

No. 20 of 2019



**SIXTH NATIONAL ASSEMBLY**

**PARLIAMENTARY**

**DEBATES**

**(HANSARD)**

**(UNREVISED)**

**FIRST SESSION**

**FRIDAY 28 JUNE 2019**

## **CONTENTS**

**ANNOUNCEMENT**

**MOTION**

**BILLS (*Public*)**

**ADJOURNMENT**

## THE CABINET

(Formed by Hon. Pravind Kumar Jugnauth)

Hon. Pravind Kumar Jugnauth	Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, Minister of Finance and Economic Development
Hon. Ivan Leslie Collendavelloo, GCSK, SC	Deputy Prime Minister, Minister of Energy and Public Utilities
Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC	Minister Mentor, Minister of Defence, Minister for Rodrigues
Hon. Mrs Fazila Jeewa-Daureeawoo	Vice-Prime Minister, Minister of Local Government and Outer Islands, Minister of Gender Equality, Child Development and Family Welfare
Hon. Yogida Sawmynaden	Minister of Technology, Communication and Innovation
Hon. Nandcoomar Bodha, GCSK	Minister of Public Infrastructure and Land Transport, Minister of Foreign Affairs, Regional Integration and International Trade
Hon. Mrs Leela Devi Dookun-Luchoomun	Minister of Education and Human Resources, Tertiary Education and Scientific Research
Hon. Anil Kumarsingh Gayan, SC	Minister of Tourism
Dr. the Hon. Mohammad Anwar Husnoo	Minister of Health and Quality of Life
Hon. Prithvirajsing Roopun	Minister of Arts and Culture
Hon. Marie Joseph Noël Etienne Ghislain Sinatambou	Minister of Social Security, National Solidarity, and Environment and Sustainable Development
Hon. Mahen Kumar Seeruttun	Minister of Agro-Industry and Food Security
Hon. Ashit Kumar Gungah	Minister of Industry, Commerce and Consumer Protection
Hon. Maneesh Gobin	Attorney General, Minister of Justice, Human Rights and Institutional Reforms
Hon. Jean Christophe Stephan Toussaint	Minister of Youth and Sports

Hon. Soomilduth Bholah	Minister of Business, Enterprise and Cooperatives
Hon. Marie Roland Alain Wong Yen Cheong, MSK	Minister of Social Integration and Economic Empowerment
Hon. Premdut Koonjoo	Minister of Ocean Economy, Marine Resources, Fisheries and Shipping
Hon. Soodesh Satkam Callichurn	Minister of Labour, Industrial Relations, Employment and Training
Hon. Purmanund Jhugroo	Minister of Housing and Lands
Hon. Marie Cyril Eddy Boissézon	Minister of Civil Service and Administrative Reforms
Hon. Dharmendar Sesungkur	Minister of Financial Services and Good Governance

## PRINCIPAL OFFICERS AND OFFICIALS

Madam Speaker	Hanoomanjee, Hon. Mrs Santi Bai, GCSK
Deputy Speaker	Lesjongard, Georges Pierre
Deputy Chairperson of Committees	Jahangeer, Hon. Ahmad Bashir
Clerk of the National Assembly	Lotun, Mrs Bibi Safeena
Deputy Clerk	Ramchurn, Ms Urmeelah Devi
Clerk Assistant	Gopall, Mr Navin
Clerk Assistant	Seetul, Ms Darshinee
Hansard Editor	Jankee, Mrs Chitra
Serjeant-at-Arms	Pannoo, Mr Vinod

**MAURITIUS**

**Sixth National Assembly**

-----

**FIRST SESSION**

-----

**Debate No. 20 of 2019**

**Sitting of 28 June 2019**

The Assembly met in the Assembly House, Port Louis at 3.00 p.m.

**The National Anthem was played**

*(Madam Speaker in the Chair)*

## ANNOUNCEMENT

### POINT OF ORDER - HON. SHAKEEL MOHAMED - MADAM SPEAKER - RULING

**Madam Speaker:** Hon. Members, on 24 of June last, the hon. First Member for Port Louis Maritime and Port Louis East, Mr Shakeel Mohamed, rose on a point of order in the course of the intervention of the hon. Prime Minister, when summing up on the Appropriation (2019-2020) Bill (No. X of 2019), objecting to the hon. Prime Minister stating that he has, I quote –

“made a speech on the Budget *à relent communal*”.

And requesting to know which part of his speech was so, otherwise the hon. Prime Minister ought to withdraw.

I had stated that I reserved my ruling on this point of order and will come back to the House after perusing the records. Indeed, I have perused the whole intervention of the First Member for Port Louis Maritime and Port Louis East, Mr Shakeel Mohamed. There is a small part in the intervention of the said hon. Member wherein the inferences he made may be tantamount to referring to religious and communal divides. I quote –

“Our country is also divided when it comes to religion. That is what I have seen. This is my view. Divided when it comes to religion. Can you imagine, Madam Speaker, that everything that Government does is only to score political points?”

And he goes on to say -

“Madam Speaker, I fail to understand and look at the way they operate. I think it is important for people in Mauritius to understand that. They will go to India with a bowl and they will go to Saudi Arabia with another bowl and they will say give us some money.”

And he goes on to say -

“They go to India and say: give us some money and then they come to Mauritius and play the whole game about: well, you know, since we are close to the Government of India, therefore, one component of Mauritius should be happy.

Then they send someone else to Saudi Arabia. You see Saudi Arabia likes this Government; therefore, the Muslims should be happy.”

I hold that to the extent that the hon. Prime Minister was referring to this part of the intervention of the hon. First Member for Port Louis Maritime and Port Louis East, Mr Shakeel Mohamed, I cannot say that the hon. Prime Minister was completely wrong.

However, in regard to the reference made by the hon. Prime Minister to communal speeches allegedly held by the hon. First Member for Port Louis Maritime and Port Louis East, Mr Shakeel Mohamed, outside this House and to incidents which occurred and public statements made outside this House connected with the hon. Member which, according to him, have communal connotations, I hold and reiterate that these cannot be imported into this House as I had already ruled.

Thank you.

### **MOTION**

#### **SUSPENSION OF S.O. 10(2)**

**The Prime Minister:** Madam Speaker, I move that all the business on today's Order Paper be exempted from the provisions of paragraph (2) of Standing Order 10.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

### **PUBLIC BILLS**

#### *Third Reading*

*On motion made and seconded, the Appropriation (2019-2020) Bill 2019 (No. X of 2019) was read a third time and passed.*

#### *Second Reading*

### **THE DISCIPLINARY BODIES (HEALTH SECTOR) (MISCELLANEOUS PROVISIONS) BILL (No. IX of 2019)**

*Order for Second Reading read.*

(3.07 p.m.)

**The Minister of Health and Quality of Life (Dr. A. Husnoo):** Madam Speaker, I move that the Disciplinary Bodies (Health Sector) (Miscellaneous Provisions) Bill (No. IX of 2019) be read a second time.



Madam Speaker, this Bill, which is presented before this august House, today, is an important piece of legislation which has, as main object, to amend the various legislations in the health sector with a view to reviewing and harmonising the disciplinary procedures and powers of statutory disciplinary bodies, such as the Allied Health Professionals Council, the Dental Council, the Medical Council, the Nursing Council and the Pharmacy Council.

Presently, Madam Speaker, the disciplinary procedures and powers of these disciplinary bodies differ from each other, with the result that professionals in the health sector are not on equal footing when they are subject to disciplinary proceedings. For example, the Pharmacy Council Act makes no provision to deal effectively with cases of gross misconduct or negligence contrary to the Medical Council, Dental Council and Nursing Council Acts, which provide for the respective Council to suspend a professional temporarily after a preliminary investigation pending determination of the case by the Medical Disciplinary Tribunal.

Madam Speaker, by bringing the necessary amendments to the respective legislation, the disciplinary procedures and powers of all those statutory disciplinary bodies are being harmonised so that all professionals in the health sector are placed on equal footing and are treated fairly in matters of disciplinary proceedings.

Madam Speaker, may I inform the House that the Bill has been subject to lengthy discussions at the level of my Ministry and to extensive consultations with all stakeholders. We have taken the time that it requires for consultations, and I must say that there is consensus for the passing of this important legislation which, I believe, is in the interest of all the professionals in the health sector, the more so as the Bill introduces a time limit within which the Medical Disciplinary Tribunal should hear and determine a disciplinary case of professional misconduct or negligence.

Madam Speaker, I will now deal with the salient specific provisions of the Bill.

The main amendments which are being brought to the five legislations, that is, the Allied Health Professionals Council Act, the Dental Council Act, the Medical Council Act, the Nursing Council Act, and the Pharmacy Council Act, are as follows -

- (i) Firstly, a definition of the term 'professional misconduct or negligence' is being introduced under section 2 of the relevant legislations.

Madam Speaker, presently, the terms 'professional misconduct' and 'negligence' are defined separately in the Dental Council Act and the Medical Council Act. There is no such

definition in the Allied Health Professionals Council Act, the Nursing Council Act and the Pharmacy Council Act. The Bill, therefore, provides for the introduction of a general definition of the term 'professional misconduct or negligence', under one heading, in the five different legislations.

Thus, Madam Speaker, the definition of the term 'professional misconduct or negligence' in relation to a registered professional will include 'a breach of the Code of Practice; a failure to exercise due professional skill or care which results in injury to or loss of life of a person; a failure to exercise the proper and timely care expected from the registered person; an act of fraud or dishonesty; and an improper, a disgraceful, a dishonourable or an unworthy act, or any other act which brings the respective profession in disrepute'.

In addition, Madam Speaker, the definition of the term 'professional misconduct or negligence', in the Dental Council Act and the Medical Council Act, will also include 'the prescription of a dangerous drug to any person which is in excess of the amount that is properly required for or knowing that such prescription is not required for the dental or medical treatment of that person.'

As for the pharmacists, provision is being made, in the Pharmacy Council Act, for the definition of the term 'professional misconduct or negligence' to include also 'the supply or the dispensing of a dangerous drug to any person otherwise than is properly required or which is in excess of the amount that is properly required for the treatment of a person or an animal'. Furthermore, the Bill provides that any pharmacist, who supplies or dispenses a dangerous drug on presentation of a prescription knowing that such prescription is fictitious, shall commit an act of professional misconduct or negligence.

(ii) Secondly, the amendments proposed relate to the harmonisation of the disciplinary procedures and powers of the five Councils.

In fact, Madam Speaker, as I mentioned earlier, this is a major and an important amendment since it aims at harmonising the disciplinary procedures and powers of the five different Councils with a view to ensuring that all professionals registered under the different Acts are treated in the same manner, fairly and timely in any case warranting disciplinary proceedings.

Madam Speaker, any disciplinary body in the health sector should be able to investigate into a complaint of professional misconduct or negligence against any registered

professional. When such complaint concerns a public officer, the relevant disciplinary body should be vested with the proper delegated power to investigate into that complaint. Hence, a proper definition of the term 'delegated power' is essential, as provided for in the Pharmacy Council Act. Consequently, the required amendments are being brought to the term 'delegated power' in the Allied Health Professionals Council Act and the Medical Council Act. And a new definition of the term 'delegated power' is being inserted in the respective Section 2 of those Acts, including the Dental Council Act and the Nursing Council Act, where such interpretation does not presently exist. Thus, the definition of the term 'delegated power' is being harmonised.

Thirdly, a time limit is being introduced for the determination of any case of professional misconduct or negligence against a registered professional.

As the different legislations stand today, there is no time frame for the determination of any case of professional misconduct or negligence against a registered professional and this causes serious prejudice to those concerned. Sometimes, it takes months before a case is investigated at the level of the respective disciplinary bodies and determined by the Medical Disciplinary Tribunal. It is known that, on average, a case before the Medical Disciplinary Tribunal can take more than one year for determination. The Bill addresses this flaw by imposing a time limit on the different Councils and the Medical Disciplinary Tribunal for the institution and determination of disciplinary proceedings.

Madam Speaker, the Bill, therefore, makes provision for the respective Council, in section 25 of the Allied Health Professionals Council Act; in the respective section 13 of the Dental Council, Medical Council, and Nursing Council Acts, and in section 27 of the Pharmacy Council Act, to investigate into a complaint of professional misconduct or negligence against any registered health professional, and submit its report not later than three months as from the date the investigation starts.

Madam Speaker, in the event that the preliminary investigation reveals that there is a *prima facie* evidence of professional misconduct or negligence against a registered professional, the Bill provides, in section 26 of the Allied Health Professionals Council Act; in the respective section 14 of the Dental Council, Medical Council, and Nursing Council Acts; and in section 28 of the Pharmacy Council Act, that the relevant disciplinary body may, where it considers that the case is of a serious nature, suspend him temporarily, in the public interest, until determination of the case. Furthermore, the Bill provides that where the

respective disciplinary body holds a delegated power, it has to report the temporary suspension of the registered professional to the Public Service Commission.

Madam Speaker, should the relevant Council, after completion of the preliminary investigation, come to the conclusion that the registered professional has committed an act or omission which is not considered to be of a serious nature, it may, notwithstanding the institution of disciplinary proceedings before the Medical Tribunal, administer that person, who is not a public officer, a warning or severe warning.

Madam Speaker, I will now elaborate on the provision of the Bill for the institution of disciplinary proceedings following a temporary suspension of any registered professional.

Once a registered professional has been suspended, the respective disciplinary body has, not later than seven days after such suspension, to institute disciplinary proceedings against the registered professional before the Medical Disciplinary Tribunal, and as soon as a disciplinary case is referred to the Medical Disciplinary Tribunal, the Bill imposes also a time limit on the Tribunal to hear and determine such case.

It is, therefore, provided, in section 28 of the Allied Health Professionals Council Act, in the respective section 17 of the Dental Council, Medical Council, and Nursing Council Acts, and in section 30 of the Pharmacy Council Act, that the Tribunal has to determine the disciplinary case not later than 90 days after the start of the hearing of the proceedings. In case the Tribunal will require more time to determine the case, it will have to provide valid reason for any extension which should be with the consent of all the parties concerned.

Madam Speaker, the Bill provides that as soon as the Medical Tribunal has determined the case, it has, not later than three days after such determination, to forward its report and proceedings to the relevant Council, but it shall not make any recommendation regarding the form of disciplinary measures, which is the prerogative of the respective Council.

I now come, Madam Speaker, to the action that the respective Council has to take once it is in presence of the report from the Tribunal wherein it is stated that the charge against the registered professional has been proved, and the time limit within which it has to act.

Madam Speaker, provision has been made in the different legislations that if the charge of professional misconduct or negligence against a registered professional, who is not a public officer, has been proved, the Council may, not later than 14 days after receipt of the

report, take any of the following disciplinary measures: either administer him a reprimand or a severe reprimand or suspend him as a registered professional for a period not exceeding two years or deregister him as a registered professional.

