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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 14-030-9023
Edward Hines, Jr. VA Hospital

Summary: The HRA substantiated the complaint that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, but it did not substantiate that staff did not adhere to the Code mandated protocol for the administration of emergency medication (by use of a separate standard of dangerousness for veterans). The provider did not submit a response to the findings in this case.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Edward Hines Jr. VA (Hines). It was alleged that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, and that staff do not adhere to the Code mandated protocol for the administration of emergency medication. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107).

Hines is a 471-bed Veterans Administration medical facility that incorporates a 29-bed Behavioral Health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Chief of Mental Health Services and VA Office of General Counsel Staff Attorney. Hospital policies were reviewed, and the adult recipient's clinical records were reviewed with written consent.

COMPLAINT SUMMARY

The complaint indicates that the recipient received forced emergency medication with no indication of physically harmful behaviors. Reportedly, the recipient did not resist receiving an injection but understood that the VA police were present to hold him if necessary if he refused. The complaint alleges that the recipient has no history of violent behaviors and was court ordered for medication, not for threatening behaviors but for deterioration of his ability to function only. Additionally, the complaint alleges that the recipient requested the forced medication issue be investigated by the VA, but it was not.

The complaint also alleges that staff on the Behavioral Health Unit have stated that forced medications are given on an emergency basis at the first sign of agitation because military veterans are "trained killers." A unit physician testified to this statement at the involuntary medication hearing of the recipient on 4/03/14, when he stated that medications would not be administered this way on a "regular" psychiatric unit, but that they are on the VA unit because the patients there are "trained killers."

FINDINGS

The Progress Notes for the recipient contain an Assessment of the recipient: "[Recipient] is a 61 year old African American with PPHx [past psychiatric history] of schizoaffective disorder with first psychotic episode in military in 1979, which resolved with Thorazine and Lithium, who presented as a transfer from [another VA hospital] after decompensating over the past several months resulting in patient isolating himself from his family and his work, failing to manage his finances, failing to care for himself, presenting with very strong erotomanic delusions regarding [a psychiatrist at another hospital], some paranoia, and significant hyperreligiosity. Spoke with patient's daughter today, who stated that patient has been acting very bizarre since his prostate surgery in 11/2013, and since this time he has been hyper-religious, having what sounds like command AH [audio hallucinations] of witches and spirits telling him what he can and cannot do, and preoccupied with [former attending psychiatrist]. Daughter denied any history of violence or aggression, and denied that he has ever had any fixed false beliefs similar to his preoccupation with [psychiatrist] prior to now. [Psychiatrist] has been informed of [recipient's] erotomanic delusions through 'Duty to Warn', and she is concerned for her safety. Given that [psychiatrist] is potentially in harm's way, and based on the fact that [the recipient] failed to provide for his basic needs (eating, going to the bathroom, leaving his house, paying bills, etc), he is in need of inpatient psychiatric admission for safety, stabilization, prevention of harm to others and himself." The recipient's diagnosis is Schizoaffective Disorder. He was admitted to the Behavioral Health Unit on March 16, 2014.

Progress Notes from 3/16/14 at 6:01 p.m. describe an emergency medication situation: "Social Work approached by Veteran, who wanted to speak with this worker as he wanted to report 'a recollection of events on 3/12'. Social Work previously attempted to speak with this veteran yesterday, and was unable to obtain pertinent information as he would only respond 'I don't know.' Upon meeting with the Veteran today, he was agitated and argumentative, presents with paranoia during his conversation with 2S staff. Hines Police and Nursing Service present during this interaction, as Veteran refusing to take prescribed medications. Veteran first informed Social Work that he wanted it documented that he has had a 'recollection of events', which includes him being brought to Hines VAMC 'against my will' and being 'taken into custody for no reason.' Veteran reporting that his daughter and ex-wife 'did not contact the police' prior to his admission. He is also requesting it to be documented that he has court on 3/18 at 1:30 p.m. 'in Watseka Illinois, Iriquois County' for a DUI and 'six tickets'. Veteran reporting 'I am innocent.' Social Work advised the Veteran that his statements/concerns would be documented, and when asked if there was anything else he wanted to discuss, Veteran reported 'more statements to come tomorrow.' Veteran subsequently agreeable to medication, reporting 'I will take this shot against my will.'"

