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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 13-030-9005
Vanguard MacNeal Hospital

Case Summary: The HRA substantiated the complaint that the hospital did not follow Code requirements when it detained and restrained a recipient. The hospital's response is attached below.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Vanguard MacNeal Hospital (MacNeal). It was alleged that the facility did not follow Code procedures when it detained and restrained a recipient. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

MacNeal is a 427-bed community hospital located in Berwyn and is part of the Vanguard Health System. The hospital services an area of more than a million people and houses a 62- bed behavioral health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Vice-President of Psychiatry and Behavioral Health, the Director of the Emergency Department, the Director of Behavioral Services Clinical Operations, the Behavioral Health Services Nursing Director, the Behavioral Health Services Intake Supervisor, the Behavioral Health Services Coordinator, the Behavioral Health Services Utilization Review Coordinator, and the Emergency Department Quality Coordinator. Relevant hospital policies were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint indicates that the recipient was flying from Memphis, Tennessee to Detroit, Michigan to meet with religious ministry individuals when she had a layover in Chicago. She was in the waiting room of the airline for a longer than usual period of time, when a staff person approached her and asked her if there was anything she needed. She responded that if there was anything she needed it would be her medication. The staff person then notified a Chicago Fire Department unit, who transported the recipient to the MacNeal Hospital

Emergency Department (ED). At MacNeal, the complaint indicates that the recipient was first told that she was being transferred to a mental health facility for involuntary inpatient treatment, and then later she was admitted into the behavioral health unit. The complaint states that when the recipient was told she was being detained for inpatient treatment, she objected and demanded to be released, at which time she was restrained and administered forced psychotropic medication. The complaint indicates that the recipient was never a danger to anyone and just wanted to refill a prescription and then meet with people from her ministry. She was finally able to do this, after spending ten days in the hospital.

FINDINGS

The clinical record face sheet indicates that the recipient arrived at the ED, transported by fire department ambulance, on Monday, 10/08/12 at 9:16 p.m. The Chicago Fire Department incident report shows that the recipient is a Psychiatric Emergency and her symptoms are listed as "Depression." The description of the incident states, "Pt found sitting in WC at Midway Airport, Southwest Airlines states the pt has been wandering around the airport all day long, and has been in several cities over the last couple of days. Pt alert and answers questions approp. Pt does speak of God, church and ministries. Pt does not live in this city and states she does not have any family here. Pt denies all medical complaints. Pt states she has a hx of depression but has not taken her meds for several months. Pt denies any suicidal thoughts. Vitals stable. Trans to MacNeal without incident." The ED Nursing Assessment Notes entered at 9:41 p.m. state, "Alert, Awake. The patient responds to speech. Oriented X3 (Person, Place, Day), Cooperative. Fully verbal."

The record contains the recipient's screening assessment that was completed in the ED on 10/09/12 at 12:07 a.m. It describes the recipient's presenting problem: "Pt presents after being found wandering the airport, disheveled and unkempt. On arrival to ED, pt verbalizing feelings of depression, and states she wants to throw herself away. Pt claims to be en route to Detroit from Memphis, TN to preach the gospel. She admits to hx of 'nervous breakdown' and depression." The diagnostic conclusion is given as Bipolar Disorder NOS (not otherwise specified). The screening indicates that the recipient is medically cleared for admission to a psychiatric facility and lists the provider name and address.

The record contains a Petition for Involuntary Admission completed on 10/09/12 at 4:11 a.m. by an Intake staff person. In the section describing signs and symptoms of mental illness, the petitioner has stated, "Pt found wandering about the airport, disheveled and unkempt. On arrival to ED, pt verbalizing feelings of depression and states she wants to throw herself away. Pt claims that she was en route to Detroit from Memphis. ….[Not legible] to preach the gospel. She admits to history of 'nervous breakdown' and depression." The petition is missing the certification that the recipient was given a copy of the petition as well as a copy of the Rights of Admittee and advocacy information. The record contains a copy of the Rights of Individuals Receiving Mental Health and Developmental Disabilities Services and staff have signed that the recipient received a copy of it, however there is an "x" on the signature line of the recipient.

The record contains an Inpatient Certificate completed on 10/09/12 at 2:00 a.m. by an ED physician. The clinical observations and factual information on which the immediate hospitalization is recommended is described as, "Pt is disorganized and tangential and danger to herself." There is another certificate completed on 10/10/12 at 1:00 p.m. by an ED physician. The clinical observations, etc. on this document state, "Pt is disorganized/tangential/danger to self."

