FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 11-030-9023

John H. Stroger, Jr. Hospital of Cook County

Case Summary: The HRA substantiated the complaint that Stroger Hospital did not follow Code procedures when it admitted a recipient and held him for 19 hours in the hallway of the emergency department.

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 the Emergency Department of John H. Stroger, Jr. Hospital of Cook County (Stroger). It was alleged that the hospital did not follow Code procedures when it admitted a recipient and held him for three days in the hallway of the emergency department. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et. seq.).

John H. Stroger, Jr. Hospital of Cook County is an academic medical center and part of the Cook County Bureau of Health Services. The hospital Emergency Department serves over 124,000 patients per year. The hospital does not contain a behavioral health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Director of Patient Relations, the Director of Quality Assurance, the Chairman of Emergency Services, the Director of Cook County Health and Hospital System Risk Management, the Psychiatry Department Administrative Assistant, and the Psychiatry Department Crisis Worker. Relevant hospital policies were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint indicates that a recipient was sent to Stroger Hospital for pain medication and a psychiatric evaluation. He was then placed in a room and later moved into a hallway where he remained for three days. The complaint states that the recipient was in the facility for 24 hours before being evaluated by a student of psychology who took a lengthy statement of his history and current complaint. This student then completed the recipient's petition for

involuntary admission. Later, a certificate was completed on the recipient by an emergency department physician who had not met the recipient- he based his entire judgment of the recipient's mental health condition on the student's recommendation. The complaint indicates that the recipient requested a copy of the petition but was told he could not have it. Also, the recipient was placed in a hallway where he was able to hear other patient's personal mental health information.

FINDINGS

The record shows that the recipient arrived at the Stroger Hospital Emergency Department at 12:16 p.m. on 1/12/11 and was triaged at 1:57 p.m. Emergency Services notes written by the attending physician at 3:15 p.m. state: "57 y.o. male with history of hypomania and substance abuse complains of depression after experiencing a manic episode. The pt. denies suicidal ideation, audio/visual hallucinations. The pt. reports not having active homicidal ideation but is concerned that if he is provoked that he will harm someone. The pt. is seeking access to Psych and refill on medications for mood stabilizers and NSAIDS for his osteoarthritis." The nursing notes indicate the recipient had lab work completed by 8:30 p.m. and was awaiting medical clearance for transfer to a mental health facility. The record is not clear regarding the initial placement of the recipient while he awaited transfer.

At 6:30 p.m. on 1/12/11 a psychiatric evaluation was completed by a psychiatry "extern" (a student pursuing a doctorate in psychiatry or psychology who is in their second or third year of graduate school) which states, "57 yr old white male, pt reported history of rheumatoid arthritis. Pt. was in study at …hospital where he was taking a trial drug which helped but ended in Nov. and he felt withdraw from medication which made him psychotic. Pt. reports past hospitalization since 9 years ago when he was in a 'cocaine induced mania' and a danger to others. Pt. also lost his job and was arrested with a 30 day period of hospitalization. Pt. reported mania since Nov. including symptoms of poor judgment, impulsive behavior, rage, racing thoughts, grandiosity, intrusive with others, mild delusions, grandiosity, and thought others were out to get him, superhuman strength, gambling, and reckless shopping. Pt. reports poor sleep and states he takes generic Xanax prescription from a friend for sleep for 30 years. Pt. reports others called the police on him three time since Nov. because of his behavior- erratic and others feel threatened by him, Pt. reports in Nov he was more angry and erratic but is more calm and controlled now. Pt. denies current intent or plan, but states he worries he may harm someone else if provoked or if protecting others because he has a fantasy of himself as a protector. Pt reports a previous job as a BA therapist (mental health) at …hospital states he restrained others but was fired 3 years ago. Pt. is currently homeless and on disability. Pt. reports he was raging and out of control in dec due to personal injuries and losses but states he is better now and wants meds and therapy to ensure he does not get manic and out of control again. Pt. denied SI [suicidal ideation] or hallucinations. Pt reports past episodes of depression, labile mood. Pt. reports past cocaine abuse- up to 3 ½ grams in one sitting when he was using 7 years ago. Pt. reports he is trying to stop and last used Oct. pt. denied current dealing. Pt. reports to past marijuana use 1 x per 2 months, last use one week ago. Pt. reports drinking 6 oz. vodka a night and "a few beers" over the holidays. Pt. previously took Wellbutrin which made him manic. Cymbalta was helpful. Pt. currently seeking mood stabilizer. Alert, compliant, oriented x 4, hypomanic, affect full range, illogical, thought process- grandiosity and perservatory delusions.