Moreover, Madam Speaker, where the proven charge of professional misconduct or negligence is in relation to a registered professional who has prescribed a dangerous drug to any person, which is in excess of the amount required or which is not required for the medical treatment of that person, the relevant Council has to make a recommendation to the Minister in accordance with section 9(6) of the Dangerous Drugs Act. The same procedure will follow with regard to a pharmacist who has supplied or dispensed a dangerous drug to any person otherwise than is properly required and which is in excess of the amount required for the treatment of that person, or if the Pharmacist, knowing that a prescription is fictitious, has supplied or dispensed a dangerous drug on presentation of such prescription.

The Minister, to whom the responsibility for the subject of health is assigned, may, once he is in presence of the recommendation of the appropriate disciplinary body on those cases, and acting in accordance with section 9(6) of the Dangerous Drugs Act, withdraw the authority of the medical practitioner or dentist or pharmacist to supply or procure any dangerous drugs or direct that no prescription containing a dangerous drug shall be issued by that medical practitioner or dentist or pharmacist.

Madam Speaker, the Bill provides also that where the proven charge concerns a registered professional in respect of whom the respective Council holds a delegated power, it has to submit its own report to the Public Service Commission, in accordance with regulation 46E of the Public Service Commission Regulations. After the Public Service Commission has taken cognizance of the report and after it has decided that the punishment to be inflicted on the public officer is dismissal or retirement in the interest of the public service, the relevant Council has to determine, not later than 14 days of the decision of the PSC, whether or not it shall suspend or deregister the registered person.

Madam Speaker, in case the charge of professional misconduct or negligence has not been proved against a registered professional, the Bill provides for the respective Council to notify the registered person within a time limit. It is, therefore, provided that the relevant Council has, not later than 14 days after receipt of the report from the Medical Tribunal, to notify the registered person of such finding, and send a copy of the notice to the PSC where it holds a delegated power.

Madam Speaker, the disciplinary proceedings, I have mentioned, will apply to any registered professional in the health sector against whom there is an alleged case of professional misconduct or negligence, and that person will be subject to the appropriate disciplinary measures after completion of the preliminary investigation and disciplinary proceedings, and determination of the case by the Medical Tribunal.

However, Madam Speaker, without any of the disciplinary proceedings provided for in the different Acts being instituted, where a registered professional has been convicted of an offence and is serving a sentence of imprisonment or penal servitude, the Bill provides, in the respective section 18 of the Dental Council, Medical Council, and Nursing Council Acts, that the respective Council shall suspend him as a registered person for such time as the respective Council may determine. This provision already exists in the Allied Health Professionals Council Act and the Pharmacy Council Act. It is being replicated in the Dental Council, Medical Council and Nursing Council Act.

Madam Speaker, I, now, come to the membership of the Disciplinary Tribunal. Presently, it is provided in the Allied Health Professionals Council Act, the Dental Council Act, the Nursing Council Act and the Pharmacy Council Act that the Prime Minister has to appoint two persons with the required profile and experience as members of the respective Disciplinary Tribunal. Provision is now being made in those Acts that such appointment will be made by the Minister responsible for the portfolio of health matters, instead of by the Prime Minister. The reason behind such provision is that the setting up of any Disciplinary Tribunal in respect of those Councils is on an *ad hoc* basis, that is, it is constituted as and whenever a case of professional misconduct or negligence against a registered professional is referred to the Tribunal.

With regard to the membership of the Medical Disciplinary Tribunal, no amendment is being proposed. The appointment of the Chairperson and two members of the Medical Disciplinary Tribunal as provided for in the Medical Council Act will still be made by the Prime Minister.

Madam Speaker, as mentioned in the Explanatory Memorandum, the Bill also makes provision for an amendment to section 9 of the Dangerous Drugs Act, whereby the setting up of an *ad hoc* Dangerous Drugs Tribunal is being removed. This amendment is being proposed since any case pertaining to the supply, dispensation or prescription of a dangerous drug by a pharmacist or a medical practitioner or dentist to any person which is in excess of the amount

that is properly required or knowing that such a prescription is not required for the medical treatment of that person, will now be dealt with by the appropriate disciplinary body, that is, either by the Dental Council or the Medical Council or the Pharmacy Council, as the case may be. Therefore, the setting up of an *ad hoc* Dangerous Drugs Tribunal will no longer be required.

Lastly, Madam Speaker, as a consequence of the amendment being brought to the Dangerous Drugs Act, the Bill makes provision to amend the Veterinary Council Act accordingly. Thus, a new paragraph is being added in section 20 of the Veterinary Council Act to provide for appropriate disciplinary action against a veterinary surgeon who has prescribed a dangerous drug which is in excess of the amount that is required or knowing that such a prescription is not required for the medical treatment of an animal.

To conclude, Madam Speaker, I am confident that the House will welcome this piece of legislation, and that there will be consensus among all hon. Members for this passing of this Bill for the simple reason, which I explained in my introductory remarks, that it harmonises the definition of the terms professional misconduct or negligence, the disciplinary procedures and proceedings, and powers of the statutory disciplinary bodies in the health sector, namely the Allied Health Professionals Council Act, the Dental Council Act, the Medical Council Act, the Nursing Council Act, and the Pharmacy Council Act. And, Madam Speaker, last but not least, the Bill introduces an important element, which is a time frame for the completion of the disciplinary proceedings instituted against any health professional, which is in the interest of one and all. It paves the way for a new legislative framework with inbuilt safeguards that reinforce the transparency of the disciplinary proceedings within the set time frame without causing serious prejudice to the concerned parties.

With these words, Madam Speaker, before I resume my seat, I thank the hon. Members for lending ears to my plea for the passing of this important legislation.

Madam Speaker, I commend the Bill to the House.

Thank You.

**Mr Roopun rose and seconded.**

**Madam Speaker:** Hon. Leader of the Opposition!

(3.29 p.m.)

**The Leader of the Opposition (Mr X. L. Duval):** Madam Speaker, this is, indeed, an important legislation concerning medical negligence, which is a huge issue for our population. I for myself, whether in or out of Government, I always try to pay particular attention to health because I believe the quality of care, the professional ability of our health professionals and also the well-being of the patients and our doctors are important. I remember when I was Minister of Finance, back in 2012, through the Finance Act (Miscellaneous Provisions) Act, we provided for preregistration exams for all doctors to be in Mauritius to protect the population because sometimes they qualify in all corners of the world and not always is the quality of the tuition given properly made. So, this exam is still going on. It is held, I believe, still by Indian examiners in Mauritius, and it is very fair.

Also, Madam Speaker, in the Budget 2014, we introduced the shift system so that our health professionals no longer had to work day in day out for 3-4 days on end and, therefore, resulting in being dangerous to their health, but also the quality of care given. And, of course, Madam Speaker, during all that time, we provided for hundreds of increases in staffing in our public hospitals.

Also, as the Leader of the Opposition, I have had the occasion to ask a number of PNQs on the health sector, not because I have any particular grudge against the Minister, not at all, but because I think it is an important issue, whether it is renal dialysis or whether it is individual cases. So, I have listened with a lot of attention to what the Minister has just said. One first thing, Madam Speaker, in fact, I am going to limit myself basically to the Medical Council Act. I am not going to go to all the others. I have no particular issue with harmonising the laws. But I am going to take, in some little depth, the Medical Council Act.

And I was a little bit surprised, at the start of his speech, the hon. Minister said that this piece of legislation is in the interest of all professionals in the health sector, forgetting the patients. I would have thought he would have taken the opportunity to say 'in the interest of the professionals', fair enough, but I would have put the patients first. He did not even mention the interest of the patients. *C'est un lapsus*. I am sure he might try and correct it later on. But it is important to say that this piece of legislation, in his opinion, maybe not my opinion, is also in the interest of the patients, whether in the private sector or whether in our public hospitals, Madam Speaker.

I am going to stick to the Medical Council Act. On the face of it, this Bill ought to be commended. But, Madam Speaker, unfortunately, once again, the devil is in the detail. In my



opinion, the intention may be good, although I hear now the intention is to be nice to the health professionals. The intention may be good, but in practice, the loopholes that have been left in the law are sufficient, as they say, for the double-decker bus to get through them or the Metro Express to get through them. Madam Speaker, there are also a number of unintended consequences which actually mean a regress in the protection that is being given to patients who have allegedly suffered from medical negligence in Mauritius.

Madam Speaker, let me talk firstly about the public health service. Now, we understand there will be a limit of three months on preliminary investigation of the Medical Council - three months. And then, there will be another 90 days, three months in other words, for the Disciplinary Tribunal to have its hearing. But let's understand the whole circuit first of how we end up with some sanctions being taken against a doctor in the public service. Let me take that, Madam Speaker, very quickly.

Firstly, the incident occurs; baby dies, someone gets a wrong operation, something like this happens. Then the hospital superintendent will write a report and say this has occurred, and the report is then addressed to the Ministry with his opinion or without his opinion, just has been an incident. Now, the Ministry will, if it decides to do so, have an internal inquiry. The internal inquiry - we don't know how long it will last - will determine whether there is some prima facie case concerning that particular incident. The internal inquiry is done by two or three doctors from outside that same hospital and it is sent to the Ministry. So, the Ministry gets the report, has the inquiry, and gets the report of the inquiry, and then the Ministry will take whatever time it wants to send it, or not, to the Medical Council for further action. The Medical Council receives it and has a preliminary investigation again. Once it does its preliminary investigation, it will decide if the matter needs to go to the Medical Disciplinary Tribunal, then it goes to the Medical Disciplinary Tribunal. They have their hearing and they send it back again to the Medical Council which will decide on the sanction, but since this is the public sector, the Medical Council will not take any sanction, it will take the file again, send it this time to the PSC which may or may not take the sanction. All this, Madam Speaker, remembering that the Public Officers' Protection Act gives prescription of two years for anyone who wishes to sue the State or sue a doctor for medical negligence. Two years! So, this has to happen within those two years for there to be any value at all in all this procedure as far as the patient is concerned.

Now, Madam Speaker, does this Bill really shorten the delay or does it not effectively shorten the delay? It will probably have some effect, but what effect would it have? Firstly,

Madam Speaker, the initial period between the incident and the reporting to the Medical Council, this is not dealt with at all in this law. In the case of Beekareea, I asked a PNQ here, Madam Speaker, and do you know how long it took for the file to reach – I will you the little time frame of the case of Beekareea: 13 April, the poor baby, son or daughter, I don't know, of Mr and Mrs Hossen Beekareea died. On 10 July I asked a PNQ. It was on 18 July that the internal inquiry started. A few days later, the internal being completed, the file was sent to the Ministry of Health. My information is that it was only at the end of the year, around December, that the Ministry of Health sent the file to the Medical Council. Already 8 months! The Medical Council, to date, has not made any recommendation, has not taken any sanction, has not finished yet its investigation regarding the two doctors - I won't cite their names - involved in this case. The poor parents have been waiting 15 months. Madam Speaker, do you know how patients and relatives of patients are dealt with? Never has the Minister met poor Mr and Mrs Beekareea. They were only called for the internal inquiry in July after the PNQ. That's all. They don't have any idea at all about what is happening to the case. They are poor people - he is a waiter. They don't have money to go every day to hire big shot lawyers to speak to the Medical Council. They are still waiting; they have no clue what has happened to their case. The doctors are still practicing. So, this is the situation.

Madam Speaker, let's go back to my case. This law does not address the first issue, the delay that may happen between a hospital finding that there is an incident, having the Ministry informed, the internal inquiry done, the Ministry informed again, and finally the report sent to the Medical Council. This isn't dealt with here. So, the first loophole for which you can drive a double-decker bus through is the issue of the Ministry itself not being accountable, not being restricted in time as to what it should do. I would have really appreciated if this law or some subsidiary legislation could be amended to provide a strict time limit for the doctors in the hospital, etc. to do their work, and at the Ministry. Because doctors are doctors, they may not always want to take action against their colleagues. They may see something bad happening and instead of taking action, they just sleep on the file, and then time goes by. And as I said, we are limited to the two years' prescription for public officers. So, in the case of Beekareea, a clear case, which is not dealt with here in this Bill, half of the delay in one and a quarter years is due to the Ministry of Health itself, and this is not being dealt with in the law today. The other half is - and we will come to that - as a result of whatever the Medical Council is doing.

Madam Speaker, the second thing is the actions of the Medical Council itself. I would have expected the hon. Minister to give us the *raison d'être* of this law. As far as the Medical Council is concerned, perhaps he can tell us, in his summing-up, the following –

- How many cases are sent to the Medical Council a year?
- How many are sleeping in their drawers?
- How many are awaiting investigation?
- How many have been dealt with without any sanction?
- How many are under preliminary investigation?
- How many have been sent to the Disciplinary Tribunal waiting to be heard?
- How many hearings have started?

All this information is absolutely essential for us to understand the *raison d'être* of this law, otherwise we are a bit in the dark. We know that's a big problem, but maybe it is even bigger than we imagine, Madam Speaker.

We come now to the Medical Council, which, as I say, is still hearing the case of Beekareea after 15 months. Now, the Medical Council is meant to take only 3 months. It has no choice, it has to take 3 months for the preliminary inquiry. And when does the 3 months start? The 3 months don't start on the date that the report is filed or the complaint is filed at the Medical Council. It does not start there, Madam Speaker, the 3 months start on the date of the start of the investigation. So, it's there, there are tens of files or hundreds of files, I don't know, sitting at the Medical Council. It hasn't started any investigation. The clock is not ticking. The clock will only start ticking when it picks up the file and it gives it to an investigating committee, and that committee, from then on, can only take 3 months. This is what the law says. The law should give a time limit, not from when the investigation starts, but from when the complaint is received at the Medical Council, otherwise it's pointless. There is a big loophole: you can just leave the file and don't start the investigation. The clock doesn't tick. It can take months before you start an investigation – it does take months, sometimes years before an investigation is started and this Bill doesn't cater for that, Madam Speaker.

