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HUMAN RIGHTS AUTHORITY- NORTH SUBURBAN REGION
North Suburban Regional Human Rights Authority
REPORT 14-100-9010
Gottlieb Memorial Hospital

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Loyola University Health System's Gottlieb Memorial Hospital (Gottlieb). It was alleged that the facility did not follow Mental Health Code requirements when a recipient of mental health services was denied visitation. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.). The Illinois Probate Act (755 ILCS 5/1 et seq.), the Health Care Surrogate Act (755 ILCS 40/20) and National Guardianship Association's Standards of Practice were reviewed relative to the complaint.

Gottlieb is a 250-bed community hospital located in Melrose Park, Illinois. The hospital incorporates a 12-bed Geriatric Behavioral Health Unit.

To review these complaints, the HRA conducted a site visit and interviewed the Attending Physician, three Registered Nurses, the Licensed Clinical Social Worker, the Director of Nursing/Patient Safety Officer, and the Patient Experience Advocate. Relevant hospital policies were reviewed, and records were obtained with the consent of the recipient.

COMPLAINT SUMMARY

The complaint indicates that for the duration of hospitalization, from 8/28/13 until 9/18/13, the recipient was denied his right to visitation. The complaint indicates that on 8/31/13 the recipient's daughter, son, and granddaughter went to Gottlieb to visit the recipient. The family members showed the nurse a court order which indicated that they were allowed to see the recipient, and the nurse left to speak with the supervisor. An hour later, the family checked and they were then told they could not see the recipient. A hospital security guard reportedly threatened to have them arrested and they then left.

FINDINGS

RECORD REVIEW

The recipient's clinical record provided by Gottlieb Hospital, indicates that on 8/28/13 the recipient was evaluated by a McHenry County crisis worker after being taken by ambulance to a hospital emergency room (ER). The hospital record indicates that the recipient was seen at approximately 3:19 p.m. ER notes written at 3:21 p.m. state, "ER MD and social worker at bedside with pt, guardian, and caregiver. Pt immediately angry when sees guard. and care giver, states, 'some joke you played on me'." At 3:48 p.m. progress notes state, "Pt takes valium without difficulty. Points to caregiver and states, 'he's the one who called the ambulance. He's with that [guardianship] Corporation. Have you heard of them?'" The record indicates that at approximately 5:48 p.m. the recipient was evaluated by a McHenry County crisis worker. The Crisis Intervention and Disposition Summary states, "Assessed Pt. Pt. states that he does not know why he was brought to the ED [emergency department] via ambulance. Pt. reports that he does not want to go home with these people, referring to his caregiver and guardian. Pt. reports that he is scared to go home and that he has not been allowed to have a telephone for 4 weeks and that his caregiver fixes the door so pt. cannot leave the house. Pt. denies suicidal and homicidal ideation and reports that all basic needs are being met. Consulted with guardian. Guardian reports that Pt. has been agitated since last night when visited by his daughter and granddaughter who reportedly were providing Pt. with alcohol. Guardian reported that Pt. attempted to leave his apartment via a window and today during transport to his other apartment he was punching the window of the car and attempted to open the door to the car while moving two times. Guardian reports that Pt. is unable to visit with his daughters without supervision. Guardian contacted [Chicago hospital] and reported acceptance to Pt. with transfer. Nurse verified this information and found [hospital] to have no beds available for Pt. Nurse verified and found that [hospital] requires face sheet, petition, and other information before considering placement for Pt.

Asked guardian to petition as crisis worker did not have sufficient observation or information to complete one. Guardian indicated she had previously completed a petition and did not need assistance. Guardian contacted her facilities attorney multiple times to consult how to complete a petition. Guardian claimed she had never seen a petition like the one presented before. Crisis worker assisted Guardian in completion of petition.

Contacted [staff] at Senior Services regarding current suspicions of mistreatment of Pt. based on Guardian's statements and observations made by crisis worker. [Staff] states that she is familiar with Pt. and his case that resulted in the placement of guardian. Crisis worker explained that guardian appears to be looking for placement for Pt. without following protocol, is refusing to transport Pt. to his home, Pt.'s reports of being denied a telephone upon request, Pt.'s reports of being unable to leave his home and other abnormal statements and behaviors by Guardian. [Staff] stated that long term placement cannot be sought for Pt. without court order and the petition will only allow for a 72 hour hold. [Staff] stated that follow up by an elder abuse worker is warranted given provided information. [Staff] asked for placement information if placement is found for an elder abuse worker to follow up."

On 8/28/13 at 8:00 p.m. the guardian completed a petition for involuntary admission for the recipient to be admitted for psychiatric services. The reason given for the need for immediate hospitalization states, "Changed mental status beginning the evening of 8/27/13. Attempted to leave apartment through window at approx. 4:30 a.m. Refused medication and meals. Attempted to exit a moving car, attempted to break car window. Through [sic] drinking glass across apartment." A certificate is included in the record, completed by a physician on 8/28/13 at 9:00 p.m. and the

reason given for the need for immediate hospitalization is stated as, "Change in mental status refusing to get in vehicle making threats to caregiver."

The record contains another petition, completed on 8/29/13 at 3:35 p.m. by a nurse in the Gottlieb emergency department where the recipient had been transferred. The reason for the hospitalization is given as: "Pt became agitated following a visit with his daughters. Per reports, he attempted to jump out a window. He refused medications and to eat. He also attempted to jump out a moving vehicle." The petition does not indicate that the recipient received a copy of it within 12 hours after admission. It does not include a statement that the recipient received a copy of his Rights of Individuals Receiving Mental Health and Developmental Services or his Rights of Admittee information.

The record contains an Application for Voluntary Admission completed on 8/29/13 at midnight. The section which indicates that the applicant refused to sign the form but accepted voluntary admission is checked, however the form appears to have been signed by the recipient. It also indicates that the recipient did not want anyone notified of his admission. The recipient's name, birthdate, social security number, and address are not completed on the form.

The record contains an informed consent for medication document. It indicates that the recipient was prescribed Depakote, Zyprexa, Seroquel, and Haldol (dosage not given). On the signature line of the recipient or legal representative it states, "Patient gave verbal consent to receive medication" and it states, "Guardian aware of medications."

