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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

**REPORT 13-030-9012
Vanguard MacNeal Hospital**

Case Summary: The HRA substantiated the complaint that the facility did not follow Code procedures when it administered forced psychotropic medication. The provider has issued a non-public response.

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 administered forced psychotropic medication. 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 Services, the Coordinator of Behavioral Health services, the Nursing Director of Behavioral Health Services, and the Director of Clinical Operations. Relevant hospital policies were reviewed, and records were obtained with the written consent of the recipient.

FINDINGS

The record shows that the recipient was admitted to the emergency department (ED) on 8/26/12 for an overdose of his medication, Geodon. He was assessed and treated on the medical floor, and then transferred to the behavioral health unit after being medically cleared. On 8/29/12 the recipient was evaluated by a psychiatrist and this report states, "The patient reports that he was trying to commit suicide by taking too much of his medication, Geodon, reports anxiety, multiple stressors including death of his mother in the hospice. The patient is frustrated with the process of being on parole. The patient is depressed. No social contact, low energy, thoughts of suicide. The patient says that he was being treated for depression in the past and has

intentionally overdosed in the past as well. The patient agreed for voluntary hospitalization. The patient was cleared on the medical floor for overdose. Current substance use, the patient reports no current use of illicit drugs or alcohol. The patient has decisional capacity to consent for voluntary admission and treatment." The record contains signed informed consents for all psychotropic medications administered to him during his hospitalization. Additionally, the record contains the recipient's Designation of Emergency Treatment Preference and Emergency Notification document, and it indicates the recipient had "no preference" for emergency intervention.

An entry in the nursing progress notes made on 8/30/12 at 9:00 a.m. states, "Patient is very anxious at this moment when updated regarding plan of care. Pt. refused blood draw that was just ordered and ... Attempting to have patient calm down. Security is on unit due to pt. yelling at staff and intrusive behavior. Will attempt to carry out order after patient has deescalated. Patient refused oral Ativan. Paging Dr...for IM [intramuscular] order. Received order for Zyprexa 10 mg PO [oral] or IM now and every 6 hours PRN [as needed] for psychosis." At 10:40 a.m. another nursing note describes the emergency situation: "Patient became very confrontational and was very intrusive and threatening to staff. Patient began yelling at staff and would not respond to redirection. Security on unit. Patient refuses to get off phone when instructed to- Patient slamming phone down and began shouting, 'You're not going to tell me what to do, I'm going to tell you what to do.' Patient became verbally abusive towards a nurse when she refused to disclose her nationality. Patient continued to be inappropriate on unit. Panic button initiated when patient would not respond to security directions. Patient rights restricted- IM Zypreza given in right gluteus with security and staff present. Patient presented with threatening behavior towards case manager stating, 'I will meet you outside.' Patient instructed to stay in room to allow medication to work. Continue to monitor patient closely and assess for affects of medication...."

The record contains a Restriction of Rights Notice for the emergency medication event. The reason for the medication is, "Patient very confrontational. Refuses PO meds. Intrusive and verbally abusive to staff and security. Patient has IM Zyprexa ordered." The Restriction Notice indicates that the recipient "refused to take it." The Notice indicates that the recipient did not want anyone notified of the emergency medication.

An entry in the progress notes made on the same day at 3:16 p.m. states, "Patient received Ativan 2 mg IM at 12:55 p.m. for increased aggressive gestures toward staff. He was sitting in corner of dayroom making a gesture of mimicking shooting a rifle at staff. He was redirected and he cooperated with IM Ativan. He is calm at present." There is no Restriction of Rights Notice in the record for this event.

The record contains the recipient's Preferences for Emergency Treatment and it indicates that he did not have a preference at the time of its completion. The record also contains the physician's statement of decisional capacity for the recipient and the recipient has also signed a consent for Ativan and agreed to take Zyprexa but refused a signed consent.

HOSPITAL REPRESENTATIVE RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that the recipient in the first instance was threatening to staff and unable to be redirected. A Restriction of Rights Notice was issued after the recipient escalated and could not be calmed. Staff were asked if the recipient was given an injection because he refused oral medication and they indicated that he was continuing the behaviors which placed him and staff in imminent danger. Staff were also interviewed about the second episode of emergency medication and they indicated that although it is not described in the record the staff felt threatened by the recipient and he was agitated enough to require emergency medication. The staff who were present at the time of the event felt endangered by the recipient's behavior.

STATUTORY BASIS

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment, and describes the requirements for the administration of psychotropic medication and its refusal:

"If the services include the administration of...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 the provisions of Section 2- 107 [to prevent harm]...." (405 ILCS 5/2-102).

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).

Additionally, the Code states that whenever any rights of the recipient of services are restricted, notice must be given to the recipient, a designee, the facility director or a designated agency, and it must be recorded in the recipient's record (ILCS 405 5/2-201).

HOSPITAL POLICY

MacNeal Hospital did not have policy and procedure for the administration of psychotropic medication at the time of this complaint. However, since then the hospital has developed the following policy (#BHS 120):

"In accordance with the Mental Health and Development Disabilities Code, the patient, legal guardian, and/or substitute decision maker is informed of circumstances under which the

law permits use of emergency forced medication, restraint or seclusion. Such interventions are not utilized unless necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is effective. The patient, on admission, will be provided an opportunity to select a preference of interventions should such a circumstance occur: emergency forced medication, restraint, seclusion, or no preference. Every effort will be made to honor the patient's preference, however circumstances may warrant an intervention that is not of the patient's preference. Under no circumstances may long-acting psychotropic medications be administered as an emergency medication."

The policy includes the completion of a Restriction of Rights Notice and its issuance in accordance with patient directive.

CONCLUSION

The interview of staff for this case indicates that they felt personally threatened by the recipient and thus requested and received an order for forced psychotropic medication for him. In review of the record and staff interviews the HRA does not agree that the description of these behaviors rises to the level of a threat of "serious and imminent physical harm", which is the legal justification for overriding a recipient's right to refuse treatment. Additionally, the record is missing a Restriction of Rights Notice for the second event, which staff indicated was a forced emergency administration of psychotropic medication, thus requiring Notice. Regardless of whether the record noted his cooperation with an injection, the staff statements imply that he had no choice. The HRA substantiates the complaint that the facility did not follow Code procedures when it administered forced psychotropic medication.

RECOMMENDATIONS

1. Train staff in the newly developed policy and procedure for the administration of forced psychotropic medication.