Exhibit No. 5
Date 3-4-05
Bill No. HB 26

**Senate Judiciary Committee**

**Testimony of Mark C. Rumans, M.D.**
**Chief of Staff, Deaconess Billings Clinic**

**In Support of House Bill No. 24, 25, 26 and 64**

**March 4, 2005**

Mr. Chairman and members of the committee, my name is Dr. Mark Rumans, Chief of Staff at Deaconess Billings Clinic (DBC) in Billings Montana. I am also a practicing gastroenterologist and have been a physician at DBC for almost nineteen years. Deaconess Billings Clinic is an integrated, foundation-model organization like Mayo Clinic. It is a 200-physician multi-specialty group practice, which is integrated with a 272-bed tertiary referral, Level II trauma hospital. DBC also has 6 regional branch clinic sites in Montana ranging from Bozeman to Miles City as well as two branch sites in Wyoming. Affiliate agreements are in place to provide management services to 8 rural hospitals. Each year 52 physicians in 18 specialties provide outreach specialty clinics for residents of rural Montana, Wyoming, and North Dakota. This last year, DBC spent nearly $7 million in malpractice insurance coverage. Although we have had some success in controlling our malpractice premiums by participating in a captive insurance pool with several other organizations, malpractice premiums continue to be a major expenditure of dollars for DBC. This is money that is subsequently unavailable for patient care staff as well as new technology to benefit our patients. We have also seen the effect that rising malpractice premiums have had in the ability to attract and retain high-quality physicians in rural Montana. I believe House Bills 24, 25, 26 and 64, that are before you today, are a good first step in addressing this problem.

## HOUSE BILL NO. 24

This bill allows physicians to express an apology or sympathy without that expression being an admission of liability in a malpractice claim. Medicine has recently been accused of becoming too impersonal and lacking compassion. At the same time, patients are significantly more actively involved in their care, increasingly sophisticated, and desirous of transparency in their care. They are asking for and should be receiving open and honest answers to their questions about their care. Unfortunately, when there has been an unexpected adverse outcome, physicians have been counseled to withhold expressions of remorse or sympathy because of the fear that this would be used as an admission of "legal liability". We should be taking the opposite approach and encouraging physicians and other providers to have compassionate and transparent discussions with patients. At DBC, we have encouraged these types of discussions because of our deep commitment to patient safety and quality of care. We believe that honestly discussing all aspects of care with patients, even those aspects of care that are not ideal, in a compassionate, sympathetic manner will help improve the quality of care that we can deliver to all patients. This bill would help encourage these types of discussions and I fully support it. Condolence, commiseration, compassion, sympathy, and benevolence are all behaviors that should be encouraged and supported by all of us involved in today's modern health care system.

## House Bill No. 26

House Bill 26 addresses the liability of a hospital when a physician practicing in the hospital may be considered an ostensible agent. DBC, like may other organizations, has an open medical staff to any physician in Billings. A significant number of physicians not employed by DBC (such as anesthesiologists) provide care on a daily basis to patients within the hospital. Other organizations rely almost solely on physicians in private practice, not employed by the hospital to provide care to patients in the hospital. These physicians are not acting on behalf of the

hospital nor are they agents of the hospital although it can be difficult for patients to know if the physician is employed or not by the hospital. Currently, DBC and other hospitals can be found liable for the acts of these physicians even though the physician does not have the authority to act for the hospital. I would like to speak as a proponent for House Bill 26 as it significantly clarifies the organization's liability when an act or omission occurs by an individual who is not acting under authority for the organization. Hospitals still need to be diligent in privileging and credentialing physicians on its medical staff as this is one of the first key steps in ensuring quality of care delivered to patients within the hospital. DBC, through its bylaws, requires members of the medical staff to have insurance.

**HOUSE BILL NO. 64**

This bill defines the qualifications for medical malpractice witnesses. Medical care today is very complex and frequently requires the expertise of specialty-trained physicians. Availability of specialists and diagnostic tests also varies dramatically from community to community in Montana. Because of these complexities, it is critical that an expert witness in a malpractice case thoroughly understands the details of the case and the standards of care. For example, as a board-certified gastroenterologist, I would not consider myself qualified to understand the details and the risks involved in caring for a very ill cardiac patient. I would rely on the expertise of a cardiologist who has cared for patients in a similar setting. This bill would ensure that physicians called to testify in malpractice cases are qualified to understand the numerous risks and benefits involved in taking care of complex medical or surgical patients. I would not ask a plumber to judge the work of an electrician just as I would not ask a gastroenterologist to judge the work of a cardiologist.

Mr. Chairman and members of the committee, I would like to thank you for your attention and I am available for recall should the committee have any questions.

**CONTACT:**

Jani McCall
Lobbyist
406-670-3084