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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 16-030-9001
Norwegian American Hospital

Summary: The HRA substantiated the complaint that the facility did not follow Code procedures when it restricted a recipient's visitation/communication rights.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Norwegian American Hospital (Norwegian). It was alleged that the facility did not follow Code procedures when it restricted a recipient's visitation/communication rights. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Norwegian is a 200-bed, acute care community hospital serving residents of the near northwest Chicago area. The hospital incorporates a 31-bed Behavioral Health Unit.

To review these complaints, the HRA conducted a site visit and interviewed the Program Coordinator, the Nurse Manager, Corporate Counsel, and the Chief Nursing Officer. Relevant hospital policies were reviewed, and records were obtained with the consent of the recipient and the Power of Attorney for Healthcare.

COMPLAINT SUMMARY

The complaint alleges that while a recipient was recovering from a stroke approximately a year and a half ago, he executed a Power of Attorney for Healthcare, naming his partner of 17 years as his agent. When he was admitted into Norwegian in June of 2015, his POA agent was not permitted to visit or have phone communication with him. The hospital did not communicate to the recipient or the POA agent the reasons why the recipient's rights to communicate were being restricted. Allegedly the recipient was appointed a state guardian and sent to a nursing home, all without the input of the recipient's POA agent. The complaint indicates that the POA agent was never called or informed what was happening to her husband, and that the recipient himself had the presence of mind to see a phone and call his wife for help. When she returned the call she was told that she could have no contact with the recipient.

FINDINGS

The recipient's admission face sheet completed on 5/20/15 states, "Pt with a history of dementia presents with increased paranoid delusions and poor self care. Believes the water in his home is poisoned and will not use it. Lives with his 'wife' who is currently not taking proper care of him. APS [Adult Protective Services] [illegible] …. Pt also believes …. [illegible] Under his wife. Poor hygiene."

The record contains a Petition for Involuntary/Judicial Admission completed on 5/19/15 at 5:00 p.m. which gives as the reason for the need for immediate hospitalization: "Here for evaluation per [APS agency] and EMS house in poor condition. Per wife pt is delusional. Says refuses to shower due to no heat in house yet states this is not true. Pt states no money left yet wife states this also is not true. Pt is paranoid at home and believes that people are attempting to murder his wife. Pt in need of psychiatric evaluation." The Petition contains a certification by an Intake staff member that indicates that the recipient had been apprised of his rights and given a copy of the Rights of Admittee and Rights of Individuals Receiving Mental Health and Developmental Disabilities Treatment. The date on this portion of the document is 5/21/15 at 11:00 a.m. There are also two Inpatient Certificates in the record. The first was completed on 5/20/2015 at 3:50 p.m. by the ER Crisis Worker and indicates that the recipient was informed of the purpose of the examination, that he did not have to respond to the examiner, and that any statements he made could be used in a mental health court hearing. The clinical observations state, "Pt is a 69 year old male with a history of dementia who presents with increased paranoia and delusions. Pt believes that the water in the home is poisoned so he is not showering. His significant other will not administer his psychotropic medications that we prescribed several months ago, instead giving him holistic treatment. The patient often calls 911 believing there is a gas leak in the home, also believes that his partner will be murdered and that he himself carries a lethal virus that he has given to others and that they have died from this. Due to acute psychosis, pt cannot guard against future harm at this time, in need of psych care." The second certificate was completed on 5/21/15 at 10:00 a.m. by a hospital psychiatrist and it certifies that the recipient was informed of his rights and it describes his symptoms as "Patient is very confused. Pt is unable to care for self, needs residential treatment."

The record shows that on 5/21/15 the recipient gave a general consent for treatment and on the same date he gave informed consent for Ativan and Haldol. On the same date at 3:20 a.m. he signed an Application for Voluntary Admission and the Intake Specialist certified that he was not suitable for informal admission for the following reason, "Increased paranoid delusions, dementia, unable to care for self." On this date the recipient also signed a "Disclosure of Treatment Information" document allowing his partner (named as his wife by the recipient) to receive information regarding his treatment. The record does not contain a physician statement of decisional capacity.

