of Church and Education, who had a liberal view on alcohol sales and who right then was standing in for Lars Abrahamsen (1855–1921), Minister of Social Affairs and temperance advocate. Here, Løvland is caricatured by the artist Jens R. Nilssen (1880–1964) in the satirical magazine *Hvepsen* [*The Wasp*], no. 35/1919. Drawing by © Jens R. Nilssen/BONO.

The need for a prescription act

The authorities realised that in order to combat the abuse of prescriptions there had to be a prescription act that could authorise the measures necessary. Allowing the ministry to intervene in the prescription rights of individual doctors could be an effective alternative to legal prosecution, but legal amendments were required to do so. Many doctors had reservations about this approach. Even Johan Scharffenberg, who was an ardent supporter of prohibition, spoke warmly about the doctors' inviolable prescription rights (7, 8). The doctors' professional autonomy had roots far back in history, and nobody else could interfere in, and far less overrule, the doctor's self-evident right to assess what would be the best drug to help or cure the patient.

One of Paal Berg's last initiatives as Minister of Social Affairs in June 1920 was to appoint an expert commission to prepare a general act on the rights and obligations of doctors. The commission's first mandate, however, was to draft an act on the doctors' prescription of

alcohol (a prescription act). The commission was dominated by doctors, including Harald Gram (1875–1929), Director of Health, and the professors Edvard Poulsson (1858–1935) and Ragnar Vogt (1870–1943). They unanimously recommended that everybody over the age of 25 should be allowed to purchase a half-bottle of spirits or a bottle of fortified wine as a house remedy each quarter without having to see a doctor, i.e. a kind of rationing. This was seen as «the only effective manner in which we may do away with the abuse that some doctors currently indulge in to a considerable extent» ((9), p. 4). During the initial years of prohibition it had been repeatedly emphasised that only a handful of doctors abused their prescription rights. In 1920–21, the situation was recognised as having changed. By exempting the doctors from prescribing alcohol as preventive medication, the commission claimed that the prescription rights could no longer be abused or stretched as easily. The commission recommended that the doctors should be denied the right to prescribe alcohol unless they could appropriately establish that the patient suffered from a disease for which alcohol could provide an effective remedy.

In early spring 1921, this proposal was submitted to the Conservative government led by Prime Minister Otto B. Halvorsen (1872–1923), which most likely would have endorsed it. However, before his Minister of Social Affairs could submit a recommendation, a new liberal government came to power, with Otto Blehr (1847–1927) as Prime Minister and Lars Oftedal (1877–1932) as Minister of Social Affairs. The new government would not accede to a rationing system as proposed by the expert commission, but maintained that all spirits with more than 12 % ABV (distilled spirits and fortified wine) should still be prescribed by a doctor. Emphasis should be placed on a quick-response control apparatus. In September 1921 the two houses of the Storting (the Odelsting and the Lagting) were split down the middle, and the proposal was finally dropped. Earlier that same month, the same government had obtained a majority in favour of the Prohibition Act, which introduced a permanent ban on distilled spirits and fortified wines for purposes of indulgence.

A new proposal for a prescription act was submitted during winter 1922 by the Blehr government. Minister of Social Affairs Oftedal had not changed his views, and maintained that alcohol should be obtained in no other way than by prescription. The medical community, however, was strongly opposed to establishing this as a statutory obligation. The medical association in Stavanger submitted a protest to the Storting: The doctors' job is to provide help for those who are ill, not to distribute spirits to those who are healthy (10). Even the profiled temperance advocate Rasmus Hansson (1859–1934), who was General Secretary of the Norwegian Medical Association and co-editor of its journal, claimed that the statutory obligation would make the pressure on doctors «worse by tenfold», and supported the expert commission's proposal for a rationing scheme. He believed that the Blehr government's approach would produce a large number of whisky doctors. Because of strong opposition, this proposal also failed to be submitted to the Storting (11).

In the winter of 1923 the liberal government resigned, and was replaced by another conservative government. One of its first acts was to abolish the prohibition of fortified wine, followed by a third attempt to establish a prescription act – but now only for distilled spirits (12). The proposal was mainly based on the rationing scheme recommended by the expert commission. In a somewhat amended form, the Prescription Act was adopted in the autumn of 1923, and came into force on 1 March 1924. Doctors should no longer prescribe alcohol as preventive medication, nor could distilled spirits be legally purchased for this purpose. In practice, this spelled the end of distilled spirits as prophylaxis for illness.

