Standing Committee on Private Bills

8:35 a.m.
[Chairman: Mr. Renner]

MR. CHAIRMAN: Good morning, everyone. I'd like to call this meeting to order. This is a meeting of the Private Bills Committee. We're here to consider two Bills this morning: Pr. 14, the Jody Anne van Overmeeren Adoption Act, and Pr. 6, the Gimbel Foundation Act. We'll be dealing first with Pr. 14, and I wonder if you could have the petitioners for Pr. 14 come in, please.

Committee members, while the petitioners are coming in, due to the nature of adult adoptions and the fact that from time to time it's necessary that we go in camera because they're of a personal nature and also due to the fact that we have a good deal of interest in the next Bill, I'm wondering if it might not be prudent for the committee to go in camera for the duration of the adoption Bill to avoid the confusion of having to clear the gallery partway through. So if anyone would like to make that motion?

MR. HERARD: Yes, I'll so move.

MR. CHAIRMAN: Mr. Herard moves that the committee go in camera. Any discussion? All in agreement?

HON. MEMBERS: Agreed.

MR. WICKMAN: Mr. Chairman, with the understanding that it's only for the first one.

MR. CHAIRMAN: Yes. Oh, by all means. Only for the first one. It should probably take about 10 minutes. So if I could have the gallery cleared. You can just wait outside in the foyer, and then as soon as we're finished with this adoption Bill, everyone is more than welcome to come back in.

[The committee met in camera from 8:36 a.m. to 8:46 a.m.]

MR. CHAIRMAN: This committee now will be in regular session. Committee members, there's going to be a bit of a break while we bring all of the various intervenors and petitioners in for the next Bill. I would like, while we're waiting, to go on to approval of the agenda and the minutes of the previous meeting. The agenda item is under the tab Agenda. Could I have a motion to approve that agenda?

MR. JACQUES: So moved.

MR. CHAIRMAN: Moved by Mr. Jacques. All in favour? Opposed? Carried.

Could I also have approval of the minutes of April 19? They are also included in your binders. Moved by Mrs. Gordon. All in favour of that. Opposed? Carried.

We'll take a bit of a break while we bring all of the various individuals in.

I'd like to call the meeting back to order if I could. Ladies and gentlemen, welcome to the Alberta Legislature. This is certainly the largest crowd that's been here since I've had the privilege of chairing this committee, and I'm glad to see we accommodated everyone.

My name is Rob Renner. I'm chairman of the Private Bills Committee. We're here today to consider a private Bill proposed by Dr. Gimbel, and everyone, I am sure, is well aware of the procedure. However, I'm going to just briefly go over it. First of all, everyone here, it is my understanding, has been sworn, and you are all under oath. You were sworn in in the Confederation Room. If anyone was not sworn in, would you please raise your hand so Parliamentary Counsel can do so.

Now another thing. I have a list of different organizations that have contacted Parliamentary Counsel, and as you have all been advised in advance, each organization that I will be recognizing should have five minutes to speak. I encourage you to use less than five minutes so that we have more time for questions. I'm going to just go through the list. If there's anyone here who feels they're not on that list, would you please let me know now.

I have the Alberta Eye Institute, Heather Climenhaga and Harold Climenhaga; College of Physicians and Surgeons; Consumers' Association of Canada, Wendy Armstrong and Irene Gouin; Donna Wilson, project co-ordinator for ECHO -- there are two representatives of that organization -- Alberta Council on Aging, Ms Wilson and Robert Fraser; Alberta Association of Registered Nurses, Dr. Douglass and Ms Sherwood; Association for Healthcare Philanthropy, Mrs. Fyfe and Ms Warmington; Dr. Terry Davis, representing nurse educators of Alberta; nonprofit lawyers Ms Sinclair and Ms Dixon; Faculty of Medicine, University of Alberta, Dr. Collins-Nakai; Ophthalmological Society of Alberta, represented by McLennan Ross; and finally, the Health Law Institute, Ms James. Is there anyone here who would not be included in one of those groups that I've just gone through?

Yes.

DR. WILSON: I've been asked to submit on behalf of Dr. John Dossetor, who had a written submission that was circulated on Friday. Since he is unable to be here today, he has asked that I address his letter for the committee.

MR. CHAIRMAN: Fine. Anyone else?

MRS. LORD: Cecilie Lord with Alberta Health. We are available to the committee to answer questions, but we're not making a presentation.

8:56

MR. CHAIRMAN: Thank you very much. I appreciate the fact that you're here.

So there's one more that I should add to my list then.

Now, so that everyone understands then, if there is more than one individual with each of these groups, I am going to ask that the time be kept collectively. If you both wish to speak, that's fine, but your collective total time will be five minutes. Now, the petitioners, Dr. Gimbel and anyone who happens to be with his delegation, will have 15 minutes. The same thing will apply. I don't care how many people would like to speak, as long as the maximum time is 15 minutes. Again, I would encourage everyone not to use the maximum time so we have the most time possible for questions.

With that, then, just before we get started, I want to give you a little bit of background information about the procedures in this committee and have a chance for the committee members to introduce themselves to you. As I mentioned earlier, this is the Private Bills Committee. We consider Bills that are submitted by private individuals throughout the province requesting that laws be passed on their behalf. Normally private Bills deal with specific cases. You're probably well aware that we just had an adult adoption prior to consideration of this Bill. We also deal with nonprofit foundations, private educational facilities, a number of different organizations throughout the province. The committee consists of all parties of the Legislature. Both government members and opposition members are on the committee, and we have a good geographic cross section as well.

With that, I think I would like the committee members to introduce themselves so that everyone here has an idea who the members of the committee are. We'll start with Mr. Wickman.

MR. WICKMAN: Percy Wickman, Edmonton-Rutherford. Good morning. I'm glad to see such interest in our health care system.

MR. PHAM: Good morning. Hung Pham, Calgary-Montrose.

MR. SMITH: Good morning. Murray Smith, Calgary-Varsity.

MRS. FRITZ: Hello. Yvonne Fritz, Calgary-Cross.

MRS. LAING: Good morning. Bonnie Laing, Calgary-Bow.

DR. L. TAYLOR: Lorne Taylor, Cypress-Medicine Hat.

MR. HERARD: Good morning. Denis Herard, Calgary-Egmont. Welcome.

MRS. GORDON: Good morning. Judy Gordon, Lacombe-Stettler.

MR. JACQUES: Hello. Wayne Jacques, Grande Prairie-Wapiti.

MRS. SOETAERT: Good morning. Colleen Soetaert, Spruce Grove-Sturgeon-St. Albert.

MR. KIRKLAND: Terry Kirkland, Leduc. Good morning.

MS LEIBOVICI: Welcome. Karen Leibovici, Edmonton-Meadowlark.

MR. BENIUK: Good morning. Andrew Beniuk, Edmonton-Norwood.

MR. YANKOWSKY: Good morning. Julius Yankowsky, Edmonton-Beverly-Belmont.

MR. VAN BINSBERGEN: Duco Van Binsbergen, West Yellowhead. Good morning.

MR. SEKULIC: Peter Sekulic, Edmonton-Manning. Good morning.

MR. MITCHELL: Grant Mitchell, Edmonton-McClung. I don't sit on this committee. I'm here to observe because I'm very interested in this issue.

MR. BRUSEKER: I'm Frank Bruseker. I'm not on the committee either, but I used to have the good fortune of having the Gimbel eye clinic in my constituency until the boundaries were changed, so I'm interested in the Bill too.

MR. BRACKO: Len Bracko, St. Albert, observer.

MR. RENNER: Thank you. I'm Rob Renner; I'm from Medicine Hat. The other two people at the table with me here are Mr. Rob Reynolds, Parliamentary Counsel for our committee, and assistant for our committee, Florence Marston.

So I welcome you all here. I think we should get started. One more bit of information on procedure. This Bill has received first reading in the House, and it's up to this committee to decide whether or not that should proceed for debate at second reading. So it's basically the decision of this committee as to whether or not this Bill should receive further debate in the Legislature.

So with that, I think we'll get started. I'll ask Dr. Gimbel whether you want to start or whoever wants to start, if you'd go ahead with your presentation.

MR. SMITH: Mr. Chairman, I would like to re-emphasize that a decision won't be taken this morning and that in fact it is a discussion this morning, and then we will proceed further at a later date.

MR. CHAIRMAN: Yes, that's right. Thank you, Mr. Smith. That's very true. It is not the custom of this committee to make a decision today. In fact, the committee will be reconvening at a later date to make our decision. The purpose of today's meeting is to gather information and for the committee members to ask questions for clarification. We will not be making a decision today. In fact, we may even decide to reconvene and call back certain witnesses at another time.

DR. GIMBEL: Good morning, Mr. Chairman, members, ladies and gentlemen. I'm Howard Gimbel, medical director of the Gimbel Eye Centre, that has facilities in Calgary and Edmonton.

I started my ophthalmology practice in Calgary in 1964, almost 30 years ago. My mission then as now was, with God's guidance and blessing, to treat with love and compassion, to always strive for excellence, to constantly learn new and better ways to treat eye disease in order to be able to do what's best for the patient, and to share what I believe is best for the patient with others.

In 1974 my practice began to change from a general ophthalmology practice to a cataract specialty practice when I pioneered in Canada a new small incision method of cataract surgery known as phacoemulsification. The combination of this technique with intraocular lens implants, which I introduced to Alberta in 1975, revolutionized the process of cataract surgery. Before this time, cataract surgery had required a hospital stay, often general anesthesia, severe restrictions in movement for a week or so, and restricted vision afterward with high risks for other eye problems after surgery.

This new method of cataract surgery with intraocular lens implants has been continually refined so that presently the operation is done with drops rather than a needle for freezing, and the patient walks away from the operation chair with the vision so immediately restored that many patients shed tears of joy with their restored vision before leaving the operating room. There's no requirement for an eye patch or any restriction of activity after the procedure. There's minimal interruption in their lives, which is particularly advantageous for elderly people.

In our Alberta facilities we have over 40,000 patient encounters per year where individuals are treated by a team of eight ophthalmologists, three optometrists, and a technical and administrative support staff of 140. Approximately 4,700 major surgical procedures and 1,800 minor procedures are performed each year. Many Canadians as well as individuals from 45 other countries have chosen the Gimbel Eye Centre for surgery.

But we are not here today to discuss these accomplishments of the centre. We are here to ask your assistance in the preservation, expansion, and the future of what we consider to be our highest achievements: achievements in innovation, research, and education, wherein we impact the quality of eye care in all of Canada and indeed in most of the world. These innovations, research, and education activities have been funded by personal and private donations not public funds.

First, regarding innovations. The surgical technique of phacoemulsification that I learned in New York and introduced to Canada in 1974 has been undergoing constant refinement, as I mentioned. With the Lord's guidance I've had the privilege of participating in this process with the development of a number of innovative surgical techniques that have become international standards.

One of my latest innovations in surgical technique has its greatest potential application in cataract surgery in children, which I have been pioneering and developing. Since I presented this technique at a recent international conference, it has already been adopted enthusiastically by a professor of ophthalmology at Baylor University in Houston.

When we built our own operating rooms and surgical centre, we innovated a unique way using an observation room to facilitate family support by maintaining visual and auditory contact with the patient and the surgeon during surgery. Located adjacent to the two surgical suites with floor-to-ceiling glass and two-way audio, this room allows the patient's family to watch everything that is happening and to hear an explanation of what is happening to their family member during surgery. This has reduced anxiety, increased confidence, and has had great educational value for the family.

In addition to these innovations, clinical research studies are conducted at the centre by medical staff. Of the 28 research studies currently in progress at the centre, one study just being completed of a certain drug has shown that one-tenth of the lowest dose previously used is equally effective. The results of this study will be presented next month at the prestigious annual meeting of the association for research in vision and ophthalmology. The results of this study will effect a tenfold saving in cost for this drug as well as the benefit of requiring less drug in the tissue.

