



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 09-030-9014

Cermak Health Services of Cook County

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Cermak Health Services of Cook County (Cermak). It was alleged that the facility administered forced psychotropic medication in violation of the Mental Health Code. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.) and the Administrative Code for County Jail Standards (20 Ill. Admin. Code 701 et seq.).

Cermak Health Services of Cook County is an affiliate of the Cook County Bureau of Health Services and the health care delivery system of the Cook County jail. It provides an array of on-site ambulatory and infirmary clinical services to approximately 1,000 mental health detainees housed daily in the jail. Cermak's Department of Mental Health Services provides screening and assessment services in the intake department of the Cook County Department of Corrections, infirmary level of acute psychiatric care in the Cermak building, intermediate care in the Residential Treatment Unit for males in Division VIII and for females in Division III, medication clinics in the general population, and twenty-four hour crisis assessment services located in the Reception and Classification (R&C) Diagnostic Center.

Psychiatrists and psychologists for mental health services are provided through a contract with the Isaac Ray Center, Inc., with oversight provided by the Cook County Board. The mental health specialists, nurses, social workers and case managers are Cook County employees. The approximate ratio of mental health recipients to staff is 100:1.

Cermak Health Services of Cook County is voluntarily not accredited by the National Commission on Correctional Health Care, although documentation has been submitted to begin the accreditation process. Additionally, the facility must meet American Correctional Association standards as well as the Illinois Department of Corrections Jail Standards.

To review these complaints, the HRA conducted a site visit and interviewed the Director of Mental Health Services, the Director of Psychiatric Services, the Director of Patient Care Services, and the Nurse Coordinator. Relevant hospital policies were reviewed, and records were

obtained with the written consent of the recipient. The recipient is an adult who maintains his legal rights.

COMPLAINT SUMMARY

The complaint alleges that the recipient received three forced injections of psychotropic medication after refusing his prescribed medication and requesting a grievance form. The complaint alleges that the recipient then suffered an adverse reaction to the medication and was not provided treatment for this reaction.

FINDINGS

The record indicates that the recipient was screened in the Reception and Classification Diagnostic Center at 5:30 p.m. on 11/25/08. The Department of Mental Health Services Brief Primary Psychological Screening Tool states that "Upon further screening from Dr. Pt. determined to be in need of Psych. Services." While still in Reception and Classification the Cermak Health Services Department of Mental Health Services Admission/Evaluation Form was completed. It indicates that the recipient was referred for evaluation "due to bizarre behavior in RCDC area". The Current Symptoms are listed as, "Pt. positive for FOI [flight of ideas], shows signs of paranoia, appears delusional, extreme religious conviction (not persecuting self). Continuously announces his protest to having to answer questions." His mental status exam states, "Patient is very talkative, cooperative, Ox4 [oriented to person, place, time and situation], Psychomotor agitation. Pt. shows signs of paranoia, speech: is rambling, stays closely associated to topic. Thought pattern: shifting and slightly disorganized. Denies A/V/H [audio/visual hallucinations] Denies S/H/I [suicidal/homicidal ideation]. Pt. appears delusional but no established false belief. Tends to shift, holy man, legal counselor, and political strategist, pt. memory recent and remote, maybe impaired, hygiene fair, impulse control poor, insight poor, judgment: poor, sleep: poor, appetite: OK, Denies feelings of helplessness." The Cermak Health Services Department of Mental Health Services Secondary Interview, completed at 7:54 p.m. the same day, lists the diagnostic impression as Bipolar Disorder NOS (not otherwise specified).

An Initial Psychiatric Assessment was completed on 11/26/08 and states, "Delusion behavior- about judge, and law- bond. Was supposed to appear in behavior clinic exam-suspicious of procedure of court and clinical behavior clinic. Pt. admitted to 2N on 11/25/08 for bizarre delusional paranoid behavior w/ looseness of thoughts, pressured speech. Evaluator is able to redirect pt. to answer questions and ...'I have no belief in court services, county, or psychiatric profession'. Pt. states he is not willing to take medication to expedite his transfer out of unit." This assessment identifies the recipient as a past mental health recipient and describes his mood as "expansive, very suspicious, and delusional." His diagnosis is listed as Bipolar Disorder Type I- manic and his scheduled psychotropic medications are listed as Depakene with PRN (pro re nata, as needed) Haldol, Ativan, and Cogentin.

The record contains a physician's order for medication, which appeared to be written in the RCDC on 11/25/08. It lists Depakene liquid, 750 mg PO bid, Haldol 5 mg PO/IM PRN, Ativan 2 mg PO/IM PRN, and Benadryl, 50 mg PO/IM PRN. There is no medical justification for the PRN medication listed on the physician's orders, although anxiety and agitation are noted

as purposes on the Medication Administration Record (MAR). The record contains a Medical Intake Form and a Consent to Physical Examination and Diagnostic Evaluation- Treatment and Transmittal of Problem List - both of which indicate that the recipient refused to sign. There is also an Emergency Room Record which indicates that the recipient refused to consent to examination on 11/26/08. There is no written information on medication side effects, risks and benefits to indicate that the recipient gave informed consent for medication and there are no Restriction of Rights documents within the record. Additionally, there are no documents to indicate that the recipient was asked to designate his preferences for emergency treatment.