The record contains a form titled, Geriatric Behavioral Health Care Unit Verbal Information Release for Telephone and Visitation Consent (form 05-01-14A). It shows that the patient wished to receive telephone and visitation from his guardian, caregiver, personal physician, and personal attorney. This form is not signed by the recipient but by an attorney and states, "client attorney per guardian [name]." On the bottom of this document is written: "No family allowed. Daughters are not allowed to visit or call or get information per [guardian]."

Gottlieb Hospital Progress Notes from 8/29/13 state, "SW received phone call from pt.'s daughter. She is making allegations that pt is being mistreated by the guardian. SW advised daughter to make an abuse report with the Department on Aging. Guardian has said that we are not allowed to give information to the family. SW then received voicemail message from [guardian], pt.'s guardian, to have pt transferred to [Chicago area hospital]. SW called office and spoke with [staff at guardian agency] who confirmed that they would like pt transferred. SW received call from [staff] at [an aging care group] who has been assigned to investigate abuse allegations. SW informed her that pt is most likely being transferred to [Chicago area hospital]. SW faxed pt clinicals and was making arrangements when phone call was received from [Chicago area hospital] that they will be unable to accept pt. SW left voicemail with [staff] that [hospital] has declined pt."

Progress Notes from 8/30/13 state, "Patient very confused this evening; patient wandering around on the unit unable to find his own room and had to be redirected on many occasions. Patient was pleasant at the beginning of the shift; however, as the evening progressed, patient became anxious and irritable. Patient wanted staff to call his daughter (but patient did not know her phone number); patient wanted staff to call him a cab because patient wanted to go home, and when oriented to reality (that patient could not go home and was not able to care for himself), patient became agitated, angry, and irritable."

Progress Notes from 8/31/13 at 2:26 p.m. state, "Chaplain brought family of patient to visit pt, they told, that have the rights to visit pt. Security notified. [Staff] notified, family was not allowed to let in. Nursing Supervisor called explained the situation, she said that she is coming to help, social worker notified." The notes also indicate that the family was knocking on unit doors at 2:15 and escorted off of the unit by hospital security at 7:00 p.m. A Pastoral Care Progress Note made on 8/31/13 states, "The chaplain met the family on 3W looking for the patient whom they said was on GBH unit. On the way to the unit the family consisting of a son, a daughter and granddaughter said they have a court order allowing them to see the patient and prior to coming they had gone to police department who told them if they could not see the patient they should call the Police Department. When the chaplain and the family asked to be allowed in to see the patient the nurse said the family was not allowed to see the patient. The family became a little agitated and said they would call the Police; the chaplain calmed them down and requested the intervention of the Nursing Supervisor. The Nursing Supervisor came and with the chaplain tried to address the family's concerns. She asked to see the court order and asked the family to be patient and wait. The family left to get something to eat while the documents the family provided were examined by the Nursing Manager, Social Worker, Chaplain, Asst. Nurse Manager and another nurse. The Nursing Supervisor was called to a Code in Surgery and left instructions for the Asst. Nurse Manager to call the Administrator on call as well as the psychiatrist overseeing the patient's care. Shortly after the Chaplain was called to attend to the family of the surgery patient."

Neuropsychological Evaluation notes entered on 9/01/13 indicate that the recipient suffered from middle stage dementia and describe the patient's Emotional Functioning: "The patient's emotional status is characterized by depression and anxiety. He is adamant that he does not belong in the hospital and is sad that he had to be brought here. He states it is like a jail. He admits to feeling sad all the time and he has a negative outlook about himself and his future. He reports feelings of guilt and worthlessness. He report increased crying, agitation, and irritability. He has lost interest in other people. He has difficulty making decisions and difficulty concentrating. He has been sleeping less lately and his level of energy is subjectively diminished. He is getting tired more easily than he used to. Appetite is reportedly good. He denies suicidal ideation and thoughts of death. He is clearly confused but he denies any periods of confusion. He reports that his guardian and caregiver are mistreating him and stealing from him. Elder Abuse is investigating his situation at home. He denies any auditory or visual hallucinations or other psychotic symptoms. He denies being in any pain. He obtained a score of 21 on the Beck Depression Inventory II, which is in the Moderate range on this self-report measure." The recipient's diagnosis is listed as middle stage Dementia and Depressive Disorder NOS.

Progress Notes from 9/01/13 state, "Pt very anxious about seeing MD today. Wanted to know if we contacted his lawyer to see about his family coming to visit. Stated he hates guardian and wants to fire them. Explained to pt that we will get in touch with the lawyer and Guardians by Tuesday after the holiday weekend. Tried to redirect pt to watch tv and relax before bed."

Progress Notes from 9/03/13 state, "SW spoke with [staff] from [an aging care group] and faxed her results of neuropsych evaluation. SW also received phone call from [guardianship agency]. SW updated her on pt progress and faxed her results of neuropsych evaluation. SW and [guardianship agency staff] weighed pros and cons of pt's family visiting while pt is in the hospital. [Guardianship agency staff] would like [attending physician's] input and possibly a letter from him to support his opinion for their file. SW to discuss issues with [attending physician]."

A Geriatric Behavioral Social Work Assessment dated 9/03/13 states, "[Guardianship agency] reports that patient is found to have dementia. Patient's children have argued over his care and the judge appointed Magnolia as a neutral party to make decisions, again per [guardianship agency]. Reports indicate that patient believes the child that he last spoke with and is easily agitated when [guardianship agency] must make decisions which conflict with that of that particular child. At this time, [guardianship agency] has restricted all visitation and phone calls with his family while he is admitted. Once discharged, the judge has indicated pt may see his family only when supervised by [guardianship agency]."

Progress Notes from 9/05/13 state, "Alert, verbal coherent enough to express and understand questions, communicating needs. Withdrawn, quiet, expresses that he wants to go home."

Progress Notes from 9/05/13 state, "SW spoke with [staff] from [guardianship agency], guardian of pt. She received the letter that SW faxed yesterday. SW let her know that [recipient's attending physician] is on staff at [nursing home where guardian wants to place recipient upon discharge] and could follow pt there if agency would like [pt] to go there upon discharge. [Guardianship agency staff] indicated that that would be a wonderful idea and agreed to have SW contact [the nursing home] to facilitate discharge planning…."

Progress Notes from 9/06/13 state, "Patient refused HS meds. stating, 'I will not take any medicine and I will not eat any more until I get home.'"

