FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY-NORTH SUBURBAN REGION

REPORT 22-100-9005
AMITA Health Alexian Brothers Medical Center

Introduction

On 4/6/2021 the North Suburban Regional Human Rights Authority (HRA) opened an investigation of possible rights violations regarding care for a recipient of mental health services in AMITA Alexian Brothers Behavioral Health Hospital (Case # 21-100-9010). On 6/15/2021 the North Suburban Regional Human Rights Authority (HRA) voted to open a separate but related investigation of possible rights violations regarding care for the same recipient of mental health services in the AMITA Health Alexian Brothers Medical Center emergency department. The complaint alleged that hospital staff did not work with or inform the recipient's Power of Attorney agent to provide proper informed consent for the treatment, and did not provide hearing aid batteries to the recipient, rendering the recipient functionally deaf. Substantiated findings would violate protections under the Mental Health and Developmental Disabilities Code (405 ILCS 5) and the Illinois Power of Attorney Act (755 ILCS 45).

AMITA Health Alexian Brothers Medical Center is a 329-bed, full service medical facility in Elk Grove Village, Illinois.

Method of Investigation

To proceed with this investigation, the HRA reviewed the recipient's clinical record (with authorization) from the service provider and obtained additional case information through an interview with members of the recipient's clinical care team, and follow-up written requests from the hospital's Director of Patient Safety and Quality. The HRA also reviewed relevant hospital policies, provided by the hospital. The HRA acknowledges and appreciates the full cooperation of Alexian Brothers Medical Center personnel in this investigation.

Case Summary

The recipient of services was admitted by petition to the emergency department of Alexian Brothers Medical Center (ABMC) at 2:44 pm for a mental health evaluation and was provided with a transfer to Alexian Brothers Behavioral Health Hospital (ABBHH) the following day at 6:59 pm. A petition was completed in the ED on the day of admission at 3:30 pm, at which time the recipient's legal status was involuntary. The recipient's advanced medical directive paperwork

accompanied the recipient upon admission and designated a Medical Power of Attorney (POA) agent. The petition included the POA agent's phone number and address. A handwritten note on the petition next to the Rights of Admittee line reads "Patient unable to participate due to clinical condition". The POA agent was not contacted at that time. The HRA asked the provider to elaborate on the admission and the provider responded: "This pt was not oriented enough and could not understand his rights at the time of admission and therefore could not participate in a level of orientation assessment. The admission person did not attempt to contact the pt's POA at that time, as this is not our current process. The case manager and physician are expected to contact the pt's POA within 24 hours of admission."

The evening of admission at 5:47 pm, the hospital administered intravenous psychotropic medication (Ativan .25 mg) to the recipient. At 5:56 pm, a master's-level clinician performed a behavioral health assessment of the recipient. The clinician's report for this assessment in the record indicated that the "PT stated he does not know why he is here". At 6:57 pm, the hospital administered intravenous psychotropic medication (Ativan .5 mg) to the recipient, and at 8:13 pm the hospital administered an injection of Ziprasidone (10 mg). The case documentation does not provide explanations for these medications, and hospital staff did not offer elaboration on these instances of medication administration in the staff interview. During the HRA interview, hospital staff acknowledged that at this point in the recipient's treatment they had not yet attempted to contact the recipient's medical POA. When asked if the recipient himself was advised about any of these psychotropic medications at the time of administration, the provider responded that they are "unable to comment". When asked if the recipient's doctor was able to determine whether or not the recipient had the capacity to make a reasoned decision about the administered medications, the provider responded that they are "unable to comment". The record contains no further information about administration of these medications.

A doctor's note in the record from the day after admission indicates "This morning, in the context of screaming, yelling, threatening, the patient had to be given emergent Olanzapine". The provider confirmed in follow-up questions that the recipient was administered an injection of Olanzapine (5 mg) at 9:48am the morning after admission for "imminent danger." No further details about this emergency medication administration are found in the documentation, and the provider did not have any restriction related documents. The hospital told the HRA that they did not know if the recipient was advised about these medications or about his right to refuse treatment, but stated that it is the hospital practice to "advise the patient (even during high agitation) what is being ordered by the MD and given".

The day following the recipient's admission to the ED, a hospital form titled: "Physician Statement for Power of Attorney for Health Care to make Health Care and Mental Health Decisions" timed at 1:30pm, verifies that the recipient was unable to give informed consent and/or authorization for any health care decisions, and that consent and/or authorization for health care decisions should be obtained from the POA agent. The record also contains the hospital's Psychotropic Medication Consent, timed at 3pm the same day. This form documents the first contact with the recipient's POA agent and indicates that they consented to including Olanzapine in the recipient's treatment plan and were educated about common side effects and risks of Olanzapine. Neither of the previous psychotropic medications that the recipient was administered (Ativan or Ziprasidone) are listed on the medication consent form. At 3:15pm that afternoon, the attending psychiatrist performed a

psychiatric evaluation in communication with the recipient's POA agent. The recipient was transferred to Alexian Brothers Behavioral Health Hospital that evening at 6:59 pm, with the consent of their medical POA agent.