9:06

Over the last 19 years, in addition to numerous book chapters, 48 articles have been published by centre physicians in peer-reviewed medical journals. A recent publication in the *Journal of Pediatric Ophthalmology and Strabismus* reports our results using intraocular implants in children over the last 14 years. Our excellent surgical and visual results reported in this paper is adding to the evidence that this is a safe and effective procedure. It is gratifying to hear from pediatric surgeons around the world who are beginning to implant intraocular lenses safely in children after reading my publications, viewing our surgical teaching videos, or attending our international symposium on cataract and refractive surgery, which we have held annually for 10 years. At the symposium in July this year we have arranged for surgeons to examine some of the many Alberta children who are experiencing excellent vision after this pioneering surgery.

Our educational endeavours extend from the community, the family, and the patient to our technical staff. We developed a competency based training program which has prepared our technical staff to support patient care with accuracy and excellence and to become certified in their profession. Many other clinics and universities have incorporated this training program into their teaching programs. Quite a number of Albertans have rewarding careers as a result of our commitment to training.

Patient educational materials regarding eye disorders and treatment developed at our centre are also widely distributed. The professor of ophthalmology at Emory University in Atlanta, Georgia, has used the booklets we published to inform patients about refractive surgery options and their risks and benefits, stating that they are the best that he has seen. Complimentary sets of patient educational materials have been donated to all public libraries across Canada.

The observation room, with an explanation of the surgery, has also been utilized by many high schools for field trips. Recently, in conjunction with Foothills hospital school of nursing, Mount Royal College, and Southern Institute of Technology, we have hosted over 80 nursing students that in small groups benefit by an observational experience at the centre. This observation room is also used throughout the year by physicians and other professionals for learning purposes.

Our teaching of physicians is many faceted. Surgeons from Canada and around the world come almost daily to learn by observing surgery. Also, every surgery is videotaped and catalogued for editing of skills-transfer educational videotapes, which are used by surgeons around the world. In the last four years we have distributed almost 6,000 of these videotapes. Complete sets of educational teaching videotapes have been donated to all Canadian university medical libraries. Using some of these tapes, a department of ophthalmology in a former Soviet republic trained their young doctors in the modern technique of cataract extraction, because the professors themselves have not had opportunity to travel and learn them. Some of these tapes have been translated into Japanese, French, Spanish, and Chinese and have been deeply appreciated by surgeons around the world.

We have also shared our techniques with over 15,000 surgeons around the world through seven different satellite broadcasts of live surgery from our surgical centre. One such broadcast to Athens, Greece, for example, benefited the patients of 350 surgeons, who watched live surgery broadcast via satellite from our centre to their society's meeting.

The benefits of our system of outpatient surgical care have been recognized nationally and internationally. We have had surgeons and administrators from across Canada come to see how we function. I'd like to quote from a letter from a chief of a university department after his visit: Perhaps for me the most important impression was a very genuine feeling I had that we were not looked upon as competitors but as fellow travellers; what a great sense of joy it gave me to see a group of people working for the sheer happiness of doing the absolute best job they knew how.

Besides some Canadian centres which have incorporated aspects of our surgical care delivery, many clinics in the United States and in other countries have also visited and copied our innovations. In February of this year we were visited by architects, administrators, and the eye department chairman from the famous Cleveland Clinic Foundation in Ohio. The training of young physicians through clinical clerkship electives and through fellowship programs has also always been a commitment of the centre. The centre currently accepts two fellows per year to develop surgical skills, gain clinical experience, and be involved in research and publication projects. Our current fellow will join the faculty at Yale this fall.

In addition to the skills and the science learned at the centre, students learn more about the art of caring. One surgeon who himself came for surgery wrote this letter after he returned home. He was a former professor as well.

> I was so impressed with the service attitude at your institution that, on the way home, I resolved to tell you my thoughts.
>
> If all our medical graduates, in their clinical years, had the advantage of even one day at your clinic, I feel certain (hopeful) that their service and attitude to our fellow human beings would profit by it!

Our commitments to innovation, research, and education are very important to us. We have been dedicated to these objectives for over 20 years. Again, all of this work in innovation, research, and education is not paid for by government or patient fees. This work is supported by my own donations and from others in the public who believe in this work. We believe it is valuable work which has brought worldwide recognition, and Albertans can be justly proud of these achievements. We are here today on a simple mission: to create a foundation that will provide for the preservation,

enhancement, and future success of this work. This Bill is not about corporate medicine or two-tiered health care, extra billing or user fees, or private medicine or private hospitals, all very important issues that need public debate, and we indeed participate in those debates. Here this morning it is not about any of these things. This is a very simple matter. We are here to ask your support of this foundation because our research has shown this to be the simplest and best way to provide for the long-term future of this work.

Thank you very much, and I would be pleased to answer any of your questions.

MR. CHIPEUR: In one minute I would just like to highlight a proposed amendment sheet that you have in front of you. These amendments do not change the substance of the Bill at all; they merely clarify what the Bill would have accomplished in any case but, in fact, say it in so many words. The first amendment is to make it clear that the limited liability provisions are subject to the Medical Profession Act. If you could just take a pencil right now and strike out the words "part 4 of" in the first paragraph -- that's the proposed amendments page -- it would read: incorporated under the Medical Profession Act. So "part 4 of" is out.

Then going on down again, there's no change in substance, just in form so that it is clear exactly what the legal effect is. If we did not make any of these amendments, the law would still provide that this would happen. We just want to make it clear to you and to the world that there is a very clear purpose, and that is a charitable purpose, behind this Bill.

Finally, in section 10(1) of the Bill you have before you, take out the words "part 4 of" so that it reads "the Medical Profession Act" and it's not just part 4. If you have the Bill in front of you, go to the last page of the Bill. At the very beginning of section 10.1 it says "part 4 of." That's out, and it would just be "the Medical Profession Act."

Thank you very much. We'd be happy to answer your questions later.

MR. CHAIRMAN: For the information of anyone who might be here as an intervenor, we are getting copies of the amendments made, and they will be circulated to you.

That concludes the 15-minute allotment. I would now ask that the representatives from the Alberta Eye Institute have an opportunity to address the committee.

9:16

DR. CLIMENHAGA: I'm Dr. Harold Climenhaga. Thank you for the opportunity to address the committee this morning. I'm an ophthalmologist on active staff at the Royal Alexandra hospital, and I'm also on courtesy consulting staff at the Stony Plain municipal hospital and the Wetaskiwin general hospital. The largest portion of my practice is concerned with cataract surgery. Now, I should emphasize I'm not here to in any way criticize, diminish, or reduce Dr. Gimbel's accomplishments. He's been very dedicated, hardworking, and conscientious. He's also had the good fortune to be on the first wave of a major new surgical innovation which has proved to be highly successful. In fact, cataract surgery is miraculous to many patients that undergo it. However, many other people in all walks of life, including politics, are equally diligent, conscientious, innovative and receive far less recognition, gratitude, or even financial reward. Rather, I'm here today because I have some concerns about the implications of the Gimbel Foundation Act for the future of medical care.

My concerns are centred in three areas: first of all, the substantial power and advantage this organization may have. I have some concerns about the internal workings of the organization. Lastly and most importantly, I'm concerned about the effects of the preceding two factors on the public delivery of health care. In the area of financial powers, it appears to have at its disposal numerous sources of revenue and some tax advantages, more than any other private or public institution. These advantages, as I see them, are fee-for-service income; donations, charitable annuities, and endowments, both personal and corporate; research funds and grants; facility fees -- in other words, fees charged directly to the patient for facility costs associated with delivery of insured and noninsured medical services as currently charged by nonhospital surgical facilities. There appears to be some potential for negotiating direct grants from the provincial government or from Alberta Health. The proposed foundation appears to have most of the business rights and protections of a limited liability company, and there seem to be potential tax savings, including partial rebates of the GST, no corporate income tax, freedom from provincial sales taxes in other provinces. Significantly, the foundation has the right to purchase professional corporations. This would imply that the foundation could grow by purchasing the practices of existing physicians, and possibly the seller would receive the small business capital gains tax exemptions.

I have some questions about the internal workings of the foundation. I do have concerns about the lack of an arm's-length relationship between the solicitation and management of charities and the remainder of the operation. I also note that the first member of the foundation's board is Dr. Gimbel, naturally. The number, composition, selection, resignation, expulsion, and other qualifications of the members of the board shall be set forth in the bylaws of the foundation. Now, who writes the bylaws? Dr. Gimbel? Conceivably the bylaws could give Dr. Gimbel absolute power to appoint and dismiss members of the board. I'm interested in what sort of independence the members of the board may have. The issue of reasonable compensation for services rendered to the foundation is also somewhat unclear. For example, to what age would members remain on the board? Would members of the board have to remain in active practice, or would they just have to have an active licence with the college, which is not necessarily the same thing?

My principal reason for concern is the possible effect of this foundation on the public delivery of health care. I think it should be realized that there already exist a number of other not-for-profit organizations wherein a group of physicians, nurses, managers, technical and support staff have banded together for the purpose of delivering medical services. These organizations are called hospitals. Contrary to rumour, the public system is alive and is able to deliver high-quality care at reasonable cost. In the handouts to the committee, I've enclosed cost data derived for Stony Plain and Wetaskiwin hospitals for cataract surgery in 1993. I've also enclosed a copy of the charges levied by the Gimbel clinic for the same services in 1992. It should be noted that the Wetaskiwin hospital is the Alberta flagship for a computerized management information system funded by the federal government, and their figures therefore should have substantial validity. For the record, the Wetaskiwin hospital reports average direct costs of $342.65 per case and average indirect costs of $145.44 per case for a total of $488 per case for cataract surgery. Now, this does not include capital costs, yet it does seem clear that existing rural and presumably urban hospitals are capable of delivering the same medical services . . .

MR. CHAIRMAN: I'm sorry to interrupt you, but your five minutes has expired.

DR. CLIMENHAGA: Okay.

MR. CHAIRMAN: Do you have a written copy of your presentation?

DR. CLIMENHAGA: It's all in the . . .

MR. CHAIRMAN: Fine. If you could circulate the balance of your presentation in writing, the committee would be able to consider it that way. I can't allow further time.

DR. CLIMENHAGA: Okay.

MR. CHAIRMAN: The next group will be the College of Physicians and Surgeons. Dr. Chadsey.

DR. CHADSEY: Correct.

MR. CHAIRMAN: Thank you.

DR. CHADSEY: Mr. Chairman, members of the committee, ladies and gentlemen, I appreciate the opportunity to make some very brief comments. Mr. Chipeur has made reference to two of the amendments we would seek in the proposed legislation, and I'll refer to one other which is included on the document but to which he did not speak.

First of all, let me say that the counsel for the College of Physicians and Surgeons of Alberta considered the early form of this proposed legislation and took the position that it would be essential -- in fact, counsel was absolutely adamant on this, and we feel it is embraced in the proposed legislation and amendments -- that the foundation as described must practice medicine but operate professionally within the jurisdiction of the Medical Profession Act, which applies to all physicians in the province of Alberta. Mr. Donald Boyer, lawyer for the college, communicated this in writing to Mr. Chipeur in March 1993, and Dr. Ohlhauser, the registrar, in whose absence I'm appearing today, also wrote in the same vein to the administrative assistant of the Legislative Assembly on August 11, 1993. I might say that the response from Mr. Chipeur was that he would agree to the amendments we sought, and that is reflected in the document to which he referred a few minutes ago.

We are pleased that Mr. Chipeur has proposed adding to section 2(4) the words "except to the extent provided for professional corporations incorporated under the Medical Profession Act." We're further pleased that this morning he has proposed that in that amendment the words "part 4 of" be deleted. That is our first request to the committee.

Turning to section 10(1), almost at the end of the proposed Bill, we would ask -- and Mr. Chipeur agreed -- that the words "part 4 of" be deleted.

The third amendment we would seek, with which Mr. Chipeur's document appears to agree but which he didn't speak to this morning, would be to add the words "and regulations thereunder." Thus 10(1) might read: the Medical Profession Act and regulations thereunder, with the exception of section 65(1)(c) and (e), shall apply to the foundation. That would answer the wishes of the College of Physicians and Surgeons of Alberta and I believe has the agreement of Dr. Gimbel and Mr. Chipeur.

I have no further comments. I would be pleased at the appropriate time to answer any questions that might arise.