Now, let's say that the preliminary investigation finds some *prima facie* case, sends it now to the Disciplinary Tribunal. It has 7 days to send it. But how long will the Disciplinary Tribunal wait before starting a hearing? It doesn't say. So, again same thing! There is one Disciplinary Tribunal for all these health cases and there is no limit as to when the file is

received from the Medical Council, or these other Councils, and the hearing starts. So, again, if it is clogged up with work - I am sure it is - it will take months, maybe years before starting the hearing, and it is only when it starts the hearing that the 90 days start ticking again. So, you see, Madam Speaker, there is a problem with this law. I would have loved to have consensus on this issue. But we cannot have consensus when the time limits are set against goal posts which are not fixed, which are movable according to when the Medical Council wants to move it or the Disciplinary Tribunal wants to move it. That should be as from the date of the complaint is received either from his Ministry or from a member of the public, and that is when the time starts ticking. Because that is what the public is all concerned about: how long they have to wait before they get an answer, before disciplinary action is taken, before the doctor is or is not punished for his negligence. That is what matters, and this law does not cater for that. It protects in a way the professionals because they cannot be suspended for very long and that is the point of the law. It protects in the professionals. They can only be suspended for 90 days or so. But it doesn't protect the public, because the public wants to know more about what is happening to their case. So, there is no guarantee at all, Madam Speaker.

Madam Speaker, another thing. You put in the law that the Medical Council must/shall report, terminate and/or complete a preliminary investigation within three months and the same thing for the Disciplinary Tribunal although there is a little caveat there. But if they don't, if they just ignore it, what is your sanction? What are you proposing as a means to enforce this? You provide something in the law, that you have no legal right, no provision to sanction, no disciplinary measure, nothing is being proposed against the Medical Council, which may not abide by this law or against the Disciplinary Tribunal, which may ignore as well the 90 days. What is the sanction that is being provided? Are you giving yourself power here to fine the Medical Council? Are you giving yourself the power to dismiss members, call for new elections if they don't abide by the law? I can't see any of this. I cannot see, hon. Minister, that you are giving yourself or the Government any power whatsoever to make people abide by what you have called us on a Friday afternoon to discuss. We don't just want to discuss a piece of paper. We want to discuss a law that would have biting force, not a poodle without teeth. So, there is no provision to sanction. It could well just be a waste of time. We all know the Environment Tribunal, etc. It takes far longer than it is intended to take.

So, Madam Speaker, we need sanctions for people if the Medical Council ignores completely what the Minister is trying to do today with this Bill. And what are the unintended consequences of this law? You are giving the Medical Council three months, as I said, to decide on a preliminary investigation and the Disciplinary Tribunal 90 days, and it can extend with good reason and with the consent of both parties. But what happens if the Medical Council takes longer than three months? The law says it must give within three months. After three months, I understand it - I am not a lawyer, but I have gone to a lot of trouble to verify this - I am told that it no longer has jurisdiction on that case. It's gone, finished! The doctor walks free. Is that what you intended? That, after three months - and we all know that these guys are going to take more than three months. Check with your lawyers maybe, you will see that I am right. After three months, bye-bye; sorry mate, you were supposed to give me a finding within three months, you have not done so, the law just says it's too bad now. You have exceeded the time you are allowed. Like when you fire someone, within seven days, etc., you must tell him what the thing is. If you miss the seven days, you are finished, you are gone, you cannot do so.

So, Madam Speaker, there you go, and again the same thing for the Disciplinary Tribunal. It has 90 days; it can extend with the consent. If it doesn't get the consent, 91 days, the doctor who has been put in cause can just walk away, bye-bye, finished, you have only jurisdiction for 90 days, not a day more.

So, Madam Speaker, this law must have some clause which allows what I am just saying for it not to happen, must provide some clause *d'échappatoire*, with the approval of the Minister, with the approval of whatever so that the Council can, under exceptional circumstances, extend - what could be exceptional circumstances. A witness, main witness could be very sick, not able to attend; maybe you might need DNA samples - you know how long that takes; maybe you might need an expert witness from overseas. Who knows? I am saying that, of course, we all want it to happen within three months. Firstly, there must be a sanction and secondly, what happens in exceptional cases for the Council is not even provided for, even with the consent. And for the Disciplinary Tribunal, again, Madam Speaker, there must be a way to protect the public in case, as there will be delays, and you will have tens and hundreds of doctors just walking away from the disciplinary procedure provided.

Now, another issue - I have checked in the UK, also *L'Ordre des Médecins en France* - is this question of having public health service doctors only sanctioned by the PSC. Another

delay in the whole system! Madam Speaker, you tell me that the Constitution needs to be amended and all this, but it's not acceptable that a doctor in the public service should have a different treatment than a doctor in the private sector. It's not acceptable. The Medical Council should be there for all the doctors. The Disciplinary Tribunal should be there for all the doctors. You cannot have one for the public service, one for the private sector. Again a tale of two cities! We cannot have this. The system for the doctors must be the same for both, and the Public Service Commission should come out of that chain, should come out of there, and it should be the Medical Council itself that should take the disciplinary decision. It may need changes to the law, it may need changes to the Constitution, but that is what we are here for because otherwise, it will just add another layer of time, which is unwarranted, Madam Speaker.

Madam Speaker, now let us talk about the Disciplinary Tribunal. This Disciplinary Tribunal is presently headed by a very capable, a very senior Judge and two Assessors. What we are doing now is we are really bringing this Disciplinary Tribunal down to as if it is a mere committee at work. That Judge, a Judge of the Supreme Court can only deliver her findings on whether the case is proven or not proven. Although this is her day to day work, although this is her job, she is not allowed to determine any sanction. That is for the Medical Council, made up of doctors and laymen, etc., to decide on the sanction, whereas you have a Judge, that's his or her work, day in day out, and I for one would rather trust the Judiciary to deliver a sanction than the Medical Council to deliver that same sanction. And, therefore, Madam Speaker, I think it is a mistake in the law, it is mistaken to take away where there was some doubt, but it should be given the power to determine, the sanction should be in the hands of the Judge who is in charge of the Disciplinary Tribunal. It is currently a Judge. It does not have to be a Judge, but again the law can provide that it is a sitting Judge to do so. That would get the public on the side of the Government, in fact, the aim being to provide more justice in the system.

Madam Speaker, let us just deal with some of the issues which I want to clear. One, Madam Speaker, I cannot see anywhere in this Bill, any mention, any need for anyone to keep in contact with the victim, to keep in contact with parents of the victim, to even advise them of any conclusion to this whole thing. The Ministry is informed; the PSC is informed. The patient, the victim, he does not know what is happening. He is just there. This is putting people last! How can you provide a law on medical negligence and you don't provide any provision in the law for the person most affected by that negligence to know the different

stages where it has reached so that there is transparency and some conclusion, and the reasoning behind that conclusion. I think this is not right, Madam Speaker. I think that should be changed, Madam Speaker. So, that is one thing.

Another thing, we are talking about citizens. It is a fact that most of our citizens do not really know the procedure for making a complaint. Where is the Medical Council, where does it sit? We can find out, but it is not well known. In the public sector, most people think you just have to go to the hospital and make a complaint, but I think you can also go to the Medical Council. Has the Ministry of Health ever published a leaflet about patients' rights? What you should do if there is an incident, if you have lost a close one, if he/she has been subject of medical negligence, what are the procedures. I do not think so. I would invite the hon. Minister to have this leaflet and to ensure that citizens are well advised what they should do for cases of medical negligence. Maybe, they can bypass the whole procedure of the Ministry and come directly to the Medical Council and make a complaint there, but not many people may know that.

Madam Speaker, overseas, in UK, in Ireland, every hospital has a complaints officer. You have a complaint to make, you go to a complaints officer, he will give you the leaflet, he will give you the information and you can come and see him now and then to see how your complaint is going. In Mauritius, no complaints officer! It is not important probably. But very important, in fact! So, a complaints officer to deal with complaints at the hospital level is essential to ensure that citizens of Mauritius are able to know their rights and act upon their rights. Madam Speaker, there is also something called an incident report in most modern countries now, where low employees, high employees are encouraged in the name of transparency, in the name of good governance to write incident reports and send them to their bosses so that we get a better health service. That also does not exist in our system.

Madam Speaker, before I finish, I should maybe talk about this two-year prescription for suing the Government, in fact, in this case, the Ministry of Health, the doctors. We have seen clearly - just take the Beekareea case, it is already a year and something gone and he has not got anything yet; it has not even gone to the Disciplinary Tribunal yet - I don't believe. It is not going to make me popular with the doctors in the public service. It is ten years for the private sector. This two-year should be extended; it should at least be doubled. The two-year is too short to give our citizens access to the Courts in case of negligence. Too short! They would not have gone through the whole procedure, and when they do, they find that they are out of time, the case has already been prescribed. So, this is, Madam Speaker, section 4 of

the Public Officers' Protection Act, which dates back to 1957 – before I was born. It has to be changed and we need to provide proper protection, not just to the public officers, but as I mentioned throughout my speech, to the people of Mauritius, to the patients and the persons who may or may not have suffered negligence, Madam Speaker.

Madam Speaker, finally, this Bill tries to impose some deadlines on the Medical Council. Can the hon. Minister tell us whether, even these deadlines, with all its loopholes, they will be able to abide by it with the resources that they have or the resources that they don't have? Now, if they have the resources and are not doing it, then, it is a *motion de blâme* on the Medical Council itself because they ought to know everything in this Bill, they ought to be able to apply anyway. We need not have to legislate to tell them that they need to be quick and fast, accurate and fair in what they are doing. So, is it a problem of resources, in which case I have not seen any mention of increased resources to the Medical Council, but I am told that they have tens of millions of rupees in the bank – I don't know whether that is true. If it is not a question of resources, then it is a greater problem than is being dealt with here. There is a greater issue than is being addressed here. The issue is with the Medical Council itself. The issue is how to ensure that we have a Medical Council which responds to the needs of modern Mauritius, and that, Madam Speaker, I cannot see in this Bill.

Thank you very much.

(4.01 p.m.)

**Dr. R. Sorefan (Fourth Member for La Caverne & Phoenix):** Thank you, Madam Speaker, for letting me say a few words. I would like to thank the hon. Leader of the Opposition for his remarks and for the good research work he has done, and being helped also by lawyers.

Well, Madam Speaker, I am not a lawyer, I am in the medical field. I would like to thank the hon. Minister of Health, Dr. Husnoo for the good work he has done and I would like to congratulate him. Why, because he has tried to take all those Councils of the Health Sector and to bring all the disciplinary steps that should be taken, to have them uniformised and harmonised so that when it comes to disciplinary action, we just have the same step to follow. The hon. Leader of the Opposition has mentioned *lapsus*.

Madam Speaker, since I joined this House in 2010, my conclusion is, whatever law that is passed here, that we adopt here is in the interest of the people; most of them. And so is this Bill that the hon. Minister of Health has brought to this House. He does not have to



mention that he is bringing this Bill in the interest of the patients. No, Madam Speaker, it is understood, because that's what we do, that's what we are here for, that is, for the people. It is understood, the public knows why we are coming with this Bill.

Madam Speaker, the hon. Minister has mentioned of time frame. If everything, every law has a time frame, I would ask myself the question: why so many cases in the Supreme Court, even in the Magistrate Court/ District Court which take so much time? There are problems, there are procedures to follow. If today we come with a Bill, the case in a Magistrate Court should be determined in 90 days, can we do that? In the Supreme Court there are cases that go for more than 8 years, and still not determined. We can't put a time frame, because there are issues that we have to take in consideration. We have put time frame on the tribunal, 90 days, to determine, and when they are determined, within a few days the Council has to take action. Well, to put a time frame, Madam Speaker, will be very difficult. It would be very nice to have it, but in the system of our health, it is more or less difficult to attain it.

Madam Speaker, this Bill is the first step in the right direction. It is not the perfect thing as if the Minister won't come in this House to come with another Bill in the Health Sector. This is not so. In another 10 years, there will be improvement coming. And this is what the hon. Minister is doing today coming with certain issues that put the stepping stone that we can proceed and do better in the future.

The hon. Leader of the Opposition mentioned about Complaint Desk. Can you imagine the Complaint Desk at Dr. A. G. Jeetoo Hospital! The queue will be longer than the queue for having medical treatment or because of very petty things. So, for complaints we have a system, the legal way to do the complaint. So, I don't go for a Complaint Desk as such because we know how the system works here with certain persons.

Madam Speaker, the hon. Leader of the Opposition mentioned that certain cases go to PSC. Rightly so! The public officers, whatever complaint we have, they are reported to the PSC. The PSC has the jurisdiction, they can't have, as you said, two different; for the private, the Council doesn't need delegated powers, it can act, whereas with the public sector, before acting, I have to report to the Public Service Commission. This is so. We can't get out of this because this is what the Public Service Commission law says.

Madam Speaker, various health council disciplinary bodies have different disciplinary procedures and powers at that particular moment. Today, with this Bill, harmonisation and uniformity will prevail after voting at the Third Reading.

Madam Speaker, allow me to clarify just a word that I am not too happy being a Dental Surgeon myself. The word “Dentist” is used instead of “Dental Surgeon”. This word “Dentist” where it is mentioned in the Bill, is a very old term in the 19<sup>th</sup> century where Dentists were doing very minor interventions. That was a long time ago, even when Henry VIII proclaimed to be doctors, etc. Today, we do a lot of major interventions in the mouth, even major surgeries. That’s why as from 1950, the words “Dental Surgeon” in France “*Chirurgien Dentiste*” is being used just because not to give us ‘I am a Dental Surgeon’ no, just because we do dental surgery, main surgery in the mouth. We do a lot. I won’t go all about what Dental Surgeons do. So, when it comes to the dental profession, please mention Dental Surgeon because we are dealing with all the major surgeries whatever they do in the oral cavity. By the way, there is one part where Dental Surgeon is mentioned in the law whilst in the Explanatory Memorandum they talk about Dentist. So, there must be uniformity there also in what we say.

**Madam Speaker:** Yes, but hon. Member, the Explanatory Memorandum does not form part of the Bill itself. Right! You have to relate to the clauses of the Bill because the Explanatory Memorandum does not, in fact, form part of the Bill.

**Dr. Sorefan:** What I am trying to point out, Madam Speaker is that forget the word “Dentist” and carry on – because since 1950 we are talking of Dental Surgeon, not Dentist.

Madam Speaker, regarding section 26 subsection (2) at page 4 where upon a determination under subsection (1) the Council considers that the conduct or act or omission of the allied profession, and other professions is of such serious nature that it should in the public interest...

**Madam Speaker:** Can I just interrupt you to correct myself. The Explanatory Memorandum won’t form part of the Act.

**Dr. Sorefan:** Yes, I am aware, Madam Speaker. I am trying to make reference to it.

I will come back again. Where upon determination under subsection (1) the Council considers that the conduct, act or omission of allied health profession is such a serious nature that he should in the public interest instantly cease to practise, the Council ‘may’. I would say the Council ‘shall’ because it has been determined if it is of a serious nature, I would

propose instead of 'may' that the Council 'shall' and because he uses the same section 2(b) when it comes to public sector, the Council 'shall'. Why *deux pouds deux mesures*? Whereas in the private sector, the Council 'may' and when it comes to public sector, it is 'shall'. I would go for 'shall' wherever it is mentioned for all the Councils we are talking about.

