Chapter 6

Voluntary Admission of Minors

6.1 Overview **6-2**

6.2 Terminology Used in this Chapter **6-2**

6.3 Procedures for Admission and Discharge **6-3**

A. Application for Admission
B. Notice of Provision for 72-Hour Hold Upon Request for Discharge
C. Notice to Clerk of Superior Court of Admission

6.4 Duties of Clerk of Superior Court **6-4**

A. Schedule Hearing
B. Appoint Attorney
C. Give Notice

6.5 Duties of Attorney for Minor **6-5**

A. Meet with Client
B. Deliver Notice of Hearing
C. Advise Minor on Hearing Procedure
D. Advise Minor on Potential Effects of Admission
E. Represent Minor Until Relieved by Court

6.6 Hearings **6-7**

A. Venue
B. Preparation
C. Continuance
D. Not Contesting/Not Resisting Commitment
E. Waiver of Right to Appear and Waiver of Right to Testify
F. Attorney Representation of Legally Responsible Person
G. Hearing Closed to Public
H. Evidence
I. Criteria for Admission
J. Dispositional Order

6.7 Treatment **6-11**

6.8 Rehearings **6-11**

A. Right to Rehearing
B. Notice to Clerk of Superior Court

C. Notice of Rehearing
D. Rehearing Procedures
E. Length of Authorized Admission Upon Rehearing

6.9 Discharge and Conditional Release 6-12

A. Conditional Release
B. Duty of Responsible Professional to Discharge
C. Request of Responsible Person
D. Discharge Within 72 Hours of Reaching Age 18

6.10 Emergency Admission 6-13

6.1 Overview

The legally responsible person may voluntarily admit a minor to a 24-hour facility by written application. Judicial review and concurrence is required to ensure that the admission is appropriate, as the minor does not have capacity to consent to the admission. Procedures for the voluntary admission of a competent adult generally apply, with the legally responsible person giving or refusing consent as necessary. The provision for keeping the minor up to fifteen days in the facility prior to a hearing and the lack of a requirement for the court to find danger to self or others in order to concur in the admission are important differences from the involuntary commitment procedures.

6.2 Terminology Used in this Chapter

"Legally responsible person" for a minor is "a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment." N.C. GEN. STAT. § 122C-3(20)(ii) (hereinafter G.S.).

"Mental illness" as defined for a minor is "a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment." G.S. 122C-3(21).

"Qualified Physician's Examination report (QPE)" is the term commonly used to refer to the Department of Health and Human Services form completed by an examining physician when prepared for use in court. *See infra* Appendix A, DMH form 5-73-01. It is forwarded to the clerk of court when involuntary commitment is recommended following the filing of a petition or when a rehearing on commitment is requested by the attending physician.

"Responsible professional" is the "individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability." G.S. 122C-3(32).

"Substance abuse" is "the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal." G.S. 122C-3(36). There is no separate statutory definition of substance abuse applicable only to minors.

"Substance abuser" is "an individual who engages in substance abuse." G.S. 122C-3(37).

"24-hour facility" is "a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under [Chapter 122C of the North Carolina General Statutes]." G.S. 122C-3(14)g. A 24-hour facility includes by statutory definition a "'residential facility', which is a 24-hour facility that is not a hospital, including a group home." G.S. 122C-3(14)e.

6.3 Procedures for Admission and Discharge

A. Application for Admission

The provisions governing the voluntary admission of competent adults apply to the voluntary admission of minors unless otherwise specified. G.S. 122C-221(a); *see infra* Chapter 10. The legally responsible person may seek to admit a minor by appearing at the 24-hour facility with the minor and signing a written application for admission. G.S. 122C-221(a), 122C-211(a). An evaluation must be conducted to determine if the minor is in need of treatment or further evaluation for mental illness or substance abuse at the facility. *Id.*; *see infra* Appendix A, Form DMH 5-73-01.

