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**HUMAN RIGHTS AUTHORITY- CHICAGO REGION**

**REPORT 09-030-9005  
MacNeal Hospital**

The HRA substantiated the complaint that the facility did not follow Mental Health Code procedures when it admitted a recipient without the guardian's participation.

**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 admitted a recipient without the guardian's participation. If substantiated, these allegations would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et. seq.), the Illinois Probate Act (755 ILCS 5/11a-17 and 11a-23) 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, the Behavioral Health Services Nurse Manager, and a Behavioral Health social worker. Relevant program policies were reviewed as were the recipient's records upon written consent of the guardian of the person. The recipient is an adult.

**FINDINGS**

The MacNeal Hospital record (Intake Log) indicates that on 5/19/08 a call was received from a nursing home where the recipient had been temporarily residing. He had been a resident of a mental health center when he became very ill and required treatment at a hospital which resulted in his lapsing into a coma for 14 days. For his recuperation he was sent to a nursing home and while there, he was involved in an incident with another resident. After this physical altercation the decision was made to send him to MacNeal Hospital. The Intake Log shows that the nursing home contacted the Intake Department and reported that due to aggressive behavior, the recipient would be transferred to MacNeal on a completed petition. At this time the Intake Department was informed that the recipient had a guardian:

"Rec'd call from ....stated that pt. is in need of admission...Stated that pt. is reportedly MR, she has not seen pt. yet. Pt. has been aggressive....This writer called NH, pt. has been aggressive towards other residents, hit another resident and knocked another resident out of wheelchair....Guardian listed, attempted to call 2 numbers, not able to reach anyone or leave a message. This writer spoke with another nurse who stated that she has only worked with pt. two times, pt. has never talked with her, however, can understand what is being said. This writer talked with ....RN and assisted with completing petition. Will fax over Face Sheet, MAR and petition. This writer called pt.'s mother, listed as guardian left VM."

The nursing home that transferred the recipient to MacNeal forwarded a packet of information regarding the recipient's contact information, recent history, medication, and diagnosis which indicated Depressive Disorder NOS, Seizure Disorder and Moderate Mental Retardation. Staff from MacNeal indicated that the recipient's medications from the nursing home were continued without revision at MacNeal.

The petition for involuntary admission was completed at 9:30 p.m. on 5/19/08 and it asserts: "I was passing medication down 500 wing. I heard a resident yelling. When I looked up I seen [recipient] up on his feet throwing wheelchair with resident to the floor. Earlier [recipient] punched a resident in the left side of her face." The petition lists the names and phone numbers for both the father and mother of the recipient. The first certificate was completed at 10:50 p.m. and the clinical examiner states, "The Nursing Home sent the patient because the patient has demonstrated violent behavior, threw another resident from wheelchair and hit different resident in the face. Symptoms began approximately today. The patient has been under psychiatric treatment in the past. Patient has been diagnosed as mental retardation."

The recipient's guardian states that she was contacted by a MacNeal social worker late in the day on 5/19/08, exact time unknown. The social worker informed the guardian that the recipient had been admitted involuntarily due to aggression. The guardian remembers that the social worker stated that the recipient would then be signing a voluntary application for admission and consent for the medications listed on his MAR, and that he did not require the input of his guardian. The guardian, who had not been notified of the involuntary admission, adamantly objected, saying that the recipient was unable to give consent because of his disability. The recipient had recently been very seriously ill due to an incorrect medication regimen, and the guardian was concerned about the accuracy and appropriateness of his medication administration. The record did not contain a consent signed by the recipient and there is no statement of decisional capacity in the record. Hospital staff did state that the recipient's medication regimen was not altered from the treatment plan he brought with him from the nursing home.

The record indicates that at 10:30 a.m. on 5/20/08 the recipient signed a voluntary application for admission. The Progress Notes for 5/20/08 also state: ".....completed admission process with consent signed voluntary this a.m."

Hospital representatives were interviewed regarding the complaint and they stated that traditionally guardians are notified by phone of their ward's admission and they are encouraged to participate in all aspects of the recipient's care. In this case they felt that every effort had been

made and documented to notify the guardian of the recipient's involuntary admission, however they agreed that the recipient should not have been allowed to sign a voluntary once he was admitted, without contacting the guardian for her input (there is no indication from the record of the time of the guardian's notification). Staff confirmed that often recipients are brought in involuntarily and then sign a voluntary once they are on the behavioral health unit.

The recipient was discharged from MacNeal Hospital on 5/21/08 back to his residence at a mental health center.

### STATUTORY BASIS

The Mental Health and Developmental Disabilities Code allows any person 16 years of age and older to be admitted voluntarily if suitable (405 ILCS 5/3-400). As case law states that guardians may not consent to voluntary admission whenever the recipient/ward objects, see In re Gardner (1984), the Code mandates that from the time services begin, legal guardians and other substitute decision makers are to be included in all facets of care. Information about a recipient's rights must be shared orally and in writing with the adult recipient upon commencement of services, or as soon as his condition permits, and with the guardian. A recipient aged 12 or older and any guardian must also be informed upon commencement of services of the right to designate a person or agency to receive notice should the recipient's rights ever be restricted. The recipient is allowed to select a preference for forced emergency treatment and the facility is to communicate a selection to any guardian (405 ILCS 5/2-200). If any guaranteed right under the Mental Health Code is restricted, including the right to refuse medications, then the facility must promptly give notice to the recipient, his guardian, and to any person or agency so designated (405 ILCS 5/2-201).