Madam Speaker, one issue from this Bill where a medical or dental professional is suspended as a registered person for a period not exceeding two years. Madam Speaker, here we have a problem. I was faced with one suspended Dental Surgeon who came to see me and very rightly so if this dental or medical professional is suspended say for one year, and he goes after one year to get registered to practise, he will be refused registration because he has no CPD points, Continuous Professional Development. He has to gather 12 points. This is law. 12 or 14 points and when he is suspended, he can't follow the CPD because he is not a registered professional. So, we call that a cash 22, suspended you can't follow a course, if you don't collect your points, you can't get registered. So, what I am proposing that we come with an amendment, not today but in the appropriate Council, Medical Council or Dental Council, that the registered be exempted from the CPD. That will make life easy for all parties concerned because this will create problems because of suspension.

Madam Speaker, a lot has been elaborated by the hon. Prime Minister, even the leader of the Opposition has said what are the realities of what we see, but I am mainly concerned about the section regarding the Pharmacy Council Act, Section 7 of this Bill, at pages 25 and 26. It says that professional misconduct or negligence in relation to a pharmacist includes amongst others – subsection d, pages 26, (e) and (f) - the Council may investigate into any complaint of professional misconduct or negligence against a pharmacist. Madam Speaker, I wonder whether the Pharmacy Council is well manned to deal with cases where there is reporting of sales of drugs.

Madam Speaker, presently, we have about 500 or so registered pharmacists in Mauritius, about 340 private pharmacies, 39 wholesale pharmacies.

Madam Speaker, only 40% of the 340 private pharmacies are owned by professional pharmacists; the rest, that is, 60% which is about 140 pharmacies are owned by non-registered pharmacists. They employ pharmacists. We have about 75 to 80 pharmacists who work in private pharmacies.

Madam Speaker, with these facts that I have just mentioned, the Pharmacy Council cannot deal with complaints especially regarding strict control of sale of drugs.

Madam Speaker, it is high time that we come with a policy decision. One, pharmacies must be owned by registered pharmacists. I understand that there was a draft amendment since 2006, but still nothing is being taken care of because this will solve a lot of problems. I then propose to have restrictions in opening pharmacies in certain places where it is saturated.

Madam Speaker, 60% of owners of retail pharmacies are non-pharmacists. Some owners have three to four pharmacies. In certain cases, Madam Speaker, pharmacists are treated as employers who need to adapt and comply to the whims and caprices of the owner who shows no professional ethics – I mean those non-pharmacy owners.

Madam Speaker, accountability of dangerous drugs by non-pharmacy owner who, most of the time, cannot confirm the actual quantities. The risk of suspension or deregistration of a pharmacy is very high where the owner, most of the time, will get away from any offence, if any. It is always the pharmacist who takes the responsibility when he is working for a private owner. The private owner is just here to make money.

Madam Speaker, another suggestion if we have to accommodate is regarding non-pharmacist owners. We must come with a law that allows a person to lawfully conduct a retail pharmacy business with all disciplinary measures if engaged in an unlawful act in the pharmacy he owns. Like I said, we have a lot of non-pharmacist owners. So, tomorrow we cannot just close over them. We can make accommodation of them through another law.

Madam Speaker, when this Bill comes into force, especially the pharmacy section, it will be really impossible to execute the functions of the pharmacy council disciplinary procedures because presently, we have only about 35 pharmacists employed in the public sector to execute all duties under the Pharmacy Act, under the Dangerous Act.

Madam Speaker, to carry out an effective inspection of retail pharmacists with only 35 public pharmacists is very difficult, if not, impossible.

Madam Speaker, as mentioned in Paul Lam Shang Leen report, we must come with an independent inspectorate with pharmacists fully trained for that purpose. This will help to curtail the sale of dangerous drugs by those people.

Madam Speaker, it is a well-known fact that some pharmacies are engaging in malpractice consisting in illegal trade of substances listed in the Second and Third Schedules of the Dangerous Drugs Act.

Madam Speaker, to conclude, I welcome this Bill with the slight amendment that I have proposed and suggestion as regards the proper manning of the public pharmacy department to carry out the duties of the Pharmacy Act and so as to bring peace and happiness to the Mauritians from the dangerous drug dispensed presently by some pharmacists and let's hope mum and dad and some youngsters don't suffer the way the doctors with certain pharmacies do their business to sell those dangerous drugs to people and on this I would like to say thank you.

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Thank you, Madam Speaker.

Madam Speaker, the main object of the Bill is to review and harmonise disciplinary procedures in the medical sector - review and harmonise, namely in the Allied Health Professionals Council of Mauritius, the Dental Council of Mauritius, the Medical Council of Mauritius, the Nursing Council of Mauritius and the Pharmacy Council of Mauritius. We have no problem with regard to the harmonisation of the procedure in these Councils. It is good not only for the doctors - I'll come later with regard to the victims - but, at least, it is good for the victims as well to know what is the procedure when they make a complaint and what is the time limit. I'll come again to the time limit as referred by the hon. Leader of the Opposition. So, we have no disagreement with harmonisation, but when it comes to reviewing certain sections of the Bills in all these institutions, we have some concern. I heard the hon. Minister say there have been many consultations with the stakeholders. I did not have time because we were busy with the Budget, but yesterday, I spent the whole day consulting each and every person concerned be it the dentist, be it the medical, be it the pharmacy, be it most of the professionals. Most of them did not know certain reviewing - things that we are going to review in that Bill and they are concerned. They are concerned about what we are reviewing. I'll take one example. In this Bill, we are doing away with section 26 of the Allied Health Professionals Council Act and it is replaced by another section. This section 26 does not appear in the Pharmacy Council Act, the Medical Council Act and the Dental Council Act, but it is the latest Bill which we voted one and a half year before in September 2017. So, it has the latest requirement when it comes to natural justice and procedures.

What does that Bill say? That section 26, which we are going to delete said -

(1) Where, after a preliminary investigation, the Council considers it necessary to prefer charges against an allied health professional, it shall forward to the allied health professional a statement of those charges and call upon him to state in writing, before such date as the Council may specify, any ground on which he relies to exculpate himself.

This is the basic principle of natural justice. When you intend to charge somebody, you give him an opportunity. The first time, he should be given an opportunity to explain himself so as to exculpate himself.

Now, what we are doing? We are doing away with that. This becomes more important because in the amendment we are proposing today, when it comes to disciplinary action, the Council may, prior even to investigate the charge at preliminary level, suspend a professional. So, this gentleman or lady is not given an opportunity to explain himself, but he risks suspension pending the enquiry. It is said here, hon. Dr. Sorefan has referred to it. The new section 26 -

“where upon a determination under section 1, the council considers that the conduct, act or omission of the Allied Health provision is such of a serious nature that he should, in the public interest, instantly cease to practice.”

We are doing away with that section to give you an opportunity to exculpate yourself, but we are giving the Council power now to suspend him at preliminary investigation level. Is this natural justice?

Madam Speaker, we, on this side, believe that section 26 which appears as it is in the 2017 Allied Health Profession Act should be repeated in all the Bill, namely the Dental Council Bill, the Medical Council Act and the Pharmacy Council Bill. In fact, we should harmonise this in all the Bills, giving an opportunity to the one sanctioned to give his explanation.

Now, regarding the issue of time, I have appeared many times before the Medical Tribunal, and we know the time it takes to come to the end of the enquiry. Hon. Dr. Sorefan was talking about Supreme Court. Yes, but the Supreme Court can take years because there would not be action following the decision of the Supreme Court. But, here, the victim who has either lost her baby whom she has given birth, or the baby who is alive, has lost his or her mother while giving birth. The husband, the next of kin, they would not. They need reparation. They need to be compensated. But then, the Public Officers' Protection Act

gives you only two years. And this Bill does not adjust the issue of time at preliminary investigation. It does not mention 90 days at preliminary investigation, 90 days at the Tribunal. And we know how long it takes at preliminary investigation. It does not make mention of any time delayed at Council level. And we know how cases take years and years. Like I say, I have appeared before the Tribunal – I will come to the Tribunal later – there is no mention. But for the council, we need a fast track when it comes to medical negligence and it is a fact. Hon. Minister, I hope when you sum up - you are very busy talking to your colleague. Please listen to me, if you consider this important.

*(Interruptions)*

**Madam Speaker:** Hon. Baloomoody, do not address yourself to the Minister! Address yourself to the Chair rather than to the hon. Minister!

**Mr Baloomoody:** But we want the hon. Minister to enlighten us as to how many cases of medical negligence have gone to the Tribunal other than those with regard to gynaecologist. It is only cases where gynaecologists are involved. And this is as a must because there are *mort d'homme*. When the baby has passed away or the mother has lost her life that it goes to Medical Tribunal. The Minister will tell us how many other cases where there has been medical negligence have gone to the Tribunal. None for the last three to five years, according to my information! We have that question of time limit.

Now, the Tribunal, as we say, will hear the case. We give the Tribunal 90 days to hear the case. I do not know how many of you have been to the Tribunal. First, the place where it sits, there are only four benches and a high chair for the Judge and the two assessors. It is in Atchia Building. The room is 6 x 6. Not even space for witnesses. The Council sits here, the witnesses sit here. And this is a Tribunal who will decide the future of professionals.

Now, when it comes to the Tribunal, the Chairperson of the Tribunal is a Judge of the Supreme Court. Now, we are telling that the Judge of the Supreme Court sits on a part time basis. Let me tell you, Madam Speaker, it starts at 2 or 3 o'clock in the afternoon and we sit sometimes till 6 to 7 p.m. I have appeared there and I have sit till 6 to 7 p.m. Even with the number of cases reported there, there is no way that this Judge can deliver a judgment in 90 days. No way, when we know how witnesses sometimes refuse to come. All delaying tactics on the part of professionals to turn up when they know they will be cross examined on delicate issued.

Now, that Tribunal, the Chairperson used to be nominated by the Prime Minister because it is an important Tribunal, and we know when the Prime Minister nominates somebody, the procedure is that the PM comes with an information paper to Cabinet. All members of the Cabinet are aware who is going to be nominated. It will be somebody independent. Now, it is the Minister who will nominate. Why should the Minister nominate the Tribunal at the Council level? He has the majority of people in the Council and the Preliminary investigation is done in his Ministry, under the supervision of his officers. So, the Minister becomes judge and party, appoints Judges, investigates the council, all the nominees of the majority are on his side. Why do we have to remove that power from the Prime Minister? This appears in all the Bills. Why do we have? For a less important Tribunal which is as important. Let us take the Industrial Property Tribunal; the Chairperson there is named by the Minister after consultation with the Prime Minister. Here, even no consultation. The Minister will do it. And we know in the past what types of Ministers we have had at the *ministère de la Santé*.

**Madam Speaker:** Please do not make comments on anybody else!

**Mr Baloomoody:** No. Because we are giving power to the Minister and it is a fact. We do not trust certain people to have this power, power to nominate a Judge to decide the future of a professional, be it a doctor, a dentist or a pharmacist. Give it to a Minister.

Madam Speaker, another institution which I want to know whether it is functioning. Let me refer to the report of the Drug Commission. Page 104, paragraph 10.3.10. The Pharmacist is not here.

“The commission has received evidence from several stakeholders, including the ADSU, former addicts, several NGOs etc., to the effect that there prevails a malpractice at the level of many pharmacies around the island, one of which consists of an illegal trade in certain substance available in pharmacies.”

“This illicit traffic carried out by certain pharmacists, in some cases with the connivance of a medical practitioner who often is 'attached' to the pharmacy and fraudulently issue prescriptions to cover over the counter sales effected by the pharmacy.

Psychotropic substances for the most are sold over the counter but also overselling of cough syrups - I know that in Curepipe - requiring prescription, to persons who are



most likely drug abusers. The presence of empty cough syrup bottles in high numbers not far off from certain pharmacies has been reported by some of the witnesses.”

This is what the Drug Commission has seen. And we are supposed to have a Pharmacy Board.

And you know, Madam Speaker, you were the Minister of Health, I am sure you know it, that pharmacies are supposed to keep records and they submit their report to the Ministry of Health. Pharmacies are supposed to have drug quotas. But how many pharmacists have been arrested or queried by that Pharmacy Board? Is it functioning that Pharmacy Board? Everybody knows. Yesterday, I was speaking to somebody, he gave me the name of a pharmacy in Solferino, not far from his place, which opens till 11 o'clock, selling all sorts of syrup. In Curepipe, everybody knows. Only the Pharmacy Board does not know! Only the Ministry does not know!

Can the hon. Minister when he is summing up tell us how many pharmacies have been either closed or pharmacists have been queried by the Council in the last, not go far, three years? Zero! Abuse of drugs, so, the Pharmacy Board has to be re-invented. We have to do exactly what the Commissioner of Inquiry has said that we should have an independent Board, independent from the Ministry, probably, to supervise these 350 or 340 pharmacies which hon. Dr. Sorefan has mentioned. The Ministry has failed when it comes to controlling the pharmacies around the island, controlling the supply of drugs by pharmacists to drug users. Now, what have we done? It is good that we are disciplining, harmonising with regard to discipline. But what is the role of the victims in all this? Do you know, Madam Speaker, to have your own medical files from the Ministry of Health, you don't get access? All the hearings, be it at the Council, be it at the Tribunal, are done *in camera*. Not even the victim is allowed to assist, not even the lawyer of the victim is allowed to have a watching brief. Only the lawyer of the doctor and the lawyer representing the Medical Council are allowed in the Tribunal. So, the victim is kept in the dark, he is not aware of what has happened to his case, and never is he being informed by the Medical Council what action has been taken.

In other countries, victims are present as a *partie civile*. They hear, they come, they know the evidence and they can use that evidence against the tortfeasor. But, here, everything is in the secret. So, nothing for the victim. I have tried to find out how many cases of convictions there has been with regard to professional in the health sector. There is only one recently, and that gentleman has pleaded guilty. You know how difficult it is to prove

because of access to information, lack of information, and very often, the brief we are given, even at the Tribunal level, many important documents are missing, and they call it 'unused material'. For them, it is not necessary to give us. But when it comes to the victim, nothing in that law. Nothing in that law which can comfort the victim. I have said it many times before, why should public officers be protected when private officers are not? Why should they have a shield of only two years? You can prosecute them only two years. They have killed by negligence, not intentionally, probably by negligence somebody has lost his life, an unborn baby is dead and after two years, this gentleman is free. You can't prosecute him, you can't sue him civilly because he is protected. Why should he be protected? And intentionally, we know cases have been delayed, make sure that it even over two years so that after two years he is here, he is Okay, no risk of being prosecuted.