A private physician or facility is not required to accept the minor for treatment or evaluation. G.S. 122C-209. A voluntary application for admission of a minor can be denied in the discretion of the physician or facility.

B. Notice of Provision for 72-Hour Hold Upon Request for Discharge

The admitting facility must give written information setting forth the procedures for judicial review and discharge to both the legally responsible person and the minor before admission. G.S. 122C-224(b). This information must include that the minor may be held for up to seventy-two hours after a written request for

discharge by the legally responsible person to allow the facility to initiate involuntary commitment procedures. *Id.*

C. Notice to Clerk of Superior Court of Admission

The clerk of superior court in the county where the facility is located must be notified within twenty-four hours of the admission of the minor. G.S. 122C-224(c). The notice must request that a judicial hearing be scheduled and must supply the names and addresses of the legally responsible person and the responsible professional. *Id.*

6.4 Duties of Clerk of Superior Court

A. Schedule Hearing

The clerk must schedule a hearing for judicial review upon receipt of notice of the minor's admission. G.S. 122C-224.1(b). The hearing must be held within fifteen days of date of admission. *Id.* This is in contrast to the requirement of a hearing within *ten* days of the date a respondent is taken into custody for an involuntary commitment.

B. Appoint Attorney

Within forty-eight hours of receipt of notice of the admission, an attorney shall be appointed in accord with the rules of the Office of Indigent Defense Services. G.S. 122C-224.1(a). Typically, the clerk has made the appointments. If the minor is in a state facility, Special Counsel serves as the minor's attorney. All minors are presumed to be indigent. *Id.*; *see infra* Appendix A, Form AOC-SP-912M.

The Attorney General issued an opinion that only the legally responsible person can choose or engage an attorney for a minor. *See* Opinion of Attorney General to C. Robin Britt, Sr., Secretary, Department of Human Resources, Attorney Access to Minors in State Hospitals and Attorney General Opinion (December 20, 1995), *available at* www.ncdoj.com/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Attorney-Access-to-Minors-in-State-Hospitals-and-A.aspx. The opinion also states that the minor's rights are protected during commitment proceedings by G.S. 122C-224.1 and 122C-270, which provide for representation of the minor by Special Counsel or appointed counsel. Presumably, this is acknowledgement that an attorney selected by the legally responsible person, who signed the application for the voluntary admission of the minor before the court, would have an inherent conflict of interest in representing the minor in the judicial proceeding. Appointed counsel's responsibilities for a minor continue until counsel is discharged by the court. G.S. 122C-224.2(c); *see also infra* § 6.5E.

C. Give Notice

Upon calendaring of the hearing, the clerk must give notice of the time and place of the hearing to the minor's attorney on behalf of the minor. G.S. 122C-224.1(b). The notice must be given as soon as possible but not later than seventy-two hours before the hearing, pursuant to Rule 4(j) of the North Carolina Rules of Civil Procedure. *Id.* Rule 4(j) requires personal service, service by certified mail, or other designated methods of service.

The clerk also must send notice as soon as possible but not later than seventy-two hours before the hearing, by first-class mail, postage prepaid, to the legally responsible person and to the responsible professional. G.S. 122C-224.1(b).

6.5 Duties of Attorney for Minor

A. Meet with Client

By statute, the attorney must meet with the minor within ten days of appointment and not later than forty-eight hours before the hearing. G.S. 122C-224.2(a); *see infra* Appendix C, "Working with Clients."

B. Deliver Notice of Hearing

The attorney must deliver a copy of the notice of the time and place of hearing to the minor no later than forty-eight hours before the hearing. G.S. 122C-224.2(a). As the attorney must be served with the notice no later than seventy-two hours before the hearing, it is possible that the attorney will have only twenty-four hours in which to deliver the notice.

C. Advise Minor on Hearing Procedure

It is the duty of the attorney to explain the hearing procedures to the minor. The attorney may want to review the records and talk with the treatment team to learn about the minor's level of understanding. Especially with very young children, the attorney may need to use non-legal terms to help the minor better understand the proceeding.

