Time — 11:00 a.m.

CHAIRMAN — Warren Steen (Crescentwood)

MR. CHAIRMAN: Committee come to order please. We can proceed with Bill 17, The Medical Act. To members of the Committee, there are a series of amendments which Legal Counsel will distribute now and perhaps Mr. Kovnats, as we get to each and every one, you might move them.

We apologize to Mr. Cherniack for not starting at 10:00 a.m. this morning as I'm sure he would like to have.

BILL NO. 17 — THE MEDICAL ACT

MR. CHAIRMAN: Mr. Sherman.

HON. L.R. (Bud) SHERMAN (Fort Garry): Mr. Chairman, has the meeting been called to order?

MR. CHAIRMAN: Yes, the meeting has been called to order and the amendments have been distributed and we're ready to go with Bill 17.

MR. SHERMAN: So, Mr. Chairman, is Mr. Cherniack's question on the record — whose amendments are these?

MR. CHAIRMAN: Well, maybe Mr. Cherniack could restate that question.

MR. SHERMAN: Well, it is simply that I want to respond on the record, if the question is on the record.

MR. CHAIRMAN: Mr. Cherniack.

MR. SAUL CHERNIACK (St. Johns): You put the question on the record, do you want to put the answer on the record?

MR. SHERMAN: The answer is that these are amendments being moved by the sponsor of the bill, Mr. Chairman.

MR. CHAIRMAN: They will be moved for committee purposes and read into the record by Mr. Kovnats, on behalf of Mr. Brown, the sponsor of the bill, who is not a member of the committee.

MR. SHERMAN: Good. Thank you.

MR. CHAIRMAN: Can we go section-by-section? Clause 1, Definitions. (Interjection)— No, is it your desire and wish that we do each subsection too? Okay.

Definitions on Page 1, Section 1, Clause 1 — pass; Page 2, Persons deemed practising medicine 2(1) — Mr. Kovnats.

MR. ABE KOVNATS (Radisson): Mr. Chairman, I move that subsection 2(1) of Bill 17 be amended by striking out the word and figures "clause (1)(o)" in the first line thereof and substituting therefor the words "the definition of practice of medicine."

MR. CHAIRMAN: We have a motion by Mr. Kovnats. Are we ready for the question?

Mr. Cherniack.

MR. CHERNIACK: I would like to know the extent to which this section differs — I'm just looking to see that — from the existing. The comment is that it is the equivalent. Does that mean that this description does exclude something like the respiratory technologists from being restrained?

MR. CHAIRMAN: Mr. Cherniack, is that question to Mr. Sherman or to Legal Counsel?

MR. CHERNIACK: I want to be as free as I can be to submit it to anybody, even Mr. Kovnats who moved the change.

MR. CHAIRMAN: Well, he's the mover. Mr. Sherman, are you in a position to answer that?

MR. SHERMAN: Mr. Chairman, I believe I am. 2(1), this is the equivalent of Sections 2(2) and 2(3) of the present Medical Act. The only changes in this section are a removal of references to opticians in the preamble and the simplification of the paragraph.

MR. CHAIRMAN: Mr. Balkaran.

MR. ANDREW BALKARAN: Mr. Chairman, might I point out that from a drafting standpoint the change there was necessary to accommodate the French translation — the clauses are no longer numbered so the reference to clause (1)(o) — there's no clause (1)(o) — clause (1)(o) in the previous bill as numbered was the definition of the practice of medicine.

MR. SHERMAN: Mr. Chairman, you know I appreciate Legislative Counsel's comment but further, just for the edification of the committee, the whole clause 2(1) is really the equivalent of Sections 2(2) and 2(3) of the existing Medical Act. That was my point. Mr. Balkaran has addressed the specific change of terminology.

MR. CHERNIACK: Mr. Chairman, I'm looking at 2(1)(d) and I'm thinking of physiotherapists who are excluded under (h) of 2(2), so that's okay. Then I'm thinking of the team trainer we talked about yesterday and I'm wondering to what extent this could restrict him from doing what he normally does. I know it's the same as the previous Act, but we're looking at it fresh.

MR. CHAIRMAN: Mr. Cherniack, are you raising that point because it doesn't specify the team trainer, because it's sort of omitted?

MR. CHERNIACK: Well, yes, 2(2) does not specify the team trainer as being excluded from the

description. But we talked about the team trainer doing certain things which the physiotherapists agreed are helpful for the treatment of an injury, say. I just wanted to know whether this 2(1)(d) could put that team trainer in any problem.

MR. SHERMAN: I don't think so, Mr. Chairman. In fact I should go beyond that to say I'm confident it doesn't because what is really at the nub of the questions that Mr. Cherniack is asking — and I'm not implying that I'm placing an interpretation on his questions — but what is really the nub of this issue is the function of diagnosis which is vested in the medical profession and in the medical practitioner. That function is protected. The trainer, for example, to use Mr. Cherniack's example, does not do the diagnosis. I don't know whether that answers Mr. Cherniack's concerns or not.

MR. CHERNIACK: I read (d) and I will read it just picking the phrases as they come to me "administers any treatment for the cure, treatment, of any human ailment or injury" which is what I really though the team trainer does do at the time during and following an injury. I pick that only because it occurs to me from our discussion last night. I just want to know; I don't presume that they operate under the supervision of a doctor or any of the people listed in 2(2).

MR. SHERMAN: Mr. Chairman, the trainer to whom Mr. Cherniack refers does indeed administer treatment but he doesn't prescribe and he doesn't diagnose; a medical practitioner does prescribe and diagnose. Or put it the other way around, does diagnose and prescribe. The trainer does not do that but certainly the trainer administers treatment.

MR. CHERNIACK: Mr. Chairman, I have a problem with this and Mr. Balkaran will have to help me. It says "prescribes or administers". So I rule out the prescribes as Mr. Sherman says and I read "administers any treatment" which Mr. Sherman says he certainly does do. Therefore I want to ask Mr. Balkaran, are we likely to, by continuing this restriction, involve people who are now earning a living doing something which society recognizes as being of value?

MR. CHAIRMAN: Mr. Balkaran can you answer that?

