

§ 35A-1245. Procedure to permit the sterilization of a mentally ill or a mentally retarded ward in the case of medical necessity.

(a) A guardian of the person shall not consent to the sterilization of a mentally ill or mentally retarded ward unless an order from the clerk has been obtained in accordance with this section.

(b) If a mentally ill or mentally retarded ward needs to undergo a medical procedure that would result in sterilization, the ward's guardian shall petition the clerk for an order to permit the guardian to consent to the procedure. The petition shall contain the following:

- (1) A sworn statement from a physician licensed in this State who has examined the ward that the proposed procedure is medically necessary and not for the sole purpose of sterilization or for the purpose of hygiene or convenience.
- (2) The name and address of the physician who will perform the procedure.
- (3) A sworn statement from a psychiatrist or psychologist licensed in this State who has examined the ward as to whether the mentally ill or mentally retarded ward is able to comprehend the nature of the proposed procedure and its consequences and provide an informed consent to the procedure.
- (4) If the ward is able to comprehend the nature of the proposed procedure and its consequences, the sworn consent of the ward to the procedure.

(c) A copy of the petition shall be served on the ward personally. If the ward is unable to comprehend the nature of the proposed procedure and its consequences and is unable to provide an informed consent, the clerk shall appoint an attorney to represent the ward in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Should the ward or the ward's attorney request a hearing, a hearing shall be held. Otherwise, the clerk may enter an order without the appearance of witnesses. If a hearing is held, the guardian and the ward may present evidence.

(e) If the clerk finds the following, the clerk shall enter an order permitting the guardian to consent to the proposed procedure:

- (1) The ward is capable of comprehending the procedure and its consequences and has consented to the procedure, or the ward is unable to comprehend the procedure and its consequences.
- (2) The procedure is medically necessary and is not solely for the purpose of sterilization or for hygiene or convenience.

(f) The guardian or the ward, the ward's attorney, or any other interested party may appeal the clerk's order to the superior court in accordance with G.S. 1-301.2(e). (2003-13, s. 1(a); 2005-250, s. 5.)