Thank you, sir.

MR. CHAIRMAN: Thank you very much.

The Consumers' Association of Canada. Wendy Armstrong and Irene Gouin.

MS ARMSTRONG: Thank you. Good morning, Mr. Chairman, committee members, ladies and gentlemen. For almost 50 years the Consumers' Association of Canada has been working for fairness in the marketplace. There is no single cost that can so financially devastate a family as medical expenses. This makes the cost and quality a vital consumer issue. We would like to thank the Private Bills Committee for providing this opportunity to address the proposed Bill, which in our view will significantly affect both the cost and quality of medical services in Alberta.

9:26

This Bill is a slight variation of a Bill introduced by a Liberal MLA last year. We were opposed to the Bill then, and we continue to be opposed to the Bill now for the same reasons. We are asking for your support to delay consideration of this Bill until our outstanding concerns have been fully addressed.

There are two areas of outstanding concern: one, outstanding and unresolved issues with the current model for private clinics in Alberta which may be augmented with the passage of this Bill; and two, inadequate protection of the public interest and the interests of consumers of health care services with the creation of a new mechanism of tax-exempt private medical foundations.

In the view of CAC, Alberta, some of the current outstanding issues in private clinics include the uncontrolled drain on the public purse through subsidies to the private clinics with the reimbursement of physician fees; escalation of costs for medically required services through expensive duplication of capital costs and increased market; lack of monitoring in the marketplace to ensure a fair deal for taxpayers and patients, as despite the public subsidy there is no control of the amount of the facility fee. There is no arm's-length mechanism to ensure that the consumer is not paying twice for the same service, once as a taxpayer and once as a patient. Another issue is protection of the public interest from preferred referral arrangements. Finally, I think an important one is value and informed choice in the marketplace.

While supporters of private cataract clinics continue to suggest to the media that these clinics are providing a valuable service to patients who otherwise would have to wait up to two years for surgery in the public system, they also suggest that they are providing an opportunity for choice to consumers. We do not question that some consumers have increased choice; we do question whether it is real choice. How informed are Albertans of their options before they make that choice? How supportive are physicians of patients choosing alternatives? Alberta Health has advised CAC, Alberta, that present waiting lists for cataract surgery in the public sector can be as short as two weeks, depending on the surgeon. This has been confirmed by a telephone survey conducted by the CAC, Alberta, health care committee. In fact, initial survey results indicate that the average waiting list in the Edmonton area is about four to six weeks. There also initially appears to be a relationship throughout the province between longer waiting lists in the public sector and the amount of time a surgeon spends in the private sector. This information certainly raises the question: are Alberta seniors currently being exploited in the marketplace through higher than necessary costs and few visible alternatives?

Future regulation. It is our view that the passage of the Gimbel foundation Bill at this time will pre-empt and limit the ability of our Ministry of Health to effectively address the current situation.

Our second point is public interest in the creation of tax-exempt private medical foundations. The Gimbel foundation provides for at least one physician to duck paying his fair share of taxes on income from the public sector as well as significant tax advantages for a wide range of activities carried out by the corporation. The board of this foundation, restricted to physicians, will have the authority to

determine the business activities of the corporation and the treatments and charges for services with no public scrutiny, accountability, or ability to influence priorities. A lack of adequate disclosure requirements under Canadian law for sources of income to private foundations has already created problems in other areas outside this area, and it means there is not the same degree of public protection from potential conflicts of interest and unfair competition as exists in the States.

Is this setting a precedent? That's our concern. This Bill is sure to be copied by other medical practitioners who will see it as an avenue to augment income and control of health care research and services. It will provide a way to avoid the accountability and cost-containment measures being introduced by Alberta Health in response to our present deficit. In the absence of other practitioners following suit, we will be faced with a potential monopoly in the delivery of health care services and no meaningful competition.

MR. CHAIRMAN: Thank you very much.

Dr. Wilson, representing Ethics and the Crisis in Healthcare Organization.

Again, all intervenors, if you could keep your remarks to under five minutes, we would have more time for questions.

DR. D. WILSON: Thank you very much. I'm very pleased to address this Standing Committee on Private Bills on behalf of the ECHO group. Our group was formed last summer, and we are interested in the role of ethics in our society. Our group has been involved in an ongoing research study and ongoing public dialogues over health care reform. As a group, we have studied Bill Pr. 6 extensively and have sought a great deal of legal and other advice in relation to this Bill. We submitted a written brief, which was circulated on Friday. We believed at that time that we understood a great deal about this Bill, but looking over the amendments which have taken out the subsections which indicate they are going to establish and maintain health clinics, institutions, lodges, and facilities for those in need of health care and the aged, I now wonder what Bill we're talking about.

We are certain that this nonprofit privatization thrust, however, represents the beginning of what would quickly become a rush of privatization. After all, who would not want to set up a similar type of operation? The tax and other monetary advantages to the foundation physicians and board members are considerable. However, our group could find little or no Alberta advantage. What difference does it make if physicians are paid by public tax funds whether they work in a public hospital or work in a private clinic? The number of hospital beds in Alberta and the number of hospital personnel in Alberta are expected to be halved over the next two or three years, so what advantage would there be to having a private facility or a series of private facilities operating in Alberta? There is no Alberta advantage in terms, then, of government health care expenditure savings for taxpayers. There also does not seem to be any Alberta advantage when a business does not pay taxes. The charitable aspect of the Gimbel Foundation Act is very worrisome in this regard, because it means that at the same time considerable profits could be realized, there would be little financial return to Albertans.

These worrisome financial aspects of privatization lead up to the most important aspect of ECHO's concern over privatization of health care, and that quite simply is that privatization of health care as indicated in this Act would cause an immediate and ongoing erosion of our public health care system. I believe there are three reasons for this: that is, lack of public participation in and therefore reliance on and concern over our public health care system. The second point is that rising health care costs, which are sure to follow in the wake of profit orientations in health care, which has been shown time and time again to be the case in the U.S., would also erode the ability of our public health care service system to provide services. Finally, how many of the members of the public would want to continue to pay public health care premiums if they are paying for private health care insurance? Furthermore, how many of the members of our public would want to continue to pay the level of taxes they do if they do not wish to support a public health care system?

We now have an excellent health care system in Alberta which serves all Albertans. It is an important system and is what helps make an Alberta advantage. Albertans are largely healthy and are free from crippling worry of financial ruin.

The fact that our health care system serves all Albertans, as does the Canada Health Act, which serves all Canadians and our national interest, implies the ethical nature of health care. Ethics is broadly concerned with what is right and what is good, and it is absolutely certain that the common good is served by a public health care system. It is also certainly right that governments be involved in health care. No other single player can monitor, control, and guide such an essential service, and no other single player can facilitate innovations, research, and education in health care.

There are some people who believe we need to encourage privatization in health care to take the pressure off the public system. These are the same people who report that the public will welcome greater choice if there is privatization of health care. We believe there would be no Alberta advantage if public funds pay for private health care services, and there would be no Alberta advantage and no greater choice than there is right now in health care. If the public health care system becomes eroded because of siphoning off of funds and public interest because of the private sector, what choices will there be? If insurance companies and personal finances begin to dictate what and where services are provided, how can this be greater choice? We believe the reforms in health care that are occurring will meet the needs of all Albertans without privatization.

Thank you.

9:36

MR. CHAIRMAN: Thank you. That was Dr. Wilson.

You have your name on the list again representing another organization. Is that correct? And it is a separate organization?

DR. D. WILSON: Yes.

MR. CHAIRMAN: Fine.

Alberta Council on Aging. Ms Wilson.

MS H. WILSON: I'm pleased to represent the older people in Alberta. The Alberta Council on Aging is a voluntary organization of groups, individuals, and agencies in the province of Alberta concerned with the process of aging. It seeks to increase understanding of the impact of aging on both individuals and society. It works for change, both social and individual, in order to enhance the participation of older people as active members of society. One objective of the Alberta Council on Aging is to inform government at any level of the potential impact of policies and legislation on older people. The organization is concerned with social programs and policies. Position statements have supported the principle of medicare and have opposed changing the Canada Health Act to allow for a two-tiered system and private insurance coverage. The publication of your own government's Partners in Health states that Albertans want the principles of health care maintained.

Based on recent provincial surveys, the findings of the *Rainbow Report*, and the responses to that report, there is no doubt that for the great

majority of Albertans, the answer to that question is an unqualified yes. The Government of Alberta supports this position.

I and my peers vividly remember the days before medicare was introduced. The disparity in the care of the rich and the poor was evident everywhere. If you go to the senior community, you will hear stories of families not getting the care they needed, of taking years to pay hospital and doctor bills after getting treatment and providing vegetables to hospitals in payment for their care.

There are specific items in the proposed Act that are of concern to us. One is item 2(2), which says, "However, reasonable compensation may be paid for services rendered to the Foundation." What is the meaning of this statement?

We also have concern about item 4, "the charitable objects of the Foundation," that states:

> to engage in every phase and aspect of rendering the same medical services to the public that a registered practitioner of the College of Physicians and Surgeons of the Province of Alberta is authorized to render.

In rendering this charitable object, who will pay for this service? Is it through billing of the Alberta health care commission?

Item (d):

> to enter into partnership, consolidate or merge with or purchase the assets of another corporation or individual rendering the same professional services.

What does this mean? Could the foundation purchase a hospital and eventually control all health care services in the region?

We were also concerned about item (e), but that's been deleted.

Why are we concerned about the implications of this Act? First, it is a matter of social values and principles. The current medicare system allocates services on the basis of medical need. The very sick take precedence over the not so sick wealthy in an integrated system. The state of a person's health is a better allocation of health care services than the state of a person's bank account.

Second, it is a matter of citizenship. In 1967 Ottawa decided to use its spending power to create one national standard for health care. The equal right of all Canadians to fully insured health care in any province on similar terms is a characteristic of our nation. Our health care system is a factor in national unity and a sense of pride.

Third, those of us who lived in the era before the introduction of medicare remember too well the practice of private insurance companies. If you developed a chronic condition or a recurring health problem, your policy was canceled.

We are currently going through a process of restructuring the health care system which is causing fear and anxiety for many. An additional change to permit the establishment of private foundations for a two-tiered system violates the principles of the Canada Health Act which make a two-tiered system impossible. I would anticipate that the majority of Albertans would also be opposed. We believe this is changing the structure of the health care system with limited public input. We ask: is this Act in the best interests of Albertans? We believe it is not.

MR. CHAIRMAN: Thank you very much.

The next group will be the Alberta Association of Registered Nurses. Dr. Douglass.

DR. DOUGLASS: Thank you. Mr. Chairman, members of the Standing Committee on Private Bills, other petitioners, and guests. The Alberta Association of Registered Nurses welcomes the opportunity to present our views on Bill Pr. 6, the Gimbel Foundation Act. The AARN represents approximately 24,000 nurses and is the body responsible for regulating its members in terms of safe, competent, and ethical nursing care to Albertans. As nurses we have many issues and questions arising from the Gimbel Act, and as a result of these issues, we are requesting your committee to stop the passage of this Bill.

The Hon. Shirley McClellan, Minister of Health, just stated that the health care system will be guided by four principles outlined in the Alberta health business plan. Of the four, two are of particular relevance to our discussion. These are: one, a consumer-driven system based on community priorities will form the cornerstone of future health services which will be delivered co-operatively by health providers and community organizations; secondly, health services will be publicly funded subject to what society can afford, and access will be based on need, not age or ability to pay.

As part of the health care restructuring process the province will be divided into regions. The regions will be governed by a health authority, and the public funds provided to regions, based on the needs of the residents, will be allocated by the authority to provide essential services. Services that are essential and nonessential have yet to be defined. If one only looked at the health care reform process as it is unfolding in Alberta, it is clear that this Bill is premature and is incongruent with the government's own business plan for health.

Federal Health Minister Diane Marleau has said that private Bills currently operating in Alberta do not contravene the Canada Health Act. She has, however, expressed concern that more privatization could lead to a two-tiered system. Registered nurses recognize that approximately 27 percent of the system is currently privatized. Nevertheless, we share Mrs. Marleau's concerns.

