Time — 8:00 p.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood)

BILL 17 — THE MEDICAL ACT

MR. DEPUTY CHAIRMAN, Abe Kovnats (Radisson): We have a quorum. This Committee will come to order. The Chairman advised that he would be a little bit late but would be here quite soon so he's asked me to take the Chair which I have done.

We are on Bill No. 17, The Medical Act and I believe the item under discussion when we left just before the supper hour was Item 37. All right we will start on Clause 37. 37 — pass.

MR. SAUL CHERNIACK: Are you sure it's 37?

MR. DEPUTY CHAIRMAN: Well he signed up to 36(2).

HON. L.R. (Bud) SHERMAN: We're on 36(2), Mr. Chairman.

MR. DEPUTY CHAIRMAN: We are at 36(2)? If there's any more discussion on 36(2) I will . . .

MR. SHERMAN: Mr. Chairman, I undertook to consider the questions raised by Mr. Cherniack and others and study them over the dinner hour break which I did. I propose that the section remain as is in the legislation. The fact apparently is that the Law Society operates no differently and this is not an exceptional or a unique situation. Further to that, the difference in terms of operation here vis-a-vis that in the case of, for example, the registered nurses lies in substantial part in the numbers. We're looking here at a council; we're looking at a representational body of 28 elected representative from electoral districts who represent, in each of their cases, a limited number of professionals ranging probably in the area of 40 to 45 to 50 depending on precise geography. Whereas in the case of the registered nurses we're talking about a membership of some 9,000 or 10,000 and a smaller directional body, a smaller management body in their board of directors, so that the line of communication between the elected representatives and the membership themselves is much closer and much tighter in the case of the college than in the case, for example, of the registered nurses and so far has proved to be workable and is, therefore, presented to the Committee in this wording and I believe the wording can be justified.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I, too, had a discussion with representatives of the council and the conclusion I came to is that they have no real communication with their membership at all. But the other conclusion is that the membership doesn't seem to care so I wouldn't get too upset about it. I gather that they get hardly any turnout at all from the membership at their meetings which may mean they're very happy with what goes on. If they don't care enough to turn out and raise a fuss then why should we. On the other hand, they require members to give them notice that they are coming — I think six week notice or some ridiculous thing like that. But I, too, checked The Law Society Act and I see that the Law Society has all sorts of practice. They carry out a procedure which I think is commendable but I find they do it voluntarily; it's not in the Act.

MR. DEPUTY CHAIRMAN: Item 36(2) — pass; 37 pass; 38(1) — pass.

MR. CHERNIACK: I have marks on 38(1). I don't know whether they're original to me or if they were suggested by MARL and I'm just looking to see. Yes, it is they. They're suggesting that 38 is far too broad, gives powers to the Committee or any member to inspect books at his place of practise or elsewhere and review the professional competence. They're suggesting, I think, that they should have the council's approval before they do it. I certainly think, Mr. Chairman, that they may be asking a little bit too much caution but 38(1) says that the standards committee, or any member thereof, may inspect books at the place of practise or elsewhere. Or elsewhere may mean a hospital — and I don't recall whether Miss Seidel had some comment to make on that or not, I'm not sure. But I certainly question any member toddling in somewhere and saying, I want to see your books, I want to see your records. I think there has to be some formality involved.

If it's the Committee then if it designates a member or designates a person to do it, okay. But the way it is written, as I read it, is that any member of the Committee can walk in and inspect books, records, without any complaint. It seems to me there ought to be some basis on which they're going to go, not just snooping. I don't know whether the Minister would want to suggest some variation but I certainly think that the snooping right that's given is more than our police have I believe. Not that I know much criminal law but I don't think the police can walk into my house and search the house without a warrant, or my place of business. Here they're saying just anytime at all. I certainly would like to hear some suggestion of some strengthening of the restraints on the Committee or any member.

MR. DEPUTY CHAIRMAN: Mr. Jenkins.

MR. WILLIAM JENKINS (Logan): Just to reiterate what my colleague has said. I think that these powers that the Association or the college here is asking for are very severe. I can remember a few years ago when we were bringing in consumers legislation, we really got ourselves into a jackpot from the then Opposition and now government on snooper clauses. Now if you want to see snooper

clauses, this is a real snooper clause; not only a place of business or elsewhere. I think that's pretty broad; I think that's very, very broad coverage. I certainly would expect the Minister who is one of the member's who was here, who complained very bitterly at that time about snooper clauses, that he would certainly now put his money where his mouth is and make sure that there is some cutting down of this power that we are going to give the people to snoop. That's really what it boils down to, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Mr. Downey.

HON. JAMES E. DOWNEY (Arthur): My brief comment, Mr. Chairman, would be that it is pretty clearly spelled out that it's in direct relationship to the practice of medicine and, as the impression that I would get from the members opposite, that it was to do almost with any books that the individual may have. I think it is pretty well spelled out that it is in line with what the Act is trying to do and I have no difficulty with it the way it is, Mr. Chairman.

MR. DEPUTY CHAIRMAN: (1) — pass — Mr. Cherniack.

MR. CHERNIACK: I agree with Mr. Downey that it relates to the practice of medicine but it is a matter of competence. It's not a matter of doing anything illegal, improper, it's only is he good enough? For that, as I understand it, hospitals have tissue committees, hospitals have peer review committees but this says that any member of that committee can walk into any doctor's office during reasonable hours and start looking over his records or he can go beyond that. (Interjection)— Well, of course it has to do with medicine but there is nothing that says that upon an allegation being made or complaint being lodged, questioning the competence of a doctor, then a member may. You know, there has to be some basis for it; otherwise, you've got these people with a right to wander in and out on their own decision.

I really feel that this a snooper clause, no question about it, without any authority and I'd like to think that somebody will volunteer a reduction of the power. It may be, which I'll say, and on a complaint being lodged. The Committee or any member designated by the Committee may proceed. The note in the college's brief says that at the present time the college standards review the standards of practise within hospitals; on occasion it does enter the physician's office. This has always been on a voluntary basis and has never been refused by any member of the college; nevertheless, it was felt desirable to have this right established in The Medical Act. Mr. Chairman, without an apparent need for it — they say that right off the bat — has never been refused; without an apparent need.

They are now asking for a power which is very broad and I really would like to make a major issue of this. I'd like to feel that there's justification for giving any member of the Committee, stimulated by anything at all which may be mere curiosity, to walk in and to start inspecting books, records and other documents of any member at his place of practice or elsewhere. I don't how far the "or elsewhere" goes and then review the competence on direction from council or on its own initiative. I don't mind if the Committee meets and decides that but surely no member shall have that authority. I want to suggest again that there should be a complaint, otherwise why go? A complaint need not be formal, in my estimation, but there should be a complaint; then it should be the decision of the Committee or a designated member thereof and then I think I could accept it. Now I'd like to hear comments.

MR. SHERMAN: Mr. Chairman, this section is in here for the protection of the public. I can't agree with Mr. Jenkins that this equates to the situation that was examined some years ago when we talked about the snooper clauses to which he referred to in The Consumer Protection Act.

We're talking here about a specific specialty in which the public has the right to be assured of its protection in terms of medical practice. In fact, it's standard practice now; in fact, the function exists right now under the rules of the college. What this proposed section would do would be establish the right in The Medical Act. Taken with 38(2) and I realize we're not there yet, Mr. Chairman, but it's the same subject, it would, for example, establish the right to utilize the involvement of persons with particular expertise. For example, the use of a psychiatrist to help audit a psychiatrist's practice.

Let me say I'm not particularly hung up on this provision and I would certainly be prepared to invite the representatives of the college to justify it. But I think that if you're going to charge a professional body, such as the College of Physicians and Surgeons, with the responsibilities with which they are are charged, the heavy responsibilities with which they are charged, they have to have an opportunity to audit practices in order to ensure that standards and ethics are being universally maintained, or at least maintained as universally as possible. It doesn't come as a surprise to any practitioner; I mean no one is forced to study medicine and become a doctor; nobody is forced to subject themselves to these kinds of disciplines. All of us in the respective vocations that we choose subject ourselves to certain kinds of disciplines.

In the Statutory Orders and Regulations Committee of this Legislature we recognize that we sometimes may have to work fairly lengthy hours; that's part of the job. Doctors recognize that because of the heavy responsibility they carry that their practices, their standards and their ethics have got to be monitored and evaluated. So no objection that I know of has come from the medical profession. But if my friends from Logan and St. Johns are particularly disturbed about it I would certainly ask the Committee's indulgence to invite the college representatives to justify it.

MR. JENKINS: Mr. Chairman, we have already passed 36(2), (1) and (2), where the council doesn't have meetings, no general membership meetings. I don't know even if the total membership of the College of Physicians and Surgeons are even aware of some of the changes that are in this bill. There are no general meetings held; that is what we were told by a representative of the college. Now we have a standards committee which is part and parcel of this council and I know it's part of the game and, as I say, Mr. Chairman, through you to the Minister, we

are, as a Legislative body, not only for the consuming public of this service but also, I think, we have to look after the people that are practising in this service as well. We owe them a responsibility. They are not all here; there are some people here. Now, I'm not satisfied with the way that these people get themselves elected to these boards and councils because it is a very peculiar method; one that is totally foreign to any association that I have ever belonged to. But if the doctors aren't that hung up about it, then as far as their electing or appointing these peoples to these councils and boards that seem to run their affairs, and they have the power of life or death over these people because, on their say so with the certain provisos that are here for them to appeal, these people can say whether they work or not to work. You know this is practically what we call in the trade union movement is a closed shop; it is a closed shop. It's an absolutely closed shop and I've been a member of a trade union for a long time and I can tell you I am not in favour of a closed shop because a certain clique of people can get together and if they don't like you they can make damn sure that you don't practise or you don't work and that is one of the things that is dangerous in this legislation that you're putting in here now.

I appeal to the Minister just to think about it a little bit. You're putting tremendous power into the hands of a very few people who, by their own admission today, have said that the people are not that interested; they don't want a general membership meeting to even approve their bylaws. I don't know how they prove their bylaws. So I say what we're getting is the reports here of a very few people, not all the people who are members of the College of Physicians and Surgeons, and they are the licensing body, not the Manitoba Medical Association which, for all intents and purposes is the bargaining unit, but these people as the licensing unit. So I say to the Minister it's a very serious amount of power that you're putting into the hands of a very few people.

MR. SHERMAN: Mr. Chairman, before making a final judgment on it could we ask for an opinion from Dr. Ewart representing the college and from Legislative Counsel?

MR. DEPUTY CHAIRMAN: Agreed? Dr. Ewart, would you care to . . .

DR. W. B. EWART: I'll be pleased to. I haven't spoken today at all and I think this is a very important issue and I think there is lack of understanding to some extent as to what the standards committee does and perhaps what the profession does. I think it should be realized that right from the time we entered the profession and once we get into, at least into hospital work, certainly there is a constant review taking place, peer review taking place with patients' charts, the documentation of charts, the tissue committees; this is all part of the environment of medicine. The constant reviews that are taking place are welcomed; it's part of the improvement; it's part of our education and continual education. I think I can safely say almost no question that this is part of the profession, this is part of the way things are done. In fact, I don't think in some ways, if you wish, that there can be any group, with the possible exception of the Law Society, that no group has as much, how shall we say, self-continual perusal and review.

I was just back at the hospital a short time ago and I did a procedure. I write that down; I check on it; I check the intern; all these things are done because, at any moment, this will be coming up for review by my peers.

Now on the standards committee there's about 200 at least that do this job and officially report to the college. It's not a discipline committee, it's done on the basis of overall education; it's a peer review that's taking place all the time; it's part of the profession. We're inbred with it I guess. And quite true sometimes we figure for God's sake I'm fed up writing that note or this type of thing but this is part of the continual procedure. So we really — I think I can state this for almost all the members of the profession — we just take this for granted. The only difference here is an extension from the hospital into the offices.

Now we're not alone on this I understand; I understand that the Law Society has people that go in all the time on a routine basis. I stand to be corrected but I understood this. But nevertheless, in our own cases this is exactly what takes place. The peer reviews are done sometimes in our particular place, where I work with others we do this on our own but we take it for granted that this is the type of thing that would be done by the college because the college is standard. The protection that we have is that this Standards Group, this peer review group, that we constantly use is accepted and welcomed; it's part of the educational routine and probably the most important method that we have in keeping standards high.

Now we apply this also; we have other jobs that we do and that includes such things as investigation of laboratory, radiological units and that. We're doing this all the time; there's a constant review taking place. I don't know whether the members here realize that probably, I believe anyhow, we're one of the best in Canada. There's a constant review of all blood specimens that are taken; these are sent to independent authorities and end up in the college and the members then go over these reviews that take place, appraise them and then we will call up the lab director or whoever it might be and say: your calciums are off, it's about time that you settled down we've had two reports like this. Would you send us a letter explaining why and they send it.

Now this is different from the inquiry. This is the method which we think is an absolutely vital part of the college; this is the real, if you wish, individual self-discipline. We haven't got any powers there except to recommend. You're not reading electrocardiograms; we looked over your electrocardiograms and two of them were very poorly read. You better check up on this; we suggest that you to this. But there's no other power; it's a peer review type of thing. I'm afraid I'll have to leave it in that perspective. I'll be pleased to answer any questions.

MR. DEPUTY CHAIRMAN: Thank you. Legislative Counsel care to make any comments?

MR. A.C. BALKARAN: Mr. Chairman, the only comment I believe I can make at this time is that 38(1), as it's written now, assuming the entire

Committee or any member thereof were to appear at the office of a medical practitioner or indeed elsewhere, assuming it's a hospital and wants to take a look at certain books and records, I don't think that the hospital or the doctor is under any obligation to let him in. He could tell him, well, you just go back and bring back a court order or warrant, otherwise, I won't show it to you. It simply says may and there's no obligation compels, as I read it, the doctor to open his doors and open his records and say, here you are, take a look.

MR. CHERNIACK: I think Mr. Balkaran is talking about the rights of the individual but I don't think that they'll get away with it very long; they will be charged with conduct unbecoming. I'm sure that if they say, here we have a member wanting to look at your records, you won't let him do it, they will haul him up with the Discipline Committee.

MR. BALKARAN: I don't think a judge will, really.

MR. CHERNIACK: I don't think a judge will either but their Discipline Committee may well do it. (Interjection)— Well, that's pretty remote. I wanted to ask Dr. Ewart, in describing this peer review, to what extent did you mix in hospitals, labs, other places with the office of the member?

DR. EWART: We're putting that in now with the office.

MR. CHERNIACK: I know what you say here, that it's been on a voluntary basis, you've never been refused so you've never had the problem that you are dealing with here.

DR. EWART: No, no, we haven't but then we haven't attempted in any particular way to move in that direction.

MR. CHERNIACK: Are you now planning to . . .?

DR. EWART: We're hoping, yes, it's part of our . . .

MR. DEPUTY CHAIRMAN: I'll tell you, excuse me, just one moment. I've just been advised that Hansard are having difficulty in identifying the voices. That's the reason that I have jumped in with the interjection with the names, so try to put up with it.

Dr. Ewart.

DR. EWART: No, we're attempting to move beyond the area of the hospitals into the offices with the anticipation that we will be able to improve standards in doing that as well.

MR. CHERNIACK: Are you planning to walk into any doctor's office without any notice and start looking at his records to see whether he keeps his records on each patient adequately, that there's a full file kept on the patient? Are you planning to just walk in one after the other after the other, like take over one business building and cover all the doctors there? Is that the way you would operate?

DR. EWART: I can't visualize it being done by the standards committee without some notification; it may be. I would defer, if you wish, to another member of the committee who may be more involved in that line, but I can't visualize it being done in that way because the purpose of the standards committee, as I said, is peer review. It's not a snooper if you follow what I'm saying, except in the sense of us snooping on each others charts by committees that we set up ourselves in hospitals and so on.

MR. CHERNIACK: And if you will hear what I'm purposing, see what's wrong with that? I'm proposing to say "and on receipt of a complaint the committee or any designated member thereof may," in other words, I'm suggesting that you will not go into any old doctor's office on any occasion without some reason unless you are really prepared to start going to every doctor's office. Frankly, I don't think you are. I think that when you find, let's say, in some hospital tissue committee or something, you feel that a doctor seems to be slipping or, if you get a report from anybody else, a nurse who may say this doctor doesn't seem to be up to his usual level, then you would start looking into the matter and then I think that the discipline committee should say, "well then, let's look into that doctor's records," and I would welcome your doing it, I do believe it's important. But the way this is worded I think is broader than you need; it's certainly broader than you've ever had and I can't think of anything less broad than this is. It means anytime, any reasonable time, you walk in any time, any member can walk in and say, "I want to look it over and look over the records." Now, did you say 200 members do that?

DR. EWART: Yes. We have extensions at the standards committee so that there are almost 200 people who are doing the work in hospitals now.

MR. CHERNIACK: In hospitals?

DR. EWART: Yes, and they report to the college, but although you may not realize it, but we really do inspect each other.

MR. CHERNIACK: They have a special task. They go to a certain hospital and they . . .

DR. EWART: Or a certain district, sir.

MR. CHERNIACK: Here it says any member, any one of the 200, or you may have to increase that number if you're going to start going into offices, any one of them can walk into any doctor's office. Frankly, I doubt that if you want that power, I doubt if you'll use that power and it seems to me until you need it, you shouldn't be asking for as broad a power. I want to know what is wrong with my suggestion? I see you're going to say that on receipt of a complaint isn't good enough, but how about in the event that they believe that it is in the best interests of the public so to do of a certain member; then, the committee or any designated member, in other words, the committee would say, "Dr. Jones, you go and check on this one. Dr. Smith, you take over that district." But somehow there has to be some sense of order that is not reflected in this wording that you now have. Now is there anything wrong with my suggestion to sort of make you hesitate, make your members say, 'I'm going to do

something that's pretty drastic and I will consider carefully getting approval from the committee or the sub-committee and I will do it.'' Not just anybody at all but for a reason.

DR. EWART: I guess the first thing that bothers me is that a complaint starts it because that's not the point. We know this in hospitals and we're used to this in medicine, that for the educational purpose you don't want it to start as a complaint, you want it to be a continual peer review, sir, and that is the subtle difference I know, but there is a subtle difference between standards and enquiry. If it's a complaint, then it goes to enquiry, and we're asking, in many respects we have the power to, if you wish, you know, go in and take action of the type that you were saying you want to have us do. This is a more subtle thing and, I guess, it's very difficult for me to explain. It's an educational thing; it's an accordance. This is why I wasn't questioning too hard about, I can't visualize us going in without letting somebody know. I can see a clinic inviting the whole group of us in, a group through the central, and it may be that it should come that the permission would have to come through the Standards for somebody to go out rather than any one of the 200 sort of deciding on the way home, I'll drop in and inspect somebody. I understand what you're getting at there.

MR. CHERNIACK: That's what I mean by any designated member.

DR. EWART: I've put across something that I guess is very difficult unless you're involved with it, this subtle difference education and the cooperation of the doctors involved and that it's almost built in, it's taken for granted, it's accepted, it's part of it.

MR. CHERNIACK: If you read this section, cooperation is not taken for granted at all. There is no notice given, there is no by your leave; there's just a march into the office. I'd like to think that you start out with a softer approach and if you find this inadequate you come back and may I ask two other questions; firstly, where do you mean by elsewhere? Where else do you want to go?

DR. EWART: This is if the books are in the home for example, he may take his histories home or it may be that the college offices, the documents in the college offices that he brings in, this type of thing.

MR. CHERNIACK: College . . .

DR. EWART: . . . the offices of the college. He may bring them down with him.

MR. CHERNIACK: The question I was going to ask is, has there been ample notice to the profession of your intention to ask for this kind of legislation?

DR. EWART: Yes, I believe so, but I'll check.

MR. CHERNIACK: Mr. Sherman said that you send out periodic memos.

DR. EWART: Yes, right, and defer to the registrar on that.

MR. DEPUTY CHAIRMAN: The Honourable Minister of Health.

MR. SHERMAN: Yes, Mr. Chairman, the membership and all its members received a news letter. In fact, received more than one news letter outlining the provisions of this Act and all of them were given the opportunity to acquaint themselves with all the provisions that are being pursued in this Act and through their elected representatives to make their responses. I can't accept Mr. Cherniack's suggestion. I think that to follow the course that he proposes defeats the whole purpose of the evaluative process and the peer review process and the protection of the public. If you're going to wait for a complaint, that's too late. We want the standards and the ethics and the procedures high before somebody complains and who is going to do the complaining? In this case it is peers who have some knowledge of what their peers are doing obviously, who are able to make that evaluation. A complaint from the public or a complaint from a nurse, although not illigitimate by any means, do not necessarily have the kind of validity in this area that the review personnel would have, the standards committee personnel would have. Complaints can be handled in the normal process but this is to head off complaints, to ensure that the system is sound and it is a practice that is followed elsewhere, in other provinces. It's a practice that's followed here under the rules. It's a practice that every medical practitioner in this province knows, that he or she is subject to and it's a practice, as I understand it, that's followed by the Law Society. Therefore, I certainly am prepared to entertain any suggested amendment but I'm recommending the subsection to the committee as it is written.

MR. CHERNIACK: Mr. Chairman, I just want to point out to the Minister that the duty of the Legislature is to concern itself with the public interest. It's also to concern itself on behalf of the individual against the group and this section, I believe, is twofold. Firstly, it is to protect the public that we want the council to maintain a standards committee, but I think also, it imposes on the member the threat of a walk-in at any time and I don't think that's intended and I have to tell the Minister that the only rights that I'm aware of in the Law Society is to inspect the trust accounts and nothing else. I believe it has nothing to do with standards of practice of competence. It has to do with the trust account and an accountant walks in and takes the trust account, only the trust account and looks it over to make sure that all moneys received are indeed recorded and in the bank.

Just to bring it to a head, I would move

THAT the word ''designated'' be inserted in the 3rd line between the words ''any'' and ''member'' so that we will at least know that member has an authority given to him by the committee.

MR. DEPUTY CHAIRMAN: Are the members aware of the amendment? Are you ready for the question?

The Honourable Minister of Health.

MR. SHERMAN: My suggestion on Mr. Cherniack's proposal would be that if we are going to accept insertion of the term ''designated'' that we should be more specific than that in order to ensure that we are meeting the objective of this section. I am not going to belabour the committee with what I see as

the objective of the section and I would suggest that the insertion should be the phrase, "designated by the committee."

MR. CHERNIACK: Or then say, or any member thereof designated by the committee. Is that what you are suggesting? That's fine with me.

MR. SHERMAN: Yes, designated by the committee, right.

MR. CHERNIACK: In the third line, the committee or any member thereof designated by the committee may.

MR. DEPUTY CHAIRMAN: Is there a motion?

MR. SHERMAN: Take out the thereof or any member and the committee or any member designated by the committee. Take out the last two words, "thereof may" and make it "any member designated by the committee may."

MR. DEPUTY CHAIRMAN: The Honourable Legal Counsel.

MR. BALKARAN: I think that removal of the word "thereof" from an interpretation standpoint might cause some problems. Thereof relates back to the committee and I think that should stay in because any member could be a member of the college, a member of the council.

MR. CHERNIACK: I interpreted it that way and I assumed that they want the right to say to Dr. so and so, you go on in and check it. I think that's more of a peer than the committee itself. I have no objection to the thereof being removed as long as the committee designates a member of the society of the college.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. D. JAMES WALDING: If it's any help I noticed that the following section 38(2) uses the word designated in the form, its designated members when referring to the standards committee. Perhaps it would help to have some uniformity in the use of language.

