SENATE JUDICIARY
Exhibit No. 1
Date 3-4-05
Bill No. HB 24

Testimony in Support of HB 24 (Sympathy Bill)

I speak on behalf of the physicians of the Rocky Mountain Health Network in strong support of HB 24, the so called Sympathy Bill. This bill is very important and the policy behind it is clear: Patients, patients' families and caregivers, be they doctors, nurses or anyone else, have a fundamental need to communicate when unexpected bad outcomes occur. However, without HB24 a physician's statement, "I'm sorry this happened to you," which is just a simple expression of concern and compassion could be misconstrued and ultimately used as an admission of liability. As a matter of good public policy we should not inhibit a humane gesture. In fact, numerous studies show everyone involved wants and needs action that spontaneously convey a sense of compassion or commiseration.

We know from Montana data that over 70% of malpractice claims are closed without payment to the patient because they lack merit and yet the yearly cost of defending those claims is very expensive.

Numerous studies show that patients pursue claims because they are looking for answers and because they do not think their clinicians cared enough to express concern and empathy following an unexpected result. Passage of HB24 will reduce non-meritorious claims and their attendant costs because patients will not be driven into the arms of trial lawyers.

We suggest that for the sake of patients, their families and the clinicians involved, that there be a legally protected right to engage in the process of consolation and comfort during a time of need and without fear of legal consequences.

The purpose of HB24, is to give physicians the opportunity to console the patient or the patient's family in the event a procedure does not go well for whatever reason without fear of

legal consequences for making such apology. It is similar to legislation enacted in Colorado (CO Statutes: 13-25-135), Washington (Chapter5.66.010 RCW), Massachusetts (Mass.Ann. Laws ch. 233, § 23 D), California (West's Ann. Cal. Evid. Code § 1160), Texas (Vernon's Tex. Stat. & Code Ann., Civ. Prac. & Remedies Code § 18.061), Florida (Section 90.4026), Oregon (OR Laws 677.082), and Tennessee (Evidence Rule 409.1). According to the accompanying articles, the underlying theory of Colorado Statute 13-25-135, like its counterparts in Oregon, Washington, Texas, Massachusetts, Tennessee, and Florida is that a settlement of a lawsuit is more likely if the defendant is free to express sympathy for the plaintiff's injuries without making a statement that would be admissible as an admission of a party opponent. This process is consistent with the modern focus on mediation and other methods of dispute resolution that seek to avoid a trial by facilitating a resolution acceptable to all parties.

HB24 would not foreclose any of the rights currently held by a patient, and a patient or family could still sue even after an apology. It is only the expression of regret or apology for which we are seeking protection.

Thank you.

Mike Schweitzer, MD

Laurel, MT

Amednews.com 6/10/02 "Being Open May Avoid Lawsuits"; Robeznieks

Annals of Internal Medicine 3/16/04 "Health Plan Members' Views about Disclosure of Medical Errors": Mazor

Annals of Internal Medicine 6/21/99 "Risk Management: Extreme Honesty may be the Best Policy"; Kraman

Wall Street Journal 5/18/04 "Doctors New Tool to Fight Lawsuits: Saying I'm sorry"; Zimmerman