FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY-SPRINGFIELD REGION

REPORT 15-050-9001
Andrew McFarland Mental Health Center

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving complaints of possible rights violations in the care provided to an inpatient at Andrew McFarland Mental Health Center in Springfield. Allegations state that:

1. Phone use was impeded and restricted without harm, harassment or intimidation.
2. Forced medications were given without the need to prevent serious and imminent physical harm when less restrictive alternatives were available, and there was no opportunity to refuse.
3. Written information about the forced medications was not shared.
4. Restraints were used as a form of punishment or discipline.
5. Restriction notices were incomplete, not given promptly, and the patient was not asked if anyone was to be contacted.
6. Adequate and humane care and services has not been provided for medical and dental needs.
7. Harmless property has been confiscated.
8. The patient is not allowed to inspect her record upon request.

Substantiated findings would violate protections under the Mental Health and Developmental Disabilities Code (405 ILCS 5), the Department Treatment and Habilitation Code (59 Ill. Admin. Code 112) and the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110).

McFarland is a Department of Human Services hospital with a 50-bed forensics program. The matter was discussed with staff involved in this patient's care. Relevant policies were reviewed as were sections of her record with authorization.

To summarize the complaints, the patient reportedly stood up for a peer during group therapy one day and was talking about it later on the phone when staff disconnected her call and said she was being restricted. A verbal exchange erupted and the patient walked off to have a seat in the day room. Two males and a nurse lifted her off the chair, pulled her pants down and gave two shots, one on each side. She yelled at them to leave her alone, sat back in her chair and

considered the event over when the nurse said she wanted her in restraints. The nurse allegedly taunted her as she was restrained, saying "now see what this fat bitch can do". She was never informed of what she was injected with, her restriction notices were not given to her promptly, they were not filled out entirely and she was never asked if anyone was to be contacted. The complaint goes on to say that the patient's requests to be seen for sinus pain and bleeding gums have been ignored and her leggings have been taken away for no good reason. Another was added well after this review started alleging that the patient is repeatedly refused access to her record.

FINDINGS

Complaints 1-5:

Phone use was impeded and restricted without harm, harassment or intimidation.
Forced medications were given without the need to prevent serious and imminent physical harm when less restrictive alternatives were available, and there was no opportunity to refuse.
Written information about the forced medications was not shared.
Restraints were used as a form of punishment or discipline.
Restriction notices were incomplete, not given promptly, and the patient was not asked if anyone was to be contacted.

A nurse explained that on the day in question she came on duty at 3:00 pm to find the patient already in a rage, yelling and threatening harm after an apparent incident. She did not recall the telephone having anything to do with it. She immediately asked all other patients to clear the milieu, and, as she normally does in these situations, tried to talk with the patient to calm her down and offered to sit somewhere quiet. That seemed useless and the patient never sat down according to her recollection, at which point she offered to give her medications. She said that medications are attempted when redirections fail and are forced when the patient refuses to take them but continues to be potentially dangerous. In this case she had numerous opportunities to relax and avoid medications but she was about to provoke other patients and her behavior risked safety for the whole unit. Written drug information was not shared with her and never is in emergency situations, unless there was previous consent.

Restraints were necessary as a last resort because the patient continued to struggle with the staff. Contrary to the complaint, the nurse did not taunt her and was not even in the room when she was restrained.

The nurse said that she always completes restriction notices and asks if anyone is to be notified as was done here. The patient mentioned no one. Notices can be offered right away if conditions permit or be placed in their individual box at the nurses' station; they have access to them at any time.

Nursing notes detailed the incident but made no reference to problems on the phone. The nurse we spoke to documented how the patient approached the nurses' station and yelled that she was going to "…fuck you up. [She] was placed in a physical hold and given EFM [emergency forced medication] after threatening imminent danger to others. She was requested many times

to calm and redirected to area of less stimuli but refused to follow staff redirections. …. Code blue called for additional staff. Patient became physically aggressive when EFM given, kicking, scratching…. Patient was offered PRN medication, conflict resolution, empathetic listening and redirection to new task. Refused all interventions….” Notes continued to describe how the patient carried on with threats to harm the staff and after a physical hold provided no relief she was restrained.