The record shows that the recipient spent her first night in the ED without incident. On 10/09/12 at 8:05 a.m. the notes state, "Pt in hallway on cart in front of security. Pt questioning being admitted to [state mental health facility]. Requesting to speak with MD, MD notified." The notes then show that the recipient ate breakfast and the next entry is made at 2:14 p.m. It states, "Pt verbally abusive and threatening staff, increasing aggression, pacing in halls." At 2:16 p.m. the notes state, "Pt was restrained d/t violent behavior. Please see restraint packet for additional details." The restraint packet is included in the record. The Restraint Order, signed by the attending physician and registered nurse, give the conditions or symptoms warranting both physical and chemical restraint as: "threatening staff." The order indicates that less restrictive measures were taken (reorientation, reduction of stimuli, hospital companion, addressing the problem causing the behavior). Also, the order indicates a 4-hour limitation, and indicates that the restraint does not pose an undue risk to the patient's health in light of her physical condition. A 15- minute checklist of the recipient is included and it shows that the recipient's vital signs were monitored and that she was given an opportunity for nourishment and toileting The order also indicates that the recipient is "Undressed/Belongings bagged, labeled and given to security" and that a Restriction of Rights Notice is given to the patient. Although the order indicates that the recipient received both physical and chemical restraint, there is no physician order for emergency medication until 10/10/12 at 7:10 p.m. (Ativan 2 mg PO/IM [oral or injected] for severe anxiety and Haldol 5 mg IM for psychosis). It is not clear that the recipient was administered medication, as indicated on the Notice.

The Restriction of Rights Notice for this event is included in the clinical record. The reason for the restraints is listed as, "Violent behavior, combative and threatening staff." The Notice does not show that it was issued to the recipient or anyone of her choosing.

The ED record contains a Clinician History of Present Illness. It is not clear on which day this was performed, however it states, "Exam started at 22:22. The presenting problem is chronic. History comes from patient. Have reviewed and agree with RN note. Able to get a good history. Patient presents with symptoms of depression associated with feeling down like she "wants to throw herself away." No history of suicidal ideation or thoughts of harming self. Here voluntarily for a psychiatric evaluation. No history of threatening or violent behavior/thoughts towards self or others. No current history of hallucinations or delusional thoughts. No significant somatic complaints." The Past Medical and Surgical History section states, "Depression; No significant prior psychiatric history. Has had prior psychiatric inpatient evaluation. Stopped taking medications."

ED Chart notes indicate that on 10/10/12 at 6:12 p.m. the recipient was discharged from the ED to a state mental health facility, however at some point the decision was made to transfer the recipient to the MacNeal behavioral health unit, although this is not mentioned in the notes.

The record contains an Application for Voluntary Admission signed by the recipient on 10/10/12 at 5:00 p.m., and Progress Notes from behavioral health begin on 10/10/12 at 6:45 p.m.

On 10/11/12 at 7:30 a.m. the recipient was evaluated by a psychiatrist and the Comprehensive Clinical Assessment is included in the record. It states, "Difficult historian. Patient found wandering around Midway Airport. 'I was trying to get to a ministry. I am a powerful woman spiritually.' Denies significant mental illness - 'I was hospitalized many years ago for depression.' Unclear if she is on meds. Denies visions/voices. All answers to any questions show religious preoccupation."

The recipient remained on the behavioral health unit until 10/18/12 at which time she was transferred to Midway Airport where she continued her trip to Detroit, Michigan.

HOSPITAL REPRESENTATIVE RESPONSE

Hospital staff were interviewed about the complaint. They indicated that the recipient was brought to the emergency department by the ambulance because she was wandering around the airport and complained of feelings of depression. She was examined by the ED physician and was recommended for transfer to a state mental health center. Staff were asked why the record shows that the recipient was recommended for transfer to a state mental health facility but then remained at MacNeal and they indicated that the physician who wrote the disposition may not have realized that she had medical insurance and those recipients who do not have insurance are transferred to the state facility. When staff became aware that the recipient had insurance, she was then discharged to the behavioral health unit. Staff also indicated that the petition and certificates were completed in the ED because they would be required by the state mental health facility before they would accept the recipient.