Progress Notes from 9/07/13 state, "Pt upset today. Complains to nurse that he is not getting right medications and also verbalizes concerns about his current situation regarding his family and guardian."

Progress Notes from 9/09/13 state, "SW received phone call from guardian at [guardianship agency]. Nurse liaison from [nursing home] will be here Wednesday to evaluate pt for admission. [Guardian] would like SW to discuss with [recipient's attending physician] if he thinks pt is stable enough to have family visit with supervised visits."

Progress Notes from 9/10/13 state, "SW received phone call from [guardian] at [guardianship agency]. SW explained that per [recipient's attending physician], pt is to have no family visitors until he is discharged and at the new placement for 2 weeks."

Progress Notes from 9/11/13 state, "Pt calm, pleasant, ate breakfast well, pt mentioned my daughters supposed to visit me yesterday."

Progress Notes from 9/17/13 reflect a visit from the Human Rights Authority. At this visit the recipient expressed sadness and disbelief regarding his forced hospitalization. He stated that he was tricked into going to an emergency room and then was forced to transfer to Gottlieb. He stated that he couldn't believe that his family had not come to visit him or take him home. He was worried that his medication was making him too tired and believed that all he really needed were water pills for an ailment that "runs in my family." He told this writer that it was his 93rd birthday that day. He also stated that he had escaped the Nazis but got caught by the medical system ("Do you know that they put me in an ambulance and tied me down- I was arrested like a criminal").

The recipient was discharged to a nursing home on 9/18/13. It is not clear from the record whether or not he approved of this transfer but the hospital is reminded that the court order states that guardians must have the approval of the recipient for an out of home placement.

The record shows that on 6/13/13 a private guardianship company was appointed a limited guardianship of the recipient in a court order which states in part,

1. [Guardianship agency] is appointed the Limited Guardian of the Person of [the recipient].

2. As Limited Guardian of the Person, the authority specifically conferred on [guardianship agency] as follows:

a. In accordance with the provision of the Health Insurance Portability and Accountability Act (HIPPA), [guardianship agency] shall have the authority to:

i. Execute releases and consents in order to access any and all of [the recipient's] medical records, including but not limited to, psychiatric records; and

ii. Communicate with all of [the recipient's] health care providers in order to assist [the recipient] with obtaining necessary medical care, and applying for all appropriate private insurance and/or public government benefits.

b. [Guardianship agency] shall have the authority to act as health care surrogate decision maker for [the recipient] under the Illinois Health Care Surrogate Act, 755 ILCS 40/1 et seq., at any time [the recipient's] Attending Physician and/or Health Care Provider, as defined under 755 ILCS 40/10, determines that [the recipient] lacks decisional capacity as defined under 755 ILCS 40/10, to make medical decisions.

c. [Guardianship agency] shall have authority to apply for any and all private, public, and/or government benefits on behalf of [the recipient].

d. [Guardianship agency] shall have the authority, in consultation with [the recipient], to procure any home, and/or home health services for [the recipient].

e. In the event that [the recipient] is no longer able to remain in his home at…because of medical or financial reasons, [guardianship agency] shall have the authority to explore alternative living arrangements for [the recipient], including but not limited to, an assisted living facility, supportive living facility, or an apartment. [Guardianship agency] shall consult with [the recipient] regarding proposed alternate living arrangements and shall ensure that [the recipient] has the opportunity to inspect any and all placements, if feasible. If [the recipient] objects to the proposed alternate living arrangements, [guardianship agency] shall bring the matter before the Court pursuant to 755 ILCS 11a/14.1 of the Probate Act on the issue of placement.

On 7/18/13 the Court issued an order regarding the restriction of the recipient's visitation:

It is hereby ordered that:
1. Visitation and all contact with [the recipient] is limited to family/blood relatives only.
2. All of the children and [the recipient's] other family members are prohibited and ordered to refrain from communicating in any way with [the recipient] about any aspect of this case or his business, and the family

has been further advised that the Limited Guardianship of the Person shall follow the procedure that has been specified in the letter dated 7/12/13 of [the attorney of the guardian] (attached hereto) with respect to all visitation, telephone calls and any other communication with [the recipient] and all visitation and telephone calls will be monitored
3. It is further ordered that said petition is denied without prejudice.

It is further Ordered:
That all visits with [the recipient] shall be scheduled in advance with [guardianship agency] and all visits shall be supervised and monitored as detailed herein. Supervision shall be monitored by the caregivers or representatives of [guardianship agency] as they shall direct.

The letter referenced above, is included in the record. It states:

Dear Counselors,

My office represents the Limited Guardian of the Person of [the recipient], [guardianship agency name]. As you know, on June 13, 2013, all parties entered an agreed order appointing [guardianship agency] as the Limited Guardian of [the recipient's] person.

As Guardian, [guardianship agency] must act in the best interest of [the recipient]. It has come to my attention that despite admonishment from the Court on June 28, 2013, [the recipient's] children and [the recipient's former caregiver] continue to discuss and communicate matters relating to the guardianship proceedings with [the recipient], which have caused him unnecessary stress and agitation. Matters relating to the guardianship proceedings include discussing [the recipient's] properties, business entities, and finances belonging to his estate.

Judge [of the guardianship proceeding] was extremely clear that no person was to discuss any matters relating to the guardianship proceedings with [the recipient], other than his attorney. Any concerns related to [the recipient's] person or estate should be directed to the respective Guardians.

In light of these continued behaviors, [the guardianship agency] is now implementing a new component to [the recipient's] care plan. In addition to the agreed Court Order, dated June 28, 2013 stating that caregivers shall be present at all visits between [the recipient] and others, caregivers will also be monitoring all telephone calls between [the recipient] and outside callers. The caregivers will identify themselves on the telephone at the beginning of each call. Accordingly, caregivers will be monitoring all communications between [the recipient] and others to ensure that conversations relating to the guardianship proceedings are not discussed with him, other than with his attorney.

Further, upon hearing any conversations relating to the guardianship proceedings by the family or [the former caregiver], all caregivers are now instructed to complete an 'incident report' detailing the person, time, mode, and content of the conversation. Incident reports will be immediately sent to [the guardianship agency], informing it of illicit communications. Upon receiving an Incident report, [the guardianship agency] will immediately terminate visitation and all telephone privileges of the offending party. It shall be made clear that this action will only take place if the illicit communications are heard and/or witnessed personally by the caregivers or guardian.