Hospital staff were interviewed regarding the admission process for detainees with mental health issues. They stated that a mental health specialist completes an initial screening for mental health needs in the Reception and Classification area of the jail. If the detainee appears to have mental health issues the mental health specialist completes a second, more extensive screening, which may result in the physician's order for treatment within the mental health unit. The recipient is then sent to the Cermak emergency department for medical screening. Within 24 hours, and usually the morning following the admission into the R&C, the psychiatrist completes a psychiatric assessment. The psychiatrist reviews the side effects, risks and benefits of medications with the recipient for the purpose of consent and this is generally noted in the record, although it is not noted in the extant case. Staff reported and the record confirms that the recipient refused all examination for medical needs before being admitted to the behavioral health unit in Cermak.

A Cermak Unit Psychologist Admission Review and Assessment note is included in the record. It states, "Pt. states 'I am unwilling to answer questions posed on me by the government'. Pt. was explained the process of 2N and why it is important to comply with the interview. Pt. continued to refuse answering any questions. Pt. instead talked about 'evils' his quest as a Roman Catholic and his belief that the judge is involved in a Divine conspiracy against him which is why he is here. Pt. denies [suicidal/homicidal] [no intent/plan]. Pt. denied any psychotic [symptoms]. Pt. also stated 'I will not take any of those psychiatric medications. I plan to live as God intended in order to have salvation.'"

On 11/26/08 a Nursing Note was made at 1:15 p.m. which indicates that the recipient refused to take his medication, however, no other action appears to have resulted from this event. The MAR indicates that at 7:50 p.m. that evening the recipient was administered 5 mg Haldol IM (intramuscularly). The reason given is "psychosis". There is no Restriction of Rights document in the record for this event, and there is no notation in the record of an adverse reaction.

On 11/27/08 a staffing note (no time given) states, "Pt. refused interview. Steadily refusing scheduled medication. Entitled, agitated. Asking for meds for toothache. Suddenly complained of trouble walking, demanding to bond out asking to loan \$ from officers. Impaired judgment/insight, continue to offer Depakene, PRNs hold." No action on the part of staff appears to have resulted from this event. An entry made the same day at 11:30 a.m. states, "Pt. needed to be redirected several times. 'I can't move'. Pt. did not respond by moving when requested to be seen by medical student. Pt. approached officers approximately 5 minutes later to request to use the telephone. 'I think I can stand now'. Pt. refused medication and was given a PRN." There is a notation on the MAR which may correspond to this entry. It indicates that at

10:15 a.m. the recipient was administered Haldol 5 mg and Benadryl 50 mg IM. The reason given is "psychotic agitation /non-compliant [with] meds." There is no Restriction of Rights document in the record for this event, and there is no notation of an adverse reaction.

There is one more documented administration of IM medication in the MAR and it occurred on 11/27/08 at 7:00 p.m. The recipient was administered Haldol 5 mg for "psychosis". There is no event in the Progress Notes to correspond to this administration of medication. There is no Restriction of Rights document for this event, and there is no notation of an adverse reaction.

Hospital representatives were interviewed about the use of forced psychotropic medication. They stated that there is no indication from the record that the recipient objected to the medication and that sometimes recipients request or agree to injections because they realize that they will work faster. They also stated that Restriction of Rights documents are completed when recipients are given forced emergency medication or restraint and not PRN medication, because it is ordered "as needed". Hospital staff were divided on the issue of whether a Restriction of Rights form would be needed for PRN medication that is refused. Staff also reported that written statements regarding decisional capacity are not completed for the recipients and medication information for consent is given verbally, and noted in the record.

Hospital representatives addressed the issue of the recipient's request to file a grievance. They stated that although there is a need to improve the processing of grievances, they did not feel that the request for a grievance form would itself generate the response of forced medication. There is no indication in the record or from staff recollection that the recipient requested to file a grievance. Currently there is a Correctional Rehabilitation Worker (CRW) who aids detainees in the completion and processing of grievances, however this individual is not available as often as is necessary. The grievance must then be processed through the Program Services Department. If it is a medical issue it is then forwarded through the Cermak Quality and Improvement department where a response is generated. Staff stated that since the recipient in this case was only detained for three days, the grievance would probably have been disregarded.

Hospital representatives addressed the status of the recipient upon his discharge. They reported that the National Commission on Correctional Health Care determines the rights, regulations and policies of the hospital, and this regulation dictates that once a detainee is released by a judge, the facility has 4 hours in which to discharge him. If the detainee is discharged but medically unstable he is referred to the facility emergency department and transferred to the county hospital. If the recipient is discharged and mentally unstable, a petition is filed for involuntary commitment in the community. In this case the unit nurse determined, and the record confirms (Progress Notes), that the recipient was stable when he was released to his home at 11:00 p.m. on 11/27/08.

STATUTORY BASIS

The Mental Health Code specifically describes the requirements for the administration of psychotropic medication:

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 or 2-107.1 or (ii) pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. (405 ILCS 5/2-102).

