

Choice of Treating Physician:

Background:

In Montana, injured workers have always been allowed to choose their treating physician for obvious reasons. Selection of a physician who will touch their body, examine them with or without clothing, and perhaps even perform surgery, is a very personal decision. Montana's broad right of "individual" privacy is a testament to Montanans' continuous and zealous protection of personal autonomy and dignity.¹ Montana's right to privacy broadly guarantees each individual the right to make medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider, free from government interference.²

In 2011, the Montana Legislature made changes to the statutes providing for choice of treating physician. In relevant part, Mont. Code Ann. § 39-71-1101, parts (1) and (2) now provide:

(1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:

- (a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;
- (b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;
- (c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and
- (d) shall conduct or arrange for timely impairment ratings.

The workers compensation insurers and the Montana Employment Relations Division interpret this revised statute as permitting the insurer to select Montana's injured workers' treating physicians.

This position run afoul of the Montana Constitution and the right to privacy Montanans' hold so dear. The Montana Supreme Court noted:

¹ *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 374-75, 989 P.2d 364, 374.

² *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 376, 989 P.2d 364, 375. Const. Art. 2, § 10.