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Act 169 provides greater clarification on end of life issues

Many of us closely followed the story of Terry Schiavo, the woman who had lived for over a decade through the use of a feeding tube after suffering brain damage brought on by respiratory and cardiac arrest. Her husband, Michael Schiavo, wanted the tube removed, while her parents, Robert and Mary Schindler, wanted the tube to remain in place. The courts persistently sided with Michael Schiavo, but Congress and the Florida Legislature tried to intervene on behalf of the parents. Ultimately, the feeding tube was removed and Ms. Schiavo died nearly two weeks later.

The incident stirred heated debate about end of life issues. Some of you may have even drawn up living wills to ensure your loved ones would not be faced with such an agonizing ordeal. Yet, an estimated 70% of people do not have a living will. Not only does the lack of such a directive burden the patient's loved ones, it also presents problems for health care professionals who may have to make decisions without any standard or guidance, risking legal ramifications.

Pennsylvania obviously was watching the Schiavo case as well. On November 30, 2006, Governor Rendell signed into law Act 169, which became effective on January 29, 2007. Act 169 provides a comprehensive framework that governs health care directives and health care decision-making for incompetent patients. It provides clarity, direction, and protection for patients and physicians.

The Act uses the term "advanced health care directive" which covers living wills, health care powers of attorney, or a document that incorporates both. A living will is a written statement of the patient's desires regarding life-sustaining treatment and other care. A health care power of attorney is a written document that appoints another person as the health care decision maker should the patient be incapacitated. A health care directive must be signed by the patient and witnessed by at least two individuals who are 18 or older. Health care providers, including physicians and office staff, cannot sign an advanced health care directive on behalf of a patient they are treating. The form does not have to be notarized.

A living will focuses on life-sustaining treatment (a treatment that prolongs the process of dying or maintains a patient in a permanently unconscious state). A living will only becomes operative when 1) a patient is determined

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and documented to be incompetent by a physician and 2) when a physician determines the patient is permanently unconscious or has an end-stage medical condition. Note that the Act allows a living will to go into effect when a patient has an “end-stage” condition, not a “terminal” condition. This is especially important to Alzheimer’s patients who may not be able to make decisions, but might live for several more years.

A health care power of attorney grants authority to the appointed health care agent which may be as broad as the patient’s authority, if he or she were competent. Unlike living wills, health care agents are not restricted to end of life decisions and Act 169 does not impose a requirement that the patient be permanently unconscious or have an end-stage medical condition for the health care agent to make decisions. The patient must only be incapacitated.

If the patient has not made a living will or has not designated a health care agent, Act 169 decrees the patient’s health care representative will be, in order of priority: 1) spouse, 2) adult child, 3) parent, 4) adult sibling, 5) adult grandchild and 6) close friend. Unlike a health care agent who is designated in a health care power of attorney, a health care representative can only make decisions on behalf of the patient when the patient is permanently unconscious or has an end-stage medical condition.

Act 169 also requires the Department of Health to assemble a panel to study if Pennsylvania should standardize advanced directives into a form called Physicians Orders for Life-Sustaining Treatment (POLST). Under POLST, a brightly colored sheet that spells out the patient’s wishes concerning life sustaining treatment would be put in a patient’s medical file and would travel with him or her between hospitals and nursing homes.

Generally, if you have done estate planning with the firm, our attorneys include a living will and a health care power of attorney in your preparations. However, if you do not have a health care directive or you would like to amend your current one, feel free to contact your Rothman Gordon attorney for assistance.

Unclaimed property filing deadline is April 15th

Everyone knows that April 15th is the deadline to file taxes, but fewer people are aware it is also the deadline to file unclaimed property reports. Pennsylvania requires all PA businesses be in compliance with the Unclaimed Property Act (72 P.S Section 1201.1 et seq).