If the minor is contesting the admission, the attorney should explain about evidence and testimony and explore potential witnesses for the petitioner and for the minor. Evidence supporting admission should be discussed, along with the judicial standard of review. The minor should be advised that counsel might need to contact other people in preparation for the hearing. If the minor objects to communication, for example with parents, counsel should explain the reasons contact might benefit the case and explore the basis for the objection. If the minor continues to object, it is better practice to follow the minor's wishes. Counsel

should make a note in the office case file of the advice given and the minor's position.

Minors may equate "contesting" with "going home." The attorney should explain that the judge makes the decision after hearing all the evidence and that contesting does not necessarily mean that the minor will be released. A realistic assessment of the merits of the case may help the minor make a good decision regarding whether to contest.

The statute provides that minors have the right to be present at the hearing, as well as the separate right to testify even if otherwise not in attendance at the hearing. G.S. 122C-224.3(b); *see infra* § 6.6E. The attorney should explain that the minor may appear at the hearing whether or not the admission is contested. If the minor is not contesting, an appearance will have no effect on the outcome on the case. The minor still may be interested in being present at the proceeding. Some minors may look at the hearing as a chance for an outing. Counsel might gently discourage this but ultimately must leave the decision to the client.

Even if the minor does not wish to appear at the hearing, the minor still has the right to testify. G.S. 122C-224.3(b). For example, the minor might not want to be present in the hearing room to hear the testimony of the petitioner's witnesses, yet might want to testify. If the minor is contesting, counsel should explore the possible testimony of the minor. Counsel must assess whether the minor's testimony will aid or hinder the minor's position.

Note that the motions for waiver of appearance and the waiver of right to testify must be filed separately and in writing. G.S. 122C-224.2(b). This is presumably to ensure that the minor has the opportunity to testify, if desired, without having to sit through the entire hearing, which may be daunting to a minor.

D. Advise Minor on Potential Effects of Admission

Generally. The attorney should explain that the minor may be kept as a patient in the facility as long as the court concurs in the admission and the facility determines that the minor continues to be in need of treatment that could not be received in a less restrictive manner. Other matters that arise only after reaching the age of majority are more difficult to explain meaningfully. For example, in applying for college or employment, if asked whether the client has ever been committed, must the client answer in the affirmative? There is a good argument that a voluntary admission is not a commitment and does not have to be disclosed. It is also a confidential proceeding and is not a public record. *See infra* Chapter 12.

Federal gun laws. Federal gun laws prohibit ownership or possession of a gun by someone who has been committed to a psychiatric institution. Again, there is an argument that these laws do not apply to a voluntary admission. It is difficult to

explain these legal concepts to a young person, especially when they might not become a real concern for years. *See infra* § 12.3.

Expunction of records. There is a statutory procedure for expunction of a minor's records of admission or commitment to a 24-hour facility. G.S. 122C-54(e). Either the legally responsible person or the former patient may request that the records be expunged after the minor reaches adulthood and has been released from the facility. *Id.* The statute provides that the court is to inform the legally responsible person and the minor in writing of the right to expunge records. This notice is to be given at the time the application for admission is filed. *Id.* It is unclear how the court would provide this information. It appears that only the facility staff would be in a position to provide this information at the time of admission. *See infra* § 12.6.

E. Represent Minor Until Relieved by Court

The statute provides that counsel for the minor shall continue the representation until relieved by the court. G.S. 122C-224.2(c). Presumably, representation also ends when the minor is unconditionally discharged or when the minor reaches the age of majority.

6.6 Hearings

A. Venue

The statute provides for the hearing for judicial review of the minor's admission to be held at the 24-hour facility if located within the judge's district. G.S. 122C-224.3(a). The hearing may be held elsewhere, however, if the judge determines that holding the hearing at the facility would be disruptive to the court calendar. *Id.* In that case, the hearing may be held in another location, including the judge's chambers. The hearing may not be held in a regular courtroom over the minor's objection if a more suitable place is available. *Id.*

There is no statutory provision for change of venue.