Whisky doctors

As early as in August 1917, the *Journal of the Norwegian Medical Association* published its first report of abuse of the prescription rights. A doctor in Bergen had written so many prescriptions for spirits that he had been summoned by the Director of Health that spring to provide an explanation. The report of a doctor in Kristiania, who had been sitting in a

bodega writing prescriptions for spirits for medical use at ten kroner each, also quite naturally attracted some attention. This was the free-spirited Dr. Gustav Michelsen (1862–1926).

The number of whisky doctors increased each year. When the Storting was discussing prescriptions for spirits in the winter of 1918, Johan Castberg (1862–1926) pointed to what he held to be a flagrant example of abuse of the prescription rights – a doctor who had written 550 prescriptions «in merely a single month», equivalent to 6 600 on an annual basis (13). In 1921, altogether 21 doctors wrote 10 000 prescriptions or more. During the peak year of 1923, their number had risen to 29. This amounted to 2 % of all the nation's doctors. In addition to these, there were 49 doctors who were each responsible for 5 000–10 000 prescriptions ((2), p. 427), i.e. one in every 20 doctors wrote 5 000 or more prescriptions for spirits in 1923. Five thousand prescriptions alone are equal to 16–17 prescriptions every day for six days a week year round, not counting two weeks of holidays.

On 13 November 1923, the *Aftenposten* daily had a front-page story on Dr. Anders Kornelius Meyer-Lie (1894–1946), a doctor in the Grünerløkka district in Kristiania, who for some time had been under investigation for prescription fraud (Figure 2) (14, 15). Readers were informed that he had earned 310 000 kroner so far in 1923, and that valuables amounting to 125 000 kroner had been confiscated. At about the same time, the doctor was excluded from the Norwegian Medical Association (16). Meyer-Lie was a young man, only 30 years old, and had not practised for more than a couple of years (17). When the case against him came up in the Kristiania District Court, *Aftenposten* brought daily reports of the proceedings. A top-ten list circulated in the court, and it turned out that Meyer-Lie came in a good second place, having written approximately 38 000 prescriptions for a total of 90 000 bottles of spirits.



Figure 2: Anders Kornelius Meyer-Lie (1894–1946) was a doctor in the Grünerløkka district in Kristiania, and was put on trial after writing approximately 38 000 prescriptions for spirits in 1923. Photo from *Studentene fra 1913* [*The students of 1913*]. He was convicted in the District Court, but acquitted by the Court of Appeal. Facsimile from *Aftenposten*, 13 November 1923.

Nevertheless, his defence counsel pleaded for a full acquittal. According to the law, writing a prescription without an examination was not a punishable offence. Prescribing alcohol for prophylaxis was not prohibited before the enactment of the Prescription Act. The defence attorney claimed furthermore that there was no evidence that the doctor had known in any of the cases that the spirits would be used for purposes other than medical ones. But to no avail; Meyer-Lie was sentenced to 60 days' imprisonment and confiscation of 100 000 kroner to the Treasury. The doctor appealed, and when the case came before the Court of Appeal in November 1924, he again made the front pages of *Aftenposten*. After three days of proceedings, Meyer-Lie was acquitted.

Both in the District Court and in the Court of Appeal, the defence attorney pointed to a number of acquittals of doctors who, like Meyer-Lie, had written a large number of prescriptions. The man in first place, Gustav Michelsen (with 48 657 prescriptions to his name in 1923), had not even been charged. It would be clearly wrong to convict Meyer-Lie for committing acts for which others had been acquitted, the defence attorney claimed. The District Court paid little attention to this, but his viewpoint appears to have been given some weight by the Court of Appeal. The case against Meyer-Lie demonstrates the difficulties involved in attempts to prosecute the whisky doctors.

Already in the District Court, Meyer-Lie's defence attorney had pointed out that the new Prescription Act would render it impossible for doctors to end up in the same situation as Meyer-Lie, since the prescription rights had been so drastically curtailed. Therefore he should not have been charged, the attorney claimed. Indirectly, he accused the authorities of the situation that had prevailed until 1924. It was the legislator who had made it possible for doctors to write such a large number of prescriptions. Court proceedings against whisky doctors after the Prescription Act had come into force appear to have been unrelated to this act, but were based on the mass prescription that had taken place before 1 March 1924. The main reason why it was so difficult to convict doctors of violations of their prescription rights was the difficulty involved in proving that the prescription was illegal (Figure 3). Even though the number of prescriptions was huge, this would not necessarily indicate that the doctors had no justification for their practices. In court, they invariably claimed to have such justification. Since most of the prescriptions were to be used as needed, it was difficult for the court to «overrule» the doctors' decisions. The firmly established nature of the prescription rights also appears to have compounded the difficulties in obtaining convictions of the whisky doctors.



