FOR IMMEDIATE RELEASE

REPORT OF FINDINGS
INGALLS MEMORIAL HOSPITAL —– 12-040-9003
HUMAN RIGHTS AUTHORITY—– South Suburban Region

[Case Summary— The Authority made corrective recommendations regarding the allegations presented below but all of them were not accepted by the service provider. The public record on this case is recorded below; the case was referred for enforcement.]

INTRODUCTION

The Human Rights Authority (HRA) has completed its investigation into allegations concerning Ingalls Memorial Hospital. This general hospital has an adult and adolescent psychiatric unit. The specific allegations investigated are as follows: 1) a recipient was verbally and physically abused by the security staff and was denied access to the Emergency Department, 2) the recipient was later detained and restrained for about 48 hours without cause and authority, 3) psychotropic medication was administered without justification, 4) the recipient was not provided with prompt medical care for pain and irritation from pepper spray and was made to lie in clothing soaked with this burning chemical, and, 5) personal property was not returned upon his hospital discharge.

If substantiated, these allegations would be violations of the Mental Health and Developmental Disabilities Code (the Code) (405 ILCS 5/100 et seq.).

METHODOLOGY

To pursue the investigation, the hospital's Associate General Counsel, the Assistant Director of the Emergency Department/Attending Physician and a Registered Nurse were interviewed. Ingalls provided an audio disc of telephone calls between the paramedics and the hospital's staff as the recipient was being transported to the hospital on two different days. The complaint was discussed with the adult recipient who maintains his legal rights. The recipient's record was reviewed with written consent. Relevant hospital's policies were also reviewed.

COMPLAINT STATEMENT

The complaint stated that the recipient was transported by ambulance to the hospital's Emergency Department on August 2nd or 3rd, 2011 because of injuries sustained during a physical fight in the community. Once there, he reportedly went outside to smoke a cigarette and two security officers told him to sign-in or to leave the premises upon returning to the waiting area. It was alleged that the security officers were verbally and physically abusive while escorting him away from the hospital's grounds. One of them reportedly told the recipient to "shut the

[expletive] up or we will throw you off the premises." On the morning of August 4th, 2011, the recipient was reportedly pepper sprayed by the police and was escorted to the hospital for a mental health assessment. Once there, he was allegedly detained, restrained for about 48 hours and psychotropic medication was administered without authority and justification. It was reported that the hospital's staff failed to provide prompt medical care for pain and irritation from pepper spray and that the recipient was made to lie in clothing soaked with this burning chemical. Additionally, the complaint alleged that the recipient's personal property was not returned upon his discharge.

FINDINGS

Information from the record, interviews and program policies

On an audio disc, during transport to Ingalls' Emergency Department on August 2nd, 2011, the paramedics were heard telling the hospital's staff that the recipient has a history of Bipolar and that he had acknowledged smoking marijuana earlier on that same day. According to a corresponding Emergency Medical Services' (EMS) report, the recipient said that he had been physically beaten by gang members and that his house had been burned down. He was described as being agitated, restless and was "babbling incoherently." His vitals signs were taken, and he was strapped down during transport to the hospital for a mental health assessment. And, his care was reportedly turned over to the hospital's staff without incident at 8:50 p.m. Ingalls' Associate General Counsel told the HRA that the hospital does not have a record of this visit other than the EMS's records. She said that although the recipient told the paramedics that he had been physically beaten, there were no bruises observed by the staff. She reported that one of the paramedics remembered that the recipient was asked to complete the registration sheet when he was escorted to the hospital's greeter's desk. But, he resisted having a medical screening done because he was concerned about being transferred to another hospital for a psychiatric evaluation. The investigation team was also informed that the recipient has a history of leaving the hospital before triage or being seen by a physician.

The HRA requested to interview the security officers who were assigned to the hospital's Emergency Department when the recipient arrived by ambulance on the 2nd. The hospital's Counsel repeated that the security officers did not remember the recipient's visit nor did they have any interactions with him on the above day. She said that the security personnel are required to complete a written report concerning any kind of disturbance, but there was no such report. On questioning about security cameras in the Emergency Department, the hospital's Counsel reported that she had reviewed the recordings on the tape but did not find anything concerning the alleged incident. She also said that the tape erases itself after a certain amount of time has passed.

On August 3rd, 2011, another EMS' report indicated that the recipient was in handcuffs when the paramedics arrived to transport him to the hospital's Emergency Department for a mental health assessment. He was screaming while lying on the ground because he had been pepper sprayed by the police. According to the report, the recipient had refused to allow his vitals to be taken. His eyes were repeatedly flushed with saline and some relief was reported. He was described as being [sic] and aggressive. He allegedly said that he had robbed a bank earlier and was going to sue everyone. As before, he was turned over to a nurse without incident

at 12:39 a.m.

