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Egyptian Regional Human Rights Authority
Report of Findings
13-110-9039
Chester Mental Health Center
July 30, 2015

The Egyptian Regional Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission has completed its investigation concerning Chester Mental Health Center (CMHC), a state-operated mental health facility located in Chester. The facility provides services for approximately 240 recipients serving both forensics and civil commitments. The specific allegations are as follows:

Staff did not take appropriate steps to prevent abuse from occurring.

If substantiated, the allegations would be violations of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2) and the Code of Federal Regulations (42 CFR 482.13).

Investigation Information

To investigate the allegation, the HRA investigation team, consisting of two members and the HRA Coordinator conducted a site visit at the facility. During the visit, the team spoke with the Recipient whose rights were alleged to have been violated and staff members. With the Recipient's written authorization, copies of information from the recipient's clinical chart were reviewed by the Authority. Facility Policies relevant to the complaints were also reviewed.

I. Interviews:

A. Recipient: The Recipient informed the team that another patient at CMHC hit him from behind in December, 2013. The recipient's glasses broke and he sustained major injuries to his eye including a punctured lens. He had to have surgery and was told he might lose sight in that eye as well. The recipient stated that this peer had made threats to him 6 days prior to the incident. He told his therapist and the peer's therapist but nothing happened. He said he was moved to a room farther away from this peer but was still on the same unit. He also spoke with the Office of Inspector General (OIG) liaison and was told that the police were called, a report was filed and the peer was "put into handcuffs and taken into custody" but he was unaware of what has happened since then.

B. Recipient's Therapist: The HRA questioned the recipient's therapist as to whether or not the recipient had reported the peer's threats against him. The therapist responded by saying that the recipient did report the threats to him at the end of a Friday afternoon. However, the therapist stated that both the recipient and the peer had been antagonizing one another and both had been unstable behaviorally. The therapist also involved the peer's therapist and made her aware of the threats. She spoke with the peer and at that time, the peer denied that he had any intentions of harming the recipient. The therapist stated that both therapists discussed the threats with the Security Therapy Aide (STA) staff and it was decided that the most appropriate action was to separate them within the module. The two were placed at opposite ends of the module to reduce any contact between them. They previously had rooms next to each other or very close to each other. Then sometime over the weekend while the two were in the dining room, the peer came out of line and attacked the recipient after the recipient had made a derogatory comment to the peer. This is when the peer punched the recipient in the face causing the arm of his eyeglasses to puncture his eye.

C. Peer's Therapist: The HRA then spoke with the peer's therapist who informed the HRA that the recipient's therapist had informed her that the recipient had complained to him that her client was verbally threatening towards him. She spoke with the peer (her client) and he reported that the recipient had been calling him derogatory names that were upsetting him. She advised him to stay away from the recipient and he relayed to her that he had no intentions of hurting the recipient. Both therapists, along with security staff, agreed that neither of them could be moved to another module and that the best thing they could do would be to put as much space between them as possible to limit their contact. Therefore, their rooms were moved to opposite ends of the living module. A couple of days later, while in the dining room, her client reported that the recipient called him a derogatory name and that he came out of the line and hit him in the face, which led to the eye injury to the recipient. The peer admitted to being counseled to stay away from the recipient by both his therapist and security staff when questioned about the incident later. The therapist stated that she also knew that the recipient had also been told to stay away from the peer prior to the incident by his therapist and security staff.

II. Clinical Chart Review:

A. Treatment Plan Reviews (TPRs): The 12/19/12 TPR stated in the discussion section that the recipient was seen in the infirmary of Chester Mental Health Center due to being struck in the eye by a peer while in the dining room. As a result of the incident, the recipient received medical treatment at an outside hospital for injury to his right eye. His eye was "*seriously damaged and the prognosis is unknown at this time.*" The section continues by discussing the recipient's inappropriate sexual behaviors and "other problematic behaviors" which are specified in this section. Of note, is the fact that on 12/13/12 the recipient was involved in a physical altercation with a peer and three days later this same peer, that he had the altercation with, is the one struck him in the eye in the dining room. In the response to medication section it was mentioned that he had an emergency ophthalmic surgery at an outside hospital. He was told by the doctors that "it is unlikely that he will lose his eye." The recipient denied any pain and it was noted that he was housed in the infirmary while his eye and orbital heal.