MR. DEPUTY CHAIRMAN: If I could have the motion written so that we can have a vote please.

MR. SHERMAN: So the proposal would be, Mr. Chairman, that the concluding phraseology in 38(1) would be: And the committee or any member thereof designated by the committee.

MR. CHERNIACK: We agreed to remove thereof to broaden . . .

MR. SHERMAN: You've agreed to remove the thereof, all right.

MR. CHERNIACK: The college feels they should be able to designate any member.

MR. SHERMAN: Well, that was my original suggestion that we take out the thereof. Then there was an argument as to whether thereof should be reinserted because in the matter of interpretation, legislative counsel says it has to be in there for clarity.

MR. CHERNIACK: If it's to be a member of the committee it has to be there, but if it doesn't have to be a member of the committee then it doesn't have to be there. They want it out.

MR. DEPUTY CHAIRMAN: Are you ready for the question?

MR. BALKARAN: Wait a minute, I'm not clear on the motion.

MR. DEPUTY CHAIRMAN: I'm sorry, Mr. Balkaran does not have the motion here, and if we could have some assistance so that I can read out the motion before we have a vote. Whoever is making the motion, would you repeat it slowly so we can get it written down?

MR. SHERMAN: Mr. Chairman, could I go back to the original amendment that I suggested to be applied to Mr. Cherniack's original suggestion, which would have made the clause read as follows, and that is "by members of the college and the committee or any member designated by the committee may . . . "

I would like Legislative Counsel's opinion now on that wording because there appeared to be some unacceptability.

MR. BALKARAN: Mr. Chairman, the removal of the word "thereof" opens it up to the committee to designate any member. By definition, "member" means a person who is registered under this Act, so that you can go outside of the committee and designate another physician and authorize him to carry out this inspection. Now, I don't know if that's the intention or is it the intention to designate a member of the committee, as opposed to the entire committee and I'm not so sure which way the college wants to go.

MR. SHERMAN: Mr. Chairman, my feeling would be that the intention would be to have it a member of the committee, but if the college doesn't require that, then we'll take the word "thereof" out and go with the wording as proposed — "any member designated by the committee may . . . "

MR. BALKARAN: I've got the motion now, Mr. Chairman.

MR. DEPUTY CHAIRMAN: I'm going to ask Mr. Balkaran to read the motion. Mr. Balkaran.

MR. BALKARAN: The motion reads as follows:

THAT subsection 38(1) of Bill 17 be amended by striking out the word "thereof" in the 3rd line thereof and substituting therefor the words "designated by the committee."

QUESTION put on the amendment, MOTION carried.

MR. DEPUTY CHAIRMAN: 38(1) — pass. I think I'm just about ready to give back the Chair to Mr.

Chairman, but before I do, I would like to ask the Honourable Member for Portage, because of the nature of the bills that are being discussed at this time, these medical bills, would the Honourable Member for Portage like to be referred to as Dr. Jekyll or Mr. Hyde?

MR. CHAIRMAN, Warren Steen (Crescentwood): 38(1) as amended — pass; 38(2) — pass; 38(3) — pass — Mr. Cherniack.

MR. CHERNIACK: Just how does it work? If that member does not serve a period of refresher training, what is it, is that unprofessional conduct? What does the college do?

MR. CHAIRMAN: Your question is, Mr. Cherniack, to legal counsel or to Mr. Sherman?

MR. CHERNIACK: To the college, I think. But if Mr. Sherman knows, that's fine with me.

MR. SHERMAN: Mr. Chairman, apparently under present practices, the Council may recommend that a member of the college serve a period of refresher training, but this is a new provision in the legislation. (Interjection)— No, it doesn't say it, but I'm saying it. It's a new provision in the legislation but the practice has been that the Council has been able to recommend that a member of the college serve a period of refresher training. So we should ask the college as to how the method of such recommendation is applied and what results if the member does not take that refresher training?

MR. CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Mr. Chairman, through you to Mr. Sherman, does the clause or section, sub-clause that we're dealing with, it's not mandatory. It's "may" — the council "may" recommend that a member of the college serve a period of refresher training and if the member says get lost, then what?

MR. SHERMAN: I don't know. We'll have to ask the college.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: I don't want to attempt to answer that question; that's for the college to answer.

I just noticed something for the first time, Mr. Chairman. The thrust of this is to recommend that a member of the college serve refresher training. I would have thought it would be a member of the medical profession.

MR. CHERNIACK: The college is anybody; it's the Council that is the executive.

MR. BALKARAN: Does the college encompass all members of the medical profession? — (Interjection)— Okay, I'm sorry.

MR. SHERMAN: The MMA does not necessarily encompass them but the college does. I don't know the answer to the question put by Mr. Jenkins and perhaps Dr. Morison can answer.

MR. CHAIRMAN: Dr. Morison, are you available to answer? Agreed by the committee? (Agreed)

DR. MORISON: At the present time, we have recommended to doctors that they take refresher training at the standards committee, from events arising in hospitals or from voluntary audits of their offices and they have always accepted our advice. Now, if they didn't accept that advice, under our rules and the principles, we would only be able to recommend to the executive that this doctor's practice needs to be investigated. I mean, if we start giving details of our findings, which are opinions, we would destroy the whole peer use process, which Dr. Ewart has explained is totally accepted by our profession in North America, but it's meant to be an educational thing. But if he refused, and the committee was of the opinion that that was absolutely essential, then they would have to just refer the matter, then under the Investigating Chairman, which is the next clause or part, that man would have to start a new investigation but then he would have to go to the courts to get the document, the doctor would know immediately that he has got to prepare his defence. I would think he would be consulting his lawyer pretty darn quick and he would have the full due process to defend himself and to say that the our recommendation wasn't based on anything.

One of the things that you should realize about a peer review, that it's a completely candid discussion between doctors and the reason we wanted to have any designated member, I think to give an illustration, if it was a general practitioner, it would be general practitioners that would review his practice, not the professor of surgery and the professor of medicine. It would be, if it was an audio-laryngologist, we would have to find an audio-laryngologist that would look at that practise.

So these are people who can discuss his work and give him advice and that's the only intent, and we wouldn't intend to enforce that, but if it was critical to the welfare of the community that this fellow just had to get retraining or a review indicated there was real risk to the population, then the Committee would merely have to report as it does in a hospital now, to the Hospital Board that this man must be investigated, then the administrative arm of the hospital looks into and the investigative arm of the college would look into it.

Does that answer your question as to what would happen?

MR. JENKINS: Yes, I think that's . . .

MR. CHAIRMAN: Any further questions, Mr. Jenkins?

MR. JENKINS: I feel a little bit more reassured that we wouldn't invoking Clause 40(5), which is conduct unbecoming a medical practitioner if he refused to take refresher training.

DR. MORISON: Well, I mean it depends on the nature of the deficiency. Obviously if there's a very gross deficiency that makes him a risk to the public, you can't stand by and say, well we wish you'd take some training. Then you'd have to report it to a body that has the power to get more substantive details, because at the standards committee level, it's only an opinon. It's not evidence; you don't take evidence; you don't take anything under oath; you

discuss it with the doctor and they decide from that informal discussion that they have some advice to give him and the matter of complaints which you discussed before the whole principle of an audit is, it is not based on complaint.

In the provinces where they have it now, it's a spot checking of people who are under no suspicion whatsoever but may through this, they may detect needs for improvement or any doctor can improve with the advice of outsiders on anything he's doing.

MR. CHAIRMAN: 38(3) — pass; 39(1) — Mr. Cherniack.

MR. CHERNIACK: I draw the attention of the Committee to the comments by MARL to the effect that as the section as it stands might prevent a doctor, who thoroughly needs it, from seeking medical or psychiatrist help from a colleague. They say that doctor-patient confidentiality must be honoured.

There's validity to that. There are many occasions when a doctor sees that a medical practitioner is suffering from some disorder, not necessarily because the practitioner has come to him as a patient, but I draw the attention of the Committee to two subsections in The Registered Nurses Act.

Firstly, it says that this subsection does not apply to information obtained by a member which is confidential by reason of a nurse-client relationship and again, if I may mention 39(2), the wording that they have here is subject to any liability therefor, the phrases added in the nurses — not added but exists in The Nurses Act, which I think is important — except where it is proved that the disclosure was made maliciously.

Now there are a couple of protections I think that are needed for the benefit of the doctor whose capacity is being questioned. I wonder if I can get agreement to insertion of both of these clauses from The Registered Nurses Act, following 39(1).

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I wonder if Mr. Cherniack would be satisfied with an amendment which would simply insert the words after the medical practitioner in 39(1), second line, the words, ''who is not a patient of the member or the associate.''

MR. CHERNIACK: Well that would take care of the confidentiality. I don't know yet whether the principle of what I'm proposing has been accepted. If it's accepted, then the wording can be ironed out.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, I'm aware of the fact or was aware of the fact that concerns would be raised in this area and it has been mentioned, the MARL presentation did raise it, and certainly we took pains in the nurses legislation to protect that situation covered by the confidentiality of the nurse-client relationship.

My understanding of the proposal in the legislation is that here we're dealing with the direct responsibility that perhaps is somewhat heavier and somewhat more direct, although only by degree, for the welfare of a patient or a person suffering from illness, moreso than in the case of a nurse and the medical profession or the college deems this as necessary or desirable, again for the protection of the public; again as a reinforcement of the public's protection.

The omission of a complementary clause to that which exists in the nursing legislation was not an error. The bill was drafted this way on that basis, on that principle, that here there is too much danger of putting the public at risk, unless it's incumbent upon members to report such findings as are described in 39(1) but as I say, I was aware there would be questions raised about it. I can only justify it on the grounds that I've described that sometimes I suppose one is looking at making a choice between the lesser of two evils.

However, if the college feels that nothing is lost by putting in a saving clause, complementary to the one that's in the nurses legislation, certainly I as Minister have no objection to it.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, frankly I want to protect the individual against the group, but I do know, I think Mr. Uruski pointed out the other night, that a doctor is required to report, what is it — bad eyes that affect the driving ability, visual ability, to The Highway Traffic Act and child abuse, but child abuse the patient is the child that has been abused, it's not the abuser, but I am aware of the visual thing and that is for the protection of the public and certainly the purpose here is for protection of the public.

The reason I mention it is not that I find it offensive, but I do want reassurance by the medical profession that this will not prevent a doctor who needs treatment from seeking it, because he's afraid. That's the point MARL made and I think a doctor who may be realizing that he has some disability and who's afraid to give up his practise, might just stall along and go to a chiropractor but it's the assurance that the medical profession isn't worried about denying the doctor the services of another doctor because he knows he's going to be squealed on. That's all, I would rather it was in as is, but I have to ask the college to deal with that aspect of it. Of course . . . May just finish? A doctor who is aware of this knows that when he goes to another doctor for counsel, it's likely to be reported, but the great danger is that he won't go. Now, what do they want? Do they want him to come or do they not want to come?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman . . .

MR. CHAIRMAN: If Mr. Sherman wants, that's his prerogative. Mr. Sherman, do you want to respond, or do you want to . . .

MR. SHERMAN: I don't want to preempt the committee's opportunity to hear Dr. Ewart, but I'm prepared to suggest that such a saving clause be written into the legislation, equivalent, complementary to that which exists in the nursing legislation. No, about . . .

MR. CHERNIACK: Oh, they don't want that? I expressed the opinion that I like it as it is but I want the college to recognize that if they keep it as it is, without that saving provision, they may be denying the doctor treatment and if in the light of that recognition they still say they want to have to report it, then it's on their conscience not ours, because from the standpoint of the public, it's better that they do report this doctor. So, I think it's up to the Council to decide what the . . .

MR. SHERMAN: I understand that, Mr. Chairman. I understand Mr. Cherniack's question. Perhaps, then we should invite the college to respond. I'm saying that at this juncture that I'm prepared to amend the section by adding a saving clause.

MR. CHAIRMAN: Is it the general wish of the committee to have the college respond? Agreed? (Agreed)

Your representative, Dr. Ewart.

DR. EWART: First of all, thank you for your concern on this. I can assure you it's been a concern of ours as well.

There's two things here. We're really protecting both the doctor and the patient, believe it or not, and the general public. First of all, the doctors as a group, both the college and the Manitoba Medical Association, got together and we now have an organization called Physician at Risk which we think covers a lot of the problems connected with the doctor reporting and this appears to be working very well. There is a problem arises both for the protection of both the patient and the doctor and this is being vetted, by the way, very closely with a number of people that are involved, particularly the psychiatrists, who we feel reasonably secure in coming out with this knowing that we're on a very dicey area, and the important thing about this is that, for example, we'll say even with the Physician at Risk, that the doctor reports in to a, I forget exactly the way it's done but I think it's with a telephone number reports in and somebody speaks to him, the psychiatrist then contacts him, he talks with him, we'll say it's alcohol is the problem, or it could be something more violent and more threatening to the general public. If he, the psychiatrist, will then interview him and you'll note that it says, ''and who continues to practise when counselled not to practise.'' And, this is our attempt to protect not only the patient who happens to be a doctor, but also to protect the doctor and protect society. We hope this will work, gentlemen. We know it's a difficult area and yet, I think, we've covered, and we've certainly done a lot of background work on it. I hope that reassures you to some extent.

If you wish, I may say, I think I don't know whether I need to say this at all after what I've just said but, we're not worried about the . . . We'd like to have it that it's still allows the psychiatrists to report, if it happens to be a psychiatrist, for the benefit of his patient, if you wish, and society, but also if you wanted from the Nurses Act, 46.(3), ''a person disclosing information under subsection 1 shall not be subject to any liability as a result thereof, except where it is proved that disclosure was made maliciously. Now, if you want to add that protection, we don't mind, but we really, perhaps we're too well wishing in this particular area.

MR. CHERNIACK: Just one thing, Mr. Chairman. Doctor Ewart, I think, said it allows the psychiatrist to report. I think he said that. It requires him to report, doesn't it? He must. If he doesn't report then he's guilty of a professional misconduct, isn't he?

DR. EWART: Yes. Yes, that would be right, but it also means it gives him, in talking with his patient what really happens, if you realize, we'll say that it is something very threatening, and —(Interjection)— that's right, and he says, ''now look, just don't do any driving or just don't do any of this type of examinations because obviously you can't control yourself in this particular situation.'' Now, the patient gets beyond him, if you wish, and then he turns around and says, ''Look I have to do something about this for your good and my protection,'' if you wish, too, ''and I'm going to be notifying the college.'' This isn't exactly the way it takes place, of course.

MR. CHAIRMAN: 39.(1) — Mr. Walding.

MR. WALDING: Mr. Chairman, may I ask Dr. Ewart, out of curiosity, what does the registrar do when he receives this information? What's the next stage?

DR. EWART: Please ask the registrar. I want to be precise, if you don't mind.

MR. CHAIRMAN: Dr. Morison.

DR. MORISON: At the present time, if we have a complaint like this, and we do have it from psychiatrists, there are some psychiatrists who feel that this is their obligation when the doctor is at a danger to the public. Other psychiatrists have felt that they must have the protection of the law. Our code says you must not reveal a confidence unless you're required by law to do so and that is one of the reasons we put this in, but there are other psychiatrists who feel another part of the code that says a doctor's responsibility to the community at large exceeds his responsibility to a patient and certainly in a man who is extremely dangerous to the public, a psychiatrist will phone and tell us and with a letter from the doctor saying that this person in his mind is unfit to practise, we would presumably and we have laid charges against the doctor. Normally at that time and it has happened in all cases which I have been involved in, once the charges have been laid, a doctor gets in touch with a lawyer. A lawyer usually counsels the doctor to retire from practise for the period of his illness. So, we've never had a whole formal hearing, but that would be the end result. If the doctor fought it, we would have to prove that he was unfit to practise.

MR. CHAIRMAN: 39.(1) — pass; 39.(2) — Mr. Cherniack.

MR. CHERNIACK: I want to move an amendment to add at the end thereof the words, ''except where it is proved that the disclosure was made maliciously''.

MR. SHERMAN: That's acceptable, Mr. Chairman, and would conform with the nursing legislation.

MR. CHAIRMAN: The legal counsel has the motion. All in favour? Agreed? Pass. 39.(2) as amended — pass; 40 — Mr. Kovnats.

MR. ABE KOVNATS (Radisson): I move

THAT subsection 40.(1) of Bill 17 be amended by striking out the word "including" in the 4th line thereof and substituting therefor the words "other than" and by striking out all the words after the word "Act" in the 6th line thereof.

MR. CHAIRMAN: Is everyone aware of the amendment? Mr. Sherman.

MR. SHERMAN: For the information of the committee, this amendment and the resulting rewording of this clause was worked out as a result of some positions that were taken before the committee last night or the night before — I can't remember which night it was now — by the Manitoba Health Organizations. You will remember that in the original wording the case was made, I think, by MARL that there was ambiguity and the Manitoba Health Organizations had somewhat similar difficulty with it and so a number of words at the end of the originally proposed section are removed and it clarifies the intent and meaning and hopefully removes the ambiguity.

MR. CHAIRMAN: Is Mr. Sherman's explanation sufficient?

MOTION presented and carried.

MR. CHAIRMAN: 41 as amended — pass; 42 — pass; 43 — pass; 44 — pass; 45 — pass.

Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move

THAT Section 40 of Bill 17 be amended by adding thereto at the end of Subsection (5) thereof the following subsection:

Application to other facilities 40(6) The Program Review Committee may enter into agreements with the federal, provincial and municipal governments to apply the provisions of Subsections (1), (2) and (5) of this section to any facilities or any portion of a facility falling within the jurisdiction of that government and such agreement shall specify the procedures not inconsistent with any Act to be followed when the Program Review Committee believes that the facility does not appear to meet the requirements standards.

MOTION presented.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, this results from the amendment and the revision of 41 and the subsequent subsections that follow. The ambiguity in 41 that has now been cleared up, nonetheless, notwithstanding its ambiguousness, addressed a matter that still has to be covered by the legislation and that's now covered clearly in 46. It applies, for example, to those facilities that are approved hospitals under The Manitoba Hospitals Act or approved under any level of government, federal, provincial or municipal, with agreement from that federal, provincial or municipal authority, then the Program Review Committee may carry out the review procedures that are requested and that are not inconsistent with any other Act. But the way 40(1) was originally worded, it tried to cover everything in one sub-clause and it became incomprehensible to most people who were trying to understand it.

QUESTION put on the Amendment, MOTION carried.

MR. CHAIRMAN: 46 — pass; Section 41 — Mr. Cherniack.

MR. CHERNIACK: I want to know whether the intent is to say "lay member" or "lay person"? In other words, are the lay people to be lay members of the Council or are they to be anybody who is selected by the Minister and by the Council? What is the intent?

MR. SHERMAN: I'm sorry, would Mr. Cherniack repeat his question? I'm sorry, Mr. Chairman.

MR. CHERNIACK: When I read this the first time, I decided that the Complaints Committee shall consist of the Chairman plus three members of the college, and three lay members, two of whom are named by the Minister and the third by the Council. I thought this meant people who are not members of the Council, just people picked out from anywhere to be on that, but then I looked up "members" and there is a definition for member and there's a definition for lay person. Now, a lay person is anybody who is not registered under the Act, but member is a member either under 6 or 23, both of whom are either doctors or associate members.

So I am just asking, what do they want; do they want a member of the Council or do they want a lay person, and what would the Minister want because he is going to appoint them?

MR. SHERMAN: Mr. Chairman, I missed Mr. Cherniack's question the first time around because I was writing in an adjustment, an amendment in my copy. There is an amendment on Section 41.

MR. CHAIRMAN: Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move

THAT Section 41 of Bill 17 be amended

(a) by striking out the words "member of Council" in the 2nd line thereof and substituting therefor the word "councillor"; and

(b) by striking out the word "members" in the 3rd line thereof and substituting therefor the word "persons."

MOTION presented and carried.

MR. CHAIRMAN: 41, as amended — pass; 42 — pass; 43 — pass; 44 — pass; 45 — Mr. Cherniack.

MR. CHERNIACK: I'm looking at what MARL had to say. It did have something to say which I think it worthy of consideration. They are talking about the opinion of the complaints committee and they say that no opinion is needed of (a), which is true, either he has or he has not been convicted; under (b), he is either alleged to be guilty of professional misconduct — they say that's not necessary. I don't know if it matters that it's not necessary; I'm just wondering why the opinion of the complaints committee is needed, because when there is an allegation it is

made; they don't have to form an opinion on it. Possibly what they mean is in the opinion of the committee or the registrar there appears to be justification for the allegation, but other than that, is it as long as he has been convicted or is alleged to be then they shall automatically refer it to the investigating chairman or is it that they may refer to the investigation chairman to consider whether or not there is justification for the allegation, just to summarize it; they are suggesting. And now I think that they make sense that there is no need to have the phrase in the first line "in the opinion of the complaints committee or the registrar." So it will read, "where a member has been convicted or is alleged to be guilty or demonstrated incapacity it shall be referred" and they are suggesting the word "may" but I think it should be "shall."

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think that's semantics and perhaps, Mr. Cherniack's language is better than the language that is used here but it doesn't alter the meaning or the intent of this section. In fact that's what this section says. It says it in a different way. It's up to the complaints committee or the registrar to determine whether they are going to refer that matter if in their opinion the incident or the record of that member deserves referral to the investigation chairman for review, then it will be done. If their opinion is otherwise it won't be done, so it's really just a long way of saying what Mr. Cherniack has said and other than changing the terminology, I don't see that there is any basic conflict with the principle of the section.

MR. CHERNIACK: I won't debate it if we delete it, but if we don't delete it then I would debate it because I think that Mr. Sherman is wrong. I think that the complaints committee under this section must refer regardless of what his opinion is. I think that's the point, that where there's a conviction or an allegation it shall be referred and the opinion doesn't count and that's why I think there is a difference. Well, I'll move that we delete in the first line all the words other than "where."

MR. CHAIRMAN: Legal counsel, please.

MR. BALKARAN: I think that Mr. Cherniack's point is well taken. How do you form an opinion on something that is a fact, that's an allegation. You simply state where a member, a, b, c, and state the results that flow, what action shall be taken. The circumstances where a, b, or c, is present, the committee or the registrar shall do certain things. It doesn't depend on the opinion because it is a conviction, but as an allegation.

MR. SHERMAN: Well, all it does as far as I can see, Mr. Chairman, is enshrine the role and the activity and the function of the complaints committee. I admit that it is probably somewhat cumbersome wording but one doesn't have to refer the fact that somebody has been convicted of an indictable offence to investigation. It's a matter of whether the complaints committee deems that offense to be of a serious enough nature to warrant that referral.

MR. CHERNIACK: No, Mr. Chairman, I think that's the essential point. The provision here is that the investigation chairman should investigate and come to a conclusion and therefore the complaints committee is not involved at all in making any preliminary decision as to whether or not it's warranted. That, as I see it, is the important difference. The complaints committee receives complaints, reviews complaints and then makes a decision, but where there is an allegation of professional misconduct, then it must refer it and the investigation chairman then uses his discretion, and that's why I think those words ought to be deleted because it makes more sense that way. Having said that, you know in the end I really don't suppose I care. It's a draftsmanship aspect that we are dealing with.

