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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 08-030-9004
MacNeal Hospital

Case summary: The HRA did not substantiate the complaint that the facility did not follow Mental Health Code procedures when it placed a recipient in restraints, did not allow her to call her family or the HRA, and administered forced psychotropic medication absent an emergency.

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at MacNeal Hospital. It was alleged that the facility did not follow Mental Health Code procedures when it placed a recipient in restraints, did not allow her to call her family or the HRA, and administered forced psychotropic medication absent an emergency. If substantiated, these allegations would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et. seq.) and hospital policies.

MacNeal Hospital is a private medical facility located in Berwyn, Illinois. The hospital is a teaching facility that incorporates a 72-bed Behavioral Health Services Department.

To review these complaints, the HRA conducted a site visit and interviewed the Executive Director of Behavioral Health Services as well as the Nurse Manager. Relevant program policies were reviewed as were the recipient's records upon written consent. The recipient is an adult who maintains her legal rights.

FINDINGS

The record shows that on 12/01/06 the recipient was brought to MacNeal Hospital on a petition and certificate from another hospital where she had been taken by police officers for psychiatric evaluation. Progress Notes written at 4:00 a.m. at MacNeal Hospital indicate that the recipient had approached security officers on a local community college campus and presented them with a letter which suggested to them that she might harm herself; she was taken to a local hospital and then transferred to MacNeal. She was admitted to MacNeal's behavioral health unit at 3:56 a.m. The Progress Notes contain an admission note recorded at 4:00 a.m.: "Report from [hospital]. 51 year old white female admitted to 32 North due to suicidal ideation per 5

page letter. Patient was on...Community College campus on Thursday and approached security guards to ask for help. She became tearful and agitated and was taken to...[hospital] where patient was petitioned and certificates made out for court. Patient refused to sign voluntary and was talking loudly on unit. At every question patient became more agitated. Refused to go to room with cane and shoes. Patient refused to answer any pertinent questions of medical history and wrote out instead 2 pages of medical conditions...refusing to go to room."

The record shows that the recipient refused to sign any admission documents or to take part in any way with the admission procedure.

The recipient provided a statement regarding her arrival at MacNeal Hospital and in it she stated that because of her traumatized state upon arrival at the hospital, she had refused to leave the large dayroom on the unit and eventually settled on the floor underneath a table and behind several chairs. She made several calls to 911 and to the police department to no avail. The recipient stated that at approximately 7:00 a.m. she had approached staff to make a phone call to her father. She stated that she wanted to know if he had gotten out of bed safely because he suffers from Parkinsons and usually gets up at around this time. She was told at this time that she could call at 8:00 a.m.

Staff were interviewed about the procedure for phone use and they said that because 7:00 a.m. would have been the shift change and also breakfast, that the recipient would have been asked to wait until staff were available to monitor the call at 8:00 a.m. They stated that it is their policy and procedure to allow patients to call, usually from 7:00 a.m. until 10:00 p.m., however they try to accommodate all requests for phone use. In this case, because the recipient had been calling 911 repeatedly and appeared to be very unstable (refusing to complete admission paperwork, refusing to proceed to her room, and sitting on the floor of the dayroom), they felt that she should wait until 8:00 a.m. so that staff could monitor the call. There is no indication from the record or from staff interviews that the recipient would not have been allowed to make a call, but only that she was asked to wait one hour until staff could be assured that she was not calling 911.

There is no indication from the record or from the statement of the recipient that she had requested or attempted to call the HRA.

There is an entry in the Progress Notes for this event. It states: "Pt. agitated and became out of control. Took telephone and destroyed two phones and threw phone at staff. Patient then became physically threatening to staff by throwing a telephone at staff and trashing nurse's station by tearing phones out of circuits and pulling out cords. Patient verbally abusive to staff. Dr. paged for Ativan 2 mg IM given stat." Progress Notes show that at 7:30 a.m. the recipient's father called to check on his daughter. An entry made at 7:30 a.m. states, "Father called to check on daughter.... Concerned about daughter and wants to talk to Dr.... Dr. was paged again for restraint order. Father's number on chart. Patient remains agitated and out of control." The restriction of rights notice for this event states, "Patient approached staff asking to make a phone

call. Patient was instructed to use the phone at 8 a.m. Patient grabbed phone off desk, pulled it off the wall socket. Patient began to throw phone and strike out at staff. Patient was asked to let go of the phone. Patient refused. Patient then put into restraints by staff." This form also indicates that the recipient received forced emergency medication and a phone restriction. It also indicates that no one was contacted at the request of the patient.

