SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3/19/09
BILL NO. HB362

To the Senate Judiciary Committee in support of HB 362

Mr. Chairman and Members of the Committee:

I am Dr. Gwen Jonas, a practicing obstetrician and gynecologist, Chief of Staff and Chairman of the Ethics Committee at Kalispell Regional Medical Center, immediate past chair of Mass Casualty and Pandemic Planning Committee for Flathead County, and a prior EMT. I am here to ask for your support for HB 362. As you have already heard, this proposed legislation has arisen out of the joint work of our county health department and both local hospitals as we plan in concert for healthcare response to any number of disasters.

We recognize surge capacity as a critical issue, not only as it pertains to supplies and facilities but also to personnel. It is of paramount importance that we maximize the number of professionals who respond to a disaster. Our human resources are the local healthcare professionals who will be the backbone of that response. From the EMT in the field, the respiratory therapist in the ER, to the ICU physician, we may face significant physical risks, harsh conditions, scarce resources, isolation, and emotional strain. We may be forced to provide medical care in tents, parking lots and gymnasiums. We will be tasked with caring for more patients than we are able to treat – either due to lack of ventilators, beds, antibiotics, etc. or due to lack of providers themselves. We will be tasked, many of us for the first time, with balancing individual patient interests against the health of the population. And we may have to choose who receives limited life-saving interventions or evacuation.

It is against this backdrop that we fear the threat of unnecessary litigation may prevent the involvement of many desperately needed healthcare providers. Others may feel they have no ability to practice adapted standards of care as the situation demands, thus being distracted at a critical time of decision-making. The recovery phase of disaster may also be hindered as medical professionals are prevented from aiding their communities secondary to time constraints and emotional burdens of litigation. Louisiana, and New Orleans in particular, have struggled with dwindling numbers of doctors and nurses as many were driven out of the state by the litigious aftermath of Hurricane Katrina. If we expect healthcare professionals to stay behind and assist during disasters additional legal protections are necessary – not just to "protect" the providers but to allow for the best available care for future patients in a crisis. We must remember it was not the providers who left who were sued – it was the ones who stayed and tried to do the best they could to help.

Present Good Samaritan Law (MCA 27-1-714) does not provide comprehensive protection. It covers only the uncompensated provider at the scene of an emergency, and in the context of an intact healthcare infrastructure. The healthcare provider functioning in their professional role (albeit without adequate and customary facilities, equipment, medications and support personnel) is not covered. The out-of-state volunteer who receives compensation for travel expenses may negate their protection. In-hospital or in-clinic provision of disaster medicine may not constitute the "scene of an emergency." In addition, private malpractice insurers may exclude from coverage care rendered in a

disaster or outside of traditional venues. HB 114, while complimentary to this legislation, covers only volunteer professionals. The volunteers may be much needed but they will not be the first called – it will be our own Montana professionals working in their customary roles. These are very real and well-founded concerns for the licensed healthcare professional faced with responding to a disaster.

As the American Academy of Disaster Medicine states on their website, "the improbable . . . has become the inevitable." After the atrocities of 9/11 came random Anthrax attacks, SARS outbreaks, the Southeast Asian tsunami, Hurricane Katrina, the Pakistani earthquake and multiple terrorist attacks around the globe. Healthcare providers and communities recognize the need for disaster preparation and planning on a scale never before seriously attempted. We need your help to legitimize our efforts in the development of disaster protocols, to provide the legal protection that will help us maximize the human capital needed to deal with an event, and also to lend societal support to those who will be called to stand firm in the face of human suffering and disaster. I ask for your strong support of HB362.