Progress Notes from 3/16/14 at 10:38 p.m. describe an emergency injection: "Patient was waiting at the hallway in front of conference room to talk to a social worker who at that time was talking to another patient in the conference room. While waiting this patient was getting paranoid and agitated towards other patients who pass by him and asking him, 'Why he was standing on the spot?' Patient was offered meds to help him calm down, but patient was refusing meds initially PO [orally] or IM [intramuscularly]. Patient was getting more agitated at that time. Patient finally accepted Haldol 5 mg and Ativan 1 mg at 5:25 p.m. with police presence and standby…."

Progress Notes from 3/19/14 describe another emergency injection: "Patient was noted to pacing the hallways frequently this shift. Verbalized, 'I am doing great' when asked. Has denied SI [suicidal ideation]/ HI [homicidal ideation]/ AVH [audiovisual hallucination] but appeared internally preoccupied and anxious. Later this shift he started yelling while pacing on the hallways. At 11:05 p.m…. accepted Haldol 5 mg and Lorazepam 1 mg IM at this time…."

Progress Notes from 3/22/14 describe another emergency medication injection: Patient states, 'I have already contacted your boss in prayer and I have the okay to have pizza tonight! Pick up the phone and call for pizza!' Patient with angry affect; Pt not listening to any redirections by staff, getting louder and verbally threatening to staff; Patient insisting that it's a Pizza night tonight today and demanding to know why we have not ordered yet. Patient remains delusional and hard to redirect; Patient had not been compliant with medications; Police Assistance was needed to administer PRN [as needed] of Ativan 1 mg and Haldol 5 mg IM each 6 hours as ordered…"

Progress Notes from 3/29/14 describe another emergency medication injection: "You know who I am. Your wife and children are dead. I just have to speak it.' 'My wife and my brother are going to come at lunch time to marry me to [former psychiatrist].' Paced the unit off and on. Suddenly approached staff reporting he is god, and staff's wife and children are going to be killed. Also, delusional about marrying his former Doctor. Police arrived and Haldol/Ativan IM given…"

Progress Notes from 4/01/14 state, "'I want my rights. I want to file a complaint.' Patient spoke with doctor, then came out of his room to complain of his rights were violated. He signed the rights form with another RN. Referred to speak with CNM [Clinical Nurse Manager]. Patient upset that he received an IM injection on Saturday after he had become threatening, delusional, hyper religious, and unpredictable. However, on Sunday, he joked about the injection and laughed with me and other staff, as he was attempting to convince us to order pizza. On Sunday, he displayed no psychotic symptoms, and actual psychosis was questioned by several nursing staff. He was appropriate, and jovial in regards to events leading up to Saturday's injection. He was attempting to manipulate staff to order pizza. He was quite cheerful and pleasant the whole shift on Sunday. On Saturday, he reported he was god, and told me to call my wife and children or they will be killed as he is god. Also, he reported he would have his wife and brother visit to marry him to an outside doctor. Police had to be called and he took the injection complaining that he did not want it, but took it anyway…."

On 4/03/14 the recipient attended a court hearing where he was ordered involuntary treatment with medications. At that hearing a staff physician from Hines VAMC testified and the partial transcribed notes from this testimony state:

Attorney: You testified that Respondent has expressed his willingness to participate in non-medical therapy, correct?

Physician: He's inquiring about this daily, yes.

Attorney: And he has offered to continue to participate in psychotherapy and in substance abuse treatment, correct?

Physician: Correct.

Attorney: Can you explain a reason why the Respondent has all four of his PRN's or emergency medications given either on a weekend or the afternoon shift-

Physician: Yes

Attorney: - when the regular team isn't there?

Physician: Again, my order specifies severe agitation and threatening behavior, please offer the patient oral medication before proceeding with IM medications. That's my full order. Why the medications were delivered because the patient was receiving medications per my order because he was agitated and presented threatening behaviors. And every time my patient gets PRN medications, the next day I'm asking the nurses who were present, why did you shoot my patient with oral- with haloperidol, so I know why they did it. And I'm very careful about this. You have to understand what my unit consist of, whom we are treating. In fact, I have an inpatient unit that treats non—(inaudible), lawyers for that matter, I wouldn't use emergency medications at all. But these are trained killers. These are people who were trained to kill people. And I'm not going to take any chances that anybody, including the patient, will be hurt. That's why medications are used wisely and I trust my nurses. They always have a good reason why they gave emergency medications. These are trained soldiers with very good skills, even 40 years after Vietnam, they can do a lot of harm. That's why they get emergency medication when situation calls for it.

Attorney: So generally, according to staff on the unit, at the first sign of any agitation, emergency medication is administered because these men are trained killers?

Physician: That is not true.