MR. BALKARAN: I'm not a medical man, Mr. Chairman, but I would have thought that the exclusion in 2(2)(h) which excludes physiotherapists would include trainers because they perform similar functions to some extent.

MR. CHERNIACK: Mr. Chairman, I'm surprised because it says a physiotherapist, acting with the scope of The Physiotherapist Act; surely that can't include any other para-professional who is not a physiotherapist. I don't want to belabour this, it's just that it seems to me this is a good time to clean up wording.

MR. SHERMAN: Mr. Chairman, I apologize but I'm having some difficulty with Mr. Cherniack's difficulty. In a great many cases, trainers for athletic teams are physiotherapists. Now if they're physiotherapists there is no problem. His problem is with the trainer who is not a physiotherapist and that trainer certainly can administer physical treatment for physical injury if he's recognized by that team as having some skill in doing that. But I don't understand what is troubling Mr. Cherniack with respect to a conflict here in terms either of his parameters of function and the specific exclusivity of function that is reserved to the medical practitioner.

MR. CHERNIACK: Let me try to explain my position to Mr. Sherman. I believe it is our duty in granting special exclusive rights to any group of people, any profession, that we must do so in the light of the need for us to make sure there is in the public interest, available to the public, services which are health services in this case which are needed by the public. If we create legislation which restricts the availability of personnel, then I think we're not protecting the public, we're actually doing harm to the public.

Now what I can see happen here is that where Mr. Sherman says usually they are physiotherapists — and maybe that's true, I don't know — but I interpret Section 2(1)(d) coupled with 2(2)(h) to say that every trainer who works for any team at any athletic program, will have to be a physiotherapist. I think there should be doubt expressed about that because of the costs involved. You take an amateur football team who has a trainer who is considered adequate, are we going to force them to have a physiotherapist? That's why I asked the question. Maybe Mr. Scott will offer an opinion as to how the medical profession looks at it. But I see it as being a forcing of a highly skilled person to do a job which I think a lesser skilled person has been doing and can do and that's my concern. If that concern is not shared by other members of the committee, I'm not going to be their conscience. I'll just drop it.

MR. SHERMAN: Mr. Chairman, we may be getting a closer legal examination of the point; it may be forthcoming in a moment or two. I personally don't have any difficulty with it. If I for example were a coach of a football team and Mr. Cherniack whom I knew through athletic experience, was very good at working on injuries such as charley horses, muscle injuries, that sort of thing, I would have no qualms whatsoever about engaging him provided we had a reasonable relationship, engaging him as trainer of my team. Serious medical injuries of course would be referred to the club doctor. But if Mr. Cherniack feels this legislation has to specifically include reference to trainers, I would have no objection to inserting it but I think it's unnecessary.

MR. CHERNIACK: Mr. Chairman, I'm really hoping Mr. Kovnats will give us his experience because I think he's been involved in athletics and certainly I haven't been. Just to respond to Mr. Sherman, rather than include a trainer, I would like somehow to involve an outside review at Exceptions under 2(2) which would permit somebody else outside of both the physiotherapists and the medical profession to be able to say in any particular case, "Yes, a trainer is okay". Frankly I don't know who else would be. I brought an example but there may be others. I really can't think offhand who they may be.

It may even be that there are people that work in a large plant, say, in an isolated area who are assigned the task of administering treatment and paid to do it and I think they're not excluded from this. So having raised that, I really don't want to pursue it. I don't want to take up time of the Committee if the Committee is not concerned after I've raised this point.

MR. CHAIRMAN: We have a motion by Mr. Kovnats on 2(1). All in favour of Mr. Kovnat's Motion. (Agreed)

MR. CHAIRMAN: 2(1), as amended — pass. 2(2) — I think we have another amendment.
Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Subsection 2(2) of Bill 17 be amended by striking out the word and figures "Clause 1(o)" in the first line thereof and substituting therefor the words "the practice of medicine".

MR. CHAIRMAN: Are you ready for the question? Mr. Cherniack.

MR. CHERNIACK: That's okay. I wanted to make another suggestion about the general . . .

MR. CHAIRMAN: I will put Mr. Kovnats' Motion now. All in favour. (Agreed) — pass. Mr. Cherniack, on 2(2) still?

MR. CHERNIACK: Yes, on the definitions under Subsection 2(2). My impression is that the regulations of the College do not need the Legislative Counsel's approval. No, I don't think they do. — (Interjection)— Pardon?

MR. BALKARAN: Regulations 19.

MR. CHERNIACK: 19.

MR. CHAIRMAN: Legal Counsel mentions Regulations 19.

MR. CHERNIACK: Thank you. Could we put into 19 the authority to enlarge the list of exceptions under 2(2)? I would be quite happy if that were done to give for the future — no need to come back and change the Act all the time — but if the Counsel, with the approval of the Lieutenant-Governor, increases this list of exceptions, then I would assume they know what they're doing and I would certainly rely on them and trust them to do the right thing. Could that be done?

MR. SHERMAN: Yes, Mr. Chairman, that's acceptable.

MR. CHERNIACK: We'll leave this to Mr. Balkaran to draw something and then come back to it.

MR. CHAIRMAN: Are we going to do it in 2(2), Mr. Cherniack, or under 19, the Regulations?

MR. CHERNIACK: Wherever I'm given advice to do. I thought 2(2). Well, maybe no; maybe you're right, maybe under 19. It's up to Mr. Balkaran; he's the draftsman.

MR. BALKARAN: If it's to be regulations I would think it properly belongs under 19.

MR. CHAIRMAN: 2(2) as amended — pass; Section 3 — pass; Section 4 — pass.

MR. CHERNIACK: It's the same as in the previous legislation. I don't know just how that applies to let's say the withholding of blood transfusions or witch doctors. Well there is that. I don't know what the problem has been or if there has been a problem but it says "anyone who practises the religious tenets of their church" — and that I think includes everybody. I think every person may say I am following the religious tenets of my church. Is that a problem? Is this just a concession that's given or is it really recognition and maybe it's Christian Scientists that would be covered? I don't know who is included under (4 . I wonder if we can get clarification from the college or from the Minister.

