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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 09-030-9004

Northwestern Memorial Hospital

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 did not follow Code procedures when it detained, restrained, and administered psychotropic medication to a recipient. 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 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. The Feinberg Pavilion is the inpatient teaching hospital.

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

FINDINGS

The complaint in this case alleged that a recipient was taken from her home by the Chicago Police Department on 2/28/08 after her landlord had reported her for reasons unknown to her. The police reportedly told her that she was being taken to Northwestern's emergency department for an eye exam and that she could leave the department at any time. The complaint also stated that in the emergency department the recipient was given forced medication and restrained without having been seen by a doctor and that when she attempted to leave she was again administered forced psychotropic medication. Additionally, the complaint alleged that the recipient was voluntarily admitted into the Stone Institute, but was then forced to go to the

Feinberg Pavilion for treatment of high blood pressure, which she had self-treated for many years. After being treated for two days for the hypertension problem, she was then released back to the Stone Institute.

It is unclear from the hospital record why the recipient was detained and treated in the emergency department. The Psychiatry Emergency Department (Psych ED) flow sheet indicates that she arrived on 2/28/08 at 10:35 a.m. having been brought in by the Chicago Police Department. There is no petition for involuntary admission in the record. The flow sheet indicates that the chief complaint was "combative." The Emergency Department Physician Medical Record states "69 year old female with history of apraxia and aphasia presents with complaint of vision difficulty states she was kicked by officer being brought in by police for reason not clear to patient….Very agitated with staff and placed in restraints. States has elevated blood pressure for 20 years but does not know normal." A note in the column titled Attending Physician Confirmation of CC/HPI with the Following Key Elements, Revisions, and Clarifications states: "69 year old African American female history + hypertension and CVA unknown psych illness presents via CPD for evaluation of abnormal behavior. CPD first encountered patient 2 days ago for well being check. At that time patient delusional but agreed to come to ED on Thursday (today). When arrived at hospital became combative, uncooperative, requiring physical/chemical restraint to protect herself/staff."

There is a statement in the Management/Plan section of the Triage Notes that states, "69 year old female with vision problems, hypertension and agitation placed in 4-point restraints, chemical sedation with Haldol 5 mg IM, Ativan 1 mg IM, consider head CT to rule out neurologic pathology. Haldol 5 mg IM + **2nd** dose." In the section titled Triage Note it states, "Patient brought to ED for wellness visit. Patient found in apartment, combative. Patient was not answering questions appropriately nor is she complying at present. Security and CPD at bedside to secure patient prep for chemical restraints and behavioral restraints…..Pt. resisting complying with requests, unable to redirect." Directly below this statement is a notation of the recipient's blood pressure, which states 117/92.

Hospital staff from the ED were interviewed regarding the recipient's admission into the hospital. They stated that although they did not recall this particular recipient, they were assured from the Triage Notes that she must have been very combative and aggressive from the time the police brought her into the hospital. They agreed that the documentation of combative behavior could have been more descriptive to better justify the forced treatment however they felt very sure that the recipient posed an immediate danger to herself or others. Staff did not feel that a petition was necessary because it was not clear that the recipient had objected to the treatment.

A Medicine Progress Note, written after the recipient had been admitted to Feinberg Pavilion stated, "Pt……became combative in ED, briefly requiring physical restraints after trying to leave, with a good response to a total of 10 mg of Haldol, plus Ativan and Cogentin." Staff were interviewed about this statement due to the fact that it indicated that the recipient attempted to leave the facility, indicating her refusal of services. They stated that the staff person who had recorded this statement had not been present at the time that the recipient was admitted but had written this statement second-hand. Staff did not feel that the record indicated that the recipient had refused her treatment in the ED.

The record contained a General Consent form for diagnosis, care and treatment, and for the area indicating that the patient had read and agreed to the statements on the form there is the statement, "Pt. uncooperative unable to obtain signature." It is dated 2/28/08.

