Vilnius University Press

Contents lists available at Vilnius University Press

Teisė
2024, vol. 133, pp. 157–175

ISSN 1392-1274 eISSN 2424-6050
DOI: https://doi.org/10.15388/Teise.2024.133.10

Legal Regulation of Pharmacy Operation prior to 1918

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Legal Regulation of Pharmacy Operation prior to 1918

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Summary. The article aims to investigate the question of the legal regulation of the field of pharmacy in the 17th – early 20th centuries, which is of relevance in the history of medicine and pharmacy as one of the forerunning cross-disciplinary branches in the historical-legal research. In the article, academic literature is used as a primary source of information, as well as the laws and the decisions of the Governing Senate in pharmacy cases before 1918.
Keywords: pharmacy law, pharmacies, medical law, history of medical law, pharmacy legislation.

Teisinis vaistinių veiklos reguliavimas iki 1918 metų

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Santrauka. Straipsnyje siekiama apžvelgti farmacijos šakos teisinio reguliavimo klausimą XVII–XX a. teisėje. Straipsnis – vienas iš tarpdisciplininių istorinių teisinių tyrimų – yra aktualus skaitytojams, besidominantiems teisės, medicinos ir farmacijos istorija. Straipsnio autorė kaip pirminį informacijos šaltinį naudoja akademinę literatūrą, įstatymus ir Valdančiojo Senato sprendimus farmacijos bylose iki 1918 metų.
Pagrindiniai žodžiai: farmacijos teisė, vaistinės, medicinos teisė, medicinos teisės istorija, farmacijos teisės aktai.

Introduction

The study of historical experience of the legal regulations of the operation of pharmacies in the period of a rapid development of economy, commerce, business and competition acquires its special topicality at the present time. Nowadays, the legislator has a concordant question of what lies in the foundation of the State-run regulation of the branch of medicine, the opening of a pharmaceutic business, receiving proper income, the creation of a legal balance between granting State medicinal assistance

Received: 08/09/2024. **Accepted:** 26/06/2024

and generating the conditions for medicinal business for its development – overall, it is the creation of a legal basis, which is appropriate to provide optimal decisions of such issues experienced by the State as the provision of timely, high-quality and accessible medicinal and pharmacy assistance to the State's population on the one hand, and the promotion of entrepreneurship and the development of the private pharmacy business on the other hand. Pursuing the most suitable methods of legal regulation under the present-day conditions, professionals frequently turn to the experience of the past. Hence, the object of the research lies in the legal acts and the court litigation, which originates in the medical-pharmaceutical field, because of a negligent attitude of pharmacists and medics to the fulfilment of their duties: the quality of services provided to clients, the revelation of medical secrets, the violation of terms of maintaining (safekeeping/preserving) medicinal products, which, overall, caused litigation and thus the formation of legal precedents. The subject of the article is a wide range of normative-legal acts issued before 1918, such as the Pharmaceutical Statute (*Ustav Aptekarskiy*), the Doctor's Statute (*Ustav Vrachebniy*), as well as the Full Body of Laws of the Russian Empire (*Polnoje sobranije zakonov Rossijskoj Imperiji*), whereas the author's contribution to the field of science is the analysis of the normative-legal acts of the said time period. The branches of the regulation in the field of pharmacy in the period starting with the 17th and concluding with the early 20th century encompasses a wide spectrum of activities in the field of pharmacy:

1) The rules and the order of opening State (*kazionnyja apteki*) and free, that is, private, pharmacies (*vol'nyja apteki*);
2) The rights, duties and education requirements to pharmacists;
3) Dispensing of prescription and non-prescription medicines;
4) Dispensing of medicines free-of-charge to the poor;
5) Demands towards the arrangement of pharmacies, maintenance and manufacturing of medicinal products.

Hence, the author interprets the term *pharmaceutics* in its classical understanding.

1. The Pharmacy Order (16th–18th centuries)

The legal basis for pharmaceutical activity in the second half of the 18th century was formed by the Apothecary Statute of 1789 (*Ustav' Aptekarskiy*), but the beginnings of the healthcare system can be observed much earlier. Before the 16th century, the prerequisites and foundation for the development of both the pharmacy business and the pharmacy service were formed in the Russian State. The Tsar's Court, starting from 1581, possessed one pharmacy, while the population was served by herbal shops (*zelejnaja lavka*), whereas the boyars and the representatives of clergy had house pharmacies (*domovaja apteka*), the production of medicines in which, in essence, was absolutely not different in principle from the methods employed by herbal shops (Kulikov 2012, p. 92). According to the research of Grigorieva and Maksimov (2018), pharmacists, as such, were initially mentioned in documents in 1553, whereas, in 1581, the Tsar's Pharmacy (*Gosudareva apteka*) was opened, although this pharmacy served only the family of Ivan IV the Terrible, and its doctors and pharmacists were mainly employed from abroad (Grigoryeva, Maksimov 2018, p. 10–11). Mirskiy (1995) in his book *Ocherki*... mentioned that, according to the recollections of a number of the contemporaries of the 16th century, in the 16th century, there were neither physicians nor pharmacists in the Russian State, while, according to others, hospitals (or, rather, alms houses – *bogadel'nya*) for sick and crippled citizens did actually exist (Mirskiy 1995, p. 5); the population, in case of an illness, usually treated themselves by self-medication – for example, by drinking wine laced with gunpowder, or going to a bathhouse for

as much as three hours (Mirskiy 1995, p. 16). The very first pharmacy in the Russian State was run by two English pharmacists – James French and Robert Jacob, as well as a number of their assistants; later, the first of the two famous pharmacists soon returned to England, but came back to Moscow again in 1602. The pharmacy, which was managed by James French, was a purely court pharmacy, and it worked to provide medicines exclusively for the royal court (Koroteeva 2011, p. 90–91). After the emergence of such an institution of the healthcare system, as a pharmacy in the Russian State, there was a need to create an authority to control it. The authority which controlled the pharmacy was named the Apothecary Order (*Aptekarskiy Prikaz*). The exact date of its foundation is unknown; a number of historians date it as the year 1620 (Koroteeva 2011, p. 90–91), although Mirskiy believes that it was created immediately after the opening of the first pharmacy in the Russian State in 1581, by noting that the Apothecary Order did certainly exist in 1594–1595, during the reign of Feodor Ivanovich (a.k.a. Feodor I of Russia) (Mirskiy 1995, p. 9). Although the Apothecary Order was initially created as a court department, its scope of competence was quickly expanded from supplying medicines to members of the Tsar family to the representatives of the Tsar court, i.e., courtiers, the boyars close to the Tsar, as well as military leaders (Mirskiy 1995, p. 10).