MR. SHERMAN: Mr. Chairman, certainly we can get clarification from the college if it's the committee's wish. It's my understanding that this would as a prime example exist in reference specifically to groups, persons such as Christian Scientists. But it was in the previous legislation as Mr. Cherniack has acknowledged and I would suggest it's there as a concession to and a recognition of those differing points of view, religious and philosophical, which include certain forms of therapeutic treatment.

MR. CHERNIACK: Could that include Mr. Jones? Is that the name of that Jonesville, that crazy massacre that took place?

MR. SHERMAN: Mr. Chairman, certainly it wasn't written with Mr. Jones in mind. But I suppose the short answer to the question would be "yes".

MR. CHERNIACK: Let me conclude this by asking Mr. Balkaran. Would this be subject to interpretation by the courts? Would the courts look into whether or not the religious tenets of a church would exempt them? If it's something that a court would look into and decide on, then by all means.

MR. BALKARAN: The question is whether this would be open to . . .

MR. CHERNIACK: Yes. It occurs to me that a court could say this or the other person is going beyond the religious tenets of a church and then that would be in court. But would this come under the power of the college or strictly the courts?

MR. BALKARAN: I think that it would perhaps first come under the power of the college to determine as to whether or not it valued the tenets of the church of a certain person. But if the person is not satisfied with that finding, certainly it could wind up in court.

MR. CHAIRMAN: Section 4 — pass; Section 5 — pass; Section 6, Memberships — pass; there's two parts to 6, (1) and (2). On 6, Mr. Cherniack?

MR. CHERNIACK: Yes. I was asking Dr. Ewart about the inclusion of a section such as in The Nurses Act prohibiting discrimination and Dr. Ewart

said by all means, he said he had fought for this kind of principle before and no objection to it.

Mr. Walding however, pointed out Section 6(1) I think it is, of The Human Rights Act and I'm wondering whether that would cover this. It would cover the point I made and that Dr. Ewert had agreed to accept and that is a clause prohibiting discrimination of people on the basis of those particulars in the — I'm just looking for it.

MR. CHAIRMAN: Mr. Balkaran.

MR. BALKARAN: The Human Rights Act spells out a number of things on the basis of which a person ought not to be discriminated against but the scope or the areas of discrimination is limited to employment, housing and certain things of that . . .

MR. CHERNIACK: Something about occupational — I thought Mr. Balkaran was right. I thought we needed this here if we believed in it.

MR. BALKARAN: I didn't think it went as far as to control the entry into a profession such as the Law Society.

MR. CHERNIACK: There's some reference to occupation or profession. We haven't got the legislation. Mr. Chairman, I wonder if we can come back to this when we get The Human Rights Act.

MR. CHAIRMAN: Is that agreed by the committee? Mr. Sherman.

MR. SHERMAN: Yes that's agreeable, Mr. Chairman, but certainly we had a look at that and I would just suggest to the committee that we believe it is covered by The Human Rights Act.

MR. CHAIRMAN: We'll come back to 6.

MR. CHERNIACK: May I just say in the light of that, I would want to ask Mr. Balkaran — and probably this is the time to do it — the extent to which this would apply to the chartered accountants who said, "We're not asking for exclusivity of practice". If we could look at it in that light, it seems to me they might be excluded where the college is included in The Human Rights Act. So maybe we can look at it when we get it.

MR. CHAIRMAN: All right, we'll come back to Section 6. Section 7. Mr. Kovnats.

MR. KOVNATS: Mr. Chairman, I move that Section 7 of Bill 17 be amended by striking out the word "qualifiications" in the last line thereof and substituting therefor the word "qualifications".

MR. CHAIRMAN: It's a spelling correction I'm told. (Agreed) Section 7 as amended — pass. Mr. Cherniack.

MR. CHERNIACK: I wish you'd let me explore it for a minute. I have that this item and 19(a) takes away the old Section 18 — I'm trying to read my own scribble — which grants rights, Section 18 sets out the number of rights. My comment is, it might be okay if under 19 the Lieutenant-Governor-in-Council could initiate changes. This takes away from the Legislature and gives to the college except for a veto by the Lieutenant-Governor.

I think the point I'm making is that in Section 19, the Lieutenant-Governor is not given the power to initiate regulation changes but may only give veto power. That to me would be desirable if they could initiate it in order to grant these powers. I don't think I'm making myself very clear and that's because I'm looking at old 18. The note on the college's brief says, "This section along with 19 replace 18 of the current Medical Act, removing the specific qualifications for registration from the Act to regulations approved by the Lieutenant Governor. Draft regulations have been prepared and make no changes". So under 18 it lists for example, people on the medical register in New Zealand or various places, Irish Medical Council. That is removed and is put into the hands of the college.

My suggestion was, that it may well make sense to have it in regulation but suppose a person comes along from somewhere with a qualification and it might be an acceptable one except — except the college may stumble over it - would it be possible for the Lieutenant-Governor under 19, to call upon a change in the regulation to broaden the scope of the people to include people who would be proposing to practice medicine in the province? I wonder if Mr. Sherman follows what I'm saying and feels he should have that right?

MR. SHERMAN: Yes, Mr. Chairman, I do follow what Mr. Cherniack is saying. I have asked for an opinion on the point and the opinion to which I would subscribe and which I would offer the committee is, that those to whom administration of the Act has been delegated — in this case of course the college — are customarily the ones to do the initiation. But as the legislation itself specifies, the government has the final authority and can change the Act. The government can equally or similarly initiate an Act, or change the Act if this delegation of authority is abused.

MR. CHERNIACK: I'd like to suggest to Mr. Sherman if the government has the power to change the regulation, then that would suit me fine because to change the Act means possibly another year to get around to it, whereas the regulation is something the Cabinet could deal with. One other thing, my note says — and I really don't remember just the circumstances of it — but my own scribble tells me that Dr. Ewart will accept the present 18 on Page 6 of the college brief and the Lieutenant-Governor can't change it. Now I wonder if that's clarified. I don't understand my note itself. It says, "Ewart will accept present 18" but I wouldn't push that at all. I'm just wondering if Mr. Sherman would agree that the Lieutenant-Governor shall be able to change the regulation in that respect.