According to nursing entries, the recipient was still in handcuffs, and he was accompanied by the police upon his arrival to the hospital. The hospital's staff were informed that the "patient was punching cars [and was] acting aggressive towards others." He was described as being alert, cooperative and well-groomed. His respirations and skin including color were normal upon examination. The nurse noted that the pain scale was not applicable. The recipient reportedly started shouting at the staff, he was unable to follow basic tasks, and the hospital's security department was notified. A sitter was assigned to monitor the recipient for safety reasons such as combativeness and suicidal ideations. At 12:56 a.m., four-point restraints were ordered, and "patient exhibits severely aggressive or destructive behaviors to self or others" was checked on the form. Also, a nursing entry stated that restraints were needed because of possible injuries from moving his extremities and aggressive behavior toward others. He reportedly was placed in a gown, and his belongings were secured by the guards before restraints were applied. The recipient was placed in restraints at 1:00 a.m., but there was no ending time written on the order or restriction notice found in the record. Nor was the order signed by a physician or another appropriate clinician. We also note that the recipient's belongings later were labeled and placed in a bin, according to the record.

At 1:28 a.m., a certificate for immediate hospitalization was completed by the initial Attending Physician who affirmed that rights were admonished prior to examination. According to the certificate, the recipient presented with paranoid delusions and aggressive behavior. It asserted that the recipient was definitely a danger to self or others. At 1:30 a.m., the hospital's Central Intake Worker completed a petition, which allows for a recipient's involuntary detention for a mental health assessment under the Code. The petition documented that the recipient was very psychotic and that he was observed hitting at cars on the street. He reportedly was yelling, profane, and he made threatening statements to the staff. The petition further stated that he exhibited low impulse control and that his insight was poor. At 1:35 a.m., the same Attending Physician recorded that the recipient's eyelids were normal upon examination. His pupils were equally round and reactive to light. His respiratory, heart rate, skin, range of motion etc were also normal. The recipient reportedly presented with agitation, and his remote and recent memory was poor. He exhibited delusions of persecution and was disconnected with reality. It was documented that blood work and an alcohol screening were done around that same time. Later, a urine screening showed that he was positive for marijuana.

According to the flow sheet, the recipient was monitored, and his behaviors were recorded every 15 minutes while in restraints. He was sleeping or calm from 1:15 a.m. to 2:15 a.m. He was described as being verbally abusive for the next thirty minutes. The Medication Administration Summary documented that Ativan 1 mg and Haldol 5 mg intravenously (IV) were given at 2:40 a.m. and 3:17 a.m. respectively. The nurse later wrote that Ativan and Haldol were given together at 2:40 a.m. and that the medication's "actions and side-effects" were explained to the recipient prior to their administration. Documentation indicated that the recipient was sleeping from 3:15 a.m. until 9:00 a.m. except for 15 minutes when he was quite. At 5:31 a.m., the nurse recorded that the recipient was easily wakened and shouted out at times. His circulation and range of motion were intact, and there was no acute distress observed. He was reportedly updated on his plan of care. He was quiet at 9:15 a.m. His hand restraints were

removed so that he could eat breakfast minutes later, and all restraints were discontinued at 10:15 a.m. The recipient was restrained for about 9 ½ hours, but the record contained only the initial order that lacked an ending time for the invention.

According to the record, the recipient was escorted to the bathroom about two hours after restraints were discontinued and then he went back to sleep. He requested some wet towels and told the hospital staff that he still had some burning sensation from the pepper spray at 6:51 p.m. He was medically cleared for transfer to a state-operated facility, but his belongings could not be located when the ambulance arrived for transport on August 4th. He reportedly informed the nurse that he had a pair of jeans, a book bag and no shirt. The recipient told the HRA that he also had a pair of designer gym shoes and that his birth certificate and state identification card were in his book bag.

In regard to the recipient's hospital visit on August 3rd, 2011, the staff interviewed repeated information documented in the record such as the recipient's eyes were flushed with saline during the ambulance ride to the hospital and that some relief was reported. He was shouting at the staff, he was unable to follow basic commands and suicide precautions were implemented upon his arrival to the hospital. The hospital's security department is notified when a recipient arrives in handcuffs. They also are called for other safety concerns involving the staff. According to the nurse, the recipient was a danger to self and others, and he did not want to be examined. A sitter was assigned to monitor the recipient because he was combative. Also, the physician and the nurse tried to calm the recipient by talking to him before restraints were used. She said that the recipient tried to hit the hospital's security officers, but this was not documented in the record.

The Assistant Director of the Emergency Department (the second Attending Physician who provided the most care to the recipient) said that sometimes patients might be agitated and yelling when they arrive by ambulance. He said that patients are not automatically restrained and that lesser interventions are attempted first. He explained that a posey and then a jacket would be used but hard restraints are only used when necessary. The nurse is responsible for assessing the patient's breathing and skin every hour when restraints are used. According to the nurse, recipients are assessed when restrained, but this is not always recorded in the chart. They are informed what behaviors they are expected to exhibit for release from restraints. Recipients are not released from restraints if they are agitated. The nurse told the investigation team that she believes that a recipient should not be released from restraints if the person is shouting. She said that she would wake up a recipient to assess the person's ability to cooperate, to perform basic tasks and dangerousness to self or others.