The record contains the Illinois Statutory Short Form Power of Attorney for Health Care, naming the recipient's partner as his agent and "as my attorney –in-fact (my 'agent') to act for me in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold, or withdraw any type of medical treatment or procedure, even though my death may

ensue." The document is signed by the recipient on 3/29/14 however the Notary Public date is 5/29/15, which would have been during the recipient's hospitalization.

The record contains the recipient's Initial Psychiatric Evaluation, completed 5/21/15. It states, "The patient, who lives in the community with his common-law wife, was brought to the emergency room of [a local health center] after a home visit by [APS]. As per the worker from [APS] by the name of …, the house was completely ruined and the patient was not being cared for by his common-law wife who believed in holistic medicine and was not giving him any psychotropic medications. Also, as per [APS], he had not been eating or being taken care of. [APS] further states that he has a diagnosis of dementia and he has been exhibiting with paranoid delusions that the water in his house was poisoned and that there was a leak in the home and that his partner will be murdered and that he carries a lethal virus with him that he has given it to the others and they have died from this. He had been discharged from [a local community hospital] approximately 2 months ago for similar reasons. He denies any auditory hallucinations or any visual hallucinations, and he is seen to be alert and he is seen to be grossly oriented. He does admit to having a gas leak in his home and that there was a lethal virus that he was carrying. He also admits to auditory hallucinations on and off but he is unable to provide the content of the voices. He denies using any illicit street substances or alcohol. He denies any history of self – injurious behavior."

Progress Notes from 5/22/15 state, "The patient very confused, anxious, and agitated. Has persecutory delusions, auditory hallucinations. Started on low doses of Risperdal 0.5 twice a day. Medication, management and treatment plan reviewed with staff." Progress Notes from 5/24/15 state, "The patient, with schizophrenia disorder by history, was admitted from … after his house was found in a disarray. He has not been well cared for by his common law wife who believes in holistic medicine and does not believe in any psychotropic medications. As per [APS], they have been requesting that he be placed at an intermediate care facility or a nursing home to prevent further decompensation. Also, he has been refusing to eat and had been steadily losing weight. During the staffing today, he continues to remain very anxious, very guarded, very disorganized, although he is alert and he is grossly oriented. He is on titrating doses of Risperdal and he is without any side effects noted." The recipient's diagnosis is listed as Schizophrenia, paranoid type with an acute exacerbation. The treatment plan is to increase his Risperdal 1 mg twice a day, and as needed Lorazepam 0.5 mg every 6 hours for his anxiety, and contact APS to facilitate a transfer of the recipient to a structured care facility upon discharge.

Progress Notes from 6/01/15 state that the recipient "is preoccupied with and demands discharge back to his common-law wife."

The record contains a letter dated 6/02/15 from the Adult Protective Services Program. It states, "This letter is to inform you that Adult Protective Services has an open case involving our client, …, and Passive Neglect has been substantiated."

Progress Notes from 6/03/15 state, "The patient was seen in the staffing today for medical management, supportive therapy, and for discharge planning with the interdisciplinary team. As per the social service, there was an order for temporary guardianship approved for the patient and that he is being assigned to a state guardian, who will finally decide where the patient

will be discharged to what nursing home or any other structured living facility or an assisted living facility. The patient was much relieved to hear about this information and reports that he is 'looking forward to his discharge.' Also, as per state guardian, now he was allowed to talk to his common-law wife." The treatment plan section states, "Now that the patient has a temporary guardianship from the state, and the state guardian who has suspended the restriction of phone calls to the patient. We will have the patient contact his common law wife."

The record contains a Notice Regarding Restricted Rights of Individuals. It indicates that the recipient had a restriction placed on his telephone calls and visitation from 5/21/15 until his discharge (this was later changed after a newly appointed temporary guardian allowed phone calls on 6/03/15). The reason given for the restriction was, "allegations of potential abuse by caregiver. Per adult protective services." In the section which indicates who the recipient wished to be contacted of his restriction it indicates that he wanted no one notified and it states below "Individual is non-decisional." The form is signed by the unit nurse.

The recipient in this case had his state guardianship rescinded, his wife was named his Power of Attorney for his health care, and he was returned to his home with his wife after five months of residing in a nursing home.

