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8 MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY
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10 ROBERT BAXTER, STEVEN STOELB,)
STEPHEN SPECKART, M.D., C. PAUL)
11 LOEHNEN, M.D., LAR AUTIO, M.D.,)
GEORGE RISI, JR., M.D. and)
12 COMPASSION & CHOICES,)

Judge: _____
Cause No. _____

13 Plaintiffs,)

COMPLAINT

14 v.)

15 STATE OF MONTANA and MIKE)
MCGRATH, ATTORNEY GENERAL,)

16 Defendants.)
17

18 COME NOW Plaintiffs Robert Baxter, Steven Stoelb, Stephen Speckart, M.D., C. Paul
19 Loehnen, M.D., Lar Autio, M.D., George Risi, Jr., M.D. and Compassion & Choices, and for
20 their complaint against Defendants State of Montana and Mike McGrath, Attorney General,
21 allege as follows:

22 **INTRODUCTION**

23 1. This action is brought by terminally ill Montanans, and physicians who treat
24 terminally ill patients in the state, to establish their constitutional rights, respectively, to receive
25 and provide aid in dying. Aid in dying involves the right of a mentally competent, terminally ill

1 adult patient to obtain a prescription for medication from a cooperating doctor, which the patient
2 may choose to take to hasten an inevitable death in the face of unrelenting pain and misery at the
3 end of life. Plaintiffs seek declaratory judgment and injunctive relief to prevent the application
4 of Montana's criminal homicide statutes against physicians who wish to help their patients
5 achieve a peaceful and humane death by providing aid in dying assistance. The legal bases of
6 plaintiffs' claims are the fundamental rights of privacy; individual dignity; due process; equal
7 protection of the law; and the right to seek safety, health and happiness in all lawful ways, as
8 guaranteed to them by the Montana Constitution.

9 PARTIES

10 2. Robert Baxter is a resident of Yellowstone County. He is 75 years of age and a retired
11 truck driver.

12 3. Steven Stoelb is a resident of Park County. He is 53 years of age and a former logger
13 and forest technician.

14 4. Dr. Stephen Speckart is a physician who practices medicine at the Montana Cancer
15 Center in Missoula, Montana. He is an oncologist, and is board certified in internal medicine
16 with a subspecialty in hematology. Dr. Speckart regularly treats patients who are terminally ill
17 with cancer and related diseases.

18 5. Dr. C. Paul Loehnen is a physician in private practice in Missoula. He is board
19 certified in internal medicine and pulmonary medicine, and specializes in treating patients with
20 pulmonary diseases and deficits. He regularly treats patients who are terminally ill with lung-
21 related disorders.

22 6. Dr. Lar Autio is a physician who practices medicine at the Western Montana Clinic in
23 Missoula. He is board certified in family practice. Dr. Autio regularly treats patients with
24 terminal illnesses in nursing home, hospice and other settings.
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1 of the heart; hypertension; and gastroesophageal reflux disease.

2 12. Lymphocytic leukemia is a progressive disease for which there is no known cure. It
3 results in the bone marrow making an excessive number of lymphocytes, a type of white blood
4 cell, which crowd out normal blood cells, suppress the immune system, and render the body
5 unable to fight off infections as effectively as normal. It is treated with multiple rounds of
6 chemotherapy, which typically become less and less effective as time passes.

7 13. As a result of the leukemia and the treatment he has received to combat it, Mr.
8 Baxter has suffered varying symptoms including anemia, chronic fatigue and weakness, nausea,
9 night sweats, intermittent and persistent infections, massively swollen glands, easy bruising and
10 generalized pain and discomfort. These symptoms, as well as others, are expected to increase in
11 frequency and intensity as the disease progresses.

12 14. Mr. Stoelb is terminally ill with Ehlers-Danlos Syndrome ("EDS").

13 15. EDS is a connective tissue disease caused by a defect in the body's ability to produce
14 collagen, which provides structure and support for the skin, muscles, ligaments, blood vessels
15 and internal organs. It is characterized by degeneration and excessive laxity of the joints, skin
16 extensibility and tissue fragility. There is no known cure and no effective form of treatment for
17 the disease.

18 16. Mr. Stoelb suffers from a constellation of symptoms associated with his EDS which
19 includes progressive bodily deterioration; chronic pain in his abdomen, shoulders, elbows, hips,
20 hands, knees, ankles and other joints; pelvic instability; hernias; recurring shoulder dislocations;
21 spontaneous bleeding and bruising; difficulty eating; intense nausea; inability to sleep; a
22 prolapsed rectum; and fecal incontinence. These symptoms continue to worsen with time.

23 17. As a result of their terminal illnesses, Mr. Baxter and Mr. Stoelb are approaching the
24 end of their lives and have no reasonable prospect of recovery. As their respective diseases take
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1 their toll, they face the progressive, inexorable erosion of bodily function and integrity,
2 increasing pain and suffering, and the loss of personal dignity which is the hallmark of human
3 life.

4 18. At the threshold of death, in the event their suffering may become unbearable, Mr.
5 Baxter and Mr. Stoelb want the legal option to be able to hasten their inevitable deaths and die in
6 a peaceful and dignified manner, by taking medication prescribed by their doctors for that
7 purpose. Because it will be their suffering, their lives and their deaths that will be involved, they
8 seek the right and responsibility to make that critical choice for themselves if circumstances lead
9 them to do so.