The passage of the Gimbel Foundation Act could open the door to a stampede of profiteers in a system that has managed until recently to keep for-profit values out of health care. Although the Gimbel Foundation Act makes it explicit that the foundation will not financially profit any member, we note that the board is composed solely of practitioners registered with the Alberta College of Physicians and Surgeons. We also note that the board members can expect reasonable compensation for the services they render to the foundation. We presume that it is planned that some services provided through the foundation would be paid for out of the public purse. For example, the Alberta health care insurance plan pays for surgical procedures that are medically required, performed by registered physicians, and that are in accordance with the Alberta schedule of medical benefits. This is the case whether services are performed in a hospital, in a doctor's office, or in a private facility. Neither the Canada Health Act nor the Alberta Health Care Insurance Act and regulations defines "medically required."

9:46

We have grave concerns that private enterprise will be provided with the ability to dip into the public purse in the provision of essential services as well as to dip into the private purse of consumers. With health care professionals, including physicians, there is a fine line between providing essential services and creating a need for the services. The public is not well served in the latter instance. If providers are reimbursed for services from the public funds, then the public should have access to those providers. The ability to receive health care should not depend on the thickness of the wallet.

We urge the Standing Committee on Private Bills to stop this Bill based upon the following questions. What checks and balances are in place to ensure that channeling funds to a private system will not undermine the public system? If driven by financial rather than safety and ethical considerations, will privatization encourage access based on the ability to pay rather than need? Will advertisements for costly diagnostic and treatment services dupe unsuspecting consumers into using more health services?

My time is up. Thank you for the opportunity to present. We will conclude later on.

MR. CHAIRMAN: Thank you. If you wish to circulate your brief to the committee, that's fine as well.

The Association for Healthcare Philanthropy. Mrs. Fyfe.

MRS. FYFE: Thank you, Mr. Chairman and members of the Legislative Assembly committee. It's some years since I've stood on this side of the House, and at that time government members spilled over to this side too. So I feel like I've come home this morning.

My colleague Patricia Warmington and I are here as members and representatives of the Association for Healthcare Philanthropy representing the Edmonton area. We've also spoken to our colleagues in the Calgary region who did not have an opportunity to prepare for the hearings this morning, and we'll be contacting some other members on an individual basis.

Our work as fund-raisers is to seek charitable donations to support patient care, education, and research on behalf of public nonprofit health care organizations within Alberta. We emphasize that we are not here to speak about the delivery of services provided by the Gimbel clinics but rather to address the concerns of Bill Pr. 6, which will in our judgment create unfairness for other charitable organizations and a potential lack of accountability to donors within this province.

Fund-raising by public foundations is based on a partnership between donors on one side and a volunteer board of trustees on the other side. The donations given freely then in fact become public dollars, and they must be accountable through a trusteeship, accountable under the laws of this province passed by this Legislature. It is this relationship of donor and public trusteeship which provides accountability in both appearance and fact. It is these privately given funds that complement tax dollars and help to create a better world for all of us.

There are a number of sections within the proposed Bill which we might address; however, we limit our presentation this morning to our members' prime concern, and that is that the Bill, we fear, creates an unequal playing field. We believe your committee must not allow the creation of one set of rules for one organization and another set for other organizations. For example, public foundations are required to meet very specific rules and regulations created by this Legislature and by Revenue Canada. These include the makeup of the public boards, boards of volunteers; the requirements for annual reporting and audited statements; disbursement of receipted donations; and procedures for winding up the affairs of the organizations.

Our concern is primarily with section 3, incorporation -- it's what we primarily wish to address this morning -- and the fact that the Bill is void on basic requirements such as an annual audit and reporting. We strongly believe that some of our concerns about this Bill would be mitigated if the proposed chairman and board membership at the Gimbel Foundation were to be created at arm's length from the individuals that are delivering the service thereby protecting the interests of donors and the public dollars that have been donated from generous individuals. In this way, any perception of a conflict of interest would be reduced. We also believe donors, who are so important to our communities and to our organizations, would receive the same assurances and rights that are given to those who support other charitable foundations and organizations.

I now ask my colleague Patricia Warmington to supplement these comments.

MS WARMINGTON: Thank you, Myrna. In the materials that have been made available to the committee members and to those gathered, there is a copy of the Donor Bill of Rights. This Donor Bill of Rights has been a few years in coming together now, and it has been developed, approved, and accepted by no less than nine organizations, international in scope, who represent fund-raising in health care, education, and social services. It is very important to all of those represented in those organizations, both ourselves as professional fund-raisers, the volunteers who make up the various boards, and the organizations which we represent, that a Donor Bill of Rights be in place. I would just like to read the first very brief paragraph that leads into the 10 points of this Donor Bill of Rights, which underscores the importance of public representation and accountability and an arm's-length situation as it relates to foundations who are involved in fund-raising.

> Philanthropy is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that . . . donors have these rights.

We bring this to your attention.

Thank you for your time.

MR. CHAIRMAN: Thank you very much.

The next group is the nurse educators of Alberta. Dr. Davis.

DR. DAVIS: Mr. Chairman, members of the committee, and ladies and gentlemen, I am a nurse educator. Recently I attended a conference involving some 200 Alberta nurse educators from nursing programs located in Grande Prairie, Fort McMurray, Edmonton, Red Deer, Calgary, Lethbridge, and Medicine Hat. At this conference a decision was taken to send a representative to intervene in the consideration of this private Bill. In the period of time allocated to me this morning, I want to outline our main reason for opposing the Bill and to express our grave concern regarding what we see as the ultimate consequence of this Bill, if it is passed.

We are opposed to this Bill primarily because the creation of a foundation such as this is inconsistent with the government's stated directions and processes for achieving health care reform in Alberta. Let me elaborate. In order to fully reform our health care system in the face of significant downsizing and radical provincial restructuring, the government has pinpointed the use of partnerships: partnerships among individual Albertans, families, health care providers, community groups, organizations, and governments. Viewed from the government's perspective, these partnerships will serve as the vehicle for identifying our regional needs and priorities and for integrating them at a provincial level, and it will also serve as the vehicle for holding our health care system responsible and ensuring that it's affordable. Now, the government partnership strategy is in keeping with the desire of Albertans, a desire that has been expressed many times before, to be fully involved in decisions concerning their health care and pertaining to health care reform in Alberta.

Now, in the midst of this incredible health care reform that we're experiencing, we have before us now a Bill which in effect creates various health professional services outside of the proposed health care reform planning process. In short, the approval of this Act creates a corporate instrument with the potential to compete with the existing health care services and with the potential to interfere with the government's own health care reform process, which we fully endorse.

It is important to note that even if one disagreed with our point of view on this and thought that the creation of the foundation was consistent with the vision of healthy Albertans living in a healthy Alberta, then it could also be logically argued that to come forward with this Bill at this point in time, when our health care reform process is just getting under way, is inappropriate. Our community assessments have not been completed. Regional needs and priorities have not been identified nor established, and the collaborative

regional planning initiatives are just emerging. We are simply not in the position of knowing what the health care needs of citizens are in the various areas and for setting priorities relative to those needs.

9:56

If this Bill does obtain approval, we believe it will open the door for other similar foundations. The overall cumulative effect of these foundations will be to derail the health care reform process. Let me describe how. If the foundation is successful, it will serve as a demonstration project for other medical superspecialists. These specialists through simple market forces will offer their services at rates which are beyond the ability of the average Albertan to afford, and therefore this creature will quite predictably lead to medical procedures that will only be available privately.

So what is the effect of this specialized method of delivering health care? Let's assume that you are a farmer of modest income in Vermilion. You will lose your accessibility to these services because they are not available to you in the public system and ultimately, because you cannot afford them, in the private system.

Since the Alberta government is in the process of taking major initiatives towards reaching the vision of healthy Albertans in a healthy Alberta, it is our respectful submission that this Bill ought not to be approved.

MR. CHAIRMAN: Thank you very much.

The next group is Alayne Sinclair and Janet Dixon, representing Worton and Hunter.

MS DIXON: Thank you, Mr. Chairman. You had earlier represented us as not-for-profit lawyers, and we prefer not to publicly acknowledge that.

The concern of Ms Sinclair and I today in presenting to this committee -- and we thank you for your time -- is that we actually are practitioners who have assisted many, many, many not-for-profit societies and corporations in incorporating. In fact, it's my information, somewhat dated now, that there are over 52,000 societies and not-for-profit corporations in Alberta, the enormous bulk of which have been incorporated through normal channels.

It's our understanding that the test this committee has to apply in looking at this private Act and seeing if it's appropriate to pass is: does a reasonable alternative exist in our current statute law, and does this statute or this proposed private Act have an impact on the public? Well, with respect to the first test -- does a reasonable alternative exist? -- I understand from a recent corporate search that in fact there exists the Gimbel Eye Foundation currently. So in terms of this committee asking yourself whether a reasonable alternative exists, not only does existing statute law allow the incorporation of a foundation of this sort, in fact a foundation of this sort is currently incorporated. It's called the Gimbel Eye Foundation, and its principals are the same petitioners before you today for this Gimbel foundation. The significance of that is that were this committee to approve this foundation, it gives great incentive to Ms Sinclair and I to encourage all of our clients, which regrettably do not number 52,000 but at least the portion of that group, to take the same sort of approach to secure the same kinds of benefits that the foundation will get if this Act is passed.

Now, we acknowledge the laudable work that Dr. Gimbel is doing, and I think every group here would agree that within the current structure the Gimbel Eye Centre, from the report given by Dr. Gimbel, is achieving great things. The concern is: why does Dr. Gimbel have to go after this creature through a private Act outside of the scrutiny of the public to continue to deliver these good services?

I would encourage the committee to be cautious, because what you've heard today and even the amendments you've heard today have been the result of special interest groups scrutinizing the Act and saying, "Yes, but there is a statute we have that exists that is supposed to protect against some things, and you have inadvertently overridden the statute." We see that with the amendments associated with the Medical Profession Act, and we're fortunate that Dr. Chadsey and the college took the time to thoroughly review the Act. We may see that with the amendments under section 4(e), because clearly if this foundation were to establish institutions and health clinics, it would probably be in violation of some existing Acts like the Hospitals Act, the Health Disciplines Act, the Nursing Profession Act, and those interest groups are here today to help warn the committee that those are potential pitfalls if you should be motivated by the work that Dr. Gimbel does and the apparent innocence of this Bill to approve it.

I'd warn you of other potential pitfalls in this Act, and I warn you as a practitioner who doesn't like to go to court to litigate ambiguous legislation and as a practitioner who doesn't particularly like to take obscure routes with clients to achieve good causes when there is perfectly good legislation that exists.

I would be concerned as a committee that section 4 describes the objects as charitable, because as you are aware, the provincial Legislature doesn't have that power. The power to designate something as charitable is reserved to the Income Tax Act and the federal government. So you have to ask yourself: why would that designation be in the Act? It may be inadvertent. My friend Mr. Chipeur may argue with me that in fact these objects are charitable. He and I would disagree. But there's a simple way to resolve that argument. Dr. Gimbel can apply to Revenue Canada through the same process that tens of thousands of charities have applied to get the proper endorsement as a charitable organization.

You may wonder, as a submitter did earlier, why section 4(d) is in this Act. Certainly the notion of mergering and expansion doesn't typically fall within a charitable object. It's not a charitable object. I'm not accusing Dr. Gimbel or Mr. Chipeur of any underhanded motive. The fact is that in an effort to facilitate some benefit or some unique foundation structure, there are different pitfalls in this Act that will probably come into conflict with existing statute.

Sections 7, 8, and 9 are all sections that any practitioner would be delighted to have within the corporate structure of a not for profit, because the three things that are addressed in those sections actually are related to the Trustee Act, the Alberta Income Tax Act, the Insurance Act: all other statutes which must be looked at to see how they conflict with this Act.

I just encourage you to be very cautious -- I know my time is up, Mr. Chairman -- and to review the brief that Ms Sinclair and I have prepared, because the concern that we have as practitioners is: the question as to why this has to be a special foundation has not been answered in the submission of Dr. Gimbel and his group.

MR. CHAIRMAN: Thank you.