MR. SHERMAN: Well, Mr. Chairman, I'm not sure I understand Mr. Cherniack's difficulty with respect to the government's authority over regulations. The government can repeal a regulation.

MR. CHERNIACK: That's my point. No, I read 19 that the government can veto but once passed the government cannot. It's not a government regulation

as I read it. Now if Mr. Sherman is right I have no problem but the way I read 19 is that the council makes the regulation but it has to have the approval of the Lieutenant-Governor. Once having obtained the approval then I think that's finished. I don't think it's a government regulation.

MR. SHERMAN: Mr. Chairman, that's not the way I have interpreted it or understood it. Mr. Cherniack raises a question that deserves examination and answer. I will have my officials and advisors explore it in the immediate future in the course of this committee meeting.

MR. CHAIRMAN: Mr. Balkaran. Can we proceed?

MR. BALKARAN: No, I may be wrong, Mr. Chairman, but I have to check it out so maybe you can get back to it. I think there's a provision in The Interpretation Act which confers on the Lieutenant-Governor the power to make regulations or, where he has the power to make regulations, he has the power to amend or repeal. I can check that out.

MR. SHERMAN: Could we proceed. We'll certainly have that point checked out. But this is the difference in interpretation that I was referring to. Mr. Cherniack obviously has some legitimate concerns that I have not had. I may well be wrong but could we proceed in the meantime.

MR. CHAIRMAN: Okay, we'll move on to 8. We'll leave 7 and Mr. Kovnats' Motion on the table. 8 — Additional qualifications — pass; 9(1) — pass; 9(2) — pass; 9(3) — pass; 10 — pass; 11 — Inspection of Register.

MR. CHERNIACK: Mr. Chairman, could we say the register shall be open to the public. I think that's part of the MARL recommendation. But whether or not it is add the words "to the public" after the word "open". The register shall be open to the public and may be inspected. I'm pretty sure that MARL suggested it and I think it's a good idea.

MR. BALKARAN: Mr. Chairman, I wonder if Mr. Cherniack would accept adding the words "by any person" after "inspected".

MR. CHAIRMAN: Mr. Cherniack move that?

MR. CHERNIACK: Yes, Mr. Chairman, unless I have to write it out in which case I won't move it.

MR. CHAIRMAN: Okay. Legal counsel will write it out for you. All in favour of Mr. Cherniack's Motion. (Agreed). 11 as amended — pass; 12(1).

MR. CHERNIACK: There's a lot of debate on this one, Mr. Chairman. Is it clear that there is an appeal right? I think there is; I think that's clear but I want to make sure. 64(1) says "any person who considers himself aggrieved by an order or decision of the council". I'd just like Mr. Balkaran to confirm that it's covered. Would that be under (d), an order suspending the person?

MR. BALKARAN: Sorry, Mr. Chairman, I wasn't listening. I was trying to find something else.

MR. CHERNIACK: Is 12(1) covered for appeal under 64(1)(d) maybe?

MR. BALKARAN: I would think so, Mr. Chairman, because under 12(1) the council . . . no that's erase, this is a suspension.

MR. CHERNIACK: (a) a refusal or alteration of registration and (d) is an order suspending. But this is a refusal to register.

MR. BALKARAN: It goes beyond that, Mr. Chairman. It may erase or it may refuse.

MR. CHERNIACK: So it's both.

MR. BALKARAN: Yes. So (d) covers the suspension, (a) covers the refusal.

MR. CHERNIACK: So you say that 64(1) covers? It covers and that's all I want.

MR. BALKARAN: I would have thought that (d) should be amended to read "an order erasing" or another clause erasing a member's name from the register.

MR. CHERNIACK: You would be more comfortable if 64(1) were amended to include 12?

MR. BALKARAN: Yes.

MR. CHERNIACK: I'll make the note then.

MR. BALKARAN: Excuse me, Mr. Green. Before we go on, when we were on Section 7 a while back, 20 Sub (1)(f), Clause (f) of The Interpretation Act reads as follows: "In an enactment where power is conferred to make regulations the power shall be construed as including power exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others".

MR. CHERNIACK: Does that mean the power on any regulation or is it only the regulation that's passed by the Lieutenant-Governor-in-Council? Because as I read this section we were talking about, 19, it's not a regulation of the government. Does that interpretation take in a regulation made by the council in this case. I mean a council of . . .

MR. BALKARAN: I think it's a matter of semantics, Mr. Cherniack. The section reads: "subject to the approval of the Lieutenant-Governor-in-Council. Surely if he withholds his approval there's no regulation so it's tantamount to making it, really.

MR. CHERNIACK: No, no the point I was making, Mr. Chairman, was that the College may make regulations, submit them to the Lieutenant-Governor-in-Council; the Lieutenant-Governor-in-Council may approve them and then they are regulations. Now that's a regulation of the College not of the Lieutenant-Governor-in-Council, as I understand it.

MR. BALKARAN: No it would be filed and published in the Gazette of the Manitoba Regulations.

MR. CHERNIACK: It will be a Manitoba regulation?

MR. BALKARAN: By definition it becomes a regulation under The Regulations Act.

MR. CHERNIACK: I'm surprised but I accept that.

MR. CHAIRMAN: 12(1) — Mr. Green.

MR. SIDNEY GREEN: Mr. Chairman, I question the necessity of 12(1) and 12(2) and I go to 57 which deals with the discipline where a member is found by an inquiry committee to have been guilty of professional misconduct unbecoming a member or to have demonstrated incapacity or unfitness to practise medicine, etc., may cause the name of that member to be erased from the register.

Now first of all, where we are saying that we can erase from the register it seems to me that if the conduct, the commission of the indictable offence, fell within 57(1), and those are the only ones that I think should cause a person to be erased, then 57(1) will take care of it. Where it's a refusal to register, that is a different circumstance. But I rather think that the refusal to register, there should be a provision which says that if a person has done something which would fall under the same definition as are included in 57(1) then they don't have to register him. I mean if a person has done something which the college could discipline him for under 57(1), then it seems to me that for the same reason they could refuse to register him. But the section saying that it's the indictable offence that does it, bothers me some and I'll tell the Minister why; because I think that sometimes we have put people into double jeopardy.