Madam Speaker, we all listen to the radio in the morning about the number of complaints received with regard to the hospital. Hon. Dr. Sorefan just confessed by saying that if you have a desk at each hospital, the queue will be longer than the number of patients in the hospital. Our hospital is sick. There is no procedure to attend to the victims, to those who are being abused. I understand Civil Hospital, at least, there has been a training to train the officers how to speak gently to members of the public. But our hospital services is sick. Those who go there every day knows, those who go for dialysis, we know what problem they are having, they have to wait for a transport till 11 o'clock at night, after their dialysis they sit on a chair to return home.

You have just to listen to the radio in the morning. They are doing a very good job; they try to solve the problem. But, unfortunately, it would seem now that the *porte-parole* of the Minister is not allowed to address issues on radio.

What we are recommending in this particular case - we have an Ombudsperson for health sector, we just have one in the financial sector, we have one for children, we need one who can inquire, look into complaints and investigate matters independently of the Ministry. This is very important, independently of the Ministry and independently of political interference.

I have done, Madam Speaker.

(4.42 p.m.)

**Madam Speaker:** Hon. Rughoobur!

**Mr S. Rughoobur (Second Member for Grand’Baie & Poudre d’Or):** Thank you, Madam Speaker. Madam Speaker, I am going to be very brief. I have listened to the hon. Leader of the Opposition and hon. Members, on both sides of the House. I would like to, first of all, thank them for their contribution.

Madam Speaker, I have listened carefully to hon. Members, on the other side of the House. And the first question that I wanted to ask myself: for whom are we bringing this Bill in front of this House today, Madam Speaker? This is the question that we have to ask ourselves. Is it for the Medical Council? Is it for the Government? Have we not worked all this because during the recent years almost every day, almost every month, you hear complaints about medical negligence? What was the reason for which this Bill is in front of this House today? It is for the victims, Madam Speaker.

Now, when I listen to my hon. friends, on the other side, the hon. Leader of the Opposition and my hon. friends, hon. Baloomoody, on the other side of House, it appears to me that nothing is correct in this Bill. We have to close everything and we go, we adjourn the House, Madam Speaker. We need to understand one thing, Madam Speaker. Let me tell you, when this Bill was circulated, there was an old lady living very near to my house, who came to meet my mother and she told her that she was suffering from a severe back pain. There was an old lady, living very near to my house, who came to meet my mother and she told her that she was suffering from a severe back-pain. My mum told her: ‘well, why don’t you go and see the doctor or go to the hospital’. She said ‘I was at the hospital a couple of days back and I met with the doctor’ and the doctor told me that ‘look, you have to undergo an operation’ after examining her. You know what Madam Speaker, the old lady, in her late seventies, said to the doctor: ‘Yes, doctor you have to do it immediately because it’s unbearable now this pain’. Do you know Madam Speaker what the doctor, whom I know personally, said to that old lady: ‘Get ready next week but you have got to bring Rs70,000 to undergo this operation’. That old lady asked the doctor: ‘Doctor, we are in a public hospital, why should I bring Rs70,000?’ and the doctor replied: ‘Look, there is a long waiting list and this operation will have to be done in a private clinic’. And she was telling my mum: ‘Where on earth will I bring Rs70,000, I’m living on pension’.

Why I have got to say this, Madam Speaker, in the House today? It’s only to tell you that its fight against medical negligence or abuse, it’s not only the fight of the Opposition or the Government, it’s the fight of everybody. It’s the fight of the Medical Council, it’s the fight of all the stakeholders in the health sector. So we can’t just only come and say that the

Government has to do this, Government has to do that. We agree that the Government has a responsibility but what do we want to do, Madam Speaker, today? What is the approach?

The approach is not to lay the blame from start to finish like what the Leader of the Opposition has been doing. I had this impression that Medical Council is this, Medical Council might not abide by the timeframe that has been given to them. The tribunal might not abide by the timeframe. All these are stakeholders. What are we expecting as a responsible Government, Madam Speaker? That we work as a team. We won't be able to meet the objectives that we have defined in this Bill unless all the stakeholders work together. This is our approach. Why are we coming with this? Madam Speaker, I would like to ask Members in this House when was the Medical Council Bill amended the last time. I'm told it was 17 years back, can you imagine, Madam Speaker? I think it was in 2002, 17 years back that is a long time. I heard very interesting speeches but I like to know, in the past, there were people here, how many times did we have discussions on this in the past?

Let me tell you, Madam Speaker, there was a case in 2012, maybe some hon. Members might know about that case, the Medical Council will know about that case. I would like to know why, in the case of that lady doctor in 2012, the case took five years to be resolved, only in 2017; five years because of connections.

Madam Speaker, what I want to say is that we have got to stop with all this. I know that it's not the perfect Bill in the world. It's not the perfect one, but, at least, we've listened to the victims, we've listened to the complaints of the people there outside, and we've come with some amendments today. Honestly, I am expecting better contribution from hon. Members in this House though I can understand that there have been concerns expressed.

Still let me come to the Bill, Madam Speaker, and some of the issues that I had to raise based on the Clauses of the Bill.

What are the objectives of this Bill, Madam Speaker? First, as rightly pointed out by some hon. Members in this House, to harmonise the disciplinary procedures of the different statutory disciplinary bodies, speeding up the cases that we have pending at the level of the different Councils, and we been concentrating very much on the Medical Council.

Madam Speaker, we have to understand that today, if we take the case of any Council, but especially the Medical Council, they have been given a deadline for them to establish whether there is a *prima facie* case. Now, it is up to the Medical Council to take responsibility and to ensure, I don't agree that there is no accountability, they are accountable

toward their members. If the law says that they have to establish whether there is *prima facie* case in a case of medical negligence, then they will have to do it otherwise what will happen, Madam Speaker? As I mentioned earlier, a case is taking more than 5-7 years; I'm taking one case, but there are several cases like this. I'm convinced that with the amendment that we are bringing, the Medical Council would be compelled to move faster, *pour moi c'est une avancée*, Madam Speaker.

Similarly, I can understand the hon. Leader of the Opposition when he said that there are two categories of employees here. There are doctors in the private and public sectors. What we expect from the Public Service Commission is that, even there, things move faster. Once a *prima facie* case is established against a registered professional whether it is in the private sector or in the public sector, things have to move fast. He has to be suspended and the case referred to the tribunal.

At the level of the tribunal, there, of course, I know that there have been concerns expressed by Members on the other side of the House as to the timing. But, Madam Speaker, do we have an alternative? I have not heard anybody proposing an alternative. Okay, we are saying that we have to appoint an Ombudsperson, but you know I don't want to come on a debate on the appointment of an ombudsperson. We know there are ombudspersons that have been appointed in other areas, I don't want to come to that. Very often, they are termed as *un bouledogue sans dents*, we know it.

Madam Speaker, in this case, what alternative do we have? We are proposing a tribunal. Today that tribunal has got a deadline to submit its report to the Medical Council, that is, 90 days. So, that is the best that we can do for the time being. We are coming with a proposal that, we believe, will be better than what it is today. Is there anything better than what we are proposing? I haven't heard anything better than what we are proposing.

Now, Madam Speaker, there is something interesting in the legislation that I have heard nobody mentioning and it's a good thing. It is this issue of conflict of interest. You know there was a case a couple of years back, I think. Let me take it general, Madam Speaker. Suppose you have the director of a clinic which is a member of the Medical Council and there is a case of medical negligence in that private clinic which is filed at the Medical Council, there is now a new clause in the Act – conflict of interest; I think it is clause 13(4). This is something that we have introduced. I think it is a new clause that has been introduced and which is something that was extremely important for us to add. And this clause, relating

to conflict of interest, is most welcoming and, I believe, it helps into bringing better transparency and fairness in the conduct of affairs of the different disciplinary councils, Madam Speaker.

Madam Speaker, let me come to another interesting amendment that is being proposed in this Bill. Madam Speaker - not only in my constituency - we know the situation with the pharmacies almost everywhere and this issue of synthetic drugs. There has been a lot of complaints against a lot of pharmacies in relation to sale of drugs. Now, in this Bill, we have made provision for disciplinary actions against pharmacies selling drugs in excess - let me come to that clause, Madam Speaker, it is an important one. In this section, Madam Speaker, there is henceforth disciplinary actions will be taken against pharmacies where –

- (i) the pharmacist has supplied or dispensed a dangerous drug to any person otherwise than is properly required for the treatment of a person or an animal;
- (ii) the pharmacist has supplied or dispensed a dangerous drug to any person which is in excess of the amount that is properly required for the treatment of a person or an animal, and
- (iii) the pharmacist has supplied or dispensed a dangerous drug on presentation of a prescription knowing the fictitious nature of an animal.

Madam Speaker, we have had a series of complaints against pharmacists. I am sure that the provisions that you have in this Bill and the disciplinary actions that these clauses will enable the Pharmacy Council to take would again help in ensuring that we fight the series of issues that we have been having with these pharmacies lately.

Madam Speaker, in general that was my contribution in this Bill. What I wanted to simply add and say was that the Government, as a facilitator, is here to work along with the other stakeholders in the health sector, and we are relying on all the stakeholders to work in collaboration with them in order to ensure that we meet the objectives that we have defined in this Bill, Madam Speaker, for the months and years to come. So that was my contribution.

Thank you very much, Madam Speaker.

**Madam Speaker:** I suspend the sitting for half an hour.

*At 4.59 p.m., the sitting was suspended.*

*On resuming at 5.36 p.m. with Madam Speaker in the Chair.*

**Madam Speaker:** Hon. Dr. Boolell!

(5.30 p.m.)

**Dr. A. Boolell (Second Member for Belle Rose & Quatre Bornes):** Thank you very much, Madam Speaker. Let me, right from the outset, congratulate all those who have intervened on this Bill. The Opposition, of course, has canvassed their points very forcefully; the Minister, in his best endeavour, has tried to put across his views and I, as a medical practitioner and a politician, feel like walking between a hammer and an anvil.

But let me share with you some experiences. I have had the opportunity to work in different parts of the world as a medical practitioner. The fact remains that wherever you are and you may be working in the best institution, the provisions of legislation may be very strict. In Britain or New Zealand, for that matter, or Wales, where I have had the opportunity to work - I will refer to the Medical Council which is, as we say, the Mother Council - the medical officer has to contribute to a Medical Defence Union. He has to be a member of the Medical Defence Union because at any one time, he may be taken to task for alleged medical negligence. The Medical Defence Union will give him the necessary medico legal support.

Now, the Minister has made provisions for harmonisation of provisions in respective legislation to ensure that there is uniformity of purpose and, at the same time, there are several caveats in the legislation to protect all the stakeholders - I will come to this at a later stage. But, as we say, in good medical parlance, prevention is better than cure and cure of the disease is far better than treatment of symptoms. The Bill goes some way, but not all the way, to address the fundamentals of the legislation.

Let us look at the problems which prevail in both public and private hospitals. Be it in UK, in Mauritius, there is disparity in medical and surgical care or for that matter, any ancillary services provided by the health sector - it's a fact - except that there is a tendency to raise the threshold and to eliminate any disparity. That is why I say, in Mauritius, unfortunately, our doctors or for that matter, anybody in allied health services or in the dental profession, work as chemists or who are nursing officers, they don't have a defence insurance, and this is an issue that needs to be addressed. True that we are doing our level best with ongoing continuous medical care to constantly raise the standard. And today, access to medical information is a right and not a privilege.

So, there are other expectations. Expectations are not that high, but the Ministry is doing its level best to impress upon doctors that unless they have collected - doctors or dental surgeons or pharmacists, I don't know - so many points, they will not be able to obtain a

registration. What is true for the medical profession is equally true for the legal profession. But, unfortunately, there are those who are very successful and they fall into what I call 'the cartel trap' - and I will come to this at a later stage.

Now, what is it that we want? We want institutions to be independent, far from the stronghold of the Government of the day, to be independent and to be fiercely independent. Hence, relevant questions have been put as to who is going to chair those Councils. Let us look at the allied health professionals. With respect to this particular Council, it is true that the powers have been vested in the Minister and he has almost lock, stock and barrel. He is the one who is going to appoint the judge and the assessors to chair the Council which is yet to be set up. But as for the Mother Council, which is known to us as the Medical Council, it stands as it is. The Prime Minister will continue to appoint the Chair, except that the assessors are going to be appointed by the Minister. And what is true for the Medical Council, I think it is equally true for other Councils. But the Chair of the Medical Council will also chair the Dental Council, the Pharmacy Council, the Nursing Council and the Dental Council. That is the information that has been imparted to me and I hope it will remain as it is.

Now, I have stated earlier that, in the light of the number of cases which are referred to the Medical Council, I think it is high time that we revisit the system and see to it that the Council becomes a permanent institution. In the light of the number of cases which are referred, we have to see to it that a decision is taken to appoint a retired Judge, who will have ample time to scrutinise and to examine all the cases that are referred to him. There were some valid points raised by hon. Baloomoody. I see no reason why relatives of victims or victims should have no access to the Tribunal. I think this is a legitimate right and, to me, it should be a right which is acquired.

Now, what is the other issue? It has been canvassed fully by the Leader of the Opposition. Time is of an essence. Time cannot be a constraint because this is an issue where emotions override sometimes rational thinking. But the legitimate rights, the right to know the truth, the right to have access to information, matters to be expedited but to be scrutinised thoroughly, you cannot leave victims or relatives of victims in the dark. I think there is an obligation, and where there is obligation, there is right. They have a right to be informed and to be informed by appropriate bodies. And what are those bodies, Madam Speaker? The Council, the Ministry, and I am sure the Minister, who is an excellent paediatrician, acts diligently when it comes to cases which are referred to him or when information is sought, whether the information is going to be referred by the Regional Health Director, or for that



matter whether it is coming from any specific quarter relating to any specific Council. The Minister has to act, has to act forcefully, and information has to be disseminated. It is true that there is no Freedom of Information Act in this country. I am not saying that sensitive information has to be released and ventilated in the public, but I am talking of information relevant to a case brought before the Ministry and, of course, if the Minister deems it fit or if a case is referred to the Medical Council, the Medical Council has to act promptly. But what is the problem with the Medical Council? And I have to say it, for the first time in the history of this country, the Medical Council has become tainted because the electoral process has been foiled, and to a large extent, everybody has to face the problem fair and square, the Minister, the Parties in power, everybody, and I say it without fear or prejudice, and I know what I am saying. Even doctors, consultants also have to assume their responsibilities. And today, it's tainted and there is a communal overtone which should not have happened, and worse, now we are told - and I have no problem whether the Chairman is going to stand as a candidate in the forthcoming election, but for God's sake ...