The hospital's Counsel reported that the staff receive annual training on the use of restraints. The HRA was provided with documentation that the nurse interviewed had completed training on restraints in November 2010 and 2011. We note that the sitter reportedly assigned to monitor the recipient during the restraint episode could not be interviewed because she only works at the hospital when her school schedule allows this. We were told that the nurse and the paramedics recalled that the recipient was immediately changed out of his clothing and that his belongings were bagged to prevent contaminating others prior to the intervention. The hospital's Counsel said that the recipient's belongings might have been discarded because of residual

contamination from the pepper spray and that he should follow the hospital's claim process for lost items.

According to the hospital's Counsel, Haldol and Ativan were administered for acute psychosis under Section 112.90 of the Administrative Code which allows for emergency medication. The Assistant Director of the Emergency Department further explained that medication is ordered based on the recipient's symptoms. He said that Haldol and Ativan are given for delusions and agitation respectively. The nurse reportedly shared information orally about the medications with the recipient. He was comfortable around 9:00 a.m. The Assistant Director of the Emergency Department said that he did not order the restraints and medications used in the recipient's care, but he put the orders in the hospital's system for the initial Attending Physician. We noticed that the record documented that he became the treating physician at 1:44 a.m. and that he had ordered Haldol and Ativan at 2:40 a.m.

Ingalls' "Psychiatric Patients Care" policy states that the Emergency Department physician will determine whether the patient needs psychiatric care based on an evaluation. It states that all patients must be medically cleared. The Department of Behavioral Health Central Intake will evaluate the patient. The Central Intake Counselor is responsible for notifying the patient's private physician or psychiatrist on call. A petition for involuntary hospitalization should be completed, and the intake counselor will facilitate the transfer process when the patient is medically cleared.

The hospital's patient rights statement includes rights as follows: 1) to receive care in a considerate manner, 2) to be free from mental, physical, verbal and other kinds of abuse, 3) to refuse treatment to the extent permitted by law, and, 4) to receive appropriate assessments and pain management.

The hospital's Emergency Department policy on prevention and management of violence states that the risk of harm to self and others must be assessed when a violent or potentially violent person is identified. These patients are described as being frequently frustrated, angry, insecure and frightened. The policy includes interventions as follows, 1) verbal and social interventions to assess the patient's responsiveness and, to begin diffusing and managing the situation, 2) physical restraints, 3) the hospital's security employees, 4) the emergency alert and alarm systems such as security camera monitoring in entry ways, waiting areas, hallways and other strategic locations, 5) police intervention, and, 6) other security measures such as the hospital's screening process, regular staff training on violent patients, and placing the patient in a gown and securing their belongings.

According to the hospital's "Restraint/Seclusion" policy, seclusion is limited to a designated area in the Emergency Department. Each patient has the right to be free of restraints unless they are medically necessary. Restraints should not be used as a means of coercion, discipline, convenience, or retaliation by the staff or in any manner that causes physical pain or harm to the patient. It states that the least restrictive type of restraint will be used. A registered nurse may initiate restraint or seclusion prior to a physician's order. But, the nurse must obtain a physician's order as soon as possible but no longer than one hour after the intervention is implemented. The initial and subsequent restraint orders shall expire in four hours for patients

18 years of age and older. The physician or qualified examiner must conduct a face-to-face assessment within one hour of restraint application. The policy states that patients will be monitored and reevaluated while in restraints. The patient's record shall include: 1) the reason for the restraint or seclusion, 2) the specific behavior leading up to the restraint, and, 3) the criteria for discontinuation of the intervention. It further directs that restraints should be discontinued at the earliest possible time. Examples of criteria for discontinuation include: 1) Cessation of behavior leading up to restraint, 2) Alternative interventions have been effective, and, 3) The patient is oriented to the environment and able to follow directions.

The hospital's "Psychotropic Medication Education" policy states that information concerning the proposed medications will be provided prior to administration. It states that the recipient, guardian or legal representative will be informed in language that they can understand why the medication is necessary in the presence of continuing symptoms, the potential benefits, side effects, harm, consequences of being non-compliant with medication and other alternatives to the medications ordered if any.

According to the hospital's "Lost Person Property Claim Process" policy, patients and family members assume full responsibility for all personal property that the individual chooses to keep with them during their stay. Ingalls is not responsible for items that are not secured by the hospital's Cashier or Security Department. The policy states that the patient should file a written claim of within ten days of the loss to be reviewed for partial reimbursement.

CONCLUSION

According to the Code,

> 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. (405 ILCS 5/2-102).
>
> 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 …. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to Section 5/2-107 …. (405 ILCS 5/2-102 [a-5]).
>
> (a) An adult recipient of services … must be informed of the

recipient's rights to refuse 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 harm to the recipient or others and no less restrictive alternative is available…. (b) psychotropic medication or electroconvulsive therapy maybe administered under this Section for up to 24 hours only if the circumstances leading up to the need for emergency treatment is set forth in writing in the recipient's record. (405 ILCS 5/2-107 [a] [b]).

Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. (a) Restraint shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker or registered nurse with supervisory responsibilities…. the order shall state the events leading up to the need for restraints…. the length of time restraints is to be employed and the clinical justification for that length of time…. (b) in no event may restraint continue for longer that 2 hours unless a personal examination is done and it is determined that the restraint does not pose an undue risk to the recipient's health…. (f) the recipient shall be observed by a qualified person as often as is clinically appropriate but in no event less than once every 15 minutes…. the recipient shall be permitted to have regular meals and toilet privileges free from the restraints, 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, to have any person or his choosing including the Guardianship and Advocacy Commission notified of the restraint under Sections 5/2-200 and 5/2-201. (405 ILCS 5/2-108).

Every recipient of services in a mental health facility shall be free from abuse and neglect. (405 ILCS 5/2-112).

Whenever any rights of a recipient of services are restricted, the recipient shall be promptly given a notice of the restriction. (405 ILCS 5/2-201).

Whenever a petition has been executed …, and prior to this examination for the purpose of certification of a person 12 or over, the person conducting this examination shall inform the person being examined in a simple comprehensible manner of the purpose of the examination; that he does not have to talk to the examiner; and that any statement he makes may be disclosed at a court hearing on the issue of whether he is subject to involuntary admission. (405 ILCS 5/3-208).

> The petition shall include a detailed statement of the reason for the assertion that the recipient is subject to involuntary admission, including the signs and symptoms of a mental illness and a description of any acts, threats, or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence. (405 ILCS 5/3-601 [b]).
>
> When a recipient is discharged from the mental health or developmental disabilities facility, all of his lawful personal property which is in the custody of the facility shall be returned to him. (405 ILCS 5/2-104 [c]).

The complaint stated that the recipient was verbally and physically abused by the security staff and was denied access to the Emergency Department. Ingalls' Associate General Counsel told the HRA that the hospital does not have a record of the recipient's visit on August 2nd, 2011 except for the Emergency Medical Services' documentation indicating that he was transported by ambulance to the hospital on the alleged incident day. The HRA requested to interview the security officers on duty when the incident supposedly occurred but was told that they did not remember the recipient's visit, per the hospital's Counsel. She also said that the security officers would have been required to complete a report if there had been an altercation but no incident report exists. The Authority cannot substantiate the complaint as presented above without more evidence. No violations of Sections 5/2-102 (a) or 5/2-112 of the Code or the hospital's patient rights statement regarding humane care and freedom from abuse were found.

The complaint stated the recipient was detained, restrained for about 48 hours and psychotropic medication was administered without cause and authority. The record indicated that the recipient arrived by ambulance to the hospital on August 3rd, 2011 at 12:39 a.m. He reportedly started shouting at the staff and was unable to follow basic tasks. The hospital's security department was notified and lesser restrictive interventions such as a sitter failed to calm him. It was documented that restraints were needed because of possible injuries from moving his extremities and severely aggressive or destructive behavior to self or others. A nurse told the investigation team that the recipient was hitting at the security officers, but this was not documented in the record. According to the flow sheet, the recipient was in restraints at 1:00 a.m., and the intervention lasted for about 9 ½ hours. He was sleeping from 3:15 a.m. until 9:00 a.m. except for 15 minutes when he was quiet. His hand restraint was removed at 9:21 a.m., and all restraints were discontinued at 10:15 a.m. The initial order lacked important information such as the ordered duration for restraint and the physician's signature or another clinician deemed appropriate under the Code. There were no orders for continuation of restraints or documented indication of physical harm found in the record beyond the initial order.

The record contained a petition and certificate completed on August 3rd, at 1:30 a.m. and 1:28 a.m. respectively. Illinois law permits the detention of persons subject to immediate involuntary hospitalization under the Mental Health Code. The physician affirmed by signature that rights were admonished prior to examination. Haldol and Ativan were administered at 2:40 a.m., and the restraint record documented that the recipient was verbally abusive around that

same time. There was no indication of what the recipient said or whether he provided informed consent first or was given the opportunity to refuse. Also, there were no restriction notices found in the record. According to the hospital's Counsel, restriction notices are not provided because the hospital's Emergency Department is not a "mental health facility."

The complaint is substantiated under Section 5/2-107 (a) of the Code because verbal abuse by itself does not justify the need for emergency medication. The hospital violates Sections 5/2-108 and 5/2-201 of the Code's requirements that the duration for restraints shall be included on the order, and the right to notify any person of his choosing of the restriction. The hospital violates it restraint policy stating that patients have the right to be free of restraints unless they are medically necessary and that this intervention should be discontinued at the earliest possible time. By documentation, restraints were continued following a noted absence of physical harm (a more than reasonable five-hour period when he was sleeping). There was no clear indication that the recipient was reevaluated for the need to continue restraints. No violations of the hospital's policies concerning psychotropic medication education or psychiatric patients' care or Sections 5/3-208 or 5/3-601 (b) of the Code were found.

The complaint stated that the recipient was not provided with prompt medical care for pain and irritation from pepper spray and was made to lie in clothing soaked with this burning chemical. The record documented that the recipient's eyes were flushed with saline and some relief was reported during his transport to the hospital. Once there, the recipient's clothing was removed because of the pepper spray, and he was examined by a physician at 1:35 a.m. It was documented that the recipient requested some wet paper towe1s and said that he still had some burning sensation from the pepper spray at 6:51 p.m. This was the only mention that the chemical was still burning the recipient. The complaint is not substantiated. No violations of Section 5/2-102 (a) or the hospital's patient rights statement regarding humane care and appropriate assessments and pain management were found.