When you commit an indictable offence you are jailed, you are imprisoned, you are fined, you are dishonoured and you are a person who has enough troubles as it is. If you have a skill and you are prevented from exercising that skill, in addition to this, isn't that vindictiveness if the offence has nothing to do with the practice of medicine? If so, why are we putting it in as the offence?

You know, there was a Member of Parliament who had been convicted of armed robbery and was elected as a Member of Parliament and was re-elected; this was Frank Howard. It seems to me that he made a contribution to society after he was convicted and after he paid his debt to society he went on and proved to be a very useful citizen. That has happened time and time again by the way. There were three members of this Legislature who were elected while they were serving time for having committed a indictable offence. In 1921, there were three people who were convicted of having engaged in a conspiracy to overthrow the government and they were elected while they were sitting in prison. (Interjection)— I'm sorry. Well, Mr. Chairman, there was another person who was elected to Parliament in Ireland, which is a different situation, but I do not know why we still maintain these archaic words. Aren't we trying not to punish people or to penalize or to be vindictive against them but what we are trying to do is protect the public.

It seems to me that the college should be able to refuse registration if they are satisfied as to the same things that would enable them to suspend registration. In other words, if a person has done something for which he could be disciplined under 57(1), the College should have the discretion to refuse registration and I would agree with that. Having said that, to erase from the register, 57(1) includes the commission of indictable offence which would have the effect of making him unfit to practise because, where the member is found by the Committee to have been guilty of professional misconduct, conduct unbecoming a member. Well surely conduct unbecoming a member would be conduct which would include an indictable offence that related to the practice of medicine.

Now why don't we get rid of those statements? Don't forget the guy is going to be punished for the indictable offence; 57(1) takes care of the erasure. If you're worried about the entrance then I would strongly recommend, Mr. Chairman — although again I don't have the right to make an amendment — that you change 12(1) to talk about where a person has done any of the things for which he may be subject to suspension under 57(1), the council may refuse to put his name on the register. Now, doesn't that take care of it?

MR. CHAIRMAN: Mr. Sherman.

MR. SHERMAN: Mr. Chairman, I must say that Mr. Green makes an eloquent case but he does more, through his evaluation of this situation in his interpretation of it, to reinforce my feeling that Section 12(1) should be here, although that was not his intent. But Mr. Green has just delivered a very impressive articulation of a person approaching a situation of this kind with reason, with moderation and with consideration. I suggest to Mr. Green that just as he has said to the committee, now what is the purpose in being vindictive? Is it not better to eliminate some of these old-fashioned trappings and conventions and just assure ourselves of the protection of the public and not be authoritarian about the fact that somebody somewhere has a criminal offence in his record?

I suggest to Mr. Green that people on the Council of the College would say precisely the same thing as they adjudicated individual cases. But I have to say that I think in the case of the profession of medicine, which is a profession dealing as we all know with life and death, that the reputation and the image of the profession and the confidence of the public in that profession must be paramount, must be guaranteed wherever possible, must be reinforced and in those circumstances, I think the profession certainly should have reserved to it the right to make these individual adjudications.

I have to suggest, Mr. Chairman, that I don't read 12(1) and (2) and 57(1) as being interchangeable in the same way as Mr. Green does. 57(1) refers to an action that can be taken following an inquiry. 12(1) refers to an action that can be taken today, at 5 minutes to 12, without an inquiry so they're not interchangeable in that sense. Why should the college, Mr. Chairman, go through the expenditure and the trauma on both sides of an inquiry when because of a particular indictable offence — and this would by no means include all indictable offences, in fact it would include a very small percentage of them only — but because of a particular indictable offence which was clear, which was known publicly because that man or woman, Mr. Green or I, had been judged by a jury of our peers and had been found guilty of that indictable offence, had appealed it and had lost

our appeal and therefore stood convicted by the public of an indictable offence, then why should the college go through the expenditure of time and the double trauma of conducting an inquiry simply to satisfy themselves that they were adhering to the specific wording of a piece of legislation?

I think the college should have reserved unto itself the right to make individual judgments. I think that there will be people in those instances who will say the very things that Mr. Green has said now and will persuade their colleagues on the council that we should not erase Mr. Sherman's name from the register. But the opportunity and the entitlement remains there for the college to refuse registration where it's a clear-cut case and when it's obvious that it's in the interests of the public's protection and the public's protection and the public's confidence in the profession that that registration be refused.

Now Mr. Green referred to Mr. Howard whom I know quite well, in fact served in the House of Commons with Mr. Howard. I have no worries or concerns about Mr. Howard. I always found him to be a fine person and an excellent Member of Parliament, not of my political persuasion but nonetheless doing the best he could in a lost and losing cause but Mr. Howard was not a doctor. I know journalists who have committed indictable offences. There is no reason why they should not be able to write their stories and broadcast their stories in the same fashion as though they hadn't committed indictable offences.

You can extend this kind of formalized charity to which Mr. Green addresses himself, to a great many fields of endeavour. I think in the field of medicine, in the field of care, commitment and challenge where illness and life and death are the primary concerns, that we're dealing with an exceptional profession in that sense — I don't mean exceptional in any other sense than that — but I think in that sense that a strong case can be made for reserving to the college the authority to do this. The legislation simply says they may, it does not say they shall.

But let me just add in conclusion, Mr. Chairman, that I would like to propose that subclause 12(2) be amended, could be amended, take out the phrase "in the opinion of the council" in the second and third lines thereof — remove the phrase "in the opinion of the council" — which would then sort of put the onus for this kind of justification on a broad, universal and public bases rather than vesting it in the council and would also make any such action by the council appealable on the part of the person who felt himself or herself to have been unfairly treated.