As a result of this order, the recipient's caregiver (all caregivers were secured by the guardian) initiated monitored phone calls of the recipient's home phone before his hospitalization, however,

he had been issued a cell phone by his family so he would have easy access to a phone and contact numbers and this was replaced with two landline phones so that caregivers were able to hear all conversations.

The record contains emails from the recipient's family requesting visitation with their father/grandfather while hospitalized in the geriatric behavioral health unit at Gottlieb hospital. The first is a letter prepared by the recipient's granddaughter and sent to her grandfather's attorney:

> "My name is… and I am the granddaughter of [the recipient] who I understand is your client in a Guardianship Proceeding…. I have become aware of some events that are very troubling to me to say the least. I live in Malibu, California and was recently visiting my mother,…, in the Chicago area, and on two occasions was able to visit my grandfather in person. The last time I visited him was Tuesday, August 27th, between 3:15 p.m. and 4:30 p.m.
>
> To be frank I have many concerns with the way [the guardianship agency] has been executing their role as Guardian of the Person as it relates to the health of my Grandfather, but this most recent development is what I would like to address in this email.
>
> I understand that in a short time after I saw my Grandpa in person, he attempted to make a phone call and call my mother and his care takers would not only not allow him that simple liberty, but somehow that act precipitated a call to have him taken to a psych ward via ambulance.
>
> Further [the guardianship agency's] attorney is saying the family can't speak to him because he needs to be 'stabilized.' However my mother called the hospital to speak to the doctor to understand her father's condition that necessitated such drastic measures and she was told that per [the guardianship agency's] directive, the doctor could not update her on her father's condition?!
>
> Mr…. this is completely absurd to me and does not appear to me to be within the parameters of the law. I am a licensed attorney in the state of California, currently on inactive status since the time my kids were born, and there is no court order as I understand it giving [the guardianship agency] plenary power over the care of my Grandfather to the exclusion of Grandpa himself as well as the entire family concerning his care and treatment. However that is just what they are doing and it is nothing short of a travesty!
>
> I visited with him this past Tuesday and his mental faculties were as good as ever. The ONLY problem he had was that he did not understand [the guardianship agency's] presence in his life and he didn't like the fact that it was there. He asked me personally several times to get rid of them because he said he felt like a prisoner. But because of some convoluted 'rules' that I was told about previously, the scope of which did not make sense to me, I did not respond at that time to his plea.
>
> However this new sequence of events that occurred 24 hours later, where [the guardianship agency] completely stripped him of all his liberties, completely isolated him from his family, instructed the doctors taking care of him to not discuss his care (not the case, but his care) with the family and the rationale given for this extreme move is that he

was "disoriented" because he didn't know where he was or why he was there Is crazy-- pun intended! He didn't try to hurt himself, no family member attempted to hurt him, a 93 year old man was merely temporarily disoriented and he is now confined to a psych ward? And his family can't see him or get information on his care? Is this conduct sanctioned by the court.

I am further concerned that the conclusion of the email below from [the guardianship agency's] attorney represents that they are seeking a plan for permanent care in a facility for him. That is ludicrous to me. I saw him just a few days ago and he was the way I have always known him to be. He may not be as sharp at 93 years old as he has been in the past, but he should not be in a ward of any kind. The reasons given in the email for this confinement is based on 'his inability to accept assistance from caregivers.' I have known my Grandpa a long time and when he doesn't want something he can be very contentious. That is just who he is and has always been. He made it very clear to me during my visits with him that he did not want [the guardianship agency]. His stubbornness to refuse the help he is being given is simply because he does not want help from them.

Since you are his attorney I am asking you on his behalf to remove [the guardianship agency] as the Guardian of his person. I am not against my Grandfather getting proper medical care but it should be done with his input if possible and the input of the family as well. There is no good reason, that I can see, to keep him completely confined and separated from his family. Finally, any medical provider in charge of his mental health care should recognize that he has been ornery and stubborn his whole life and this behavior is NOT a result of some kind of diminished capacity and he should not be treated as such. Moreover I understand that my aunt would like to be the Guardian of his person. I further understand the entire family supports that decision. She is perfectly capable to get her father adequate care and I see no reason to take that basic right away from the family.

Mr…., my Grandpa does not have much time left, and thus it is criminal to me to think that his life and liberty would be compromised during his remaining time with us. It may appear to you or others that this family does not care about him but I am writing to tell you that this is not the case. Family dynamics are complex but at the end of the day, I and the rest of the family love him very much and he us. Please give him back his freedom and his family access to not only his person but knowledge of his medical treatment as well."

On 9/05/13 an attorney for [the guardianship agency] wrote an email to the recipient's attorney, the recipient's daughter's attorney, and nine others (however no family members) regarding the plans for the recipient:

Dear Counsel:

Mr… continues to remain in the geriatric psychiatry unit at Gottlieb Hospital. His medical team is providing on-going assessment and treatment. [The guardianship agency] has received numerous inquiries from family members as to when [the recipient] can receive visitors. As of now, until [the recipient] is stabilized, his psychiatrist is not recommending family visits. [The guardianship agency] will immediately alert all involved parties when supervised visits can occur. There are no plans for discharge at this time. [The guardianship

agency] will continue to work with [the recipient's] medical team and send out email updates as developments occur."

Later the same day the recipient's granddaughter again wrote to the recipient's attorney:

"Mr…., I just received word that my Grandfather continues to be held against his will in psychiatric care at Gottlieb Hospital. This is very distressing to me. I understand that my grandfather attempted to 'escape' from the care that [the guardianship agency] is providing, but I personally saw him 24 hours prior to this action and it clear to me that this action is not intended to harm himself but rather escape feeling like a prisoner. He made that perfectly plain to me; and, when my sister saw him approximately a week before, he broke down sobbing asking she help him get his 'freedom' back. This feeling is what is driving him to be non-compliant with [the guardianship agency's] care, nothing else.

