SENATE JUDICIARY
Exhibit No. 22
Date: 3/26/15
Bill No. HB 477

# TESTIMONY IN OPPOSITION TO HB 477

Aid in Dying

When my second cousin, who lived in Oregon, was diagnosed with terminal cancer, she sought to obtain the drugs from a caring physician to be used should she decide to end her life if the pain and suffering from the final stages of her cancer became too much to bear. She received the drugs which gave her relief and assurance that she would be in control of end of life decisions. In the end, she died without using the drugs, but her decision was a catalyst to spark a discussion with her children about end of life decisions and how she both wanted to die as well as how she had lived.

It has been 17 years since Oregon passed legislation detailing how individuals who are competent and terminally ill can seek assistance from physicians to obtain drugs to be used to end a patient's life. It has been five years since the Baxter decision by the Montana Supreme Court which clarified that physicians who prescribed medications that could be used by a competent patient to end their suffering could not be accused of criminal conduct. There are no documented instances of any abuse of this precious right of privacy either in Oregon, in Washington, which has a law similar to Oregon's, or in Montana.

In 2014, Oregon issued 155 prescriptions for aid in dying. Of these, 50, or about one-third, did not use the medications. The majority, 67.6%, were above 65, the median age was 72. 84% of the patients were suffering from terminal cancer or ALS; another 4% suffered from chronic respiratory diseases. All of these diseases have a painful end. Almost 93% died at home. 93% were in Hospice care. 100% had health insurance. 83 separate physicians wrote the 155 prescriptions.

Yet, once again those who oppose physician aid in dying are advancing a bill to outlaw the practice through passage of HB477. Like last session, they seek to criminalize the behavior of physicians who are concerned about their patients and who want to work with those patients to assure that end of life suffering is not extreme. In so doing, of course, they are proposing legislation which could criminalize any prescription of any drug later used by a patient to end their life. Indeed the language of the statute, while trying to criminalize conduct which is identical to palliative care, presents an impossible dilemma to prosecutors to prove that the physician intended death rather than palliative care even if death results from the latter action.

Montanans have fully supported the right to privacy as public policy. Nothing is more precious than to be able to make end of life decisions, to reach a decision of when suffering is enough as an individual comes to the end of a terminal illness. The Legislature should not criminalize conduct which approximately 70% of the citizens of Montana approve of, the ability to make end of life decisions. The Montana Constitution protects both individual dignity and the right to privacy – both provisions are implicated and violated by this legislation.

If there is a problem with elder abuse, a contention asserted but not documented or established by any evidence, then Sen. Barrett's SB 202 should have been passed, since it established explicit procedures for physicians to follow and apply as they work with competent patients to make end of life choices. What the Legislature should not do is criminalize physicians' practice making any prescription of a drug potentially used to terminate a patient's life a crime.

It is time to end the debate. The Legislature should avoid hysteria of the out of state lobbyists and lawyers and focus on the question of whether there is an actual problem with end of life decisions. There is no evidence at all of any actual abuse under the current Baxter Decision. This legislation proposes to solve a problem which does not exist. The Legislature should defeat HB477. It should reject all other efforts to prohibit end of life efforts to assist competent patients in making end of life decisions.

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