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**HUMAN RIGHTS AUTHORITY- CHICAGO REGION**

**REPORT 14-030-9005  
Vanguard MacNeal Hospital**

Case Summary: The HRA substantiated the complaint that MacNeal Hospital did not follow Mental Health Code procedures when staff administered forced psychotropic medication.

**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, and the Nursing Director of Behavioral Health Services. Relevant hospital policies were reviewed, and records were obtained with the written consent of the recipient.

**COMPLAINT SUMMARY**

The complaint states that the recipient received emergency psychotropic medication for alleged agitation and aggression, however the injection was given some time after the recipient was offered oral Haldol but refused it (he did take oral Ativan, which was offered at the same time). The complaint indicates that the recipient was told that if he didn't take the oral Haldol, that it would be injected. The complaint also states that the recipient signed consents for Zyprexa and Ativan only, and he specifically refused Haldol, due to its side effects. The complaint indicates that the recipient was eating at the time the nurse returned to him with a security officer and gave him the injection. The complaint indicates that staff may have been affected by an incident that happened two days earlier when the recipient was attacked by another recipient and they had to be separated. At that time the recipient was transferred to another floor (and he did not receive any medication for that incident) while the attacker was discharged into police custody.

## FINDINGS

The record shows that the recipient was admitted to the behavioral health unit at MacNeal on 7/24/13 after being treated and medically cleared on the medical floor. His psychiatric evaluation, completed on 7/24/13 states, "This is a 41 year old Caucasian male with a past history of schizoaffective disorder who was transferred from the medical floors here at MacNeal Hospital. He had presented to the hospital due to non-compliance with medication, leading to psychotic behavior. He has been paranoid and delusional. He believes that there is a plot against him. He is refusing to cooperate with much of the admission process. The patient apparently at home had become increasingly agitated. He currently lives with his parents. He has not been sleeping at all for the last several days prior to admission. He has been showing more impulsivity in his behavior. He has not been caring for his hygiene. He also has been believing that he has been intoxicated with alcohol and dope. He has negative alcohol and drug screen. The patient tells me he will not discuss anything further and will not sign any paperwork without a lawyer. Apparently the patient has been increasingly difficult to be cared for at home by his parents and they have been looking for nursing home placement for this patient." The recipient's diagnosis is listed as Schizoaffective Disorder and he was petitioned for involuntary admission and the documents filed in court.

The record contains a "Patient Notification of Psychotropic Medication" form signed by the recipient and his attorney on 7/25/13 at 3:30 p.m. The form indicates that the recipient has been given information and consents to the administration of Ativan, however the form states, "No (to Haldol) per [the recipient] as told to counsel, GAC [attorney] 7/25/13 3:30 p.m." The form is signed and witnessed by the physician and a registered nurse and states, in the recipient's handwriting, "signing for Ativan only." The record does not contain the recipient's Preferences for Emergency Treatment and there is no physician statement of his decisional capacity.

On 7/27/13 an entry in the progress notes, made at 12:45 p.m., states, "Rapid response [call for medical help- possibility of injury]. Pt was in the day room taking over the tv. Pt not willing to let others change the station. Pt was yelling back and forth with another pt. Pt did not stop arguing. Another pt pushed him and a physical altercation started. Staff unable to separate the 2. Staff finally got them apart but the other pt went toward [the recipient]. Both pts ended up on the ground. [The recipient] was hit multiple times. Staff once again attempted to separate them. Security alarm pressed earlier. Staff pulled them apart and they were separated from each other. Rapid response called for [recipient], clarification of incident. When the verbal altercation continued, [recipient] was the pt who picked up his fist first." Although it is not noted in the progress notes, the Medication Administration Record (MAR) shows that the recipient received 5 mg Haldol and 2 mg Ativan orally at the time of this incident. The recipient was then moved to another floor of the hospital for safety.

On 7/29/13 an entry in the progress notes, made at 9:45 a.m. states, "Inability to care for self. Monitored each 15 minutes per COUP [close observation/unpredictable behavior]. PRN Haldol 15 mg \Ativan 2 mg given IM [intramuscularly] at 9:00 a.m. for increased agitation and psychotic symptoms. Disheveled, mumbling to self, "It's all starting, people fighting with me." Intrusive, accusatory with peers. Appears paranoid, "I want witnesses." Talking about his

lawyer...." The record contains a Restriction of Rights Notice for this event. The reason for the emergency medication is described as, "Agitated, verbally aggressive with peer, escalating with security assist. Talking about fighting with peer." The form indicates that the recipient received a copy of the Notice and indicated that he did not want anyone notified. The MAR shows that the recipient received an injection of 5 mg Haldol and 2 mg Ativan orally at 8:55 a.m.