MR. GREEN: I think that Mr. Cherniack has yielded to me because I have to be away, Mr. Chairman. I think the Minister, if he says I made his case then I say that he has made my case. Mr. Chairman, because he has said that the council wouldn't do this and therefore I don't have to worry about it. If they wouldn't do it then we who are the legislators and who are making legislation should not confer on them the powers to do it and if you are saying that under 12(1) it's not the same as 57 because under 12(1) they can make an immediate suspension regardless of an inquiry, then it seems to me that there is more necessity for dealing with it under 57 rather than under 12(1) because at least if there is an inquiry the man will have an opportunity of putting his position and if you're worried about whether he should be suspended immediately because of the danger to health, the council has power to do that as well. They can make an immediate suspension without 12(1) and if he has done something which is indictable and which deserves an immediate suspension, the council has that power. So they don't need it under 12(1) and if they're going to do it without grounds then there should be an enquiry; and if there should be an enquiry then 12(1) should be out.

Now the Minister has learned something. If you go back through Hansard you'll hear what he said. He said a man has committed an indictable offence; he's been convicted; he has appealed and he has lost the appeal. Do you notice, Mr. Chairman, that the Minister has learned something? Because, Mr. Chairman, there were 57 legislators here in December and you said that the council would not do such a horrible thing. If you would do it, why do you say that the council wouldn't do it? We all did it and we didn't wait for an appeal and the man was out on bail. But now you say if it's appealed and he has lost his appeal and is found guilty in the eyes of the public then they should have this immediate right.

Well this doesn't say anything here about appeal. It says "convicted of an indictable offence". Now, Mr. Chairman, if I know that the Minister of Health would do it, the Member for Springfield would do it, the Member for St. Johns would do it and I was involved in it too and I voted the other way, but who in the hell knows what I would do? All I know is that they could do it; that they could be for one reason or another wrought up to do it and it's not necessary. If you go to 57 they have a power to suspend a man on a hearing for doing something that will be contrary to the practice of medicine. If you want him to have the right to do it immediately, this statute also permits him to do it immediately, so they don't need these two sections.

May I say to the Minister that taking out the words "in the opinion of the council" in my view doesn't change anything because that is going to be done in the opinion of the council. Whether the words are there or not it's the council who's going to make that decision. It seems to me that if the council makes that decision then any decision of the council is appealable, I gather — that would be one of the decisions although I'm not certain — I got tripped up on this yesterday. 64(1) an order suspending a member; a refusal or alteration of registration is appealable and if it's done by the council I gather that it is appealable. So the words in the opinion of the council are a redundancy and if that's the contribution that the Minister of Health makes I can tell him that in my respectfull submission, it is not much of a contribution.

But, Mr. Chairman, I'm going to move — I can't do it here — but I'm going to move that 12(1) and 12(2) be eliminated if I can get an amendment in at the Report Stage, and I will debate it in the House. I really feel satisfied, almost certainly satisfied — although I have not reason to say this — that if the Minister went over and spoke to the members of the College of Physicians and Surgeons on these two questions as a result of them having heard this debate that he would come back and find that he

has not got as much objection to what I am suggesting as he thinks he has.

MR. SHERMAN: Well, Mr. Chairman, that well may be but I, as Minister of Health, have an objection to what the Member for Inkster is suggesting. Does the Member for Inkster suggest that I do not, as an elected member of the Legislature as he is, have a right to have my objection to it in just the same way as he has objections to what I am proposing or what we are proposing? —(Interjection)— Mr. Chairman, I challenge that contention by the Member for Inkster. I reject it and repudiate it. I did not say that it was the college's instructions. Those are words that he has put into other's mouths, words that he has used. What I have said is that this piece of proposed legislation is the work of a great deal of input over a great period of time. Naturally it has included considerable input from the College of Physicians. It has also included considerable input from other health professionals and professions and fields and from officials in my department including my Deputy Minister and myself and I wish to have that point corrected and clarified at this juncture because it is not a case of doing simply what the college is asking.

As a matter of fact there's a perfect example of that in the debate that is going on on this point. Mr. Green has said that he has the college's concurrence in, or that he believes that there would be some support, some enthusiasm for his suggestion that 12(1) and 12(2) be taken out of the proposed legislation. I am saying that as the administrator or the elected administer of the Health Services of this province, that I am not agreeable to taking 12(1) and 12(2) out of the legislation. I certainly would be susceptible to or amenable to an amendment that didn't alter the basic right that's being vested here in this clause in the college and in the profession to look to its own image and reputation and to the protection of the public's confidence in it.

I would ask Mr. Green this: If there were a situation, and it happens, where a medical practitioner for example in another province of this country or another jurisdiction in North America, had been convicted of the offence of administering overdoses of certain toxic drugs or toxic medications to persons resulting in their deaths and that practitioner applied for registration on the register of the College of Physicians and Surgeons in Manitoba, is he suggesting that if the knowledge of those incidents which lead to the conviction of that applicant were available and had been understood by the college and the public that the college should go to the trouble of holding an inquiry to determine whether or not that practitioner should be allowed to practise?

In the meantime, I assume if Mr. Green is taking that position, in the meantime he's saying that practitioner should be allowed to practise and should be allowed to go out tomorrow and commit the same offences for which he was convicted in the jurisdiction from which he came. I say that is not acceptable and the section as it's written, is designed to protect the public against that sort of thing; not to protect the public against somebody who happened to cheat on his income tax and be convicted for that reason.

I can assure him that in just the same way that he has approached the individual circumstances of cases the College will approach the cases on the basis of individual circumstance. But there has to be protection of the public against practitioners who have committed offences; that show that they have not demonstrated a sense of responsibility and protection. And to have to go through an inquiry before you can stop that practitioner from doing that again, I say, is irresponsible.

MR. GREEN: Mr. Chairman, the Minister is asking a question and obviously he is having some difficulty understanding what I am saying. I said that if a person wanted to be registered and the College had information that he had done any of the things for which he could be suspended under 57(1) that they could refuse to register. I assume that giving an overdose of toxic drugs causing the death of somebody is unbecoming a medical practitioner. And then you wouldn't have to hold a hearing; you would not give him a certificate. —(Interjection)— Mr. Chairman, that is not what it says. I am suggesting that the section permits them to refuse to give a certificate because a person has been convicted of an indictable offence and entitles them to erase for the commission of an indictable offence. I am saying that is covered by 57(1) because they can erase somebody from the register if he engages in conduct unbecoming of a doctor and they can immediately erase him for any reason that they see fit to erase him for pending an inquiry. So he has all of the powers that he is talking about except, Mr. Chairman, a power on the College to throw a person out of the profession because he has committed an indictable offence which is not conduct unbecoming of a medical practitioner. That's the only power that they have here that they don't have under the other sections and they don't need it.