MR. SHERMAN: Mr. Chairman, I agree, I think it is the draftsmanship and I think it's language and as I said I think it is cumbersome. What really is intended here is that certain information comes to the complaints committee. It's described in the verbiage here as an opinion and I think that's probably an imprecise choice of wording. What we are really saying here is where information comes to the attention of the complaints committee or the registrar that a member has, etc., etc., etc.

So it could either be amended that way and I would suggest that might be perhaps be the better way to amend it or the way that Mr. Cherniack has suggested to provide the more accurate thrust to the section. So I would move, unless . . . I'm sorry, did Mr. Cherniack have a motion on the floor.

I would move, Mr. Chairman,

THAT section 45 of Bill 17 be amended by striking out the words, "in the opinion of" in the 1st line thereof and substituting therefor the words, "information comes to the attention of" so that it would read, "where information comes to the attention of the complaints committee or the registrar," then inserting the word "that" before the term "a member" in the 2nd line thereof, and hopefully that would take care of it; so that the section would read: "Where information comes to the attention of the complaints committee or the registrar that a member either before or after is alleged to be," "is alleged to have," etc.

MR. CHERNIACK: . . . the complaints committee or the registrar are informed that" — I don't care.

MR. CHAIRMAN: Is Mr. Sherman's amendment acceptable? (Agreed)

Now, Mr. Sherman, for legal counsel, would you repeat your amendment; he must get it down?

MR. SHERMAN: Yes, Mr. Chairman,

THAT Section 45 of Bill 17 be amended by striking out the 1st two lines thereof and replacing them with the words: "Where the complaints committee or the registrar are informed that a member"

MOTION presented and carried.

MR. CHAIRMAN: 45(a) as amended — pass. 45 . . .

MR. CHERNIACK: 45(b), I'm back to suggesting that we are dealing with professional misconduct or conduct unbecoming. I don't really know that I know the difference but maybe there is such a thing. But

we have already dealt with a conviction and now we have this phrase criminal conduct and frankly I don't know what that is, because until there's a conviction, I don't think there is criminal conduct proven, "whether in a professional capacity or otherwise" and what's the "otherwise" for? Now we were into this discussion with Mr. Green dealing with Section 12, but I really don't see the sense to it and I don't even know what it means and I don't know what criminal conduct is. It implies that somebody alleges criminal conduct but he has not been convicted and that the nature of the criminal conduct is not professional misconduct or conduct unbecoming, because if it were, then why bother to say it? So it sets up three occasions under (b), misconduct, conduct unbecoming, or criminal conduct, and if criminal conduct is not misconduct or conduct unbecoming, why do they want it? May I ask that question of the Minister or the representatives of the council or whatever?

MR. SHERMAN: Mr. Chairman, certainly Mr. Cherniack can, as far as I am concerned, ask that question of the college. First he has asked of me, and my answer would be the intention is to cover all eventualities; again to reinforce the reputation, standing, and image of the profession and the publics confidence in that profession. There may be some justification for arguing that a term such as conduct unbecoming a member could be all embracing but there certainly can be criminal conduct of which one is alleged, whether in a professional capacity or otherwise, that has not led and may never lead to a conviction of an indictable offence, but being known to the college, it is of concern to the college in its responsibilities and they have under this section the rights and powers to deal with them. That is my interpretation of it. I see it as a desirable reinforcement of what the college is attempting to ensure and enshrine in terms of public confidence. If the college has other views on that I suggest we invite them.

MR. CHERNIACK: Mr. Chairman, I would like you to invite the college to explain what it means and why they need it.

MR. DEPUTY CHAIRMAN: Is it agreed that a representative from the college would . . . Legal counsel, Mr. Scott. I forgot his name for a moment there. (Interjection)— Yes, I see. I guess the Tritschler Report was so far removed from me that I . . . Sorry, Mr. Scott, for forgetting your name. Mr. Cherniack says you performed so well in this room for so many —(Interjection)— Oh, so often, maybe.

Mr. Scott, could you perhaps clarify the situation?

MR. SCOTT: Well, I can certainly attempt to. I think it's important to keep in mind that this is at that the first stage. Information has come to the attention of the complaints committee or the registrar and the phraseology is deliberately loose. To indicate in the phrase "criminal conduct," it is deliberately used because it is general in nature to indicate that any allegation of a serious nature has to be initially referred to the investigation chairman who may amongst other things decide if there is an allegation of criminal conduct, theft, or any example you want to think of, that because it is a matter for the criminal courts as it turns out, that the college will step back and take no further part in the proceedings.

For example, it may turn out that what is alleged to be criminal conduct, is not criminal conduct at all but is perhaps professional misconduct or conduct unbecoming or something else. The thing here is that at this stage, no one knows, so the language here is deliberately broad to indicate that if it is an allegation of a serious nature, including at this very preliminary stage an allegation of criminal conduct, that it's got to be referred to the investigation chairman and he has to have a look at it, so that's the intent of that wording.

MR. CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Scott, what could be more general than conduct unbecoming? How much more general can you be? Why do you need more than conduct unbecoming?

MR. SCOTT: Well because as I understand the jurisprudence on those two phrases that are used, I think in just about every professional act, conduct unbecoming or professional misconduct, incredible as it may seem that they may or may not constitute criminal conduct and again, at this stage the allegation from the patient or whoever the complainant is, may be one of what you would think of as pure criminal conduct. That is an allegation of theft, an allegation of kickbacks, an allegation of . . .

MR. CHERNIACK: Kickbacks?

MR. SCOTT: Kickbacks.

MR. CHERNIACK: That would be professional, wouldn't it?

MR. SCOTT: I would think so.

MR. CHERNIACK: I don't even know if that's illegal?

MR. SCOTT: Well, whether it's illegal or not, it is certainly in the ethics of the college, unprofessional, but one can think of instances, where at this very early stage, the allegation is serious, but of such a general and unspecific nature that one cannot say for certain that it is an allegation of professional misconduct or conduct unbecoming and that's the reason for this phraseology.

MR. CHERNIACK: Could you give us an example? I just don't understand . . .

MR. SCOTT: Theft.

MR. CHERNIACK: Well would theft of this pencil be the kind of conduct that the college should be involved in considering, although theft of a thermometer might be.

MR. SCOTT: Well, that's for the investigation chairman to determine. That's the whole point of this exercise.

MR. CHERNIACK: But I'm suggesting that the theft of a pencil or theft of a briefcase — you see, a

medical bag I would say okay, that's professional. A briefcase containing the last issue of Playboy might be something else. It would still be criminal conduct, but what does that have to do with the practise of the profession?

MR. SCOTT: Because it was the allegation, the alleged offence or incident took place during the time that a patient-doctor relationship was in existence, to take your example, the theft of a briefcase.

MR. CHERNIACK: Well then it's conduct unbecoming surely.

MR. SCOTT: Well it may or may not be, because while it took place during the existence of a doctor-patient relationship, it did not directly relate to the administration of medical services. The odds are, Mr. Cherniack, that you're right, but again I can only repeat that the phraseology was chosen this broad because at this very early stage, you don't know and we wanted to make it clear that any allegation of a serious nature had to be referred to the investigation chairman for investigation. That's all.

MR. CHERNIACK: And if the conclusion is that it was not criminal conduct in a professional capacity, would you say the investigating chairman should proceed with his investigation and proceed with the complaint.

MR. SCOTT: I suppose it depends on how serious the allegation is. The facts are after he has completed his investigation.

MR. CHERNIACK: So you're back to Dr. Ewart's strangulation case.

MR. SCOTT: Yes, in a sense. In a sense, yes.

MR. CHAIRMAN: Any further questions — pass; 45 as amended — pass; 46 — pass; 47 — pass. Mr. Kovnats you have an amendment on 48.

MR. KOVNATS: Mr. Chairman, I move

THAT section 48 of Bill 17 be amended by striking out the word "or" in the 6th line thereof and substituting therefor the word "and".

MOTION presented and carried.

MR. CHAIRMAN: 48 as amended — pass; 49 — pass; 50 — pass; 51 — pass; 52(1) — pass; 52(2) — pass; 52(3) — pass; 53 — . . .

MR. CHERNIACK: Just a moment, Mr. Chairman. They say if the member cannot continue then what? Then they have to stop the inquiry, but if it's a lay person they don't have to stop the inquiry. Is that it?

A MEMBER: You see there would be four members.

MR. SHERMAN: You'd still have a quorum, Mr. Chairman.

MR. CHERNIACK: Mr. Chairman, though the distinction is made as between a lay member, I think they meant lay person come to think of it; I think they must mean a lay person. I may be misreading this, Mr. Chairman. We have five members of whom . . .

MR. SHERMAN: These are members of the Inquiry Committee.

A MEMBER: But these could still be a lay person.

MR. SHERMAN: That's right.

MR. CHERNIACK: Five members of the Inquiry Committee.

A MEMBER: Why would he be defined as a lay member member rather than a lay person?

MR. SHERMAN: Because he's a member of the Committee, we're referring to the members of this Committee.

MR. CHERNIACK: Well I think you better think about that twice, because there's a definition for member and there's a definition for lay person.

MR. SHERMAN: Yes, but here we're talking specifically about members of the inquiry committee.

MR. BALKARAN: It's qualified.

MR. CHERNIACK: My question is not articulated in my own mind, but it seems to me that under 52(3) they can continue even though the lay person is not around but they have three — I see, so they're saying the quorum shall be three plus — I don't really follow the sense to this. I wish it could be explained to me, Mr. Chairman. I keep getting lost with numbers.

MR. BALKARAN: There's no quorum.

MR. CHERNIACK: Quorom is three, including the lay person. Now they're saying if that lay person becomes ill, then they have to drag in a third person who is a member, not a lay person. Is that it?

MR. SHERMAN: No, this was added and I think Mr. Cherniack may have a note on this, so that the illness or absence of a lay member wouldn't result in cancellation of the hearing, due to loss of a quorum.

MR. CHERNIACK: Because that lay person is part of the quorum at the beginning?

MR. SHERMAN: Yes.

MR. CHERNIACK: At the beginning, otherwise there would be no need to refer to . . . Okay, I understand, I think I understand.

MR. CHAIRMAN: 52(3) — pass; 53(1) — pass; 53(2) — pass.

MR. CHERNIACK: On 53(1), is in the practise for 14 days; is that enough time? It's the same as before I see. The nurses have 31 days. Do they need more time than a doctor?

MR. CHAIRMAN: Good enough? 53(1) — pass; 53(2) — pass; 53(3) — pass; 53(4) — pass.

MR. CHERNIACK: Mr. Chairman, that's the reason why I thought the 14 days. People alleged the mail service to be much worse than I think it is but nevertheless out of 14 days there may be a number of days that are lost due to the mail, if it's going say to Flin Flon, to Swan River and maybe 14 days, maybe the notice shall be deemed to have been served three days after it was mailed. If we really want the doctor, the member who is being questioned, if we really want him to have 14 days, then we shouldn't make him liable for any delays in postal service, but on the other hand, we can't let him say I didn't get the letter.

So may I suggest that either we extend the 14 days to a longer period of time or say leave the 14 days, but the notice sent shall be deemed to have been served on the date, three days after the date on which it was mailed. Does that make some sense?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Well, Mr. Chairman, I don't have any problem with that. I'd prefer to see us go back to 53(1) and extend the time. Mr. Cherniack raised a good point. I might say that this bill, of course, was prepared a few days ago and a member of my family yesterday received a letter from Calgary, postmarked in Calgary 10 days previous, so that's the postal service we're talking about and I think Mr. Cherniack is quite right.

MR. CHAIRMAN: All right, do we have the agreement of the Committee to go back to 53(1) and Mr. Cherniack, will you move the amendment?

MR. DOWNEY: 21 days.

MR. CHERNIACK: Mr. Downey suggests 21 days.

MR. CHAIRMAN: To change 14 days to 21 days. Agreed? (Agreed)

MR. CHERNIACK: I'd like to point out en passant 55(3), we're coming to it, it does name the third day after mailing, but I think this is fine, 21 days.

MR. CHAIRMAN: 53(1) as amended from 14 to 21 days — pass; back to 53(4) — pass; 53(5) — pass; 53(6) — pass.

MR. CHERNIACK: I think, Mr. Chairman, we had discussed with somebody the question — well I wrote in the words "and does not provide a reasonable excuse as failure to attend." We discussed it in some legislation. I think Mr. Walding mentioned it, referred to it, maybe in another bill but the idea was that the proceeding may proceed upon proof of service, unless and I think Mr. Balkaran or Mr. Tallin put in some wording saying, "unless before the hearing, the person has notified the Committee of a reasonable excuse for not being able to attend." I don't know the exact wording but — did you work on that, Andy?

MR. SHERMAN: Does Mr. Walding recall that wording?

MR. CHAIRMAN: Mr. Walding.

MR. WALDING: No, but I recall that the reason had to be given before the hearing. That was Mr. Tallin's point. (Interjection)— Probably that's the only other Act we've dealt with in depth.

MR. CHAIRMAN: Bill 19, Mr. Jenkins, is The Veterinarian Act. Do you wish the Clerk to provide you with another copy?

MR. CHERNIACK: . . . may not be, I don't know where it went.

Well, Mr. Chairman, maybe we can . . .

MR. CHAIRMAN: The clerk doesn't have a copy of it at present.

MR. CHERNIACK: I want to suggest that we provide, and Mr. Walding had mentioned it somewhere, where we provide here that unless that person has provided a reasonable excuse for his failure to attend — has provided before the hearing, a reasonable excuse for his failure to attend.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I want to ask if the Minister of Agriculture recalls that in discussions?

MR. DOWNEY: No, I don't. I don't recall it in the discussions at all, I don't think it was an issue.

MR. CHERNIACK: No, it may not have there, but it was somewhere it was discussed.

MR. DOWNEY: It is mentioned in the bill, but I can't remember debate on it.

MR. CHERNIACK: It is mentioned in the bill?

MR. DOWNEY: 14(6), page 4 . . .

MR. CHERNIACK: Well maybe we can get the original blue. Could we get the blue of 19?

MR. CHAIRMAN: No, the blue is gone too. It's not in, but it's okay.

MR. CHERNIACK: We inserted it that is why it is not there. (Interjection)— Is there any objection to the principle?

MR. SHERMAN: No, there's no objection to that saving clause, Mr. Chairman.

MR. CHERNIACK: Well then, could we ask Mr. Balkaran to reduce it to writing and be done with it?

MR. CHAIRMAN: Would you repeat it for Mr. Balkaran's purposes?

MR. CHERNIACK: I want his wording to go in: "Where the person is called and the subject does not attend, the inquiry committee . . . "

MR. BALKARAN: "Where he does not attend without proper excuse for his failure to attend"?

MR. CHERNIACK: "Without having provided the committee prior to the hearing with a good and

sufficient reason for his failure, then the committee may . . .''

MR. CHAIRMAN: Legal counsel hasn't written it down yet. Mr. Cherniack, could you help legal counsel out?

MR. BALKARAN: ''Without providing''?

MR. CHERNIACK: ''Without having provided the committee prior to its hearing with an adequate excuse . . .''

MR. WALDING: Can we not authorize Mr. Balkaran to seek out the amendment and simply . . .

MR. CHERNIACK: . . . where it is.

MR. SHERMAN: Mr. Chairman, the committee has agreed to the sense of the amendment and Mr. Balkaran will produce the wording and I think we can proceed.

MR. BALKARAN: What was it you said, ''proper excuse?''

MR. SHERMAN: Well, I wouldn't use the term ''proper'' excuse. I think ''good and sufficient reason.''

MR. CHAIRMAN: 53(6) as amended by Mr. Cherniack — pass; 53(7) — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I'm just trying to look for a comparable section in the Nurses bill. I have a note that it should refer to having the evidence reduced to writing. Maybe it appears elsewhere.

MR. SHERMAN: Mr. Chairman, (7), (8), (9), (10), and (11) are verbatim equivalents of what is in the present Act; Sections 33(6), (7), (8), (9) and (11).

MR. CHERNIACK: That doesn't answer my question. It seems to me that the evidence must be taken under oath and reduced to writing because later on you are going to deal with — maybe I should be happy since I want a trial de novo, not to have it reduced to writing. See how helpful I am?

MR. CHAIRMAN: Mr. Cherniack, are we prepared to go on?

MR. CHERNIACK: Mr. Chairman, I don't know. We have an appeal. The appeal 64(3) says that ''the appeal shall be founded upon a copy of the proceedings.'' You know I don't agree with it but the Minister has his powerful disagreement with me. Therefore, surely it must be reduced to writing to be made available. However, if nobody cares, I don't care. All right, pass.

MR. CHAIRMAN: Mr. Sherman, do you stick by it that these four sections are from the previous bill?

MR. SHERMAN: Yes, Mr. Chairman.

MR. CHAIRMAN: 53(7) — pass; 53(8) — pass; 53(9) — pass — Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move

THAT subsection 53(9) of Bill 17 be amended by striking out the word ''thereof'' in the 1st line thereof.

MOTION presented and carried.

MR. CHAIRMAN: 53(9) as amended — pass; 53(10 — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, somewhere here it seems to me there ought to be some provision for the holding of the inquiry in secret, in public, in the presence of members of the college. Is there anything in this bill that indicates whether it should be an open inquiry or a closed inquiry? What is the law? I am asking, Mr. Chairman, whether the drafting should require as to whether or not this inquiry shall be in public or not. I would be quite happy to make it an open hearing but I suspect that would not be acceptable. Does the college have the power to close the hearings, and do they, and where does it say so?

MR. SHERMAN: Mr. Chairman, there is no provision in here for a public inquiry in the sense that it exists in the nursing legislation, where public conduct of an inquiry can be requested. It's felt that there is a difference in subject matter, in vulnerability of professional reputation and vulnerability of patient reputation and that the privacy and confidentiality of patients, in particular, is better protected by private proceedings.

MR. CHERNIACK: Mr. Chairman, the point made by Mr. Sherman was considered in the nursing bill and was taken care of in the nursing bill because it says there that all hearings shall be in private unless the person whose conduct is being questioned applies for a public hearing and the board is satisfied that none of the parties to the hearing would be prejudiced by the holding of a public hearing, but where the board determines that there may be prejudice to any of the parties, it shall give written reasons. Now, what's wrong with this, that we hammered out last year? What's wrong with that, where the rights of the patients are protected, of any individual are protected?

In posing my question, I can read to you from The Law Society Act, which provides that an inquiry held subject to Subsection 11, an inquiry held under this section shall be held in-camera. But then it says, ''Where the member to whose conduct the inquiry is being made under this section requests that the inquiry be open to members, the inquiry shall be open to members.''

The point I would like to make, Mr. Chairman, is the old principle that justice should be seen to be done as well as be done. It seems to me that the constituency of the medical profession should have an opportunity to see the performance of the inquiry to ensure that justice is being done. It seems to me that the membership ought to be able to be present, and be bound by confidentiality, which they would be, at least if the member himself wants them to be there. In other words, a doctor who is being investigated and an inquiry is established, may feel that it's in his best protection and interest that other members of the college shall be present to hear and watch the proceedings. The Law Society Act

provides that that member may request it and is entitled to it.

Is there any objection that from the standpoint of the college?

MR. SHERMAN: Mr. Chairman, I think it raises a serious and subtle number of questions and to proceed the way Mr. Cherniack has suggested, I think would lead us into some fairly tricky waters. I don't know that I have a strong opinion pro or con but certainly I would prefer that the legislation proceed in its present form.

Mr. Cherniack has cited the fact that we made the provision for public hearings under certain circumstances in the nursing legislation and he asks, is there anything wrong with that, and my answer would be an unequivocal no, there is nothing wrong with that. I participated with members of this committee in the refinement of that legislation.

But I come back to what I have said before and I don't want to sound like a broken record about the public confidence in the medical profession. This is not to suggest that we don't require public confidence in the nursing profession too; of course we do. But I must suggest that, in my humble opinion, there is a slight degree of difference in the importance of that confidence and public inquiries mean precisely what they say, public inquiries. That means all the attendant media attention, etc., etc. They can have a tendency to distort; they can have a tendency to be turned into a circus and I make no apologies for the use of that word. They can have a tendency to result in what, in effect, is trial by media. I'm not suggesting that isn't important in terms of the nursing profession but I suggest it's more important, more dangerous in terms of public confidence if it occurs with respect to the medical profession.

Again, I think we are choosing between the lesser of two or three evils. Either way that we do it, we're going to have imperfect legislation. There are dangers on both sides. I think on balance that the protection of privacy and confidentiality in the case of the medical profession outweigh the disadvantages.

MR. CHERNIACK: Mr. Chairman, I really don't accept that there is a difference between the standards that the public expect from the nurses and the standards they expect from the doctors. As a matter of fact, I think they have a built-in greater respect for the medical profession because of its age and because of its prestigious standing. Therefore, I don't think the medical profession needs more protection than do the nurses in this respect. But I don't want to have my argument distorted as being for public hearings, you know, I set that aside. I'm not arguing for public hearings. I am arguing for the Law Society provision and I think that the Law Society should be just as jealous of its image as the doctors, where the Law Society says "where the member to whose conduct an inquiry is being made under this section requests that the inquiry be open to members, the inquiry shall be open to members."

Now this is the man who is being charged, the man who is being investigated, and he says, "In my interests, I would like that members of my college and the profession should be able to be present and to hear it," and I think that that is a protection he is entitled to and we should grant that to him. I don't think that the college, in carrying on the inquiry, should deny its own membership the right to hear how they are operating.

So I won't be led into the open hearing question because my suggestion is very limited and I wonder if the college would — maybe they have a practice now that permits that; I don't know. Could we find out what their practice is?

MR. DEPUTY CHAIRMAN, Abe Kovnats (Radisson): The Honourable Minister.

MR. SHERMAN: Mr. Chairman, pardon? — (Interjection)—

MR. CHERNIACK: Mr. Chairman, that's very useful. Dr. Morison says that the chairman has the authority. If you go back to the nurses, it says that the board, that is the board hearing the inquiry, can make that decision, just like the chairman can, but there's an indication of what should be in their minds and that is that none of the parties of the hearing would be prejudiced by the holding of — here it says "public hearing" but I'm saying a hearing open to members.

Well, then, could I suggest to Dr. Morison that my purpose would be served if we do provide that "if the board is satisfied that none of the parties to a hearing would be prejudiced by the holding of a meeting of the inquiry in the presence of members, then the inquiry shall" — Anything wrong with that?

MR. SHERMAN: It is my understanding, Mr. Chairman, that this can be done now, that such inquiries can be held in the presence of members of the college. I thought that Mr. Cherniack was arguing in favour of the kind of provision that's in the nursing legislation, which provides for public inquiries and public hearings under certain circumstances.

MR. CHERNIACK: I would like to, but I stepped back from that because I saw I couldn't get anywhere with that, so I'm really talking now about the members being present. I think that there should be an obligation of the board to consider this question and make a position finding that it would be injurious and therefore they won't do it. But it should be a matter of right, unless the board or the chairman decides that it would be harmful, so that it is a decision they make, it's not by whim or by just . . .

MR. DEPUTY CHAIRMAN: For the record, the last person that spoke was Mr. Cherniack, just so that they will know.

MR. SHERMAN: Mr. Chairman, is that an observation or ruling?

MR. CHERNIACK: Do you want to feel the ruling? It did it for the Hansard.