In the 17th century, as Koroteeva highlights, the functions of the Apothecary Order were significantly expanded: it began to manage all pharmacy affairs, and then began to be in charge of inviting foreign doctors to work in the Russian State (actually, at that time, the absolute majority of physicians were foreigners), and, subsequently, the training of doctors, as well as their allocation among positions, and, later, forensic medicine, quarantine measures and combatting against epidemics, etc. (Koroteeva 2011, p. 91–92). Moreover, the Apothecary Order, according to Koroteeva (2011), was apparently the first body nominated to manage medical affairs in the Russian State; as a matter of fact, it often dealt with issues fairly remote from pharmacy, and, in 1681, its staff included 80 medics, only 4 of whom were pharmacists (Koroteeva 2011, p. 91–92). The Apothecary Order was commonly headed by the boyars close to the Tsar; for example, under the Tsar Feodor Ivanovich, it was led by the future Tsar Boris Godunov (Mirskiy 1995, p. 15). The Apothecary Order included physicians of various specialties – physicians (specialists in internal medicine), healers (the prototype of surgeons), chiropractors, ophthalmologists, pharmacists, alchemists, etc. Most of these doctors were foreigners who had received their education in European countries; only in the second half of the 17th century did local specialists begin to appear in its staff (Mirskiy 1995, p. 15–17). From the statements outlined above, we can conclude that the Apothecary Order in the Russian State could be perceived as a distant prototype of the Ministry of Health. The Apothecary Order remained its operation until 1721, when the Medical Chancellery was established, which was directly subordinated to the Governing Senate (Koroteeva 2011, p. 95). The Tsar's Pharmacy remained to be the sole pharmacy until 1672, when a new State pharmacy for the citizens was opened in Moscow which was called 'the new one', and, a decade later, the third local pharmacy was opened at a civil hospital (Mirskiy 1995, p. 28). The 1670s witnessed two more openings of pharmacies in Vologda and Kazan in 1673 and 1679, respectively (Mirskiy 1995, p. 28–29).

2. The first normative-legal regulation and the Apothecary Statutes of 1789 and 1836

The first normative-legal act, attributed to the foundation of pharmacy, which apparently would gain scientific interest, was the Ordinance of 1693 "On the customs observation of the supplies, which are delivered to the Apothecary Order (*Polnoje sobranije zakonov* 1693, p. 167–168), which was published in the *Full Restatement of Laws* ("*Polnoje sobranije zakonov*"), Vol. 3, No. 1475, according to which,

it was required by law to write down information in the books concerning all the delivered medicines and the medicinal materials, and to put stamps on them in order to control the turnover. It is quite concordant to highlight that, since the above-mentioned normative-legal act, the development of pharmacy in the field of legal regulation actually began. The *Full Restatement of Laws* of the Russian Empire from the period of 1649 to 1825 included 137 normative-legal acts regulating the sphere of pharmacy (*Ukazatel' alfavitnyj, Polnoje sobranije zakonov,* 1830, p. 41ff.). The sphere of regulation included the issues of acquisition of medicinal materials, questions pertaining to doctoral positions, the control of the medicinal turnover, upgrading of military and state pharmacies and their maintenance; another topical issue was the related with customs and the regulation of medicinal taxes.

On 22 November 1701, by a personal decree of Peter I, it was ordered to create 8 free (private) pharmacies in Moscow. The same order instructed to terminate the activities of various herbal shops selling various herbs and potions "as if instead of medicines" (*Polnoje sobranije zakonov* 1701, p. 177), and, in 1707, a decree was issued according to which only those wines and alcohol (verbatim, *vodka*) that are used to make medicines can be stored in pharmacies (Blūmentāla 1931a, p. 266–270). What is more, on 7 July 1725, by decree of the Governing Senate, establishing a pharmacy and a hospital in Astrakhan was ordered. For the pharmacy, it was requested to make a courtyard with a building adjacent and belonging to the pharmacy, as well as an adjoining vegetable garden, with pharmacy equipment and utensils. It was also demanded to provide a military convoy for the transportation of medicines from Moscow to Astrakhan. It was proposed to allocate two 300-ruble budgets for the maintenance of the given pharmacy for the pharmacists, two 150-ruble allowances for the *gezels* (provisors), and two 48-ruble funds for the pharmacy apprentices (*Polnoje sobranije zakonov* 1725, p. 499–500). Nine years later, a Highest Resolution from 1734 was adopted, which was named "On the inspection by the Port Customs of pharmaceutical materials and supplies brought from overseas to state pharmacies at those pharmacies, on non-collecting duties on them, and on including this in the Customs Statute" (*Polnoje sobranije zakonov* 1734, p. 248–249). This regulation was in effect until 1797 and replaced by the Personal Decree of Pavel I to the Governing Senate named "On the import of pharmaceutical materials" (*Polnoje sobranije zakonov* 1797, p. 506). On 9 May 1738, a field pharmacy was established in the city of Voronezh (*Polnoje sobranije zakonov* 1738, p. 492). On 2 July 1758, the Governing Senate issued a decree according to which poor women in labor and newborn babies would be given free medications based on prescriptions from doctors and midwives from state pharmacies (*Polnoje sobranije zakonov* 1758, p. 360). On 10 January 1768, a personal decree was issued to the President of the Medical Collegium regarding the establishment of pharmacies in cities. This decree stated that governors used to complain that there were no pharmacies in their governorates, and that doctors simply did not have the medicine to treat patients, so the decree appeals to the President of the Medical Collegium that, perhaps, it would be worthwhile to assign free pharmacists to the cities, or to establish pharmacies in cities based on the regimental model (*Polnoje sobranije zakonov* 1768, p. 418).

In 1778, *Pharmacopoea Rossica* was published in the Latin language, which systematized the medicines in use. It was published with a print run of 1800 copies, and then was sent to medical institutions and pharmacies (Kulikov 2013, p. 97). On 13 August 1784, the Governing Senate decided that the Decree of Peter I of 1701 did not prohibit the opening of pharmacies in Moscow, and more than 8 of those were opened in accordance with this order; it allowed the Medical Collegium to provide for people "desiring and knowledgeable" to open private pharmacies in Moscow, and to notify the Governing Senate in reports about when and how many such pharmacies will be established (*Polnoje sobranije zakonov* 1784, p. 196). On 29 December 1786, a personal decree was issued to Privy Councilor Zavodovsky and Prince Dolgorukiy regarding the establishment of pharmacies in the districts

of St. Petersburg Governorate, which provided for an assignment of 500 Rubles for each city, and the proceeds from the medicines were to be used for the benefit of the Orders of Public Welfare (*Prikaz obschestvennago prizrenija*) (*Polnoje sobranije zakonov* 1786, p. 770–771). In 1789, the Apothecary Statute was adopted, which was the first act in the Russian Empire that codified the aspects of the activities of pharmacists (*Ustav Aptekarskiy* 1789, p. 80–83). Later, it was reissued and supplemented in 1837, and then was fully included in the first Doctor's Statute (*Ustav Vrachebniy*) twenty years later. Finally, with the creation of the Medical Boards (*Vrachebnaja Uprava*) in 1797, both physicians and pharmacists came under their control (Blūmentāla 1931b, p. 314–319). The central authorities founded ministries in 1802; in our context, it was the Minister of the Interior who governed all the questions of medicine, and the Medical Department became its sub-structure in 1819; and, as a result of zemstvo and city reforms of 1864 and 1870, medical departments of governorate boards (originally, they were named as *Vrachebnoje otdelenije gubernskago pravlenija*) were established as divisions responsible for all the medicine and public health issues on a governorate level (Shalamov 2021, p. 52–64).