Again, as I stated in my first email, I want my grandfather to receive adequate and proper medical care, but I feel very strongly that his case is being mismanaged. I strongly believe that keeping him imprisoned with heavy drugs may be the easiest way to 'handle' him, but I do not believe that it is the most humane because it is NOT necessary. Further, anyone who thinks so is lacking pertinent information on his basic nature. This man, in his youth, literally escaped the Nazis. He has a very strong will at his core to put it mildly. He will continue the same 'behavior' that [the guardianship agency] believes needs to be 'stabilized' out of him because that is who he is. It is only when he believes in his mind that he is free from control will he stop trying to 'escape.' Anyone that knows him understands that NOTHING upsets him more than being 'controlled.' He will NEVER cooperate with [the guardianship agency] as long as they keep him imprisoned and medicated like they are doing now. I cannot stand for that and I implore you as his attorney to stand up for him and fight for him. You told me you would oppose any permanent placement of my grandfather but unfortunately that is the only way [the guardianship agency] can continue their control over him. This man has lived almost 93 years on this planet. He has seen and fought against events in his life we can only imagine. It continues to be my opinion that it is not only criminal to allow [the guardianship agency] to keep him medicated against his will, it is against human decency! He turns 93 on September 18th of this year. He should be at peace and 'free' at home with his family far before this date to celebrate this milestone. Again, I implore you to take action immediately."

On the same day the recipient's daughter wrote her third email to the recipient's guardian requesting visitation:

"Please let me know when I can see my father?"

On 9/06/13 the recipient's daughter emailed the guardian with the following message:

"I understand that my father is well enough to see his attorney. I assume he is well enough to see his family. Please let me know what time I can see him tomorrow? Also I spoke to the nurse I was told the medical staff does allow it but [the guardianship agency] does not want the family to visit which is against the court order. If the nurse spoke incorrectly please

forward the statement from a doctor that seeing his family is detrimental to his health and related hospital policies stating that family cannot see him."

Later the same day the guardian responded to this email:

"[The guardianship agency] is aware this is your 4th request to see your father. We have responded to each of those requests. I am once again forwarding our attorney's update, which was sent yesterday afternoon, for your reference."

On 9/16/13 the recipient's daughter sent an email to all parties:

"Tomorrow is my father's birthday. I am requesting to see father tomorrow afternoon. Will 2 pm work for you?" The guardian then forwarded the following response:

"Please see the email below sent by our attorney on Friday, September 13th."

The email referred to in the above message states:

"[The recipient] is scheduled to be discharged from [the hospital] on Wednesday, September 18th. After consulting with his medical team, [the guardianship agency] believes it is in [the recipient's] best interest to be discharged to [an assisted living facility] for a short-term, 30 day respite stay.

Due to [the recipient's] inability to accept a live-in caregiver prior to his hospitalization, [the guardianship agency] does not feel comfortable having him discharged home at this point in time. [The guardianship agency] believes [the recipient] will benefit from a routine, predictable schedule and programming geared towards individuals with dementia in a secure, home-like environment. [The recipient's] psychiatrist is not recommending family visits for the first two weeks following his admission to [the assisted living facility]. [The guardianship agency] will continue to update all parties on a regular basis and will send out a follow-up email at the end of next week regarding [the recipient's] admission and adjustment to [the facility]. In the event of an emergency, [the guardianship agency] will contact the family immediately and schedule visits accordingly."

HOSPITAL REPRESENTATIVE RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that the recipient, who was taken by ambulance to Gottlieb, was admitted on a petition and certificate from another hospital and a petition and certificate were then completed at Gottlieb. The recipient subsequently signed a voluntary application for admission, which was accepted at Gottlieb and he was presumed to have decisional capacity by this acceptance. Staff indicated that they generally tell recipients that they have more rights if they sign in voluntarily. Staff were asked about the form that listed the recipient's release for telephone and visitation consent which was completed at the time of the recipient's admission, and they indicated that although they recognized the form and had completed it, they did not remember the conversation with the guardian which gave the directive that the recipient's daughters were not allowed to visit or call or get any information about their father. The staff who completed the form thought that she received the information from the recipient's guardian after a phone conversation with her, however she did not know if this call was

documented. Staff were asked if the recipient gave informed consent for his medications, particularly Haldol, which is not FDA approved for administration to senior citizens with dementia. The recipient's physician indicated that most of the recipient's medications had been prescribed previous to his hospitalization, and that Haldol, although listed as a black box medication, is generally appropriate for use as an emergency medication when a recipient becomes a danger to himself or others. The physician did note that there was verbal approval only and that a written consent would be preferable.

Staff were interviewed about the recipient's numerous statements that he wanted to go home after he was accepted as a voluntary recipient of services. The HRA noted that he was not offered a Request for Discharge as is required under the Mental Health Code. They indicated that oftentimes patients will say that want to go home and may then change their mind later. They did not feel that the recipient made a "substantive" request to be discharged. Additionally, they indicated that a Request for Discharge form is included in the recipients' admission paperwork.

Hospital representatives were asked about the recipient's family's attempt to visit their father/grandfather on 8/31/13. They indicated that they had been told the family was prohibited from visitation because they had given their father alcohol at another placement and that for the safety of the unit and other patients they could not take this risk. The family presented on off hours and were heard causing a scene. Staff attempted to intervene but the decision was made to refuse their entrance and the family called the police. Staff indicated that the family presented a document that they questioned, (the HRA has not reviewed the document, and cannot confirm its legitimacy), which supposedly indicated that they had the right to visit their father, and after staff reviewed the document they made the clinical decision to refuse their entry. Also, staff indicated that that the unit staff had consulted with hospital administration about the issue of the recipient's visitation and the hospital legal department had advised the staff to go along with the wishes of the guardian. There is no documentation of this consultation in the record, however staff indicated this would be recorded in the private correspondence between the hospital administration and the legal counsel.

The HRA visited the recipient after being sent to the floor where the Geriatric Behavioral Health Unit is located. Upon entering the unit, a visitor confronts two doors which lead into a large area which appears to be a nurses' station and reception area. It is empty- there are no staff present in this area and it appears to be unoccupied. On the far end of the room is another set of doors which lead into the actual Geriatric Behavioral Health Unit. A visitor who has not been to the unit may feel that they have to knock very loudly or call out to be heard from the anteroom. Staff at the site visit informed the HRA that there is a phone and a keypad behind the anteroom door to call for access, however the HRA did not see that on the day of their visit and it took a while before the HRA gained access to the unit. Hospital staff indicated that this arrangement has changed since the HRA visit, however they were reminded that the family may have had to shout to gain access if they were unaware of the phone and key pad.