The Code also guards all adult recipients against the use of unwanted services, including medications, unless it becomes necessary to prevent serious and imminent physical harm:

An adult recipient of services or the recipient's guardian,... if any, must be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker shall be given the opportunity to refuse generally accepted mental health...services, including but not limited to medication. 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. (405 ILCS 5/2-107).

Whenever a guaranteed right within Chapter II of the Code is restricted, including the right to refuse medication, the facility must issue a notice that describes the reasons for the restriction to the recipient and any person or agency he or she designates (405 ILCS 5/2-201).

Additionally, the Illinois Administrative Code for County Jail Standards, Section 701.160, states that psychotropic medication shall not be used as a disciplinary device or control measure (20 Ill. Admin. Code 701.160).

CERMAK HEALTH SERVICES POLICY

Cermak Health Services provided the HRA with their policy on the recipient's right to refuse treatment. It states:

A patient or the person authorized to give consent for the patient has the right to refuse treatment, examination, procedures or services unless it is determined that such exercise clearly and presently endangers self or others. In the case of a refusal which does not constitute a clear and present danger to self or others, the treatment, examination, procedures or services are not to be provided.

Additionally, Cermak's policy outlines the procedure for the authorization of involuntarily administered psychotropic medication:

Involuntarily administered psychotropic medication must be given only under the order and authorization of a physician/psychiatrist. Ideally, all treatment should be given with

the informed consent of the patient. Involuntarily administered psychotropic medication may be used when the patient poses an imminent or persistent threat to self or others or is gravely disabled.

CONCLUSION

The Mental Health Code (5/2-102 a-5) specifies that if recipients receive 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. Also, the physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about this medication. For medication, and all other treatment, the recipient always has the right to refuse services. If these services are refused, then the Code mandates that they will not be given unless they are necessary to prevent the recipient from causing serious and imminent physical harm (5/2-107).

In this case the recipient was administered three injections of psychotropic medication per the MAR. Although the record does not indicate that the recipient refused these medications, it is difficult to imagine that a person who had refused all services, and specifically psychotropic medication, from the time of his arrival into the jail, would willingly accept an emergency injection of the same. In at least one of these instances described on 11/27/08 the notes indicate that the recipient was given an injection **because** he had refused his prescribed medication, clearly violating his right to refuse treatment as guaranteed by law. Nowhere in the Progress Notes or the MAR is there an indication of dangerousness or threat of imminent harm on the part of the recipient. Additionally, it is not clear that the recipient ever received information regarding his medication in order to give informed consent. Nor is there a capacity statement to determine if he had the decisional capacity to make reasoned choices for his treatment, and Restriction of Rights forms were not completed as mandated by the Mental Health Code. Finally, there is no indication from the record that the recipient was given the opportunity to identify his preferences for emergency treatment.

The HRA substantiates the complaint that Cermak Hospital administered forced psychotropic medication in violation of the Mental Health Code.

RECOMMENDATIONS

1. Develop, implement, and train staff on policy and procedure for emergency medication that complies with the Mental Health Code and the Administrative Code. Instruct staff to follow the Mental Health Code and Administrative Code requirements and administer emergency medications only for behaviors that indicate the need to prevent serious and imminent physical harm and no less restrictive alternative is available (405 ILCS 5/2-107 and 20 Ill. Admin. Code 701.160).

2. Train staff to accurately document the incidents of forced emergency medication with specific descriptions of behaviors that indicate serious and imminent physical harm (405 ILCS 2-107).

3. Be certain that Restriction of Rights Notices are completed for every instance of rights restriction and that they comply with the Mental Health Code (405 ILCS 5/2-107 and 5/2-201).

4. Ensure that the recipient's preferences for emergency treatment are noted in the treatment plan and are accessible to staff should the need arise. Also, be sure that staff give due consideration to the preferences of the recipient regarding which form of intervention to use. (405 ILCS 5/2-102 a and 5/2-200 d).

5. The Mental Health Code states that whenever psychotropic medications are proposed the physician is to determine and state in writing whether the recipient has capacity to make reasoned decisions about the treatment. If capacity is lacking, the treatment may only be given in an emergency (5/2-107) or upon court order (5/2-107). Ensure that a capacity statement is completed and entered into the record.

6. Ensure that absent an emergency, recipients are advised in writing of the side effects, risks, benefits and alternatives to prescribed medications (5/2-102 a 5). Should the recipient refuse consent, note this refusal in the record.

7. Revise the hospital policy for the authorization of involuntarily administered psychotropic medication to eliminate the phrase "gravely disabled".

SUGGESTION

1. The administration of emergency psychotropic medication is a clinical determination made in response to a crisis situation and thus by definition is not appropriate as a standing order or PRN. The HRA suggests that Cermak staff make every effort to obtain consent for all psychotropic medication and prescribe emergency medication based on the determination of the recipient's danger to self or others at the time of his emergency situation.

2. All grievances should be addressed using the established grievance procedure and not discarded because the detainee is no longer being held in the facility.