B. Preparation

Counsel should review the medical and psychiatric records from this and any prior psychiatric admissions. Additionally, any available school records and psychological reports or testing should be reviewed. The treatment team should be consulted, after obtaining any necessary consent, to learn the recommended length of stay and to explore the possibility of an agreement between the client and the treatment team on the length of the admission.

As with any other client, the minor's attorney should obtain the consent of the

minor to contact witnesses outside the facility, including the legally responsible person. Counsel should interview possible witnesses and issue subpoenas for documents and witnesses as necessary. Admission papers and court documents should be examined to determine if they comply with statutory and due process requirements. For example, the admission application should be checked to see if it was properly signed by the legally responsible person. If there are irregularities, counsel may consider whether a motion to dismiss is possible and discuss the possible outcomes with the client.

C. Continuance

The hearing is to be held within fifteen days of admission, with statutory provision for one continuance of not more than five days. G.S. 122C-224(a). The statute neither specifies nor limits who may move for the continuance.

As many district courts hold hearings for commitments and admissions only once a week or on two consecutive days, a five-day continuance will not suffice. It is common practice for the court to allow a seven-day continuance upon consent of the parties.

D. Not Contesting/Not Resisting Commitment

Not contesting. There are no statutory provisions for minors to accept the recommendation for continued inpatient treatment or to "not contest." In practice, however, many minors are in agreement with their attending physicians on the need for inpatient treatment and do not want to contest the admission. Counsel may inform the client of the option to "not contest" the voluntary admission.

By not contesting, the minor can avoid a hearing with possibly upsetting testimony from family, friends, and the treatment team. An uncontested hearing on admission could proceed with testimony from witnesses supporting the admission or by stipulation of the respondent's counsel. Counsel may stipulate to the facts alleged in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 6.2) or stipulate that the information in that document would be the testimony of the author.

A minor who is not contesting may wish to attend the hearing and has the right to do so. Counsel should explain the abbreviated nature of the proceedings so that the minor will know what to expect. Minors who are not contesting often prefer not to attend the hearing. A motion for waiver of appearance should be filed so that the minor is not compelled to attend. *See infra* § 6.6E.

Not resisting. The minor's lack of maturity, as well as the acute symptoms of mental illness, may prevent the minor from understanding the nature or import of the proceeding. The minor may be unable to discuss the issues or respond to counsel's questions, even at an elementary level. There are no statutory provisions

to guide counsel when the client is unable to express a decision on whether to contest the commitment. For a discussion of these issues in cases involving adults, see *supra* § 2.6F.

If a review of the psychiatric and educational records support counsel's observations of the minor's level of understanding and there is no prospect of the minor being released by the court, counsel may report to the court that the respondent is "not resisting." This means that the minor is unable to understand and discuss the issues enough to contest the admission, but is equally unable to decide not to contest. As with an uncontested case, the hearing may then proceed with testimony from witnesses supporting the admission or by stipulation of the minor's counsel. Counsel may stipulate to the facts alleged in the Qualified Physician's Examination report (for a definition of this report, see *supra* § 6.2) or stipulate that the information in that document would be the testimony of the author.

A motion for waiver of appearance is filed in virtually every voluntary admission case in which the minor is not resisting. The minor is often also unable to make a decision regarding an appearance and is unable to understand or to benefit from attending court proceedings.

E. Waiver of Right to Appear and Waiver of Right to Testify

If the minor client does not want to be present at the hearing, counsel must file a written motion to waive the right to appear. G.S. 122C-224.2(b), 122C-224.3(b). The minor retains the right to testify even if the right to appear is waived. *Id.* If the minor client does not want to testify, counsel must file a *separate* written motion waiving the right to testify. *Id.*

An interesting section of the statute on the minor's testimony provides that the minor may appear "to respond to the judge's questions." G.S. 122C-224.3(b). Although one could infer that this means that only the judge may question the minor, this would appear to be a violation of the minor's due process right to representation by an attorney and the right of the petitioner to cross-examination.