There were no phone restriction notices in the record but two were completed thoroughly following orders for the physical hold, emergency medication and restraints. The first to hold and inject the patient because she was fighting staff, threatening to “bust them in the face”, scratching and kicking them and the second to restrain for the same ongoing reasons. Both noted that the patient was provided a copy and that she wished no one to be notified. Corresponding orders for the hold and restraints reflected the same and included failed attempts to intervene beforehand. Observation sheets showed that she was continually monitored for the thirty-minute duration.

A Chlorpromazine injection was used for the emergency according to physician orders and the medicine administration record, which the patient previously consent to and was scheduled as needed according to a medication counseling form she signed.

An Office of the Inspector General report verified the nurse’s account and determined the mental abuse accusation unfounded.

CONCLUSION

McFarland policy allows private telephone conversations and properly documented restrictions against them as required under the Code (#HR126). The facility defines an emergency as a mental condition that calls for immediate action to protect from harm or prevent further deterioration. Refusing medications in itself does not constitute an emergency but they are given when necessary to prevent serious and imminent physical harm. Nurses in consultation with physicians can determine whether an emergency exists based on personal examination. Procedures from there must follow 5/2-107 of the Code (#02.06.02.020). Written drug information is shared with patients when obtaining consent for psychotropics (#MD200 and Consent to Medication form). Restraints are only used to prevent harm and never for punishment, discipline or staff convenience. They must follow a written physician’s order and be closely monitored (#MD460). Restriction notices must be completed for each administration of emergency medication and whenever restraints are applied; they are to be provided to the patient and anyone designated (#02.06.02.020, #MD460 and #HR 126).

All related policies align with requirements under Sections 2-103, 2-107, 2-102 a-5, 2-108 and 2-201 respectively (405 ILCS 5).

1. Phone use was impeded and restricted without harm, harassment or intimidation.

There is no evidence either by staff statements or record documentation that the patient’s right to use the phone was restricted. The complaint is unsubstantiated.

SUGGESTION

McFarland's Guide to Your Hospital Stay inaccurately states to patients that they have "qualified" rights and then lists all those enumerated under Chapter II of the Code. For example, "You have a qualified right to communication" on page 3. Half of them are repeated in this manner in a summary on page 5. This is a misrepresentation of rights as established in the Code; they are guaranteed, i.e., patients do not have to qualify for them, they already have them and only restrictions are qualified (405 ILCS 5; Chapter II, Article I). The language should be changed to accurately inform patients.

2. Forced medications were given without the need to prevent serious and imminent physical harm when less restrictive alternatives were available, and there was no opportunity to refuse.

According to the nurse involved this incident and according to her supportive documentation, the patient threatened physical harm repeatedly and was given a number of opportunities to calm down. When multiple less restrictive alternatives failed she was necessarily given an emergency forced injection. The patient's right to refuse medications absent the need to prevent serious and imminent physical harm is unsubstantiated.

Suggestion

The patient's treatment plan listed restraints as her designated emergency intervention preference. The restriction notice for the injection stated that her preference was not used because her behavior was unpredictable while the notice for the restraint stated the same. Asked whether the preference was considered before going to an injection, the nurse said she does not memorize everyone's preferences and a unit administrator offered that they consider restraints most restrictive so they prefer to avoid them if they can. McFarland is encouraged to familiarize with every patient's preferences and remember that the choice for consideration is the patient's preference, not the staffs' (405 ILCS 5/2-200d).

3. Written information about the forced medications was not shared.

McFarland staff said they never give patients written materials about drugs used for emergencies. The record showed that the one used in this case was previously consented to and scheduled, meaning she was already provided with the education. The Code provides no requirement specific to 2-107, and the complaint is unsubstantiated.

Suggestion

Written information must be shared whenever psychotropic or electroconvulsive therapies are used (405 ILCS 5/2-102 a-5). Clearly, informed consent for voluntary meds is based on information and it is even part of the due process when they are court ordered. However interpreted, it is at least ethical to provide the same to patients after an emergency when their condition permits so they are fully informed of what was injected into their bodies. We implore

McFarland to honor their patients' rights to be fully aware of all their treatments, a suggestion also raised in case 15-050-9002.

4. Restraints were used as a form of punishment or discipline.

Restraints in this case were applied after the patient continued to physically attack the staff, biting, kicking and scratching them when less restrictive alternatives failed as reported and documented. All indications pointed to the need to prevent physical harm, not to punish or discipline. She was continually monitored and released after thirty minutes when she was able to demonstrate safety. A rights violation is unsubstantiated.