MR. DEPUTY CHAIRMAN: It was an observation to assist the people at Hansard, but if there are any additional questions to Dr. Morison, I would hope that Dr. Morison would please step up to the microphone so that it can be recorded.

Jim Downey.

MR. DOWNEY: Mr. Chairman, it would appear that we either have Mr. Morison come up and make a

decision and do something, or else put the question on this section. I put the question, Mr. Chairman.

MR. CHERNIACK: I am not going to make an issue out of this, but I would like to hear . . .

MR. DEPUTY CHAIRMAN: Just a moment, one at a time. Mr. Sherman.

MR. SHERMAN: I have no objection, and I'm sure the committee has no objection — we have done it several times tonight already — in asking Dr. Morison to address the proposal. (Agreed)

MR. DEPUTY CHAIRMAN: Dr. Morison.

DR. MORISON: I may wish to turn this over to Mr. Scott. The reason that we like to be able to almost guarantee confidentiality is that I have the experience, and the lawyer that we hire to prosecute, that patients are often very reluctant to get up and discuss their personal health problems. We have had cases where there should have been charges but the patient refuses to be a witness. But when we can assure them that this is before a committee of doctors who understand medical matters and they don't need to be embarrassed, we can persuade them to come forth. That's why we like to be able to assure them that it will be a confidential hearing, because if you've talked to these people, and as lawyers, I'm sure you realize that they are very reluctant to discuss personal matters, which are the substance of most inquiries.

Now the wording that you have suggested would allow members of the profession to be there and we do allow that now, at the discretion of the committee, but it's covered by by-laws, not by the Act, and it's rarely exercised, I think only once in my recollection.

MR. CHERNIACK: To allow it, or not to allow it?

DR. MORISON: That they asked for it, they requested it. We have allowed doctors, of course, to have a colleague there to advise him and his lawyer. I mean that's a different thing, he's there as part of the defence.

MR. CHERNIACK: Okay, let it go.

MR. DEPUTY CHAIRMAN: (10) — pass; (11) — pass; 53 — pass; 54 — pass; 55(1) — pass; (2) — pass; (3) — pass; (4) — pass; 55 — pass; 56 — pass; 57(1) — Mr. Domino.

MR. LEN DOMINO: Mr. Chairman, I have a motion to make. I move

THAT subsection 57(1) of Bill 17 be amended by striking out the words "thereof" in the 1st line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 57(1) as amended — pass; 57(2) — pass; 57(3) — pass; 57(4) — pass; 57 — pass; 58(1) — pass; 58(2) — Mr. Cherniack.

MR. CHERNIACK: I move

THAT in the 2nd line, after the word "council," the words "or agent" be added and that the following words be added at the end of the subsection, "and to examine documents and records prior to the hearing."

If I may explain it, it's just that, as Dr. Morison said, sometimes a doctor will want another doctor to represent him and therefore the words "or agent" is broader than just council. I think that's correct. And the other is the right to examine documents, which is rather important.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. WALDING: I just want to point out that Dr. Morison said that sometimes an accused doctor will have a doctor there to advise him and his lawyer. Now, putting in the words, "or agent," would that exclude the lawyer if there was a doctor to do it, to help him?

MR. DEPUTY CHAIRMAN: I have been advised by legal counsel, no.

MR. WALDING: It wouldn't? Okay.

MR. DEPUTY CHAIRMAN: 58(2) — pass; I am sorry, we have a motion?

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 58(2) as amended — pass.

MR. BALKARAN: Mr. Chairman, I haven't got the words that would go at the end.

MR. CHERNIACK: At the end? The same as the Nurses bill " . . . and to examine documents and records to be used at the hearing prior to the date of the hearing." That's straight out of The Nurses' Act.

MR. SHERMAN: "To be used at the inquiry prior to the date of the inquiry."

MR. CHERNIACK: Mr. Balkaran said the word "hearing" is more correct.

MR. SHERMAN: It should be inquiry; that's what we're talking about.

MR. CHERNIACK: The wording from the Nurses bill is: "Examine all documents and records to be used at the inquiry, prior to the date of the inquiry."

MR. SHERMAN: Right.

MR. BALKARAN: The motion would now read, Mr. Chairman,

THAT Subsection 58(2) of Bill 17 be amended

(a) by adding thereto immediately after the word "counsel" in the 2nd line thereof, the words "or agent"; and

(b) by adding thereto at the end thereof, the words, "and to examine documents and records to be used at the inquiry, prior to the date of the inquiry."

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 58(2) as amended — pass; 59 — pass; 60 — pass; 61 — Mr. Cherniack.

MR. CHERNIACK: I'm not really clear. We discussed the Statute of Limitations and the time period and the note I had made prior to that was that surgical pad case that we had some years ago where I think it was 20 years before it was discovered that there had been negligence. I don't remember the law about that; I'm looking for help. Did they not have to come to the Legislature for — (Interjection)— It was not granted? —(Interjection)— Ought we to consider whether the Statute of Limitations provides that power? I think that it does. The Statute of Limitations, I think, says something like the court has the right to extend the period of time under the Statute if the matter is brought to the court within, I think, one year after the cause is discovered. Mr. Scott is nodding his head and if that's right, Mr. Chairman, then I want to know whether this supersedes it — oh, yes, I think that the Statute also says, "in any other Act."

Mr. Chairman, I wonder if Mr. Balkaran could just confirm my impression and if so, then we can drop it? It says, 15(1) of the Limitation of Action: "Notwithstanding any provision of this Act or of any other Act of the Legislature limiting the time. The court, on application, may grant leave."

Does that then mean that in spite of this two-year period, the Statute of Limitations . . .

MR. BALKARAN: Can be extended by the court.

MR. CHERNIACK: It can? The court can extend the time. All right, that's fine.

MR. DEPUTY CHAIRMAN: 61 — pass; 62 — pass; 63 — Mr. Domino.

MR. DOMINO: Mr. Chairman, I move

THAT Bill 17 be amended by adding thereto, immediately after Section 63 thereof the following section:

Examinations and Certificates.

64 The University is, subject to this Act, the examining body in medicine in the province, and the University may grant to any person a certificate under the academic seal of the university that the person mentioned in the certificate is, by way of medical education, a proper person to be a member of the college; but the certificate shall not be granted until the person making the application has given such evidence of qualification by undergoing an examination or otherwise, as the by-laws, rules, or regulations of the university then in force may require; and the applicant shall in all other respects first comply with the rules and regulations of the university in that behalf.

MOTION presented.

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, this section, 64, was in the old Act and when this Act before us now was being drafted and put together, the intention was to put that section in the regulations. The Medical College and the Dean of the Medical College have expressed some difficulty with that. They wish to have it in the Act, so 64 would put it back in the Act and, in fact, it has always been there, sir.

MR. DEPUTY CHAIRMAN: 64 as amended — pass. Rather than me changing the numbers as we go along, I'm going to read off the old numbers and then we will change the numbers when I'm finished. 64(1) — pass; 64(2) — pass — Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I believe on 64 Mr. Cherniack had some concern as to whether 64 would give the right of an appeal from the erasing of a name from the register. I gathered you would want it to include erasing the name.

MR. CHERNIACK: That's right. My note says, amend to include 12(1). That's the erasing, isn't it? You do not feel that it's covered; that we have to add something in order to do it?

MR. BALKARAN: The closest you come to it is in Clause (a) which speaks of alteration and I'm not so sure that an alteration and an erasure is the same thing.

MR. CHERNIACK: Mr. Chairman, could we just add under (a) "a refusal, alteration or erasure of registration," just to ensure that there is that right?

A MEMBER: Under (d)?

MR. CHERNIACK: (d) would be better, that's fine. (Interjection)— You can't erase a member.

MR. DEPUTY CHAIRMAN: Do I have a motion?

MR. CHERNIACK: Yes, I would like it to be whatever is sensible, Mr. Chairman, whatever Mr. Balkaran think's it should be.

MR. BALKARAN: My suggestion would be, Mr. Chairman, that we say in clause (a) "a refusal," strike out "or" and add "after alteration or erasure."

MR. SHERMAN: Or erasing from the registration but the other word that could be used, Mr. Chairman, would be expunge — "an order suspending or expunging a member from practice."

MR. BALKARAN: No, no, no.

MR. SHERMAN: Or "an order suspending a member from practice or erasing the registration of such a . . ."

MR. CHERNIACK: "Erase from the register the name of," that's what it says.

MR. SHERMAN: Yes, "erasing the registration." Clause 12(1) and 12(2) talk about the registration of a person being refused, erased, etc.

MR. DEPUTY CHAIRMAN: Mr. Craik.

HON. DONALD W. CRAIK (Riel): Mr. Chairman, since the matter has been raised by the Legislative Counsel, why don't we let the Legislative Counsel draft his amendment?

MR. DEPUTY CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: The motion would read

THAT renumbered subsection 65(1) of Bill 17 be amended
(a) by adding thereto at the end of Clause (f) thereof, the word "or" and
(b) by adding thereto immediately after Clause (f) thereof the following clause: "(g) the erasure of the name of the person from the register."

MR. DEPUTY CHAIRMAN: There is one correction; we are not at 65 yet, we haven't changed the numbers.

MR. BALKARAN: Well, it's renumbered.

MR. DEPUTY CHAIRMAN: I haven't changed it yet. All right, we have a motion before the committee.

MOTION presented.

MR. DEPUTY CHAIRMAN: Clause 65(1) — I am going to call it 64(1) because I haven't changed it yet. 64(1) — pass; 64(2) — pass; 64(3) — pass; 64(4) — pass; 64(5) — pass — Mr. Cherniack.

MR. CHERNIACK: On (5) I have a suggestion that the court shall have the power to extend the time for filing because it says that if the transcript was not filed within 30 days, the appeal shall be deemed to be abandoned. Now it is possible that for various reasons the transcript is not available and therefore it seems to me the court should have the right to extend the time for filing, and I would like to move those words at the end, unless the court has extended the time for filing.

MR. SHERMAN: That's acceptable, Mr. Chairman. (Interjection)— Well, the section is there to avoid delaying tactics. The court can hardly be accused of delaying tactics.

MR. DEPUTY CHAIRMAN: Are you ready for the question? The motion before the committee is on 64(5). Is it the pleasure of the committee to adopt the amendment? (Agreed) I declare the amendment passed.

QUESTION put on the amendment; MOTION carried.

MR. DEPUTY CHAIRMAN: Clause 65(1) — pass; 65(2) — pass; 65 — pass; 66 — pass; 67 — pass; 68 — pass; 69 — pass; 70 — pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, on 70. It seems to me that if there is an offence against this Act it is a matter where the Attorney-General ought to launch the prosecution. Now that doesn't mean that you can't have a private prosecution but an offence under the Act should be dealt with like any breach of the law. If there is a private prosecution then why does it have to have Section 70 there? Firstly, the province can make an ex gratia payment, but this doesn't even mean anything, 70, because it leaves it up to the province to decide what to pay if they are going to pay at all. I am wondering if there could be a justification for 70.

MR. SHERMAN: Mr. Chairman, I would ask that that question be addressed by Legal Counsel for the college. It is obviously a highly technical legal question.

MR. DEPUTY CHAIRMAN: Mr. Scott.

MR. SHERMAN: Is Mr. Scott present?

MR. SCOTT: Sorry, Mr. Chairman, I was trying to catch up on the amendment to 64(5). I wonder, Mr. Cherniack, if you would mind repeating the question?

MR. CHERNIACK: I am suggesting firstly that the principle ought to be when there's a breach in the Act that it's the Attorney-General's Department that should prosecute it, but recognizing as I do that there are occasions where there could be a private prosecution, I am wondering why this section shouldn't just read any person may be prosecuted or a complainant under this Act, period. The rest of it to me is meaningless because the province shall pay, but then it says such portions of the fines that may be expedient to cover costs.

I don't think that fines which are assessed should be other than fines that go to the general revenue of the province where all fines go. Why should it be particular in this Act that there should be an indication that they ought to pay the prosecutor? And surely the college . . . May I quote Dr. Ewart, as saying $16,000 is only $10 a doctor? I frankly find this offensive to have this kind of provision.

MR. SCOTT: Firstly, Mr. Cherniack, let me say I think that Dr. Ewart feels that he has been misquoted with respect to the $16,000.00. We'll all recall C. D. Howe's famous quote, "What's a million," and what happened to him. The first part of Section 70 is there to cover the very situation that you described in the event that the Attorney-General's Department decides and I should indicate that recently the college was advised by the Attorney-General's department that they will not prosecute breaches of the Act and that that is a matter for the college. That is their official position at the present time, so that is the reason for that section. The rest of it, and again, I appreciate this is no valid reason for this committee. It has been in that form for many years and there are similar provisions, I am not saying identical, but similar provisions; as I sat here the other night and listened to debate and discussion on the other Acts, it struck me that there are somewhat similar provisions in a great many of the other Acts. Again, it doesn't make it right. (Interjection)— Well, and the province gets the other half.

The college has no strong position on this, Mr. Cherniack, except as I indicated at the present time the province has taken the position that prosecutions under the Act are a matter for the college and as such the college will obviously have to bear the costs of those prosecutions, so while there may indeed not have been a particular need or requirement for that provision in the past, in fact for the first time it may now be required, I should also indicate that in the last ten years there have been something like six or seven prosecutions in total for violations of the Act; each one, I believe, relating to individuals who were thought to be practising medicine when they were not licenced medical practitioners under the Act.

So it is a little used provision, and as I say it's not a section that the college feels strongly about, but I

do believe that given the present situation there is some justification for it that perhaps wasn't present in the past.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: May I ask, Mr. Scott, if the province was prosecuting in the past?

MR. SCOTT: Yes, Mr. Cherniack.

MR. CHERNIACK: The province did conduct prosecutions for people who were falsely holding themselves out to be doctors and now they have stopped, and this is a recent decision.

Well, Mr. Chairman, under those circumstances, I certainly think Mr. Scott has made a good case. We may have to deal with the Attorney-General as to why there is that change in policy but Mr. Scott seems to be right. If the council is forced to do the prosecution, then surely they ought not to do it for the benefit of the provincial purse without compensation for their costs. I withdraw my objections.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Scott. 70 — pass; 71 — pass; 72 — pass; 73 — pass; 74 — pass; 75 — pass — Mr. Domino.

MR. DOMINO: Mr. Chairman, I move

THAT sections 64 to 75 be renumbered as sections 65 to 76 respectively.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: Preamble — pass.

The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, we have not come to a conclusion on clause 28 that was held over and I propose to the committee that, with the exception of the one amendment that was accepted in the preamble which consisted of the words "for the purposes of the college", that the remainder of the section be passed as written.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I wonder, Mr. Sherman, if you could just remind us of why it was held back?

MR. SHERMAN: Well, it was held back because Mr. Walding had raised a question as to whether the benefit of members should be included and I have discussed that with officials of the college, they feel there are specific circumstances in which there is protection afforded here that would otherwise not be afforded and they feel it is a desirable section. If the committee would like to hear further representation from the college on it that's acceptable to me.

MR. CHERNIACK: I would like a reassurance that the council will not have the right to impose any form of mandatory pension or other beneficial insurance, and I exclude malpractice insurance because that's not beneficial in that term. Can the council under this require all members to buy term life insurance or pension?

MR. DEPUTY CHAIRMAN: Who is the question directed to?

MR. CHERNIACK: We're getting an answer so . . .

MR. SHERMAN: I'd suggest it go to the college, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Dr. Ewart.

DR. EWART: Well, I guess, yes, it could. We have nothing to do with that. The reservation that I would have, as the representative from the college, is that we will use such things as this insurance for members who perhaps will be asked to fly to Churchill, to cover the member and his family travel insurance, things like this. There are many manifestations of this. We have no desire to make anything compulsory. It would be shot down in flames the moment it was brought up. That's just not the function of the college, is really what I'm trying to say. We don't want to limit it because there are so many manifestations of things such as I have just mentioned, the travel insurance, that come up almost on a routine basis that we might be using, that's all, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Thank you, Dr. Ewart. 28 — pass; Preamble — pass; Title — pass; Bill be reported — pass. That completes Bill No. 17.

BILL 18 — THE PHARMACEUTICAL ACT

MR. DEPUTY CHAIRMAN: Bill No. 18, The Pharmaceutical Act. Mr. Domino are you ready to go? Have you got amendments to the bill? Bill No. 18. 1 — pass; 2 — pass.

Mr. Walding.

MR. WALDING: Mr. Chairman, I have a few notes, here after looking through the bill and I see that "lay members" does not appear in the definition section; yet, I believe the term appears in 5(1) and perhaps other places, too. I wonder why that is?

MR. DEPUTY CHAIRMAN: It would appear that there's been an oversight Either an oversight, or done deliberately? But, I think, we assume that we all know what lay members are. Do you want to know what lay members are?

MR. WALDING: No, I just want to know why it's not in the definition section as it is in, at least, the three nursing bills that we passed last year?

MR. RAE TALLIN: I didn't draft the bill but I would presume that the language in any bill is dealt with in the context of the bill. If there's anybody who doubts that the interpretation of a lay member in the context of a Pharmaceutical Act would be a person who is not a pharmacist then I don't know what kind of problems we'd end up with. The mere fact that it's defined in other Acts doesn't necessarily mean it's necessary to have been defined there; it may have been some quirk of the draftsmen of those Acts.

MR. WALDING: No big deal, Mr. Chairman, I just raised it because I noticed a difference, that's all.

MR. DEPUTY CHAIRMAN: (2) — pass; 3. pass; 4. pass; 5(1).

Mr. Jenkins.

MR. JENKINS: We had a representation last night from the Manitoba Health Organization, I think they asked that, rather than specifying two lay members that there should be a percentage basis used. Has there been any thought given to that recommendation that came from the Manitoba Health Organization?

MR. SHERMAN: Mr. Chairman, this conforms to a considerable degree with some of the legislation that's been dealt with at this session in terms of total membership and the amount of that total membership that's made up by lay members. I would agree that we have gone into percentages in the nursing legislation. I understand from Legislative Counsel however though, and Legislative Counsel may want to comment on this, that that has created some difficulties. The decision to specify a percentage, it is meant that some of the professional bodies and associations have had to make difficult and unwieldy adjustments in the size of their governing bodies to accommodate a percentage in a fair way and the members of the Pharmaceutical Association evidently felt that this was a more expedient way to deal with it, 2 out of 8.

MR. CHERNIACK: They said 2 out of 10.

MR. TALLIN: It says, not fewer than 8 members.

MR. CHERNIACK: They said that they have 10 members and they want to add two lay people.

MR. SHERMAN: Counting the ex-officio members, right.

MR. CHERNIACK: No.

MR. SHERMAN: Yes.

MR. CHERNIACK: Including these ex-officio?

MR. SHERMAN: They said they would, as I recall, they probably would go to 10. If you add the ex-officio members in you'd get 10.

MR. CHERNIACK: I think the principle of percentage is a valid one because by increasing the membership of the board when they have a fixed number of lay members then the lay members disappear substantially. In the nurses, we said . . . Ah, I see the point. Twenty-five percent of who means you've got an unwieldy board. If you said not fewer than 25 percent then they could have 28 percent; there's no problem there.

MR. SHERMAN: That's right, but I remember we spent a long time trying to work out the wording in that connection last year and the final conclusion we came to, on the advice of the Legislative Counsel, was to just go with the term 25 percent but that has produced some difficulties.

MR. CHERNIACK: I can see that. Mr. Chairman, I'm just wondering instead of where it says "2 of whom shall be lay members"; if we say, "and not fewer than 20 percent shall be lay members", would that not take care of that?

MR. SHERMAN: Well, Mr. Chairman, it would. I think it's a minor point. I'm not sure what the sponsor of the bill, namely yourself, Mr. Chairman, might feel about it or the legal counsel to the association may feel about it. I have no particular hang-up on it but the request was for this wording and this differentiation, and I find it acceptable.

MR. CHERNIACK: May we ask, is it Mr. Haig? May we ask if they'd object to no fewer than 20 percent being lay?

MR. DEPUTY CHAIRMAN: Mr. Haig would you care to speak at the microphone?

MR. GRAEME T. HAIG: Mr. Chairman, the question, I understand of Mr. Cherniack is the matter of the number of lay representatives to be on council.

MR. CHERNIACK: As being a proportion of the total, so that if you increase it to 100 members then the 2 would be insignificant, so . . .

MR. HAIG: That would undoubtedly be the case. The practicality of the thing is, for an organization having the number of members that the Pharmaceutical Association has, a council consisting of 10 people is about the largest practical council and of that number, if you have 2 lay members that is a substantial percentage. The main concern is not the number of lay members but their quality and that they are actively involved and, as you will see later in the bill, it requires that they participate, for example, in the discipline proceedings so that those are the critical areas for lay representation, in our opinion.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Haig.

MR. CHERNIACK: Mr. Haig, there are 800 members?

MR. HAIG: Yes. There are 800 members but they are divided in districts and the representation on this council is by district, as you'll see in section 6.(1). There are electoral district established and these are represented by one member from each of such districts, and that's why the likelihood of any substantial increase in the number of members of council is small.

MR. DEPUTY CHAIRMAN: Mr. Craik.

MR. CRAIK: Mr. Chairman, only to comment that if you're going to use a percentage to get the next even number, you'd have to go to 12. So, you're talking about the practicality of the matter and as long as you have lay representation on here that's the important matter and you've got 2. An even number at 2 is probably more practical a state than trying to state a percentage. What do you do if you're at 10? You've then got 2 and a half.

MR. DEPUTY CHAIRMAN: I think, to the members, it's been established that it's not a matter of great discussion at this point and that it's acceptable that 2 lay members, as written in the bill, is acceptable.

MR. DEPUTY CHAIRMAN: 5(1) — pass.
Mr. Walding.

MR. WALDING: Mr. Chairman, I think you might have been going a bit too quickly. I wanted to ask a question under 4.

MR. DEPUTY CHAIRMAN: All right, we'll revert to 4. 4, Mr. Walding.

MR. WALDING: The last few words in section 4, "for any other purpose required by the association." It seems to me to be very wide, almost excessively wide, and it goes back to a conversation that we had over the Medical bill on a similar item.

MR. DEPUTY CHAIRMAN: Is it just as a remark or are you looking for an answer?

MR. WALDING: No, I'm looking for a comment. I'm not sure from whom, maybe from the Minister or from the association themselves.

MR. SHERMAN: Well, the difference, as I see it, Mr. Chairman, is that it's specifically spelled out here in the original wording that were talking about purposes required by the association, and I would think that that's consistent with what we have done in the preceding legislation.

MR. WALDING: I look to my colleague, Mr. Cherniack, to see if those words will cover the concern in section 4.

MR. JENKINS: What would be added under this Act?

MR. DEPUTY CHAIRMAN: Are there any other comments?

MR. CHERNIACK: Does Mr. Tallin agree that there's a limitation there? Any purpose required by the association is . . .

MR. TALLIN: It's very similar to the words that were added in the Medical Act which were just for the purposes of the Association.

MR. DEPUTY CHAIRMAN: 4 — pass; 5(1) — pass; (2) — pass; (3) — pass; 5 — pass; 6(1) — pass; (2) — pass; (3) — pass.

Mr. Domino.

MR. DOMINO: I move

THAT Section 6(3) of Bill 18 be amended by striking out the word "a" in the 3rd line thereof, and substituting therefor the words "and elected".

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: (3) as amended — pass; (4) — pass; (5) — pass; (6) — pass; (7) — pass; (8) — pass. Have I got somebody holding a hand? Mr. Walding.