B...Progress Notes: Progress notes from 11/30/12 through 12/18/12 were reviewed. There was nothing in the progress notes the weeks prior to the incident that documented that the recipient had ever reported the peer's threats to anyone. A 12/13/12 case note from a registered nurse stated that the recipient *"was involved in an argument that led to a fight with hands scratching the other patient. Received scratches to both arms ¼ inch each and to the lower lip ¼ inch. No physician exam necessary. Cleaned with hydrogen peroxide."* A 12/16/12 registered nurse's note stated *"patient returned to unit [number] escorted by security staff and RN [name]. Patient had an ice pack to Right eye and napkins with blood on them – bright red. Noted with [illegible] bleeding [illegible]right eye. Approximately 2 inches in length still actively bleeding but slowing down. Cleaned all areas with H20 [water] [illegible]patient stated was hit by peer [peer number] in the dining room. He was referred immediately to Dr. [name] at this time for further tx [treatment] noted [illegible] injury report completed and patient seen by Dr. and taken by [illegible no report of vision loss or [illegible] at this time [illegible] right eye."* The Medical Doctor's note this same date stated *"called to see pt [patient] who was punched in Right eye…alert 'a little dizzy now'…'I can't see anything' from Right eye…Plan send to ED [emergency department] notified ED MD…cup protection taped over R [right]orbital area informed ED MD PT [patient] needs tetanus booster."* The next several notes documented continued follow up via telephone to the doctors at the outside hospital and the care that was received. The recipient was returned to Chester Mental Health on 12/18/12 into the infirmary for continued follow up care for his eye injury. A psychiatric note on 12/19/12 stated that the recipient attended his TPR in the infirmary and that the doctors told him that he is *"unlikely to lose his eye as originally thought…he will remain in the infirmary while his eye and orbit are healing. No changes in treatment plan at this time."*

C. Injury Report: The injury report dated 12/16/12 was reviewed and it documented injuries to the recipient's right eye and lower lip and also that the Office of Inspector General was notified.

D. OIG Report: The OIG report noted that on Dec 13, 2012 there was an altercation between the recipient and a peer. A STA documented the next day that he was concerned over continued threats being made by the peer toward the recipient and that the STA was not comfortable with the distance put between the two individuals. The peer had indicated to the STA that he was not threatening to harm the recipient but promising it. The report noted that the peer had a history of being vengeful and waiting for the opportune time to carry out his revenge. The STA gave the information to another STA noting that it needed to be reviewed promptly by a STA IV. However, the STA IV did not review the information until December 19th which was 3 days after the recipient was attacked by the peer resulting in a severe eye injury requiring surgery. The report also noted that other staff members present during this attack indicated that they were unaware of threats of harm that the peer had made toward the recipient. The OIG substantiated the allegation of neglect against the facility and recommended that the facility address the breakdown in communication between staff members and establish a protocol to more adequately address relocating individuals that are a "clear and present danger to each other based on repeated incidents that are documented." The report also noted the OIG's finding that the neglect in this incident did rise to the level of egregious neglect "due to the great bodily harm received by [recipient]. However, the neglect was determined to be systemic in nature and not due to any one staff member. Therefore the allegation was substantiated against the facility and egregious neglect could not apply toward a facility."