Progress Notes from 4/05/14 state, "Came to desk calling male staff names and telling him, 'I want my wife!' went back to his room but keeps talking loud, cursing and extremely agitated; offered prn meds but was cursing staff and 'there's no way you gonna give me that shit; you have to put me in restraints first', police was called, with two officers and four nursing staff, vet was ready to fight and saying that he will fight and challenging who would come first; three more police officers came to assist and meds were given shortly after that which made me believe that the show of force somewhat worked in this situation; 2 mg Ativan and 5 mg Haloperidol both given; nursing supervisor made aware of above."

HOSPITAL REPRESENTATIVES' RESPONSE

Facility representatives were interviewed about the complaint. They stated that the culture of the VA Behavioral Health Unit has tended to be the opposite of what has been alleged in this complaint. The Chief of Mental Health Services indicated that he has never seen a bias

towards the veterans in terms of determining dangerousness and that generally with his young interns he has had to encourage the use of emergency medication when patients are dangerous because of their reluctance to use this intervention. When emergency medications are utilized, the physician must assess not only dangerousness but also the capacity to inflict harm, and this can be very difficult. Generally, when emergency medication is considered, the staff err on the side of the veteran's rights and not on the forced medication. Generally, staff believe that veterans are treated better within the VA hospital than they would be treated outside the VA, and that includes the administration of emergency medication.

Hospital representatives were interviewed about the use of the VA Police for the administration of forced emergency medication. They indicated that most of the Police are veterans themselves and they intervene to allow staff to administer the medication safely. Staff reported that they have worked very hard on developing the VA Police in terms of their intervention on the unit, and the Police have become a stabilizing show of force, often with the effect of calming patients and preventing physical acting out.

The staff had not read this complainant's chart, however from our discussion and the HRA presentation of the Progress Notes, the staff felt that the descriptions did not adequately demonstrate an imminent threat of physical harm. The unit staff complete Restriction of Rights Notices for all emergency medication cases but these do not print from the general record and perhaps a clearer rationale is presented there. The HRA asked if the veterans complete their Preferences for Emergency Treatment because it was referred to in the clinical record and they did not know, however they are willing to develop this form. They were also asked about the physician statement of decisional capacity and they indicated this is included in the record.

STATUTES

The Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment. As a means to this end, it outlines how recipients are to be informed of their proposed treatments and provides for their participation in this process to the extent possible:

"(a) A recipient of services shall be provided with adequate and humane care and service 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 that recipients shall be asked for their emergency intervention preferences, which shall be noted in their treatment plans and considered for use should the need arise].

(a-5) 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 [below]…." (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

Hines provided hospital policy and procedure regarding medication orders, monitoring psychotropic medication, distribution of medication and reconciliation of medication, however they did not have policy which specifically described the patients' rights regarding medication. Patients are apprised of their rights when they are given the Rights Regarding Mental Health and Developmental Disabilities Services and the Rights of Admittee at admission.

CONCLUSION

The Mental Health Code mandates that all recipients shall be informed of their right to refuse treatment, including medication. If such services are refused, they must not be given unless they are necessary to prevent the recipient causing “serious and imminent physical harm” to the recipient or others. In this case the record does not support the case for forced emergency injections except perhaps for one administered on 3/22/15 which mentions verbal threats but no specifics. Both of the entries for 3/16/15 fail to meet the standard for dangerousness- the first entry even stating “Veteran subsequently agreeable to medication.” Entries which show that the recipient was “anxious”, “pacing”, “delusional”, “agitated”, or “manipulative” do not convey that he was also a threat of imminent physical harm.

The record shows that the unit physician testified in court that veterans are considered “trained killers” and thus are held to a different standard when making decisions regarding emergency medication. The HRA cannot assign decisions made on the unit to this stereotype, however we condemn this image and ask all staff to apply the same Mental Health Code standard for dangerousness that is practiced in all Mental Health treatment facilities across the State.

The HRA substantiates the complaint that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, but it does not substantiate that staff did not adhere to the Code mandated protocol for the administration of emergency medication (by use of a separate standard of dangerousness for veterans).

RECOMMENDATIONS

1. Review with all the staff the Mental Health Code section which describes the administration of forced treatment (405 ILCS 5/2-107), and ensure that if 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." Apply this same standard to all Illinois veterans.

2. The record mentions the use of Restriction of Rights Notices as well as Preferences for Emergency Treatment, however the HRA did not receive these as they are not copied in the CD of this file. The HRA reminds the VA staff that these are Mental Health Code requirements and must be utilized when veterans are administered forced emergency treatment.