### HOSPITAL REPRESENTATIVE RESPONSE

Hospital staff were interviewed about the complaint. They indicated that the recipient had been shadow boxing with another patient, antagonizing him, on 7/27/13, and eventually the situation developed into a real fight. Staff intervened to break up the fight and had to throw themselves on top of the recipient to protect him from the blows of the 2<sup>nd</sup> patient. Hours later, the 2<sup>nd</sup> patient was walking into the day room, where he was prevented from entering due to the recipient being there, and another fight ensued with the 2<sup>nd</sup> patient becoming extremely violent and injuring 5 staff (one of whom is still not able to work). The recipient was moved to another floor and the second patient was taken into police custody.

After the recipient was moved to another floor, he again began to initiate a fight. On 7/29/13 he became verbally aggressive and threatened a fight with another patient. Security was called and the recipient received emergency medication. Staff indicated that the complaint was incorrect in that the recipient was medicated some time after the event- the incident occurred shortly before 9:00 a.m., the MAR shows that the recipient received his injection at 8:55 a.m., and the Restriction of Rights Notice was completed at 9:00 a.m. as well. Staff indicated that the recipient was not offered oral medication which he refused- his physician prescribed Haldol for emergency use and the nurse felt that he needed it at the time it was administered.

Hospital staff were interviewed about the Mental Health Code requirements for the administration of psychotropic medication such as the physician statement of decisional capacity and the preferences for emergency medication. They indicated that the psychiatric evaluation had stated that the recipient did not have the capacity to sign in as a voluntary admittee, however there is no statement of decisional capacity. They indicated that it could be added to the medication consent form and they would be agreeable to that. They also indicated that there is not a separate form for preferences for emergency treatment, however they agreed to add this.

### STATUTORY BASIS

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment: "A recipient of services shall be provided with adequate and humane services in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. The recipient's preferences regarding emergency

interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan." Section 2-200 d states:

"Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the facility shall advise the recipient as to the circumstances under which the law permits the use of emergency forced medication under subsection (a) of Section 2-207, restraint under section 2-208, or seclusion under Section 2-109. At the same time, the facility shall inquire of the recipient which form of intervention the recipient would prefer if any of these circumstances should arise. The recipient's preference shall be noted in the recipient's record and communicated by the facility to the recipient's guardian or substitute decision maker, if any, and any other individual designated by the recipient. If any such circumstances subsequently do arise, the facility shall give due consideration to the preferences of the recipient regarding which form of intervention to use as communicated to the facility by the recipient or as stated in the recipient's advance directive."

The Mental Health Code 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 a-5).

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 has provided their policy for emergency medication (#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 record shows that the recipient in this case presented an imminent threat of physical harm and that he was medicated at the time of the incident and not later while he was otherwise occupied. A Restriction of Rights Notice was issued for the event showing that he did not want anyone notified of the restriction. At issue is the recipient's refusal to give informed consent for the Haldol which he was administered on an emergency basis, as well as the documents required under the Code for the administration of psychotropic medication in general. The record contains a document signed by the recipient and his attorney stating that he would consent to the use of Ativan but specifically refused the administration of Haldol. This document was signed by the recipient and his attorney on 7/25/13. The Mental Health Code mandates that services must be provided in the least restrictive environment, pursuant to an individual services plan. In determining whether care and services are being provided in the least restrictive environment, the Code indicates that the facility must consider the views of the recipient, if any, concerning the treatment being provided. In this case, the facility made the medical decision to override the recipient's objection to Haldol, and as in any emergency situation, the recipient's consent for this emergency medication is not required. However, the record is missing two other important documents that are mandated by the Code: the physician statement of decisional capacity and the preferences for emergency treatment. The HRA substantiates the complaint that MacNeal did not follow Code procedures when it administered forced psychotropic medication.

## **RECOMMENDATIONS**

1. Review hospital policy and Mental Health Code mandates regarding the administration of psychotropic medication, both regularly scheduled and emergency medications.
2. Ensure that recipients give informed consent for all psychotropic medications and that the record contains a physician statement of the recipient's decisional capacity.

3. Include the recipient's preferences for emergency medication in the recipient's treatment plan and ensure that these recommendations are available to staff should the need arise.

#### SUGGESTION

1. Given that there is such an array of psychotropic medication from which to select a treatment, the HRA asks that physicians and hospital staff make every attempt to honor a recipient's preference for medication, even in emergency situations.