The complaint that the recipient's personal property was not returned upon his hospital's discharge is substantiated. According to the hospital’s Counsel, the recipient's items were possibly discarded because of the pepper spray and he should follow the hospital's policy regarding filing a claim concerning this issue. The complaint is substantiated. A violation of Section 5/2-104 (c) was found.

RECOMMENDATIONS

1. The hospital shall follow Section 5/2-107 (a) requirements that emergency medication should only be given if there is a risk of serious and imminent physical harm documented in the recipient's record.

2. Ensure that recipients are given the opportunity to refuse medication in absence of a documented emergency pursuant to Section 5/2-107 (a).

3. Follow Section 5/2-108 concerning the information required on the restraint order.

4. Release recipients from restraints when the threat of physical harm no longer exists under Section 5/2-108 and program policy.

5. Complete restriction of rights notices whenever guaranteed rights within the Code are restricted, including the requirement to note if the recipient was asked if any person or agency is to be contacted per Sections 5/2-108 and 5/2-201.

6. Revise the restraint policy to state that initial restraints maybe ordered up to four hours based on the recipient's behavior.

7. Revise the restraint policy to include issuing notices to all mental health recipients when rights are restricted.

8. Train all appropriate emergency room staff regarding emergency medication and issuing of rights restriction notices under Sections 5/2-107 (a) and 5/2-201, and properly completing restraint orders.

9. The Authority understands that the recipient's belongings were discarded because of contamination from pepper spray, but the hospital should have made some effort to contact the recipient about filing a claim to resolve this issue to satisfy Section 5/2-104 (c) of the Code.

SUGGESTIONS

1. Use exact language that describes what occurred. If a patient tries to hit a staff person, document that the patient tried to hit the staff person as opposed to "aggressive behavior toward other." Being verbally abusive without documented implication of imminent physical harm does not meet the standards for the use of emergency medication.

COMMENT

Ingalls' Counsel said that the hospital disagrees with the HRA that the Mental Health and Developmental Disabilities Code applied to the recipient's care because the hospital's Emergency Department is not a mental health facility as defined in the Code. Although Ingalls disagrees that the Code applies to its Emergency Department, the Authority noticed that a petition and certificate were completed for involuntary hospitalization during the recipient's care. We note that these involuntary documents are provided only by the Code's authority. We also note that treatment, evaluation, psychotropic medications and restraints, all for behavioral purposes, were used while he was there. We continue to encourage the hospital to apply all of the Code's requirements to recipients of services who are seen in its Emergency Department. As before, the Authority emphasizes that the Code defines a mental health facility, a recipient of services, and treatment as follows:

> A mental health facility is defined as any licensed private hospital, institution or facility **… or section 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 Section 5/1-114).

A "recipient of services" or "recipient" is defined as a person who has received or is receiving treatment or habilitation. (405 ILCS Section 5/1-123).

Treatment includes, but is not limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipient by mental health facilities. (405 ILCS Section 5/1-128).

RESPONSE

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

Ingalls Health System

One Ingalls Drive
Harvey, IL 60426
708.333.2300

September 10, 2012

Via Facsimile (708) 338-7505
and Regular Mail

Ms. Kimberlee Brewerton, Chairperson
Human Rights Authority
West Suburban Regional Office
P.O. Box 7009
Hines, IL 60141-7009

Re: HRA No. 12-040-9003

Dear Ms. Brewerton:

Pursuant to your letter and report of findings received by Ingalls Memorial Hospital ("Ingalls") on August 13, 2012, we are providing this response to the recommendations and comments on the findings. We would also ask that our response be made a part of the public record and have indicated such on the enclosed document.

A. Response to Recommendations and Suggestions:

1. Ingalls agrees to follow and our policy comports with Section 5/2-107(a) requirements that emergency medication should only be given if there is a risk of serious and imminent physical harm documented in the patient's record. The hospital's Restraint/Seclusion Policy and Procedure states that medication as a behavioral health restraint should be used to restrict patient movement for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, a staff member, or others. Documentation in the medical record should include the reason the restraint was applied and a specific description of the behavior which led to the patient being restrained. Staff were most recently re-educated on February 2, 2012 regarding proper restraint documentation. Restraints Competency is also an annual competency for all clinical staff and they are advised that compliance can only be achieved if documentation is completed in the medical record.

2. Ingalls agrees that all competent patients have the right to refuse medication or treatment, after they are given proper information and allowed to ask questions and have rights answered. Ingalls will continue to honor all competent patients' rights to refuse treatment or medication and will ensure that the Emergency Department are re-educated on these concepts.

3. Ingalls agrees to follow and our policy comports with Section 5/2-108 concerning the information required on the restraint order. An orange restraint order is placed on the patient's chart and must include the reason for the restraint, the time frame required, and the current date and time. The signature on the sticker is only valid for the restraint order as indicated on the sticker. The sticker is never placed over an existing order. The hospital's Quality Department monitors and audits the usage and documentation of restraint orders in all areas of the hospital, and the results are reviewed by the Quality Safety Committee.