III... Policies:

A. CMHC Patient Rights Policy 01.01.02.01 states *"It is the policy of Chester Mental Health Center (CMHC) to respect the rights of patients and not to abridge said rights without cause and without due process. Restrictions, as such, should have a clinical rationale and serve to facilitate a therapeutic treatment setting. Each patient admitted to Chester Mental Health Center shall be treated with respect and shall be ensured of all rights under Sections 2-100 to 2-111 of the Mental Health and Developmental Disabilities Code. Restrictions of rights and corresponding rationale shall be properly documented in the patient's clinical records…"* Under Rights of Patients it states *"A patient shall be provided with adequate and humane care and services in the least restrictive environment, pursuant to an individual treatment plan..."* A list of patients' rights *"as delineated in the Program Directive 02.01.06.010, Prevention of Abuse and/or Neglect of Individuals"* provides a list of rights that patients of Chester Mental Health have, that all relate to their care at Chester, but did not address peer to peer assaults or how staff should handle those types of allegations or incidents.

B. Department of Human Services (DHS) Policy 02.01.06.010 Prevention of Abuse and/or Neglect of Individuals states *"The Department of Human Services (DHS), Divisions of Mental Health (DMH) and of Developmental Disabilities (DDD) has statutory responsibilities to care for, habilitate, and treat persons with mental illnesses and/or developmental disabilities.* ***To this end, it is the policy of DHS to protect those individuals from abuse and/or neglect, and to ensure a safe and secure environment for individuals served.*** *It is a violation of DHS policy and may be a violation of State criminal law for an employee to abuse and/or neglect an individual. Any employee who abuses and/or neglects an individual may be subject to discipline, up to and including discharge."* In this policy, neglect is defined as *"The employee's, community agency's, or facility's failure to provide adequate medical care, personal care, or maintenance and that, as a consequence: causes an individual pain; injury or emotional distress; results in either an individual's maladaptive behavior or the deterioration of an individual's physical or mental condition; or places the individual's health or safety at substantial risk of possible injury, harm or death."* Egregious neglect is defined as *"A finding of neglect as determined by the Inspector General that represents a gross failure to adequately provide for, or a callous indifference to, the health, safety or medical needs of an individual and results in an individual's death, or other serious deterioration of an individual's physical or mental condition."*

This policy focused more on employees not abusing or neglecting recipients so the HRA questioned the facility as to what policy it has on peer to peer aggressions. The Director of Nursing responded.

C. Director of Nursing (DON) response: The DON provided the HRA with copies of policies relating to patient aggression and assaults and informed the HRA that the facility's risk management committee has been working on a plan to address patient to patient assaults with the units as outlined below:

"In order to achieve our mission, we will continue to improve the safety of the environment in which we provide care by reducing patient to patient assaults by:

1. *Create a process for ongoing individualized violence risk: Ongoing*
2. *Identify risk factors in treatment and environment. Target Date – January 2015*
3. *Units to identify: events leading up to aggression, interventions used prior to incident, Tx [treatment], plan modification as a result of incidents, and risk factors contributing to incident (unstable psychosis, new admit, H20 tox [water intoxication]): Units are completing patient to patient assault logs and submitting data to the Risk Management Committee monthly*
4. *Develop plan to prevent risk: Target Date - 9/2014 (process in place)*
5. *Develop behavior plans and ensure all staff are aware of plan*
6. *Re-evaluate current behavior plans*
7. *Modify behavior plans*
8. *Redistribute patients on the unit*
9. *Need for medication review/adjustment, etc.*
10. *Reduce patient injuries requiring medical intervention by 11/2014.*
11. *Ensure appropriate staffing levels and utilization and appropriate distribution of existing staff, Detail staff based on acuity."*

D. CMHC Routine Observation Policy EC 04.01.01.01 states *"In order to ensure the continued safety and security of patient, Security Therapy Aide (STA) staffs assigned to each module are required to visually observe and account for each patient assigned to that module at least every 15 minutes. Any unusual behavior and/or situations noted requiring intervention shall be promptly responded to in accordance with facility procedures and documented as required…Visual observation shall be made by looking at each individual patient and coding their status on-unit with a [check mark] on the Routine Visual Observation Check Sheet…For those patients not on the module at the time of the 15 minute check, the STA places a 'O' as the status on the Routine Visual Observation Check Sheet and ensures that those patients are properly signed out on the Patient Movement Chart"*