The recipient's physician indicated that he and the unit staff were unaware that the recipient's family wanted to visit their father/grandfather after the failed attempt on 8/31/13. After that date the staff heard nothing more from the family and the staff thought that the issue had been resolved and that family reunification would occur after the recipient's discharge. The staff attempted to follow the directives of the guardian and were guided by the court order, which the Patient Experience Advocate said they had reviewed but possibly had not understood. They were unaware that the family had problems with the guardian and had no reason to question the

guardians' decision-making. Staff felt that if a recipient has a legal guardian then it is assumed that the guardian will be aware of the patient's rights. Staff did feel that they should have asked the hospital legal staff to review the court order.

STATUTES

The Mental Health and Developmental Disabilities Code states, "No recipient of services shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the State of Illinois, or the Constitution of the United States solely on account of the receipt of such services (405 ILCS 5/2-100)." Additionally, it 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 Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible the recipient's guardian, the recipient's substitute decision maker , if any, or any other individual designated 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 services being provided (405 ILCS 2-102a)."

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, 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).

The Mental Health Code also provides guidelines for the administration of psychotropic medication:

"(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. The physician or the physician's designee shall provide to the recipient's substitute decision maker, if any, that same written information that is required to be presented to the recipient in writing. 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 or 2-107.1 or (ii) pursuant to a power of attorney for health care under the Powers of Attorney for Health Care Law [FN1] or a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act. [FN2] A surrogate decision maker, other than a court appointed guardian, under the Health Care Surrogate Act [FN3] may not consent to the administration of authorized involuntary treatment. A surrogate may, however, petition for administration of authorized involuntary treatment pursuant to this Act. If the recipient is under guardianship and the guardian is authorized to consent to the administration of authorized involuntary treatment pursuant to subsection (c) of Section 2-107.1 (court ordered medication) of this Code, the physician shall advise the guardian in writing of the side effects and risks of the treatment, alternatives to the proposed treatment, and the risks and benefits of the treatment…" (405 ILCS 5/2-102).

The Mental Health Code states, "An adult recipient of services, the recipient's guardian, if the recipient is under guardianship, and the recipient's substitute decision maker, if any, must be informed of the recipient's right to refuse medication. The recipient and the recipient's guardian or substitute decision maker 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, guardian, or substitute decision maker, if any, 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). A recipient who is 12 years of age or older and the parent or guardian of a minor or person under guardianship at any time may designate, and upon commencement of services shall be informed of the right to designate, a person or agency to receive notice under Section 2-201 or to direct that no information be disclosed to any person or agency (405 ILCS 5/2-200). 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).

The Mental Health Code states, "Any person 16 or older may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director of the facility if the facility director deems such person clinically suitable for admission as a voluntary recipient" (405 ILCS 5/3-400). "The application for admission as a voluntary recipient may be executed by: the person seeking admission, if 18 or older; or any interested person, 18 or older, at the request of the person seeking admission; or a minor, 16 or older, as provided in Section 3-502. The written application form shall contain in large, bold-faced type, a statement in simple nontechnical terms that the voluntary recipient may be discharged from the facility at the earliest appropriate time, not to exceed 5 days, excluding Saturdays, Sundays and holidays, after giving a written notice of his desire to be discharged, unless within that time, a petition and 2 certificates are filed with the court asserting that the recipient is subject to involuntary admission" (5/3-401). The Code also states, "No physician, qualified examiner, or clinical psychologist shall state to any person that involuntary admission may result if such person does not

voluntarily admit himself to a mental health facility unless a physician, qualified examiner, or clinical psychologist who has examined the person is prepared to execute a certificate under Section 3-602 and the person is advised that if he is admitted upon certification, he will be entitled to a court hearing with counsel appointed to represent him at which the State will have to prove that he is subject to involuntary admission" (5/3-402).

The Probate Act of 1975 states that "Guardianship shall be utilized only as is necessary to promote the well-being of the disabled person, to protect him from neglect, exploitation, or abuse, and to encourage development of his maximum self- reliance and independence. Guardianship shall be ordered only to the extent necessitated by the individual's actual mental, physical and adaptive limitations (755 ILCS 5/11a-3)." According to Section 5/11a-17a, the duties of the guardian of the person are described as follows: "To the extent ordered by the court and under the direction of the court, the guardian of the person shall have custody of the ward … and shall procure for them and shall make provision for their support, care, comfort, health, education and maintenance, and professional services as are appropriate." Also, "Decisions made by a guardian on behalf of a ward shall be made in accordance with the following standards for decision making. Decisions made by a guardian on behalf of a ward may be made by conforming as closely as possible to what the ward, if competent, would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the ward's personal, philosophical, religious and moral beliefs and ethical values relative to the decision to be made by the guardian. Where possible, the guardian shall determine how the ward would have made a decision based on the ward's previously expressed preferences, and make decisions in accordance with the preferences of the ward" (11a-17 e).

The Act describes the process for determining the type of guardianship warranted and states in Section 11a-12 b that "If the respondent is adjudged to be disabled and to lack some but not all of the capacity as specified in Section 11a-3, and if the court finds that guardianship is necessary for the protection of the disabled person, his or her estate, or both, the court shall appoint a **limited guardian** for the respondent's person or estate or both. The court shall enter a written order stating the factual basis for its findings and specifying the duties and powers of the guardian and the legal disabilities to which the respondent is subject." Furthermore, with regard to a limited guardianship, the Act (755 ILCS 11a-14a,b,c) states that " (a) An order appointing a limited guardian of the person under this Article removes from the ward only that authority provided under Section 11a-17 which is specifically conferred on the limited guardian by the order. (b) An order appointing a limited guardian of the estate under this Article confers on the limited guardian the authority provided under Section 11a-18 not specifically reserved to the ward. (c) The appointment of a limited guardian under this Article shall not constitute a finding of legal incompetence."

The Act addresses residential placements in Section 11a-14.1:

No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to place his ward in a residential

facility. The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. In making residential placement decisions, the guardian shall make decisions in conformity with the preferences of the ward unless the guardian is reasonably certain that the decisions will result in substantial harm to the ward or to the ward's estate. When the preferences of the ward cannot be ascertained or where they will result in substantial harm to the ward or to the ward's estate, the guardian shall make decisions with respect to the ward's placement which are in the best interests of the ward. The guardian shall not remove the ward from his or her home or separate the ward from family and friends unless such removal is necessary to prevent substantial harm to the ward or to the ward's estate. The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed.