The first and the only normative-legal act upon which the pharmacies of the 18th and early 19th centuries were operating was the *Apothecary Statute*, which was enacted in 1789. The provisions of the law were fully included into the Doctor's Statute with changes and amendments. With the adoption of the first Apothecary Statute in 1789, the State began to regulate the order of prices for medicinal goods by issuing a printed pharmaceutical tax, on the grounds of which, the cost of medicines to be dispensed was determined. The Apothecary Statute contained 23 articles. The text was written in Russian and German (in German, it was called *Apotheker-Ordnung*), since, from the end of the 16th century, the Pharmaceutical Order was headed by people from German lands. German doctors and pharmacists were invited to develop this business in the Russian Empire, and therefore they turned to the German version of the statute. The Apothecary Statute became the main document regulating the activities of pharmacies. Its articles prescribed the rules for running pharmacies and the duties of their employees. The Statute determined that a pharmacist must be tested and awarded a pharmaceutical title by the *State Medical College*. It also set forth the requirements for the pharmacist's behavior: The first two articles of the statute set forth requirements for the qualifications and the moral character of a pharmacist (*Polnoje sobranije zakonov* 1789, p. 80–83). The first article of the Statute stated that every pharmacy in the Russian Empire must be managed by "…an excellent man [who has been], by a State Medical Collegium, tested and awarded in pharmaceutical knowledge …" Then, the second article of the Statute stated that a pharmacist must be "…skilled, honest, conscientious, prudent, sober and diligent" in his work (*Polnoje sobranije zakonov* 1789, p. 80–83).

According to the Apothecary Statute of 1789, the State was concerned that pharmacies would not be at a loss as a result of the production and sale of pharmaceuticals, therefore, in Article 4 of the Statute, it was held that: "…So that the pharmacist, using the necessary costs and labor to make supplies, does not incur a loss, it will be observed that nowhere, no one except pharmacies, to sell medicines in parts." According to Article 5 of the Apothecary Statute, high demands were made on the quality of the manufactured and, accordingly, sold products. Thus, according to this provision, the pharmacist had to maintain complete cleanliness in the pharmacy, and especially in the vessels that contained the medicines; the materials chamber had to be located in such a way that it could not be damaged by dampness or dryness, and the pharmacy laboratory had to contain all the supplies necessary for the pharmacist's work. The qualifications of the pharmacists themselves, the accuracy of the preparation of the medicine, and the avoidance of errors were deemed of high importance, and therefore, according to Article 9 of the Statute, the pharmacist was obliged to try to ensure that the medicines were prepared and composed in accordance with the doctor's prescription, in order to avoid causing any harm to the patient

taking the medicine due to an incorrect dosage. The next provision of the Apothecary Statute stated that the pharmacist should not undertake preparation of a medicine, where its weight is questionable until he has received the appropriate explanation from the physician (Article 10). Also, Article 6 of the Statute stipulated that the pharmacist must closely monitor the activities of the provisor, apprentices or his students so that they perform their duties at a sufficient level; in addition, the pharmacist could not accept other employees to work in the pharmacy without them having obtained appropriate qualifications in the field of pharmacy (*Polnoje sobranije zakonov* 1789, p. 80–82). The pharmacist had the right to dispense medicines only on prescription. The exceptions were "…the lightest and safest medicines, such as almond oil, cinnamon water, rosemary herb, rhubarb syrup and the like," as well as other medicines that were urgently needed according to the instructions of midwives during childbirth. In cases other than childbirth, the dispensing of medicines on their request was completely prohibited (Article 17). The pharmacists themselves were prohibited from prescribing medicines to patients and engaging in treatment of patients (Article 19), as well as engaging in the production of any alcoholic beverages (e.g., vodka), as outlined in Article 20 (*Polnoje sobranije zakonov* 1789, p. 82).

All medicines were prepared by the provisors; they were highly qualified drug manufacturers. The manager of the pharmacy was responsible for the quality of its medicines. For purchasing "such [medicinal] components that must be prepared in a pharmacy laboratory" from manufacturers a fine of 50 to 100 Rubles could be imposed according to Article 886 of the Restatement of Criminal and Correctional Punishments (*Ulozhenije o Nakazanijah Ugolovnyh' i Ispravitel'nyh*) of 1885, and Article 1099 of the Restatement of the edition of 1845 (*Polnoje sobranije zakonov* 1845, p. 805; *Ulozhenije o Nakazanijah Ugolovnyh' i Ispravitel'nyh*, p. 346). Medicines were dispensed "at all times," around the clock: at night, a pharmacist was always on duty in the pharmacy. The activities of the pharmacy were not only highly valued, but also controlled at the highest State level, and, according to Article 23 of the Statute, a pharmacist who performed his duties with dignity would enjoy the patronage of the State Medical Board; otherwise, he "will feel the exact severity of the law" (*Polnoje sobranije zakonov* 1789, p. 83).

The second edition of the Apothecary Statute was adopted in 1836. This edition specified the requirements for the pharmacy manager: he must be at least 25 years old, and is required to possess the rank of a pharmacist. For the first time, this Statute regulated the requirements for the organization of a pharmacy: it was necessary to have a prescription room, a materials room, a coctorium room, and a laboratory, a dry cellar, a glacier, a drying chamber for medicinal herbs, a dry place for storing herbs, flowers, roots, as well as for storing and dispensing medicines, utensils, scales, tools and devices. The Apothecary Statute of 1836 is characterized by the continuity of the Apothecary Statute of 1789, and the development of its main provisions; however, in some provisions, the requirements became more stringent. An addendum was made to the section *Internal Structure of Pharmacies* and, in particular, on the content of the pharmacopoeia; in fact, they were made to be mandatory Russian and Berlin ones. It was assumed that the pharmacy had to be supplied with a sufficient quantity of fresh medicines, along with materials for their production, as well as containers for their storage, scales, instruments and devices for composing medicines and making them (Article 10) (*Polnoje sobranije zakonov* 1836, p. 312–319). According to Article 252 of the Doctor's Statute of 1857 (based on Articles 16–17 of the Apothecary Statute of 1836), the demand for prescriptions had to be satisfied at any time, immediately. Prescriptions for which the physician designated as *statim*, *cito* or *citissime* had to be satisfied immediately, with preference to others (*Polnoje sobranije zakonov* 1836, p. 312–319; *Ustav' Vrachebniy* 1857, p. 48). The Statute also paid attention to the quality of the production, pharmaceutical compatibility and the overdosage of potent medicines (Article 19), which was re-used in the Doctor's Statute (Article 254) of 1857: "If any ambiguity or doubt is noticed in the prescription regarding the mixing of different

components of the medicine, or the amount of potent substances, then the owner of the pharmacy or its manager, having stopped the execution, enters into an explanation with the physician, and dispenses the medicine not before receiving an affirmative written response" (*Ustav' Vrachebniy* 1857, p. 48). The author would like to denote that the Apothecary Statute of 1836, Article 40, presupposed the liability of pharmacists for an incorrect compounding, drawback or superfluity of a certain part of the medicine, under condition of it not bringing towards any deplorable consequences (that is, damage to the health of the patients who took the medicines), then, the pharmacist could be subjected to an admonition from the side of the Medical Board (for the first time), a strict reprimand (for the second time), and a fine (for the third time during the same year) (*Ustav' Aptekarskiy* 1836, p. 318).

