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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 08-030-9020

Northwestern Memorial Hospital

Case summary: The HRA substantiates the complaint that the recipient was restrained in violation of the Mental Health Code, but it does not substantiate that the recipient received psychotropic medication in violation of the Code.

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 Northwestern Memorial Hospital (Northwestern). It was alleged that the hospital administered psychotropic medication and restrained the recipient in violation of the Mental Health Code. If substantiated, these allegations would be violations of the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Northwestern is an academic medical center that provides comprehensive care in nearly every discipline. The Emergency Department (ED) is also a Level I Trauma System and offers emergency psychiatric services. The Norman and Ida Stone Institute of Psychiatry offers inpatient and outpatient services for adults and older adults with mental health and substance abuse issues and its inpatient facility has 55 beds.

To review these complaints, the HRA conducted a site visit and interviewed the Director of the Department of Psychiatry, the Manager of the Psychiatric Emergency Department, Director of Emergency Services, and the Associate General Counsel. Hospital policies were reviewed, and an adult recipient's clinical records were reviewed with written consent.

COMPLAINT SUMMARY

The complaint states that the recipient had received notice that his public transportation service had been terminated because he had taken a box cutter (which he states he carried with him at all times for protection) onto a bus a week earlier. He went to the bus office thinking that his services would be reinstated and when he arrived he was told that it would not. He became very angry and left the building, bought a cup of coffee, and was awaiting his ride home when police stopped him for questioning. He was taken to the police station where the decision was

made to transport him to Northwestern ED for a psychiatric exam. In the ED the recipient was restrained and given forced medication, and he was petitioned and admitted to the behavioral health unit for 5 days, during which time he was again administered forced psychotropic medication. The recipient is a 63 year old man, diabetic, with cancer of the prostate, who is unable to walk without a cane due to the effects of a stroke.

FINDINGS

The record (Emergency Nursing Flow Sheet) indicates that the recipient arrived in the ED at 12:29 p.m. on 5/22/08. In the section labeled Chief Complaint it states, "Psych". The Triage Note states, "Pt. threatened a bus driver with a knife. Started throwing furniture around in building. Alert, uncooperative, states he was walking down the street, drinking his coffee and 'police jumped on me'. Hostile. Using profanities." At 12:50 p.m. a Focused Assessment note is included in the record which states, "rec'd pt. awake Ato x 3 rambling on + flight of ideas pt. verbally abusive to staff uncooperative." In the checklist of Affect Appropriate, the boxes are checked for agitated, uncooperative, homicidal, security standby, hostile, and suicidal. The record shows that at 12:50 p.m. the recipient received Ativan 2 mg and Haldol 5 mg intramuscularly (IM). The nursing narrative states, "Pt. placed in restraints continues to be threatening and abusive to staff. Meds given as ordered." At 12:55 p.m. the record shows that the recipient received Ativan 1 mg and Haldol 5 mg and the notes state, "Continues to be agitated very hostile, verbally abusive."

The Emergency Department Restraint Flowsheet was initiated at 12:45 p.m. and continued at 15 minute intervals until 3:45 p.m. There is no statement of undue physical risk included in the record and the hospital Behavioral Health Restraint Utilization Order was left blank, which should record the need and purpose of restraints as well as the length of their application. There is a Restricted Rights of Individual form that is completed for the restraint and medication episode and the reasons given for the forced treatment are "Abusive, uncooperative, threatening."

Hospital representatives were interviewed regarding the recipient's admission to the ED. They noted that the recipient came into the hospital very angry, aggressive, and threatening, and that he remained a threat to staff throughout his time in the ED. The police officer reported to staff that the recipient had threatened a bus driver with a box cutter one week earlier. The police officer who transported the recipient remained in the hospital to give input into the completion of the petition and security personnel remained with the recipient and on notice throughout his triage and initial assessment. Due to the recipient swinging his cane, emergency staff were unable to approach him and thus diagnosis and care would have been impeded or impossible without the use of restraint and medication. Staff indicated that the psychotropic medication used to calm the recipient was customary for a patient who was unable to be evaluated or tested without injuring staff. Additionally, the patient's aggressive behavior, which was documented within the record, suggested that he was an imminent threat of harm to others. It was noted by the hospital representatives that injected medication is the route of choice for crisis situations and that patients would be offered oral medication in the behavioral health unit when there is customarily less emergent need to calm patients. Staff indicated that the recipient remained angry and aggressive throughout his time in the ED.