I now call on the Faculty of Medicine from the University of Alberta. I understand there are two representatives: Dr. Collins-Nakai and Dr. MacDonald.

DR. COLLINS-NAKAI: Thank you. I'm Dr. Collins-Nakai, and this is Dr. Ian MacDonald. I appreciate the opportunity to address the committee. I'm currently representing the University of Alberta and in particular the Faculty of Medicine. I'd like to dwell on two particular aspects of the Bill, one having to do with process and one having to do with content.

With regard to process, there are two concerns. This Bill is being put forward as a private Bill meant to affect only one or a few

persons or a corporation and not the population as a whole. We believe this Bill may well affect the population as a whole, and democratic principles state that there must be a public process with full public discussion. Because the consequence of this Bill might lead to a competitive, privatized system of health care delivery in Alberta, full disclosure and discussion is necessary rather than the creation of policy by stealth, which is what the Bill is attempting. We therefore recommend delay of the process, clarification of details, and, preferably, resubmission as a public Bill.

Secondly, we're in the midst of health reform. Because we are in the midst of tremendous upheaval and change in health care, with participation by payers, patients, and providers in the reform process, it seems inappropriate and premature to allow a Bill such as this special status in the health reform process, which itself, at this point, is driven primarily by budgetary considerations. So on the basis that change is already taking place, we again recommend delay on this Bill until the effects of reforms currently under way are analyzed and understood.

With regard to content, there are three major areas of concern from the academic standpoint: education, research, and clinical service. Currently education in health care professions, and in particular medicine, is under the purview of postsecondary, public educational institutions. In Alberta the teaching of medicine and most other health care providers is provided at universities under the regulations of the Universities Act and meeting provincial and national standards. Postgraduate training is provided by university faculties of medicine, meeting standards set by the Royal College of Physicians and Surgeons of Canada and by the college of family practice of Canada.

10:06

In recent years federal and provincial governments have strictly controlled the numbers of trainees, while licensing and professional regulatory bodies set standards for accredited training programs. This Bill suggests that the Gimbel Foundation could undertake such training programs in isolation from universities with no provision to meet national standards. The creation of such separate training programs could result in a lesser quality or standard being applied and may result in increased numbers of trainees, particularly physicians, at a time when governments are specifically attempting to control the numbers of physicians.

With regard to research, in the same section, section 4(f) of the proposed Bill, it is suggested that the foundation would engage in research. We are delighted to have further funds applied to research, but if a corporate body, charitable or not, is doing research on human subjects, there must be guarantees that appropriate research standards including ethical standards are met, and it is imperative that there be full disclosure to patients, with informed choice, when research is conducted.

With regard to clinical care, from the academic standpoint clinical care must meet standards of practice, which are usually set by academic and professional bodies. In other words, clinical care must be publicly accountable under the Canada Health Act. We see nowhere that this foundation will be accountable. It openly violates the tenets of the Canada Health Act and therefore raises constitutional issues and issues with regard to other Acts, as has been mentioned, which would have to be changed in order to allow this foundation to proceed with no evidence that it will be in the best interests of all Albertans.

In summary, on both process and content bases we recommend that this Bill be clarified and converted to a public Bill or be denied, deferred, or delayed and that full public discourse on the implications of this Bill be sought from all those potentially affected.

Thank you.

MR. CHAIRMAN: Thank you very much.

The next organization is the Ophthalmological Society of Alberta, represented by David Ross.

MR. ROSS: Yes. Thank you, Mr. Chairman. I should also point out that I have with me Dr. William Pidde, who is the president of the organization, to assist in answering any questions.

Aside from having a general concern about the distribution of health care dollars and the problems that this legislation may create in that regard, our concerns are fundamentally technical concerns. I find it a bit surprising that the speaker just before me, in respect to the University of Alberta, has conveyed to you two of the basic areas of concern that we've raised. We have a submission that was presented for distribution yesterday. I don't know if it has been distributed, but I would welcome all of you reviewing that.

Our concerns pertain to section 4(f). My friend Ms Dixon has dealt with a number of other aspects of section 4 and has raised some concerns about that. We are principally concerned about section 4(f) as it pertains to education and research and training, because the provisions of section 4(f) enable the foundation to engage in education, learning, and research without restriction or supervision.

As it pertains to education, all schools in Canada that provide education in ophthalmology do so with the accreditation of the royal college of surgeons. The proposed legislation would appear to allow the foundation to enter into the providing of education without accountability and external review, and we suggest that that is not appropriate, reasonable, or proper.

In respect to research, again without repeating the previous speaker's words exactly, we would point out that before medical research can be undertaken by a private research institute or a university faculty, there is an external impartial committee which reviews the proposed research to make certain that it has both scientific and ethical validity. Such an independent committee exists at the University of Alberta and at the University of Calgary and should apply to the foundation in respect to any research capability it is to be given.

The one matter that was not addressed by the previous speaker pertains to the issue of training. Because of the broad wording that exists in section 4(f), the legislation makes it possible for the foundation to become engaged in the training of paramedical staff, including optometrists, and the granting of certification or accreditation concerning the attainment of standards in respect to that training. We point out that the training of these individuals is currently provided by accredited institutions. There is no need to duplicate this service, particularly so when there is no requirement that the foundation will be controlled by any accreditation process. At the same time, we'd like to point out that there is an Eye Care Disciplines Advisory Committee in Alberta, on which this society I'm representing has representation. That committee is dealing with the question of whether optometrists should be entitled to prescribe therapeutic agents. The committee reports to the Professions and Occupations Bureau, who will make a decision in that regard following a recommendation from the committee. We fear that unless the proposed legislation is altered, the committee's and bureau's endeavours will be improperly bypassed because there is nothing in the proposed legislation to control the training of optometrists in respect to the prescribing of medication.

In summary, we ask that the legislation contain a requirement that all research undertaken by the foundation meet the standards that generally apply in respect to medical research in Alberta; that it contain a requirement that the providing of education in ophthalmology by the foundation meet the accreditation standards of the royal college of surgeons of Canada and the licensing requirements of the College of Physicians and Surgeons of Alberta;

and three, that there be a restriction upon the foundation from training optometrists or other paramedics so that such training only occurs within the facilities currently in existence for the provision of the same and that the activities of the Eye Care Disciplines Advisory Committee in respect to the Professions and Occupations Bureau not be bypassed.

Thank you very much.

MR. CHAIRMAN: Thank you.

The Health Law Institute. Ms James.

MS JAMES: Thank you. My submission today concerns some of the legal issues that the institute feels may arise as a result of this legislation. We're concerned about not only legal issues but some of the policy issues as well. Three significant issues will be addressed in this submission. First, the Gimbel Foundation Act, that I will refer to as the GFA, may contravene the Canada Health Act -- and I'll call that the CHA -- a statute which sets the terms on which the federal financial contributions are made to support the Alberta health care insurance plan. Secondly, the GFA may be vulnerable under the Canadian Charter of Rights and Freedoms to a constitutional challenge. Thirdly, the GFA marks a substantial departure from existing statutory and common law principles governing business organizations. It is also a substantial departure from existing law governing charitable or not-for-profit organizations.

First, issues dealing with the Canada Health Act. If the GFA is passed by the Alberta government, it will potentially invite the federal government to respond by invoking the remedial provisions under the Canada Health Act. As this committee is aware, one of the purposes of the Canada Health Act is to ensure continued access to quality health care without financial barriers in order to maintain and improve the health and well-being of Canadians. The federal government contributes to equality of access by sharing costs with the provinces through federal transfer payments. The Canada Health Act was enacted, many of you will recall, in response to those provincial governments, such as Alberta, which permitted extra billing by doctors and instituted hospital user fees. The Act gives the federal government the power to levy financial penalties against those provinces and territories who do not comply with the program criteria enumerated in sections 7 to 12 of the Act. Many of you will know the criteria: public administration, comprehensiveness, universality, portability, and accessibility. Any province which violates any one or more of these conditions risks losing federal funding for health care.

Alberta runs the risk of triggering one of two penalty provisions: firstly, extra billing and user fees pursuant to section 20 of the Act, which provides that provincial governments which permit extra billing or user charges will lose by way of federal cash contribution an amount equal to the total amount charged to patients. The facilities fees charged by Gimbel's clinics could probably be considered as user charges and would appear to violate section 20 of the Act and could subject the Alberta government and Alberta residents to this risk. The second penalty that might be triggered, or the general penalty provisions under section 15 of the Act -- it applies to any province that fails to satisfy any of the five criteria enumerated earlier. In this instance the Act provides for financial penalties to be assessed by the federal cabinet, depending upon the seriousness of the violation. It is possible that the federal Minister of Health could remove every dollar of federal funding under the Canada Health Act from Alberta if the GFA is passed since it arguably violates the condition of accessibility as defined in section 12 of that Act.

10:16

The Alberta government has embarked upon a policy of deficit reduction by cutting health care costs. It cannot afford to ignore the supply side of the equation. To run the risk of losing federal funding contributions for Alberta's health care runs counter to the government's own objectives. In the last few days the federal Minister of Health has threatened British Columbia with these retaliatory penalties and in relation to Alberta has begun assessing whether the province's growing reliance on private clinics amounts to a default of the Canada Health Act criteria. Even if the federal government fails to act, the Alberta government runs the risk of a private citizen having public interest standing to challenge provincial laws which violate federal cost-shared programs.

For the benefit of my legal colleagues, I refer them to the Finlay decision, which has been recently determined by the Supreme Court of Canada. The history of that decision, stemming from 1986, suggests that any Alberta residents covered by the Alberta health care insurance plan can request an order from a court declaring that the federal government's contributions to Alberta's health care insurance plan are illegal until the province amends its legislation to bring it back into line with the program criteria established under the Canada Health Act. Although the challenge in the Finlay case 1993 decision, based on the Canada assistance plan, was ultimately unsuccessful in the Supreme Court of Canada, the case demonstrates that the courts will step in to compel both levels of government to comply with legislation under which federal support is provided.

I will submit the rest of my reasons to the committee. Thank you.

MR. CHAIRMAN: Thank you very much.

Finally, Dr. Wilson, you wish to present a brief on behalf of Dr. Dossetor.

For the benefit of committee members and intervenors, I would like to quote from a letter I received from Dr. Dossetor.

> I am participating at a conference in Vancouver on that day and am therefore unable to attend . . .
>
> I would greatly appreciate if you would allow Dr. Wilson to present my submission on my behalf.

So I did have written notice.

If you would be brief, please.

DR. D. WILSON: Thank you very much. I'm pleased to be able to address the standing committee on John's behalf. I have to emphasize as well that these are his personal views. Some of you will know John Dossetor, since he's a noted physician. He is a nephrologist, or kidney doctor specifically, and he has been awarded with the honour of Canada. He also is a noted bioethicist and the director and founder of the Bioethics Centre at the University of Alberta. He has been involved with many charities in the past, and he has mused to me that none of those have required him to pay for services rendered or to buy insurance for future potential services.

He has written a letter outlining many of his concerns which he believes must be addressed before this Act is ever passed, and many of these concerns have been mirrored by the presentations today. But he would like one point emphasized which really is not addressed directly in his letter, and that insight is in regards to self-referral, an inherent conflict of interest situation which is a major problem with privatization in health care. Quite simply, there's a potential for abuse now when a physician or any other licensed health care professional is able to access patients or consumers and then refer those patients to their own private lab for blood tests, their own private radiology department for X rays, and their own private pharmacy for medications. In the future, if the Gimbel Foundation Act and other private initiatives are approved, this self-referral could expand into a practice where physicians or other health care professionals refer patients to their own operating rooms, their own

24-hour medical or surgical clinics, their own nursing homes, et cetera, et cetera, et cetera.