No SI [suicidal ideation], poor judgment, average insight, normal rate of speech. No hallucinations. Pt. was circumstantial. Positive homicidal ideation. Pt. with identified circumstances. Imp: Bipolar D/O Most recent episode manic. Rec: Direct observation, Inpt. Psych hospitalization."

The recipient was placed on close observation from 9:00 p.m. on 1/12/11 until 5:00 p.m. on 1/13/11. The record contains the petition for involuntary admission completed by the emergency department extern on 1/12/11 at 8:45 p.m. It asserts that the recipient is a person with mental illness who is reasonably expected to engage in conduct which could cause harm to the recipient or others, who is unable to understand his need for treatment and if not treated on an inpatient basis is expected to suffer mental deterioration, and is in need of immediate hospitalization. The basis for the assertion is "57 year old white male with a dx of Bipolar, currently in a manic episode experiencing grandiosity, persecutory delusions, impulsive and risky behavior. Denied specific plan to harm a specific individual, but expressed fear he would be a danger to others if provoked or if he viewed he was protecting someone else. Pt. reported a past hospitalization for mania and a danger to others." The petition is signed and dated 1/12/11 at 8:45 p.m. There is no documentation to indicate that the recipient was given rights information or a copy of the petition. The certificate, completed by a clinical psychologist, is also included in the record. It also indicates that the recipient is in need of immediate hospitalization based on the following statement: "57 year old Caucasian male who is currently extremely hypomanic. Feels he has controlled symptoms w/o meds- last meds 3 years ago, circumstantial speech, grandiosity, paranoid ideation, and cannot guarantee he will not hurt others 'if provoked'. Not sleeping well." The certificate is signed and dated 1/12/11 at 9:25 p.m.

The recipient remained in the emergency department until his transfer to a mental health facility at 9:04 p.m. on 1/13/11.

Hospital Representatives' Response

Hospital representatives were interviewed about the complaint. They stated that the recipient was seen by the attending physician in the Emergency Department at 1:57 p.m on 1/12/11 and a number of tests were ordered to medically clear the recipient for a psychiatric evaluation. His psychiatric evaluation was performed by an Emergency Department extern, who then determined that he was in need of inpatient treatment and she completed the petition. Since the hospital does not have a behavioral health unit, the process was initiated to have the recipient transferred to a state mental health facility. Hospital representatives stated that they have worked to obtain priority over other Emergency Departments in transferring their large number of patients (50-70 per month) to inpatient treatment, however the process is demanding and cumbersome and this means that the wait for a bed may be 24-48 hours for Emergency Department patients. During this waiting period the Emergency Department beds may be needed and mental health recipients may be placed in the hallway under constant observation. At times, recipients may have to be evaluated in the hallway and although this is not the accepted protocol, it is commonly done, although every effort is made to provide a bed. Staff indicated that recipients have complained of this practice in the past. Generally speaking, patients who present with mental health issues are placed in a separate area where they can be evaluated by a psychologist (who is on duty 20 hours per day), however in the extant case this was not possible.

Hospital staff calculated that the recipient's total length of stay in the Emergency Department was 1 day, 6 hours, and 5 minutes with a period of time in the hallway of almost 19 hours.

Hospital staff were interviewed about the credentials of the staff person who completed the petition and certificate. They stated that the petition was completed by an "Extern", referring to a student pursuing a doctorate in psychiatry or psychology who is in their second or third year of graduate school. At the time of the incident in this case the student had a Master degree in Psychology. The examiner who completed the certificate is an Attending Psychologist with the Department of Psychiatry and had a Master Degree in Psychology.