Staff indicated that when the recipient was told she was being detained on an inpatient basis, she became very angry and stated, "You can't keep me here." She requested to speak with an administrator and then later required restraint. Staff were interviewed about the Restriction of Rights Notice for the restraint episode, which indicates that the recipient's clothes were removed for her restraint. They indicated that the recipients are asked to remove their clothing and are observed as well as searched for anything that may be dangerous to them or others when they are placed in restraints. Staff were asked if the recipient returned to her room for this and they indicated that she did return to her room. Additionally, staff were asked if recipients are stripped when they are admitted to the ED and they indicated that this is the practice for all patients who are seen in the ED. Staff were also asked about the justification for the use of restraint: The ED Chart states that the justification is further explained in the Notice, however the Notice only states, "violent behavior, combative and threatening staff." The staff had no further information from the record or recollection, to describe the recipient's behavior.

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 and Developmental Disabilities Code states, "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 a).

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, excluding weekends and holidays, 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).

Restraint is a therapeutic tool that the Mental Health Code carefully regulates. Although its use is to prevent physical harm, the Code outlines specific measures to ensure that it is safe and professionally applied:

"Restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff.

(a) Except as provided in this Section, restraint shall be employed only upon the written order of a physician, clinical psychologist, clinical social worker, or registered nurse with

supervisory responsibilities. No restraint shall be ordered unless the physician, clinical psychologist, clinical social worker, or registered nurse with supervisory responsibilities, after personally observing and examining the recipient, is clinically satisfied that the use of restraint is justified to prevent the recipient from causing physical harm to himself or others. In no event may restraint continue for longer than 2 hours unless within that time period a nurse with supervisory responsibilities or a physician confirms, in writing, following a personal examination of the recipient, that the restraint does not pose an undue risk to the recipient's health in light of the recipient's physical or medical condition. The order shall state the events leading up to the need for restraint and the purposes for which restraint is employed. The order shall also state the length of time restraint is to be employed and the clinical justification for that length of time. No order for restraint shall be valid for more than 16 hours. If further restraint is required, a new order must be issued pursuant to the requirements provided in this Section….

(c) The person who orders restraint shall inform the facility director or his designee in writing of the use of restraint within 24 hours.

(d) The facility director shall review all restraint orders daily and shall inquire into the reasons for the orders for restraint by any person who routinely orders them.

(e) Restraint may be employed during all or part of one 24 hour period, the period commencing with the initial application of the restraint. However, once restraint has been employed during one 24 hour period, it shall not be used again on the same recipient during the next 48 hours without the prior written authorization of the facility director.

(f) Restraint shall be employed in a humane and therapeutic manner and the person being restrained shall be observed by a qualified person as often as is clinically appropriate but in no event less than once every 15 minutes. The qualified person shall maintain a record of the observations. Specifically, unless there is an immediate danger that the recipient will physically harm himself or others, restraint shall be loosely applied to permit freedom of movement. Further, the recipient shall be permitted to have regular meals and toilet privileges free from the restraint, except when freedom of action may result in physical harm to the recipient or others…. (405 ILCS 5/2-108)."

HOSPITAL POLICY

MacNeal provided hospital policy and procedure regarding Involuntary Admission (BHS-301). This policy outlines the process for instituting Involuntary Admission in the Behavioral Health Unit, and it comports with all the mandates outlined in the Mental Health and Developmental Disabilities Code. The policy does not address the involuntary detention of mental health recipients who are awaiting transfer to another facility after being medically cleared in the emergency department.

MacNeal provided the hospital policy and procedure for Restraint. The policy indicates that restraint may only be used for the protection of the patient or others and must be applied only when warranted by the patient's behavior that threatens "the safe provision of clinical care or the physical safety of the patient or others." Restraints are not used as a means of coercion, discipline, convenience, or staff retaliation, and only after less restrictive measures are tried but found to be unsuccessful. Restraint is applied only on the order of a physician, clinical psychologist, or other licensed independent contractor. All staff who order restraints are trained in the requirements of the restraint policy and must demonstrate a working knowledge of it. The MacNeal restraint policy is thorough and in keeping with the requirements of the Mental Health Code.