MR. WALDING: Mr. Chairman, in this section 6(7), it says that lay members of the council are those people who are not licensed pharmacists, which is fair enough. It also says who have never been licensed pharmacists. What is the significance of those words? Why should not a retired pharmacist be a suitable lay person for the government to appoint to the board?

MR. DEPUTY CHAIRMAN: I can answer but I would think — The Honourable Mr. Sherman.

MR. SHERMAN: Well, I don't want to pre-empt your answer, Mr. Chairman. My answer is because the association doesn't want them. (Interjection)—

MR. WALDING: Mr. Chairman, I can understand Mr. Downey's remark that they don't want a practising pharmacist. I would agree that is obviously not a lay member, but I'm still waiting for an explanation of why it could not be possible or even advantageous to have a lay member who has some knowledge of the pharmacy, from previous experience.

MR. SHERMAN: Well, I take the view, Mr. Chairman, that that defeats the purpose of lay membership. The value of lay membership is that a disinterested, hopefully objective, disinterested, dispassionate party is added to a decision-making or policy-making body.

A retired pharmacist could hardly fit into that category and it's the view of the association that by lay members, they want disinterested objective third party members.

MR. WALDING: Well, Mr. Chairman, the Minister says that this is what the association wants. He is the Minister — it's a matter of what the Minister wants or what his views are on the matter, but I would also point out that if there is some concern about this matter being disinterested and dispassionate, etc., those persons are still appointed by the Lieutenant-Governor-in-Council. If the Cabinet feels equally strongly on the matter, then they would not name someone who was an ex-pharmacist anyway. But I would still like to hear from the association, what is their objection to that particular act.

MR. DEPUTY CHAIRMAN: Mr. Haig, would you care to answer that? Mr. Haig.

MR. HAIG: The purpose of restricting the lay membership to persons who are not and never have been practising pharmacists in the province is to ensure that the representation is a community representation; that it is not an additional two members of Council who have some pharmaceutical background. That isn't the background that this council requires in order to be responsive to the public need and the problem which can arise is that a pharmacist who ceased to be licensed, may be ceased to be licensed as a result of a disciplinary proceeding.

More often he may be ceased to be licensed as a result of having retired, at which point it is the experience of the association that within three years a pharmacist who has not maintained his practise and his professional education, is no longer competent to practise pharmacy without some additional education, so you gain very little from the experience of a pharmacist who formerly practised.

What you do gain we hope is, particularly in disciplinary proceedings and things of that kind, is the objective dispassionate view of people who have no involvement with the profession as such.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, the effect of this would be to prevent the Cabinet from doing something that it might want to do.

MR. HAIG: Well it might. but I think the Cabinet in their own wisdom would find that if this was objectionable that an amendment to the Act could be made, but when you talk about lay members of a Council, you certainly don't want former lawyers; we keep former lawyers in Stony Mountain or wherever they may be. We don't want former doctors, who were ineligible to practise, as lay members of those councils.

The whole concept of having representation of the public on a council of this kind is defeated if the people we place there are simply retreads or former members of those professional associations. What we're trying to do is to give a public window into the workings of the association to add to the deliberation of the association the wisdom of people who aren't affected by the bias and prejudice of those who practise the profession.

MR. DEPUTY CHAIRMAN: Thank you very much, Mr Haig.

MR. WALDING: Mr. Haig, I realize what you are getting at in the principle involved in it. I just wanted an explanation of that aspect of it, that's all.

MR. HAIG: Thank you, Mr. Chairman.

MR. DEPUTY CHAIRMAN: 6(7) — pass; 6(8) — pass.

Mr. Cherniack.

MR. CHERNIACK: 7(2) and 7(3), . . .

MR. DEPUTY CHAIRMAN: No, I'm not there yet, I'm . . .

MR. CHERNIACK: You said 7, pass . . .

MR. DEPUTY CHAIRMAN: No, I'm sorry. I meant 6(8) — pass; 6(9) — pass; 6 — pass.

Mr. Walding.

MR. WALDING: Mr. Chairman, under 6(8), can we have an explanation of why the term of the lay members overlaps by a year?

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, this is not an unusual practise in appointing members to councils and boards of self-governing professions or, for that matter, government committees and commissions and agencies. The objective is to maintain some continuity between changes in membership while establishing the new council. We have got staggered appointments of this kind in a number of committees and boards and agencies to which the government makes appointments.

MR. WALDING: Mr. Chairman, if the concern is continuity I wonder why it's worded differently in this Act than in other Acts which provide for Lieutenant-Governor-in-Council to nominate lay members for an indefinite time until replaced.

MR. SHERMAN: Well, there certainly is variation, Mr. Chairman, I wasn't attempting to suggest that there is absolute conformity to any one concept. I am merely saying that this is not unusual in appointments in the cases to which Mr. Walding refers where he's talking about appointments at the pleasure of the Lieutenant-Governor-in-Council. Those indeed can be maintained to any length or changed at any time but there is also a strong case that can be made for specified terms of office and the government has no particular ideological perspective on either of those methods. The association would like to have specified terms in this case but would like to have a provision for some continuity in the initial stages. We didn't see any difficulty with the proposal.

MR. WALDING: Further to the Minister's last remark, Mr. Chairman, about arguments that can be made for, you know, a specific term; is he speaking only of the professional asscciation Acts or government appointments generally? If he is speaking only of professional Acts then I want to know what is different about this board than other Acts?

MR. SHERMAN: Well, I wasn't speaking only of professional Acts, boards, or bodies, Mr. Chairman; I would apply that attitude to appointments to government boards too.

MR. WALDING: My comments are only to do with the comparison of different Acts. I'm wondering why you choose or permit this to be different from others.

MR. SHERMAN: Well, I'm not sure that I can answer in any other way than I did, Mr. Chairman. Certainly it's desirable to have conformity and uniformity up to a degree in our professional health legislation but where there are some minor differences in the approach that various individual associations may wish to take to their method of maintaining and reinvigorating the memberships of their boards or councils, we accept those, after examination, as being requested in the best interests of the association to meet its responsibilities, maintain its level of activity and guarantee sufficient fresh input of ideas and motivation. I don't think that uniformity and conformity has to extend to every aspect of our health legislation as long as the principles are universal.

MR. WALDING: I'll accept that, Mr. Chairman.

MR. DEPUTY CHAIRMAN: (7) — pass; (8) — pass; (9) — pass; 6 — pass; 7(1) — pass; (2) — pass.

Mr. Cherniack.

MR. CHERNIACK: For one thing I just want to comment. I think it's a pretty well-drawn Act and it does take care of features that we didn't find in The Medical Act and I think this is better for it but I do think that notice of a meeting is very important and I would like to think that it should not be the time of notice should be in the legislation rather than in the by-law because I think it can be fixed I would invite Mr. Haig to suggest the number of days notice and agree to insertion in the section to say something like, "notice of the time and place shall be given at least so many days in advance thereof in the manner provided by the by-laws."

MR. DEPUTY CHAIRMAN: Mr. Haig, would you care to answer?

MR. HAIG: Mr. Chairman, we would have no objection to arriving at a term similar to the one that was done with the other Acts, 21 days for example; it's quite acceptable.

MR. DEPUTY CHAIRMAN: The legal counsel, Mr. Balkaran. Can we write that in; 21 days?

MR. CHERNIACK: Well, I'm just suggesting; I'd like Mr. Balkaran to make the decision. I thought to say, "Notice of the time and place of the meeting shall be given" and insert there, "at least 21 days in advance thereof in the manner provided by the by-laws." So it's an addition of the words "at least 21 days in advance thereof."

MOTION presented and carried.

MR. CHERNIACK: In 7(3) I would assume the same would apply and I thought it would fit in in the last line after the word "prescribe" saying "at least 21 days in advance thereof," and I move.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: (2) as amended — pass; (3) as amended — pass; 7(4) — pass.
Mr. Walding.

MR. WALDING: Mr. Chairman, can I just enquire of the association the reason for a quorum for a general meeting being 25 out of 800 members seems a very tiny fraction and not the usual 50 percent or maybe 33-1/3 percent in many associations. Have there been problems in the past in getting 25 people or more to a meeting?

MR. DEPUTY CHAIRMAN: I would believe that would be the reason.

MR. SHERMAN: Plus the fact, Mr. Chairman, that a considerable portion of the membership is situated in rural Manitoba and, as a consequence, when some necessary business is required it is obviously more expedient to deal with a limited group of the membership. Mr. Haig may want to comment further on that.

MR. HAIG: . . . because, Mr. Chairman, that there's a great deal of routine business that is required to be dealt with by the general meeting of an association. It's called annually; a great many more than 25 people attend but, at the particular business session, this association is no different from any other. It is extremely difficult to establish and maintain a quorum during the whole of the business session and it would frustrate the ability of the organization, the association, to carry out its duties and responsibilities if the quorum were to be so great as to make it difficult to establish and maintain during such a meeting.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Haig.
Mr. Walding.

MR. WALDING: Can I ask Mr. Haig. he mentioned other general business meetings, are there then several total membership meetings held throughout the year?

MR. HAIG: There can be. It depends on what the requirements and the nature of the business of the association might require. For example, if the decision is made to institute a group, a fire and casualty insurance scheme for the benefit of the businesses of member pharmacists, that could not be implemented without the approval of the association at a general meeting and it would be called specifically for that purpose. It would be necessary to have a quorum of 25 at that meeting in order to deal with that business.

MR. WALDING: It surprised me when, after we had heard from the doctors who said they didn't have even one general meeting a year and they had less than twice as many members, but they trusted their executive, or their council, to handle those things for them.

MR. HAIG: Well, I think this association does too but the experience is that a substantial amount of professional advancement, education and updating occurs at annual meetings and consequently the view of the association is that the professional members of the association benefit from it, as do the public, so they have continued to strongly support the holding of regular meetings.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Haig.
(4) — pass; (5) — pass; 7 — pass.
Mr. Jenkins.

MR. JENKINS: Just before we pass this item, I want to congratulate the Pharmaceutical Association itself. I think that we have here seen far more democracy in action than we have seen in the previous bill that we were discussing. I like the layout that is here. It is good; it shows that the members of the association are operating in a democratic fashion and I can't, in all truth, say that for the Act that we considered previously, The Medical Act.

MR. DEPUTY CHAIRMAN: 7 — pass.
Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I think a good deal of that credit should go to the sponsor of the bill.

MR. DEPUTY CHAIRMAN: Thank you very much. Naturally I had a lot of guidance and a lot of help and I didn't do that much to contribute to it, but thank you for your kind remarks.
8 — pass; 9(1) — pass; (2) — pass; (3) — pass; (4) — pass; 9 — pass; 10 — pass; 11(1).
Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I am concerned about the provision of fines. I'm not really familiar with professional legislation that fines its members, money fines. I don't recall the extent to which other professional bodies impose money penalties on their members. They suspend them; they dismiss them; they wipe them off the rolls, but to be able to buy your way out with a fine, to the improvement of the treasury of the organization, is something that I question. I am guessing that this is not new, although

I don't have the present Act before me. I am wondering whether this is a justifiable provision, that they should be able to impose fines.

MR. SHERMAN: Mr. Chairman, I would have to refer that question to legal counsel for the association.

MR. DEPUTY CHAIRMAN: Mr. Haig.

MR. HAIG: Mr. Chairman, the Act which preceded this bill specifically provided the responsibility of the association for dealing with its members in certain offences and also complaints are issued under The Food and Drug Act of Canada and under various public statutes; where prosecutions are taken through the association by the complaint and discipline procedure, rather than, as may often be the case, under a federal or provincial statute affecting the handling of poisons, chemicals, drugs or what have you.

Historically this association has levied fines where the nature of the penalty, for example, Mr. Chairman, were we in the community of Waskada to suspend the pharmacist we effectively remove from service in that community the provision of pharmaceutical services and any meaningful suspension is going to be for a period of time which would jeopardize the nature of that enterprise. The pharmacist is not only a professional practitioner he is a commercial businessman in the community. So it has been a long understood and I think widely accepted practice that there are certain instances where fines are appropriate.

I wouldn't like to suggest by that answer, Mr. Chairman, that fines are used in substitution for penalties of a more severe nature which are justified by the misbehaviour of members and there are suspensions; there are temporary suspensions; there are total removals from the register which can occur for very serious offences under the section. But the nature of some of the fines in this particular profession, Mr. Chairman, the nature of some of the offences is such that a fine is really appropriate and is a substantial deterrent. For example, recently a member of the association was fined, and fined fairly substantially, for selling prescription drugs without prescription in substantial amounts over a fairly lengthy period of time. The evidence at the hearing disclosed that he had them pre-packaged under the counter ready for sale, $10.00 a bag, for a prescription drug which is a mood-altering drug and one which is very popular in certain parts of the community. He was carrying on a commercial venture of that kind. He was fined and he was also suspended. One of the reasons, of course, for the fine was that he was in breach of a statute but it had been dealt with by a complaint through the association by the Federal Food and Drug Administrator.

MR. CHERNIACK: Mr. Chairman, we now have the scenario of a man who commits what I assume is a very offence in law and Mr. Haig says he was penalized under the particular statute, prosecuted by whom?

MR. HAIG: A complaint was laid to the association that one of our members . . .

MR. CHERNIACK: By whom?

MR. HAIG: The complaint was laid by the Federal Food and Drug Administration.

MR. CHERNIACK: Okay. And he was then convicted and a sentence was imposed for that offence.

MR. HAIG: Yes.

MR. CHERNIACK: Now, on that basis, I would expect the Pharmaceutical Association to throw him out or suspend him for a period of time.

MR. HAIG: They threw him out permanently, if I'm . . .

MR. CHERNIACK: Threw him out permanently? Well, how could they even impose a fine?

MR. HAIG: They did for one of the offences. He had a number of offences for which he was charged.

MR. CHERNIACK: Did he pay it?

MR. HAIG: He paid the fine.

MR. CHERNIACK: Did he have to pay it?

MR. HAIG: Yes, and he did pay it.

MR. CHERNIACK: Why did he have to pay it, because you provided that he should?

MR. HAIG: Because it was provided that he should and because he was charged with and subsequently found guilty of a number of offences.

MR. CHERNIACK: But he paid the penalty prescribed by law.

MR. HAIG: He did.

MR. CHERNIACK: And you imposed an additional penalty on him?

MR. HAIG: No, he paid the penalty imposed as a consequence of this hearing. There were no charges laid under The Food and Drug Act. There were complaints laid under The Pharmaceutical Act, and the complaints were, and you'll see, I think, that a pharmacist found guilty by the council of conduct detrimental to the public interest, or wilful negligence or misconduct, that is a broad enough definition of a person who acts in contravention of the provisions of The Food and Drug Act and sells a prescription drug without a prescription, or a prohibited poison.

MR. CHERNIACK: You mean the federal authority doesn't prosecute him?

MR. HAIG: They very often will elect to proceed through the association; lay a complaint through the association and utilize the association's complaints procedure to deal with that pharmacist, rather than . . .

MR. CHERNIACK: Why is that the case?

MR. HAIG: I think basically it's because the resources of the Food and Drug Administration, both in terms of investigative and prosecuting resources in

this community are very small. There are only one or two inspectors available in the whole province.

MR. CHERNIACK: So their inadequacy in policing their own legislation . . .

MR. HAIG: That is part of it.

MR. CHERNIACK: . . . puts on you the onus to do that?

MR. HAIG: Yes, but I may say this to you, that in my experience as counsel for that organization, there have been a number of instances where the council have refused to deal with the complaint, on investigation. They felt that there was inadequate grounds for a proceeding or if they had conducted a hearing have refused to convict.

MR. CHERNIACK: Mr. Chairman, my problem is trying to understand the role of a professional body which is now involved in criminal prosecutions and conducting a business and dealing with businessmen who can be called upon to pay a fine and would be allowed to stay in business to serve a community. It opens up doubts in my mind as to the purity of a professional society, as I have . . .

MR. HAIG: One of the reasons, of course, Mr. Cherniack, is that this is a longstanding historical responsibility of the association. You will note that in the bill that is before you there is no reference to fines per se. We specifically deleted that. I think that basically the association will impose such penalties or censure or suspension or expulsion as it's authorized by its by-laws, approved by the Lieutenant-Governor-in-Council, to do.

MR. CHERNIACK: The fact that you changed the word from "fines" to penalties does not mean that you do not intend to impose fines.

MR. HAIG: It means that if we pass a by-law under Section 11 which authorizes the imposition of fines they cannot be imposed until such time as that by-law has obtained the sanction of the Lieutenant-Governor-in-Council.

MR. CHERNIACK: I am aware of that. I am really not too sure the extent to which the Lieutenant-Governor-in-Council can impose fines. I would like to ask Mr. Balkaran or Mr. Tallin, can a regulation passed by the Lieutenant-Governor-in-Council, an Order-in-Council, impose a money fine on infractions of the law?

MR. DEPUTY CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Not ordinarily, Mr. Chairman, but if it's authorized by the Act it can.

MR. CHERNIACK: Do we have such legislation?

MR. DEPUTY CHAIRMAN: Mr. Tallin.

MR. TALLIN: I can't recall any offhand but I think you are referring to the rules on review of regulations?

MR. CHERNIACK: Yes.

MR. TALLIN: It's considered to be bad form but if the Legislature specifically authorizes the making of a regulation fixing a fine, I would think that that would be the end of it.

MR. HAIG: The existing Pharmaceutical Act, Mr. Chairman, specifically provides for the levying of fines.

MR. CHERNIACK: Mr. Chairman, I want to draw to the Minister's attention, and to the Committee's attention, that this, to me, is a very unusual power given to both the Pharmaceutical Society and to the Lieutenant-Governor-in-Council, the imposition of fines, no limits. It could be taken to a ridiculous extreme. As long as the council and the Lieutenant-Governor-in-Council agree then you can impose penalties of a substantial nature, and apparently legally because of the drafting of this legislation. I don't think it's right. The fact that it's been there . . . Well, 11(1)f) and (g). I am quite sure that they can pass a by-law. —(Interjection)— Yes, yes.

MR. DEPUTY CHAIRMAN: Mr. Tallin.

MR. TALLIN: Oh, I think most of the associations have that.

MR. CHERNIACK: I'm not really aware of that but Mr. Haig says that there are many occasions where the food and drug people will lay a complaint before the council and the council then proceeds to hold a hearing on a breach of the Food and Drug Law and then the council will impose a fine. The fine of course has to be set out in the regulations and under 11(3) approved by the L.G. and C.

MR. HAIG: I should make it clear, Mr. Chairman, that when I give that answer I am dealing with the existing legislation, the penalties and the offences that are described therein. They are not included in this. No by-law dealing with the imposition of penalties under either 11(1) (f) or (g) has any effect whatsoever and cannot be implemented until the Lieutenant-Governor-in-Council has approved it.

MR. CHERNIACK: Yes, that's right, but what you are proposing here is in line with what you now have. Is that right, Mr. Haig? You are not asking for anything new?

MR. HAIG: No, we are not asking for anything new.

MR. CHERNIACK: You have this power now, you are asking to have it continued . . .

MR. DEPUTY CHAIRMAN: Order please. We are getting into a debate, an argument, and I'm losing control. I think if we are going to get at least on to Hansard that it better be that you be recognized before you make your statements please, to all of the members.

The Honourable Mr. Sherman.

MR. SHERMAN: I am not sure whether Mr. Cherniack had completed and I don't want to interrupt, but I am just wonder has he looked at 11(3) in concert with 11(1)?

MR. CHERNIACK: Mr. Chairman, really when I referred to Mr. Haig, I was just looking to him to

confirm what he had already said, I'm not discussing this with him. I am drawing this to the attention of the Minister, to tell him and confirm with him what Mr. Tallin said, that it is most unusual for the Lieutenant-Governor-in-Council to bring in an Order in Council imposing a fine. Now he says it can be done if the legislation permits it to be done, but he agrees that it's unusual. He can't think of a case where it was done and it is contrary to the House description under Statutory Regulations. Is that right, Mr. Tallin?

MR. DEPUTY CHAIRMAN: Mr. Tallin.

MR. TALLIN: I would have thought that those rules for the review of regulations would have said, "except where specifically authorized by an Act."

MR. CHERNIACK: So that means this is an extraordinary provision although it's not new, newly requested, it's still pretty extraordinary. It means that a combination of the council meeting in private and the Cabinet meeting in private can determine very substantial financial penalties against a professional which will not necessarily remove him from practising his profession but impose a payment that he has to make to the Pharmaceutical Council for a breach of the law — I'm not saying a breach for unprofessional unconduct — I'm saying for a breach of the law of The Food and Drug Act. I find it so unusual I don't know what to suggest at this stage, except I am wondering whether we ought to perpetuate what I would like to question and research much more than we have time to do.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, it is unusual but the profession that we're dealing with is unusual in relation to other health professions. I think really that's where the common usage derives and that's where the justification for these provisions lies. Of course other health professionals work for gain but they don't work in direct commercial enterprise. They do not have the double function of being in addition to a professional, a commercial entrepreneur in the conventional sense and a pharamcist does, so I agree with Mr. Cherniack when he says that this is unusual but I think we are dealing with an unusual type of professional.

MR. DEPUTY CHAIRMAN: Mr. Anderson, would you give me that motion please? I would like to get the motion on the book and then we can carry on with the discussion.

MR. ROBERT ANDERSON (Springfield): Mr. Chairman, 11(1)(l)?

MR. DEPUTY CHAIRMAN: That's right.

MR. ANDERSON: Mr. Chairman, I move that Clause 11(1)(l) of Bill 18 be amended by striking out the words, "or regulations" in the second and third lines thereof.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, I had a question on (g).

MR. DEPUTY CHAIRMAN: Well we have been taking the whole of 11(1) together and I should have allowed the motion at the very beginning and then discussed the whole thing. Are you ready for the question? Mr. Cherniack.

MOTION presented and carried.

MR. CHERNIACK: (f) and (g) are the ones I raised.

MR. DEPUTY CHAIRMAN: Yes, okay, now we're on to it.

MR. CHERNIACK: Mr. Sherman is leaving but it seems to me — no he is discussing something there. It seems to me there is nothing that a pharmacist can do that a medical practitioner can't do. I am under the impression a medical practitioner can do all the things and compound drugs and sell drugs — I believe so — and if that is the case if I am right, then it's not as if the pharmacists are unique. The fact that in a commercial enterprise, I'm just shocked that the Federal Food and Drug don't do their own prosecutions. It seems to me if they have a law they ought to be prosecuting them and not leaving it for the professional body to do it.

As I say, I don't know just how to handle this but it certainly seems wrong to me.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, could I ask Mr. Cherniack so that I can identify for myself what his basic disagreement with this proposal is, whether he would be happier if we removed Clause 11(3)?

MR. CHERNIACK: No way, at least that gives some protection but it still puts an onus which I think the Legislature ought to have. If there are fines to be imposed then I think the Legislature ought to be doing them. I don't think they ought to be done by a council nor by the L.G. and C but I'd rather the two of them were involved in doing it, the complicity of doing it, than just the council. As I say, at this stage I wouldn't know what to suggest should be done except I am expressing my dismay.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Downey.

