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MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS AND CLARK COUNTY

ROBERT BAXTER, STEVEN STOELB,	)	
STEPHEN SPECKART, M.D., C. PAUL	)	
LOEHNEN, M.D., LAR AUTIO, M.D.,	)	Judge: _____
GEORGE RISI, JR., M.D. and	)	Cause No. _____
COMPASSION & CHOICES,	)	
	)	
Plaintiffs,	)	COMPLAINT
v.	)	
	)	
STATE OF MONTANA and MIKE	)	
MCGRATH, ATTORNEY GENERAL,	)	
	)	
Defendants.	)	
_____	)	

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

**INTRODUCTION**

1. This action is brought by terminally ill Montanans, and physicians who treat terminally ill patients in the state, to establish their constitutional rights, respectively, to receive and provide aid in dying. Aid in dying involves the right of a mentally competent, terminally ill adult patient to obtain a prescription for medication from a cooperating doctor, which the patient may choose to take to hasten an inevitable death in the face of unrelenting pain and misery at the end of life. Plaintiffs seek declaratory judgment and injunctive relief to prevent the application of Montana=s criminal homicide statutes against physicians who wish to help their patients achieve a peaceful and humane death by providing aid in dying assistance. The legal bases of plaintiffs= claims are the fundamental rights of privacy; individual dignity; due process; equal protection of the law; and the right to seek safety, health and happiness in all lawful ways, as guaranteed to them by the Montana Constitution.

### **PARTIES**

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

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

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

5. Dr. C. Paul Loehnen is a physician in private practice in Missoula. He is board certified in internal medicine and pulmonary medicine, and specializes in treating patients with

pulmonary diseases and deficits. He regularly treats patients who are terminally ill with lung-related disorders.

6. Dr. Lar Autio is a physician who practices medicine at the Western Montana Clinic in Missoula. He is board certified in family practice. Dr. Autio regularly treats patients with terminal illnesses in nursing home, hospice and other settings.

7. Dr. George Risi, Jr. is a physician who practices medicine with Infectious Disease Specialists, P.C. in Missoula. He is board certified in internal medicine and infectious disease, and specializes in treating patients infected with the Human Immunodeficiency Virus (HIV) or who are suffering from Acquired Immune Deficiency Syndrome (AIDS). In that capacity, he regular cares for people in terminal condition.

8. As physicians, Drs. Speckart, Loehnen, Autio and Risi (collectively Athe doctors@) have a special relationship with their patients which confers upon them standing to advocate for the patients= constitutional rights in areas involving the medical care provided to them. The doctors are accordingly asserting their personal rights as well as the rights of their patients, both current and future, in this litigation.

9. Compassion & Choices is a national non-profit organization dedicated to improving care and expanding choices at the end of life, and advocating for the rights of terminally ill people. It has more than 60 chapters and 30,000 members throughout the United States, including Montana. Compassion & Choices has been a leader in advocating that aid in dying be recognized as a legal option for mentally competent, terminally ill patients.

10. Mike McGrath is the Attorney General of Montana and the chief law enforcement officer of the state. As such, he is responsible for exercising supervision over county attorneys

throughout the state, and has the power to order and direct the prosecutors in all matters pertaining to the duties of their office. Section 2-15-501(5), MCA. Mr. McGrath is sued here in his official capacity.

### **FACTS**

11. Mr. Baxter is terminally ill with lymphocytic leukemia with diffuse lymphadenopathy, a form of cancer. He also has a history of prostate cancer, for which he underwent surgery and radiation therapy several years ago; chronic atrial fibrillation, a disorder of the heart; hypertension; and gastroesophageal reflux disease.

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

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

14. Mr. Stoelb is terminally ill with Ehlers-Danlos Syndrome (ÆDS@).

15. EDS is a connective tissue disease caused by a defect in the body=s ability to produce collagen, which provides structure and support for the skin, muscles, ligaments, blood vessels and internal organs. It is characterized by degeneration and excessive laxity of the joints,

skin extensibility and tissue fragility. There is no known cure and no effective form of treatment for the disease.

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

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

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

19. In their practices, the doctors frequently encounter terminally ill patients who have no chance of recovery, to whom medicine cannot offer any hope other than a degree of symptomatic relief. In some cases, however, even symptomatic relief is impossible to achieve without the use of terminal sedation, a pharmacological technique that renders the patient unconscious during the

period leading to his or her death. The only choice available to these patients, therefore, is prolonged and unrelieved anguish on the one hand, or unconsciousness and total loss of control on the other. Faced with such a choice, some patients ask for the doctors' help in hastening their deaths, by providing prescriptions for medication which the patients may take in quantities sufficient to bring an immediate end to an intolerable dying process. In these types of situations, where mentally competent adult patients are involved, the doctors' professional judgment may often be that providing such a prescription is medically appropriate.

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

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

22. The consent of the victim to a defendant's conduct or its result is a defense to a criminal charge in Montana. Consent is deemed ineffective, however, if it is against public

policy to permit the conduct or the resulting harm, even though consented to. Section 45-2-211, MCA.

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

24. The existence and potential application of the criminal homicide statutes deter the doctors from providing aid in dying to their qualifying patients, preventing the doctors from offering medical care which, in their professional judgment, would otherwise be appropriate under the circumstances. The homicide statutes are also likely to deter, in the same manner, the physicians who will treat Mr. Baxter and Mr. Stoelb during the periods immediately preceding their deaths.

25. By preventing physicians from providing aid in dying and interfering in the patient-physician relationship, the criminal homicide statutes deny patients the right to make medical judgments affecting their bodily integrity and health in partnership with a chosen health care provider, while remaining free from government interference in the process. The statutes also deny terminally ill patients the right to the integrity of and personal autonomy over their own bodies; the right to decide for themselves the most fundamental questions about the meaning and value of their lives and the intrinsic value of life in general; the right to liberty, of which they may not be deprived without due process of law; the equal right to form and follow their own values in profoundly spiritual matters; and the inalienable right to seek safety, health and

happiness in all lawful ways.

### **CAUSES OF ACTION**

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

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

ways.

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

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

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

2. For declaratory judgment determining that Sections 45-5-102, 45-5-103 and 45-5-104,

MCA are unconstitutional as applied to the acts of a physician who provides aid in dying to a mentally competent, terminally ill adult patient facing a dying process the patient finds intolerable.

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

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

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

DATED this \_\_\_\_ day of October, 2007.

CONNELL LAW FIRM

By: \_\_\_\_\_

Mark S. Connell  
Attorneys for Plaintiffs