4. Ingalls agrees to follow and our policy comports with Section 5/2-108 regarding the release of patients from restraints when the threat of physical harm no longer exists. Ingalls policy provides that restraints should be discontinued at the earliest possible time. Any patient who is requiring restraint should be monitored and evaluated for appropriateness for early discontinuation. Factors to consider for discontinuation include the behavior causing the restraint has ended, alternative interventions have been effective, or the patient is oriented and following directions. A competent staff member must assess the patient at the initiation of the restraint and every 15 minutes thereafter for readiness for discontinuation of the restraint. A restraint shall be discontinued when the registered nurse or physician assesses that the behavior or condition that was the basis for the restraint order is resolved, regardless of the duration of the order. Ingalls will seek to comply with this policy and will assure that the Emergency Department personnel are re-educated on these concepts.

5. Recommendation number five assumes that the Mental Health Code governs medical stabilization and medical clearance procedures in the general hospital emergency department. As the Human Rights Authority ("HRA") notes, Ingalls does not agree with this position.

6. Ingalls agrees with this recommendation and submits that its Restraint /Seclusion Policy and Procedure already provides that the initial restraint order and all subsequent orders for behavioral health care reasons shall expire in four hours for patients 18 years of age and older.

7. Recommendation number seven assumes that the Mental Health Code governs medical stabilization and medical clearance procedures in the general hospital emergency department. As the Human Rights Authority ("HRA") notes, Ingalls does not agree with this position.

8. Ingalls agrees that all appropriate staff members should be required to be trained in emergency medication and the proper completion of restraint orders. Ingalls disagrees that staff in the Emergency Department should be trained in the issuing of rights restrictions notices under Sections 5/2-107(a) and 5/2-101 based on its position that the Mental Health Code does not govern medical stabilization and medical clearance procedures in the general hospital emergency department.

9. Recommendation number nine assumes that the Mental Health Code governs medical stabilization and medical clearance procedures in the general hospital emergency department. Section 5/2-104 (c) speaks to the requirements of a mental health facility to return personal property at discharge. As the Human Rights Authority ("HRA") notes, Ingalls does not agree with this position and specifically disputes that the Ingalls Emergency Department is a mental health facility. Furthermore, Ingalls maintains its position that the patient could have availed himself of the Lost Personal Property Claims Process for partial reimbursement. The patient has not made any attempt to do so. Ingalls remains amenable to resolving this matter directly with the patient in accordance with its claims process.

Ingalls agrees with the suggestion that staff should use exact language to document their interactions with patients. Education on this type of documentation was provided to the Emergency Department staff on December 8, 2011.

In response to your final Comment that despite the hospital's disagreement with the HRA that the Mental Health Code applies to the patient's care, a petition and certificate were completed during the patient's care, Ingalls continues to insist that the completion of these documents is not inconsistent with its position that the Emergency Department is not a mental health facility as defined by the Code. Both the petition and certificate require the physician and the petitioner to attest to the need for "in -patient admission" or "hospitalization". "Hospitalization" is defined by the Code as "the treatment of a person by a mental health facility as an inpatient." (405 ILCS 5/1-112) The purpose of the general emergency department however, is to provide emergency care to stabilize patients for either discharge or hospitalization, i.e. admission to the appropriate in-patient units of the hospital, or transfer to another in-patient facility. In this case, the patient's medical record, including the certificate and petition make clear that the treatment provided to him in the Ingalls Emergency Department was solely to clear him medically and stabilize his immediate behavioral health on an emergency basis for hospitalization or treatment at the appropriate mental health facility.

Sincerely,

Linda B. Conway
Associate General Counsel

moh

Ingalls Health System

One Ingalls Drive
Harvey, IL 60426
708.333.2333

October 9, 2012

Via Facsimile (708) 338-7505
and Regular Mail
Ms. Kimberlee Brewerton, Chairperson
Human Rights Authority
West Suburban Regional Office
Guardianship & Advocacy Commission
P.O. Box 7009
Hines, IL 60141-7009

Re: #12-040-9003

Dear Ms. Brewerton:

We have carefully reviewed and considered your most recent letter of September 25, 2012. While Ingalls Memorial Hospital continues to share the South Suburban Regional Human Rights Authority's (HRA) desire to cooperate and close this matter, we remain steadfast in our position that the Illinois Mental Health and Disabilities Code does not govern emergency medical stabilization care and procedures rendered by emergency room physicians and staff in the general Emergency Department. We would also respectfully disagree with the HRA's position that the Code follows the person with mental illness to all licensed facilities without regard to the type of care being rendered, and would further caution that such an approach could unintentionally lead to deleterious labeling of those persons as "mental health patients" in interactions with health care providers rendering medical care unrelated to their mental health care and condition. Finally, the HRA notes that Ingalls' stance is inconsistent with the actions taken and protections provided by hospital emergency departments across the state. Ingalls would submit that a poll of emergency departments on this issue should not be dispositive on this issue, and the correct legal approach rests with an analysis of the applicable definitions and provisions of the Code.