MR. DOWNEY: I appreciate the concern that the honourable member has, Mr. Chairman. I think probably the best way to resolve it would be if he has an amendment or a proposed amendment, I realize the dilemma that he's in. If he has an amendment he should introduce it, we could see how it reads and vote on it or proceed to vote on the bill as it is, because it has been practised and it hasn't apparently caused any great hardship so I think we have to proceed on this bill.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I agree with Mr. Downey, I may bring in a six-month hoist on this thing, but I agree that we ought not to hold up the consideration.

MR. DEPUTY CHAIRMAN: Are you ready for the question on Section 11(1)? Mr. Balkaran, we have a correction.

MR. BALKARAN: Mr. Chairman, in Clause (f), I wonder if the committee would agree to a correction in the third and fourth line thereof, the reference to the revised Statutes of Manitoba should really read, "coming into force of this Act".

MR. DEPUTY CHAIRMAN: Rather than the revised Statutes of Manitoba.

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: Clause 11(2) — pass — Mr. Walding.

MR. WALDING: Mr. Chairman, you have another amendment on the floor, I assumed that's what we were voting on.

MR. DEPUTY CHAIRMAN: That's correct.

MR. WALDING: Then why are you moving to 11(2), we are still on 11(1).

MR. DEPUTY CHAIRMAN: I just passed 11(1) as amended, I'm sorry.

MR. WALDING: No, Mr. Chairman, we voted on the amendment and we approved the amendment. I'm assuming we are still on 11(1).

MR. DEPUTY CHAIRMAN: All right, you want to carry on the discussion on 11(1)?

MR. WALDING: Yes.

MR. DEPUTY CHAIRMAN: Clause 11(1) — Mr. Walding.

MR. WALDING: Mr. Chairman, I wanted to ask a question under II(1)(g), why the reference to the appeal has been dropped from the old Act. Mr. Chairman, is there an appeal procedure under some other section and if so, what is it?

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: I haven't got the section in front of me, Mr. Chairman, — yes 15(7).

MR. DEPUTY CHAIRMAN: Well rather than get into any difficulty, if it's the pleasure of the committee I will go to 11(1)(a) — pass; (b) — pass; (c) — pass; (d) — pass; (e) — pass; (f) as amended — pass; (g)(i) — pass; (g)(ii) — pass; (g) — pass — Mr. Walding.

MR. WALDING: Mr. Chairman, can I have an assurance, perhaps from Mr. Haig, that 15(7) covers the provision in the old Act about the right of appeal for suspension or expulsion?

MR. DEPUTY CHAIRMAN: Mr. Haig.

MR. HAIG: Yes, I can give that assurance without qualification.

MR. DEPUTY CHAIRMAN: (h) — Mr. Walding.

MR. WALDING: Who does the appeal go to?

MR. HAIG: Mr. Chairman, the appeal goes to the Council of the Association. If the appellant is not satisfied with the decisions of the Council of the Association, he may proceed on an originating Notice of Motion to a judge of the Court of Queen's Bench.

MR. DEPUTY CHAIRMAN: (h) — pass; (i) — pass — Mr. Walding.

MR. WALDING: Can I ask what association or what organizations the council might give assistance pecuniary or otherwise to?

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: We would have to ask the association.

MR. DEPUTY CHAIRMAN: Mr. Haig.

MR. HAIG: Mr. Chairman, the association of professional pharmacists which was created to be a representative organization of pharamcists in the province for the purpose of dealing with the government on the question of prescribing fees and practices, is a typical example and that association when it was established was assisted in getting established and organized by funds provided by the Pharmaceutical Association.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. WALDING: Can I ask further of Mr. Haig or perhaps of Mr. Balkaran whether the word organizations stands separate from the word pharmaceutical? In other words is it pharmaceutical associations and pharmaceutical organizations or organizations of any sort or type?

MR. DEPUTY CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: I would think it would be an organization of any sort, Mr. Chairman.

MR. WALDING: Including a political party? I think my question to Mr. Balkaran was, would the word "organizations" include, for example, a political party.

MR. DEPUTY CHAIRMAN: Did you not answer that?

MR. BALKARAN: My answer was yes, Mr. Chairman.

MR. WALDING: Then I suppose have a question to Mr. Sherman as to whether that is a proper power to give to an organization charged with protecting the public against pharmacists, to give them the power to make contributions to political parties, for example?

MR. SHERMAN: Mr. Chairman, I don't read the clause the way legislative counsel reads it. I stand to be corrected but I think we're talking about pharmaceutical associations or organizations where, in the opinion of the council, the assistance will be of benefit. I would have to ask for further legal

clarification of that point, but that's the way I read the section. Insofar as the question posed by Mr. Walding, I see it as a hypothetical question in the circumstances but that doesn't alter my ability to answer it and my answer would be, no. I wouldn't see that as an acceptable practice by a professional health body charged with maintaining standards, ethics and forms of practice in the health field. Individual members of the association, of course, are entitled to do whatever they want.

MR. WALDING: Exactly, Mr. Chairman, but since Mr. Sherman seems to share my concern that the power to do that very thing is there, would he have any objection to its removal or suggestions as to how that could be avoided? If his interpretation is correct, then a political party obviously would not be a pharmaceutical organization. I'm not sure if Mr. Balkaran has a suggestion to clarify it. Maybe the word, ''pharmaceutical'' in front of the word ''organizations'' also might take care of it.

MR. CHERNIACK: I have a suggestion. I have just looked up the definition of association and it is ''an organization of persons having a common interest'', which makes it appear as if it's redundant to say association or organization and I think if we you take out the ''or organization'' then clearly it because pharmaceutical association. I haven't looked up the definition of organization, yet.

MR. DEPUTY CHAIRMAN: What is agreeable?

MR. SHERMAN: It's agreeable to delete the words ''or organizations''.

MR. DEPUTY CHAIRMAN: (i) as amended — pass; (j) — pass; (k) — pass; (l) as amended — pass; (m) — pass; (1) — pass.
Mr. Cherniack.

MR. CHERNIACK: Under 11(1), is the provision for admission to the Association, Society, or whatever it's called in this case. I think that's correct and I want to know where the appeal lies by a person who is denied admission into the association? Looking as I do at, is it 15(7)?

MR. BALKARAN: 21(3)

MR. CHERNIACK: 21(3). Okay, thank you.

MR. DEPUTY CHAIRMAN: 11(1) — pass; 11(2).
Mr. Domino.

MR. DOMINO: Mr. Chairman, I move
THAT subsection 11(2) of Bill 18 be amended by striking out the words ''and regulations'' immediately after the word ''by-laws'' in the 1st line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: (2) — pass; (3) — pass; 11 — pass; 12(1) — pass.
Mr. Walding.

MR. WALDING: Mr. Chairman, either under 12(1) or 12(2), do I understand from the wording here that the discipline committee also carries out the investigation and then sits in judgment to consider what penalty, if any, would be imposed against the member?

MR. SHERMAN: I have to ask for a few seconds time, Mr. Chairman.
Mr. Chairman, I'm not sure whether 15(4) satisfactorily relieves Mr. Walding of his concern but I propose it to him to examine.

MR. DEPUTY CHAIRMAN: Am I waiting for an answer or have I got it?

MR. CHERNIACK: Mr. Walding raised it but I'd like to pose a question to the Minister. Last year we went through a difficult and time consuming experience of passing 3 pieces of legislation dealing with health disciplines, health professions, where we did agree that there has to be a separation of the investigative and prosecuting function from the judicial and it's not in this Act and I'm just wondering if it wouldn't be well, if time allowed, for some sense of uniformity in principle between legislation we passed and this.

MR. SHERMAN: Mr. Chairman, examination of the two or three pages of the bill that we're dealing with at the moment would indicate that the answer to Mr. Walding's question is, yes, and then appeals go beyond that from the Discipline Committee to the council but the subject raised by Mr. Cherniack was certainly discussed with advisors and with the association in preparation of the legislation and it was the concensus of those meetings that because the pharmacists is a businessman, as well as a health professional, that the association needed this kind of process to deal with complaints and infractions. The legal aspects of it could best be explained, I think, by Mr. Haig.

MR. HAIG: Mr. Chairman, the division between the investigative process of the association, the Discipline Committee and the judicial process is clearly there and it's provided for that where a complaint is made, for example, by a member of the public, and it is simply a complaint and no supporting material or evidence is offered or provided by the complainant, then the Association's Discipline Committee directs its inspectors to conduct an inquiry into the circumstances and there are permanent employees of the association whose job it is to do that. They make an investigation, prepare a report and the Discipline Committee, on the basis of that report, determines whether or not charges should be formulated and laid against the member and if they do direct on the basis of that investigative report that those charges be laid, they're laid and the formal hearing follows thereafter. The members of the Discipline Committee do not participate in the inquiry.

MR. CHERNIACK: Mr. Chairman, what Mr. Haig has described is indeed that the Discipline Committee monitors the investigation, the preliminary inquiry and the final hearing.

MR. HAIG: They direct it.

MR. CHERNIACK: Well, they direct it, that's even stronger than monitoring. By the time they've decided that there should be a hearing they've

already concluded that this is something worth investigating because the preliminary investigation showed that there was indeed an element of fault.

MR. HAIG: Mr. Chairman, the separation in substance is exactly the same as the separation which is maintained by the Law Society and that is that those persons who have the conduct of the investigation, the actual matter of inquiry, do not sit in or participate in the judgmental function. The association retains on its staff for this purpose, and for all other inquiry purposes, a permanent inspector who is a qualified pharmacist and who is directed by the Discipline Committee to make an enquiry if the complaint, as tendered to them, does not disclose on the surface of the complaint any legitimate cause for proceeding.

MR. CHERNIACK: Mr. Chairman, I think Mr. Haig knows the Law Society Act better than I do but my recollection is that there's an investigative committee, complaints committee is it or discipline committee?

MR. HAIG: Discipline Committee and the Judicial Committee.

MR. CHERNIACK: Yes, the Discipline Committee is seized of the allegation; it conducts an investigation; it decides whether to proceed or not and when it proceeds it goes to the Judicial Committee which does the judicial function. That's quite different from what you're saying here which is the Discipline Committee makes all the decisions. True, apparently they don't make their own investigation, they have hired help that make the investigation but when they get the report they then decide whether or not it's worthy of a hearing and then they hear it, so that they are not the same as the Law Society in my concept.

MR. HAIG: Mr. Chairman, Mr. Cherniack is correct, there is a distinction between the two methods but the separation, which is critical to an impartial adjudication of the thing, is in fact established and maintained and this was the point that the association is anxious to have made clear.

MR. CHERNIACK: Why isn't it in your Act?

MR. HAIG: Well, I believe it is if you look at Section 15(4), Mr. Chairman, that's where the provision is made for the conduct if an inquiry where it appears necessary to do so.

MR. CHERNIACK: It may conduct an inquiry into the complaint and, following the completion of the inquiry, it shall convene a meeting; it will conduct an inquiry; it's not it will cause an inquiry to be conducted.

MR. HAIG: The language is less than precise in that regard, Mr. Chairman, but that practice is that it directs an enquiry to be made.

MR. CHERNIACK: I'm talking to a lawyer and I have to question whether you go by practice or by the law, the legislation.

MR. HAIG: I would agree that the use of the word "conduct" is an inappropriately use, and certainly the association would have no objection to the section reading that the Discipline Committee direct an inquiry to be made, because that's in fact what it does.

MR. CHERNIACK: By?

MR. HAIG: By the association's inspection staff.

MR. CHERNIACK: Well, Mr. Chairman, I think that would be an improvement if Mr. Haig could work out the clarification of the process as it is, not as it's written, then I think it would be helpful. (Interjection)— I don't know what that "pass" means. Does he mean that . . .

MR. DOWNEY: We have to wait until we get to 15(4), Mr. Chairman, to do that I understand. To get there you've got to do 12(1).

MR. DEPUTY CHAIRMAN: (1) — pass. Mr. Walding.

MR. WALDING: Further to the discussion that was being held, can I ask, perhaps Mr. Haig, the usual route for complaints to get to the discipline committee for it to make a judgment of whether to investigate or not. How do complaints get to the discipline committee?

MR. HAIG: Mr. Chairman, complaints are sent to the registrar of the association and every complaint is then directed by the officers of the association to council and council then refers the matter to its discipline committee. If the complaint, as delivered, is complete and discloses on the surface a legitimate grounds for proceeding, the hearing is immediately initiated. If the trail of the complaint does not on the surface of it disclose that an offence has occurred, or that the basis for a hearing exists, then the association directs its inspectors to make a further inquiry to ascertain if in fact an offence has occurred. Then the inspector's report is delivered back and the discipline committee will direct the registrar to formulate the charges if the inspector's report discloses that an offence has occurred.

MR. WALDING: Mr. Haig, at what stage in the proceedings would there be a preliminary look or consideration of the complaint to see whether it was frivolous or vexatious? Can that be sorted out, done in a very informal manner, and the complainant satisfied?

MR. HAIG: In practice, Mr. Chairman, every complaint is dealt with on the basis that it may end up in the hands of the discipline committee. A complaint received by the association is dealt with by the registrar initially contacting the complainant and if it is a matter which can be resolved by an explanation or by some rectification of the dealing with the pharmacist in question, it is of course dealt with in that fashion. If the complaint discloses that there has been some non-professional behaviour or some inadequate prescribing practice or some other offence of the kind contemplated by Section 11 or by a by-law under Section 11, then the charges are formulated immediately. No further investigation is necessary before the charges are laid. (Interjection)— The discipline committee is seized of the thing, Mr. Chairman.

MR. WALDING: When you first gave me the procedure, you said that the registrar received the complaint and it went to the council and the council sent it to the discipline committee and they sent their inspectors out. Now, if you said that there is an immediate case. does the registrar then go directly to the discipline committee with it thereby cutting out the council?

MR. HAIG: Yes, he does. The reason why there is some confusion in my answer is that up until this point, the council as a whole has acted as a discipline committee. Under this bill. under these sections, a portion of the council will act as a discipline committee, but in every instance if the complaint, as delivered to the registrar, discloses an offence or a misdemeanour by a member of the association, the charges are laid immediately without further inquiry.

MR. WALDING: I think one further question that we might get to later on anyway, is there power to suspend immediately and, if so, in whom is it vested?

MR. HAIG: Mr. Chairman, there is no power to suspend immediately under the Act as it is presently constituted. There are no offences of the kind that the association is presently authorized to deal with which would justify immediate suspension without following the proceedings that are prescribed here.

MR. WALDING: The case that you mentioned to us a little earlier on about the pharmacist having packets under the counter, it's obviously a very serious offence. Would you not want to stop that pending the formal hearing?

MR. HAIG: Yes, and that's an instance, Mr. Chairman, where there are in fact two facets of the offence. There is a clear criminal aspect of it, where charges are laid and dealt with in the Provincial Judges' Court customarily as criminal charges, but the conviction on those charges immediately, amongst other things, gives rise to an offence under The Pharmaceutical Act, as a result of which a hearing must be convened to determine whether or not, by virtue of having been convicted under that statute, the member has behaved in an unprofessional fashion. The hearing is a complete hearing. All of the evidence that may have been presented at the original trial is presented at that hearing.

MR. WALDING: But in view of the seriousness and the likely criminal nature of the charge, would the association not want to stop that immediately by suspending the member?

MR. HAIG: Yes, it might very well like to but the principle involved is that until such time as we can demonstrate through the appropriate process that the person is guilty of the offence he is charged, there is no justification for doing that. Now, the man in this particular instance, had he indicated to the association that he was guilty of the offence, they could have bridged the time, convened the hearing and dealt with the penalty immediately, but only after having heard what was to be said on the man's behalf.

MR. WALDING: I hear you saying that it would be a good thing if this could happen. That being the case, why haven't you either suggested it to the Minister or put it in the Act?

MR. HAIG: Mr. Chairman, there are very few instances that would justify those harsh measures, so few that I think it's the association's view that it doesn't justify putting it in the Act. The important thing, Mr. Chairman, is that there is a substantial distinction that must be drawn between a pharmacist who commits an offence, such as selling a drug, trafficking in a drug illegally, and a person on the street who does it. The pharmacist is a person in whom a special trust and confidence is imposed. He is given the care and custody of poisons and chemicals that no other person, with the exception of a veterinarian or a medical practitioner is allowed to have. Because of those conditions and circumstances of trust, a much higher standard of behaviour is expected of him. The community imposes penalties for the ordinary deficiency in his behaviour; the Pharmaceutical Association is responsible for dealing with his breach of their particular standards and requirements.

MR. DEPUTY CHAIRMAN: (1) — pass — Mr. Walding.

MR. WALDING: Just a minute, Mr. Chairman. Mr. Haig has said that that comes up very rarely and is not likely to occur very often, but would it not be advisable, in the public interest, for there to be emergency powers that can be invoked before a few more people get poisoned or something?

MR. HAIG: The incidence of poisoning is small and the risk is small. Again, so long as there is no real or evident public hazard, from observing all of the normal tests and balances of a judicial process or system to determine the guilt or innocence of the person, it's better not to take precipitous action unless you can clearly demonstrate that there is in fact a public hazard existing.

MR. WALDING: In the event that there is a public hazard existing, then don't you have a responsibility to stop it by somehow preventing that pharmacist from doing so until a month's time when the hearing is held or whatever the timing.

MR. HAIG: The criminal courts are the proper place for that kind of thing. If the person is committing an offence of that kind, then immediate action can be taken. He can be apprehended, arrested and held in custody. Basically the sanction that the association has, Mr. Chairman, is that it can impose a penalty on him; it can suspend him; it can fine him which it wouldn't customarily do as the only penalty; it can suspend him or it can remove his right to practise altogether — a very harsh remedy. Because it has those extraordinary powers, it's absolutely imperative that they not be handled capriciously.

MR. DEPUTY CHAIRMAN: (1) — pass; 12(2) — Mr. Domino.

MR. DOMINO: Mr. Chairman, I move that Subsection 12(2) of Bill 18 be amended by striking

out the word "fines" in the third line thereof and substituting therefor the word "penalties."

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 12(2), as amended — pass; 12(3) — pass. I'm sorry, Mr. Domino.

MR. DOMINO: Mr. Chairman, it's moved that Subsection 12(3) of Bill 18 be amended by striking out the words "of the association" in the third and fourth lines thereof and substituting therefor the words "made under this Act."

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 12(3), as amended — pass; 12(4) — pass; 12(5) — pass; 12, as amended — pass; 13(1) — pass — Mr. Walding.

MR. WALDING: Mr. Chairman, we have the word "regulations" in here as well along with rules and by-laws. I'm wondering if the word "regulations" has the usual meaning of Order-in-Council. I notice that we scratched the words in 11. I'd like to know what the difference is between by-laws and rules.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, there is a departure here from the wording in some of the other health legislation. It's because of the structure and the nature of this Act and the provision under the by-laws for penalties and fines, so the wording of this section includes by-laws, rules and regulations and differs from the other health legislation or some of the other health legislation.

MR. DEPUTY CHAIRMAN: (1) — pass — Mr. Walding.

MR. WALDING: Mr. Chairman, that doesn't answer my question about what is the difference between by-laws and rules.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: By-laws are formal strictures that are made by the council and some of them as specified in 11(3) require approval by the Lieutenant-Governor-in-Council. Rules do not fall into that same formalized category. It's simply an application of terminology to cover all aspects of administration and direction of the affairs of the association. Some of that procedure is carried out by by-law; some is carried out by regulation; some are carried out by the rules of the association.

MR. WALDING: Mr. Chairman, I'm afraid that still doesn't answer my question. I read what by-laws are and they have to do very much with the internal workings in the administration of the association, etc. Now, in what way are rules different from that? Do they carry less weight or they have less authority or more so? Are they not required to be approved by the membership?

MR. SHERMAN: They certainly would not be required to be approved by the Lieutenant-Governor-in-Council as some of the by-laws are. It may be that the use of one of the two terms is redundant, but we have in most of the health legislation with which we dealt talked about by-laws and rules as distinct from each other and distinct from regulations. I have not explored the specifics of the difference between by-laws and rules for the Pharmaceutical Association but all organized bodies have certain rules of procedure and other functions that are not necessarily the formalized by-laws of the association. So I'm not alerted to the possible pitfalls and dangers of this kind of wording in the way that perhaps some of the members of the committee are. I can offer no other explanation than that, Mr. Chairman, through you to Mr. Walding but perhaps the association can.

MR. DEPUTY CHAIRMAN: Mr. Sherman.

MR. SHERMAN: I've answered the question, Mr. Chairman.

MR. WALDING: Mr. Chairman, if the Minister cannot add to it and is not asking Mr. Haig, I wonder if Mr. Balkaran can tell us what the difference is.

MR. BALKARAN: Mr. Chairman, one difference that comes to mind — a by-law goes through a more formal process of receiving three readings before it comes, shall we say, law. Rules are less formal and made that they do not require similar three readings to become . . . So they're more for the internal management rules really.

MR. WALDING: Who would formulate them? The council or are we talking about sort of rules of procedure of the various committees and sub groups that the association might have.

MR. BALKARAN: The discipline committee might want to set out to formulate a set of rules as to what procedure it should follow in conducting a hearing. That certainly is not a by-law so in the sense that the council passes a by-law on 11(1) with respect to all those clauses is certainly different to rules that one of those committees may make or the executive of the council itself may have rules for conducting their meetings when they meet.

MR. DEPUTY CHAIRMAN: (1) — pass; (2) — pass; 13 — pass; 14 — pass; 15(1) — Mr. Domino.

MR. DOMINO: I move that subsection 15(1) be amended by striking out the word "the" in the fourth line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: (1) as amended — pass; (2) — pass; (3) — pass; —(Interjection)— On 15. 15(4) — pass.
Mr. Cherniack.

MR. CHERNIACK: Yes. I think Mr. Haig was going to have some suggestions to clarify their procedures.

MR. DEPUTY CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I move that subsection 15(4) of Bill 18 be amended by striking

out all the words between the word "may" and the first usage of the word "the" in the fourth line thereof and substituting therefor the following: "Direct an inquiry to be made by the association's inspection staff" so that the clause would read "should be made before holding a hearing in the matter, it may direct that an inquiry be made by the association's inspection staff into the complaint etc, etc.

MR. DEPUTY CHAIRMAN: Mr. Balkaran with a combination of what he had prepared and what the Minister has suggested, we'll see if this is acceptable.

MR. BALKARAN: For once in anticipation of the change that was coming I prepared a motion and it reads as follows: "That subsection 15(4) of Bill 18 be amended by striking out the words "conduct an inquiry into the complaint" immediately after the word "may" in the fourth line thereof and substituting therefor the words "direct that an inquiry into the complaint be made by the association's inspection staff".

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I'd like to review if I may the procedure now. As I see it under 15(2) a complaint is filed with the registrar. 15(3), the registrar causes a meeting of the discipline committee to be convened and the discipline committee on the seat of complaint, if it is of the opinion that an inquiry should be made. So they then hold a sort of a preliminary hearing and direct an inquiry on the basis of the nature of the complaint I suppose. Then after the inspecting staff prepares their case they then hear the case, is that it? A little bit of improvement.

MR. DEPUTY CHAIRMAN: 15(4) as amended — pass; (5) — pass.

MR. CHERNIACK: Mr. Chairman, I just want to get it clear. Who is responsible for directing the work of the association inspection staff?

MR. SHERMAN: The council, Mr. Chairman.

MR. CHERNIACK: I want to know who is? Mr. Sherman said the council, I don't know that.

MR. SHERMAN: It's my understanding, Mr. Chairman, that the association's inspection staff works under the direction of the council.