The Act also states, "A guardian of the person may not admit a ward to a mental health facility except at the ward's request as provided in Article IV of the Mental Health and Developmental Disabilities Code and unless the ward has the capacity to consent to such admission as provided in Article IV of the Mental Health Code" (Sec. 11a-17 a).

The Mental Health Code states, "Except as provided in this Section, a recipient who resides in a mental health or developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to recipients who reside in Department facilities and who are unable to procure such items. …Unimpeded, private, and uncensored communication by mail, telephone, and visitation may be reasonably restricted by the facility director only in order to protect the recipient or others from harm, harassment, or intimidation, provided that notice of such restriction shall be given to all recipients upon admission. When communications are restricted, the facility shall advise the recipient that he has the right to require the facility to notify such affected party when the restrictions are no longer in effect… (5/2-103)."

The Health Care Surrogate Act (755 ILCS 40/20) requires that medication decisions made by an surrogate decision maker should conform "as closely as possible to what the patient would have done or intended under the circumstances, taking into account evidence that includes, but is not limited to, the patient's personal, philosophical, religious, and moral beliefs and ethical values relative to the purpose of life, sickness, medical procedures, suffering, and death." Furthermore, the Act states that the "patient or surrogate decision maker is presumed to have decisional capacity in the absence of actual notice to the contrary without regard to advanced age. With respect to a patient, a diagnosis of mental illness or an intellectual disability, of itself, is not a bar to a determination of decisional capacity. A determination that an adult patient lacks decisional capacity shall be made by the attending physician to a reasonable degree of medical certainty. The determination shall be in writing in the patient's medical record and shall set forth the attending physician's opinion regarding the cause, nature, and duration of the patient's lack of decisional capacity. Before implementation of a decision by a surrogate decision maker to forgo life-sustaining treatment, at least one other qualified physician must concur in the determination that an adult

patient lacks decisional capacity. The concurring determination shall be made in writing in the patient's medical record after personal examination of the patient. The attending physician shall inform the patient that it has been determined that the patient lacks decisional capacity and that a surrogate decision maker will be making life-sustaining treatment decisions on behalf of the patient. Moreover, the patient shall be informed of the identity of the surrogate decision maker and any decisions made by that surrogate. If the person identified as the surrogate decision maker is not a court appointed guardian and the patient objects to the statutory surrogate decision maker or any decision made by that surrogate decision maker, then the provisions of this Act shall not apply."

NATIONAL GUARDIANSHIP ASSOCIATION STANDARDS

Although not codified in Illinois, the National Guardianship Association's standards provide guardians with a resource for ethical standards of practice. The National Guardianship Association's (NGA) Standards of Practice #4- The Guardian's Relationship with Family Members and Friends of the Person states, "The guardian shall promote social interactions and meaningful relationships consistent with the preferences of the person under guardianship. The guardian shall encourage and support the person in maintaining contact with family and friends, as defined by the person, unless it will substantially harm the person. The guardian may not interfere with established relationships unless necessary to protect the person from substantial harm. The guardian shall make reasonable efforts to maintain the person's established social and support networks during the person's brief absences from the primary residence." NGA Standard #6 states, "Decisions made by the guardian on behalf of the person under guardianship shall be based on the principle of Informed Consent. Informed Consent is an individual's agreement to a particular course of action based on a full disclosure of facts needed to make the decision intelligently." Standard #7 states, "The guardian shall identify and advocate for the person's goals, needs, and preferences." Standard #8 states, "The guardian shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of the person under guardianship while placing the least restrictions on his or her freedom, rights, and ability to control his or her environment."

HOSPITAL POLICY

Gottlieb provided the hospital policy regarding visitation. It states, "patients at the Behavioral health Unit will be allowed visitors during designated visiting hours, unless such visits are clinically contraindicated, to maintain communication between family members and patients during the treatment process. Exceptions to the designated times must be authorized by the Program Director or designee. Patient (or designee) will list individuals on Telephone and Visitation Consent Form (05-01-14A) that are permitted to visit at time of admission. Patient will sign visitation consent. Signature will be witnessed. It is the policy of the Behavioral Health Unit to regulate visiting hours to provide maximum confidentiality to all patients while permitting appropriate visitation from friends and family while the patient is in the hospital."

Gottlieb provided hospital policy regarding Restriction of Right to Communicate. It states, "Restriction of a patient's right to communication via mail, telephone calls or visitation occurs only when therapeutically necessary to protect the patient and others from harm, harassment, or intimidation. The therapeutic use of communication restriction is based on assessment of clinical need, ordered by the physician and included in the treatment plan."

CONCLUSION

The recipient in this case was appointed a limited guardian by court order on June 13, 2013. Later, the attorney for the limited guardian petitioned the court to allow restrictions on the recipient's visitation and phone calls. This court order mandated that visitation and all contact with the recipient was to be limited to blood relatives and these relatives were to refrain from communicating in any way with the recipient about any aspect of the recipient's guardianship or business. Visitation between the family and the recipient was to be scheduled in advance with the guardian. In order to assure that the court's directives were followed, the guardianship agency monitored all of the recipient's phone conversations from his family and friends. The court order never prohibited the recipient from making phone calls, and never prohibited visitation in general- it merely restricted the visits and prohibited discussion of the guardianship or the recipient's business. The recipient was always free to discuss his family, his health, his safety, his concerns about his physical and mental condition, and the general life challenges and concerns of an elderly man experiencing dementia and end of life issues. When the recipient arrived at Gottlieb Hospital, an additional restriction was forced upon the recipient and this restriction did not issue from a court order. This restriction imposed a prohibition against the hospital staff discussing any aspect of the recipient's care with his family.

The hospital staff defends their actions by asserting that they were following the guardian's directives and did not know that the family wanted to visit their father aside from the one attempt on 8/31/13. The HRA reminds the hospital that being appointed a guardian does not nullify all the rights afforded mental health recipients under the Mental Health Code, and despite the wishes of the family and guardian, the recipient himself requested to speak with and visit his family and he maintained this right under the law. The restriction of his right to visitation was set in place the day of his admission and it was determined by his guardian, as is reflected in the record. This restriction is several times referred to in the notes and most often, as on 9/03/13 the staff themselves state that the guardian has restricted all visitation, phone calls, and any dissemination of information to the family. The physician did not present a clinical justification for the recipient's restriction of rights and there is no Restriction of Rights Notice issued for every time his right was restricted, as mandated by the Mental Health Code. Additionally, there is no documentation in the recipient's file that a restriction was warranted to protect the recipient or others from harm, harassment or intimidation. The additional prohibition against providing the family with information about their father is yet another restriction which is inconsistent with Mental Health Code protections. The HRA substantiates the complaint that Gottlieb Hospital did not follow Mental Health Code requirements when a recipient of mental health services was denied visitation.