The Emergency Nursing Flow Sheet indicates that at 10:50 a.m. the recipient was administered an intramuscular injection of Haldol 5 mg and Ativan 1 mg. There is no indication on the emergency department paperwork of the time that she was again administered another dose of the same medication although it was indicated that indeed she had been injected twice (see above). There is a Restriction of Rights form within the record and it states that at 10:40 a.m. the recipient was placed in restraints and received forced emergency medication for the reason given of "combative and uncooperative" and "comply with inquiry." The Emergency Department Restraint Flowsheet begins at 10:45 a.m. and indicates that 15 minute checks were completed until the restraints were removed at 12:05 p.m. The Restraint Utilization Order includes a statement of no undo risk due to medical condition, and includes the recipient's refusal of notification of contacts.

The record provides a Behavioral Health Restraint Utilization Order that indicates that the reasons for the restraint are "prevention of harm to others, agitation, and violent/aggressive behavior." It does not indicate what the violent behaviors were, and ED staff did not recall this recipient.

The record indicates that the time of the initial psychiatric contact was 7:35 p.m. on 2/28/08. At 1:00 a.m. the recipient completed an application for voluntary admission into the Stone Institute of Psychiatry and she was then transferred to the Stone Institute at 4:15 a.m. on 2/29/08.

The record from the Stone Institute indicates that while there, the recipient was stabilized, but remained very delusional and psychotic, and did not comply with her medications (both psychotropic and blood pressure) throughout the period of 2/29/08 until 3/09/08. The staff complied with the recipient's medication refusals and no forced medication was administered in this time period. The record indicates informed consent for medication and contains a decisional capacity statement that the recipient was unable to make reasoned decisions regarding her healthcare.

The recipient had been treated for elevated blood pressure both in the emergency department and in the psychiatric unit, however she did not tolerate the medication, and very often refused to take it. By March 9, 2008 her blood pressure had become consistently elevated to the point where her attending physician believed she was in a crisis situation. The recipient believed that she could self heal her high blood pressure but a physician note in her Psych Progress Notes states, "Refusing antihypertensive meds. Not able to appreciate the seriousness of her medical situation. Unable to appreciate the potential likely consequences to untreated severe hypertension. Thought processes are disorganized and tangential." On March 9, 2008, the recipient was discharged by her psychiatrist's order from the Stone Institute and admitted to the Feinberg Pavilion for emergency medical management of her hypertension.

The complaint alleges that the recipient was forced to transfer to the medical unit and was forced treatment for her blood pressure. The Progress Notes from March 9th state that "Patient is a high risk for elopement; strongly consider sitter, close proximity to nurse's station." The Northwestern staff reported that most of the patients that come to the Feinberg Pavilion from the Stone Institute are attended by sitters, whose job it is to monitor patients at high risk, and that the presence of a sitter does not indicate that patients are held against their wills. A Progress Note made on 3/9/08 states, "May use Haldol 5 mg IV, Ativan 2 mg IV, Cogentin, 1 mg IV prn for chemical sedation to assist with administration of medical treatment. If chemical restraints fail, may use physical restraints for as brief an amount of time as possible, in order to administer emergency medication." The record does not show that the recipient was administered forced psychotropic medication while she was a patient at the Feinberg Pavilion.

On 3/11/08 the patient was medically stabilized and was returned to the Stone Institute. The record provides a petition (dated 3/11/08) and two certificates (dated 3/12/08) for the recipient's involuntary admission and indicates that she was given a copy of her petition on the same day. According to the documentation, the petition and certificates were filed on 3/12/08.

Her Medicine Progress Note made on 3/11/08 states, "No indication at this time for the use of chemical/mechanical restraints to administer BP lowering agents as patient does not appear to have end-organ damage/complications from her HTN." Directly below this statement is the comment, "If chemical sedation becomes necessary (ie patient becomes symptomatic with regards to hypertension) can use Haldol 5 mg, Ativan 2 mg, Cogentin 1 mg IV every 4-6 hours." The staff were questioned regarding this statement and they reported that this is not a medication order but part of the forward thinking of the physician based on the past needs of the recipient. They indicated that this notation would never be followed by a nurse, but that a new physician's order would be required based on the assessment of the patient at the time of crisis. On 3/26/08 the recipient was court ordered to receive psychotropic medication, and the record indicates that she received written information regarding her medication.

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), which specifically lists the reasons (5/3-601). 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 medication (3-608).

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.
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> (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 [an emergency], or 2-107.1 [a court order]...(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 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).