The physician's restraint order, completed at 7:00 a.m. states, "Patient became agitated, exhibiting aggressive, assaultive behaviors toward staff. Broke telephones and threw all phones at staff and broke them." The order includes a statement of no medical risk and orders a 4-point Velcro restraint for 4 hours. It indicates that redirection was attempted before issuing restraints and that the behavioral criteria for discontinuation of restraints was explained to the recipient. The restraint Flow Sheet is included in the record with 15 minute checks as well as the physician's initial assessment and debriefing. At 8:00 a.m. the Progress Notes include an entry that states, "Patient loud, explosive, and demanding to use the telephone to call father. Patient asked by this writer to call father re: notification of restraints pt. stated, 'No, you do not have my permission to call.' Patient refuses to eat, drink or toilet. Requirements for release of restraints has been explained several times with patient."

At 11:00 a.m. on 12/01/06 the restraints were discontinued and at 12:45 p.m. the event was debriefed with the recipient. At this time the Progress Notes indicate that the recipient was provided with the Restriction of Rights paperwork, the petition, and the Rights of Admittee paperwork and made a call to her father, stating "Patient was provided with copy of Restriction of Rights, Rights of Admittee, and copy of petition, patient reports she wants no one contacted, that patient contacted her natural father, patient does not feel she needs to be in the hospital for 'sadness'."

Later on the same day the recipient again received emergency medication along with a restriction of her telephone rights. The Notice Regarding Rights of Recipients states that at 4:40 p.m. "Patient is loud, agitated, verbally threatening staff, demanding and disruptive to milieu, patient is refusing to go to group or room, pushing staff, getting out of wheelchair and sitting on floor, danger to others." The form contains a notation that the recipient refused to give consent to notify anyone. At this time she also received a Notice regarding her telephone rights which states, "Patient threw telephone at staff, destroying hospital property. Patient is agitated demanding discharge after rights explained by staff and management awaiting dr.'s visit. Patient keeps calling 911, disruptive to milieu, danger to others." This form and the Progress Notes contain a notation that the recipient refused to have anyone notified.

The recipient was discharged at 8:52 a.m. on 12/02/06.

STATUTORY BASIS

The Mental Health and Developmental Disabilities Code guarantees recipients the right to refuse treatment. This right can only be overridden if a recipient is threatening serious and imminent physical harm to himself or others.

"An adult recipient of services or the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication or electroconvulsive therapy. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health or developmental disability services, including but not limited to medication or electroconvulsive therapy. If such services are refused, they shall not be given unless such services are necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. The facility director shall inform a recipient, guardian, or substitute decision maker, if any, who refuses such services of alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services" (405 ILCS 5/2-107).

Additionally, the Code states that whenever any rights of the recipient of services are restricted, notice must be promptly given to the recipient, a recipient's designee, the facility director or a designated agency, including the Guardianship and Advocacy Commission, and it must be recorded in the recipient's record (405 ILCS 5/2-201).

The Mental Health Code states that upon commencement of services or as soon thereafter as the condition of the recipient permits, every adult recipient and his or her guardian or substitute decision maker shall be informed orally and in writing of guaranteed rights (5/2-200a), and, that the facility shall ask the adult recipient whether he or she wants the facility to contact the recipient's spouse, parents, guardian, close friends, attorney, advocate from the Guardianship and Advocacy Commission or others about the recipient's presence in the facility. The Code mandates that the facility shall contact by phone or by mail at least two of the people designated by the recipient (2-200 c) within 24 hours (5/2-113).

Also, within 12 hours after the involuntary admission of a person to a mental health facility the facility director must give the recipient a copy of the petition and a clear statement explaining the person's legal status and their right to a court hearing (5/3-205). The Mental Health Code mandates that whenever a person is admitted or objects to admission, or whenever the recipient's legal status is to be changed, the facility director will provide the recipient with the address and phone number of the Guardianship and Advocacy Commission and assist them in contacting the Commission if requested (5/3-206). The recipient is allowed to make no less than 2 telephone calls at the time of his admission (5/3-609).

The Code mandates that recipients shall be permitted unimpeded, private and uncensored communications with persons of their choice by mail, telephone and visitation. Correspondence must be conveniently received and mailed and reasonable times and places for the use of telephones and for visits may be established by the facility. Communication may be reasonably restricted only in order to protect the recipient or others from harm, harassment or intimidation. When communication is restricted, the recipient must be advised that he has the right to require the facility to notify the affected parties of the restriction and when the restriction is no longer in effect (5/2-103).

Restraint is a therapeutic tool that the Mental Health Code carefully regulates. The Code outlines specific measures to ensure that it is safe and professionally applied:

"Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff.