A petition for involuntary admission was completed for the recipient at 12:40 p.m. on 5/22/08. The basis for the assertion of mental illness is: "[Bus service] called CPD- said he threatened a driver with a knife and he was threatening people. CPD observed him to be agitated and yelling on arrival.... He is very loud and agitated on arrival in E.D." The first certificate is included and it was completed at 11:30 p.m. on 5/22/08. It states, "63 yr old male with unknown psychiatric history brought to ED by CPD due to aggressive, threatening behavior. Uncooperative in ED, requiring physical restraints and medication to maintain safety of staff. Unwilling to provide meaningful history. Persistently agitated in ED. Pt. deemed to be at imminent risk of harm to others. Psychiatric hospitalization required." At 11:05 a.m. on 5/23/08 the second certificate was completed and it states: "pt. threatening bus driver with a knife. Pt. brought to ED by CPD for aggressive threatening behavior throwing furniture in Pace office. Pt. attempted to assault staff in ED requiring physical restraints and medication. Pt. is not cooperative, unwilling to provide meaningful history. Pt. deemed to be at imminent risk of harm to others."

The Northwestern Rights of Clients form indicates that the recipient refused to sign and the Rights of Individuals Receiving Mental Health Services form indicates that "pt. refuses to sign." The General Consent form indicates that, "Pt unable to sign due to medical condition."

The Psychiatry ED Flow sheet indicates that the recipient was placed in Psych. ED at 4:25 p.m. and the time for his initial Psych. contact is listed as 4:20 p.m. Notes from the Psych. ED written at 4:54 p.m. state, "Patient placed into robes by this writer while removing clothing items from patient's reach a box cutter was found. Patient had been laying on sweatshirt knife found in right hand pocket of sweatshirt. This writer found patient in 3 point restraints in ED with right hand free." The Psych. Integrated Assessment is included. In it the physician states, "While there is no clear evidence of psychosis his aggression and persistent uncooperativity raises concern that he is at risk of harm to self or others." It also states, "I have determined that the patient does have the capacity to make a reasoned decision about the treatment [psychotropic medication]." At this time the physician states that the recipient is at imminent risk of harm to others and he recommends psychiatric hospitalization for further evaluation.

The Psych. ED event log indicates that at 7:55 p.m. on 5/22/08 the recipient was administered Haldol, Ativan and Cogentin, however the notes indicate that the patient agreed to the medication at this time. The rationale for the medication is given as "Patient used restroom-abusive to staff and security when told by [resident on call] he would need a CT scan he became verbally aggressive and refused to voluntarily take the procedure. Threw his cane at this writer when asked to return it." Later, at 2:20 a.m. the recipient was injected with Haldol 2 mg, Cogentin 1 mg, and Ativan 1 mg due to "Pt. angry and agitated trying to hit staff." For this administration there is no indication that the recipient agreed and there is no accompanying Notice of Restricted Rights form completed for the incident.

The recipient was transferred to the Stone Institute on 5/23/08 at 6:15 a.m. Initially, the record indicates (Psych. Social Work Notes), the recipient was oppositional, aggressive and irritable. At various times he refused medication, glucose testing, recreation, group and occupational therapy, and became increasing agitated when questioned by the staff. The

Discharge Summary indicates that his chief complaint was "I don't know why I'm here. I should be home." The recipient was not administered forced treatment as a result of these refusals. The record indicates that for the last two days of the recipient's hospitalization he was pleasant, cooperative, and the decision was made to discharge the recipient to his home on 5/27/08.

STATUTORY RIGHTS

The Mental Health Code describes a "mental health facility" as "...any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons" (405 ILCS 5/1-114).

The Mental Health Code states that when a person is asserted to be in need of immediate hospitalization, any person 18 years of age or older may complete a petition (5/3-600). The petition is to be accompanied by the certificate of a qualified examiner stating that the recipient is in need of immediate hospitalization. It must also contain the examiner's clinical observations and other factual information that was relied upon in reaching a diagnosis, along with a statement that the recipient was advised of his rights (3-602). Upon completion of one certificate, the facility may begin treatment, however at this time the recipient must be informed of his right to refuse treatment (3-609). Within 12 hours after his admission, the recipient must be given a copy of the petition and be allowed to contact persons of their choice (3-609).

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment. As a means to this end, it outlines how recipients are to be informed of their treatment and provides for their participation in this process to the extent possible:

"(a) A recipient of services shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan.

(a-5) If the services include the administration of electroconvulsive therapy or psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. The physician or the physician's designee shall provide to the recipient's substitute decision maker, if any, the same written information that is required to be presented to the recipient in writing. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2- 107...." (405 ILCS 5/2-102).

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient is a serious and imminent physical threat of harm to self 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).

A "medical emergency" exists "...when delay for the purpose of obtaining consent would endanger the life or adversely and substantially affect the health of a recipient of services. When a medical or dental emergency exists, if a physician or licensed dentist who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical or dental procedures may be performed without consent." (405 ILCS 5/2-111).

