

## Is Physician Assisted Suicide Good Health Care?

Many of us are aware of the recent Montana Supreme Court ruling that made Montana the third state in the nation to have legalized physician assisted suicide (PAS). The ruling and opinion have been circulated nationally and internationally. Proponents and opponents of physician assisted suicide are dissecting and debating every statement in the Supreme Court opinion to determine how this decision helps or hurts them in their states. We have been doing the same thing because we are interested in developing a strategy to reverse the finding.

The Supreme Court ruling did not affirm the District Court decision that held physician assisted suicide was constitutional in the state, however the ruling did legalize PAS in the state and it did so in a problematic way. It doesn't state that PAS is legal, it merely says that PAS was "*not against public policy*" in Montana. It says that this procedure is a decision that adults of sound mind can make as part of their end of life medical decisions. They did not call it suicide or even assisting in suicide. They called it health care.

The Court used the Terminally Ill Act, currently in Montana law, to support their assertion. In essence, the court said that physician assisted suicide is a health care decision for those who are terminally ill. Therefore a patient could make a request in a living will which would require a physician to prescribe drugs to end their life if certain conditions are met. The Court is saying that PAS is the same as "*withholding or withdrawal of life-sustaining treatment.*" In paragraph 29 of the opinion, the court states, "*The Montana Legislature codified several means by which a patient's life-ending request can be fulfilled. The Terminally Ill Act authorizes an individual "of sound mind and 18 years of age or older to execute, at a time, a declaration governing the withholding or withdrawal of life-sustaining treatment."* Paragraph 30 in the Supreme Court decision states "*The Terminally Ill Act, in short, confers on terminally ill patients a right to have their end-of-life wishes followed, even if it requires direct participation by a physician through withdrawing or withholding treatment. Nothing in the statutes indicates it is against public policy to honor those same wishes when the patient is conscious and able to vocalize and carry out the decision himself with self-administered medicine and no immediate or direct physician assistance.*"

Thus the Montana Supreme Court has declared that PAS is health care, and health care decisions are not only covered in provisions for living wills, but the Court goes further to say "*The Terminally Ill Act expressly immunizes physician from criminal and civil liability for following a patients directions to withhold or withdraw life-sustaining treatment. Indeed the legislature has criminalized the failure to act according to the patient's wishes.*"

My understanding of this ruling is this. Current Montana law regarding end of life decisions and living wills allows a patient to request that a physician prescribe drugs that cause death. That decision is a health care decision authorized by The Terminally Ill Act. The law immunizes

physicians from liability when prescribing those drugs, and in fact criminalizes the failure of a physician to act according to the patient's wishes. It mainstreams intentionally causing death as proper health care.

You will hear a lot about physician assisted suicide in the next year or two. Proponents will do their best to convince you that this is compassionate care. I will try to keep you up to date on the issue, and will write more on known abuses in Oregon and Washington, as well as how those who are poor, elderly, and disabled are put in great danger when laws like this are implemented.

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