E. CMHC CC .05.00.00.06 "Hand Off" Communication policy states that *"All staff is to daily report to their job site and orient themselves with any information needed to ensure they are aware of and address ongoing staff or patient needs. All staff is to ensure they seek clarification to questions…Direct Care Staff. All direct care staff who work directly with patients are expected to follow their discipline's hand-off communication formats. Each discipline is indicated below and the format they are expected to follow…* STAs are to "*1. Read the log book 2. Communicate with staff that you relieve 3. Read the behavior data reports (CMHC 207s) on the STA IIs desk 4. Look at the nursing shift report 5. STA Handoff form."*

F. CMHC CC .05.00.00.07 STA Daily Hand Off Sheets policy states *"To assure continuity of care for all patients receiving treatment at the Chester Mental Health Center, the STA staff will provide verbal and written communication to the oncoming staff and supervising personnel…Each STA prior to leaving for the shift will review their shift hand-off sheets on their assigned module to ensure that any pertinent information on each patient is documented on the written report. The STA will then review the information on the STA Hand-Off sheet with the STA assuming responsibility for the patients prior to going off duty.* ***The STA II will also notify the shift supervisor (STA III or IV) of any significant or unusual concerns or occurrences***

prior to the end of the shift*… The STA II and nurse assigned to the module is responsible for reviewing the module hand-off sheet and assuring follow-up care or issues are addressed."*

G. CMHC Violence Risk, Risk of Harm to Others, Assessment and Prevention Policy (Draft dated 2/5/15) – states that the purpose of this policy is to "establish a protocol for the assessment of risk factors leading to violence; reassessment of factors; initiate interventions to reduce risk of violence; and provide staff education on proactive approaches to address patient violence." The policy states that patients will be screened upon admission to determine the need for safety measures. The screening is to be completed using a VRAT (Violence Risk Assessment Tool) and patients with medium to high risk will have treatment plan interventions identified to reduce risk for violence. At the 72 hour treatment meeting, patients will be identified as medium to high violence risk are to be reviewed for further treatment plan interventions if needed. Patients identified as medium risk will have interventions included in treatment plans. Examples of interventions are listed as:

- Participation in relevant treatment groups
- Engagement in additional active treatment programs
- Participation in exercise and athletic activities
- Individual Engagement to reduce isolation, frustration and confusion
- Medication review/adjustments
- Ensure direct care staff is aware of patient's potential for violence risk
- Provide violence prevention/safety education
- Habilitation/rehabilitative social skills development
- Review of progress form
- Use of Quiet rooms

Patients who are identified as a high violence risk will have appropriate violence prevention measures incorporated into the treatment plan with interventions to manage and reduce risk of violence. A list will be maintained by the Unit Director of all patients identified as being high risk for violence until the risk level is determined to be low in the treatment plan. Examples of interventions are listed as:

- Restrictions of rights and privileges
- Redistribute patients on the unit
- Re-evaluate current behavior plans
- Modify behavior plans
- Increased observation status
- Consultation with CMHC clinical leadership

In addition, the policy stated that "*when an incident of aggression/violence occurs, the treatment team will document the incident on the monthly patient to patient assault log, CMHC-786. Assault log information will be reported weekly on a designated day Friday's at the facility's morning meetings to provide unit leadership the opportunity to discuss trends and develop action plans. Patients identified as having up to 3 assaults within a 2 week time frame will require immediate review for implementation of a new intervention to prevent further assaults."* The policy also provides for monitoring by the Quality Manager based on patient injury reports

and assault logs. This data is to be reported to hospital leadership and the governing body monthly or as needed. Unit patient to patient assault logs will be reviewed weekly at designated morning meetings. This data is also to be shared with unit treatment teams and action plans are to be developed to address any identified patterns.

