**FOR IMMEDIATE RELEASE**

HUMAN RIGHTS AUTHORITY-NORTHWEST REGION

REPORT 08-080-9008

FHN MEMORIAL HOSPITAL

Case Summary: the Authority substantiated complaints listed in the public record below. The facility's response immediately follows.

## INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation at FHN Memorial Hospital after receiving a complaint of possible rights violations in the services provided to a patient who has disabilities. The complaint alleged that the hospital shared the patient's protected health information without her authorization, which, if substantiated, would violate regulations under the federal Privacy Rules (45 C.F.R. 160 et seq.).

Located in Freeport, FHN Memorial Hospital has nearly 200 beds and provides an array of health services for people throughout northwestern Illinois. It is a subsidiary of the Freeport Health Network, or FHN.

We conducted a site visit where the matter was discussed with various staff members including those involved in the patient's care. Hospital policies were reviewed as were relevant sections of the patient's and her newborn son's medical records with written consent. The patient is an adult who has mild developmental disabilities and maintains her legal rights. Her son was born at the hospital on November 11th, 2007, and she held full parental rights until the Illinois Department of Children and Family Services (DCFS) assumed custody on November 27th, 2007. That information was verified by the patient's attorney and documentation in the medical records.

At issue is whether the hospital ignored the patient's requests to prohibit communications with her parents. The patient went to see her son during his extended stay in the hospital and found both parents already there with him. A nurse reportedly would not allow her in the room until the parents were done visiting.

## FINDINGS

The patient's physician who followed her from the start of pregnancy told us that the patient's mother helped her get to appointments and typically joined in on them with the patient's approval. The patient implied that she wanted her mother to be involved and never prohibited communications. He said that he spoke with the mother alone on a few occasions but about nothing of real substance or detail. Mainly, there were concerns for where the patient was going to live, which always seemed to be up in the air.

The patient's records from these visits included the physician's notes regarding his first contacts with her. He wrote in April 2007 that the patient came in for an initial prenatal visit; her mother accompanied her and it was noted that she would be coming to most of them. Another of the physician's entries from a week later stated that the patient gave permission to keep her mother involved as the three went on discussing future treatment options. The documentation also listed the mother as the emergency contact person.

Records from the patient's hospital stay for the delivery included a Conditions of Admission form. Signed by the patient, it provided consent for treatment and uses/disclosures of health information for treatment and stated that she had received notice about the hospital's privacy practices. A copy of privacy rights information was attached, which advised that with respect to friends, family and anyone else identified, the hospital may disclose information as may be related to their involvement in the patient's care unless requested not to.

The physician explained that when the patient was in the hospital he referred her to the social work department given unresolved concerns about living arrangements. A social worker said that the patient spoke very freely with her and had no objections and that their conversations centered on going home with her mother. Some time during the hospitalization she got a call from an Obstetrics nurse who said that the mother was there sobbing, upset about the patient's and the infant's prospects after discharge. The social worker met with the mother, comforted her and allowed her to express her worries. Another social worker said that she had been contacted by the mother about the same concerns and that she met with her too. Both said that their discussions were always on aftercare needs not medical treatment and that the patient never objected to them talking with her mother.

The social workers' documentation from the record showed that there were numerous occasions where they spoke in depth with the patient and her mother or other family members, sometimes together and sometimes separately. Subject matter was indeed on aftercare, and although the patient was noted to be ultimately making her own plans and decisions, there was no indication that she was unhappy with her mother or family being there or that she disapproved of the staff talking to them throughout her discharge on November 14th. Her baby stayed in the hospital until the end of the month. We followed up with the patient for her account, and she told us that she was fine with the hospital talking to her family and that she wanted them involved up to that point.

The newborn's records included another Conditions of Admission form that his mother signed on November 10th. She provided her approved visitors roster for the boy on November 14th before she was discharged, and her parents plus numerous family members from both sides and a few friends were listed.

Notes from the 12th mentioned that one of the social workers consulted with the DCFS and that the agency would be initiating an investigation that day. There were various entries in the meantime that referenced the boy's parents and his grandparents visiting without incident. According to the documentation, that changed on November 22nd when a nurse noted that the boy's mother said she did not want the maternal grandmother visiting the infant anymore. But another nurse noted on the next day that the grandmother and three other family members were there with him, and no mention of his mother being there as well. Per the record, the baby's father arrived about forty minutes later and asked for his son; the family said their goodbyes, and there was no confrontation. The mother arrived shortly thereafter and saw her family in the hall. A nurse wrote once again that the mother wanted to deny maternal family members' access to the infant. The nurse explained to her that either everyone came off the visitors list or it remained the same due to the inability to accurately police everyone that came in, especially if the names were going to change according to how she was getting along with them day to day. The nurse concluded her note by stating that the mother chose to leave the list as is, much to the father's disappointment.

We spoke to the nurse who made this notation. She verified the events as they were documented and said that she just wanted to avoid a hassle from the mother who would likely change her mind.

Notes on November 27th stated that the DCFS had taken protective custody of the baby and that only his parents could visit him. He was discharged to an agency representative later that day.