MR. DEPUTY CHAIRMAN: Mr. Walding.

MR. WALDING: Mr. Chairman, I was under the impression that Mr. Haig told the Committee that it was the discipline committee that had not monitoring powers but directing powers over the inspection staff. Can we get that clarified please?

MR. DEPUTY CHAIRMAN: Mr. Haig would you care to clarify that?

MR. HAIG: Mr. Chairman, only for the purpose of an inquiry of that kind, the inspection staff continually monitors and inspects all pharmacies in the province as part of its regular responsibilities. When the discipline committee directs that an inquiry be made a specific instruction is given to the inspection staff to make that inquiry.

MR. WALDING: By the discipline committee?

MR. HAIG: Yes. By the discipline dommittee, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: And who directs their work?

MR. HAIG: The discipline committee, Mr. Chairman?

MR. CHERNIACK: No, the inspection staff.

MR. HAIG: The inspection staff in the ordinary course of events operates directly under the management of the registrar, who is the senior permanent officer and who takes his guidance from the council of the association.

MR. CHERNIACK: Which means that the discipline committee does not have an opportunity for a pre-conceived idea as to the nature of the investigation nor the prosecution of it, the evidence.

MR. HAIG: They do not, Mr. Chairman.

MR. CHERNIACK: And you're satisfied that your change does separate that?

MR. HAIG: I think the change, Mr. Chairman, makes clear the practice which presently exists and which is working well.

MR. DEPUTY CHAIRMAN: (5) — pass; 15(6) — pass; (7) — pass; 15(8)(a) — pass; 15(8)(b) — pass; 15(9) — pass; 15(10) — pass.

MR. WALDING: Mr. Chairman, perhaps I can ask the question under this and it goes back to the matter of whether the hearing and/or the appeal are strictly private or is the possibility there, as we discussed with the doctors, for having it open to either the public or other members of the association if requested by the accused? I see no reference to that in the bill as it stands.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I would doubt that this differs from the existing practice. I'd ask Mr. Haig to comment on that point and to comment on the existing practice, but I'm not aware of any differentiation here from the procedure as it has been followed in the past in this association.

MR. DEPUTY CHAIRMAN: Mr. Haig.

MR. HAIG: Mr. Chairman, the practice of this association has been that every complainant is entitled to have a hearing of his or her complaint if the matter cannot be otherwise satisfied. Those complaints are conducted in the presence of the

discipline committee and of the person complained against and the complainants. The other members of the association are not invited but they are not excluded. The public are not invited and for the reason that the association makes no effort to monitor complaints that come before it to separate out those that are irresponsible or ought not appropriately be brought forward. If the registrar cannot satisfy a complainant, if the complaint should not proceed, it will be proceeded with. That results, Mr. Chairman, in many complaints being heard by the Committee, which upon hearing are demonstrated to be without validity, but which if they were conducted in public would be damaging to the reputation of the pharmacist in question.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I'm in trouble again with the procedure. You say, Mr. Haig, that they always hold a hearing?

MR. HAIG: If a member of the public, Mr. Chairman, has a complaint and insists that a complaint be held, that it be the subject of a public hearing, this association as a matter of practice will conduct a hearing of that complaint by its committee.

MR. CHERNIACK: Would there not always be an inquiry before there's a hearing?

MR. HAIG: Mr. Chairman, there's not always an inquiry because in some instances the nature of the complaint is such, for example, that the person is alleged to be unfit to be licenced to carry on the practice of a pharmacist in that he was convicted of an offence of moral turpitude. Let's see if I can think of one that would be acceptable or that he as a person of unsound mind so found — no that's a poor one. But suppose he was convicted of an offence the nature of which indicated that he ought not to be entrusted with the handling of hazardous drugs and chemicals; the association would immediately have a hearing at which it would be required to have the details of the conviction filed. There is no inquiry necessary in those circumstances.

MR. CHERNIACK: Isn't that an inquiry in itself?

MR. HAIG: No, that's not an inquiry, Mr. Chairman.

MR. CHERNIACK: Don't they actually get the document and look at it and in a sense isn't that all they need to have because they've made a satisfactory investigation?

MR. HAIG: Mr. Chairman, the conviction is a public record. That's not a subject of inquiry.

MR. CHERNIACK: The point I'm trying to make to Mr. Haig, Mr. Chairman, is that there really should not be a need in view of the fact that all complaints are heard, there really shouldn't be a need for the discipline committee to sit and decide whether or not there shall be an inquiry. Wouldn't it be smoother and in greater interests of the separation of the two processes — that of investigation and prosecution from the judicial, if upon receipt of a complaint the registrar instructs the association inspectors to make whatever inquiry is necessary, which may be only getting a certificate and then hold the hearing, and then the discipline committee didn't bother to get a preview.

MR. HAIG: Mr. Chairman, the problem with the procedure of that kind, Mr. Chairman, is that we're dealing with the public. This association and I suspect other associations very often will feel that it is necessary for the sake of the association and its members that a hearing be conducted even though they are persuaded strongly before the hearing ever commences that it is without merit, but the member of the public is satisfied that he's had an opportunity to have his complaint aired against the professional involved in the presence of his peers. It's this association's view that that's worth doing.

MR. CHERNIACK: So why not just provide in the Act that upon receipt of a complaint an inquiry is made, a hearing is held and there's no preview. I'm trying to avoid the judicial body having some advance knowledge of what the charge is.

MR. HAIG: The difficulty is, Mr. Chairman, in many instances some of the complaints which are quite legitimate are unsupported. They're made by people who have neither the know-how or the resources to ensure that that complaint will be properly heard. We will ask the inspector to determine if there is evidence to indicate that the complaint in fact can be supported at a hearing. He makes that inquiry and he reports back that there is evidence, that it is available and it is at the disposal of the complainant if a hearing is conducted.

MR. CHERNIACK: I don't think Mr. Haig heard me out. Let me try again. If you hold a hearing on every complaint — which is what you said you do — then it seems to me the smooth way to separate the judicial function from the investigative one, to provide that upon receipt of a complaint the registrar shall direct the inspecting officers to make such inquiries as they deem advisable and then to present them before a properly constituted hearing of the Discipline Committee. That avoids the Discipline Committee getting involved initially in deciding whether or not to have an inquiry because they're doing it anyway.

MR. HAIG: Mr. Chairman, I appreciate the point Mr. Cherniack is trying to make and I think it's probably in an ideal situation, that that could be the case. The fact remains that I think every professional organization is faced with a great many complaints which fall into three categories; those that are totally without substance and could be dealt with by the permanent officers, the secretary of the Law Society, the registrar, the College of Physicians and Surgeons by calling the complainant and discussing the matter with him. I would suspect from some experience that 60 percent of all complaints are dealt with in that fashion.

There are other complaints which are legitimate complaints but for whom the complainant is without the resources or the knowledge to establish the validity of the complaint. They know they've been done by badly, they know they've been diddled or that the sponge was left in after the operation, or

something has happened that is wrong, but all they can do is complain. They come to the society or the association and say, "This professional person has dealt with me wrongly and here is what they did". But they have nothing, Mr. Chairman, upon which a hearing could proceed.

The association can adopt two tacts; it can say, "If you can't prove it, we won't hear it". That, I think you will agree, would be an abdication of responsibilities of associations of this kind and they would enjoy self-government and their own discipline. Where it appears from the nature of the complaint that the complainant may have a legitimate complaint, the association's attitude that it has some responsibility to ensure that the complaint is validly placed before its Discipline Committee.

The Pharmaceutical Association has chosen this particular route and the reason, Mr. Chairman, is that it has worked successfully for a considerable period of time.

There are other techniques that accomplish the same results. I suspect that were we dealing with a larger council and a larger number of committees and with people more readily available to us to serve as volunteers in these things, the optimum situation of having investigative committees and judicial committees would be possible as it has been for the Law Society. But from a purely practical point of view, this appears to this time at least, to be the best solution that this association has been able to come up with.

MR. DEPUTY CHAIRMAN: (10) — pass — Mr. Walding.

MR. WALDING: Mr. Haig, may I just review with you for a minute the matter of the openness at the hearings? I think you said to me that members of the association are not invited but not excluded and members of the public are not permitted. Is that correct?

MR. HAIG: That's correct, Mr. Chairman, to my knowledge there is no existing prohibition against any member of the association attending at a meeting of the Discipline Committee, but not as a committee participant.

However, the facts of the matter are that the persons who are notified of the hearings of the Discipline Committee are its members and those who are required to appear before it. So the pratical answer and the honest answer is that while there is no prohibition against their attending, there is no way they would be likely to know of the existence of a hearing and have an opportunity of attending.

MR. WALDING: Suppose it was in the accused's best interest or he felt it was, not to have members of the association there, could they be prohibited by either the committee or the chairman?

MR. HAIG: I would think, Mr. Chairman, the answer is that if the accused asked that the proceedings be conducted with only the members of the committee present, that would be honoured.

MR. WALDING: From what I've heard then, would there be any objection to formalizing it in the bill in the same way it has been in other bills by saying that the hearings will be in private unless requested by the accused that other members of the association be permitted to attend? It seems in accord with the actual practice.

MR. HAIG: I can think of no reason why the association would object to it. In practice what they have done is simply codified their rules for the conduct of such hearings under the provisions of the bill by a set of internal rules. But if it was the feeling of the committee that it should be specified that such hearings will be private hearings in the absence of a request by an accused, I can think of no reason that the association would object.

MR. WALDING: In that case, I wonder if I might ask Mr. Balkaran to provide a suitable amendment for us along the same lines as suggested.

MR. DEPUTY CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: Did I understand you corectly, that the hearing is to be in private unless . . .

MR. WALDING: Unless requested by the accused, if that's the right term.

MR. BALKARAN: Or other members of the association be present.

MR. WALDING: That other members of the association be present.

MR. DEPUTY CHAIRMAN: Mr. Balkaran will read the amendment.

MR. BALKARAN: That Section 15 of Bill 18 be amended by adding thereto immediately after subsection (13) thereof, the following subsection:

> "Hearing in Private, 15(14). A hearing by the Discipline Committee under this section shall be in private unless the person who is the subject of the inquiry requests that other members of the association be present".

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: 15(11) — pass; (12) — pass; (13) — pass (14) as amended — pass; 15 — pass. 16(a) — pass — Mr. Walding.

MR. WALDING: Mr. Chairman, I want to congratulate the pharmacists on removing from the old Act the requirement for British subject status.

MR. DEPUTY CHAIRMAN: Your congratulations are noted. We will carry on. Sections 16(a) to 19 were all read and passed. 20(1) — Mr. Domino.

Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that subsection 20(1) of Bill 18 be amended

(a) by striking out the words and figures "first day of January 1980" in the seventh line thereof and substituting therefor the words "coming into force of this Act" and

(b) by striking out the words "it is not in the forum or" in the ninth and tenth lines thereof.

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: 20(1) as amended — pass; (2) — pass; (3) — pass; 20 — pass. 21(1) to 22 were read and passed. 23(1) — pass; (2) — pass; 23 — pass — Mr. Walding.

MR. WALDING: I have a note here that there's a change in 23(1) in the licensing of the medical practitioner. I'm not sure what the change is.

MR. DEPUTY CHAIRMAN: 23(1)?

MR. WALDING: Yes.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Could Legal Counsel tell us what the change is, Mr. Chairman, please?

MR. BALKARAN: 23(1)?

MR. DEPUTY CHAIRMAN: 23(1) is what was suggested by Mr. Walding, yes.

MR. BALKARAN: I'm not so sure at the moment, Mr. Chairman, maybe Mr. Haig is probably a little more familiar with that.

MR. HAIG: Mr. Chairman, the old section provided that a qualified medical practitioner on application to council could be registered as a pharmacist provided the council was satisfied that he would personally compound the drugs in the place of business carried on by him and that upon being so registered he is subject to the requirements of the Act. That portion dealing with the personal compounding of the drugs in the place of business carried on by him is no longer in the section. It now simply provides that he may, on application, be licensed as a pharmacist; the council will grant a licence without further examination or evidence other than the certification that he is a medical practitioner.

MR. WALDING: Is the old condition then about personally compounding the drugs in a place of business? Is that back to the horse and buggy days? —(Interjection)—

MR. HAIG: It's archaic, Mr. Chairman, yes.

MR. DEPUTY CHAIRMAN: Clauses 24 to 31(b) were each read and passed. 31(c) Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move
THAT clauses 31(c) and (d) of Bill 18 be struck out and the following clause be substituted therefor:
(c) respecting the sale and dispensing of drugs.

MOTION presented and carried.

MR. ANDERSON: Mr. Chairman, I move
THAT clauses 31(e) and (f) of Bill 18 be renumbered as clauses 31(d) and (e) respectively.

MOTION presented and carried.

MR. ANDERSON: I move
THAT Subsection 32(1) of Bill . . .

MR. BALKARAN: There is a Page 5 attached, Mr. Chairman. It deals with the renumbered 31(d). I wonder if we could pick that up now?

MR. DEPUTY CHAIRMAN: Turn to Page 5 of your motion.

MR. ANDERSON: Mr. Chairman, I move
THAT renumbered clause 31(d) of Bill 18 be amended by striking out the figure "(8)" in the 1st line thereof and the figures "(10)" in the 2nd line thereof and substituting therefor the figures "(10)" and "(12)" respectively.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 31 as amended — pass; 32 — Mr. Walding.

MR. WALDING: Mr. Chairman, I note that this section on regulations itself is new in the Act and there was some deletion under By-laws of Regulations. Can we have an explanation of whether this is simply transferring it from one part of the Act to another or is there some other significance to this section?

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: I can't answer that, Mr. Chairman. I would refer it either to legislative counsel or legal counsel.

MR. DEPUTY CHAIRMAN: Legislative counsel; Mr. Balkaran.

MR. BALKARAN: Mr. Chairman, I take it to referring to some of the earlier amendments where regulations —(Interjection)—

MR. WALDING: Under 11(1) and 11(2).

MR. BALKARAN: The reason, Mr. Chairman, for those changes is I think, 11(1), that council doesn't make regulations, it's L.G. in C., make by-laws and therefore regulations had to be taken out in that subsection. The same held true for 11(2). 31 deals specifically with the regulations that are to be made by the Lieutenant-Governor-in-Council.

MR. WALDING: Is then taking away some of the power that the council had and transferring it to the Lieutenant-Governor-in-Council.

MR. BALKARAN: I think some of the powers that council did have before to do certain things by by-law are now transferred over to Lieutenant-Governor-in-council to do by regulations.

MR. DEPUTY CHAIRMAN: 32(1) — pass; (2)(a) — pass; (b) — pass; (2)— pass; 32(3) — pass — (Interjection)— Oh, we're at 32(1)? It's the very first one? All right, we'll go right back to it. Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move
THAT subsection 32(1) of Bill 18 be amended by striking out the words "any schedule to this Act or" in the 1st and 2nd lines thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 32(1) as amended — pass; 32(2) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT subsection 32(2) of Bill 18 be amended

(a) by striking out the words "any schedules to this Act or" in the 1st and 2nd lines thereof; and

(b) by striking out the word "regulation" in the 2nd line of clause (a) thereof and substituting therefor the word "council".

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 32(2)(a) as amended — pass; (b) as amended — pass; 32(2) — pass; 32(3) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT subsection 32(3) of Bill 18 be amended by striking out the words "and to this Act" immediately after the word "Act" where it appears for the 1st time in the 5th line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 32(3) as amended — pass; 32(4) — pass; 32(5) — pass; 32(6) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT subsection 32(6) of Bill 18 be amended by striking out the words "any schedules to this Act or" in the 3rd line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 32(6) as amended — pass; 32 — pass; 33 — pass; 34 — pass; 35 — pass; 36 — pass; 37 — pass; 38(1) — pass; 38(1)(a) — pass; (b) — pass; (c) — pass; 38(1) — pass; 38(2)(a) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT clause 38(2)(a) of Bill 18 be amended by striking out the words "formula of" in the 1st line thereof and substituting therefor the words "prescription for".

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 38(2)(a) as amended — pass; 38(2)(b) — Mr. Anderson.

MR. ANDERSON: I move

THAT clause 38(2)(b) be amended by striking out the word "formula" therein and substituting therefor the word "prescription".

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 38(2)(b) as amended — pass; 38 — pass; 39(a) — pass; (b) — pass; (c) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move

THAT clause 39(c) of Bill 18 be amended by striking out the words "schedule to this Act or any" in the 1st line thereof.

MOTION presented and carried.

MR. DEPUTY CHAIRMAN: 39(c) as amended — pass; 39 — pass; 40(1) — pass; (2) — pass; (3) — pass; (4) — pass; (5) — pass — Mr. Cherniack.

MR. CHERNIACK: I'm been waiting for this. This is new and it's a fine on top of a fine. You know it's a pretty well drawn Act and it looks like an organization that has been operating pretty well but suddenly they seem to be in business, in the prosecution business. 41 provides for fines on summary conviction. That means they go to court; they're tried. A magistrate or judge will fine them and the amounts shown in 41. But in 45 in addition thereto a pharmacist upon whom a fine has been imposed under this section which is the summary conviction or has been censured, suspended or expelled, may be ordered by the council or the discipline committee to pay all or any part of the costs and expenses incurred by the association in carrying out an investigation, conducting a hearing. Now, you know, we've talked about this principle in relation to hearings, disciplinary hearings but now we're involved in court proceedings and I could now understand why it is Food and Drug turns over their whole business to the Pharmaceutical Association. The Pharmaceutical Association now is, you know, I made a crack about in business of course there's no profit involved if what they get back is their costs and expenses, but it's arbitrary on their part to decide how much they want, all or any part and it's new and I don't think it's a good idea.

We're dealing now with prosecutions in court. The last last one we dealt with were the doctors, who I think the government may pay part out of the fine. But here the fine goes to the government and the pharmacist in addition has to pay costs. So my recollection of this is unusual and I would oppose it unless somebody wants to . . . you know, I'm inclined to just vote against it; but I'd like to get a reaction. As a matter of fact, at this moment maybe —(Interjection)—

MR. DEPUTY CHAIRMAN: You want a reaction?

MR. CHERNIACK: Well, you know, if you call the question, there might be a reaction. Call the question, you'll get a reaction. (Interjection)— It's to your protection that we are . . .

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Yes, I'm here, Mr. Chairman.

MR. CHERNIACK: Now that's he's returned I'm objecting to 45 and I made an impassioned and very logical speech about it.

MR. SHERMAN: I think I heard the sense of it, Mr. Chairman. I don't have the difficulty with it that Mr. Cherniack has with it, obviously, or this section wouldn't be here. In this case I revert to the arguments raised earlier that there is a differentiation here in terms of penalties because there is a provision made for fines and I think whether it's been acceptable to all members of the committee or not the fact is that the provision for levying such a fine is

contained in the legislation and I think it can be justified and the costs of an action, of an investigation or an inquiry are a separate entity.

The provision with respect to the levying of those costs is no different than as has been the case in the earlier bills that we dealt with. Define is a separate category altogether. I believe we've justified that and on that basis I feel that the two strictures for which provision is made here are justifiable. If Mr. Cherniack desires further elaboration on that point, I think we'd again have to refer to the association itself and its legal counsel, but I have no difficulty with this section and intend to support it as it's worded, Mr. Chairman.

MR. CHERNIACK: I think and I kind of hope that Mr. Sherman has jumped to a certain conclusion on this because I've often said that my knowledge of criminal law is limited but I am not aware of proceedings that go before summary conviction where there is a conviction under summary conviction and a fine is levied and that the accused is then required to pay investigatory costs. I don't know of any such case and if there are such cases I should be told so I wouldn't think that this is a unique provision.

We discussed fines that are imposed under Section 11(1) by the by-laws approved by the Lieutenant-Governor-in-Council, that's one thing. But this Section 40(5) also refers to a summary conviction where there's a penalty. A fine imposed by the court, payable to the court and the Pharmaceutical Association which apparently is conducting a private prosecution is now claiming costs as well. I think when they're in the criminal courts they should not be treated differently than the Attorney-General. Now if I'm wrong about costs not being awarded in provincial courts, then I have to back away but what I see here is something that is extremely unusual and it's new. We can't say that it's something that they've been doing all along. Mr. Haig seems to want to respond to that and I couldn't find it in the original, so by all means, let's ask him.

MR. SHERMAN: I think we should ask Mr. Haig, Mr. Chairman, but I just make the point before doing so that once again we're talking about permissive legislation, not compulsory, not mandatory legislation. "That person may be ordered by the council to pay all or any part of the costs." — (Interjection)— That's right and he also or she also may not be ordered by the council to do it. Mr. Chairman, could we ask Mr. Haig. Certainly I defer to Mr. Cherniack's knowledge of criminal law and of court procedures in cases of this kind.

MR. HAIG: Mr. Chairman, there are two things being dealt with here and it's possible to get them confused. Under this Act there a number of offences which can be committed by members of the public. For example, a person holding themselves out to be a licenced pharmacist who is not and in such an instance the association is obliged in accordance with this Act to initiate a prosecution in the courts by way of summary proceedings. To carry the expense of that prosecution and all the investigation necessary and if a conviction is registered and a fine is levied, then that fine is paid to the association and that has been the case with respect to that type of offence for as long as I've been able to trace this Act back, which goes back for some 80 or 90 years. The part that is new and we're not embarrassed by having it here at all, is the matter of the paying of costs by a member of the association where he becomes the subject of an inquiry or the hearing of a tribunal conducted in accordance with this Act arising out of his misdemeanour, his behaviour or his non-professional conduct.

Basically the problem is simply this, Mr. Chairman, who is to pay the cost of properly disciplining members of a society of this kind which has disciplinary powers, when they have committed some offence against the rules of the society having the sanction of this Legislature? It's necessary for a hearing to be conducted properly to ensure that counsel are briefed and that the thing is conducted in a proper and judicial fashion and this costs the association substantial amounts of money.

In a small association, a very limited number of hearings of this kind can be financially very exhausting and yet the members of the association at large can legitimately say, why should we be carrying the burden? We did not commit these offences, we were not the people who were responsible. If this fellow or this woman had not misbehaved no hearing would have been necessary. Is there any reason why, since they are the wrongdoers so found, that some part at least of the cost of conducting such a hearing should not be charged against them? And it's for that reason and that reason only, Mr. Chairman, that this additional part in Section 40(5) has been asked for by the association.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Haig.

MR. CHERNIACK: I'm not going to debate with Mr. Haig. I just want to ask him this. He says the only new thing is the provision of costs on professional misconduct. What about the provision under 40(1) where they are fined under summary conviction?

MR. HAIG: Mr. Chairman, the difference there is that the amounts of the fines have been adjusted to make them more contemporaneous than 1980s.

MR. DEPUTY CHAIRMAN: I'm aware of that. I'm talking about a summary conviction with a fine payable to the province and in a case of a member of the association, the additional penalty of payment of costs, is that in the old Act?

MR. HAIG: It had the additional penalty payment of costs? No, it is not.

MR. CHERNIACK: So that's new and it does not deal with professional misconduct; it does not deal with actions of the Discipline Committee; it deals with a court process and therefore I'm asking Mr. Haig. I said earlier I'm not aware of any other case where on conviction in the courts there is a provision for costs to be paid over and above the penalty. I don't know of any.