The question then is: who would be accountable for services rendered in such private health care facilities? In a true private health care system the individual patient's insurance company has a stake in treatment decisions and so is involved and to some degree there is fiscal accountability. But you have to ask yourself if individuals who are not health care professionals and are not free from the fear of personal vulnerability because of being ill can be truly informed and involved in health care decisions. Alternatively, can an insurance company who must make a profit to survive -- can individuals there ever be truly trustworthy in their health care involvement? Furthermore, what if public tax dollars are used to pay for private health care? Individual patients would be largely exempt from involvement and treatment decisions. The government would be one step further removed from monitoring and controlling the provision of health care, and this leaves primarily the physician in the role of decision-maker, the physician who is in a conflict of interest position. How can a physician be expected to balance what is good for the patient in comparison to what is good for their own private health care business? This conflict of interest has major ethical ramifications for the patient, and chief amongst those is the question of whether patients will receive appropriate care.

John also mentioned in his letter that privatization increases health care costs, and self-referral is one reason for rising health care costs. I'm sure John would like to emphasize many other ethical problems with privatization, but self-referral is one of his greatest concerns. Self-referral problems will occur whenever there is privatization, but these problems will be greatly exacerbated if the government through tax dollars pays for privately delivered health care services.

The Gimbel Foundation Act doesn't make it clear whether their facilities will be entirely private or whether they will expect a combination of public and private funds. This question and many other questions that are raised in John's letter must be addressed before this Act is ever considered.

Thank you very much.

MR. CHAIRMAN: Thank you very much. That concludes the presentations from the intervenors.

This committee normally adjourns at or about 10:30. Obviously, that's not practical this morning, so I'm going to extend the time for the committee. We have some other time commitments that we're dealing with, so I can't extend it too terribly long. What I'm going to suggest is that we now open the floor to questions from the committee until 11:10, and then I will allow another five minutes for summation by Dr. Gimbel and we will adjourn for this morning. If the committee feels it's necessary that we bring some of the people back again, we can do that, but we cannot let this go on all morning. But I do think it's reasonable that we have a certain amount of time for questions now.

I have two people on my list for questions. Committee members, anyone else? Mr. Herard and Mr. Jacques.

MR. HERARD: Thank you very much, Mr. Chairman, and certainly I want to thank the petitioners and the intervenors for some very good discussion. It has raised a number of questions and concerns. I'm wondering if the petitioners would be prepared to provide answers to all the questions and concerns raised by intervenors or interested parties in the written submissions and verbal submissions here this morning.

DR. GIMBEL: Yes, we would like to have the opportunity to.

MR. HERARD: Thank you.

My second question. I'd like to hear the reasons or an explanation as to why you're seeking a private Bill versus other vehicles available to you with respect to foundations and charitable status and so on. If you might give us some explanation, please.

DR. GIMBEL: I was concerned in the comments of a number of intervenors that there seems to be some misunderstanding particularly about the foundation we have now and why we would need something different. This foundation Act is required to incorporate the practice of medicine within the foundation, which cannot be done in any existing foundation including our own foundation.

MR. HERARD: Thank you.

Lastly, just a comment. I wonder if you might all want to stay until 1:30. I'm sure our Speaker would love to have an orderly question period for a change.

Thank you very much. Those were my questions.

MR. CHAIRMAN: Thank you.

Mr. Jacques.

10:26

MR. JACQUES: Thank you, Mr. Chairman. To some extent following up on my learned colleague's question, Dr. Gimbel, I refer to your brief and more particularly the very end of your brief. You talk about what the Bill is not about in terms of reference to two-tiered health, et cetera. You go on to say, and I quote:

> This is a very simple matter. We are here to ask your support of this Foundation because our research has shown this to be the simplest and best way to provide for the long term future of this work.

The difficulty I had in reading the Bill, even together with your amendments, quite frankly, was to capture the essence of what the intention of the Bill is in terms of not the legalese and not the creation of the foundation, but more specifically: what is the intention of yourself and your colleagues in terms of the operation of the foundation? In terms of everyday language, what is the purpose of it? What will it do?

DR. GIMBEL: I tried to portray in the history what we have been doing. As one faces the future, at my age I won't be practising forever, maybe five or 10 years more, and I would like to see what we have done maintained. I would like to have it in place and inspire others to make the contributions I have on a voluntary basis. This Act and this vehicle for me gives the most certainty that an institution will be maintained and, in fact, enhanced.

MR. JACQUES: As a follow-up question, Dr. Gimbel, is it fair to assume that the Gimbel Eye Clinic, which you had defined and spoke to -- is it intended that effectively it would be operated by the foundation?

DR. GIMBEL: The practice of medicine would be by the foundation rather than me personally, and the public, I believe, will benefit by this Act, not be harmed by it. It's a charitable intent.

MR. JACQUES: Would the Gimbel Eye Clinic continue to operate in the form we know it as today?

DR. GIMBEL: Yes. Nothing would change in the way we provide service.

Maybe Mr. Chipeur has something more to add to that.

MR. CHIPEUR: Yes, Mr. Jacques. I'd also like to tie in an answer to Mr. Herard on this as well. It's very important to understand why this extraordinary action by this committee is necessary. Why not just have the Gimbel foundation that currently exists apply for a licence to practise medicine? The answer is that it could not, because the Medical Profession Act says that currently only a share capital corporation which could be incorporated in Alberta could practise medicine with a permit under that Act. Dr. Gimbel would like his practice to carry on after he retires with the same objectives. If we were to incorporate a company with share capital and other physicians were to purchase that share capital or Howard were to give it to them, those physicians could sell those shares in the future and liquidate the practice and the foundation if the foundation were carrying on business with share capital. We do not want to have that as a possibility in the future. It's not that we don't trust other physicians, but it is an important objective that we have a foundation that will perpetuate the practice of medicine that we're talking about here.

It's important to remember that we're only talking about the practice of medicine. It is not possible under the Canada Health Act or under any provincial legislation for the private practice of medicine to extra bill user charges or anything like that, so there's no way this Bill could ever have any impact on the Canada Health Act. Howard has been practising to a certain extent in private facilities since 1980. Those private facilities are the ones that bill the facility fee. That is not part of this Bill, not part of his practice, so it is just not an issue. The Canada Health Act is not an issue here, and that's an important concept to understand. We are only talking about the practice of medicine. If this practice of medicine were to become a public charitable organization in this province as it is contemplated, it would be subject to all the same reporting requirements under the Public Contributions Act of Alberta, under the federal Income Tax Act, under every Act that governs every other public charitable organization. In addition, Revenue Canada has reviewed this Act and has said that it does qualify as a public charitable organization, and there will be public accountability in that no single physician will be able to carry on the practice of medicine within this foundation. There must be independent public accountability among physicians, and they must be subject to the Medical Profession Act, the Income Tax Act, and the Public Contributions Act.

I would like to have that opportunity to provide you with a written response, Mr. Herard, on all the issues that have been raised, because if those issues were outstanding, I would have the same concerns. But fortunately every one of the concerns you've heard this morning have been addressed and will not and cannot be facilitated by this Bill.

MR. JACQUES: Thank you.

Just one further question. It is to the representative from the Department of Health -- I'm sorry; I missed the name -- and that is that we have had no submission from the minister or any member of the ministry. Has the department formed an opinion on this subject in terms of the Bill?

MRS. LORD: Yes, we have reviewed the former Bill and this Bill. We were not party to the amendments until just an hour ago, so we have not had an opportunity to review the implications of the amendments. Many of the concerns that have been noted by the intervenors have also been noted by the department. But I am not here to tell you what our position is. We've simply reviewed the issues, some of which have been brought to the attention of the department and some of them we've identified ourselves.

I think one of the key concerns for us from the beginning has been the scope of the intended Bill, so we need to go back and assess what has happened to the scope given the amendments that have been proposed. We are concerned in particular, I think, with the environment we're in right now with a lot of health reform, a lot of very important and necessary changes happening to our system, and what exactly the impact of this type of Bill could be on this environment.

I think I'll limit my comments to that, and we will discuss the amendments further with our minister. I'm sure when she has the opportunity to speak to it in due course, she will do so.

MR. CHAIRMAN: Thank you very much.

I have five other speakers on my list. I would encourage everyone to keep your questions as brief as possible and also keep the answers as brief as possible so we can get as many questions in. Mr. Wickman.

MR. WICKMAN: Thank you, Mr. Chairman. I want to follow up to the representative of the department. Unfortunately, it is possible that this Bill under the procedure may not necessarily proceed to the Legislative Assembly, which wouldn't give the minister at that time an opportunity to respond. So I have to ask you the question: in your opinion, does it undermine the Alberta health care system?

10:36

MRS. LORD: Well, in my opinion there's no question that the Bill is of considerable public interest and has the capacity to impact on the health system. Exactly how it will do that we're not quite sure, but clearly other physicians are impacted; the health care system is impacted; practitioners are impacted. Health authorities are in the process of being formed, and one of the key functions that they will have is to assess the health needs of Albertans and what health services are available. We're concerned that decisions may be made at this stage before these new authorities have had a chance to assess what the actual need is. I think what we've been struggling with and some of the questions that you've been faced with as well are: exactly how will this Bill improve the health status of Albertans? How will it address the health needs of Albertans? It strikes us that the marvelous accomplishments that Dr. Gimbel and his people have achieved have already been achieved under the existing provisions of the legislation that's already in place, so it is not clear to us what additional advantages or benefits can be achieved by Albertans through this new Bill. That's where our thinking is right now, and we certainly need to study the amendments that have been proposed and the submissions that have been made.

MR. WICKMAN: Thank you. My last question, Mr. Chairman, again to the representative from Alberta Health: does it in your opinion jeopardize the federal revenue sharing for Alberta health care?

MRS. LORD: We cannot in Alberta predict what the federal minister will do. What we know is public knowledge, that she has sent a letter to our minister expressing some concerns, but she has certainly publicly acknowledged that we are not in violation of the Canada Health Act at this stage. We have no information that she has changed her mind since she made those statements. We know that she and her officials are watching what is going on in the province, and I suppose a concern could arise if as a result of this Bill -- but it hasn't been passed yet -- there were a number of new private clinics established in the process which charge facility fees. The issue really is not a private clinic, which has been pointed out I think also by Dr. Gimbel. The issue is whether or not any of these private clinics in the future will charge facility fees and where the federal government will draw the line. We simply don't know that.

MR. CHAIRMAN: Thank you.

MR. PHAM: Mr. Chairman, can I speak on this point?

MR. CHAIRMAN: No, I have a list, and I think it's only fair that we stay with this list.

Mr. Van Binsbergen.

MR. VAN BINSBERGEN: Thank you, Mr. Chairman. Maybe I should start by saying that I'm a firm supporter of our health care system, and therefore I find some difficulty in understanding the reasons for this application for status as a charitable organization. So I've got a couple of questions here. First off, I'd like to ask Dr. Gimbel: why did you start a private practice many years ago if that wasn't for reasons of profit?

DR. GIMBEL: You're talking about the private facility, not a private practice. Is that correct?

MR. VAN BINSBERGEN: I'm talking about the surgery, yeah.

DR. GIMBEL: Yes. Well, I don't think that is the issue here because we're not talking about facilities; we're talking about the practice of medicine and my desire to put that into a charitable foundation. I would like to think the citizens of Alberta and the community and the ethicists and so forth would laud a person's desire to remove the profit motive from the practice of medicine. This is what this Bill is about. The profits are going to be to the benefit of the patient seeking care.

MR. VAN BINSBERGEN: Okay. Then I think I have some questions, Dr. Gimbel, about the way in which the members of the board are going to be compensated and perhaps how they're going to be selected; in other words, the bylaws that are not part of this Bill. Could you clue us in on that perhaps?

DR. GIMBEL: I'd like to ask Mr. Chipeur to answer that.

MR. CHIPEUR: That is a concern that has been raised with us in the past, and in order to address that concern and explain how it would happen, we have filed with you draft bylaws. They are just like any other bylaw; that is, the board of directors would select the members and board of directors from time to time, so if you are asking whether Howard Gimbel will choose the other physicians that will join him on the board, yes he will.

DR. GIMBEL: Really, you have to think of this foundation as practising medicine and subject to all the requirements of ethics and patterns of practice and so forth that have been addressed here this morning, but these are all regulated and monitored in the same way by the College of Physicians and Surgeons and other bodies.

MR. CHAIRMAN: Thank you.

Mr. Kirkland.