5. Restriction notices were incomplete, not given promptly, and the patient was not asked if anyone was to be contacted.

The nurse said that she always completes notices and does so thoroughly which is backed up by the record. Two restriction notices were done for this incident that covered the physical hold, injection and restraints. Each noted that they were provided to the patient and that she elected no one to be notified. Although her claims are not discredited, the nurse's statements and the record provide no evidence of a rights violation. The complaint is unsubstantiated.

Complaint 6:

Adequate and humane care and services has not been provided for medical and dental needs.

The HRA was told that all medical and dental needs that a patient may have are always reviewed by physicians and are followed up accordingly. Medical exams can occur as needed and the facility's medical physician is available for any referrals from nurses or psychiatrists. A dentist visits once per month or as needed. This patient does have allergy issues and some dental complaints that have been addressed appropriately, which should be reflected in her chart.

Prescriptions at the time the complaint was filed included antihistamines and ointments for allergy symptoms and a rash. Adjustments and additional medications were added a few days later, including decongestants for sinus pain. Medicine administration records showed that the medications were given as ordered, provided the patient took them. Around the same time a dental appointment for bleeding gums and an annual exam were ordered. There were no follow up scripts from the dentist who wrote on a consultation form that soft tissue pathologies were not apparent. Sensodyne toothpaste was recommended and carried out according to the corresponding notes.

Conclusion

Medical and dental care policies say that primary care physicians and nursing staff are responsible for ongoing dental hygiene assessment and treatment needs. They and the patient may request referrals. Dental examinations shall be repeated annually. The facility contracts a dentist who performs in-house screenings and consultations and outpatient treatment as needed. The dentist is to appear at the facility on a regular basis (#MD212).

The Mental Health Code calls for adequate and humane care and services for all recipients. It defines adequate and humane care and services as those reasonably calculated to result in significant improvement of one's condition (405 ILCS 5/2-102a and 5/1-101.2). The Administrative Code adds that dental exams and referrals will occur as often as conditions require (59 Ill. Admin. Code 112.30).

There are many references in this patient's chart to her seeing a physician for allergy and sinus complaints and a dentist for bleeding gum complaints. It also reflects how thorough exams were done on several occasions and how recommendations and orders were carried out. A violation of her right to adequate and humane care is unsubstantiated.

Complaint 7:

Harmless property has been confiscated.

The complaint is that the patient had to give up her leggings while others were able to wear theirs, an unfair practice when she had a right to her property. The same nurse explained that the patient's leggings were never taken away. She noticed how they were ripped right up to her crotch and inappropriate to wear. She did not confiscate them but instead asked her to give them up which she eventually did; there was no restriction to her property.

There were no restriction to property notices in the record provided. A case manager wrote that the nurse advised the patient of her leggings being too tight and that she requested her to relinquish them to storage. The note described how the patient became upset and complained that other patients were allowed to wear theirs. The case manager told the patient that the nurse wanted them and that she could not overrule. There is no reference to how the situation finally played out. Asked to comment on the case manager's differing notes on the matter, the nurse said they were inaccurate and had no idea why they were written.

An Office of the Inspector General report on the same issue was reviewed. The nurse gave her account as she did in our interview, and said she had never removed leggings or other items from the patient. A mental abuse claim was unfounded.

CONCLUSION

The Guide to Your Hospital Stay states that patients have a qualified right to personal property. There is a five-outfit limit due to space and available storage for the rest. Some items are restricted, which are included in an attached comprehensive list. Leggings are not specifically listed, but any item considered hazardous is.

The Mental Health Code guarantees that everyone who resides in a facility shall be permitted to possess and use personal property. Only when it is necessary to prevent harm may the property be restricted (405 ILCS 5/2-104).

The nurse involved in this situation insists that the patient was never forced to give up her leggings, rather, she was asked to and she eventually agreed. Although there is documentation from another employee implying that the patient may not have had a choice, we have no factual evidence to prove that her right to possess her own property was violated. The complaint is unsubstantiated.

Complaint 8:

The patient is not allowed to inspect her record upon request.