F. Attorney Representation of Legally Responsible Person

There is no provision for representation of the legally responsible person, the person who signed the application for admission of the minor to the 24-hour facility. There is no provision for notice of judicial proceedings to an attorney representing the interests of the legally responsible person or the facility, although the legally responsible person and the responsible professional are among those who must receive notice. G.S. 122C-224.1(b). At state facilities, the attorney from the Attorney General's office may represent the interest of the state in the admission. Private facilities may employ private counsel to represent the interest of the facility in the admission. The legally responsible person could presumably

hire an attorney to present evidence supporting the admission, although this is not provided by statute.

G. Hearing Closed to Public

Unless the attorney moves for the hearing to be open, it is closed to the public. G.S. 122C-224.3(d). The attorney is presumably the attorney for the minor, as no other attorney is mentioned in the section on voluntary admissions of minors. It also appears that if the minor's attorney requests that the hearing be open, the judge must grant the request.

H. Evidence

It may be unclear who will present evidence at the hearing to support admission. Counsel for the minor may find that the court is taking judicial notice of documents in the court file. The statute provides that "[c]ertified copies of reports and findings of physicians, psychologists and other responsible professionals as well as previous and current medical records are admissible in evidence." G.S. 122C-224.3(c). Copies of all documents admitted into evidence as well as a transcript of the hearing must be provided by the clerk at the request of the minor's attorney. G.S. 122C-224.3(e).

The minor, through counsel, has the statutory right to confront and cross-examine witnesses. G.S. 122C-224.3(c). If the legally responsible person is not represented at the hearing, who arranges for the appearance of the authors of the documents? The attorney for the minor should not be required to subpoena witnesses adverse to the client. Does the court issue a subpoena, and does this occur after objection to admitting the documentary evidence at hearing? If so, asserting the right to cross-examination will necessarily result in a delay of the hearing.

This may produce the uncomfortable situation of defending against the "empty chair." The court in effect produces or reviews the evidence, creating the appearance that the court is adverse to the minor client.

Counsel for the minor must determine, along with the client, whether to have the minor testify. It is also counsel's responsibility to subpoena any other favorable witnesses or documents.

I. Criteria for Admission

The criteria for the court to concur in the voluntary admission of a minor are less stringent than for an involuntary commitment as there is no need for a finding of danger to self or others. The court must first find that the minor is either mentally ill or a substance abuser. Additionally, the minor must be in need of further treatment at the 24-hour facility. Finally, there must be no less restrictive mode of treatment available. G.S. 122C-224.3(f).

J. Dispositional Order

There are three possible choices for the dispositional order. If the court finds by clear, cogent, and convincing evidence that the criteria for voluntary admission have been met, it must concur in the admission. The court must set the maximum length of stay, up to ninety days. G.S. 122C-224.3(g)(1).

The court may find that there are "reasonable grounds to believe" that the admission criteria exist, but additional evaluation and diagnosis are needed. In that case, it may order a one-time authorization of a stay of up to fifteen more days for such evaluation and diagnosis. G.S. 122C-224.3(g)(2).

Finally, if the court finds that the criteria for admission or additional evaluation have not been met, it must order that the minor be released. G.S. 122C-224.3(g)(3).

See infra Appendix A, Form AOC-SP-913M.

6.7 Treatment

The responsible professional is allowed to administer "reasonable and appropriate medication and treatment that is consistent with accepted medical standards and consistent with Article 3 of this Chapter [Clients' Rights and Advance Instruction]." G.S. 122C-224.6(a). This treatment may be administered both pending hearing and after any judicial concurrence in the admission. *Id.*

6.8 Rehearings

A. Right to Rehearing

A minor admitted to a facility upon concurrence of the court for either further evaluation and diagnosis or for continued treatment, has the right to a rehearing on whether the court authorizes additional time in the facility. G.S. 122C-224.4(a), (b).

