

PENNSYLVANIA LEGAL UPDATE

SUMMER 2005 ISSUE

END-OF-LIFE MEDICAL DECISIONS

In the wake of recent events that were painfully played out in the media, we all should make appropriate arrangements for end-of-life medical decisions. Pennsylvania law provides clear guidance on living wills and medical powers of attorney, sometimes called advanced medical directives. A living will is a written expression of your choices regarding the process of dying. A medical power of attorney is broader and can communicate your wishes regarding all forms of medical care. Neither document disposes of your property or identifies the people who will inherit from you. Instead, both documents deal with your health care.

Everyone has the right to accept, reject, or discontinue medical care, but when a person cannot communicate his or her preferences or is not competent to make decisions, he or she simply cannot exercise those rights. By executing and signing the appropriate legal documents now, you can express your specific preferences about medical care and life support while you are competent and able to communicate. Later, even though the medical community cannot be forced to follow your wishes, it is more likely that your choices will be honored if your doctors have a reliable way to know and understand your preferences.

Living Will

A living will applies where medical treatment would serve only to prolong the process of dying or to maintain a patient in a permanent state of unconsciousness. It does not control medical treatment in any way unless and until you are in a terminal condition or in a state of permanent unconsciousness. A living will contains very specific directives. It announces whether, once in a terminal state or permanently unconscious, you wish to have cardiac

resuscitation, mechanical respiration, tube feeding, hydration, blood or blood products, surgery, invasive diagnostic tests, kidney dialysis, or antibiotics. You can opt to have some of the listed treatments and to refuse others. A living will usually identifies a “surrogate”—someone to whom you give the authority to make medical treatment decisions for you if you are in a terminal state or permanently unconscious. By identifying your spouse, parent, sibling, or trusted friend as the person who should make the medical decisions, you may help your friends and family avoid conflict.

Medical Power of Attorney

In Pennsylvania, living wills do not apply if you are in a persistent vegetative state and conscious or if you are only temporarily unconscious. They only apply to dying or permanently unconscious patients. Thus, in addition to having a living will, it is important to have a medical power of attorney for health care. In a medical power of attorney, you designate another person as your “attorney-in-fact” to make medical decisions for you if you cannot make them yourself. Your attorney-in-fact is not your attorney—he or she is your spouse, parent, sibling, or trusted friend and quite probably the very same person you named as your surrogate in your living will. This attorney-in-fact is entitled to authorize your admission to a medical, nursing, residential, or other health-care facility and to require your discharge or transfer. He or she can refuse treatment, authorize treatment, and enter into any agreement for your care. He or she can act for you when you are not dying but are unable to make decisions for yourself. Pennsylvania law is not clear on whether your attorney-in-fact can discontinue life support or refuse beneficial treatment.

Living wills and powers of attorney for health care are not controlling in regard to all important medical decisions for the seriously ill. Your doctor or medical facility is not absolutely obliged to follow the terms of your living will or the directions of your attorney-in-fact. Medical ethics and professional standards can potentially conflict with a living will, and no doctor or hospital can be forced to take steps they do not approve. But by signing a living will and a

medical power of attorney you identify a decisionmaker and clearly express your wishes regarding life support. In the event of a legal conflict, your wishes would carry weight with the court, and your identification of an individual with the authority to act on your behalf would significantly influence the court.

If you execute a living will and a medical power of attorney, be sure to have a clear discussion about your preferences with your surrogate and your attorney-in-fact. If and when asked, he or she should be thoroughly familiar with your beliefs and intentions. Also, be sure that your primary care physician has copies of your living will and power of attorney for health care.

COHABITATION ENDS THE RIGHT TO ALIMONY

Pennsylvania judges have the broad authority to order short-term or long-term alimony as part of a divorce. The stated purpose of alimony under Pennsylvania law is “not to reward one party and to punish the other” but, rather, to ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment are met. The amount and duration of an alimony order are based upon the recipient’s reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor’s ability to pay. Moreover, alimony is described by the Pennsylvania courts as a “secondary remedy” available only where economic justice and the reasonable needs of the parties cannot be achieved by way of an equitable property division and the development of an appropriate employable skill by the dependent spouse.

Any spouse who seeks or receives court-ordered alimony loses all rights to alimony upon remarriage or cohabitation. Pennsylvania courts have struggled with the definition of cohabitation. Recently, the Pennsylvania Superior Court observed that “cohabitation may be shown by evidence of financial, social, and sexual interdependence, by a sharing of the same residence, and by other means.”

In the case before it, the court accepted a husband's claim that his wife was not spending the summer at their shore home but was in fact living with another man. Although the wife denied such cohabitation, the court was convinced by the husband's production of bank records showing that the wife was not banking from the shore home but, instead, that all of her bank transactions occurred in a Philadelphia suburb. In addition, the husband proved that the utility records at the shore home showed little use. The wife was denied any alimony despite the substantial difference in the parties' incomes.

BUYERS AND SELLERS BEWARE

If that great bargain you buy this weekend at a garage sale, or through a classified ad, or from an online auction turns out to be a dud, you have limited rights under Pennsylvania law to get your money back. If you expect to be able to return an item, you should agree at the time of your purchase with the seller to a specific return period. If you expect the item to work or function in a certain way, you need to get the seller's assurance that it actually is in working condition. Generally speaking, when an item is sold "as is," you have no right to return the item for a refund.

