

The Midwife.

PENAL PROCEEDINGS BEFORE THE CENTRAL MIDWIVES' BOARD.

THE REPORT OF THE MIDWIVES ACTS COMMITTEE OF THE LONDON COUNTY COUNCIL.

The Midwives Acts Committee of the London County Council, the most important Local Supervising Authority under the Acts, presented to the Council a Report on the question of the conduct of penal proceedings before the Central Midwives Board, which was adopted on October 18th, the terms of the Council's resolution being as follows:—

That, in the opinion of the Council, local supervising authorities under the Midwives Acts should be empowered to conduct the prosecution of midwives before the Central Midwives Board in those cases which originate with them and in which a *prima facie* case of negligence, malpractice or misconduct has been established after investigation by them; and that the Minister of Health be asked to promote legislation to give effect thereto at an early date.

The Midwives Act for England and Wales was passed thirty years ago, and there has, therefore, been ample time to observe the effect of its working. This carefully considered Report should be studied not only by the London County Council but by all Local Supervising Authorities.

The Report.

1. We have had under consideration the question of the conduct of penal proceedings before the Central Midwives' Board. The transference to local supervising authorities of the powers and duties of conducting penal proceedings was one of the suggestions put forward by the Council to the Departmental Committee on the Training and Employment of Midwives in accordance with resolution 1 (a) (vii) of 22nd January, 1929 (p. 51), and the Departmental Committee recommended (paragraph 99 of their report issued in 1929)—“That the present system should be revised and that where the local supervising authority represents a *prima facie* case of negligence, malpractice or misconduct to the Board, the prosecution of the charge should rest solely with the Authority.” Moreover, at a conference held on March 4th, 1931, between members of the Central Midwives' Board and of the local supervising authorities a resolution was passed, “That it is desirable that the powers and duties of conducting penal proceedings should be transferred to local supervising authorities,” and the Central Midwives' Board have, it is understood, approved the principle embodied in the resolution, *i.e.*, that it is undesirable that the Board should stand in the dual capacity of prosecutor and judge.

We have now, however, had before us a communication from the Central Midwives Board forwarding a copy of counsel's opinion on the subject, in which it is stated, “I do not think it is open to the Board to make rules which would compel a local supervising authority to conduct a prosecution before the Board, but it is open to the Board by its rules to permit a local supervising authority to conduct the prosecution. There may be some doubt whether the local supervising authority for its part is entitled in law to charge the expenses incurred by it in undertaking prosecution, but this point does not concern the Board. I need only add that the Board could not properly, out of its funds, pay expenses of a prosecution incurred by the local supervising authority. On the Council's part, we have been advised that the duties of the local supervising authority with regard to such proceedings are limited by the provisions of the Midwives Acts to the investigation of any charges of malpractice, negligence or misconduct on the part of any midwife practising within its area and the reporting of the same to the Board should a *prima facie* case be established, and that any expense incurred by a local supervising authority in activities outside those imposed by the Acts, *e.g.*, the conduct of prosecutions before the Board could not in law be justified. It would,

therefore, appear from the legal opinions quoted above that, in the event of the transference of the powers and duties of conducting penal proceedings to local supervising authorities, there is no legal authority, under existing legislation, for the payment of expenses incurred by local supervising authorities.

In the circumstances we consider that the Minister of Health should be asked to take the matter into consideration with a view to the promotion, at an early date, of legislation to empower local supervising authorities to conduct the prosecution of midwives before the Central Midwives Board in those cases which originate with the local supervising authority and in which a *prima facie* case has been established after investigation by them.

No estimate of the financial bearings of the proposal has been prepared, but, in the event of the new legislation providing that the cost of conducting legal proceedings should be borne by the local supervising authority concerned, it is doubtful, in view of the fact that the Council has to pay a considerable proportion of the annual deficit of the Central Midwives Board, whether, in the aggregate, the Council will be involved in any additional expense.

RECOMMENDATION.

We recommend—

That, in the opinion of the Council, local supervising authorities under the Midwives Acts should be empowered to conduct the prosecution of midwives before the Central Midwives Board in those cases which originate with them and in which a *prima facie* case of negligence, malpractice or misconduct has been established after investigation by them; and that the Minister of Health be asked to promote legislation to give effect thereto at an early date.

The Finance Committee have no observations to offer upon the above-mentioned proposal.

FRISCILLA WORSTHORNE, *Chairman.*

The points to be noted in the Report are:—

1. The suggestion for the transference to Local Supervising Authorities of the powers and duties of conducting penal proceedings before the Central Midwives Board where the Authority has found a *prima facie* case of negligence, malpractice or misconduct, as recommended by the Departmental Committee on the Training and Employment of Midwives, has been under the consideration of the Committee.

2. At a Conference between members of the Central Midwives Board and of the Local Supervising Authorities this recommendation was endorsed.

3. The Central Midwives Board have thus approved the principle that it is undesirable that the Board should act in the dual capacity of prosecutor and judge—a point which we have urged for many years.

Counsel's Opinion.

The Midwives Act Committee report to the L.C.C. that the Central Midwives Board have obtained Counsel's Opinion on the legal aspect which is:—

(a) That it is not open to the Board to *compel* a Local Supervising Authority to conduct these prosecutions but it is open to it to *permit* this.

(b) That it is doubtful whether the L.S.A. is entitled in Law to charge the expense incurred by it in undertaking a prosecution.

(c) That the Central Midwives Board could not properly pay out of its funds the expense of a prosecution incurred by the Local Supervising Authority.

The L.C.C. Midwives Act Committee, on its part have been advised that the duties of the Local Supervising Authorities are limited, by the provisions of the Midwives Acts, to the *investigation* of any charges of malpractice, negligence or misconduct on the part of any midwife within its area, and, if a *prima facie* case be established, to reporting it to the Central Midwives Board.

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