The availability of the recipient's hearing aid batteries was in question. The provider informed the HRA that although the recipient was not admitted to the hospital with additional hearing aid batteries, he showed ". . . signs of effective communication using his current hearing devices in numerous instances." The provider elaborated that those instances included but were not limited to, "the Nursing Assessment, H & P Exam, Psychiatric Evaluation, Psychosocial Assessment, as well as communications throughout his stay in various group and individual settings." The provider stated in a letter to the HRA that a Case Manager note in the record from a week after admission indicated "in accordance with POA request hearing aid batteries were replaced as requested," however the provider did not furnish that portion of the record for the HRA investigation.

Policy Review

To satisfy the HRA request for relevant hospital policies Alexian Brothers Medical Center furnished AMITA Health Alexian Brothers Behavior Health Hospital's Durable Health Care Power of Attorney, Informed Consent, and Consent for Psychotropic Meds policies. The HRA found that all these policies appropriately address the rights of service recipients under the Mental Health and Developmental Disabilities Code (405 ILCS 5). The Durable Health Care Power of Attorney policy indicates that power of attorney "shall be exercised whenever a health care provider believes a principal may lack capacity to give informed consent to health care." The procedure section of this policy does not indicate a timeline for execution of the POA. The Informed Consent policy indicates that all hospital patients must be informed of their rights under the Mental Health and Developmental Disabilities Code, and sets the standard that the "patient is knowledgeable about the nature of his or her procedures, treatments, and planned program." The Consent for Psychotropic Meds policy indicates that all psychotropic medications must have informed consent upon administration. Psychotropic medications may be administered in an emergency situation without obtaining consent . . .as defined by the Illinois Mental Health Code."

Case Findings

The complaint that the hospital did not work with the recipient's Power of Attorney agent to provide proper informed consent for the treatment is ***substantiated.*** The complaint that the hospital did not provide hearing aid batteries to the recipient, rendering the recipient functionally deaf, is ***not substantiated***.

Analysis

By commencing treatment and not implementing the recipient's health care power of attorney directive when it was determined that the patient lacked capacity to make informed decisions, (the recipient's lack of capacity was documented upon admission and during a mental health assessment on the day of admission), the provider violated their Durable Health Care Power of Attorney, Informed Consent, and Consent for Psychotropic Meds policies. The provider also

violated 405 ILCS 5/2-200. *(a) - Upon commencement of services, every adult recipient, as well as the recipient's guardian or substitute decision maker . . . shall be informed orally and in writing of the rights guaranteed by this Chapter.*

By providing treatment to a recipient who lacked capacity to participate in their treatment with informed consent, and by not communicating admissions and treatment rights to the medical POA agent until a full day following treatment, the provider violated the **Illinois Power of Attorney Act (755 ILCS 45) Section 4-7.(a)** which states: *Whenever a provider believes a patient may lack capacity to give informed consent to health care . . ., the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency.*

The recipient was administered psychotropic medication with no documentation in the record to indicate if he had the capacity to understand his rights or was given the opportunity to refuse treatment. Since the provider could not tell the HRA whether or not the recipient was advised about these medications or about his right to refuse treatment, the HRA concludes that the recipient was improperly administered psychotropic medication. This is a violation of the Code's **405 ILCS 5/2-107** – "*A recipient of services . . . and the recipient's substitute decision maker must be informed of the recipient's right to refuse medication . . . The recipient and the recipient's . . . substitute decision maker shall be given the opportunity to refuse generally accepted mental health . . . services, including . . . medication."*

The HRA did not find enough evidence to suggest that the hospital violated any statues with its handling of the recipient's hearing aid batteries. Case notes suggest that the recipient's lack of capacity to make an informed decision was more likely due to his state of agitation and diagnosis of dementia than an inability to hear.

Recommendations

1. Update Alexian Brothers Medical Center Consent for Psychotropic Meds policy to require the determinations of capacity before psychotropic medication are administered (in accordance with 405 ILCS 5/2-102 and 2-201). Retrain appropriate staff.
    a. Provide the HRA with proof of completion.

2. Retrain appropriate staff on the Provider's Durable Health Care Power of Attorney policy.
    a. Provide the HRA with proof of completion.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

NORTH SUBURBAN REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 22-100-9005

AMITA HEALTH ALEXIAN BROTHERS MEDICAL CENTER

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document, will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

X We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

_____ We do not wish to include our response in the public record.

_____ No response is included.

Jaime Zalewski
NAME

Interim Director of Quality
TITLE

2/28/2023
DATE

Ascension
Alexian Brothers

Mariah Balaban
North Suburban Regional Office
9511 Harrison Ave W-335
Des Plaines, IL 60016-1565

RE: HRA #22-100-9005

March 7, 2023

Dear Ms. Balaban,

Thank you for sharing the concern regarding case #22-100-9005. Consistent with our commitment to providing the highest quality, compassionate care to our community, we conducted a thorough investigation of the event. We did identify a lapse in our process as it was not clearly identified who the owner (i.e. nursing, provider, intake access, etc.) was to reach out to a Power of Attorney (POA) when a patient was assessed to not be decisional.

In order to mitigate this risk in future, we have designed a new process for identification and contact with the power of attorney when a patient is non decisional. Nursing will own this process. We have modified our workflow and created education and follow-up to hard wire this process.

Again, thank you for bringing this concern to our attention as we are committed to providing safe and quality care to the patients we serve.

Regards,

Jaime Zalewski
Interim Director of Quality & Patient Safety

Ascension Alexian Brothers
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