In 1857, the Apothecary Statute, as well as a number of other legal acts, for example, the act on the examination of doctors, pharmacists, veterinarians, dentists and midwives of December 18/30, 1845 (*Polnoje sobranije zakonov* 1845, p. 213–224), or the rules for the fragmented sale of potent and poisonous substances from 18 November 1846 (*Polnoje sobranije zakonov* 1846, p. 411–415) had already become part of the Doctor's Statute (and some of its provisions on the liability of pharmacists were re-used with granting sanctions in the Restatement of Criminal and Correctional Punishments of 1845), and, as a separate legal act, it practically ceased to exist (albeit, the Governing Senate in its decree of 1898 upheld that it still preserved its effect) (*Pravitel'svuyuschij Senat* 1898, p. 39–47). However, various legislative provisions of that time required that every pharmacist had to know the Apothecary Statute, and that each pharmacist had to possess a copy of it (Varadinov 1880, p. LXI and LXIII). According to Varadinov, pharmacists, as citizens who do not have a special education in the field of law, could become confused in the rather complex legal regulation of their activities, rights and obligations, and he defended the position that a separate apothecary statute was needed, and not just a codification in the form of the Doctor's Statute, and, in his opinion, pharmacists themselves should have taken part in its drafting, whereas the pharmacists' participation in the Draft Statute of 1836 was very limited (Varadinov 1880, p. LXII).

According to the Doctor's Statute of 1857, the issue of manufacturing and issuing medicines according to physicians' prescriptions was a priority; therefore, pharmacists were severely punished, including the dismissal from office for dispensing medicines according to copies of prescriptions or according to a prescription without a physician's signature (cf. Article 895 of the Restatement of Criminal and Correctional Punishments of 1885, Article 1109 of the Restatement of the issue of 1845) (*Polnoje sobranije zakonov* 1845, p. 807; *Ulozhenije o nakazanijah ugolovnyh i ispravitelnyh* 1885, p. 349). The attitude towards control over medicines was especially stringent if the ordered medicine contained potent substances, which were, respectively, divided into the following categories: "... according to their greater or lesser danger to human health and life, necessity for technical or exclusively pharmaceutical use and the degree of their availability to the people..." according to the Doctor's Statute, 1857, Article 879 (*Ustav' Vrachebniy* 1857, p. 154). A special attitude was stipulated towards the manager of the pharmacy who, in case of failure to comply with the requirements and the prescribed rules, managed the pharmacy – the manager could lose the right to manage such an establishment forever in accordance with Article 891 of the Restatement of Criminal and Correctional Punishments of 1885 (Article 1104 of the Restatement of the 1845 edition) (*Polnoje sobranije zakonov* 1845, p. 806; *Ulozhenije o nakazanijah ugolovnyh i ispravitel'nyh* 1885, p. 348). For the preparation of medicines not in accordance with the rules of the pharmaceutical business, and for their composition from substances of inadequate quality or weight, damaged or not composed in accordance with the prescription, and for the preparation of medicines in dirty vessels, or in one way or another harmful to health, the manager of the pharmacy was subject to a monetary penalty in such a case, the fine was up to 10, up to 25 or up to 100 Rubles (depending on how many times the offense

was committed, according to Article 892 of the Restatement of Criminal and Correctional Punishments of 1885 (Article 1105 of the Statute of the edition of 1845) (*Polnoje sobranije zakonov* 1845, p. 806; *Ulozhenije o nakazanijah ugolovnyh i ispravitel'nyh* 1885, p. 348).

Pharmacies were also prohibited from producing, storing, and dispensing alcoholic beverages, for which, pharmacists were also subject to severe punishment. Thus, Article 887 of the Restatement of Criminal and Correctional Punishments of 1885 (Article 1100 of the Restatement as amended in 1845) stated that a pharmacy manager who was convicted of producing alcoholic beverages (vodka, liqueur, as well as other alcoholic beverages) that were produced in his pharmacy was subject to a fine of up to 100 Rubles (for the first offense), from 100 to 500 Rubles for the second time, and, for the third offense, the manager was forever deprived of the right to manage a pharmacy, and the alcoholic beverages found in the pharmacy were subject to confiscation (*Polnoje sobranije zakonov* 1845, p. 805; *Ulozhenije o nakazanijah ugolovnyh i ispravitel'nyh* 1885, p. 347). Article 33 of the Apothecary Statute of 1836 regulated the basic principles of conduct for pharmacists, as well as the requirements for the storage and preparation of medicines. It was assumed that the owners and managers of pharmacies should be honest people of the appropriate behavior, and they should ensure that other pharmacy workers would properly fulfil their duties and behave politely with the patients, whereas pharmacy apprentices were expected to excel in pharmacy. It was also necessary that the pharmacy would be properly supplied with materials and supplies in proportion to their consumption, as well as all the necessary pharmaceutical and chemical apparatus and utensils, which had to be kept clean. Only those medicines that could not spoil over time were to be stocked, and compound medicines could not be purchased from wholesalers, but had to be prepared in the pharmacy laboratory, except for those that are manufactured in the largest quantities. It should be noted here that, according to Article 886 of the Restatement on Criminal and Correctional Punishments, edition of 1885 (Article 1099 of the Restatement, 1845 edition), a pharmacy manager was subject to a fine of up to 50 Rubles for the first time for purchasing medicines from manufacturers that were to be manufactured in a pharmacy laboratory, except in cases where this was permitted, up to 100 Rubles for the second time, and, for the third time, the manager was deprived of the right to manage a pharmacy for one to two years (*Polnoje sobranije zakonov* 1845, p. 805; *Ulozhenije o nakazanijah ugolovnyh i ispravitel'nyh* 1885, p. 346).

Clause 5 of Article 33 of the Apothecary Statute provided that prescription medicines were to be composed of intact substances, in accordance with the doctor's orders, and were to be dispensed immediately; dispensing of medicines was not permitted on prescription from persons who did not have the right to practice medicine (Article 43) (*Ustav' Aptekarskiy* 1836, p. 318–319). However, Article 35 of the Apothecary Statute stated that although the pharmacists were prohibited from prescribing medicines and treating patients, sometimes, emergency situations could arise (poisoning, suffocation, carbon monoxide poisoning, bleeding, burns), when the patient needed emergency care and there was no doctor nearby, then, until the doctor arrived, the pharmacist still had the right to dispense the necessary medicine and teach how to use it (*Ustav' Aptekarskiy* 1836, p. 317–319). The Apothecary Statute established a sizable number of cases of responsibility for pharmacists, many of which eventually became provisions of the 1845 Restatement of Criminal and Correctional Punishments, and was then reused in the 1885 edition. Some of them resulted in fines, which, by today's standards, can be interpreted as an administrative offense. However, in some cases, guilty pharmacists could also face criminal liability: Article 41 of the Apothecary Statute stated that if a mistake made in a pharmacy resulted in serious consequences, or any harm to the health of those who used incorrectly prepared medicines occurred, then, in such a case, the guilty pharmacy employee, after the consideration of the case by the medical council, was brought to a Criminal Court for trial (*Ustav' Aptekarskiy* 1836, p. 318–319).

