

April 13, 2011

The Honorable Mike Milburn
Speaker of the House
State Capitol
Helena, MT 59620

The Honorable Jim Peterson
President of the Senate
State Capitol
Helena, MT 59620

Dear Speaker Milburn and President Peterson:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto House Bill No. 464 (HB 464), **“AN ACT PROVIDING THAT PHYSICIANS WHO ARE BOARD-CERTIFIED OR BOARD-ELIGIBLE IN PEDIATRIC OR GERIATRIC SUBSPECIALTIES MAY BE LIABLE FOR DAMAGES ONLY UPON PROOF BY CLEAR AND CONVINCING EVIDENCE; AND PROVIDING AN APPLICABILITY DATE.”**

House Bill 464 establishes a higher standard of proof for personal injury claims by injured people against a practitioner board-eligible or board-certified in a pediatric or geriatric subspecialty than for all other medical malpractice claims. For doctors with these subspecialties, an injured person would have to prove their claim by clear and convincing evidence, rather than by a preponderance of the evidence, as I believe is required for all other medical malpractice claims, and indeed all other claims arising in tort.

Proponents of HB 464 argued for its passage on grounds that there is a shortage of these medical subspecialists in Montana and reducing their exposure to tort liability will assist in recruiting them to practice here. However, they failed to back their arguments with credible facts. As a general statement, Montana’s small population, not its court system, primarily accounts for the limited number of subspecialists that practice here. History tells us that when doctors decide to locate their practice in Montana, they do so either because they have roots in Montana or based on quality of life opportunities here, such as Montana’s excellent educational system or our state’s unsurpassed grandeur and extraordinary recreational opportunities.

Finally, the equal protection requirements of both our state and federal constitutions prohibit economic-based legislative classifications absent a rationale basis for the classifications. I have been counseled that the line-drawing contained in this bill, unsupported by factual evidence, may run afoul of the equal protection standards that would apply.

For these reasons, I ask for your support in sustaining my veto of HB 464.

Sincerely,

BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division