The HRA was informed, during interviews with staff, that the units at Chester are separated by legal status (unfit to stand trial, not guilty by reason of insanity, civil patients) and that the populations cannot be mixed. The HRA requested the policy requiring this, but was told that the Department of Human Services made that requirement to separate the populations, Chester does not have a specific policy that addresses the separation of units by legal status.

Statutes

The Mental Health and Developmental Disabilities Code (405 ILCS 5/2-102) 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…"*

The Code (405 ILCS 5/2-112) guarantees *"Freedom from abuse and neglect. Every recipient of services in a mental health or developmental disability facility shall be free from abuse and neglect."*

The Code (405 ILCS 5/3-211) states under *Resident as Perpetrator of Abuse* that *"When an investigation of a report of suspected abuse of a recipient of services indicates, based upon credible evidence, that another recipient of services in a mental health or developmental disability facility is the perpetrator of the abuse, the condition of the recipient suspected of being the perpetrator shall be immediately evaluated to determine the most suitable therapy and placement, considering the safety of that recipient as well as the safety of other recipients of services and employees of the facility."*

The Code of Federal Regulations (42 CFR 482.13) guarantees care in a safe setting stating that *"(1) The patient has the right to personal privacy. (2) The patient has the right to receive care in a safe setting. (3) The patient has the right to be free from all forms of abuse or harassment."*

Conclusion

The recipient incurred a severe injury to his right eye which he contends could have been prevented if staff had taken the threats of the peer seriously and taken appropriate safety measures. The OIG completed an investigation which also substantiated that the facility failed to protect the recipient from harm. The HRA discovered throughout its investigation that both the recipient's therapist and the peer's therapist knew about the previous altercation and also knew about the peer's continued threats of harm to the recipient. However, the only action that was taken was to place the peer in a different room farther down the same living unit.

Both the Mental Health Code (405 ILS 5/2-112) and the Code of Federal Regulations (42 CFR 482.13) guarantee care in a safe setting free from abuse or neglect. The HRA contends that since staff were aware of threats made by the peer against the recipient and the fact that an altercation

had just occurred 2 days prior, by leaving the two patients on the same living unit, the facility failed to protect the recipient from injury and that separate ends of the hallway was not sufficient distance between the two. Also, by not providing close monitoring of the two patients while in common areas (ie dining room) and intervening when the recipient allegedly made comments to the peer, this allowed the peer the opportunity to attack the recipient. Therefore, the allegation that staff did not take appropriate steps to prevent abuse from occurring is **substantiated**. The HRA makes the following **recommendations:**

1. Unit staff should be trained to take immediate action to separate peers who have a history of violence toward each other when threats of violence continue. Since there is no policy requiring the population to be separated by legal status, staff should separate peers with a history of violence towards each other onto different living modules until such time that the treatment team can meet and make a determination on how to best address the situation.

2. Administration should review the need for a policy to be developed requiring separation of patients on units by legal status if this is required by the DHS.

3. When a patient who has a history of violence is making threats of violence toward others, that patient should be assigned a 1:1 staff when in common areas or temporarily restricted to the living unit until such time as the treatment team can meet and determine if a continued 1:1 staff is necessary and appropriately address the issue with a behavior intervention plan.

4. Administration should review the process that was followed in this case of a STA reporting the urgency of the situation to a STA IV who did not review and address the situation in a timely fashion. STA supervisors should be retrained in the appropriate way to handle emergency situations in a timely fashion as required by CMHC policy CC .05.00.00.07.

5. Administration should develop a policy to address peer to peer aggression, which did not exist at the time of this incident. The HRA acknowledges that the facility was in the process of developing such a policy at the time of this report. The facility should forward the final version of this policy to the HRA for review.