(a) Except as provided in this Section, restraint shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities. No restraint shall be ordered unless the physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities, after personally observing and examining the recipient, is clinically satisfied that the use of restraint is justified to prevent the recipient from causing physical harm to himself or others. In no event may restraint continue for longer than 2 hours unless within that time period a nurse with supervisory responsibilities or a physician confirms, in writing, following a personal examination of the recipient, that the restraint does not pose an undue risk to the recipient's health in light of the recipient's physical or medical condition. The order shall state the events leading up to the need for restraint and the purposes for which restraint is employed. The order shall also state the length of time restraint is to be employed and the clinical justification for that length of time. No order for restraint shall be valid for more than 16 hours. If further restraint is required, a new order must be issued pursuant to the requirements provided in this Section....

(f) Restraint shall be employed in a humane and therapeutic manner and the person being restrained shall be observed by a qualified person as often as is clinically appropriate but in no event less than once every 15 minutes. The qualified person shall maintain a record of the observations. Specifically, unless there is an immediate danger that the recipient will physically harm himself or others, restraint shall be loosely applied to permit freedom of movement. Further, the recipient shall be permitted to have regular meals and toilet privileges free from the restraint, except when freedom of action may result in physical harm to the recipient or others....

(j) Whenever restraint is used, the recipient shall be advised of his right,

pursuant to Sections 2-200 and 2-201 of this Code, to have any person of his choosing, including the Guardianship and Advocacy Commission or the agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act notified of the restraint. A recipient who is under guardianship may request that any person of his choosing be notified of the restraint whether or not the guardian approves of the notice. Whenever the Guardianship and Advocacy Commission is notified that a recipient has been restrained, it shall contact that recipient to determine the circumstances of the restraint and whether further action is warranted" (405 ILCS 5/2-108).

HOSPITAL POLICY

MacNeal Hospital provided an extensive policy and procedure manual for restrictions of patients' rights as well as use of restraints that are specific to the Behavioral Health Services Unit. Both policies are in accordance with the Mental Health Code and procedures are clearly outlined to ensure the lawful and respectful delivery of services.

CONCLUSION

In this case it was alleged that MacNeal Hospital did not follow Mental Health Code procedures when it placed a recipient in restraints, did not allow her to call her family or the HRA, and administered forced psychotropic medication absent an emergency.

The Code mandates that restraint shall be used only as a therapeutic tool to prevent a recipient from causing physical harm to themselves or others. In this case the record clearly demonstrates an imminent threat of physical harm when the recipient began "throwing a telephone at staff and trashing nurse's station by tearing phones out of circuits and pulling out cords", etc. The record thoroughly documents the facility's compliance with the restraint standards set forth by the Mental Health Code.

The Code also mandates that the recipient shall be permitted unimpeded, private, and uncensored communications with persons of their choice by mail, telephone or visits. This communication may be restricted only in order to protect the recipient or others from harm, harassment, or intimidation. In this case the record and the personal account of the recipient indicates that the recipient had used the phone to call 911 repeatedly when she was given the opportunity to use it upon admission and that nothing prevented her from making calls to whomever she chose at that time as provided in the Code. When staff wanted to monitor the calls to ensure that she was not repeatedly calling 911 as she did earlier, she became physically violent to the point of needing intervention according to the documentation, which included rights restriction notices.

Neither the hospital record nor the recipient's statements indicate that the recipient requested to call or to receive help in calling the HRA, even after she was

provided with copies of her petition, rights and status information, all of which included the number to the Illinois Guardianship and Advocacy Commission as required by the Code. And, the record shows that for all instances of forced medication and restraint the hospital staff offered to contact a person of the recipient's choice, however, she refused to have anyone notified. There is also documented indication that the recipient was allowed to make telephone contact with her father after the initial incident that morning.

The Code states that recipients shall be guaranteed the right to refuse medication and that if medication is refused, it shall not be given unless it is necessary to prevent the recipient from causing serious and imminent physical harm to themselves or others. The first forced medication episode which occurred at 7:00 a.m. described the behaviors of "throwing a telephone at staff", "trashing nurse's station", etc. At 4:40 p.m. the same day, the record describes "pushing staff", getting out of wheelchair and sitting on floor, danger to others." For both instances there are restrictions of rights notices which adequately reflect the hospital's justification for their decision to force-medicate.

The HRA does not substantiate the complaint that MacNeal Hospital did not follow Mental Health Code procedures when it placed a recipient in restraints, did not allow her to call her family or the HRA, and administered forced psychotropic medication absent an emergency.

SUGGESTIONS

Although the HRA finds no conclusive violation in this case, we encourage MacNeal to be sure in all instances that notices are completed even when monitoring a recipient's phone calls, as monitoring impedes communication, and that there are corresponding Progress Notes demonstrating the need to intervene. Calls to 911 are not in themselves a reason to monitor or restrict phone rights, but only if these calls become harmful, harassing or intimidating. Finally, ensure that when restricting phone usage, the restriction must not completely prohibit contact with the outside but prevent only those phone calls that are deemed to be harmful, harassing or intimidating (405 ILCS 5/2-103).