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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 15-030-9003

Edward Hines, Jr. VA Hospital

Summary: The HRA substantiates the complaint that the Jesse Brown VA did not follow Code mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights. The provider did not submit a response to this report of findings.

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 Hospital (Hines). It was alleged that the facility did not follow Mental Health and Developmental Disabilities Code (the Code) mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights. If substantiated, this would violate Section 2-107 of the Code (405 ILCS 5/2-107). Also, as the Illinois Supreme Court pointed out In re Stephenson (67 Ill. 2nd 544, 554-556 (1977)), mental illness is not a crime, and because someone needs mental health treatment does not make him a criminal. Instead, that person's fundamental, protectable liberty interest is self-evident, and he should receive beneficial treatment and care with minimal ostracism, confinement and infringement.

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 the 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 in this case is that a 67 year old Vietnam combat veteran was cited for "disorderly conduct" on 6/05/14 by the Hines VA police resulting from police assistance on the mental health unit in administering an emergency treatment intervention. The Veteran in this case took psychotropic medication for 25-30 years until his VA doctor tapered down his dosage because of renal insufficiency. The veteran then became symptomatic and was admitted to the

Hines VA mental health unit. On 9/05/14 the Veteran became symptomatic and required emergency medication. When VA police were called to assist in this procedure, they also issued a citation for “disorderly conduct” and the veteran was mandated to appear in court on 8/11/14. Additionally, the citation was forwarded to the veteran’s home- had his daughter not been asked to collect his mail, the veteran would not have known of his duty to appear.

FINDINGS

The record (Initial Psychosocial Assessment) shows that the recipient is a 67 year old Vietnam War veteran with a long history of Schizoaffective Disorder Bipolar type. He was involuntarily admitted to Hines on 6/04/14. The recipient was petitioned for involuntary psychotropic medication as a person who lacked capacity to make decisions about medication for himself. On 7/24/14 the Court adjudicated the recipient as “mentally ill” and granted the petition for involuntary medication.

Nursing Notes from 6/05/14 at 8:54 a.m. describe the recipient’s initial encounter with the Hines police: “Reasons for use of emergency medications: Pt with increased agitation loud verbally inappropriate and threatening MD and others with physical harm. Veteran was posing significant risk of harming self and others., reassurance and attempts to verbally de-escalate the patient failed., HVA Police Department was called for assistance. The patient was handed Notice Regarding Restriction of Rights of the Individual and given emergency medications. SO [Subjective/Objective]: ‘Fuck you, [nurse]. You guys want to kick my ass. I’m going to fight all the way.’ Pt hostile with labile affect. Yelling and screaming in milieu. Threatening nursing staff and specifically MD. A [Assessment]: Ineffective individual coping/danger to others... loud, hostile, verbally threatening others to physically hurt them. P [Plan]: Redirection to new task, 1 to 1 conversation with staff ineffective in de-escalating pt behaviors. IM meds given for severe agitation and pt being a danger to others. Monitor effects of meds in 1 hour. Restriction of rights given to pt.”

Later on the same day at 4:59 p.m. a Mental Health Attending Note states, “Pt seen three times today. The first time was early this morning after he got prn injections secondary to verbal aggression against providers. Police were called and pt received restriction of rights. Pt accused me of being responsible that he got ‘abused by police.’ Informed pt that medications would not be given to him, as he is refusing them, unless he is threatening to others. Later he saw me again, and he asked me to get him in touch with a lawyer. Writer informed pt that defense attorney would be coming today to see him today and that they could discuss his strategy for his care but that I had concerns about his welfare and that I did not feel comfortable discharging him. Pt saw me again around 5 pm and asked to speak to me. This time he spoke about being given a high dose of prn and that I was ‘insisting on oppressing’ him and that he had a second evaluation by another doctor and that she thought that he was not psychotic and that two against one was good to beat me in court because I was dumb. Informed pt that he had the right to ask for a second opinion if he wanted one and that he should ask his attorney if he wished to have a second opinion.”

There is no mention in the progress notes that the recipient was issued a citation for these events.

The record contains a United States District Court Violation Notice. The date and time of the offense is listed as 6/05/14 at 8:25 a.m. for "Disorderly Conduct." The Notice indicates that the recipient is to pay \$275 or appear in court on 8/11/14. A letter to the recipient from a VA police officer is included in the record and it states, "Due to your repeated aggressive and violent behavior toward staff at Edward Hines, Jr. VA Hospital, you have been issued a citation for disorderly conduct. We made contact with you, having to physically restrain you, preventing you from causing harm toward staff members. On another date, you were contacted due to making statements toward a nursing staff member, using profanity, and needed to be redirected by VA Police." There is no date on this letter.