The Minister has said that I have accused him of speaking for the College. Mr. Chairman, I will withdraw that to the extent that in the last Medical Act that was put before the Legislature the Minister came and gave as his reasons for not supporting the legislation to come to committee was that the College advised him that they couldn't accept that form of legislation. That's what he told us. I'm the one who says that I have a right to say that I won't listen to the problem. But that's what he came into the House and said.

Now 12(1) and 12(2), Mr. Chairman, as they are written now are completely unnecessary to accomplish what the Minister says has to be accomplished. I can tell the Minister if he doesn't know it; that a man who has committed the offence of giving an overdose of drugs causing death will be held by the College to have been engaged in conduct unbecoming a medical practitioner. If he has been so engaged he can be suspended immediately. The only question is whether they should so register. I didn't know that they have to; if they have to then I say that 12(1) can be dealt with, merely saying that if the College has information that a person has done anything for which he could be suspended they need not register him and that would take care of it.

I'm sorry I don't wish to be rude but I have to leave.

MR. CHERNIACK: Mr. Chairman, I've been waiting to give Mr. Green time to deal with it.

Firstly the proposal by the Minister to delete the words "in the opinion of the council" in 12(2), I do

give some validity to it because I think that a court on appeal might, with this phrase in, say that they will not substitute their opinion for that of the council. With the deletion of this phrase I think a court will feel freer to judge of its own accord rather than to rubber stamp the council. So I agree with that proposal but I also agree with Mr. Green and I'd like to develop my approach to it.

Firstly, we are here to make sure that the best possible medical service, health service, is available to the public on the broadest scale which means more accessibility to people who are in the practice of medicine, which means that we don't want people to be arbitrarily taken away from being able to give their service to the public.

Now the problem we're dealing with under 12(1) has two avenues. One is denial of admission, denial of a registration and the other is removal after registration. It seems to me on the question of removal after registration then there really ought to be an inquiry. I don't think there's any excuse not to have an inquiry when a person is a member and he is convicted; and not to have an inquiry but just to remove him and then say appeal it if you like, I think is unfair to the person who has been admitted as a member. I think therefore that there ought to be an inquiry.

As to the person who applies and is refused because of a previous indictable offence, I don't think it's necessary to actually have 12(1) to do it, if you follow my reasoning. If you look at 7 dealing with Eligibility for registration it says, the qualification as prescribed by regulation made under 19(a). 19(a) under the Regulation provides that proof may be required as to professional conduct and general fitness of an applicant to practise medicine. I think there are certain types of criminal offences, such as overdose, would show that person is not fit to practise medicine and, on that basis, I can see that under 9(2) the registrar will refuse to enter the qualification in the register. So that the person applying could be denied under 9(2) and then, of course, there's an appeal to the council which I don't think anybody would quarrel with.

Now the thought of somebody having done something that means that he must immediately be removed has to take into account that between the date of the charge and the date of the conviction time has carried on and presumably he's been practising medicine all along. All the time that he's been under investigation, under charge and under trial, he's been practising medicine. He is now convicted and right away there is the power on the council to throw him out and then he has to appeal it.

I read Section 51 as giving the council the power to suspend at any time. Under 51, the investigating chairman may, at any time, direct a registrar to suspend, but — and it's an important but — this decision is only for one week. Then we move to 55(1); under 51 they say unless it's been confirmed under 55(1). Now this is not a arbitrary act but is one that 55(1) says that now an inquiry has been directed and that inquiry that is going to look into it may result in a suspension; therefore, the council may suspend in advance of the inquiry and I think that's fair. So that if that person is liable to repeat a serious act to the detriment of his patient, then under 51 he would certainly be suspended; under 55(1) an inquiry would be launched and the suspension would be continued and he still has his right of appeal. We must bear in mind that removing the opportunity to practise medicine from a doctor means that he's out of a job, he's out on the street, he's been discredited before an inquiry has been made and only on the basis of a conviction which is now one where he's in double jeopardy. He's been convicted, he's been fined, or imprisoned or whatever and it is still standing against him to the extent the College can deal with it.

I agree with Mr. Green that under 7, 9, 51 and 55(1) all can be accomplished but not so automatically and I think that's the point. Here you have a man — and this is not an unusual case — a man who believes that he owns property in someone else's home; he may decide to go into that home and take back his property, not realizing that he's breaking and entering, and suddenly he's convicted for breaking and entering; then somebody in the College may say that's really not very good conduct, we don't like doctors to be accused and convicted of such a deed and then they debate it. I think that while they're debating it, and I grant them the right to debate it, that his ability to practise is not really jeopardized and they don't really have to remove from him this right to practise and then say go and appeal it. That's really what 12(1) says, that they can do it without proper consideration and that the only way it can be reviewed is by way of appeal.

I'd like the Minister to reconsider that because obviously we'll be debating this again in the House unless it's changed now. I think that it's been there at least since 1964. I'd like to know from the council — Dr. Morison may know — how many times Section 19 has been brought into use since 1964. Would that not be a helpful bit of information?

MR. SHERMAN: Mr. Chairman, certainly if it's agreeable to the Committee we could ask Dr. Morison to comment in response to Mr. Cherniack's question. But just before that occurs, I don't want to put any words into anybody's mouth but let me say that it's my understanding that this provision did find its way into the legislation in 1964, as Mr. Cherniack has suggested — it was not in the legislation prior to that time — but it was written into the legislation at that time precisely because of a very serious situation described by some as a disastrous situation, with which the college was not statutorily equipped to cope. It was felt highly necessary for those very limited situations and circumstances. The example that I used is not the worse by any means; it was simply an example but there are situations which can pose a very severe immediate and obvious danger to the public. The section was written into the legislation at that time to give the College protection against that kind of thing ever happening again, to prevent that from recurring. Certainly I'm agreeable, if the Committee wishes, to exploring the issue with Dr. Morison.