3. Opening of pharmacies and the Doctor's Statute

The most important regulatory legal document for studying the legal status of pharmacies is the Doctor's Statute, and, specifically, its versions of 1857, 1892 and 1905, which later became the main document for regulating not only pharmaceutical, but also all medical activities in the Russian Empire. The Doctor's Statute contained 1866 articles, with its legal provisions involving: the establishment of all medical Institutions (Book 1), the Statute of the medical police (Book 2), the Statute on quarantines (book 2) and the Statute of forensic medicine (Book 3) (Kolychev 1915). According to the Doctor's Statute of 1857, Article 5, the staffing of the administration under the Medical Department shall be approved, where the positions of medical inspectors of the governorate, assistant inspectors and pharmacists in all medical departments are outlined. In 1881, the Ministry of the Interior was recommended to implement the rules drafted by the medical council on the establishment of pharmacies in cities, towns, and villages. It is important to note that the established procedure for opening and maintaining pharmacies and selling medicines had several goals, one of which was to ensure that the population would receive medical care, and another objective was to regulate the pharmacy trade, which would mean the creation of conditions under which the monopoly of one family or class over another was excluded.

According to Article 353 of the Doctor's Statute's edition of 1905, anyone wishing to establish a pharmacy "shall submit a petition to this effect" to the local governorate medical administration with the attachment of a certificate of pharmaceutical rank. The local medical administration, "based on: 1) the actual need to establish a new pharmacy based on local circumstances, population, and the number of pharmacies already in that city or town, and 2) written responses from other owners of local pharmacies on whether the establishment of a new pharmacy can be permitted, with an explanation of the obstacles encountered, shall submit the matter with a conclusion to the Governor, who shall permit it on his own authority." The right to open the pharmacies belonged exclusively to the Ministry of the Interior. A petition to open them could only come from the Governor (Article 353), who is obliged to consider applications from all applicants and decide on the basis of "a comprehensive review and comparative assessment of the rights of each of the applicants" and make the decision taking into account the preliminary conclusion on it of the local medical department. Permission to open pharmacies was given for one year, and during this year the owner of the pharmacy could lease it out or pass it on as an inheritance (Article 354 of the Doctor's Statute of 1905). It was permitted to move a pharmacy from city to city and change its location within the city itself (Article 355 of the Doctor's Statute of 1905). In this case, it was necessary to confirm the pharmacist's right to practice. However, the final word on obtaining the right to open pharmacies belonged to the local medical department and the civil authorities, signed by the governorate board, since the final decision on the placement of pharmacies being opened was "given to the administrative authorities, as the most familiar with the needs of the local population" (Decree of the Governing Senate of January 16, 1897, No. 301). (Kolychev 1915, p. 136–139).

The rules for opening pharmacies, paragraph 3, indicated that if several applications for opening a pharmacy were submitted simultaneously, the choice fell in favor of the applicant who had not previously owned a pharmacy or had not previously received anywhere the privilege of opening one in any location; at the same time, the privilege to open a pharmacy was also given based on seniority at the time of filing the application (applications submitted within the same month were considered to have been submitted simultaneously), and if, under this condition, all applicants were in equal conditions, then the higher academic degree of the pharmacist was significant (paragraph 3 of the rules for opening pharmacies, the Senate's opinion in the Broder case of 1906 (Protoklitov 1909, p. 26)). In the subsequent Senate practice, it can be noted that if a pharmacist had previously, even many years ago,

owned a 'normal' pharmacy, he would not have received a privilege against the background of the others – rather, the opposite was true (Protoklitov 1909, p. 26–27). Moreover, this rule did not apply to cases where pharmacists had already owned pharmacies in rural areas (Protoklitov 1909, p. 27). Also, a pharmacist who did not open a pharmacy at all (i.e., did not use the privilege he had received), or who had voluntarily closed it, or had transferred the right to the said pharmacy to another person, could not be limited in his privilege to open pharmacies (Decree of the Governing Senate of June 5, 1908 in the case of Varkanets, Zeidenvord and others) (Protoklitov 1909, p. 27). The conditions for determining who should be given the privilege to open a pharmacy should be considered in the order specified in paragraph 3 of the Rules on Opening Pharmacies – first, the presence or absence of previous ownership of a pharmacy is determined, and only then the seniority of filing an application and the consideration of the academic degree was applicable (Decree of the Governing Senate of January 19, 1906 in the case of Mandelberg *et al*. (Protoklitov 1909, p. 27)).

In the decree of 1886, the First Department of the Governing Senate indicated that seniority was determined with the following features: if petitions were submitted within one month, they should be considered as having been submitted simultaneously, and the senior of all the petitions was considered to be the one that was submitted earlier than all of the petitions, or was renewed after the opportunity arose to open a new pharmacy (for example, the number of residents of a populated area had increased, or another pharmacy had closed down) (Decree of the Governing Senate on the Tomashevskiy case, 1886) (Protoklitov 1909, p. 28–29). The resolution of the issue of the experience, skills, diligence and other human qualities of a pharmacist fell on the shoulders of the medical department of the governorate's government (Decree of the Governing Senate of December 19, 1902 on the Khariton case (Protoklitov 1909, p. 33)). In the application for opening a pharmacy, the pharmacist had to submit a conduct list, which would include the applicant's biographical data, information concerning his or her education and academic degree, the experience of work in pharmacies, and any other information that could be important for the decision of the medical department of the governorate board when considering a particular application (Decrees of the Governing Senate of February 3, 1904 on the Kannenberg case and of May 3, 1907 on the case of Gerashchenevskiy, Frizer and others) (Protoklitov 1909, p. 35). According to Article 355 of the Doctor's Statute (1905 edition), when choosing a location for new pharmacies, Medical Departments must be guided by both convenience for the public, the need to have a pharmacy, and the distance between pharmacies (Decree of the Governing Senate of March 30, 1905 in the case of Rosenberg). "It is necessary to ensure that such distribution is uniform, and that residents of more remote and less densely populated parts of the city could use medical benefits 'at hand', which condition is not met by the concentration of the majority of pharmacies in the city center, as permitted by the medical departments" (*Decree of the Governing Senate* of May 3, 1907, in the case of Gerashchenevsky) (Kolychev 1915, p. 138–140).

Both the law and the rules for opening pharmacies, established on May 25, 1873, protected the interests of pharmacists and "meant only to deliver and be able to prepare and dispense high-quality medicines and to properly fulfil their legal obligations in relation to the public" (Decree of the Governing Senate of September 18, 1890, No. 12376) (*Polnoje sobranije zakonov* 1873, p. 233–235; Kolychev 1915, p. 132–134). According to Article 353, paragraph 1, in order to enable pharmacies to legally exist in cities and to provide the population with the greatest convenience so that the residents could obtain medicines of the proper quality while eliminating the influx of unnecessary and harmful competition, the number of pharmacies in cities is limited by the number of residents within the city limits, so that, according to paragraph 1 of the Rules on the Opening of Pharmacies of May 25, 1873, for both capitals, as well as the city of Warsaw, each pharmacy is supposed to have at least 12 thousand residents, for governorate cities and the city of

Lodz, 10 thousand residents, and the normative of 7 thousand residents was established for county towns and military ports (*Sobranije uzakonenij i rasporyazhenij pravitelstva* 1873, p. 1697–1698). The cities of Belostok (currently, Białystok, Poland), Tsaritsyn (currently, Volgograd, Russia), Rostov-on-Don, Kremenchug are equal to governorate cities in terms of opening pharmacies. According to paragraph 2 (as amended on February 25, 1906, Collection of Laws and Government Orders of 1906, No. 49, Article 330), Taking into account that the norms for the number of residents cannot always be taken as the basis for opening pharmacies for small towns, villages, and hamlets, the medical council considered it fair to take as a basis the distance between pharmacies, namely, not less than 15 miles.