CONCLUSION

The record shows that the recipient arrived at the ED at 9:16 p.m. on 10/08/12, identified as a "psychiatric emergency", and by 12:07 a.m. on 10/09/12 she was screened, medically cleared, and referred to a state mental health facility. The record is somewhat confusing, however it appears the recipient was certified at 2:00 a.m. and then petitioned at 4:11 a.m. in the ED and it indicates that she remained in the ED until 10/10/12 at 6:12 p.m. when the record states that she was discharged to a state mental health facility. The recipient was instead transferred to the hospital's behavioral health unit when it was discovered that she was covered by medical insurance and it was there, on 10/11/12 at 7:30 a.m. that she was examined by a psychiatrist. But at some point in the ED she was prohibited from leaving and MacNeal completed the necessary involuntary documents via a petition and certificate, however it failed to complete the Code's mandated process: the recipient did not receive a copy of the petition for involuntary admission in the 10 days in which she was hospitalized, did not receive the Rights of Admittee at any time, and was not examined by a psychiatrist within 24 hours of her first certificate, all during week days without exclusion and all violations of her rights under the Code. The HRA substantiates the complaint that the facility did not follow Code procedures when it detained the recipient.

Nursing Notes from the ED indicate that the recipient was restrained at 2:16 p.m. on 10/09/12. The only clinical justification offered in the notes is "Pt verbally abusive and threatening staff, increasing aggression, pacing in halls" and then two minutes later, "Pt was restrained due to violent behavior. Please see restraint packet for additional details." The restraint packet offers very little additional information, stating, "violent behavior, combative and threatening staff." It is not clear how the recipient was violent, combative and threatening or what behaviors she displayed that necessitated restraint to prevent *physical* harm. Staff also indicated that she walked to her room where she removed her clothing and was placed in restraints, so one wonders how imminent a threat she was at that point. It seems more reasonable to deduce that the recipient was upset because she was just told that she was being sent to a mental health facility she had never heard of, not even in her own state, and did not know why. Nevertheless, neither the Restraint Order and Flowsheet nor the Restriction of Rights Notice that were included in the record were completed. The HRA substantiates the complaint that the facility did not follow Mental Health Code procedures when it restrained the recipient.

RECOMMENDATIONS

1. Review with staff the Mental Health Code requirements for the involuntary detention and treatment of mental health recipients and ensure that all the Code mandate procedural guarantees are honored (405 ILCS 5/3-600 et seq.).

2. Review with staff the MacNeal Hospital policy regarding the use of restraint- it is thorough and encompasses every aspect of the Mental Health Code and more. Ensure that the

physician's order for restraint states the events leading up to the need for restraint and the purpose for its use. Stress with staff that restraint is a last resort to be utilized only when the recipient's behavior is an imminent threat of physical harm to himself? or others. Make sure they document this in the clinical record (405 ILCS 5/2-108).

3. Require staff to complete rights restriction notices thoroughly including notations that copies have been delivered to recipients and whoever they may choose to be notified (405 ILCS 5/2-201).

SUGGESTIONS

1. The Chicago HRA has never been made aware of a restraint policy that orders recipients to be undressed, have their belongings removed, bagged, and given to security at the onset of a restraint episode. Aside from the fact that this practice argues against the imminent dangerousness of the recipient's behavior (as in this case, the recipient is able to go to her room, undress, etc.), it is also extreme and excessive, especially since the recipient was also undressed and observed when she arrived at the facility (which the HRA also deplores). Additionally, this practice is not included in the hospital's own policy and procedure on restraint. We ask that you discuss this practice administratively and discontinue its use as soon as possible opting instead for *individual* determinations of potential harm.

2. MacNeal staff said that petitions and certificates are completed as a prerequisite for admission to a state mental health facility. We suggest that MacNeal immediately reject this as a condition for any willing patient in light of Section 5/3-400 of the Code:

"(c) No mental health facility shall require the completion of a petition or certificate as a condition of accepting the admission of a recipient who is being transported to that facility from any other inpatient or outpatient healthcare facility if the recipient has completed an application for voluntary admission to the receiving facility pursuant to this Section."

3. According to the record this patient was certified about two hours before being petitioned. Under the Code, a petition is completed immediately as the authority to detain anyone in order to pursue evaluation and/or involuntary admission. We suggest that MacNeal be certain, as in this case, that a recipient's petition is entered the moment he or she is not allowed to leave (405 ILCS 5/3-600; 601; 602).