10 19. In their practices, the doctors frequently encounter terminally ill patients who have no
11 chance of recovery, to whom medicine cannot offer any hope other than a degree of symptomatic
12 relief. In some cases, however, even symptomatic relief is impossible to achieve without the use
13 of terminal sedation, a pharmacological technique that renders the patient unconscious during the
14 period leading to his or her death. The only choice available to these patients, therefore, is
15 prolonged and unrelieved anguish on the one hand, or unconsciousness and total loss of control
16 on the other. Faced with such a choice, some patients ask for the doctors' help in hastening their
17 deaths, by providing prescriptions for medication which the patients may take in quantities
18 sufficient to bring an immediate end to an intolerable dying process. In these types of situations,
19 where mentally competent adult patients are involved, the doctors' professional judgment may
20 often be that providing such a prescription is medically appropriate.

21 20. A person who purposely or knowingly causes the death of another human being in
22 Montana commits the offense of Deliberate Homicide. Section 45-5-102, MCA. A person who
23 does so under the influence of extreme mental or emotional stress for which there is reasonable
24 explanation or excuse is guilty of Mitigated Deliberate Homicide. Section 45-5-103, MCA. A
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1 person who causes the death of another human being through negligent conduct commits the
2 offense of Negligent Homicide. Section 45-5-104, MCA. Violations of these three sections of
3 the Montana Criminal Code ("the criminal homicide statutes") are felonies punishable by lengthy
4 prison sentences or, in the case of Deliberate Homicide, the death penalty.

5 21. For purposes of the criminal homicide statutes, conduct is deemed the cause of
6 another's death if the defendant's acts were committed purposely or knowingly, and the death
7 would not have occurred without them. Section 45-2-201, MCA. Given that definition, a
8 physician who intentionally provides aid in dying assistance to a terminally ill patient could be
9 prosecuted and convicted of homicide.

10 22. The consent of the victim to a defendant's conduct or its result is a defense to a
11 criminal charge in Montana. Consent is deemed ineffective, however, if it is against public
12 policy to permit the conduct or the resulting harm, even though consented to. Section 45-2-211,
13 MCA.

14 23. It is, or in light of the rights guaranteed by the Montana Constitution should be
15 declared to be, the public policy of the State of Montana to allow physicians to provide aid in
16 dying to their mentally competent, terminally ill adult patients who are experiencing severe
17 suffering at the end of life and request such assistance.

18 24. The existence and potential application of the criminal homicide statutes deter the
19 doctors from providing aid in dying to their qualifying patients, preventing the doctors from
20 offering medical care which, in their professional judgment, would otherwise be appropriate
21 under the circumstances. The homicide statutes are also likely to deter, in the same manner, the
22 physicians who will treat Mr. Baxter and Mr. Stoelb during the periods immediately preceding
23 their deaths.
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1 25. By preventing physicians from providing aid in dying and interfering in the patient-
2 physician relationship, the criminal homicide statutes deny patients the right to make medical
3 judgments affecting their bodily integrity and health in partnership with a chosen health care
4 provider, while remaining free from government interference in the process. The statutes also
5 deny terminally ill patients the right to the integrity of and personal autonomy over their own
6 bodies; the right to decide for themselves the most fundamental questions about the meaning and
7 value of their lives and the intrinsic value of life in general; the right to liberty, of which they
8 may not be deprived without due process of law; the equal right to form and follow their own
9 values in profoundly spiritual matters; and the inalienable right to seek safety, health and
10 happiness in all lawful ways.

11 **CAUSES OF ACTION**

12 26. The existence and potential application of the criminal homicide statutes in the
13 context of aid in dying violate the fundamental rights of Mr. Baxter and Mr. Stoelb, as well as the
14 fundamental rights of other terminally ill patients treated by the doctors, as guaranteed by the
15 following provisions of the Montana Constitution:

- 16 a. Article II, Section 10: the right of privacy;
- 17 b. Article II, Section 4: the right of individual dignity;
- 18 c. Article II, Section 17: the right to due process of law;
- 19 d. Article II, Section 4: the right to equal protection of the laws; and
- 20 e. Article II, Section 3: the right to seek safety, health and happiness in all lawful

21 ways.

22 27. The existence and potential application of the criminal homicide statutes further
23 violate the doctors' own fundamental rights of individual privacy and due process of law, as
24 guaranteed by the provisions of the Montana Constitution cited above.

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiffs pray for relief as follows:

3 1. For declaratory judgment determining that, in the context of Section 45-2-211, MCA,
4 it is the public policy of the State of Montana to allow a physician to provide aid in dying to a
5 mentally competent, terminally ill adult patient facing a dying process the patient finds
6 intolerable.

7 2. For declaratory judgment determining that Sections 45-5-102, 45-5-103 and 45-5-104,
8 MCA are unconstitutional as applied to the acts of a physician who provides aid in dying to a
9 mentally competent, terminally ill adult patient facing a dying process the patient finds
10 intolerable.


11 3. For an order permanently enjoining defendants, and all who act in concert with them,
12 from charging, threatening to charge or otherwise seeking to enforce Sections 45-5-102, 45-5-
13 103 and 45-5-104, MCA against physicians in Montana who provide aid in dying to mentally
14 competent, terminally ill patients who request such assistance;

15 4. For an award of plaintiffs' reasonable attorneys' fees and costs incurred herein,
16 pursuant to Section 27-8-313, MCA and the private attorney general doctrine; and

17 5. For such other and further relief as the Court deems just and proper.

18 DATED this 17th day of October, 2007.

19 CONNELL LAW FIRM

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21 By: 
22 Mark S. Connell
23 Attorneys for Plaintiffs
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