

1975 WL 29490 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 10, 1975

**\*1 Re: Medical Records of the Mentally ill**

Richard N. Booth, Esquire  
Floyd & Booth  
Attorneys at Law  
1115 3rd Avenue  
Conway, South Carolina 29526

Dear Mr. Booth:

Thank you for your letter of January 29th. I am sorry that I have not responded sooner, but I was on leave last week from the Office.

I am in agreement with you, that you should be allowed to review the records of a patient, and I am sorry that our guidance has been misinterpreted to deny you this right. We had advised the Department of Mental Health to send the records to the Probate Judge under seal, so that they could be available to the Court during a hearing, without necessitating the appearance of a member of the Registrar's division to verify the authenticity. This was not meant to prevent the Court from allowing the records' use prior to a hearing. However, the records must be requested by the Court rather than counsel pursuant to Section 32-1022(3), Code of Laws of South Carolina, 1962.

Notwithstanding this, there is a genuine concern over the possibility that these records may be overly influential as to what the designated examiners reported, on the one hand, and on the other, the concern as to whether an adequate examination can be had without the benefit of these records. Therefore, when the records are available to the examiners it becomes imperative that the patient's counsel know what the contents of these records are, so that the role these records had in the examiners' conclusions can be brought fully before the Court.

I will contact the Department of Mental Health to assure that the records are available. Please take note that a copy of this letter is being sent to Judge Floyd. Should either of you have any questions, please correspond.

Very truly yours,

Harry B. Burchstead, Jr.  
Staff Attorney

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