Likewise, service planning and decisions on proposed treatment with psychotropic medications and electroconvulsive therapy include the recipient's and the guardian's views:

*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...or any other individual designated in writing by the recipient. (405 ILCS 5/2-102 a).*

*If the services include the administration of authorized involuntary treatment, the physician...or designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as the alternatives to the proposed treatment... 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...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 pursuant to the provisions of Section 2-107 [an emergency] or 2-107.1 [a court order]. (405 ILCS 5/2-102 a-5).*

Finally, the Probate Act of 1975 has the same intentions when it calls for appointed guardians to secure and oversee appropriate care for their wards and to be assured that providers will rely on their directives:

*To the extent ordered by the court...the guardian of the person shall have custody of the ward and...shall procure for them and shall make provision for their support, care, comfort, health...and maintenance.... (755 ILCS 5/11a-17).*

*Every health care provider...has the right to rely on any decision or direction made by the guardian...that is not clearly contrary to the law, to the same extent and with the same effect as though the decision or direction had been made or given by the ward. (755 ILCS 5/11a-23).*

## HOSPITAL POLICY

MacNeal Hospital procedure states:

*For all inpatient admissions, intake should determine if a patient is his or her own guardian and/or whether or not they have a power of attorney [POA] for healthcare. This applies to both patients who reside at home or at a nursing home regardless of age.*

*If the patient is coming from a nursing home or group home, request they send the guardian/POA documentation with the patient. Nursing homes should also send a copy of any living will and/or DNR documents.*

*For voluntary admissions, the guardian/POA must be contacted prior to admission; therefore, this must be done prior to the patient being transferred to MN. The nursing home or group home should contact the guardian or POA. If they are unable to contact the guardian/POA, the patient should be admitted as an involuntary admission. In a situation of risk of harm to self or others, do not delay transport to MacNeal when patient is in non-hospital setting (nursing home, group home). After diligent effort has been made to locate and notify the guardian/POA without success, the patient may be transferred and admitted on a P & C (petition and certificate). If this is the case, intake must notify the nursing staff that the patient is being admitted on a P & C and the patient should*

*not sign a voluntary. The psychiatric unit will contact the guardian/POA to inform them the patient is at MN.*

## CONCLUSION

In this case it was alleged that MacNeal Hospital did not follow Mental Health Code procedures when it admitted a ward without the guardian's participation. The fact that the recipient's admission started involuntarily and that he was asked to sign a voluntary application is allowable under the Code, provided that the facility thought he was suitable and the recipient did not object; neither was contingent upon the guardian's approval. The record shows that the guardian was called on the day of admission and that messages were left on her voicemail. When she finally was reached by a social worker, reportedly on the same day, she was told that the recipient was being asked to sign a voluntary and give consent for his medication and that her participation was not needed. The guardian knew the very extensive and serious medical history of the recipient as well as the fact that the recipient who is moderately mentally retarded could not understand his medication regimen, and yet she was not being consulted at the onset for planning the course of treatment. The Code mandates that from the time services begin, legal guardians and other substitute decision makers are to be included in all facets of care. Information about a recipient's rights must be shared orally and in writing with the adult recipient upon commencement of services, or as soon as his condition permits, and with the guardian.

The HRA substantiates the complaint that MacNeal Hospital did not follow Mental Health Code procedures when it admitted a recipient without the guardian's participation. The HRA acknowledges the cooperation of MacNeal Hospital in the completion of this investigation.

## RECOMMENDATIONS

1. Train staff in the Mental Health Code law and hospital procedure to include the guardian in all facets of the recipient's care, including written information about their guaranteed rights and notice should these rights be restricted (405 ILCS 5/2-200 and 2-201).

2. Train staff in the Mental Health Code law to ensure that guardians are given information regarding the recipient's preferences for forced emergency treatment (405 ILCS 5/2-200) and that this preference is noted in the recipient's record where it can be accessed should the need arise.

3. Train staff in the Mental Health Code law to provide guardians with written information regarding the side effects, risks and benefits of proposed treatment as well as alternatives (405 ILCS 5/2-102).

4. Train staff in the Mental Health Code law to include the guardian in treatment planning and review (405 ILCS 5/2-102 (a)).

5. Train staff to document guardian contacts and involvement in the clinical record.

## SUGGESTIONS:

1. The consent of the recipient to proposed psychotropic medication is predicated upon the extent to which the treatment information is consistent with the recipient's ability to understand the information communicated. For this reason the Mental Health Code requires that the physician determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. Ensure that a statement of decisional capacity is part of the clinical record and that it informs decision making regarding administration of electroconvulsive therapy or psychotropic medication (405 ILCS 5/2-102 a-5).

2. The Mental Health Code states that guardians must be informed of their right to refuse generally accepted mental health or developmental disability services and that if such services are refused, they shall not be given unless they are necessary to prevent recipients from causing serious and imminent physical harm to themselves or others and no less restrictive alternative is available. Ensure that staff are aware of this guaranteed right so that they allow guardians an opportunity to refuse treatment for their wards (405 ILCS 5/2-107).

3. MacNeal hospital policy states that *"For voluntary admissions, the guardian/POA must be contacted prior to admission;... If they are unable to contact the guardian/POA, the patient should be admitted as an involuntary admission."*

The Mental Health Code provides any person 16 and over the right to be admitted as a voluntary recipient upon application if the facility director finds him suitable; there is no stipulation that he must be involuntary whenever a guardian cannot be reached. We encourage MacNeal to look at the policy for potential conflict and be sure that recipients truly meet involuntary criteria before that route is initiated (405 ILCS 5/3-400 et seq. and 5/3-600 et seq.).