*(Interruptions)*

**Madam Speaker:** Hon. Member, this is not the issue. I don't think this should be mentioned over here.

**Dr. Boolell:** It's public knowledge!

**Madam Speaker:** No, but it's not an issue with the Bill. Please!

**Dr. Boolell:** But you know when I, as an Opposition MP, or for that matter, my friend, hon. Baloomoody, I tried to have the Chairman of the Council over the phone, not to beg for favour, but to seek information, in fact, to help him, because if information is not bartered, how can I release what is just and fair? Because I do not want to hit all over the place. In fact, I want to be fair to any person, more so if the person is not in the House. Now, the case is referred to the Medical Council - let us take any medical case - for alleged medical negligence, and the case is going to be heard by the Investigative Committee of the Council. Then, the Council will assess, will scrutinise and will refer the matter to the Medical Council of Mauritius. And in its wisdom, according to the provisions of the law, it may refer the case to the Tribunal. But to be fair to the Medical Council, and I have to give it to them, the Medical Council will not take risk, unless and until there is an established *prima facie* case, it will not dare to cross the red line and, of course, accordingly, disciplinary measure can be applied.

But very often - and I must say it - there is undue pressure being borne upon the Medical Council. I am not going to say from which specific quarter, but it is a fact and it is reality. So, the independence of the Medical Council is undermined. I am not playing politics. Anybody has the right to stand as candidate, but, at the same time, everybody has the right to act independently and be seen and perceived to be independent. Madam Speaker, we are talking of cases, we are talking of suspension of professionals, we are talking of people waiting to be heard because justice delayed is justice denied.

Madam Speaker, we may have the best legislation and, in fact, we have good legislation in this country, but the problem is enforcement of legislation. It is enforcement of legislation. I earlier heard my friends referring to the findings of the Lam Shang Leen Commission in respect of some pharmacists or chemists who, unfortunately, because of their illegal activities, have opted for what we call dereliction of duties. But let me tell you one thing. Why is it that chemist shops should stay open till nine o'clock? I can understand if a chemist shop, a pharmacy is on call. And why is it that proprietors of pharmacies should act as dispenser, and the poor pharmacist at times acts like a passive employee? And you know, the problem today is that there are many doctors desperately trying to find a job; there are many pharmacists who will work for almost peanuts, some are earning less than Rs30,000 per month, Madam Speaker, and they cannot do anything. I am not saying that they are in collusion with what some of the proprietors are doing, but they simply cannot do much, they are afraid to report those cases. And to me, these people who are dispensing what we call drugs which can only be dispensed on the appropriate prescription which is issued by the Ministry, are in gross violation of the law but of basic human rights. They are killers, Madam Speaker. To me, they are obscene and should neither be seen nor heard. It is easy also to blame pharmacies. I hold no brief for doctors, pharmacies or dental surgeons. But I still don't understand, irrespective of the Government of the day, why is it that facilities and incentives have not been extended to qualified pharmacists to become owners of their own pharmacy. And I ask another question: why is it that the Pharmacy Board sometimes is not in full compliance of the provision of the Pharmacy Act and issues licenses to operators, and they operate at a short distance within each other? So, there are things that should not be done and allowed to be done, Madam Speaker. When you have competition, when competition is not safe, people resort to illegal activities.

Earlier, hon. Baloomoody made a fair comment. The Pharmacy Board knows exactly the number of drugs which are sold, be it dangerous drugs or drugs obtained on prescription,

by all pharmacies. There is a quota allocation. In the world of robotisation, artificial intelligence, you mean to say that we have not reached the stage where we can digitalise the system, where there can be a main or a central server to know exactly the amount of drugs which are prescribed, to know exactly who are prescribing, whether the drugs are prescribed to those who should not be prescribed to? I mean, basic things, Madam Speaker, that we need to address. And let me tell you one thing. I talked earlier of cartel. I am not saying that we need to put all professionals in the same basket. But do you know what cost overrun is in a clinic? Do we know what passing the buck means? Some call it network, others call it cartel. And in many clinics, there is a system of cartel which is in operation. I am not blaming any specific doctor but, sometimes, it has become the law of nature. And I see no reason why the Ministry cannot act. We cannot allow those who are foul of the law to get away.

Hon. Rughoobur mentioned earlier of a woman who was asked to bring all her savings to get the alleged best treatment. It is not on! In Europe, whenever you call for an investigation, you have to justify the reason as to why you are asking for that investigation. Here, it is threefold and the costs continue to escalate. And you know the number of tourists who have filed complaints against our clinics for cost escalation? Do you know the number of cases which are being reviewed simply because of gross exaggeration in payment of fees? I mean, these are issues that need to be addressed, Madam Speaker.

Madam Speaker, I welcome the proposal made to expedite matters, but subject to what hon. X. L. Duval has said, that when a case is referred, the clock ticks, there is an onus of responsibility upon the Judge that, within 90 days, the disciplinary case has to be heard and the report submitted to the respective Council, and I think this is a good decision. The Council has been vested with powers, which I call almost unfettered powers. So, the Council has to assume its responsibility fully. The Council has a right to call for papers and persons. The Council has a moral and legal obligation to inform those who are at the end of the stick to be informed as to where matters stand with respect to investigations which are ongoing. But, unfortunately, one of our fallacies, one of our problems in this country is failure on our part to be what we call user or service friendly. This is a big issue, and it is an issue that has to be addressed.

Hon. Dr. Sorefan mentioned earlier of a complaint desk and the number of cases being filed is so numerous that sometimes it takes time to know exactly what is going on.

There is another issue which I would like to touch upon. It is easy to blame doctors, but then, they have to be given the equipment to work with. Do you know that recently, in Jawaharlal Nehru Hospital, there was no film for X-rays to be carried out? It does not happen! This is bad planification; this is mismanagement. Do you know that the lithotripsy machine is out of order? Do you know that the CT-Scan which we have, the image is of such low intensity that it is difficult to interpret? So, it is easy to blame doctors. But when they do not have the basic tools to work with, what are you going to do? To point fingers at them to say that they fail to honour their obligation, that there is gross negligence? But when we come to negligence - I am not going to refer to related parties or to conflict of interest, which, as we all know, is very difficult to interpret and to define.

Let me highlight the case of two doctors - whose names I will not mention, of course - who are under investigation for alleged conflict of interest. Two doctors, who, in my opinion, are very diligent, highly appreciated by patients who come to see them, but, despite their clinical acumen, they do not even know what the rights, the functions, the privilege of their status are. When Ministers are appointed, they are given a manual of Cabinet to know how Cabinet operates. I ask a simple question: how many doctors know what are the rights, the privilege, the responsibilities and the function of their status? It is true that there is Code of Good Practice but, sometimes, the demarcation line is razor-thin.

Let me take the case of doctors who are in attendance to meetings sponsored by pharmaceutical companies. They can all be taken to task because there may be alleged conflict of interest. Let me take the case of a doctor who has to undergo training, because in the contract it is said that training is a component of the contract which has been awarded to a specific company. As long as the doctor is not a member of a tender committee, I see no reason why he should not attend a training course. But then, what is true for doctors is equally true for research fellows. And we know that private sector or call it pharmaceutical companies do sponsor many projects. But the Ministry has to spell out very clearly to the doctors that these are their rights, these are the redlines that they cannot cross. Ask yourself how many doctors are fully aware of their rights.

So, we have a basic problem. That is why I say prevention is better than cure.

Secondly, I have stated very clearly, Madam Speaker, that the Council has to be independent and to be fiercely independent, and I am glad to note that the Master Council stands as it is and, under no circumstances, will there be a perceived interference from the

Minister to appoint the Chair of the Council. And I said that we have to break the vicious circle, the cartel which operates in the health sector. What saddens me, whenever the Medical Council meets and the Board calls upon specialists to examine cases referred to them in respect of those who should be registered, although in the Bill there is no definition of registered practitioner, whether he has a temporary registration or full registration. But do you know what happens? Many of those specialists, a bunch of them - I am not saying all of them - some of those specialists deliberately would not allow the registration of those young specialists who have the acumen to do equally well. I am going to refer to a particular case. Somebody, a young medical specialist from France who has his *Diplôme d'Études Supérieures*, who was registered in France, did his internship, and then was registered as a full-fledged medical practitioner and went to do his post-graduate. Do you know that his application before the Medical Council has been rejected on flimsy grounds?

I will refer to another gentleman, almost a world renowned Forensic Psychiatrist. He came to Mauritius - I am talking some years back - submitted his application to the Medical Council. The application was never registered. And I am talking of somebody well-respected, whose services are enlisted not only by the country where he works, but he travels overseas to dispense his services. And we have a rich diaspora. People are qualified in different fields of medicine, but for God's sake, the Medical Council has to act independently and not be seen to be servile or subservient. That's why I say there is a cartel; we need to break the cartel. If we want this country to move up the ladder, if we want this country to attract a higher number of professionals, we have the people, we have the will, we have the legislation, but what is lacking, Madam Speaker, is enforcement, what is lacking is commitment to break a vicious circle, and I can tell you, we can do it subject that we enforce the provisions of the legislation. The Bill goes in the right direction. It is a step forward, but, as I say, there are miles to go, as my good Irish friends do say, before we kiss the Blarney Stone.

Thank you very much.

**Madam Speaker:** Hon. Osman Mahomed!

(6.08 p.m.)

**Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central):** Thank you, Madam Speaker, for giving me the opportunity to speak on the Disciplinary Bodies (Health Sector) (Miscellaneous Provisions) Bill. I would like to

congratulate all those MPs who have spoken before me, the last one being hon. Dr. Boolell. It is always very difficult to speak later in the list of orators as much has been said already by those who have spoken before me.

That being said, my intervention will be much shorter than what I originally envisaged. This is an important Bill as it concerns everyone in this country and it concerns the lives of people. A couple of days ago, we have voted a budget of Rs13.1 billion for the Ministry of Health and Quality of Life. A substantial increase from what we voted last year which was Rs12.26 billion. So, nearly a billion rupees more we voted for the Ministry this year. So, it is essential that we make most out of this huge amount of money and there is nothing worse than someone going to the hospital to get treatment where the Government is spending so much money and then that person loses his life like the case has been for – the Leader of the Opposition has mentioned it this morning and I was quite surprised that after 15 months, the case of Baby Beekareea has not been fully determined, be it at the level of the Ministry, be it at the level of the Medical Council and be it at the level of the Medical Tribunal. I was quite astonished, but the sad truth, Madam Speaker, is that this is not the only case.

Although I am not from the medical profession, I know that medicine is not an exact science unlike what engineering is. So, in order to prepare for what I am talking about today, I have had to talk to people who are in the know and I have read articles in order for me to raise some points, whatever is left to be raised because much has been said already.

But first thing come first, Madam Speaker, I have looked up for the meaning of the word “discipline” The word “discipline” comes from the Latin word “*discipulus*” meaning a pupil or a disciple. And from “*disci*” meaning to learn or to train by instruction and practice. It has also the derived meaning of punishment as an aid to learning. But one might wish to argue that professional health councils by legislation should be empowered to promote both the weeding out of the worst practices and the cultivation of the best.

This is an approach increasingly endorsed everywhere else in the world. Essentially, the Medical and Allied Professions Councils are rather behind the times in the exercise of their functions. And this Bill, while logical its purpose, falls short in many respects of what one might expect in 2019 for an upper income country.

Madam Speaker, when we examine the facilities of the health sector, we say it comes in three dimensions. Firstly, the structure, that is the nature and the quality of the facilities

and their operational fitness just like a vehicle, we have the roadworthiness test. That is why successive Governments have been investing quite a lot in our public hospitals, of the case that I know personally is the Jeetoo Hospital where massive investment was done by the previous Government because at that time it no longer met the aspirations of the people of Port Louis, Beau Bassin and Black River.

Now, the second aspect is the process, that is, the scope and quality of services provided and the range, quantity, quality and competence of staff delivering the services and thirdly, the results in terms of improved health of the people. The Bill is focused on a small aspect of the dimension of the second definition, more specifically, dealing with negligence of staff.

That, being said, I shall zoom into my first point and, here, I would like to take paragraph 4 (a) (ii) (g) which makes mention, Madam Speaker, of 'an improper, a disgraceful, a dishonourable or an unworthy act, or any other act, which brings the profession into disrepute.' When I first read the Bill when the Bill was first circulated and I read it, I thought this was too vague a definition which could potentially open the way to misuse and abuse by Medical Council members against Medical Practitioners who is not, for example in their good books. But it is good, in his opening remarks, the hon. Minister has specified that professional misconduct is being defined, but will this concept be applied? This is an important question to my view. Well, again, like I said, I am not from a medical profession and I base myself on what I read in articles and to this effect, I have read cases for the same patient's death, Council has been severe to one doctor or some doctors and for similar cases show more leniency. So to speak, *ce sont deux poids deux mesures*. I am taking every care not to mention names, but the articles are with me. I can discuss with the hon. Minister afterwards, but I am sure he knows the cases. Here, the hon. Minister has again used interesting words in his opening remarks and that is equal footing. But I hope that necessary means will be given to the Council and Tribunal to treat all cases fairly to use the words that the hon. Minister has used himself earlier - treated fairly. So, I hope that will be the leitmotiv going forward with this Bill. As a matter of fact, it is of my personal thinking that, at the level of the Council, people know each other because they are from the same profession, just like it would happen in the engineering profession. Why not get people who are completely aloof of the medical system in Mauritius to operate the Medical Council. If medical doctors are needed, why not take a foreigner, for example, like we have at the Mauritius Revenue Authority; someone who comes with his experience and aloofness and he can work

independently on all forces that might exist in the country. This is a suggestion. I think the point has been canvassed by hon. Dr. Boolell as well at the level of the Council. Also, the Council must be given the resources to hire more people to process cases expeditiously. What for are we spending Rs13.1 billion and there is no efficiency because of lack of monitoring whereas in many countries, Councils of this nature are much more concerned with promoting the best performance of staff. They have introduced mandatory relicensing schemes whereby, for example, medics and nurses to gain specific hours of training and credits in continuing education programmes. I think that point has been canvassed earlier. So, I believe people, who have faulted in their profession, should be compelled to be trained in those fields that they have failed and this has caused death of people. I think this will make them better when they resume their service if ever they do.

Another point I would like to raise, Madam Speaker, has to do with paragraph 4(d) which specifies that by repealing section 14 and replacing it by the following section, that is, disciplinary proceedings, subsection 2 where upon a determination under subsection 1, the Council considers that the conduct, act or omission of the registered person is of such a serious nature that he, in the public interest, should instantly cease to practise and it goes on. Well, it must be said that timing has not been quite specified here. Since we are on the issue of timing, at several paragraphs it is specified that the Medical Tribunal shall, pursuant to disciplinary proceedings, institute against a registered person here and determine the matter not later than 90 days. I think the Leader of the Opposition has raised this point earlier.