Hospital staff were interviewed about the complaint that the certificate was completed based on the notes made by the petitioner and not on the psychologist's own observation. They stated that practice is not the appropriate protocol, however they said it could have happened. Also, they stated that it is not their practice to give the recipient a copy of the petition, since they are not admitted to a behavioral health unit at the hospital, and this document would be completed at the receiving facility. Staff were asked about the process of advising the recipients of their rights that are guaranteed under the Mental Health Code and they indicated that the rights are not posted, are not given in the petition and certification process, and would not initiate until the recipient is admitted to the appropriate facility.

STATUTORY BASIS

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 indicate that that the qualified examiner "personally" examined the recipient not more than 72 hours prior to admission. It must 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 certain rights (3-602), including that before the examination for certification the recipient must be informed of the purpose of the examination, that he does not have to speak with the examiner, and that any statements he makes may be disclosed at a court hearing to determine whether he is subject to involuntary admission (5/3-208). 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). As soon as possible, but no later than 24 hours after admission, the recipient must be examined by a psychiatrist or released if a certificate is not executed (5/3-610). Within 12 hours after his admission, the recipient must be given a copy of the petition (5/3-609). Also, within 24 hours, excluding Saturdays, Sundays and holidays, after the recipient's admission, the facility director must file 2 copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the recipient with the

court in the county in which the facility is located. Upon completion of the second certificate, the facility director must promptly file it with the court. Upon the filing of the petition and first certificate, the court shall set a hearing to be held within 5 days, excluding weekends and holidays, after receipt of the petition (5/3-611).

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient threatens serious and imminent physical harm to himself or others:

"An adult recipient of services…must be informed of the recipient's right to refuse medication… The recipient…shall be given the opportunity to refuse generally accepted mental health or developmental disability 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. The facility director shall inform a recipient…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).

The Mental Health Code (5/1-122) defines "Qualified examiner" as "a person who is (a) a Clinical social worker as defined in this Act, (b) a registered nurse with a master's degree in psychiatric nursing who has 3 years of clinical training and expertise in the evaluation and treatment of mental illness which has been acquired subsequent to any training and experience which constituted a part of the degree program, or (c) a licensed professional counselor with a master's or doctoral degree in counseling or psychology or a similar master's or doctorate program from a regionally accredited institution who has at least 3 years of supervised postmaster's clinical professional counseling experience that includes the provision of mental health services for the evaluation, treatment, and prevention of mental and emotional disorders. A social worker who is a qualified examiner shall be a licensed clinical social worker under the Clinical Social Work Practice Act."

The Mental Health Code (5/1-121) defines "Psychiatrist" as "a physician as defined in the first sentence of Section 1-120 who has successfully completed a residency program in psychiatry accredited by either the Accreditation Council for Graduate Medical Education or the American Osteopathic Association." Section 5/1-120 defines "Physician" as "any person licensed by the State of Illinois to practice medicine in all its branches and includes any person holding a temporary license, as provided in the Medical Practice Act of 1987."

The Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110 et seq.) states that "All records and communications shall be confidential and shall not be disclosed except as provided in the Act." The Act defines "recipient" as "a person who is receiving or has received mental health or developmental disabilities services."

HOSPITAL POLICY

John H. Stroger, Jr. Hospital Policy # 01-01-05 outlines the rights of patients to be informed about and participate in the development and implementation of their care plans. Specifically, it lists the components as:

1. The right to complete information regarding diagnosis, treatment, and prognosis in a way that he/she understands.
2. The right to complete information regarding the procedures or treatment prescribed and the risk and/or complications involved, including unanticipated care.
3. The right to refuse to give consent if he/she has not received an understandable explanation.