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

Restraint is a therapeutic tool that the Mental Health Code carefully regulates. Although its use is to prevent harm, 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

Northwestern policy and procedure (#3.15 Admissions, Transfers and Discharges) states that patients who present to the Emergency Department in need of immediate hospitalization for mental illness may be petitioned if, because of mental illness, the person is "reasonably expected to inflict serious physical harm to themselves or another in the near future." This may include threatening behavior or conduct that places another individual in "reasonable expectation of harm," or if the individual is unable to care for or guard himself from harm. In any case, a petition must be completed even if the patient "is involuntarily detained for psychiatric evaluation in the Emergency Department."

The hospital policy also mandates that "Upon commencement of services, or as soon thereafter as the condition of the recipient permits, every adult recipient, as well as the recipient's guardian or substitute decision maker, and every recipient who is 12 years of age or older and the parent or guardian of a minor person under guardianship shall be informed orally and in writing of the rights guaranteed by the Illinois Mental Health and Developmental Disabilities Code, which are relevant to the nature of the recipient's services program." (#4.0 Patient's Rights).

Additionally, the hospital policy allows patients to refuse services, including medication (#4.0). The policy states, "The psychiatrist shall inform you, your guardian, or substitute decision maker, if any, who refuses such services or alternate services available and the risks of such alternate services, as well as the possible consequences to the recipient of refusal of such services." It also states that whenever a patient's rights are restricted, "it is recorded in the patient's Progress Notes and a completed copy ofthe Notice Regarding Restricted Rights of Individual is forwarded to the patient...."

Northwestern has developed extensive policy and procedure regarding the use of restraint (#5.09 Use of Restraints) which comport with the Mental Health Code requirements. The policy directs the use of restraints for violent or self-destructive behavior, or for acute medical and post-surgical care. It states, "Restraints shall only be used in a therapeutic manner to prevent harm or injury to the patient and/or others" and "used in conjunction with or after exploring alternatives to the use of restraints." With regard to chemical restraint, the policy states, "Chemical restraint refers to the administration of pharmacological agents for the sole purpose of physically incapacitating an individual. NMH does not support the use of psychotropic medications in this

manner. Psychotropic medications are used in the 'treatment' of delirium resulting from a serious underlying medical condition."

CONCLUSION

In this case it was alleged that Northwestern Hospital administered psychotropic medication and restrained the recipient in violation of the Mental Health Code. The record indicates that the recipient was received in the ED for threatening, aggressive behavior and the primary nursing assessment recorded that he was agitated, uncooperative, homicidal, suicidal, hostile, and required a security standby. When he refused admission and treatment he was duly petitioned and given his rights information, however he continued to attempt to assault staff throughout his stay in the ED.

While still in the ED the recipient was assessed by a qualified examiner and this assessment determined that although the recipient had the capacity to make reasoned decisions about his medication, his persistent aggression necessitated involuntary hospitalization for further evaluation and treatment. A Restriction of Rights form was completed for the use of restraint and forced medication. The record shows that the recipient was placed in restraints and observed closely at 15 minute intervals by police and ED staff and that he was released from restraints after three hours, although he remained persistently aggressive. But, the file is missing the completed Behavioral Health Restraint Utilization Order which is the physician's signed acknowledgement that the patient received the rights restriction notice and that the restraint does not pose undue risk to the patient's health. Also, this form, in compliance with the Mental Health Code requirements, must outline the need and purpose for the restraints and its time limits.

There is one incident documented in the file that indicates that the recipient was administered forced psychotropic medication at 2:20 a.m. on 5/23/08 while still in the ED but there is no accompanying Restriction of Rights Notice. The record does indicate that the recipient was "angry and agitated" and trying to hit the staff. The HRA reminds ED staff that the Code also requires that whenever any of the rights of recipients are restricted, notice must be given to the recipient, a designee, and the facility director or designated agency (ILCS 405 5/2-201).

The HRA substantiates the complaint that the recipient was restrained in violation of the Mental Health Code but does not substantiate that the recipient received psychotropic medication in violation of the Code.

RECOMMENDATIONS

1. Follow Mental Health Code requirements specific to mental health recipients in the ED.

2. Restraint may only be used as a therapeutic means to prevent a recipient from causing harm to himself or others, upon a written order. The Mental Health Code states that the Physician's Order for restraint shall state the events leading up to the need for restraint, the purposes for which the restraint is employed, and the times/duration for them. Review with

emergency room staff the Code requirements for the ordering and application of restraints (405 ILCS 5/2-108).

3. The Code requires that restraint may not continue for longer than 2 hours unless within that time a nurse or a physician confirms, in writing, following a personal examination of the recipient, that the restraint does not pose undue risk to the recipient's health in light of the recipient's physical or mental condition (405 ILCS 5/2-108). Review with staff this procedure in their application and documentation of restraint events.