## CONCLUSION

FHN's Uses And Disclosures To Family, Friends, And Other Persons Involved In A Patient's Care or Payment For Care policy (#1.768.067) states that the hospital acknowledges that many patients want information concerning their condition, care or treatment to be shared with certain involved persons, such as family members and friends. Information that is directly relevant to such person's involvement in the patient's care may be shared, including location, general condition and death. If the patient is present, information may be shared if the patient has agreed, has been given the opportunity to object and did not, or the provider has inferred from the circumstances that the patient does not object to the disclosure, like when the patient has family or friends with them.

FHN's policy on the Notice of Privacy Practices (#1.768.077) adds that each patient is to be provided with an explanation of their privacy rights, which includes a statement advising the patient that information will not be shared with family and friends or anyone else if the patient so requests.

According to a maternity services policy on visitors, the newborn nursery visitors are to be "banded"; wearing identification bands that link them to a particular infant, and only banded family members shall be allowed to enter. Visitors are restricted to two banded persons at a time

and will include parents and grandparents if banded. Visitors will be monitored to assure the security of newborns. There are no references to visitors' lists.

Under federal Privacy Rules, protected health information is that, whether oral or recorded, created or received by a health care provider, which identifies an individual and relates to an individual's past, present or future physical or mental health or condition, the provision of health care, or the past, present or future payment for health care (45 C.F.R. 160.103).

> A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual's oral agreement or objection to a use or disclosure permitted by this section.
>
> (1) Permitted uses and disclosures.
>
> (i) A covered entity may…disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care.
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> (ii) A covered entity may use or disclose protected health information to notify, or assist in the notification of (including identifying or locating), a family member, a personal representative of the individual, or another person responsible for the care of the individual of the individual's location, general condition, or death.
>
> (2) Uses and disclosures with the individual present. If the individual is present for, or otherwise available prior to, a use or disclosure permitted by paragraph (b)(1) of this section and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it:
>
> (i) Obtains the individual's agreement;
>
> (ii) Provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or
>
> (iii) Reasonably infers from the circumstances, based the exercise of professional judgment, that the individual does not object to the disclosure. (45 C.F.R. 164.510).

It is clear in this case that the patient, the newborn's mother, orally consented to her physician and hospital staff to having her parents, particularly her mother, involved in the care being provided from the start of her pregnancy and throughout her own hospital stay. A problem

arose however when the patient, who had full parental rights at the time, requested that maternal family members be restricted from her son. The nurse gave her an ultimatum, that everyone or no one comes off, and the patient complied. She was given no other choice, not that she needed a choice since it was her right to choose whomever she wanted, and to change it as many times as she wanted, until the DCFS took custody. A violation is substantiated.

## RECOMMENDATIONS

The hospital's compliance director presented a few ideas on a plan to remedy the problem:

1. Revise the visitor policy to reflect parental rights as well as the organization's ability and process to adhere to those requests.
2. Include the visitor list for newborns as part of the permanent medical record.
3. Educate staff on parental rights regarding privacy of information as well as visiting discretions and requests for their newborns.

We think this plan is excellent, and offer no other recommendations.

## SUGGESTIONS

Whenever possible, seek written authorization from patients who express permission to have other persons involved in their appointments, treatment and/or discharge planning. And, be certain that all appropriate staff members provide patients with their opportunities to object.

Revise visitors' lists immediately whenever patients direct the staff to change them.

**RESPONSE**

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

December 17, 2008

Erin Wade, PhD., HRA Acting Chairperson
Human Rights Authority
Illinois Guardianship and Advocacy Commission
4302 North Main Street, Suite 108
Rockford, IL 61103-5202

Re: HRA Case Number 08-080-9008

Dear Mr. Wade:
Please consider this to be FHN's Response to the Northwest Regional Human Rights Authority of Illinois Guardianship and Advocacy Commission's investigation of the case listed above. We have received the Authority's Report and Findings from the investigation which was conducted. The Authority's Report, recommendations and suggestions have been thoroughly reviewed, discussed, and acted upon by all pertinent FHN employees.

Regarding the recommendations please note the following:

- Staff notification in writing of noncompliance with the visitor policy and adherence to parental rights was completed along with a remedial action plan by 11/1/2008.
- Infant Identification and Visitor policy revisions to be completed by 1/1/2009.
- Training of Obstetrical and Nursery Employees regarding policy and practice changes regarding visitors, parental rights and infant identification as well as reinforcement of obtaining written authorization of sharing of PHI will be completed by 2/1/2009.

FHN remains strong in its commitment to provide the highest quality care to our patients. We appreciate the opportunity to work with the Human Rights Authority to assure that we continually review and revise our policies and procedures to conform to the highest possible standards of patient care. If you should have any questions about any of the foregoing, please do not hesitate to contact me.

Respectfully,

Carolyn J. Beyer
FHN Director Risk & Compliance

*1045 West Stephenson Street, Freeport, IL 61032*
*Phone: 815-599-6000 Toll Free: 800-747-4131*
*Website: www.fhn.org*