The Hospital also declares in Policy #04-05-01 that "An adult patient who possesses decision making capacity has the right to consent to or refuse treatment on his or her own behalf." To determine decision making capacity, it states:

"The physician is responsible for determining whether the patient has decision making capacity. In making this determination, the physician shall ascertain whether the patient has the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and has the ability to reach and communicate an informed decision in the matter. In this regard, the physician shall determine whether the patient understands each of the following elements: a. The nature and extent of his physical condition; b. the nature and extent of the proposed treatment; c. The risks involved in the proposed treatment; D. The risks involved if the patient refuses the proposed treatment."

Hospital Policy # 01-06-01 describes the procedures for health care professionals when a patient requests to be discharged against medical advice (AMA):

1. When a health care worker learns that a patient wishes to leave the Hospital AMA, the Attending physician responsible for the patient's care shall be notified immediately;
2. The Attending physician shall determine whether the patient has decisional capacity. Psychiatry can be consulted as needed. If it is determined that the patient lacks decisional capacity, a Bioethics consult must be obtained. Risk Management must also be notified;
3. The Attending physician will make him/herself available as soon as possible to discuss with the patient the risks of signing out AMA. This discussion shall take place in the presence of another health care worker. The substance of the discussion and the identity of the health care worker present for the conversation shall be documented in the patient's medical record;
4. During the intervening time from when it is learned that the patient wishes to leave AMA until the aforementioned discussion occurs, the patient shall be encouraged to remain in the Hospital;
5. If, after the discussion, the patient still wants to sign out AMA, he/she will be given the "Statement of Patient Leaving Hospital Against Medical Advice" Form #252 for his signature. If the patient refuses to sign this form, the fact shall be documented in the chart and on the form. In any event, the form will be placed in the patient's medical record.

CONCLUSION

The complaint in this case is that Stroger Hospital did not follow Mental Health Code procedures when it admitted a recipient and held him for three days in the hallway of the Emergency Department. Although the record indicates that the recipient was detained from 8:45 p.m. on 1/12/12 (upon the completion of the petition) until 9:04 p.m. on 1/13/12 (upon transfer), or 24 hours, it does reveal structural problems which denied the recipient his legal rights during his hospital stay. Primarily, the recipient was admitted, detained, and treated as a mental health recipient in need of immediate inpatient hospitalization through the completion of a petition and certificate, however the complaint alleges, and staff allow for the possibility, that the certificate was completed before the qualified examiner met the recipient. In addition to rendering the certificate invalid and falsified, this practice denies the recipient his guaranteed right to be informed of the purpose of the examination, to be given the right not to speak with the examiner, and to be informed that any statements he made could be disclosed at an involuntary treatment hearing. Additionally, the Emergency Department does not issue a copy of the petition to the recipient within 12 hours of his admission, a guaranteed right, and thus the recipient in this case was not made aware of the justification for his detention, and he was not given a copy or explained his rights as a mental health recipient. Additionally, the contact information for the Guardianship and Advocacy Commission is not posted, so mental health recipients have no recourse for advocacy when they may be in crisis and are being detained against their will for long periods of time. The fact that the recipient was also placed in a hallway for 19 hours and able to hear the personal mental health information of other patients only exacerbates the humiliation of his detention, but is also a violation of the Mental Health and Developmental Disabilities Confidentiality Act. The HRA substantiates the complaint that Stroger Hospital did not follow Code procedures when it admitted a recipient and held him for 19 hours in the hallway of the emergency department.

RECOMMENDATIONS

1. Review with staff and train them in the Mental Health Code requirements for the involuntary admission of mental health recipients, keeping in mind that once a recipient is petitioned and certified, that Mental Health Code procedural protections are initiated.

2. Ensure that certificates are completed by qualified examiners who have personally examined the recipient not more than 72 hours before admission and that the recipient is informed of the purpose of the examination, of his right not to speak with the examiner, and that any statements he makes may be disclosed at an involuntary commitment hearing.

3. Post a copy of the Rights of Individuals Receiving Mental Health Services and contact information for the HRA and Equip for Equality, both available at the Department of Human Services website for Mental Health and Developmental Disabilities forms.

4. Ensure the privacy of medical and mental health information by not interviewing or

evaluating recipients where their information can be heard by others.

SUGGESTIONS

1. Ensure that all entries in the clinical record are dated and timed.