The Illinois Mental Health and Disabilities Code states specifically that no recipient of rights shall be deprived of any rights, benefits, or privileges guaranteed by federal and state law. The threshold issue of whether the Code governs the care and treatment of a patient in a hospital is not the mere fact that the individual has presented to the hospital, but whether the patient is a recipient of services as defined by the Code. Under the Code, a "recipient of services" is a person who is receiving treatment or habilitation. Treatment is defined by the Code as "an effort to accomplish an improvement in the mental condition or related behavior of a recipient." It is

well recognized in the medical community that care in the general emergency room of a hospital is to be provided on a temporal basis to resolve an emergency condition with possible transfer or in-patient admission to treat and resolve the patient's underlying condition. According to the Classification of Emergency Services and General Requirements sections of the Hospital Licensing Requirements of the Illinois Administrative Code (Sections 250.710 and 250.720), each hospital is to provide emergency services according to one of three level categories of emergency treatment and maintain adequate facilities for the provision of immediate life saving measures. Immediate life saving measures are by their very nature separate and distinct from the level of specialized services and treatment medically necessary to improve a patient's mental condition or related condition.

While we continue to insist that the Code does not apply to the care and treatment rendered in the Ingalls Emergency Department, we believe that every patient's rights in the ED are adequately protected by virtue of our Patient's Rights and Responsibilities Policy. (A copy of the policy is attached for your review and consideration.) These rights include, but are not limited to the right to access to care, the right to respect and dignity, the right to personal safety, the right to informed consent and the right to information regarding diagnosis, treatment and prognosis. We will ensure that our ED staff are trained and educated to understand the rights afforded to all patients and that every patient or that individual's legally authorized representative receive a copy of the one page summary of the Patient's Right and Responsibilities. (See p. 7 of the attached policy.) As we indicated in our initial response, the complainant also had additional rights under our Lost Personal Property Claims Process for his missing personal property which he has failed to pursue. We remain amenable to seeking a resolution with him.

Once again, we appreciate all the time and careful consideration that the HRA has expended in their investigation of this matter. While we continue to assert that the hospital's Emergency Department is not a mental health facility and that it does not render the scope and level of treatment required to improve a patient's mental condition as defined by the Code, we would ask the HRA to close this matter with our assurances that the rights and protections afforded to all patients at Ingalls, including those receiving medical clearance and stabilization prior to hospitalization for treatment at a mental health facility are legally sufficient to protect their necessary rights, privileges and guarantees.

Sincerely,

Linda B Conway

Linda B. Conway
Associate General Counsel

cc: Geraldine Boatman, HRA Coordinator (via e-mail)

INGALLS HEALTH SYSTEM

ONE INGALLS DRIVE
Harvey, IL 60426
(708) 333-2300

January 30, 2013

Via E-mail and Regular Mail

Cynthia Z. Tracy, Staff Attorney
Human Rights Authority
Legal Advocacy Service
401 Main Street, Suite 620
Peoria, IL 61602

Re: HRA # 12-040-9003

Dear Ms. Tracy:

Thank you very much for your response letter dated November 5, 2012. Please know that we greatly appreciate the Commission's on-going willingness to seek to resolve Recommendation Nos. 5, 7, 8 and 9 of the HRA Report. Ingalls Memorial Hospital however, remains resolute that the complainant was not entitled to those rights afforded under the Mental Health Code during his admission to the Emergency Department ("ED") on August 4, 2011. Our position continues to be premised upon two essential factors. First, the complainant was not a recipient of services for mental health treatment during his 25 hour stay in the ED as defined by sections 5/1-123 and 5/1-128 of the Mental Health Code. Second, the Ingalls ED is not a mental health facility as defined by section 5/1-114 of the Mental Health Code.

Under the Code, a "recipient of services" is a person who receives treatment or habilitation. A "mental health facility" includes all hospitals, institutions, clinics, evaluation facilities and mental health centers which provide treatment for persons with mental illness. "Treatment" is defined as "an effort to accomplish an improvement in the mental condition or related behavior of a recipient." The Code defines "habilitation" as "an effort directed toward the alleviation of a developmental disability or toward increasing a person with a developmental disability's level of physical, mental, social or economic functioning." The complainant neither received treatment nor habilitation as defined by the Code in the Ingalls ED. The record establishes that the sole purpose of the treatment in the ED was to resolve an emergency condition in order for the complainant to be transferred to a mental health facility to receive mental health treatment so as to accomplish an improvement in his mental condition and behavior. Shortly after admission, attempts were being made to transfer him to Madden requiring the completion of the Psychiatric Medical Clearance Checklist. The ED physician documents at the time of discharge solely that the complainant was "medically cleared." While certain measures were undertaken in the ED to stabilize his medical condition, the complainant did not receive the necessary treatment to improve his psychiatric condition. Therefore, while the complainant was a patient in the ED, he was not a recipient of rights, and the ED staff was not required to provide him with the Notice Regarding Restriction of Rights of an Individual. Accordingly, we continue to respectfully disagree with Recommendations 5, 7 and 8.