Now, there is an issue because timeframe starts only when the inquiry starts. I think the point has been canvassed and I will just rapidly go over this and I'll make a suggestion. Why not specify that proceedings should start – give a figure - seven days, fourteen days, a month, but, at least, we know when the case will start and when it will be determined because the moving goal post like it was mentioned earlier is not fair to people who have lost their family members in circumstances that we are talking about today. I know of a case recently last week in fact. One of my constituents, his father in law went to hospital for treatment at SSRN and he passed away. He does not have any visibility as to when things will get moving in his case. Another point I would like to touch upon - and I mentioned it earlier - is monitoring. Which Department at the Ministry of Health and Quality of Life has the responsibility to oversee and to monitor of what becomes of reported cases overtime? If this is not done, Madam Speaker, I am sure, with the help of, you know, who knows who like has been said earlier some cases will go into *les oubliettes*. Who will be the victims, surely the



family members who have lost their siblings, their relatives while the medical practitioner will continue as per normal? Now, this is not normal and should be addressed. The hon. Minister seems to be wanting the wellbeing of the population. I hope he will consider this important aspect of monitoring from within his Ministry. I will even go further and suggest that he sets up a one-stop shop for victims of families who have lost members at his Ministry because they don't know where their cases are and they don't have information when they want to have information. There is nothing more frustrating than someone losing a family member at the hospital where that person is supposed to have treatment. So, I believe that Department can provide psychological assistance to those people as well because frustration, losing family members can be quite tough. I know the Minister should know about this. We meet people every day in our Constituency. Again, I go from cases that have been reported and I will refrain from mentioning names. I am told that there are cases in which the Medical Tribunal has pronounced a judgment where sections had to be taken and yet, when the same cases have been referred to the Medical Council, they been set aside. So, this is not normal. What was the point in referring the case to the Tribunal if judgment is not to be abided by? So, in my opinion, that relativity in balance, in powers between the Medical Council and the Medical Tribunal must be adjusted. Dare I say, there must be a shift in power. I believe this will resolve many malaises that we have in the system right now.

Another point, Madam Speaker, has to do with outcomes. This is important for the sake of accountability and nowhere in the Bill do we have an indication that outcome of what we are seeking to do today will be monitored and brought forward as we go by during the course, after we have approved this Bill.

Another point would be, Madam Speaker, under the Medical Council Act, page 17 of the current Bill where it is specified paragraph (e) –

‘by repealing sections 17, 18 and 19 and replacing them by the following sections’

The point I would like to raise here is like I previously stated – ‘period not exceeding twelve months or suggested period not exceeding two years’. Would it not be better for a first time offender to be given a more lenient time, period of one year and then if he commits an offence again then we go for two years. This is just a suggestion because maybe a beginner has to be given more chance and more training to become perfect. The hon. Minister has again used interesting words in his opening remarks. I used them earlier – equal footing and

treated fairly. So, whatever we are discussing today should not apply only to public hospitals, the point has been canvassed before because the Minister of Health is the Minister for the whole medical system of Mauritius. So, private clinics should come under his purview as well in that respect because people go to private clinics hoping that they will get better treatment and they pay through their noses and yet many of them lose life. I know so many cases. I believe so does the hon. Minister. What we have in the country today is a system that is not auto checked. Only when there is news, when there is a fuss, then inquiries start at the Ministry and they go to the Council.

They go to the Tribunal and then back again to the Council and back to the Ministry. How many cases of flagrant negligence can we recall have been sanctioned? In many cases, there are firefighting at the beginning and as thing goes by over time, if there is no proper monitoring, they go again in the drawers and they go into *les oubliettes, au grand dam de famille* who have lost their family members.

To conclude, Madam Speaker, the hon. Minister has a golden opportunity today to change the medical landscape and, I believe, if he takes the points that have been raised by all members today, including from the Government side, it will go a long way to better our medical system in Mauritius.

I thank you for your attention.

**Madam Speaker:** Hon. Leopold!

(6.25 p.m.)

**Mr J. Leopold (Second Member for Rodrigues):** Thank you, Madam Speaker. I just wanted to participate in this debate because I strongly believe, Madam Speaker, that this Bill is about patients. It is about the safety of patients. The Bill is not about to punish healthcare professional. It is about the maintenance of a high level of care by following the set guidelines so as to have all the clinical procedures and other medical procedures safely.

As we were in full budget exercise for the appropriation of funds for the funding of services, including the National Healthcare Services, we have voted a sum of over Rs13 billion so as to provide a comprehensive healthcare service to all. With all the measures the Ministry of Health and Quality of Life are taking, be it in building of good hospital infrastructures, to the investment in high quality tools and the reinforcement of human resources, in a view to put patients at the heart of everything.

Madam Speaker, with the provision of such a huge amount of money, of public funds being allocated for health services, it is expected that our services be seen and be portrayed and provide a customer-oriented services, services which promote transparency and accountability. And those resources, Madam Speaker, must be used in the most efficient ways and fair to the citizens. With such amount, over Rs13 billion being injected to the Ministry of health, it is to bring about continual improving health outcomes to all. The budget allocated to healthcare services is to invest in the population's health and, therefore, healthcare services must be delivered in a level so as to reflect the real value of the sum injected in the last budget.

Madam Speaker, at hospital level or any healthcare delivery setting, we are dealing with vulnerable people and there are so many procedures with strict policies which need to be followed. It is important, therefore, to have disciplinary rules and to set out the boundaries of acceptable conduct. Those disciplinary rules and procedures must be in such a way to ensure fair and equitable treatment of staff that transgresses the set of boundaries. So, Madam Speaker, it is good that the amendment which is brought to this House tonight, harmonising of health disciplinary bodies and shut them under one umbrella, as all the healthcare workers are working towards the same objectives, that is, maintaining a high standard of professional ethics so as to maintain a discipline health workforce. Healthcare workers have to always follow specific, established behaviour, public service code of ethics and professional Council code of conduct.

I do support this piece of legislation, therefore, because it is giving rise to a statutory body to ensure that disciplinary control is maintained and that corrective action be taken when an employee's behaviour or performance is unsatisfactory. This is my only point, Madam Speaker, which I wanted to raise on this Bill, which are disciplinary bodies and disciplinary procedures within the healthcare services are done to improve health and maintain standard of care. It should, in any way, be seen as a punitive tool. It should be viewed as a structured mechanism, as a method of correcting problems which will enable Managers to address shortfalls and all the action inflicted on an employer in the health sector, shall be within the law and Public Service Commission Regulation.

So, what we need to achieve with this Bill, Madam Speaker, is to continually improve patients' safety to prevent unnecessary harm to patients, thus resolving dissatisfaction and preventing future issues.

To conclude, I just want to thank the hon. Minister of Health for bringing this piece of legislation which will help in tackling a range of misconducts and most importantly, as I have said earlier on, the maintenance of patients' safety.

I thank you for your kind attention, Madam Speaker.

(6.31 p.m.)

**Madam Speaker:** Hon. Abbas Mamode!

**Mr S. Abbas Mamode (Fourth Member for Port Louis Maritime & Port Louis East):** *Madam la présidente, je ne vais pas être long parce qu'il y a eu beaucoup de points* that have been raised by my hon. friends, but very interesting is the one from hon. Dr. Sorefan. I appreciate when hon. Dr. Sorefan stated about dentists and dental surgeons, meaning that he has not been consulted prior to the Bill. If he, Member of the Government, being a professional, has not been consulted, I suppose that many professionals have not been consulted.

With regard to the changes made to the law, we do have positive issues which are appreciated. However, there are, I suppose, some actions which should have been taken prior to the Bill being presented in the House.

Firstly, Madam Speaker, if we look in this Budget Estimates 2019-2020, you will see, Madam Speaker, there are a number of positions that have been left vacant and for which no funding has been included in the Estimates. For example, the Pharmacist/senior Pharmacist on roster, no fund has been included. Similarly, no provision has been made for Health Record Technician and many others in the medical sector. I will not repeat myself. Many Medical Practitioners do not even get eight hours of rest. It should be recognised, Madam Speaker, that they perform a very important and highly technical job. The Minister, himself, when replying at Committee of Supply concerning overtime, he stated that there are many vacancies in the health sector, so, overtime is a must in the health sector. They perform a very important and highly technical job which required them to be fully alert.

However, the number of positions that has been left vacant means that they will have to take up additional responsibilities which they will not be able to perform in their best capacity. Doctors are human and we cannot expect them to be at their best if they are exhausted. The chances of medical errors are more likely to increase if they perform under such condition.

On a similar note, whenever there is a perceived doubt on medical negligence, there is a series of protocol that have been established where the change of people involved, that is, from the first person to the last person who have looked after the particular patient, have to submit a review. This is the protocol when something happens in any public hospital, everybody is taken to task. They need to be given a better support, they need to be aware and, if need be, why not looking closer to the established protocol which, I suppose, is in the health sector for a very long time.

Secondly, Madam Speaker, when talking about *négligence médicale*, it can happen that it is not only the fault, the mistake of the medical practitioner. It can be other factors. I'll give you a simple example, Madam Speaker. Perhaps, Members of this House is not aware and some might get shocked. I will talk about the *marche contre la drogue* - I suppose it was yesterday – that took place in the capital. I have got information that the five regional doctors, all the five of them, were given orders, were instructed to release a minimum of hundred working staff members in their locality, which means 500 staff at one go. What will happen, Madam Speaker, if yesterday...

**Madam Speaker:** No, hon. Member, I don't think...

**Mr Abbas Mamode:** No, I am talking about...

**Madam Speaker:** Please! Please, resume your seat! I don't think that we can make any statement on the basis of rumours. Right! So, I'll kindly request you to refrain from making these comments.

**Mr Abbas Mamode:** I have said it, Madam Speaker.

*La deuxième chose que je trouve dans the legislation c'est l'indépendance. Il y aura trois instances, Medical Council, the report from the Hospital where the problem has arisen and then the Tribunal. Every three is under the direct control of the Ministry, that is, under the control of the Minister and I hope that the Minister will consider to have an independent body qui n'est pas nécessairement un body sous le ministère de la Santé, an independent body to inquire on what we call 'négligence médicale'.*

*J'ai écouté attentivement tous mes amis de la Chambre, même mon ami, l'honorable Rughoobur, has spelt out some shortcomings. So, my main contention, the Bill in itself is not a bad one. We need to have discipline; we need to have a Code of Conduct quand il s'agit des gens travaillant pour la santé publique.*

*Madam Speaker, there is a very important issue et l'honorable Osman Mahomed a évoqué les erreurs sont humains, ça arrive, et la sévérité de foi, s'il y a un jeune professionnel qui, malgré lui, il n'est pas directement responsable, parce que des fois il y a des erreurs de jugement, et malheureusement, il sera chômeur pendant toute sa vie peut-être. Parce que s'il est médecin, s'il est pharmacien, ce sont de longues études. Le ministre, lui-même, étant un professionnel de la santé, si on peut au lieu de *cancel* sa licence de médecin, de voir d'autres mesures appropriées pour assouplir.*

So, Madam, Speaker, as I said, I have not a lot to say about the Bill itself. Everyone from both sides of the House has talked about the shortcomings, what is good and what is bad in the legislation.

So, I just hope that - the Minister has been here in the Chamber, he has been à *l'écoute de tous les orateurs* - he will do some remedial concerning the Bill.

Thank you, Madam Speaker.

**Madam Speaker:** Hon. Dr. Husnoo!

(6.40 p.m.)

**Dr. Husnoo:** Madam Speaker, I would like to thank all the hon. Members who have intervened on this important piece of legislation for their invaluable suggestions.

On this side of the House, we would have wished to examine and consider some of the suggestions made. But I am afraid this will not fit the main object of this Bill which I presented today, or to put it simply, they are not what the present Bill intends to achieve.

As I mentioned in my speech, Madam Speaker, this Bill aims to bring uniformity in the disciplinary procedures and the powers of the different disciplinary bodies. All cases of professional misconduct or negligence, whether concerning a medical practitioner or a pharmacist or a dental surgeon or an allied professional or a general nurse, will be dealt with in the same manner and within the set time limit.

Madam Speaker, if you would allow me to answer some of the queries that were raised. The hon. Leader of the Opposition was talking about the time that it takes, from the case when it happened until it is delivered may take ages. But I am advised that no doctor or person will walk away if a case takes more than 90 days to be heard or determined.

I have been told that in the case of *Ng Kuet Leong v The Medical Council of Mauritius 2019, SCJ 1*, the Supreme Court, when analysing a delay in section 17(6) of the

Medical Council Act, held that the legislator has not expressly laid down in the Act itself that any act done in breach of section 17(6) would render a decision of the Council invalid nor has the legislator indicated what should be the consequence for non-compliance with the time limit for the decision. Therefore, in relation to the clauses relating to the Tribunal a non-compliance with the statutory delays of 90 days would not affect the validity of the proceedings of the Tribunal. That is what I have been advised.

Secondly, it was mentioned that the statutory time limit of two years to institute a civil proceeding against a medical professional employed by the State or the State who employs the medical professional is provided for in the Public Officers' Protection Act. That provision has been upheld, has been constitutional by the Supreme Court and applies to the whole of the Civil Service as well.

It was mentioned that the right of the professional for a hearing, I mean, they will not have to time to disculpate themselves, but I have been told that it is in the Allied Medical Health Bill. It is mentioned in section 25.

As far as the Tribunal is concerned, I want to get it clear that as a Minister, I don't appoint the Judge, I don't appoint the Chairman. The Medical Council is appointed by the Prime Minister. It's only in the other that I appoint the assessors. So, to say there is ministerial interference, I find it difficult to accept because before I submit a name, I will have to take it to Cabinet. I won't say: 'oh, he is my friend; I'm going to appoint him.' You know that. So, it's not a question of saying that Dr. Husnoo is going to appoint somebody, his friend, and that's it. This thing has a procedure, you all know that. It has a procedure; I have to take it to Cabinet, to be approved by Cabinet before I submit the assessors' names. So, to say that the Minister is appointing, just like it depends on my – I don't know what – on my *caprice*, no, I don't think it is that. I think we all know the procedure.

The Leader of the Opposition mentioned that in this Bill, we talk about nurses, doctors, the other allied officers, but we don't talk about the interest of patients. I am a bit surprised. For me, bringing that Bill was for the patients, for their relatives. Because we know...

*(Interruptions)*

No, let me, please! The hon. Member talked, I did not disturb him. Please!