Journal entries from the VA Police Operations Journal for 6/05/14 at 8:25 a.m. describe the interaction with the recipient: "Employee called the VAPD station, she reported [recipient] is being rude towards staff. Dispatch informed all units. Officers [3] responded to this call. Officer called a magazine disconnect. Officers made contact with staff and [recipient]. Upon Officers arrival on two south [staff] informed officers that [the recipient] was aggressive and argumentative toward staff nurse also explained that [the recipient] had been making several racial slurs, yelling from his room that was located down the hallway. [The recipient] was informed that he would be mandated a shot medication of Haldol and Ativan. [The recipient] refused, stating, 'You're going to have to beat me up. Is that why you have your gloves on? You don't want to get my blood on you?' [The recipient] repeatedly refused nursing staff to administer medication. The patient sat in a chair, and stated he would fight police. Officers [all three] initiated empty hand control techniques to subdue [the recipient] to the ground. While [2] officers had control of [the recipient's] wrists, he was administered the medication by RN. After shouting various racial comments toward Officer, stating, 'I'll kill your black ass.' He was informed to calm his behavior so that he could be released. [The recipient] then agreed to cooperate, and was assisted to his feet, and escorted to his room. He then complied, and police assistance was no longer needed. Officers then departed without further incident..." Another entry into the Journal then states, "Violation Issued to: [The recipient] for on 6/05/14 nursing staff contacted police, requesting assistance. They reported police that [the recipient] was being aggressive toward Nurse and was overheard yelling profanity and racial slurs. Police had to utilize empty hand control technique to subdue [the recipient] due to his aggressive behavior, and for the safety of others on the ward. At 6:26 a.m. on 6/10/14, nursing staff reported that [the recipient] called a nurse a 'bitch', telling her to shove an oxygen monitor up her ass. When confronted about the incident, [the recipient] admitted to making the comment to the nurse. [The recipient] was given the choice to pay the collateral fine or appear in court on 8/11/14. Action dropped and citation voided; per criminal investigators on Friday, August 8, 2014"

HOSPITAL REPRESENTATIVES' RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that if a Police Officer issues a citation it would probably not be described in the clinical record because this is not a physician's, or clinical, decision. Generally, these citations would go to federal court where they would be voided immediately because the veterans who are hospitalized are not capable of presenting to the Court. The veteran's social worker should notify the Court that the veteran is hospitalized and the citation would be dismissed. It is very rare that a Police Officer

would issue a citation independent of the unit staff, however this does happen. In this case, staff felt that the Officer knew the veteran from previous incidents (there were many), and this is supported in the record. Staff indicated that sometimes incidents occur that are not related to the veteran's clinical issues but in this case, they agreed it was not appropriate to cite a man for being forced to receive treatment. Staff believed that the citation had been voided and that is why there was no mention of it in the record. They indicated that they will meet with the Police Chief and address this issue in ongoing training.

Staff were asked if the veterans complete a Preferences for Emergency Treatment document. They indicated that this information is obtained on the initial nursing assessment completed upon each veteran's arrival on the Behavioral Health Unit.

STATUTES

Section 2-102 of the Code guarantees all recipients adequate and humane care and services in the least restrictive environment. As a means to this end, recipients should be informed of and participate in formulating and reviewing their proposed treatment to the extent possible:

"(a) 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 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' emergency intervention preferences shall be noted in their treatment plans and considered if circumstances 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...pursuant to the provisions of Section 2- 107." (405 ILCS 5/2-102 (West)).

If a recipient refuses treatment, Section 2-107 of the 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 (West)).

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

VA HOSPITAL POLICY

Hines VA provided policy regarding investigations of alleged wrongdoing on VA premises. It states, "It is the responsibility of the officer assigned or receiving a complaint to initiate a preliminary investigation and complete a Uniform Offense Report.... Persons appointed as VA police officers are authorized to conduct investigations on VA premises into alleged violations of Federal law and VA rules occurring on Department property, Police officer appointees include all persons issued a VA Form 1479, regardless of other titles used, e.g. police officer, detective, or investigator. Investigations will be conducted to the extent necessary to determine whether a crime has been committed and to collect and preserve basic information and evidence relative to the incident. Allegations of crimes against persons, non-government property or other non-fraudulent criminal matters will be referred to the appropriate U.S. Attorney, FBI, or local law enforcement agency after consultation with regional Counsel. Crimes involving fraud, corruption, or other criminal conduct related to VA programs or operations shall be referred to the Inspector general...."

CONCLUSION

The Illinois Mental Health Code provides for forced emergency treatment interventions when a person is at risk of serious and imminent harm, and it outlines procedural and clinical requirements for this intervention. At times hospitals will contact security (or in the case of Hines VA, the VA Police) to assist with imposing or enforcing an emergency treatment intervention. Such an intervention is always considered a part of *treatment*. The emergency intervention should not have precipitated a criminal citation for those behaviors which were treated. Persons who need mental health treatment are not "criminals" and their fundamental liberty interests should be protected rather than violated (In *re Stephenson*, 67 Ill. 2nd 544, 554-556 (1977)). Additionally, the imposition of criminal citations for behaviors resulting from mental illness on a behavioral health unit may prevent other mentally ill veterans from seeking the mental health treatment they need and deserve. The HRA substantiates the complaint that the Jesse Brown VA did not follow Code mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights.

RECOMMENDATION

1. Ensure that all staff are trained to apply the standards set forth in the Mental Health Code for forced emergency treatment (405 ILCS 5/2-107) and refrain from issuing criminal citations for behaviors which are being (or should be) addressed clinically.

SUGGESTION

1. Although there are times when hospitalized veterans may present behaviors which are not related to their mental illness and require a criminal citation, it seems to the HRA that everything that occurs while a veteran is hospitalized on the Behavioral Health Unit should relate to his/her clinical needs. The HRA suggests that the clinical staff meet with the VA Police Department staff before issuing a citation so that there is clinical input into these interventions. Also, the citation was not mentioned in the Progress Notes. Since this is a clinically significant event that occurred on the Behavioral Health Unit, we suggest that the circumstances surrounding it should be described in the Progress Notes.