However, even here it was stipulated that this condition does not always work and is taken as a basis. Thus, according to the note, in resort and summer cottage areas, as well as suburban settlements that do not have permanent pharmacies, the owner was allowed to establish no more than two temporary pharmacies, apparently seasonal, opened and closed at times determined by the local medical authorities. And, in this case, neither the number of the population nor the distance between the pharmacies played a role, but what was important was the relevance of opening pharmacies for the resort season. It should be emphasized that the provision regulating the distance of pharmacies at 12 miles (according to Article 353, paragraph 12) applied to settlements in which the number of residents is less than the norm determined for district towns. Provided that the number of permanent residents of governorate cities is different, other distances are established, and norms are outlined, according to which, "7,000 residents for each pharmacy" allowed a new pharmacy to be opened. The rules of May 25, 1873, paragraph 2, Article 353 of the Doctor's Statute established the distance between pharmacies as "15 miles" and had one goal in mind – to protect the interests of pharmacists from harmful competition. The above-mentioned rule in paragraph 2 on opening pharmacies with a 15-mile radius between them applies to settlements in which the number of residents is 700 residents for each pharmacy. The distance established by law for the joint existence of pharmacies was precisely determined for each case separately and was based on two factors: convenience for the population and sensible competition of pharmacies without undermining the viability of the latter (*Sobranije uzakonenij i rasporyazhenij pravitelstva* 1873, p. 1697–1698; Kolychev 1915, p. 128–132).

On 12 February 1912, the law "On Certain Changes in the Procedure for Opening Pharmacies" was adopted, according to which, zemstvo and city public administrations were allowed to establish pharmacies without observing the rules set out in Articles 353–356 of the Doctor's Statute of 1905. The zemstvo and city pharmacies were henceforth opened according to the resolution of either the zemstvo assembly or the local city council, and pharmacies opened by zemstvo or city institutions could not be sold or leased (*Polnoje sobranije zakonov* 1912, p. 104).

4. Selected judgments of the Governing Senate in cases on pharmacies

4.1. Decree of 1898

On 30 January 1898 the Governing Senate (in the First General Assembly) heard a case on the execution of the opinion of the State Council regarding the case which arose from a complaint by the proprietors of pharmacies in the city of Smolensk against the Ministry of the Interior for a permission given to a pharmacy provisor M. to open already the fourth pharmacy in the said city. The case involved two questions:

1. Does the Minister of the Interior retain the right to open pharmacies when he deems it necessary according to local circumstances (Article 520 of the Doctor's Statute of 1892, note 1)?
2. If this right of the Ministry of the Interior exists, is it limited with the obligatory application of the rules of opening pharmacies, as adopted in 1873?

The State Council, with respect to the *first* question, denoted that the opening of pharmacies is governed by the rules of the Apothecary Statute of 1836, which was transformed into the respective provisions of the Doctor's Statute of 1857, and so as to the given rules, the pharmacies could be opened by the permission of the Medical Department of the Minister of the Interior, and the pharmacy could be opened by anyone possessing a degree in pharmacy, and any exception to this rule was allowed only with the permission of the Minister of the Interior. The mechanism was the following: the applicant who wished to open a pharmacy had to lodge a plea to the local medical department accompanied with his respective pharmaceutical diploma, and the medical department, taking into account the necessity of opening a new pharmacy, the local circumstances, population numbers, and the quantity of the town's or village's pharmacies existing at that time, as well as the reviews of the local pharmacy proprietors of whether a new pharmacy may be opened in this place, gave its conclusion to the Medical Department.

However, the founding of a new pharmacy was allowed without the consent of the local pharmacy proprietors in case the Minister of the Interior found the opening of the said pharmacy to be necessary, and, after receiving the consent of the Medical Department, the medical board gave out its permission to found a pharmacy. The same rules were applied in case of a transfer of a pharmacy or to another location, and the same mechanism was used as well. When a pharmacy was located, it was necessary to establish that it did not cause harm (i.e., unsound competition) to other pharmacies, and it was handy to the local people. The exceptions were allowed only with the permission of the Ministry of the Interior, and, otherwise, were applied by the State Council. The pharmacies supervised by the Ministry of the Interior were opened according to the rules prescribed in the Doctor's Statute. By transforming the governorate institutions in 1865, the opening of pharmacies was implemented under the supervision of the Governor; hence, the right to introducing changes in the opening of pharmacies since 1865 was transferred from the Medical Department of the Ministry of the Interior (as it was in 1836, when the Apothecary Statute was in force) to the Governor, but, in terms of the Ministry of the Interior's empowerment to establish pharmacies in exceptional cases (Articles 519–520 and 523 of the Doctor's Statute of 1892), they remained in full force, as the rules of the Apothecary Statute, which had been transferred to the Doctor's Statute of 1857 and 1892, all remained untouched by any further legislation.

The rules under which the Medical Department, and then, the governorate authorities allowed to establish the pharmacies were the same and did not change, whereas the Ministry of the Interior still retained its powers to open pharmacies in exceptional cases, exceeding the powers of the Medical Departments and the governorate authorities. There were, according to Article 519 of the Doctor's Statute of 1892, three categories of such exceptions, namely: 1) the permission to open a pharmacy to a person aged less than 25; 2) the foundation of a pharmacy according to the local circumstances, without the consent of local pharmacy proprietors; and 3) the permission to a person managing a pharmacy at a certain locality to establish one more pharmacy at the same locality. In all these cases, it was an absolute prerogative of the Minister of the Interior to give such permissions. Ultimately, the State Council ruled that the Minister of the Interior retained his power to open pharmacies by following the order, established in Article 520, footnote 1, of the Doctor's Statute of 1892.

Whereas, speaking of the *second* question, the State Council found that the rules of opening the pharmacies, which had been adopted in 1873, were anticipated by the necessity of a uniform application of the conditions, contained in the Doctor's Statute, for opening pharmacies by the governorate institutions. The rules, which were promulgated in 1873, as for the development and expounding the provisions of the Doctor's Statute to the governorate institutions, did not cease the effect of the provisions, which were contained in the Apothecary Statute. This statute, to wit, did not establish any norms of population for opening new pharmacies, or requirements for opening them, but only provided that the opening of a new pharmacy

is permitted in compliance with "the acting necessity in the foundation of a new pharmacy, according to local circumstances, and the quantity of pharmacies in that town or village," as well as written reviews of the local pharmacy proprietors. The given provisions of the Apothecary Statute could be repealed only in case the highest state authorities would promulgate a new Statute, and so these provisions could not be considered as ones which lost its effect with the adoption of the rules of 1873; hence, the latter could not limit the power of the Minister of the Interior in cases of establishing any pharmacies which do not fully conform to the rules of establishing pharmacies under the ordinary conditions.