We know how long some cases take. The patients kept waiting. In one case, sometimes it takes more than two or three years. I mean, you know it as well. I know it as

well. That's what I have been trying to do; to compress the time as much as possible. I mean, there is a limit, how much you can compress the time, because if you tell me to set a time when the case happens and when you start the case, you know as well as I do, by the time you get the file sorted out, by the time you get the expert advice to come in, it may not be the doctors in the hospitals, it can be somebody outside, by the time you get the lawyers, when they will be free to come, it takes time. Do you want me to set up a time limit, within one week everybody should be ready? How can I do that? You know, there is so much about compressing the time, but there is a limit to what we can do about that.

So, to say that there is too much time, some people say it's too long, some people say it's not too long. I don't understand sometimes. There is a big confusion, I think, from different Members as well. But as far as to say that we don't care about the patients, I think that's the last I would have heard. Because I will tell you personally that when I get a report when there has been a suspicious death, the next morning, I ask for it. The next morning, I mean that. I contact the Director of the Hospital and I want a report on my table the same day, and - I am telling you personally what I do - when I go through the report, if I find something suspicious, I ask the Director General of the Health Service that I want a full, complete report over the next few days. That's what I do. So, to come and to say that we don't care about the patients, well, I don't think it applies. I am telling you what I do.

Beekareea, he just mentioned it. As it is presently now, if I don't change the law, do you think I can order the Medical Council to expedite matters? And if I order the Medical Council to expedite matters, you will be coming tomorrow, telling me I am putting pressure on the Council. You will be coming tomorrow, telling me, 'Dr. Husnoo, you don't have the right to put pressure on the Council'. And now you are telling me to expedite matters, to contact the Council? Look, we can't have it both ways. Either you give the Council the independence to work or you tell the Minister to control each and every step! I mean, we have to decide what we want.

Doctors may not take action against their colleagues. The Bill does not address this issue. Firstly, in the Medical Council, we have doctors; in Dental Council, you have Dental Surgeons; in Nursing Council, you have nurses. It's like that! In the Bar Council, don't you have lawyers, or do we put doctors in the Bar Council? I mean, we have to be reasonable whenever we talk as well.



There is no provision to sanction. This Bill does not talk about sanction. It is trying to streamline the process. That's why it did not talk about sanction.

Another point that was raised, as for section 26, from what hon. Baloomoody said, it is mentioned that it is in section 25 of the Allied Health Bill. As for why we have removed the Prime Minister, I have explained that I don't control the Medical Council. It is in the other Councils that I appoint the assessors. How many pharmacies have been closed? I'm a bit surprised to hear a senior, an experienced MP like hon. Baloomoody saying that not one pharmacy has been closed. I'm surprised to hear that. Last year, I closed one pharmacy in Port Louis, and now two pharmacies are being investigated, they have to explain.

*(Interruptions)*

You just said zero. When I tell you it's one, you tell me, no it's one. Anyway, two pharmacies have to explain and if I...

*(Interruptions)*

Please, listen now! You have talked!

*(Interruptions)*

**Madam Speaker:** Hon. Baloomoody, don't interrupt!

**Dr. Husnoo:** Two pharmacies in Plaines Wilhems have to show cause why I should not close the pharmacies. I am waiting for the answer. And apart from these, I can tell you that we are investigating about 15 pharmacies.

Don't say that we are not acting. I know! Maybe the hon. Member is not aware of it. That does not mean that we are not doing the work, and 15 pharmacies are being investigated. I know the problem as much as you do. I am not taking just retail pharmacies, I am taking it from the wholesale pharmacy.

How many dangerous drugs have been prescribed to the retail? I want to get the return from the wholesale pharmacy and, in the retail pharmacy, I want to see how many drugs they have sold and on prescription, and if it hasn't been sold on prescription, what is left in the pharmacy. So, I am looking at it from the top down to bottom. You are trying to tell me that the work is not being done!

Now, our hospital is sick! I am telling you, if our hospital is sick, you know how many people come to hospital every year? 5.5 million visits; 5.5 million consultations.

*(Interruptions)*

**Madam Speaker:** Visits!

*(Interruptions)*

Please, don't interrupt him!

**Dr. Husnoo:** No, but you have to cater for the population. You know, it is a fact, I am telling you statistics. If it is so bad; for God's sake!

*(Interruptions)*

I don't mind criticism, I don't say the thing is perfect, I don't tell you the health service is perfect but, look, we have to be reasonable.

Nearly 73% or 75% of the population cannot afford to go to the private clinic. They come to the hospital. In the hospital, you are getting care from the neonatal care, very good service. I mean, whatever criticism you may have, up to a cardiac surgery operation, you are getting it from neonatal care to cardiac surgery, free for God's sake. Obviously, you pay tax, everybody pays tax, but provided by the Government. You do not have to pay at the point of care. You know what I mean? I do not say it is perfect. Sometimes, I go mad as well myself, but we have to be reasonable. That is all I ask.

*(Interruptions)*

**Madam Speaker:** Hon. Member, do not interrupt!

**Dr. Husnoo:** We have to improve, I agree.

*(Interruptions)*

**Madam Speaker:** Please, do not bring me into the debate! Yes, hon. Minister!

**Dr. Husnoo:** You know, every day I see there is a lot of improvement to be done on the service. I am aware of it. I discuss it with my colleagues in the Ministry. Sometimes, we go wild when we see what is happening. You know what I mean? But I cannot change everything overnight. The hon. Member is telling me about equipment. When I came a couple of years ago, I asked for a state of our equipment in the hospitals. There was no inventory of our equipment in our hospitals. Can you imagine? Two years ago...

*(Interruptions)*

**Madam Speaker:** Order, please!

**Dr. Husnoo:** No, I am not blaming anybody, I am just telling the facts as they are, what we did two years ago. Last year, I asked them to work on the inventory of the equipment in the hospitals. Not just that, I wanted to know when was that equipment bought, when it is going to expire, what is its lifespan and what maintenance do we have for the equipment. We have to know its lifespan and then I can order well before the expiry date. We started that last year. We never had it in the service, and now the hon. Member is telling me the equipment. You are telling me about the scan. Why is the scan like that? Our scan, by the way, is working in all the five hospitals. MRIs are working. Okay, because of the load of work in the service, inevitably these equipment are going to be overworked, they are going to get broken.

*(Interruptions)*

The hon. Member would understand that. I think for the other points raised, I will not answer. Some of them, at the end, I would not like to answer because I may be a bit nasty. So, I will not answer. I leave it at that. Madam Speaker, it is Friday night, I know...

*(Interruptions)*

**Madam Speaker:** Order, please! Order!

**Dr. Husnoo:** Thank God, it is Friday, isn't it? Obviously, Madam Speaker, as hon. Members are aware, any legislation does not remain static. I mean, we have looked at one aspect of it. I am aware that there are a lot of things to be improved, not just the process, not just discipline, not just equipment; looking at the medicines...

*(Interruptions)*

The hon. Member is talking about the young doctors in the hospitals. So many things have to be sorted out. But to pretend that I am going to sort it overnight, look, it is not like that. I am not Rambo, sorry.

*(Interruptions)*

I know what the problem is. I have started working on the problem, but it takes time. Unfortunately, it is like that. But we are working for our patients, we care for our patients.

Coming to medical negligence, I have heard a lot about medical negligence. I am not going to excuse what is happening in our hospitals because one life lost is one death too many. For me, for each life lost, I ask for an investigation. I am not justifying myself, I am not trying to defend Mauritius, but does medical negligence occur just in Mauritius only? I

mean, *soyons raisonnables*. In UK, there was a recent report in *The Guardian*. 40,000 people died of medical negligence in UK, which has one of the best health services in the world. I will not talk about other countries. I am not using that to justify Mauritius. We have weaknesses, we have to improve. I completely agree with the hon. Member, but to blame our health service every time, to have a good kick at the health service, I mean, let us be reasonable, please.

Well, Madam Speaker, I think I will not go on more than this. As hon. Members are aware, any legislation does not remain static. As new elements crop up and if there is any need, in future, to incorporate these new elements or correct any identified flaws, which there are many, we will have to identify, we will have to come again. This Government is prepared to do so because we are aware of the problem and we face the problem. We do not hide the problem under the carpet. We face each and every problem that we meet in the health service, in the Ministry. Okay, there was a flaw in this Act, which I have mentioned, and we are bringing the necessary amendment thereto. We have to set proper and common legal framework for each of the different Councils. That is what we have been doing in this particular Bill in matters of disciplinary proceedings, and we have clearly defined the respective responsibilities in those matters. It cannot be otherwise.

Madam Speaker, with these, I would like to thank all the Members that have taken part in the discussions. Thank you very much, Madam Speaker.

*Question put and agreed to.*

*Bill read a second time and committed.*

## **COMMITTEE STAGE**

*(Madam Speaker in the Chair)*

### **THE DISCIPLINARY BODIES (HEALTH SECTOR) (MISCELLANEOUS PROVISIONS) BILL**

**(NO. IX OF 2019)**

*Clauses 1-3 ordered to stand part of the Bill.*

*Clause 4 (Dental Council Act amended)*

*Motion made and question proposed: "that the clause stand part of the Bill".*

**Dr. Husnoo:** Madam Speaker, I move for the following amendment –

“In Clause 4, in paragraph (a) (ii), in the definition of “professional misconduct or negligence”, in paragraph (e), by deleting the word “medical” and replacing it by the word “dental”.

*Amendment agreed to.*

*Clause 4, as amended, ordered to stand part of the Bill.*

*Clauses 5-9 ordered to stand part of the Bill.*

*The title and enacting clause were agreed to.*

*The Bill, as amended, was agreed to.*

*On the Assembly resuming with Madam Speaker in the Chair, Madam Speaker reported accordingly.*

#### *Third Reading*

*On motion made and seconded, the Disciplinary Bodies (Health Sector) (Miscellaneous Provisions) Bill (No. IX of 2019) was read a third time and passed.*

#### **ADJOURNMENT**

**The Minister of Technology, Communication and Innovation (Mr Y. Sawmynaden):** Madam Speaker, I beg to move that this Assembly do now adjourn to Tuesday 02 July at 11.30 a.m.

**Mr Roopun rose and seconded.**

*Question put and agreed to.*

**Madam Speaker:** The House stands adjourned.

#### **MATTERS RAISED**

(7.04 p.m.)

#### **HAJJ PILGRIMAGE – AIR TICKETS**

**Mr Osman Mahomed (Third Member for Port Louis South & Port Louis Central):** Thank you, Madam Speaker. I am raising an issue that concerns the hon. Minister of Arts and Culture regarding anxiety expressed to me by my constituents and other people regarding their departure for the forthcoming pilgrimage to Mecca. Now, they are quite anxious because the details for the air tickets are not finalised.

**Madam Speaker:** Can we have some order in the House, please?

**Mr Osman Mahomed:** It is quite a unique situation and we are talking of about 1,500 pilgrims. I know that a service provider has accepted all requirements of the Expression of Interest of 22 February 2019, and now after four months, pilgrims are not fixed on their departure dates and the price that they will have to pay for their air tickets and this is causing a lot of anxiety to them.

I hope that the hon. Minister of Arts and Culture will take *le taureau par les cornes* and resolve this *situation d'incertitude au plus vite possible*. Thank you.

**The Minister of Arts & Culture (Mr P. Roopun):** Madam Speaker, I am grateful that the hon. Member raised that issue. In fact, there are certain uncertainties right now regarding the date on which pilgrims will be departing from Mauritius for the Hajj. May I inform hon. Members that presently representatives of Saudi, including the Regional Director, are in Mauritius to finalise all issues regarding the date pilgrims will be departing from Mauritius and also the cost of the air tickets.

In the light of certain uncertainties which have cropped up in the region, we are trying to sort out all issues regarding the dates and those dates when pilgrims are leaving should correspond with the date for which hotels have been booked in Mecca. I understand that talks are presently on-going by the ICCS through hon. Soodhun and tomorrow also there will be some further negotiations. Hopefully, if everything is settled by next week, I will come with a statement to the House and there is a possibility also that hon. Soodhun may be flying abroad to sort out all issues.

**Madam Speaker:** Hon. Uteem!

#### **BOULEVARD VICTORIA, PORT LOUIS – DRAINS**

**Mr R. Uteem (First Member for Port Louis South & Port Louis Central):** Thank you, Madam Speaker. I would like to raise an issue which is addressed to the hon. Minister of Public Infrastructure, who is unfortunately not here. It relates to the drain that is being constructed along Boulevard Victoria.

I am very grateful that following a similar matter which I raised at adjournment time, the NDU had undertaken works to repair drains on one side of the road. Unfortunately, for now three months, they have stopped work and there are drains only on one side of Boulevard Victoria and not on the other side of Boulevard Victoria. It means that if there is

heavy rain, there is a likelihood of flooding again because drains have been done only on one side and not on the other side of the road. So, I am making an appeal to the hon. Minister to see to it that appropriate drains are also done on the other side of Boulevard Victoria.

**Mr Sawmynaden:** Thank you, hon. Member. I will pass on the message to my colleague Minister.

**Madam Speaker:** Hon. Baloomoody!

#### **RESIDENCE ST LOUIS, PAILLES – FOOTBALL GROUND**

**Mr V. Baloomoody (Third Member for GRNW & Port Louis West):** Thank you, Madam Speaker. I will raise an issue which I raised a few months ago. I will raise it again with regard to the football ground at Residence St Louis, Pailles. The NDU, last time, promised to repair the fencing. The fencing has been broken, but months have passed and nothing has been done. And, unfortunately, the youth of the area cannot play football there because there are houses within metres around and this cause a tension between the owners of the houses and the young who want to play football. So, may I appeal to the hon. Minister to convey the message to the hon. Prime Minister, responsible for NDU, to look into the matter? Thank you.

**Mr Sawmynaden:** I will definitely pass on the message to the hon. Prime Minister and the NDU.

**Madam Speaker:** Hon. Dr. Boolell!

#### **QUATRE BORNES – MARKET FAIR**

**Dr. A. Boolell (Second Member for Belle Rose & Quatre Bornes):** Thank you very much, Madam Speaker. I would like to draw the attention of the Vice-Prime Minister, Minister responsible for Local Government, to a problem at the market fair of Quatre Bornes which, in the opinion of many people, has become acute and chronic. Despite several appeals to the Municipality of Quatre Bornes, nothing has been done and as you know very well, it is a very popular place which attracts many tourists but there is a huge problem of safety also. Toilets are filthy and on the day that they have fair of haberdashery, there is poor ventilation and the risk of fire is very high. So, I would appeal to the Minister to take corrective measures and address this problem in a very forceful and effective manner.

**Mr Sawmynaden:** I will pass on the message to the Vice-Prime Minister and talk to the Mayor of the Municipality of Quatre Bornes.

*At 07.11 p.m., the Assembly was, on its rising, adjourned to Tuesday 02 July 2019 at 11.30 a.m.*