That being said, a Pennsylvania woman who sold her horse "as is" recently was surprised to learn that the buyer *was* entitled to return the horse after finding out that the horse was older than expected and was not capable of jumping. The horse seller ran a classified ad in the local paper describing the horse as a "lovely 11-year-old thoroughbred" capable of "jumping." The buyer responded to the ad and visited the seller's farm several times to ride and observe the horse. The parties agreed on a price and signed a brief sales agreement. The agreement stated that the buyer was not receiving any warranties and was buying the horse "as is," with no right to a refund for any reason. The horse was identified by name and was described as 11 years old in the agreement.

The buyer soon discovered that the horse was in fact 16 years old, had eyesight impairment and a heart murmur, and was not fit for jumping. The buyer demanded a refund, but the seller refused. Even though the written agreement specifically provided otherwise, the Pennsylvania Superior Court ruled that the buyer was entitled to her money back.

Because the buyer relied on the classified ad that identified the 16-year-old horse as 11 years old and described the horse as capable of jumping, the court found that the “as is” language in the agreement was not valid. The court noted that express “representations” or descriptions of an item do bind the seller who makes them. If you sell something “as is,” be sure not to describe the item in any way that could potentially mislead a buyer. If your advertisement goes overboard, you cannot assume that you are protecting yourself by later calling the sale an “as is” sale. And, if you buy something “as is,” but in reliance on certain descriptions or promises by the seller, be sure to have the seller put those descriptions in writing and save a copy of the ad.

OUT-OF-STATE DUI

When a Pennsylvania driver is convicted in another state of DUI, the convicting state imposes a punishment—either probation or jail—and may also suspend or revoke the Pennsylvania driver’s driving privileges in that state. In addition, most states have entered into an agreement known as the Driver’s License Compact. This uniform law provides that each participating state will treat the DUI conviction of another participating state the same as if it had occurred in the driver’s home state. The result: A Pennsylvania driver convicted of a DUI in New Jersey can expect to receive notice from PennDOT of the suspension of his or her Pennsylvania license.

Pennsylvania and all of the states contiguous to Pennsylvania have adopted the Compact—Delaware, Maryland, New Jersey, New York, Ohio, and West Virginia all participate. Reporting, however, is not consistent or always accurate. In order to justify a license suspension, PennDOT has the burden to produce reliable documentation of the out-of-state conviction.

THE PITFALLS OF TAX SALES

Pennsylvania law requires counties to hold tax sales, usually referred to as “upset” sales, starting the second Monday in September and concluding by October 1. If you owe delinquent county, township, borough, or school taxes on your home or other real estate, the county has the authority to sell your property at the annual upset sale.

The county must issue notices of the upset sale at least 30 days before the sale date. They must advertise the list of properties in the local newspapers, must send each owner a certified mail notice, and must physically post a notice on each of the properties.

A Pennsylvania man lost his business property even though he did not personally receive the certified mail notice of the tax sale. The man operated two small businesses on the property, and an employee signed the registered mail notice. The man claimed that he never saw the mail notice and that he either disregarded or never noticed the posting of the property. Like most property owners, he did not read the lengthy list of tax sale properties squeezed into the classified ads in his local paper. After learning that the property was sold, he filed objections to the sale.

The Pennsylvania Commonwealth Court found that he was not entitled to any relief. Because the man made a substantial payment on his delinquent taxes just two business days after his employee signed the certified mail notice, the court decided that it was likely that he had actual notice of the sale. This, coupled with the proper posting and advertising of the sale, convinced the court that the sale was legal and fair.

If you receive a notice of tax sale this summer, do not ignore it. Even if you are positive that you paid your property taxes, or if you escrow your taxes with your mortgage lender and are certain that the lender paid, you still are at great risk if you ignore the notice. Go to the tax claim bureau and produce proof of payment. Do not give up until you are sure your property has been

removed from the upset sale list. If you have any doubt, attend the sale in person and make sure your property is not put up for sale.

Thinking of grabbing a cheap bargain at a tax sale? Be careful—you will take title with all of the mortgages and other legal liens still on the property. While certain forced legal sales clear a property of all of its previous liens, tax upset sales do not. If you buy a property at a tax upset sale, you cannot sell it unless you pay off all of its liens and mortgages as part of that sale.

PERSONAL USE OF THE INTERNET AT WORK

When a Pennsylvania employer fired an employee for making personal use of the Internet during office hours, the employee was denied unemployment compensation. Employees forfeit their right to unemployment compensation if they are terminated for “willful misconduct” in the workplace. Where an employer has a clear policy about personal use of the Internet, employees who violate the policy cannot collect unemployment compensation if they are terminated.

Employers looking to establish policies about Internet use should put those policies in writing. While oral policies are legally enforceable, proving the existence and dissemination of a policy is simpler if the policy is written and the employees are required to sign it. Employees whose use of the Internet at work is restricted should examine their employer’s policy carefully and realize that they may be at risk of being fired without access to any unemployment benefits if they transgress the rules.