Figure 3: There was no clear distinction between the whisky doctors and ordinary doctors. The stretching of the prescription rights grew gradually worse until the Prescription Act came into force in the spring of 1924. Here, the artist Jens R. Nilssen (1880–1964) has caricatured the situation in a mountain resort during Easter, in the satirical magazine *Hvepsen* [*The Wasp*], no. 13/1921. Drawing by © Jens R. Nilssen/BONO.

Prohibition comes to an end

Once the Prescription Act had come into force on 1 March 1924, the sales of spirits on prescription fell sharply. During the six months from March to August 1924, it declined from 448 000 litres to 71 000 litres when compared to the same period of 1923, in other words, to one-sixth. During the three last years of the Prohibition, 1924–1926, the prescription of alcohol by doctors was no longer a problem. The number of prescriptions stayed at a low level when compared to the peak in 1923. So what was the cause of this success?

Much of the explanation is likely to be found in the nature of the Prescription Act and the significant increase in resources devoted to control. The Prescription Act had made short shrift of spirits as house medicine. Since alcohol thenceforth could only be prescribed in case of illness, the doctors had significantly less opportunity to stretch the limits and to

abuse their prescription rights. Strangely enough, the *Journal of the Norwegian Medical Association* brought no comments from doctors on the Prescription Act and its effects, apart from purely factual information on the changes in prescription practices.

As regards the monitoring agencies, their work became more feasible once the Prescription Act had come into force, because of the diminishing control volume as well as the allocation of more resources for this purpose. The Directorate of Health established a separate organisational unit called the Prescription Control, and an expert commission was appointed, whose remit included assessment and advice regarding restrictions on and possible suspension of the prescription rights of doctors. The authorities supplied the doctors with prescription coupons according to their reported needs, with 100 prescriptions on each coupon. This enabled the directorate and the ministry to look over the shoulder of especially prescription-happy doctors at an early stage. At the same time, the act authorised the ministry to take action against doctors who followed questionable prescription practices. Formerly, the Director of Health had only had the authority to issue oral, almost confidential warnings, but he had no right to enforce punitive sanctions. Now, the administration could implement restrictions on the doctors' prescription rights, but they were still barred from suspending these rights completely. This could be done by royal decree, i.e. by the Government, but this option was only relevant in cases of such blatant abuse that criminal charges could be brought to bear.

During the first six months of the Prescription Act, altogether 28 doctors would come to see that the authorities were in fact paying attention to them. The Ministry imposed restrictions on the rights of four doctors to prescribe spirits «until further notice», and 18 others were requested to show restraint in their prescription of alcohol. The Government in council decided to strip six doctors of their right to prescribe spirits for a specified period (18). The number of doctors who were excluded from the Norwegian Medical Association during the prohibition era is uncertain. Most likely, there were more than those ten who were explicitly mentioned in the *Journal of the Norwegian Medical Association*, but far fewer than the number who were under scrutiny by the authorities.

While all previous attempts to regulate and control prescription practices had failed to produce any noticeable effect, the Prescription Act was thus an immediate success. Nevertheless, the prohibition was repealed only three years later, following an advisory referendum. The repeal of the prohibition was related to a number of factors, not least the relationship with France, Spain and Portugal. These countries near-coerced Norwegian authorities into purchasing large amounts of spirits, which were left in warehouses. Smuggling of liquor and not least moonshining also helped spell the final demise of prohibition.

It remains doubtful whether the prohibition would have lasted longer if the Prescription Act had been enacted 2–3 years earlier. It is indisputable, however, that the extreme increase in the prescription of alcohol in the early 1920s would have been impossible with the Prescription Act in place.

CONCLUSION

It is notable to see how long it took before legal regulation of prescription practices was enacted. The authorities soon became aware that the legal basis for imposing requirements on the doctors' prescription practices and monitoring these practices was questionable as well as inadequate. The Ministry of Social Affairs hesitated to amend the law, since they had not imagined the extent to which practices would slide. With the benefit of hindsight, the belief in new and increasingly stringent regulations and control measures on the basis of existing legislation may appear rather naive. The amount of control that would prove necessary was yet unknown, and the requirements for prescriptions and the control of them were addressed too leniently. It was not until respect for the prohibition among

people in general – and surely also among a majority of the doctors – was unravelling that the Prescription Act could be adopted. Even though the abuse of prescriptions ceased, the prohibition was already doomed.

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