The HRA, as advocates for persons with disabilities, would be remiss if we did not point out the additional violations of the Mental Health Code that are present in this hospital record. The recipient was petitioned by his guardian at a hospital and he then transferred to Gottlieb on this petition as well as a certificate. At Gottlieb another petition and certificate were completed, which violates the statutory timeline for the involuntary admission of persons for mental health services, given that this detention begins upon completion of the first petition. This timeline or detention cannot be reset by additional petitions. Additionally, the Probate Act states that a guardian may not admit a ward to a mental health facility except at the ward's request, and it is clear from the record that this was not the case. However, if the recipient then was accepted as a voluntary recipient of services, he should have been offered a Request for Discharge every time he told staff that he wanted to leave. Although staff stated that he did not make a substantive request, the record shows that on several occasions he explicitly said he wanted to go home and he stated he was not going to

take any more medication or even eat until he could go home. This was just one of many statements indicating that he no longer wanted to receive services and if he truly was a voluntary recipient then this request should have been honored in accordance with the process outlined in the Mental Health Code. Additionally, the record does not show that the recipient received any rights information, either his rights as a voluntary admittee, the Rights of Persons Receiving Mental Health and Developmental Disability Services or a copy of his petition and related rights about the circumstances that got him to Gottlieb in the first place. Without this rights information, we do not know if the recipient was allowed his Code mandated phone calls upon admission (5/3-209), we do not know that he was offered assistance in contacting the Guardianship and Advocacy Commission if he objected to his admission (3-206), and we do not know if he was asked who he wanted to be contacted if his rights were restricted, regardless of his guardian's directives (2-200). Given that this recipient had not received mental health services until three months before this hospitalization, it is unlikely that he even knew that he had rights under the Mental Health Code. And finally, the record does not show that the recipient gave informed consent for the medication he was administered. The record states that he gave verbal consent for Haldol, and that the guardian "is aware" of his medications, but this is not sufficient. The recipient expressed concern about his medication to the hospital staff and if he did not in fact consent to it, the hospital may have violated this right as well. Additionally, although the physician accepted the recipient as a voluntary recipient, there is no statement of decisional capacity, a Mental Health Code requirement for the administration of psychotropic medication (2-102 a-5).

RECOMMENDATION

1. Train staff to honor the right of every recipient to be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. Train staff that this right can only be reasonably restricted in order to protect the recipient or others from harm, harassment, or intimidation. Additionally, ensure that whenever any right of the recipient of services is restricted, notice is given to the recipient, a designee, the facility director, or a designated agency, and that it is recorded in the recipient's record. Ensure that if the hospital stands on a court order to restrict Mental Health Code guaranteed rights that they fully understand the order and have it reviewed by the hospital legal staff.

2. Review the Probate Act with staff, especially those sections above, which define limited guardianship and the criteria for substitute decision-making. Ensure that staff are trained that wards, although adjudicated as disabled persons, maintain their rights as recipients under the Mental Health Code. Remind staff that recipients with guardians must still be given a copy of the petition which detained them, must be given written and verbal rights information including the right to refuse medication, must still be given the opportunity to receive assistance from the Guardianship and Advocacy Commission if they object to their admission, must still be afforded the opportunity to contact a designee if their rights are restricted, regardless of the objections of the guardian, and they must still be allowed to make two phone calls at admission.

SUGGESTION

1. Review with staff the process for involuntary and voluntary admission under the Mental Health Code. Ensure that the written voluntary application form contains in large, bold- faced type, a statement in simple, nontechnical terms that the voluntary recipient may be discharged from the facility at the earliest appropriate time, not to exceed 5 business days, after giving a written notice of his desire to be discharged, unless within that time a petition and 2 certificates are filed with the court asserting that the recipient is subject to involuntary admission.

2. Train staff that if services include the administration of psychotropic medication, the physician or his designee must advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives, to the extent that this advice is consistent with the recipient's ability to understand the information. Ensure that the record contains a physician's statement of the recipient's decisional capacity.

3. Review the practice of accepting an attorney's signature on a release form rather than the recipient's signature or the signature of the court-appointed legal guardian.

RESPONSE

Notice: The following page(s) contain the provider response. Due to technical requirements, some provider responses appear verbatim in retyped format.

LOYOLA MEDICINE | Gottlieb Memorial Hospital

Via Fax – (847) 294-4263

October 3, 2014

Kori Larson, Chairperson
North Suburban Regional Human Rights Authority
9511 Harrison Street, W-300
Des Plaines, IL 60016-1565

RE: HRA # 14-100-9010
Gottlieb Memorial Hospital- Geriatric Behavioral Healthcare Unit

Dear Ms. Larson:

Per your request, Gottlieb Memorial Hospital ("Gottlieb") respectfully submits the enclosed completed action plan addressing the North Suburban Regional Human Rights Authority's ("NSRHRA") recommendations/suggestions following its investigation of a complaint alleging violation of Illinois Mental Health and Developmental Disabilities Code requirements, including the NSRHRA's site visit this past May. This action plan is intended to demonstrate and document actions taken by Gottlieb in response to recommendations and Gottlieb's continued commitment to compliance with Illinois Mental Health and Developmental Disabilities Code Requirements. In the event NSRHRA elects to publicly post or publish any portion of its investigative findings as such pertain to Gottlieb, by way of this letter, Gottlieb further respectfully requests that NSRHRA include the enclosed document titled "Response of Gottlieb Memorial Hospital To Human Rights Authority Investigative Findings as part of any public posting or publication. For clarification, Gottlieb is not requesting the NSRHRA to include Gottlieb's action plan as part of any public posting or publication

Thank you for your assistance with this matter.

Respectfully,

Lori Price
President
Gottlieb Memorial Hospital

Enclosure

cc: Mary Morrow, CNO