MR. KIRKLAND: Thank you, Mr. Chairman. As I understand the foundation today, it will retain the privilege to access public dollars for health care services provided. I struggle in my mind -- how you will separate those public dollars and their application to keep them separate from a charitable cause would be my first question. I wonder if one of the two presenters could address that. I have a couple of other follow-up questions I'd like to raise.

MR. CHAIRMAN: Can you limit it to one follow-up question? I'd like to get as many people in as possible.

MR. KIRKLAND: Okay. Fair enough.

DR. GIMBEL: Again, they are public dollars that pay the surgeons' fees now in Alberta health care, and there will be no difference in the way the practitioner is paid for his services than exists right now.

Mr. Chipeur, maybe you'd like to add to that.

MR. CHIPEUR: Yes. I think it's clear that this Bill does not have anything to do with facility fees, so there would be no concern with respect to the mix of public and private dollars. It's also important to remember that the funding scheme that's in place in Alberta is not the issue before the committee. That can change from year to year. This Bill would pass just as it is in Ontario, and there would be no facility fee from the private person, but rather the government would pay it. So that issue is a completely different issue that maybe relates to Bill 20 rather than the question we have before us, which is purely the practice of medicine through a charitable organization. The only difference between the way Howard practises now and the way he will practise under this charitable foundation is that he will not be able to take out any profit and he will not be able to benefit from any increase in the capital asset value of the practice. That's the sole difference, the only difference of any kind whatsoever.

MR. KIRKLAND: Supplemental question, Mr. Chairman. As I read that Bill, it indicates that in fact the foundation can enter into other health care areas or avenues. That's why that question is put forth, and I would ask Dr. Gimbel or yourself, Mr. Chipeur, if in fact there is some plan to redirect that money into other charitable causes that have not been discussed here today.

DR. GIMBEL: We have no plans to change the way we practise from our current model.

MR. CHAIRMAN: Mrs. Fritz, then Mrs. Laing.

MRS. FRITZ: Thank you, Mr. Chairman. Dr. Gimbel, I do recognize that your clinic is a renowned centre of excellence, and I want to preface my remarks with that. I know we need to be brief with our questions. I have so many based on the submissions. I'm pleased to see that you brought forward something that is innovative and needs much discussion, and I would like to see that occur in the context of the public process, because I don't think we've had enough of that before us in a private member's Bill context.

The area I'm interested in is: when you discuss the practice of medicine, is your scope much broader than what you currently practise with the ophthalmology services, and if so, if you could give me a bit of a vision of what that practice is?

DR. GIMBEL: No, I would say the scope is not different except that we would like to enhance and expand on these areas that I spoke about in the way of research and education and innovation and service.

MRS. FRITZ: But they'll solely exist within the context of the medicine you now practise?

10:46

DR. GIMBEL: That's right.

MRS. FRITZ: Thank you. Just a supplemental, Mr. Chairman. I know we're just allowed one here. You discussed who will benefit, and you brought that back to the client in relation to service and

discussed profit going back to the client. I wonder if you could just expand a bit, please, on how that will happen.

DR. GIMBEL: Maybe just further to your other question, my own practice is ophthalmology, so I could not practise obstetrics and so forth.

MRS. FRITZ: I'm referring to the foundation.

DR. GIMBEL: Yes.

MRS. FRITZ: So I'll go back to that question with you adding to it. Do you see it being broader than ophthalmology services, the foundation practising any . . .

DR. GIMBEL: No, we don't see it broader.

MRS. FRITZ: Okay. Thank you. This further question was: who will benefit in what way with the profit going back to the client? How will that happen? What formula do you have for that?

DR. GIMBEL: I think the same benefits will accrue as have been accrued over the last few years. We just want to institutionalize this to give it permanence, to give it a future role. I think the patients have benefited, the community has benefited, the medical community and patients and physicians around the world have benefited. We would like to think that the same people that have benefited in the past will continue and even accrue more benefits in the future.

MRS. FRITZ: So you see that more in the line of service rather than dollars? I guess when I heard you saying about the charitable aspect, the benefit going back to the client, I was looking at that in the area of economics as well. But that's fine.

Thank you, Mr. Chairman.

MR. CHAIRMAN: Thank you.

Mrs. Laing.

MRS. LAING: Thank you, Mr. Chairman. My questions are for Dr. Chadsey of the College of Physicians and Surgeons. You gave us indication that the amendments were addressing most of the concerns. I'm just wondering, in light of the further information that's been added, if there were other concerns that the college had as well.

My second question is: will the foundation charging the physicians' fees basically put the physician on salary, and how will that impact the envelope of funding for all physicians?

Thank you.

DR. CHADSEY: Thank you, Mrs. Laing. The answer to the first question: these other issues that have been raised are the concerns held by those interest groups and individuals. They don't add or subtract from the college's perspective. Ours were addressed in relation to the amendments that I spoke of.

The second question, if I've understood it properly: will physicians who function within the foundation and clinic -- you suggest that they might be paid within that clinic on the basis of a salary. If that were so -- and I don't know one way or the other -- it seems to me that other than by being available as an example of such a system which may work, that wouldn't so far as I can see impact one way or the other on other physicians in the province of Alberta.

MRS. LAING: The last one was: how would the foundation distributing the fees impact on the total envelope of funding for the physicians as a whole in the province?

DR. CHADSEY: I don't think that I or the college would be in a position to answer that. The college very clearly does not deal directly with issues of health care economics and physicians' payments and incomes. That's strictly -- in fact, by formal agreement with the government of Alberta -- in the purview of the Alberta Medical Association.

MR. CHAIRMAN: Thank you, Mrs. Laing.

Mr. Yankowsky, followed by Ms Leibovici.

MR. YANKOWSKY: Thank you very much, Mr. Chairman. I have three questions here that I would like to ask. The first one of those goes to Mr. Chipeur. What profits has the Gimbel clinic realized in the last three years? Are you prepared to release these? You can approximate; this will just help us to see the whole picture.

MR. CHIPEUR: Well, I don't operate that centre, so I would suggest that Howard should be the one that would answer that.

Howard, would you have any problem with that?

DR. GIMBEL: Except that I couldn't even give you that number right now. Are you asking to know what kind of profits would go back into a foundation?

MR. YANKOWSKY: No. I just want to know the total profits.

DR. GIMBEL: It would be easier to tell you that there have been millions of dollars that have gone into our efforts, in what I have been describing as not in direct patient clinical care but in these areas of education and research and innovation and teaching.

MR. YANKOWSKY: Okay. My second question is: it has been reported that the Gimbel foundation is already issuing charitable receipts; is this in fact true?

DR. GIMBEL: Yes, it is. Private patients and the public may donate to the foundation.

MR. YANKOWSKY: Okay. There has been much mention made in the background information that we received about your ties to the Seventh-Day Adventist Church. My question is: if the Gimbel foundation is allowed to be set up, will it indeed be promoting the Seventh-Day Adventist Church, among other things?

DR. GIMBEL: No. Certainly that has never been even discussed and is not an issue, and it's I think of no greater concern than what would be happening right now. Certainly as physicians it would be unethical to be proselytizing through our practice.

MR. YANKOWSKY: Thank you very much.

MR. CHAIRMAN: Thank you.

Ms Leibovici, followed by Mrs. Soetaert.

MS LEIBOVICI: Thank you. I would first like to congratulate Dr. Gimbel on his success in terms of his surgeries. I hear that though your practices might be considered a little unorthodox at times, your success is well recognized in Alberta and throughout the world.

Having said that, however, I have distinct problems with regards to this particular Bill. Some of those problems deal with the fact that I can't quite comprehend how this is going to become a charity versus an organization that is for profit. When I look at some of the submissions that you yourself have put forward, if I can beg the indulgence of the Chair, I'd just like to read a couple of excerpts, one with regards to the document that deals with an introduction that says that the Gimbel Foundation Act "is to establish a not-for-profit professional corporation." It doesn't talk about charity at all, but it talks about a not-for-profit professional corporation, which to my mind is a bit of an oxymoron. I'm not quite sure how you do both of those things at the same time. The other is that when we looked through your Myths and Facts section, it talks about:

> At the Gimbel Eye Centre, we would prefer not to receive global operating grants from the government, so as to preserve our freedom to innovate and to be able to provide services . . . and to incorporate and utilize new technology independent of restrictive and often delayed hospital budgeting practices.

To my mind, some of these things seem to indicate that what you're looking for is an ability to work outside the current health care system, and in fact you have been able to do that through your three businesses. One is the foundation, one is the centre, and the third one, I believe, is an eye care incorporated, where you've been able to straddle the public system; in other words, billings. Correct me if I'm wrong; I believe your billings for last year were $1.2 million.

Mr. Chipeur, if I can beg to differ, you are secretary and treasurer of the foundation. I would assume that you would know what some of the profit and loss statements are with regards to the corporation, the incorporation, and the foundation. And if that . . .

MR. CHAIRMAN: I think you've made your point. Can you ask the question?

MS LEIBOVICI: Well, with regards to this particular Act, I recognize that you've deleted sections (f) and (h), yet you still have sections (a), (b), (c), and (d), which allow the foundation to purchase, to contract debts, to enter into partnership. My question is: is this really a business, or this is a charity that you are engaging in?

10:56

DR. GIMBEL: Well, the practice of medicine now is both a business and a profession and can do these things. A corporation does not mean that there's going to be profit involved. As I understand it, a corporation is something other than an individual. So I think your opening statement does not hold that because it's a corporation, it's going to be profiting.

MS LEIBOVICI: Has this corporation or foundation not in fact been profitable to yourself, sir?

DR. GIMBEL: It has been profitable at times and not profitable at other times, yes.

MS LEIBOVICI: Is the figure of $1.2 million correct in terms of billings?

DR. GIMBEL: You're implying that the foundation billed that and that Mr. Chipeur should know that. He as a member of the foundation board is certainly not part of the practice of medicine knowing that. I think that would be your answer there.

I know this is always thrown out, but in looking at billings alone is not really the way you look at a business. You have to look at what they expend, and what I've been trying to portray to you as a committee this morning is what we have given as well as what we have spent on equipment and staff and amenities for the patients' well-being while they're there, to serve them properly.

MR. CHIPEUR: If I could supplement that, Ms Leibovici.

MR. CHAIRMAN: Just one more, very brief.

MS LEIBOVICI: Okay.

MR. CHIPEUR: Howard is right that there is no income within the foundation. In fact, it would illegal for the foundation at this time to carry on business, thus our need to be before you this morning. Secondly, (a) through (d) are required by the Medical Profession Act, and that's why they're there, because this charity, as a charitable organization, will be carrying on the practice of medicine. In order to do that, it must have the powers that any practice has under the Medical Profession Act, and that's where (a) through (d) come from. We have not generated those for the purposes of creating a problem for this committee; in fact, we are just complying with the Medical Profession Act.

MS LEIBOVICI: My next question is to both Dr. Collins-Nakai and Dr. Climenhaga. If this Bill is approved, will you or your organizations then follow the same practice in terms of coming to the Private Bills Committee and asking for charitable status?

DR. COLLINS-NAKAI: I represent the University of Alberta Faculty of Medicine at the present time, and I can't answer that. It would certainly go to the university board, and if there were an advantage for the university or for the faculty to be incorporated in this way, especially if it meant other income or tax advantages, I'm sure it would be looked at.

MS LEIBOVICI: And Dr. Climenhaga?

DR. CLIMENHAGA: Well, my concern has been the ability to carry on medicine within the public sphere. My understanding is that this proposed foundation basically gives the current practice of the Gimbel Eye Centre a form of institutional immortality and thus would create quite an unbalanced playing field. My concern is not necessarily that any sort of private medicine outside the public system is wrong, but there has to be a level playing field. I can see this sort of organization having quite a substantial advantage in competing with the public system for funds and resources. Yes, there's no question that if this foundation proposed was successful at the expense of the present public system, both myself and I'm sure many other practitioners would be looking at trying to enact the same sort of legislation.

MR. CHAIRMAN: Thank you very much.

Mrs. Soetaert.

MRS. SOETAERT: Hi. If you don't mind, I'd like some clarification from Ms Dixon's presentation. Did I understand you to say that there's another route that Dr. Gimbel could go through rather than Private Bills Committee to become a charitable foundation?