Unclaimed property, or escheat, is any financial asset that has been left with a “holder” without activity or contact for a period of about five years. Examples of unclaimed property include bank accounts, uncashed payroll checks, accounts payable or receivable checks, credit balances, gift certificates, stocks and bonds, escrow accounts, money orders, travelers checks, utility refunds, safe deposit box contents and insurance proceeds. If any of these items are on the books unresolved, they must be reported as unclaimed property. Writing off the items as income **does not** constitute an account being resolved.

Holders must file an unclaimed property report with the Pennsylvania Treasury Department each year, even if there is no unclaimed property to report. The Treasury Department can assess penalties and interest to any holder who does not file by April 15, 2007. For this year only, the Treasury is offering amnesty from penalties and interest to any company filing an unclaimed property report for the first time. However, this waiver will only apply to those companies filing a report directly with the Treasury Department and not through a third party reporting agent. If your business has never filed an unclaimed property report, this is the time to start.

A copy of Pennsylvania’s Unclaimed Property Act is available on the Treasury Department’s website at www.patreasury.org. The website also provides reporting instructions, forms and a link to HRS Pro reporting software.

Do you have unclaimed property? It may be a bank account you forgot to close or a gift certificate you never used - the Treasury Department is seeking the owners of over \$1 billion in unclaimed property. Since January 2005, it has returned nearly \$223 million to more than 150,000 owners. Go to www.patreasury.org and click on “Search the Database” under Unclaimed Property or call 1-800-222-2046 to see if you or a loved one may be owed money from the Commonwealth.

Bill Lestitian appointed County Councilman for District 12

County Council unanimously approved the appointment of William E. Lestitian, CPA, Esq., as the new County Council District 12 representative at the December 19, 2006 Regular Meeting of Allegheny County Council. The District 12 representative seat was vacated after the resignation of former Council Member Rich Nerone. "Bill is a great addition to our Council," said Council Member John DeFazio. "He has impressive credentials combined with strong community involvement and government participation. He will be a first-rate District 12 representative."

Bill is a life long resident of District 12, growing up in Carrick and currently residing in Brookline. His wife Debbie, their children Chloe and Ryan, and Bill's parents, Bill and Nancy, attended the swearing in ceremony in December.



Bill Lestitian takes a moment to celebrate with his family and Judge McLaughlin.



Bill Lestitian is sworn in by District Justice Charles A. McLaughlin.

Rothman Gordon sponsors the Pittsburgh 100 for a third time

Good things come in threes. And Rothman Gordon considers the *Pittsburgh Business Times'* Pittsburgh 100 a good thing, so we have signed on for our third year as a sponsor. The annual list highlights the 100 fastest growing private companies in Western Pennsylvania.

To qualify, a firm must be a privately held, independent corporation, proprietorship or partnership (not a subsidiary or a division) based in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington or Westmoreland County; it must have 2004 sales of at least \$500,000; it must be a for-profit enterprise; it must be willing to allow publication of certain information in the Pittsburgh 100 supplement to the Pittsburgh Business Times, and be willing to allow independent verification of its financial information. (Financial information is confidential and will not be disclosed without written approval.) Nominations are due May 25, 2007 and can be found on the Rothman Gordon website homepage. Alternately, you may call Anne Parys, Director of

Marketing at (412) 338-1193 to express your interest in being nominated and she will initiate the process.

The nomination process was kicked off with a luncheon at the Rivers Club on February 22, 2007. A panel of previous winners discussed the secrets to their growth and answered questions from the audience.

The winners will be announced at a reception at the Duquesne Club and will be featured in a special insert in the *Pittsburgh Business Times* in August.



In the news...



Jim Carroll Reappointed to Swissvale Zoning Board

Jim Carroll, head of the Employment Litigation department, was reappointed to the Swissvale Zoning Board of Adjustment for a five-year term. Jim first joined the Board in 1986 and has served as Chairperson since 1990.



Bernie Puzzuole appointed Vice Chair for PAACC

Bernie Puzzuole, a partner in the Commercial Real Estate department, has been appointed Vice Chair and Member of the Executive Committee for the Pittsburgh Airport Area Chamber of Commerce (PAACC). Bernie also continues to serve on the PAACC's Board of Directors.

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