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...emergency exists, if a physician...who examines a recipient determines that the recipient is not capable of giving informed consent, essential medical...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, a designee, the facility director or a designated agency, 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 safely 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.
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> (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....
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> (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 of ….the 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

The HRA was unable to determine from the documented record under what authority the Northwestern emergency department detained and treated the recipient in this case. The record indicates that the recipient was brought involuntarily to the emergency department by police and that she attempted to leave shortly thereafter, however there is no petition in the record stating why the recipient was in need of immediate hospitalization. The Triage Notes do not indicate that she presented a medical emergency, nor do they contain a statement that she lacked decisional capacity (she did not receive her first psychiatric contact until 9 hours after her forced treatment), so it is unclear why, without a petition, she was not allowed to leave before her right to be free from restraints and to refuse medications were restricted under the Mental Health Code per the restriction notices from her record. If she was agreeable to treatment, she did not sign a consent for it, and did not sign a voluntary application for admission until the next morning after her arrival. It was at this time that she was admonished of her rights, after she had been involuntarily held and treated for nearly a day.

Within ten minutes of her arrival at the emergency department the recipient was put into restraints and administered forced psychotropic medication. The documented statements of the attending physician on the medication order declared that the recipient was "very agitated with staff" and "became combative, uncooperative", however the collateral documentation of the treatment rationale for this intervention is very confusing and does not support an order for restraint and forced medication. Triage notes indicate that the recipient arrived at the hospital for a well being visit, another stated she was combative at her apartment, another stated that she became combative once she arrived at the hospital, another reported that she "is not answering questions appropriately, nor is she complying at present", and finally "became combative, uncooperative, requiring physical/chemical restraint to protect herself/staff." The restriction of rights form offered as the reason for her restraints and medication, "Combative and uncooperative, and "comply with inquiry." The record offers no documentation of behaviors that would indicate the need to prevent serious and imminent physical harm and there appears to have been no attempt at or consideration of less restrictive alternatives. Descriptions such as combative, uncooperative and agitated, without further explanation, do not imply potential serious and imminent harm. Although the Behavioral Health Restraint Utilization Order states that the recipient is "violent" there is no description of behaviors that would indicate violence and nothing in the emergency department record that would support this assertion.

The voluntary admission of the recipient to the Stone Institute after her emergency department visit is documented within the record. The recipient was then discharged from the Stone Institute for treatment in the Feinberg Medical Unit and forced to receive treatment for hypertension. For this admission, there is a statement within the record that the recipient lacked decisional capacity and due to her medical emergency, she received the medical treatment. When her medical condition stabilized and she was returned to Stone, a petition for involuntary commitment along with two certificates were completed and processed, in compliance with the Code.

The HRA substantiates the complaint that Northwestern Hospital did not follow Mental Health Code and Northwestern Hospital policy and procedure when it detained, restrained and administered psychotropic medication to a recipient in the emergency department.

RECOMMENDATIONS

1. Adhere to Mental Health Code (405 ILCS 5/2-200 et seq. and 5/3-600 et. seq.) and Northwestern Hospital policy (#3.15 Admissions, Transfers and Discharges) for completion of petitions as well as all admission requirements for recipients who are detained involuntarily in the emergency department. These requirements would include information on the right to designate a person or agency to receive notice, oral and written information regarding guaranteed rights under the Mental Health Code, information regarding the contact of family, friends or an agency including an advocate of the Guardianship and Advocacy Commission, information regarding the circumstances under which the law permits the use of emergency forced medication, and notation of the recipient's preferences for emergency forced medication.

2. Ensure that in all instances, forced medications and other treatments are given only to prevent serious and imminent physical harm and only after the consideration of less restrictive alternatives. Ensure that all staff understand and follow this Code requirement and document it within the clinical record (405 ILCS 5/2-102, 107).

3. Restraint may only be used as a therapeutic means to prevent a recipient from causing harm to himself or others. The Mental Health Code states that the Physician's Order for restraint shall state the causes leading up to the need for restraint, the purpose for which the restraint is employed, and the times/duration for them. Review with emergency department staff the Code requirements and hospital policy for the ordering of restraints and documentation within the clinical record (405 ILCS 5/2-108).