MR. HAIG: Nor am I, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Right. So, Mr. Chairman, as I say I don't want to debate with Mr. Haig, I'll

debate with Mr. Sherman. So that this is unique, Mr. Haig and I — I don't know how much experience he has, I don't claim to have much in the criminal courts — but neither of us know of any such provision and therefore it is unique which makes it unusual and which it seems to me puts a double jeopardy on here.

Is it The Medical Act we just dealt with when he said that upon receipt of a fine the Provincial Finance Minister or the government can turn over to the association some portion of the fine to compensate for costs? I can understand that if the Attorney-General is going to wiggle out — I use that term advisedly — of taking prosecutions of Statutes, then I can understand that the Minister of Finance should not be the beneficiary of a fine and should indeed turn it back to the people who have done the work for government but here it's not that. He pays the fine to the government which runs up to $1,000 and then the association on its own, charges him all or any part — it may — all or any part of the costs. I think that's so unusual, it is new and I don't think it's a good idea. I think it's offensive to the principle of the criminal courts. That's the point I was making.

While I still have the floor, Mr. Chairman, I want to ask if there is an appeal provision for that imposition of costs. I haven't seen it but that doesn't mean it's not here.

MR. DEPUTY CHAIRMAN: 40(5) — pass — Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, I really feel this is an important principle and I think that if the government — I'm assuming the government will make the decision whether to support it or not — I think they ought to make a statement justifying their support of what I have already satisfied you is a unique provision.

MR. SHERMAN: Mr. Chairman.

MR. DEPUTY CHAIRMAN: Mr. Downey.

MR. DOWNEY: I'll yield the floor to the Minister of Health, Mr. Chairman.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, would the Member for St. Johns, Mr. Cherniack, be satisfied with an amendment to 40(5) which inserted the qualifying phrase "other than under Section 40(1)" with respect to the portion of the section having to do with recovery of costs?

MR. CHERNIACK: Thank you, Mr. Chairman. I don't see any other part of Section 40 that deals with fines. I think that what Mr. Sherman may be aiming at, is to eliminate the words "under this section." A pharmacist or student upon whom a fine has been imposed . . .

MR. SHERMAN: "under this section."

MR. CHERNIACK: Yes, to eliminate that. You say, will that satisfy me? It's not your job to satisfy me and I really don't agree with all of this but I think that that answers the one objection I made about the unique features. I have to recognize it by removing that, it's a step in the direction of which I think we ought to be going.

MR. SHERMAN: Mr. Chairman, I would want to ask for a legal opinion from legal counsel to the association as to whether that presents any difficulties that I don't foresee at the moment. If I can have a few seconds, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Sure. The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, the proposal would be that subsection 40(5) would be reworded to read as follows:

> A pharmacist or student upon whom a fine has been imposed other than under Section 40(1) or who has been censured, suspended, etc.

In other words, the phrase under this section would be replaced by the phrase "other than under Section 40(1)." That would be the suggestion that I would make at this juncture, Mr. Chairman, and it's that, that I am asking Mr. Cherniack about in terms of satisfying his particular concerns about the uniqueness or the unusualness of this provision.

MR. CHERNIACK: Mr. Chairman, I appreciate what Mr. Sherman is saying. It would have to be taken out of 40 altogether because being as part of 40 I think implies that it deals with 40. Mr. Balkaran's opinion is worth a lot more than mine but I don't know why you say 40(1). I think you mean all of 40 because the fine that you're now referring to goes back to 11(1), I think, and therefore I suspect if you agree with the principle I'm trying to propound here that this probably should come out and be put somewhere else and given a different number, but I'd like to hear from Mr. Balkaran.

MR. DEPUTY CHAIRMAN: Mr. Balkaran or Mr. Sherman.

MR. SHERMAN: I don't understand that, Mr. Chairman. I think the proposed revised wording specifies that what we're dealing with here when we talk about the possibility of being ordered by a council to pay all or any part of the costs, is a pharmacist or student upon whom a fine has been imposed other than the type described in 40(1) which has to do with the summary conviction process.

MR. CHERNIACK: I really defer to the legislative counsel but I believe that since you're taking 40(5) completely out of the impact of the rest of 40, then I think it should be a separate section. Otherwise, it would be interpreted as being part of 40 and it no longer belongs with 40 because of your exempting it or accepting it from 40. That's just the point I make and while I'm talking I see . . .

MR. SHERMAN: What does Mr. Balkaran say?

MR. CHERNIACK: . . . but let me point out, I made a mistake when I talked about the government getting all the money and the society getting costs in addition. I see that under (4) they're getting all the money anyway. He didn't tell us that. So the fine

under 40(1) goes to the association and in addition to the fine they wanted the money. I thought at least the treasury would get some.

MR. BALKARAN: Mr. Chairman, I wonder if Mr. Cherniack would repeat the question he'd like me to answer.

MR. CHERNIACK: Mr. Sherman is inclined I think to agree with my argument that the association should not be entitled to collect its costs in addition to fines that are levied under the summary and conviction procedures. Therefore he was proposing to substitute the words "under this section" at the first and second line of 40(5), and substitute it with the words "other than Section 40(1). In that way he felt that he would take care of my complaint about the imposition of costs in addition to the fine. I was suggesting I think it probably belongs in a different section altogether, once it's removed from 40(1).

MR. BALKARAN: I don't know that you need to remove it from Section 40 for one would have some difficulties of renumbering but that's no problem. If it is intended to restrict the meaning of fine in 40(5) to the sort of fines that could be imposed under 11(1), then in my view the simplest way to have corrected it was to simply delete the words "under this section".

MR. CHERNIACK: But then it'll be included. So it would probably say, whom the fine has been imposed then that'll automatically sop up 40(1).

MR. BALKARAN: Then the Honourable Mr. Sherman's amendment then perhaps is more preferable to the one I just suggested. What disturbs me about that though why, if a fine is imposed for prosecution for violation of some other section of the Act.

MR. CHERNIACK: I can't understand that.

MR. SHERMAN: I'm asking a question of legislative counsel, Mr. Chairman. Does not 40(1) take care of that?

MR. BALKARAN: Yes, it takes care of any provision.

MR. SHERMAN: So I think if I would move, Mr. Chairman,

> THAT Section 40(5) be amended by deleting the words "under this section" in the first and second lines thereof and replacing them with the words "other than under Section 40(1)".

Now, Mr. Cherniack has raised a question relevant to that amendment as to whether the subsection should now even be in Section 40 and I'm not sure that I heard legislative counsel's answer to that question.

MR. BALKARAN: As to whether it should be moved to another section?

MR. SHERMAN: Yes.

MR. BALKARAN: My own feeling, Mr. Chairman, is I don't know that you need to. I think that change as proposed by the Minister, I think it's all right.

MR. SHERMAN: Then I move my amendment, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Are you ready for the question? Is it the pleasure of the Committee to adopt the motion?

MOTION on the amendment presented and carried.

MR. CHERNIACK: Mr. Chairman, I sorry I asked the question whether there's any appeal from this decision of the counsel of the amended Subsection (5)? Is there an appeal?

MR. SHERMAN: Mr. Chairman, my understanding is that there is. Perhaps Mr. Haig could be more specific on that point.

MR. HAIG: Mr. Chairman, my view that the matter of costs in any proceedings are a part of the overall award and as such subject to all of the appeal proceedings that apply to any other disciplinary proceedings under the Act.

MR. CHERNIACK: Would you point out the section?

MR. HAIG: Appeal sections provide firstly appeal to counsel.

MR. CHERNIACK: 15(7).

MR. HAIG: Yes 15(7), 15(8), 15(9) and then 15(12), Mr. Chairman. Those are the appellants' sections. They provide for two routes of appeal — firstly to the whole council of the association and secondly, if not satisfied with the disposition by that council, on originating notice of motion to a judge of the Court of Queen's Bench.

MR. DEPUTY CHAIRMAN: 40(5) as amended — pass; (6) — pass: 40 as amended — pass. Let there be noted one dissenting vote. 41 to 44 were each read and passed. 45(1) — pass; 45(2) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that Subsection 45(2) of Bill 18 be amended by striking out the word "or verbally" immediately after the word "handwriting" in the third line thereof.

MR. DEPUTY CHAIRMAN: Are you ready for the question? Is it the pleasure of the Committee to adopt the motion?

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: 45(2) as amended — pass; 45(3) — pass; 45(4) — pass; 45(5) — pass; 45(6) — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that Subsections 45(6) and (7) of Bill 18 be struck out and the following subsections be substituted therefor:

> "No substitution instructions to continue 45(6) in the event a drug is prescribed for a person on a continuing basis and a subsequent prescription is issued for that person for that drug" and
>
> "No substitution has been written by the prescriber on the original prescription and all subsequent verbal authorizations for the continuation of that prescription for that drug,

for that person shall be dispensed according to the no substitution instructions written on the initial prescription''.

If I may continue:

''Prescriber may waive no substitution instructions 45(7) notwithstanding Subsections (2)(5) or (6) where the prescriber of a drug states in the initial prescription for a person that there shall be no substitution for that drug for that person, the prescriber may in issuing any subsequent authorization for the continuation of that prescription for that drug, for that person, waive the no substitution instructions set out in that initial prescription''.

MR. DEPUTY CHAIRMAN: Are you ready for the question?

MR. BALKARAN: Mr. Chairman, in 45(6) as proposed the word ''verbal'' appears as qualifying authorization and it was just pointed out to me that perhaps the word ''oral'' should be substituted instead of ''verbal'' because verbal could actually include written — the words.

MR. DEPUTY CHAIRMAN: Do we have agreement? Are you ready for the question?

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: You can change it. 45(6) as amended — pass; 45(7) as amended — pass; 45(8) — pass; 45(9) — pass; 45(10) — pass; 45(11) — Mr. Anderson.

MR. ANDERSON: I move that Subsection 45(11) of Bill 18 be amended by striking out the figure ''(8)'' in the first line thereof and substituting therefor the figure ''(10)''.

MR. DEPUTY CHAIRMAN: Are you ready for the question? Is it the pleasure of the Committee to adopt the motion?

MOTION on the amendment presented and carried.

MR. DEPUTY CHAIRMAN: 45(11) as amended — pass; 45(12) — pass; 45(13) — pass; 45(14) — pass; 45 as amended — pass; 46 — pass; 47 — pass; 48 — pass; 49 — Mr. Anderson.

MR. ANDERSON: Mr. Chairman, I move that Section 49 of Bill 18 be struck out and the following section be substituted therefor:

The commencement of Act. 49. This Act comes into force on a day fixed by proclamation.

MR. DEPUTY CHAIRMAN: Are you ready for the question? Is it the pleasure of the Committee to adopt the motion?

MOTION on the amendment presented and carried.

MR. WALDING: Mr. Chairman, we'd like an explanation of this amendment before we tick it off.

MR. DEPUTY CHAIRMAN: Right. See if I wasn't in the Chair I could give you an explanation, but I can't leave. Mr. Sherman.

MR. SHERMAN: Mr. Chairman, the question was that the Opposition would like an explanation for the amendment to Section 49?

MR. DEPUTY CHAIRMAN: Just an explanation on 49.

MR. SHERMAN: There are a number of procedures that have to be completed by the association, by the council and it's more convenient, Mr. Chairman, for the association to proceed to do the necessary detail work and get it done in the next few weeks or months and then proclaim the Act.

MR. DEPUTY CHAIRMAN: Acceptable? (Agreed) Preamble — pass; Title — pass; Bill be Reported — pass.

BILL 20 — THE REGISTERED DIETITIANS ACT

MR. DEPUTY CHAIRMAN: Bill No. 20. Mr. Downey.

MR. DOWNEY: We've had the dietitians here and I wonder if the Opposition have many major difficulties with The Registered Dietitians Act.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: I have a major difficulty, I can't see any more.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I realize it's late and it's certainly been my hope that we could have completed The Medical Act and The Pharmaceutical Act a little earlier.

I would like to suggest that it's certainly not our intention to proceed with Bill 20 or Bills 21 or 25 this evening because the hour is very late and we were late last night. But because a number of interested parties have been here all evening I would like to propose that we deal with The Registered Dietitians Act and get as far as we can on it in the next short period of time and hopefully find that we can pass the bill tonight and at that point have the Committee rise.

MR. CHERNIACK: Mr. Chairman, I really don't see the sense of our staying here. It's 1:15 now; it was 3:40 yesterday. I'm sure the people who came here and whom I suggested about 11:00 o'clock should go home because I thought that tomorrow would be a better day for them, that at 1:15 we should be expected to open up a new bill on the assumption that it'll go smoothly. Maybe it will. Frankly I don't know, it's a while since I've looked at it. But I think that it's carrying things to an extreme without any need. I don't know what the urgency is. It's a question of accommodation, I think we need some accommodation, Mr. Chairman. Isn't this the third night in a row?

MR. DOWNEY: Mr. Chairman, I agree with what the member is suggesting. I think probably if we could give it a try as the Minister of Health has suggested and see if it does go and if it does bog down, then I don't think there'd be any problem in agreeing to it.

MR. CHERNIACK: I don't see how it can go unless it's looked at. Mr. Chairman, I think we gave good attention to the work we've done. We've worked on the medical bill, we've worked on the pharmaceutical; I don't feel we've wasted time but we sure looked at every section practically, because it's important. To think that we can just slip through, I just think it's wrong. I think it's unfair to the legislative process and to the individuals concerned and to the Chairman. Out of consideration for the Chairman I really feel that . . .

MR. DOWNEY: Just give it a try.

MR. CHERNIACK: What do you mean, give it a try? It's a brand-new Act. There's no previous . . .

MR. DEPUTY CHAIRMAN: As directed, Bill No. 20.
I have a motion for Committee Rise.

MOTION presented that Committee rise and defeated.

MR. DEPUTY CHAIRMAN: Bill No. 20, The Registered Dietitians Act, Clause 1 — pass.
Mr. Cherniack.

MR. CHERNIAK: I'm sorry. If it is the insistence of the majority again to go through this unreasonable requirement, then we're going to have to give it the time that it requires. I'm telling the Minister of Agriculture that we're bogged down. We're bogged down for one reason that I have and that is that I have to start reading this afresh at this hour, in addition to certain amendments that are just handed to us now. We are bogged down. Mr. Chairman, I for one — I guess I'm the oldest person in the room — haven't got the capacity to just keep right on going. So we're bogged down.

MR. DEPUTY CHAIRMAN: Mr. Cowan.

MR. JAY COWAN (Churchill): Mr. Chairperson, I'm not a member of this Committee but I've watched with interest the workings of this Committee over the past number of days and evenings. I admit I was not here last night when the Committee was forced — and I use those words advisedly — to sit until the early hours of the morning to the detriment, I think, of the work of the Committee. I've been on enough committees, even although I wasn't here last night, to know full well what happens at the early hours of the morning and I am a newcomer to the Legislature. Those who have been here for many more years than I have, such as the Minister of Health and others at this table, know even more clearly from their own experience, the problems that are encountered during the early hours of the morning when trying to deal with legislation which is complex and complicated.

I recognize that the group that wishes to make representation, or at least wishes to involve themselves or study the work of the Committee as they proceed through this Act are still here. I think they are here because of a commitment to the purpose of the Act and because they wish to see this Act to be the best possible Act that it can be. That is why they have taken the time out to stay here. I would only suggest to them that if there are changes which are necessary in this Act, and I've already seen there are proposed amendments which have been provided to us, those changes will be of a sounder nature if made during more appropriate hours. I've stayed with the Committee this evening because I do have an interest in some of the bills that are going forward. I haven't participated as fully in the debate as some, but I'm tired just from watching. I know that when one is examining as well as watching and listening, this process is even more tiring.

I don't think we will be doing any justice to Bill No. 20 by proceeding this evening. If the Minister of Agriculture says, "Let's just give it a try" imploringly, hoping that it will proceed smoothly, then he's gambling. I would suggest he's gambling with a bill that is very important to the dietitians which will be affected by that bill. I think their cause would be better served; I think the work of this Legislature would be better served if in fact a review of this bill, a study of this bill, and the committee work on this bill was undertaken when the Committee is fresh and best able to provide the type of insight and opinions and reflections on the bill which will make it more suitable to them.

So I think that even although the Minister of Agriculture says we would be doing them a disservice by not proceeding with the bill at this time, the fact is that we will be doing them a greater disservice by proceeding with the bill at this time. It is much easier for those individuals to come back to the Committee tomorrow than it is for us to have to undo mistakes which were made because of the late hour. It's unfortunate that a vote was taken because we lock ourselves in by those actions and sometimes we lock ourselves in by posturing. I hope that by being an outsider, so to speak, to the work of this Committee yet being interested and involved in the work of this Committee that I could provide a different perspective; that is, the perspective of one who has not been embroiled in the controversy of the evening pass, the perspective of one who wishes to see this legislation be the best possible legislation.

I would ask the government to reconsider, not for the sake so much of those of us who will sit through this discussion and examination, but for the sake of those who are most affected by our ability to provide them with the best possible legislative protection. So I would just hope that with those brief words — I have been briefer than I normally am under circumstances such as this I assure you, and that brevity was in recognition of the lateness of the hour and in recognition that we should all be able to get out of here as soon as possible so we can come back refreshed tomorrow, but I would ask the Minister of Health to reconsider and to take note of the concerns that have been expressed by the Opposition, who want to see this a workable and efficient piece of legislation.

MR. DEPUTY CHAIRMAN: The Honourable Mr. Sherman.

MR. SHERMAN: Mr. Chairman, if this bill were breaking new ground in terms of health disciplines legislation I would agree with the arguments raised by the Honourable Member for Churchill and also the Honourable Member for St. Johns. But we have over the course of the past two sessions developed a

format described by Mr. Cherniack the other night as one that was reached with some unanimity, certainly with eventual consensus for self-governing health disciplines legislation. The Registered Dietitians Act, Bill No. 20, is drawn up on that format. We examined it relatively thoroughly, I would suggest, 24 hours ago or 36 hours ago when delegations and representations appeared before this Committee respecting the five health bills in front of us. There are very few amendments proposed in Bill 20. The format follows very precisely that format that was adopted last year for the nursing legislation.

I think we can deal with it very quickly, very expeditiously; simply move the amendments and virtually accept the bill as is. All members of the Committee had a thorough opportunity to look at it the other night when representations were made on the bill. I think that, while taking into consideration the feelings and conditions of members of the Committee, I think that same courtesy should also be extended to those with a particular interest in the bill who have been there through this length of time. I would suggest that we could satisfy members of the Committee on Bill 20 and pass it within 45 minutes, if we could get on with it.

MR. DEPUTY CHAIRMAN: Mr. Hyde.

MR. LLOYD G. HYDE (Portage la Prairie): First of all, I'm not a member of the Committee as I was taken off just the other day. However, I can't help but think that the time that's been wasted — we've wasted now 20 minutes, close to it — discussing the hour. I'm as tired as anyone but I'm anxious to see this bill carried through if at all possible. I would suggest that with the 20 minutes we've practically wasted, we could have at least covered several pages of this bill.

MR. DEPUTY CHAIRMAN: I have Mr. Downey. Were you trying to get . . .

MR. DOWNEY: I just wanted to support Mr. Sherman. As he has indicated, the bill is pretty much along the guidelines of the other professional bills that have been put through. We have a few amendments. I don't want to over-impose on the members of the Committee or the staff. I think we did have a tough night last night. We should in fact see if we can proceed. As I said, bog down, and if we do . . .

MR. DEPUTY CHAIRMAN: Mr. Cowan.

MR. COWAN: On a few brief points; number one, I don't believe as has been indicated by the Member for Portage that we've wasted the last 20 minutes. I think they have been necessitated by the will of the majority on this Committee who are convinced that they're going to have to push and push and push against the better judgment, I think, of the minority in this case. But only time will tell that. But if time is going to be wasted, time is wasted by these types of maneuvers, that time is spent in one way or another down the line. The member is absolutely right that in 20 minutes we probably could have covered some ground in that bill, but we could have covered it tomorrow and we would have covered it in 20 minutes without this sort of debate, which is essential to the process and not a waste of time at all, but does not really add to the discussion on this specific bill.

Finally, I'd like to comment on the suggestion of the Minister of Health that we give this bill less consideration than other bills because it is not breaking new ground. I think the Minister of Health would have to agree that this bill is as important to those individuals who are affected by it as is any other bill which has been discussed. He is suggesting because it is not breaking new ground that we should give less discussion to it and less consideration to it. I hope I'm not misquoting him but that's certainly the analysis I gained from his remarks. So I think he is doing a disservice to those who have waited so long, as I said before, in order to discuss this bill and that it could be much more readily and efficiently and effectively accomplished tomorrow.

MR. DEPUTY CHAIRMAN: Mr. Jenkins.

MR. JENKINS: Yes, Mr. Chairman, we have been approximately, in discussion of these bills, 16 hours out of the last 29. That includes the time we've had to go home, have some sleep, eat our meals and carry out any other body functions we might require. You know, you are not doing justice to legislation by having people sitting here that are tired. We've been sitting here out of the last 29 hours, 16 hours in this room. My God, you don't even get treated like that in jail. I don't know what you people are trying to accomplish, but if this is the way you want to operate — well, hell you can sit here. You can move; you have the muscle to do it; you can push these bills through; you can keep us here until hell freezes over. (Interjection)— But I'll tell you, in the long run it's not going to do you a damned bit of good because you can figure you might get out of this Committee and back in that House, but there are ways and means of keeping you there as long as the Opposition wants to keep you there.

Now, I think we have worked well. We have done excellent. I don't know how long you want to go. It's now one-thirty.

MR. CHERNIACK: Mr. Sherman said 45 minutes.

MR. JENKINS: Forty-five minutes at 2:15. I can assure you, Mr. Chairman, we're not going to finish this bill. Twenty-three pages. It's just asinine. I say, if there's ever any sense or nonsense in sitting in Speed-up, this is one, and as I have said it's an annual trek into madness and by God that's not far fetched.

MR. DEPUTY CHAIRMAN: Mr. Cherniack.

MR. CHERNIACK: Mr. Chairman, the apparent reason for wanting to deal with this now is the fact that we have certain members of the dietitians group here who want to see the birth of their new organization, I suppose. They sat through, was it two days already and today's the third. The first two hours that they sat here were hours spent looking at The Veterinary Act at a time when we had, I'd say, 50 to 75 people waiting to be heard and they were kept waiting for two hours while we were dealing with sections of an Act, the people who are interested in

it not being present at all. At 10:00 it was decided to hear delegations which went on till I think 1:30; yesterday we were kept here out of spite until 3:40; now it's 1:30. Mr. Sherman says, it'll only take 45 minutes. Mr. Sherman said this is fashioned on The Registered Nurses Act. The fact is that if The Registered Nurses Act was to be such a good guideline then why have we spent time on The Medical Act and The Pharmaceutical Act, which were not in accord with this Act, and therefore we don't know the extent to which this Act may differ or more particularly the nature of the organization may differ. I'm sure the number of members alone is substantially different, which means if you do a good job you do it properly, and if you do it properly you can't do it at 1:30.

MR. DEPUTY CHAIRMAN: Mr. Downey.

MR. DOWNEY: Mr. Chairman, the member goes back and refers to hold-up in Committee and we won't rehash that argument. We've heard the Member for Churchill, the Member for St. George, I appreciate we've all been up late last night and so have staff and I think that the dietitians who have sat through here have waited to see this and apparently aren't going to see it because, Mr. Chairman, I would move Committee rise.

MR. DEPUTY CHAIRMAN: Committee rise.