The rules of 1873 did not limit the said powers, either; they were established to eliminate harmful competition and to provide the population with timely as well as sufficient obtaining of high-quality medicines. At the same time, the numeric data, provided in the rules, could inherently not foresee all the conditions of the local life, under the impact of which, the population's necessity in medical assistance arises; the statistical data could not serve as a precise foundation of determining the above-given details, either, since the change of such data is frequently caused by a wide variety of circumstances which could not be reasonably normed, such as an increase of the quantity of illnesses, a dramatic growth of the towns and villages, the legal separation of outskirts from the town center or the dissolution of parts of a city, etc. So, the numeric data, contained in the rules of 1873, could be used only under ordinary conditions of opening pharmacies, to which the permission is given by the governorate authorities. In some of the exceptional cases, it may be established, that, regardless of the numeric data, there is a necessity experienced by the local inhabitants to establish a new pharmacy, and, for such reason, such powers are vested to the Minister of the Interior, as the highest administrative authority governing the civil medicine in the State. Hence, when it is necessary to open a pharmacy in the interests of the population under the conditions not corresponding the rules of 1873, then, the governorate authorities need to report this to the Minister of the Interior, who, with the help of the Medical Council, will determine the actual need for the new pharmacy. Besides, these decisions could be impugned to the Governing Senate, which would decide upon the case, as the highest administrative court in the State which shall determine the actual correspondence of the Minister's decision with the laws governing the opening of pharmacies and the usefulness to the population in relation with the aim of safeguarding the public health. Thus, taking into account the circumstances of the given case, the State Council, deciding upon the complaint against the decision of the Minister to open the fourth pharmacy as an addendum to three ones already existing in the city of Smolensk, the Council arrived to a conclusion that the city is subdivided in two by the Dnieper River, and one of those city parts, where the markets and railway stations were located, became actively developing after the railway had been laid down, and was inhabited primarily by poor people living in worse sanitary conditions than the other part of the city which was located on a mountain, and, in that part, there was only one pharmacy, founded in 1862. According to the above-outlined local circumstances, which were ascertained by the governorate authorities, and the increasing population of Smolensk, which totaled at 46,889 inhabitants, the State Council found that the Minister of the Interior had a proper foundation to open the said (fourth) pharmacy. Hence, the complaint was dismissed (*Pravitel'stvujuschij Senat* 1898, p. 39–47).

4.2. Decree of 1899

The Decree of the Governing Senate of 1899 answered the following two questions:

1. Is it possible for a zemstvo to open a state pharmacy in areas where there are already free pharmacies, and if so, what restrictions should it contain to prevent the ruin of private pharmacies?
2. In what order can a complaint against a zemstvo be heard if it has caused harm to a free pharmacy by operating its pharmacy: in court or administratively?

First of all, the Senate established that zemstvo institutions are obliged to deal with issues of public health and the functions of public charity, which is prescribed by Article 2 of the Regulations on zemstvo institutions (*Polozhenija o zemskih uchrezhdenijah*), Vol. 2. Therefore, on this basis, zemstvo institutions have the obligation to both treat certain categories of citizens free of charge (Article 586 of the Statute of Public Welfare) (*Ustav' Obschestvennago Prizrenija*), and to dispense medicines free of charge on the basis of Article 587 of the same statute.

In itself, free dispensing of medicines is not something that can cause doubts. The question is: In what form, and will such dispensing of medicines not become a factor that will ruin the local free pharmacies that dispense medicines for money? It is important to note that – here – the Senate points out that the activities of zemstvos to ensure both public welfare and medical care for the population are permitted, according to Article 2 of the Regulation on Zemstvo Institutions, only within the limits established by Law, while Article 242 of the Doctor's Statute (Edition of 1892) protects pharmaceutical activity from excessive competition, that is, it follows that the said right, in any case, should not contradict the interests of free pharmacies dispensing medicines for a fee. The Senate pointed out that the issue of the activities of zemstvo pharmacies in areas where private pharmacies are already operating cannot be resolved in the same way everywhere, since, in some areas, this could lead to the collapse of private pharmacies – where they exist, and cannot have negative consequences where, accordingly, they do not exist. The issue of free dispensing of medicines from zemstvo pharmacies is that they can operate in areas where free pharmacies are already located, and then the free dispensing of medicines by the zemstvo pharmacies cannot be implemented without restrictions, because it is impossible not to take into account the rules regarding the opening of pharmacies in general. In the event that, in a certain area, there are no such private pharmacies, in this case, the zemstvo has the right to open zemstvo pharmacies there and dispense medicines to the population free of charge, or for a fee – at its own discretion, and there are no restrictions here, which cannot be said in the case where private pharmacies are already operating in these areas – in such cases, the dispensing of medicines by a zemstvo pharmacy cannot be carried out without restrictions.

Article 242 of the Doctor's Statute (Edition of 1892) protects the right of legally opened pharmacies from external and harmful competition, for which reason, it is not allowed to open a new pharmacy with the right of free sale in those areas where the turnover already exists in the norms of these rules, and it is obvious that if a zemstvo pharmacy, which, in contrast to private pharmacies, would dispense medicines free of charge, would, of course, become a serious competitor for any private pharmacy, with which, based on the nature of dispensing medicines, no private pharmacy would be able to compete, which – sooner or later – would lead to the ruin and closure of the private pharmacy. Such a fate, in the opinion of the Senate, would await any private pharmacy if the zemstvo began to dispense medicines free of charge in its pharmacy to almost all categories of patients. In view of this, the Senate asserted that, in accordance with Article 73 of the Temporary Rules for Zemstvo Institutions (*Vremennyja Pravila dlya zemskih uchrezhdenij*), as well as on the foundation of Articles 586–587 of the Statute of Public Welfare, edition of 1892, the zemstvo is obliged to limit the free dispensing of medicines from pharmacies located at the zemstvo hospitals, emergency rooms, where private pharmacies already exist, and to limit the dispensing of medicines, except for those categories of patients who possess a certificate of poverty, issued either by a police institution, or on the basis of the attending physician. This principle, the Senate says, must be recognized as guiding in resolving the first of the two questions. In addition, in the opinion of the Senate, even if the zemstvo does not pursue commercial gain from the sale of medicines (or even dispenses them free of charge), this does not change the situation in any way; it is of importance that the zemstvo, through its zemstvo pharmacies in areas where private

pharmacies already exist, can dispense medicines only to those patients who provide evidence that they are indigent, and this dispensing must be free.

As for the second question, the Senate referred to the decision of the General Assembly I and the Cassation Departments No. 28 of 5 October 1892, which clearly states that, in cases of a violation of civil rights, it is the condition when a civil claim for damages is possible, addressed to city councils, and the question of the admissibility of such a claim comes from the offense that was committed. If we transfer this principle to damages to a free pharmacy by the zemstvo, which were caused by the dispensation of prescription medicines for a fee, then, the Senate finds that an administrative complaint to the Senate, which, in this case, functions as the highest administrative court, is possible when a claim is not possible in court (Articles 127 and 128 of the *Regulation on Governorate and Zemstvo Institutions*). In addition, based on Articles 574 and 684 of Volume X, Part 1 of the *Restatement of Laws*, damages or harm may occur in the event of the actions of a certain person or institution that did not have the right to act in such a way, going beyond its scope of rights and powers. Based on the fact that the zemstvo did not have the right to dispense prescription medicines for a fee in areas where there were free pharmacies, then, such dispensing of medicines by the zemstvo for a fee as a basis for filing a claim against the zemstvo must be considered by a court of general jurisdiction, since there is a violation of civil rights (*Pravitel'stvuyuschij Senat* 1899, p. 307–309, No. 214).

4.3. Decree of 1914

In the Governing Senate's decree of 1914, the court answered two questions, raised by the Ministry of the Interior, which are concordant in the light of the Law of 12 February 1912, in which, the rights of zemstvo authorities in terms of opening pharmacies in zemstvos and governorates (now, the quota of 1 pharmacy per certain amount of inhabitants of a certain town, city or village was abolished), and the decision on opening pharmacies was within the discretion of the local authorities.