MS DIXON: Yes, and it's not uncommon for Mr. Chipeur and I to disagree because that's why law is a profitable profession sometimes.

The other route is the route that the other 52,000 groups have gone through, and the route that Dr. Gimbel's gone through. I think it's only in these clarifying questions that I'm starting to get an understanding of what the real obstacle is. Apparently it's that through this Act Dr. Gimbel wants to do two things: one, have this

Legislature deem the practice of medicine to be charitable; and two, avoid the public disclosure of financial statements and reporting that he would have to make were he to follow the ordinary route. His reluctance even today to give that information -- it's of a very personal nature, I think -- is understandable, and this Act allows him never to give that information. The third thing it allows him is in a very closely held, family style private foundation to take profits from the Alberta health care system, put them into a family type trust or charity, and then in perpetuity have control over how those profits are spent in the direction of medical research.

So in terms of the basic question, can the Gimbel Foundation be incorporated by some other means, absolutely, and I don't think I would be in a serious contest with Mr. Chipeur. Can all those other advantages be achieved through existing legislation? No, but I think that's where the public interest is raised, and that comes to the second test of this committee: is the impact of this Act so great as to take on public significance?

MRS. SOETAERT: Now, Dr. Gimbel, can I ask why you went through this procedure of private Bills rather than an alternate route through Revenue Canada or that type of thing?

DR. GIMBEL: I believe we attempted to answer that before, Mrs. Soetaert. There is no existing structure where a charitable organization can practice medicine under the Medical Profession Act.

MR. CHIPEUR: Mrs. Soetaert, the answer to every one of the objections raised is that my friend is absolutely dead wrong. She has completely misrepresented to you the purpose and effect legally of this Bill, and in fact it is exactly the opposite objective that will be achieved by the incorporation of this Bill.

Currently the Gimbel foundation is a private foundation with no public accountability. If this is passed, then a public charitable organization will be created that has already been approved by Revenue Canada -- so Revenue Canada has been involved in this process -- and we will be required by law to disclose the answers to the questions you asked. In other words, everyone will know exactly what the income of this charitable organization is. The public will know exactly what the income is; they will know what the donations are.

We cannot incorporate a charitable organization such as the Gimbel foundation through a current public Act. If we could, we would have done so. If we were to incorporate the Gimbel foundation as it currently exists and register it to practice medicine, we would be violating federal law. In addition, we would not have the opportunity to ensure that no one in the future would ever privately benefit from the sale of this organization. The only thing this Bill does is prevent anyone ever profiting from the vision Howard Gimbel has of establishing a charitable practice of medicine.

To suggest that this Legislature has the ability to bind the hands of Revenue Canada with respect to the definition of "charitable" is just wrong in law and wrong constitutionally. The fact is that this Legislature does have the right and power to say when something is charitable or not for the purposes of provincial law. But for the purposes of federal law the Income Tax Act applies and Revenue Canada has the jurisdiction to make that call, and they have made that call and this is a charitable organization.

MRS. SOETAERT: I think obviously there's need for great debate on all sides on this, which causes me some concern that this is forwarded right now.

My final supplemental to Ms Patricia James. Could you please state why you believe the foundation contravenes the Canada Health Act?

11:06

MS JAMES: I didn't go so far as to state that I believed it contravened. I said it has the possibility. I think Mr. Chipeur suggested that I was concentrating my argument on the use of facility fees at clinics and that was the basis for triggering the first penalty provisions, the extra billing provisions. That is one trigger for retaliation by the federal government. If this legislation passes, even if no facility fees are charged at the Gimbel clinics, there is still the possibility for cabinet to consider that this legislation contravenes the Canada Health Act. It is a default on the part of the Alberta government, and this legislation possibly violates the accessibility provisions under the statute. Under the general default provisions, a penalty can be assessed, a financial penalty to the extent of the default or the full amount of federal funding. I suggest that is the risk posed by the enactment of this statute, in addition to potential charter challenges that may be raised by individuals.

Thank you.

MR. CHIPEUR: Can I respond to that, because I think that . . .

MR. CHAIRMAN: Well, I think I said I would give you five minutes to respond at the end, if you can wait until then.

MR. CHIPEUR: Thank you, but I mean respond to the question.

MR. CHAIRMAN: Okay.

I have two more people on my speakers' list, and we have less than five minutes left. I encourage you both to be brief in questions and brief in answers.

Mr. Pham and Mr. Smith.

MR. PHAM: My question will be very short. You say that you're going to prepare a written response to all the concerns raised today. After we have a chance to review your response and after we have a chance to review all the submissions of the intervenors, are you willing to come back for another session with us when we can address outstanding concerns that we have?

DR. GIMBEL: I certainly would be.

MR. PHAM: Thank you.

MR. CHAIRMAN: Thank you.

Mr. Smith.

MR. SMITH: Well, thank you, Mr. Chairman. You know I have a reputation for being brief. I'm pleased to have my name on this Bill, because I think even today's debate has been a good start and it has indicated to the intervenors and the petitioners how important this discussion must be and how important it is to bring it to a larger forum for broad public discussion.

The fact that Dr. Gimbel has his eye centre in Calgary-Varsity is something which makes Calgary-Varsity a proud political home for that.

The federal government is talking about centres of excellence and is establishing centres of excellence in women's health. It's creating areas of expertise. I think perhaps there is some linkage in what their focus is compared to what Dr. Gimbel's doing. I have two very brief questions. One is that I'd like Dr. Gimbel to respond to the discussion about creating an unbalanced playing field for other

physicians who are offering the same service in the same industry. Secondly, you already have the Gimbel foundation from 1984, and you have the eye clinic. If this Act isn't passed, can you continue to act under the same structure in which you have previously performed business? I guess a supplement to that side of it, being a fond proponent of business plans, is: I think a business plan that outlines where you would like this to go, where your vision is for the next three years, would be very helpful for intervenors and legislators.

Thank you. I'd like to thank everybody for coming today. I think it's been a very interesting debate for this Legislature.

MR. CHAIRMAN: Well, it actually used up most of the time with your question, but I will be a little bit lenient. I would ask that you maybe answer Mr. Smith's question and proceed with your wrap-up all in one shot. How does that sound?

DR. GIMBEL: I would have preferred it if Dr. Climenhaga would have answered the question posed to him. I think this does not create an unfair playing field, and if other physicians are willing to make the charitable moves or contribution that this Act does, they would be able to do it. Maybe the Medical Profession Act will be amended someday to allow that so it will not be necessary to pass individual Bills.

Mr. Chipeur would like to add.

MR. CHIPEUR: Mr. Smith, I think that's an important question. The answer is that it does not create an uneven playing field, because currently Howard has a foundation and currently he can make donations of tax deductible moneys to that foundation and that money can benefit the public. So this Bill does not in any way create an opportunity for a foundation to be established and for money to be put into that foundation. The profit that would go to any physician will in this case go to the public. Other physicians who are competing with Howard can do exactly the same thing and can either put the profit in their own pocket or put it into a foundation. This Bill is not addressing that issue. This Bill only addresses the long-term viability of this centre as a centre of excellence within this province.

I think it's important, just before Howard sums up, to answer the allegation that accessibility is an issue. Accessibility is not an issue. Diane Marleau, the Minister of Health for the federal government, came to Alberta recently and said accessibility is not an issue. Alberta has the shortest waiting lists in this area, ophthalmology, of any province in Canada by a long shot. The studies show that as the case. That is why she has no problem with Alberta. She went so far when she was here as to say that she supported physicians establishing charitable organizations such as Howard's to carry on the practice of medicine. That is the public record in a public meeting, so for anyone to raise the Canada Health Act or Diane Marleau's name in opposition to this Bill is a misrepresentation to this committee.

MS JAMES: May I respond to that? I spoke to her executive assistant yesterday. Diane Marleau has been reconsidering this issue; it is continuing to be looked at by the federal government. I deeply resent Mr. Chipeur's suggestion that I may be misrepresenting the federal Minister of Health's views to this committee. It is continuing to be looked at by the federal government, and that is a fact.

MR. CHAIRMAN: Thank you.

I would now, as I mentioned earlier, give you an opportunity to sum up the discussion this morning, keeping in mind that I was hoping we'd be finished by quarter after 11. If you would try and have your summation concluded by that time, I would very much appreciate it.

DR. GIMBEL: Thank you, Mr. Chairman. The vast majority of the intervenor discussions have spoken to issues not really before us this morning. As this Bill essentially ensures that net earnings from the practice of medicine at the Gimbel Eye Centre will be used for research and education, we feel it is worthy of your approval. We affirm that issues of general health care are utterly unaffected by this Bill, and income taxes, Mr. Chipeur was saying, prohibit abuse of funds within charitable organizations, rendering those concerned moot.

We do not belittle the importance of public debate on health care issues. In fact, we participated most recently in an ecogroup formal debate at the University of Alberta hospital. But our plea here today is that you not unduly delay our foundation until these weighty and almost permanently ongoing issues are resolved. Nearly all concerns raised by intervenors remain extant whether this Bill passes or not.

Finally, when some intervenors cannot find fault with our ideas, it seems to me they challenge our motives. Let me leave no doubt about that matter. As I look at the long-term future, I wish to preserve the public service aspects of our success. My sense of community and my faith require no less.

I thank you most sincerely for your time and consideration of this matter.

MR. CHAIRMAN: Thank you very much.

This has been a most interesting morning for everyone, I'm sure. I want to thank everyone for coming this morning. I think every presentation we heard today will help the committee in deliberation and decision.

The process, as I mentioned earlier, is that the committee will not be making a decision today. The committee will in fact be reconvening a week from today to hear other petitions, but at that time I will have an opportunity to ask the committee what process they would like to take, whether or not they feel it necessary to ask some of you people to come back at a later date or not. We would be making a decision sometime in early May as to whether or not this should proceed to the Legislature. Should the committee decide that it proceeds to the Legislature, the Act still receives full debate in the Legislature, so it's not finished at that point. The committee could, at its discretion, decide that this Bill not proceed or that it proceed, or in this case obviously it would be proceeding with amendments as proposed by the petitioners.

Mr. Herard, very, very briefly.

11:16

MR. HERARD: Yeah. Just a question of process, Mr. Chairman. We've had agreement by the petitioners that they will provide answers. I would just like to know approximately how long that will take so we can factor that into our process as well.

MR. CHAIRMAN: Thank you. It's a good question.

MR. CHIPEUR: Will this be to your written submissions?

MR. CHAIRMAN: Yes. The question was: how long do you feel it would take to have your written response to the questions that came up this morning back to the committee?

MR. CHIPEUR: By the time of your next meeting.

MR. CHAIRMAN: By a week from today.

MR. CHIPEUR: Yes.

MR. CHAIRMAN: Thank you.

MR. WICKMAN: Mr. Chairman, following up on the process, I think others should be invited to send further written comments prior to a week from today, because I'm not convinced everybody had the opportunity to say all they wanted to say.

MR. CHAIRMAN: That's fine. I have no problem with that, Mr. Wickman. As a matter of fact, a number of the delegations today obviously had more material than there was time for, and I'm assuming we will be getting copies of those presentations anyway. If anyone else has some written material they want reviewed by the committee, you're certainly more than welcome to present that. You can send it to Parliamentary Counsel's office, who in turn will distribute it to the committee.

MRS. SOETAERT: Mr. Chairman, I've had calls from four different people that would also like to make presentations but knew the docket was full today. Will that be a possibility? Are we going to . . .

MR. CHAIRMAN: That can be discussed by the committee.

MRS. SOETAERT: We can discuss that later. Okay, thank you.

MR. CHAIRMAN: I'm not sure it's necessary, but that's something the committee can discuss.

We're greatly over time, and I don't want to delay things much further this morning. Again, I thank everyone for coming. I assure you that the committee will be giving due deliberation to all sides of the issue, and we'll advise what our decision is as soon as we can.

Thank you very much.

A motion to adjourn is in order. Mrs. Laing. All in favour?

HON. MEMBERS: Agreed.

MR. CHAIRMAN: Opposed? Carried. This committee is adjourned.

[The committee adjourned at 11:19 a.m.]