

FACTSHEET 28: Montana physician assisted dying

The path to legal assisted dying in Montana has been through the courts, rather than through the Parliament or a citizen initiated referendum (the pathway in the other states and Districts in the USA).

In December 2009 the Montana Supreme Court ruled 5-2, in *Baxter v. Montana*, that nothing in the state law prohibited a physician from honouring a terminally ill, mentally competent patient's request for medication to hasten the patient's death. The ruling cited the state's Rights of the Terminally Ill Act. As there is so little difference between taking a patient off life support and prescribing lethal medication, as a matter of public policy, the Court determined that existing Montana law permits physician assisted dying under the circumstances of the Baxter case. It held that Montana law permitted doctors charged with homicide to raise patient consent as a legal defense. While this ruling did not directly legalise assisted dying, providing a defense for doctors makes it difficult for the state to mount a prosecution.

An important legal qualification is that the Montana Supreme Court decided *Baxter* on the basis of statutory law, not the state constitution, which means that the Montana Legislature can overturn or modify *Baxter* by passing a bill into law. Since the ruling, the Parliament has considered bills that would ban voluntary euthanasia and other bills that would permit it. So far, none have been successful.

Montana Rights of the Terminally Ill Act

Montana provides other options for terminally-ill patients. The Montana Rights of the Terminally Ill Act permits terminally-ill patients to refuse life-sustaining medical care. This allows patients to make their own end of life decisions with the support of their doctors and family members. Patients can also plan ahead by directing doctors in advance to withdraw or withhold life-sustaining medical care should they later become terminally ill. Montana law permits adults to make this decision through a declaration process in writing and in the presence of witnesses. The declaration is placed in a patient's medical file and recorded in a state registry. Patients can also make similar declarations that permit someone else to direct doctors to withhold life-sustaining medical care.

Finally, Montana law allows relatives to consent to the withdrawal of life-sustaining medical care from a loved one in the absence of a patient declaration. There is a strict order of priority as to who can make this decision. A spouse takes priority, followed by an adult child or adult children, then a patient's parents, an adult sibling or siblings, and concluding with the nearest relative by blood or adoption. Where there is a guardian, he or she can also consent.

In a detailed review of Montana law on the Rights of the Terminally Ill, the Court concluded that the legislature specifically defers to a patient's own

decision and offers patients the right to control their own bodies at the end of life. The decision to self-administer life-ending medication is consistent with a decision to discontinue life sustaining therapies such as mechanical ventilation. The court declined to rule on the larger question of whether physician-assisted dying is a right guaranteed under Montana's Constitution. The Montana state solicitor acknowledged that it is a policy question for the people of Montana and their Parliament.

In the USA, as of August, 2017, the states of California, Colorado, Oregon, Vermont, and Washington and the District of Columbia, now have Death with Dignity statutes.

For further information see:

1. World Federation of Right to Die Societies website:
<http://worldrtd.net/node/976>
2. Compassion and Choices website:
<https://compassionandchoices.org/sslpage.aspx?pid=452> Compassion and Choices website on Montana Aid in Dying
3. Baxter v. State of Montana (1.5MB) , Dec. 5, 2008
4. Opinion/Order of the Montana Supreme Court on Baxter v. State of Montana (357KB), Dec. 31, 2009
5. Montana euthanasia laws FindLaw website:
<http://statelaws.findlaw.com/montana-law/montana-euthanasia-laws.html>
6. Montana Death with Dignity website:
<https://www.deathwithdignity.org/states/montana/>