

Montana judge: Man has right to assisted suicide

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A Montana judge has ruled that doctor-assisted suicides are legal in the state, a decision likely to be appealed as the state argues that the Legislature, not the court, should decide whether terminally ill patients have the right to take their own life.

Judge Dorothy McCarter issued the ruling late Friday in the case of a Billings man with terminal cancer, who had sued the state with four physicians that treat terminally ill patients and a nonprofit patients' rights group.

"The Montana constitutional rights of individual privacy and human dignity, taken together, encompass the right of a competent terminally (ill) patient to die with dignity," McCarter said in the ruling.

It also said that those patients had the right to obtain self-administered medications to hasten death if they find their suffering to be unbearable, and that physicians can prescribe such medication without fear of prosecution.

"The patient's right to die with dignity includes protection of the patient's physician from liability under the state's homicide statutes," the judge wrote.

Attorney General Mike McGrath said Saturday that attorneys in his office would discuss the ruling next week and expected the state will appeal the ruling.

"It's a major constitutional issue and the Supreme Court should rule on it," said McGrath, who will be sworn in as chief justice of the Montana Supreme Court in January.

The plaintiff, Robert Baxter, said he was comforted by McCarter's ruling.

"I am glad to know that the court respects my choice to die with dignity if my situation becomes intolerable," the 75-year-old retired truck driver said in a statement.

Kathryn Tucker, the legal director of patients' right group **Compassion & Choices** who helped argue the case, said the court found "it is the individual patients who should be entitled to make these critical decisions for themselves and their families, and not the government."

The state attorney general's office had argued that intentionally taking a life was illegal, and that the issue was the responsibility of the state Legislature.

Assistant Attorney General Jennifer Anders had argued the state has no evaluation process, safeguards or regulations to provide guidance or oversight for doctor-assisted suicide. The state also said it was premature to declare constitutional rights for a competent, terminally ill patient because the terms "competent" or "terminally ill" had yet to be defined.

The ruling noted that doctors are often asked to "determine the competency of their patients for the purposes of guardianship and other legal proceedings."

"Whether a patient is terminally ill can also be determined by the physician as an integral component of the physician-patient relationship," McCarter wrote.

McCarter's ruling makes Montana the third state after Oregon and Washington to allow doctor-assisted suicides. The U.S. Supreme Court ruled in 1997 that terminally ill patients have no constitutional right to doctor-assisted suicide but did nothing to prevent states from legalizing the process.