B. Notice to Clerk of Superior Court

The responsible professional must notify the clerk at least fifteen days before the end of the approved stay if there is a request for an extension of the admission. G.S. 122C-224.4(c). The clerk is required to schedule a rehearing on the request prior to the expiration of the current admission. *Id.*

These time provisions cannot be met if the initial authorized stay is limited, for example, to one or two weeks. If the responsible professional determines at any

time during the admission that additional time is needed, it will be too late to give the fifteen days' notice to the clerk.

C. Notice of Rehearing

Notices are to be sent by the clerk pursuant to the same procedures and time limits as for the initial hearing. G.S. 122C-224.1(c) (requiring clerk to "schedule all hearings and rehearings as required by this Part"). The clerk might not be able to serve and send the required notices within the statutory time periods if the prior admission term was relatively short. Because the minor's interest is not typically to extend the initial admission, counsel may waive timely notice of the rehearing.

D. Rehearing Procedures

Rehearings are to be conducted pursuant to the provisions of the statutes for the initial hearing. G.S. 122C-224.4(b).

E. Length of Authorized Admission Upon Rehearing

The court may authorize up to an additional 180 days' stay in the facility at each rehearing for admission of a minor. G.S. 122C-224.4(b). This is in contrast to the ninety-day maximum stay that may be authorized by the court at an initial hearing.

6.9 Discharge and Conditional Release

A. Conditional Release

The responsible professional is allowed to conditionally release the minor for up to thirty days during the admission. G.S. 122C-224.6(b). This conditional release could be as limited as a day pass to go out with a parent, to as broad as returning home for thirty days. In all cases, the minor must abide by any conditions of the release imposed by the responsible professional. Violation of any conditions of release authorizes the responsible professional to contact a law enforcement officer to take the minor into custody for return to the facility. *Id.*

B. Duty of Responsible Professional to Discharge

If the responsible professional determines that the minor is no longer mentally ill or a substance abuser, or that the minor is no longer in need of treatment at the facility, the minor must be unconditionally discharged. G.S. 122C-224.7(a). This discharge can occur at any time during the admission. It is important to stress this possibility, as the minor client may believe the judicial concurrence in a maximum length of admission is a "sentence" to be served. This belief could hinder cooperation in treatment and thus result in a longer stay.

C. Request of Responsible Person

At any time, the legally responsible person may file a written request for discharge of the minor from the facility. G.S. 122C-224.7(b). The responsible professional must discharge the minor within seventy-two hours, unless it is determined that the minor is either mentally ill or a substance abuser and is a danger to self or others. In that case, the facility may utilize the seventy-two hours in order to initiate involuntary commitment proceedings. *Id.* This option must be explained to both the legally responsible person and the minor at admission. G.S. 122C-224(b); *see supra* § 6.3B.

D. Discharge Within 72 Hours of Reaching Age 18

If the minor reaches the age of eighteen while in the facility and refuses to sign an authorization within seventy-two hours of reaching eighteen, the client either must be discharged or involuntarily committed. 122C-224.7(c). Upon reaching the age of majority, the client could choose to sign in to the facility as a voluntarily admitted adult. If not, the facility must discharge the client, unless it is determined that the criteria for involuntary commitment exist. In that case, the facility may hold the individual for up to seventy-two hours, presumably after the minor has reached the age of eighteen, in order to institute the involuntary commitment procedure.

6.10 Emergency Admission

A minor may be admitted to a 24-hour facility for treatment of mental illness or substance abuse on the minor's own written application in an emergency situation. G.S.122C-223(a). The legally responsible person must be notified by the facility of the admission within twenty-four hours, if possible. G.S. 122C-223(b). If the legally responsible person is not located within seventy-two hours of the admission, the responsible professional must report the juvenile's admission to Child Protective Services in either the minor's county of residence or in the county where the facility is located. 122C-223(c).