The language of the Mental Health Code and the CMS Conditions of Participation for Hospitals recognize that psychiatric services for the treatment of mentally ill persons require individualized, comprehensive and therapeutic treatment plans. Both the Code and the COPs support our long held position that mental health treatment is not meant to include an emergency room visit where the stated goal is to stabilize the patient for transfer to the appropriate mental health facility. References in the Mental Health Code to "service programs", "the formulation and periodic review of an individual services plan", and health care professionals with psychiatric training support the notion that mental health treatment is not meant to include brief emergency room visits. The requirements of the Notice Regarding Restriction of Rights of an Individual are directed toward a duration of treatment affecting the recipient's ability to receive mail and maintain communication. It requires the director of a facility to mail a copy of the notice to required entities. If the Notice was meant for hospital emergency room visits, then that language would have been inadequate in this case since the complainant left the ED before anyone would have even received a mailed copy of the Notice.

The CMS Conditions of Participation for Hospitals also set out special provisions applying to psychiatric hospitals and special staff requirements for psychiatric hospitals. A psychiatric hospital must be primarily engaged in providing services for the diagnosis and treatment of mentally ill persons. (42 C.F.R. 482.60) The hospital must have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning. (42 C.F.R. 482.62) While admittedly these sections refer to psychiatric hospitals, these specific requirements further support the proposition that psychiatric services are by their very nature distinct, specialized and of long duration.

We would submit that the cases cited in your most recent letter also support the courts' recognition of the distinct and specific nature of mental health treatment and mental health facilities. *In re Moore* recognizes that there may be sections or units within a hospital devoted to mental health treatment, but only those sections, and not the entire hospital, are defined as "mental health facilities." *In re Moore*, 301 Ill. App. 3d 759, 765-6. Also see, *In re Joseph P.*, 406 Ill. App. 3d 341, 349. The *In re Moore* general hospital had a separate psychiatric unit, which the court found to be a "mental health facility" under the Code. *Id.* Only the licensed psychiatric area of the hospital, however, was found to be a mental health facility and not the entire general hospital, which includes the emergency room of the general hospital. As you are aware, Ingalls has a completely separate mental health facility, the Wyman Gordon Pavilion ("Wyman Gordon"), on its campus. We agree that Wyman Gordon is a mental health facility under the Code, but as stated in *In re Moore*, that classification does not extend to the entire hospital, including its emergency department. The Ingalls ED is not specifically for psychiatric patients, does not provide psychiatric treatment, and is not a psychiatric section or unit of the hospital. The Ingalls ED is not devoted to mental health treatment; therefore, it is not a mental health facility.

Mueller follows *In re Moore* in that an area of a health facility may have sections for the treatment of mentally ill patients that meets the definition of a mental health facility. *Mueller v. Blessing*, 355 Ill.

App. 3d 1079, 1083. However, the Ingalls ED is not like the New Horizons mental health facility in *Mueller*. New Horizons was a behavioral unit of a nursing home that had an in-house psychiatrist, offered group therapy classes, restricted patient access to other areas of the facility and outside community, and the treatment it provided was limited to psychiatric treatment. *Id.* at 1081. The Ingalls ED does not have any of those characteristics. Wyman Gordon, however, is a completely separate, restricted location. We would agree that had the complainant received treatment from Wyman Gordon, a Notice Regarding Restriction of Rights of an Individual would have been required.

In *Threlkeld*, the court acknowledged the court's holding in *In re Moore* that an emergency room is not a "mental health facility", but distinguished the emergency room in that case since it was divided into two sections – a medical side and a psychiatric side. Based on the evidence that the plaintiff had been admitted to and treated on the psychiatric side, the court allowed the plaintiff to base her malpractice claim on the Code. Once again, Ingalls does not have a separate psychiatric emergency room; it only has a general medical emergency room.

For the reasons set forth above, we believe that our position relative to Recommendation Nos. 5, 7 and 8 is well supported by applicable state and federal statutes and case law. We also wish to reiterate that we acknowledge our legal obligations under 42 C.F.R. 482.3, Condition of Participation: Patient's Rights, to protect and promote each patient's rights upon admission to the hospital through our Patient's Rights and Responsibilities Policy. We also maintain that this policy adequately protected complainant's rights as a patient in the ED.

Finally, as to Recommendation No. 9, we also believe that Section 5/2-104 (c) of the Code would not apply to complainant's admission to the Ingalls ED. This particular section speaks to the rights of a recipient while a "resident" in a mental health facility, including the right to a reasonable amount of storage place. The complainant's brief stay in the ED would hardly meet the common sense interpretation of a residential stay. Ingalls however does have a Lost Personal Property Claim Process which complainant has never sought to invoke in order to recover his pepper sprayed clothing, and we remain amenable to reaching a resolution with him in this regard.

Once again, we appreciate the Commission's careful consideration of this matter and hope that we can close out the pending Recommendations with assurances that Ingalls is committed to the rights of all its patients, and that those rights are protected as required by applicable federal and state law.

Sincerely,

Linda B. Conway
Associate General Counsel