MR. CHERNIACK: I'd very much like to do that, Mr. Chairman. I point out to Mr. Sherman that 51 wasn't in the Act and therefore, maybe they needed 12 then; now I think 51 makes it unnecessary for them to have it. I may be wrong but the way I read their comments, 51 is brand new and if that's the case

then surely that takes care of the need and still leaves the right to a member, a person who has been a member, to have an inquiry. I wonder if we could ask Dr. Morison, Mr. Chairman.

MR. CHAIRMAN: What is the general wish of the committee? We've had delegations; do you wish to go back to various people and have them appear before the committee or do you want them to communicate through a member? What's the wish? Mr. Sherman, do you . . .?

MR. CHERNIACK: Yes, agreed.

MR. SHERMAN: Agreed, Mr. Chairman.

MR. CHAIRMAN: Dr. Morison, could you take the mike at the lectern, please?

DR. J.B. MORISON: My experience only goes back to '71. We have had only two cases where there were criminal convictions involved; in neither case did we revoke registration.

MR. CHERNIACK: In neither case?

DR. MORISON: The first one was an applicant who had served time and the other one is one who had been convicted while registered and in neither case did we use this section to revoke their licence. One was registered and both times we did take it to the committee who felt that they had paid their debt; that they were not situations we felt affected the practice of medicine either.

MR. CHERNIACK: Then the next question is, is 51 new?

DR. MORISON: Yes.

MR. CHERNIACK: And would 51 give you the power that you need to suspend the person immediately if you feel that he is not fit to practise because of conviction or otherwise?

DR. MORISON: That's illegal.

MR. CHERNIACK: Well, isn't that why you're putting it in?

DR. MORISON: This was taken, yes, to be able to suspend immediately. It gave another person the authority to suspend immediately. We've always had that authority but we would have had to convene an emergency meeting of our Executive Committee to do it in the past. This gives an officer of the college the authority to suspend immediately but that is the only change there.

MR. CHERNIACK: All right, Mr. Chairman, then I think it's confirmed. Since 1971 there have been two convictions — they did not bring 12 into effect, that is the old whatever it was — they did not use it. In other words they didn't need Section 12 since 1971, to Dr. Morison's recollection, but more important, Section 51 gives them the power to suspend but also poses the obligation on them to launch an enquiry. Section 57 gives them the need to consider an appeal on a refusal under Section 7. I support the idea that you don't need 12, that they don't need 12. I think the evidence from Dr. Morison supports that.

MR. SHERMAN: Mr. Chairman, I appreciate the arguments that have been raised and I do not wish to be arbitrary about it and I will reconsider those arguments. No doubt, unless it's removed at this juncture, the debate will resume at third reading stage and I'm prepared for that. At this juncture, I believe that 12(1) is important to guarantee the protection of the public. It makes it very clear that the public is protected against the kind of situation which could pose disastrous danger to the public and that 12(2) provides the doctor, the practitioner, with the necessary protection against an arbitrary or unfair refusal or rejection or suspension.

So I would want to proceed with the legislation in its present form at this stage, Mr. Chairman, but I recognize the fact that the subject will be redebated on third reading. I will give it very intensive consideration between now and then.

MR. WALDING: Mr. Chairman, since it's four minutes to adjournment hour, we're obviously not going to get through this bill. I wonder if, rather than have members take a hard position that they will lock themselves into, that Mr. Sherman will have the opportunity before we next meet in Committee to review this with whomever he wants. So if there's no further discussion on 12, let's adjourn or go on to 13 and perhaps come back to 12.

MR. CHAIRMAN: Maybe before we adjourn we could go back and finish 7. I believe Legal Counsel has communicated to Mr. Cherniack and that it could be passed as amended by Mr. Kovnats.

MR. CHERNIACK: I believe that means an understanding that 19 will be expanded on to take care of the point I've made. Is that it?

MR. BALKARAN: There was a further point, Mr. Chairman, as to the authority or the power of the Lieutenant-Governor-in-Council to amend or revoke a regulation made pursuant to Section 19 and The Interpretation Act, in my opinion, covers the situation, so that 7 could be passed.

MR. CHAIRMAN: Can 7 be passed as amended by Mr. Kovnats? (Agreed) For my information, what about 6(1) and (2)? What are we waiting for there now?

MR. CHERNIACK: We're waiting for clarification from Mr. Balkaran on the human rights legislation. I wonder, Mr. Chairman, Mr. Balkaran has given this to me. It reads: "Every person has the right of equality of opportunity in respect of his occupation and in respect of his membership or intended membership in a trade union, employers organization or occupational association. Without limiting the generality of the foregoing, no occupational association shall refuse membership, to expel, suspend or otherwise discriminate against that person". Will Mr. Balkaran agree that this covers the College of Physicians?

MR. BALKARAN: Yes, Mr. Chairman, I think it does. I think the medical profession is an occupational association.

MR. CHERNIACK: Then, in order to save time the next time around, would Mr. Balkaran consider and tell us later whether the chartered accountants would be covered, in light of the way Mr. Don Thompson described their group as not having exclusivity of practice and therefore he said, well, we're just a body.

MR. BALKARAN: In my opinion, Mr. Chairman, exclusivity has nothing to do with whether or not an association is an occupational association. If you are an occupational association Section 6 of The Human Rights Act would come into play and the discrimination provisions would apply.

MR. CHAIRMAN: 6(1) — pass; 6(2) — pass. Mr. Sherman, before we adjourn what do you want to do with 12(1) and 12(2)? Do you want to have them dealt with now or would you like to lay them over?

MR. SHERMAN: Mr. Chairman, I want them retained in the proposed legislation for now, but the Committee will be rising I assume within the next 30 seconds or one minute and I think it's necessary to check with the respective House Leaders to see when this Committee will sit again. If the Committee is sitting again at 8 o'clock tonight I have no objection to calling the vote or providing the Committee with my decision on those two sections at 8 o'clock this evening, or this afternoon.

MR. CHAIRMAN: I have a Motion that committee rise.

Committee rise.