

1975 WL 174060 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1975

**Re: Emergency Commitment of the Physically Disabled**

\*1 Honorable Carl R. Reasonover  
Associate Probate Judge  
Kershaw County  
P.O. Box 545  
Camden, South Carolina 29020

Dear Judge Reasonover:

I am writing in response to your letter dated May 16, 1975, in which you requested recommendations as to proper procedure to follow when an emergency patient becomes physically disabled to such extent that he or she cannot be transported back to the committing county for examinations and a hearing. The commitment law does not address itself to this point.

The first and most favorable solution to this situation would be to have the patient volunteer for in care hospitalization and treatment. This would have to be worked out with the personnel at the specific state hospital. If the patient is willing to volunteer, the hospital would notify the Court and the proceedings could then be dismissed.

An alternative procedure would be to have the hospital, in which the patient is confined, notify the committing court that the patient is physically disabled to the extent that the patient cannot be safely transported. The Court at this time may wish that a physician at the respective hospital sign an affidavit to the effect that the patient is disabled and unable to be moved, a statement as to when the patient will be able to be transported, and a statement as to patient's capacity to make a rational decision as to his or her hospitalization. This statement should be kept in the file and copies should be distributed to the attorney for the patient, the Guardian ad Litem, and in some instances to the petitioner or the petitioner's attorney. The Court based upon the physician's statement should request that the Guardian ad Litem and the attorney for the patient consent to a continuance of the proceedings until such time as the patient may be safely transported. This consent should be in written form and placed in the official file.

There is another alternative method which could be used in emergency situations where the patient is unable to be transported. This method should only be used where other methods are not suitable. The Probate Court pursuant to Section 15-453, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, may accept as evidence depositions, when the witness resides outside of the County of the committing court or more than thirty(30) miles from the county seat. The Court may commission one or more competent persons to take the testimony. This deposition procedure could be used to take the testimony of Examiners who reside in Columbia, South Carolina, who may be available to examine the disabled patient at the hospital. Pursuant to Section 32-965 the Attorney for the patient could thereafter waive the patient's appearance at the hearing and the deposition could be introduced into evidence so that the procedures could be completed. Again let me emphasize that this method may not be workable unless examiners within close proximity to the hospital wherein the patient is confined are willing to assist. If the need for this method presents itself I will be glad to assist from this end.

\*2 In summary I wish to say that these methods are not exclusive of others that can be worked out on the local level with the local physicians and attorneys, they are only procedures which I recommend. Please be sure that the reasons

for any decision to continue the proceedings or waive the patient's appearance at the hearing are well documented in the file and are in accord with due process. Feel free to contact me if questions arise in the future.

With kind regards, I remain  
Very truly yours,

Edwin E. Evans  
Staff Attorney

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