

New Laws on Living Wills

The language of Pennsylvania's recently updated law on living wills starts with clear reminder that "[y]ou have the right to decide the type of health care you want." The new law, which went into effect in January 2007, does not make your existing living will invalid, but it clarifies and expands the previous preferred legal format for living wills.

Now is a good time to review your living will or, if you do not have an existing living will, to arrange to draft one.

"Living wills" are not wills at all—they have nothing to do with passing on your money and assets to your heirs. Instead, living wills are documents that state your preferences for end-of-life medical care.

The new law renames the recommended document title. The new title, "Durable Health Care Power of Attorney and Health Care Treatment Instructions," more accurately describes the far more comprehensive document now recommended for use by Pennsylvania residents. The new document covers not only end-of-life decision making, but also permits you to appoint a health care agent to make medical decisions for you even if your condition is not life threatening. It also permits you to give specific directives and requests to your health care providers, as well as to include language regarding organ donation.

Because the newly recommended language for living wills is substantially expanded in the new

law, it is a good time to review your living will or, if you do not have an existing living will to arrange to draft one. All medical directive documents are an important part of your health care and financial planning and should be tailored to your specific personal preferences as well as to your health care philosophy and spiritual beliefs.

Spousal Privilege

One of the most ancient legal privileges is the spousal privilege. Pennsylvania law still recognizes that a husband and a wife may refuse to testify against each other in a criminal proceeding—the privilege belongs to the witness spouse.

Pennsylvania also recognizes that where "confidential communications: have

been made by one spouse to the other, neither spouse may testify in any civil or criminal proceeding unless the other spouse waives the privilege. Communications between spouses are presumed to be confidential unless proven to be otherwise.

As with all rules, exceptions exist. Where a spouse seeks to avoid testifying about facts that he or she observed, he or she has no privilege if the charges include murder or serious sex crimes. The privilege also does not apply to cases involving certain kinds of domestic violence. In all such cases, a spouse can be subpoenaed and required to testify about facts that he or she observed. However, in all cases both criminal and civil, unless the non-witness spouse waives the spousal privilege, spouse can never testify against each other about their confidential communications. The blanket protection given to confidential communications arises from social respect for the intimacy and privacy of marriage.

The extent of the spousal privilege was recently tested in a case where a husband drove across a four-lane highway and struck another car, killing its driver. The husband was injured and had no recollection of the accident.

During the investigation, the husband's wife called the police and voluntarily shared information regarding the husband's former drug use, his current participation in a methadone program, and his treatment for bipolar disorder, depression, and dementia. She disclosed the name of the prescription drugs that the husband was taking for his psychiatric conditions.

At the time of trial, the wife refused to cooperate further and refused to testify. The court first determined that the legal issues were not related to confidential communications because the wife was simply refusing to testify about all of the other knowledge and observations. However, because the husband was not charged with murder, serious se

crimes, or domestic violence, the wife was entitled to exercise her privilege to refuse to testify. When she did so, her former statements were not admissible at trial.

The privileges between attorneys and clients, health care providers and patients, counselors and clients, and clergy and parishioners are all similar to the spousal privilege and are all subject to different exceptions. The entire body of law surrounding witness privilege focuses on the social values placed on the relationships and on the need to protect the privacy and trust inherent in those relationships.