1. May the governors impugn or suspend the effect of the decrees on opening pharmacies?
2. May the town authorities open pharmacies in cities where there is a simplified civil governance?

To the first question, the Senate answered that, on the basis of Articles 86–87 of the Regulation on Governorate and Zemstvo Institutions of 1890 (*Polozhenije o gubernskih' i zemskih' uchrezhdenij*), as well as Articles 82–83 of the City Regulations (*Gorodovoje polozhenije*) of 1892, the governorate authorities have the right to suspend the effect of those decrees that do not pertain to those, that are related to decrees approved by the local or central authorities, and, in the opinion of the Senate, these include decrees of city councils and zemstvo assemblies. It follows from this that both governors and city mayors have the right to suspend the execution of the decrees of the above-mentioned authorities on the opening of pharmacies, if such are seen as contrary to the Law or the interests of the population. To the second question, the Senate answered that, in accordance with Article 2 of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912, pharmacies are opened by city councils on the basis of a resolution of the city duma, that is, in those localities where simplified governance has been introduced and where neither city councils nor city dumas exist, Article 2 of the Law of February 12 cannot be applied in any way.

The next question that the Senate was considering within the framework of the second question is whether the medical authorities (i.e., the medical department of the governorate board), when discussing petitions to open pharmacies based on Article 353 of the Doctor's Statute of 1905, should take into account pharmacies opened according to the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 1912, or they should take into account the resolutions of zemstvo assemblies, etc., which concerned the opening of pharmacies in this locality. The Senate asserted here that Article

353 of the Doctor's Statute implies that medical authorities should take into account the actual need to open a pharmacy in accordance with the local circumstances. Since, according to the law of 12 February 1912 *On Certain Changes in the Procedure for Opening Pharmacies*, the pharmacies being opened are of the nature of free pharmacies, then, in this case, when resolving issues of opening new free pharmacies, it is necessary to take into account the circumstances specified in Article 353 of the Doctor's Statute, as well as the existence of local pharmacies that were opened on the basis of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912.

As for the decrees of local authorities, the Senate noted that the law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912 does not stipulate deadlines for the implementation of the decree – that is, it does not impose any limits on the timeframe when such a pharmacy will be materially created and begin to function, and the Senate came to the opinion that local decrees should not be taken into account, since, firstly, the decree also does not regulate the time frame in which the pharmacy must be organized, does not change the local conditions in any way, including the population's need for medicines, and, secondly, the failure to establish any deadlines for the pharmacy to be organized and begin to operate may lead to the fact that zemstvos or cities may begin to delay opening pharmacies, and that thus the medical administration will not be able to establish the real need of the population for medicines.

Then, the Senate turned to the interpretation of Article 3 of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912, the question of which is what is the significance of the rule established in Article 3 of this Law, according to which, zemstvos and city councils will have to notify the medical administration of the cities and the zemstvos at least one month in advance that a new pharmacy will be operating. The Governing Senate argued that, in fact, the Law of 12 February 1912 changed little in the procedure for opening and organizing pharmacies, which continued to be regulated by the provisions of the Doctor's Statute, Articles 353–356. The Court recalled that, according to Article 10 of the Doctor's Statute, the governorate administration must certify all free pharmacies as well as those opened by the zemstvo and city administrations. If the law of 1912 did not make the opening of a pharmacy dependent on its certification, then, as the Senate asserts, Article 3 of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of February 12, 1912 is intended to give the local medical administration or local doctors the opportunity to inspect the pharmacy for its compliance with the requirements of the Law, and if any deficiencies are found, then, the medical administration could report this to the zemstvo or the city administration to take the necessary measures so that to eliminate the deficiencies in the organization of this pharmacy.

The final question to be resolved by the Senate on the implementation of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912 concerned the issue whether pharmacies that had been opened by the zemstvo and city administrations prior to the issuance of this law, which were sold or leased, or otherwise transferred into possession or use, as well as pharmacies that may subsequently be acquired by administrations in any way, may be sold, leased, or otherwise transferred into possession or use, which were opened by zemstvo or city administrations on the basis of the Law *On Certain Changes in the Procedure for Opening Pharmacies* of 12 February 1912, as the Governing Senate calls it, 'by default'. However, pharmacies opened on a general basis, in a permit-based manner, the court says, or acquired by administrations on the basis of civil legislation, are not subject, as an object of property, to any administrative restrictions, which means that they can be sold, leased, or can be transferred to someone else's possession or use in the same way (*Pravitel'stvuyuschij Senat* 1916, p. 8–9).

Conclusions

On the grounds of the conducted research, the author has arrived to the following conclusions:

1. Firstly, prior to the end of the 16th century, medicine and pharmacy were scarcely known in the Russian State. The first pharmacy (*Gosudareva apteka*) was established in 1581, and it dispensed medicines only to the Tsar's family, and later to the members of the Tsar's court. A controlling authority, the Apothecary Order (*Aptekarskiy prikaz*) was established shortly after, the members of which were initially physicians from abroad. The first public pharmacies appeared in the second part of the 17th century. The Apothecary Order's functions quickly broadened, and it became the authority that governed all the issues of medicine in the State, and the Order was later transformed to the Medical Chancellery. The legal regulation of pharmacies was barely regulated (e.g., apart from orders to establish pharmacies, or to appoint pharmacists, etc.) until 1789, when the first Apothecary Statute (*Ustav' Aptekarskiy*) was enacted.
2. The first normative-legal act to regulate the pharmaceutical profession, the legal status of pharmacists, and the functioning of pharmacies was the Apothecary Statute of 1789, which set strict requirements for the profession, the quality of medicines, and the work of pharmacists in general. It was superseded by the 1836 edition of the Statute, which was twice as extensive as its predecessor, regulated the internal order of pharmacies, and even contained a chapter on the liability of pharmacists, which was later re-used in the Restatement of Criminal and Correctional Punishments in 1845, and once more, in 1885. The provisions of the Apothecary Statute of 1836 were later fully included into the Doctor's Statute of 1857, and were afterwards transformed and amended in the further editions of the Doctor's Statute versions of 1892 and 1905. Although the provisions of the Apothecary Statute were included into the Doctor's Statute, the Governing Senate emphasized in its decree of 1898 that the Apothecary Statute never lost its effect.
3. The Doctor's Statute (1857, 1892, and 1905 editions), as well as the Rules on Opening Pharmacies, established the rules of opening pharmacies. According to them, the applicant, who had to be a person with a pharmaceutical diploma, could apply for a permission to run a pharmacy before the medical department of a governorate board. The medical department had to assess whether there was a necessity to establish a new pharmacy in a certain town or village, to weigh the local circumstances, to collect reviews of the local pharmacy proprietors, and only then to decide whether to grant the permission to the applicant or not. In exceptional cases, the Minister of the Interior could decide to grant permission to open pharmacies even in spite of them failing not fulfill the formal conditions for opening a pharmacy. In 1912, the law *On Certain Changes in the Procedure for Opening Pharmacies* was adopted, which allowed zemstvo and city public administrations to found pharmacies without regard of the rules which were provided in Articles 353–356 of the Doctor's Statute, edition of 1905; such pharmacies were established on the basis of a respective resolution of a zemstvo assembly, or a city council.

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