Here the claim is that the patient has asked for more than a year to see her medical record and has been repeatedly denied. The clinical director on her unit acknowledged that as fact and said that the patient is in no condition to see it and she has not tried showing her the record because she is only interested in arguing. She said there was no formal system in place to periodically reconsider her requests, but she does get copies of her treatment plan reviews and court reports. They do however ask patients for their input during treatment plan meetings and encourage them to put their opinions in writing which would be entered in the record. She would be allowed to enter any dispute of contents in her record.

The issue regarding another patient (15-050-9007) was addressed at the same time with a psychiatrist and managers from another unit. They said that not all patients are denied and that if one is permitted to review his record they sit with him and are available to answer any questions. The psychiatrist said that when a patient is persistent he may get involved; he is looking for psychological effects of reading the record and potential meltdowns that can be detrimental. Asked under what authority they have to restrict record access, they were unsure, saying it was probably under the Mental Health Code.

This patient's record included five restriction notices that prohibited her review. Each one repeats almost verbatim that the team believes it is not beneficial for her, that she questions what they write about her and that it would cause agitation, emotional dysregulation and attempts to manipulate.

CONCLUSION

McFarland's Patient Access to the Medical Record policy states that the Confidentiality Act entitles the patient to inspect his record. If the team approves a request the coordinator shall assist the requestor in reviewing. If the team feels a request is contraindicated clinically, a restriction notice shall be given. If denied, the team can approve review at a later date (#HIM405).

The Mental Health and Developmental Disabilities Confidentiality Act provides nothing of the same, except that a patient is entitled to inspect and copy his record, upon request. It adds that in no way may access be denied or limited if assistance is refused and that any entitled person may enter a written dispute of anything within. Nowhere does the Act provide a structure to approve or restrict access (740 ILCS 110/4).

The Mental Health Code's allowance for rights restrictions applies to those under its own Chapter II, not the Confidentiality Act (405 ILCS 5/2-201). The Confidentiality Act permits access upon request without stipulation for denials. McFarland's policy and procedures are far stricter than the Act by devising its own way to approve and restrict without authority, which is a violation. The complaint is substantiated.

RECOMMENDATIONS

Stop the practice of restricting patient record access.

Strike the approval and restriction portions and bring the policy into compliance with the Act.

Add in the policy the right to refuse assistance and not be denied or limited.

SUGGESTION

It was said that this patient is welcome to enter any dispute she has about documentation in her record, which is impossible to imagine how she can when she is not allowed to see what is in her record. The policy revision should address that adequately.

RESPONSE

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

Bruce Rauner, *Governor*

Andrew McFarland Mental Health Center
Greg Donathan, Hospital Administrator

March 23, 2015

James Bakunas, HRA Vice Chair (IGAC)
401 So. Spring St.
521 Stratton Building
Springfield, IL 62706

RE: Case #15-050-9001

Dear Mr. Bakunas,

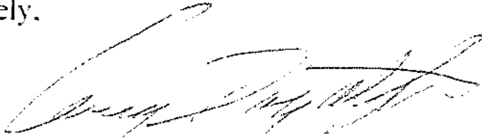
This letter is in response to your recommendations for case # 15-050-9001 which include:

- McFarland Mental Health Center should stop the practice of restricting a patient's access to his or her medical record;
- McFarland Mental Health Center should strike the approval and restriction portions and bring the policy into compliance with the Act;
- McFarland Mental Health Center should add in the policy the right to refuse assistance and not be denied or limited regarding a patient's ability to review his or her medical record.

McFarland administration is currently undergoing a policy review of this matter. We recognize the need to remain in compliance with the MHDD Confidentiality Act. We believe that individuals should be able to review their medical records and it should be a rare instance in which such a review is denied. In accordance with HPIAA 164.524, an individual should only be denied if it is reasonably expected that access to the chart will "endanger the life or physical safety of the individual or another person." Our current policy does not clearly articulate this requirement and will be amended to do so. Additionally, a review process by administration of any denial to review a medical record will be created and written into the policy. We will also include language to specify that although staff must be present to assure the record is safe, the staff person must remain uninvolved in the review of the chart if this is the request.

We appreciate the opportunity to work with the Human Rights Authority to create a policy and process that is acceptable and responsive to those we serve.

Sincerely,



Greg Donathan, LCSW

SPRINGFIELD REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 15-050-9001

MCFARLAND MENTAL HEALTH CENTER

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document, will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

_X_ We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

______ We do not wish to include our response in the public record.

______ No response is included.

NAME

TITLE

DATE