HOSPITAL REPRESENTATIVE RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that the recipient was brought to Norwegian American from an area hospital, after Adult Protective Services had visited the recipient at his home and determined that the recipient was dirty, suffering from lack of nourishment and was not being given his prescribed medication. Staff indicated that the recipient and his wife were well known to APS, however APS did not mention to Norwegian that the recipient had a Power of Attorney for Healthcare (POA). Staff indicated that they were not aware of the POA until the hearing for temporary guardianship which occurred on 6/02/15, when the recipient's wife presented this document to the judge. Initially, the recipient signed into the hospital as a voluntary admittee, however after being evaluated by a psychiatrist, who determined that the recipient did not have decisional capacity, he was petitioned and certified as an involuntary admittee and the hospital counsel was notified to file the necessary documentation for involuntary hospitalization as well as guardianship. Staff also reported that the POA paperwork had been reviewed by staff and they noticed that the document was initially signed by the recipient on 3/29/14 and then notarized on 5/29/15, while the recipient was hospitalized.

Hospital staff were interviewed about the restriction of the recipient's right to communicate with his wife while he was hospitalized. They stated that initially they made the decision to restrict communication because they thought that perhaps phone calls or visits from the recipient's wife would interfere with his treatment in that she might advise against taking medications or eating. They had consulted with APS who had known the recipient and his wife and they followed their advice to limit the recipient's calls and visits feeling that it was in the best interest of their patient. They indicated, and the record confirms, that they were willing to adjust this after receiving input from the temporary guardian.

STATUTORY BASIS

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

"(a) A recipient of services shall be provided with adequate and humane care and service in the least restrictive environment, pursuant to an individual services plan. The Plan shall be formulated and periodically reviewed with the participation of the recipient to the extent feasible and the recipient's guardian, the recipient's substitute decision maker, if any, or any other individual designated in writing by the recipient. The facility shall advise the recipient of his or her right to designate a family member or other individual to participate in the formulation and review of the treatment plan. In determining whether care and services are being provided in the least restrictive environment, the facility shall consider the views of the recipient, if any, concerning the treatment being provided. The recipient's preferences regarding emergency interventions under subsection (d) of Section 2-200 shall be noted in the recipient's treatment plan. [Section 2-200 d states that recipients shall be asked for their emergency intervention preferences, which shall be noted in their treatment plans and considered for use should the need arise].

(a-5) If the services include the administration of…psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated. The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. …. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2- 107 [to prevent harm]…." (405 ILCS 5/2-102).

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient threatens serious and imminent physical harm to himself or others and there is no less restrictive alternative:

"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).

The Mental Health Code mandates that recipients shall be permitted unimpeded, private and uncensored communications with persons of their choice by mail, telephone and visitation. Correspondence must be conveniently received and mailed and reasonable times and places for

the use of telephones and for visits may be established by the facility. Communication may be reasonably restricted only in order to protect the recipient or others from harm, harassment or intimidation. When communication is restricted, the recipient must be advised that he has the right to require the facility to notify the affected parties of the restriction and when the restriction is no longer in effect (5/2-103).

Additionally, the Code states that whenever any rights of the recipient of services are restricted, notice including the reason 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 Illinois Power of Attorney Act (755 ILCS 45/) includes the Power of Attorney for Health Care Law (755 ILCS 45/4-3) which describes the general principles:

The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual and all powers a parent may have to control or consent to health care for a minor child.

Section 4-8 sets forth the immunities of health care providers, agent, and others in relation to health care agencies:

Each health care provider and each other person who acts in good faith reliance on any direction or decision by the agent that is not clearly contrary to the terms of a health care agency (a "reliant") will be protected and released to the same extent as though the reliant had dealt directly with the principal as a fully- competent person. Without limiting the generality of the forgoing, the following specific principles shall also govern, protect, and validate the acts of the agent and each reliant:

(a) No reliant shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct for complying with any direction or decision by the agent, even if death or injury to the patient ensues.

(b) No reliant shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with any direction or decision by the agent that violates the reliant's conscience rights, as long as the reliant promptly informs the agent of the reliant's refusal or failure to comply with such direction or decision by the agent. The agent shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. It is understood that a provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the transfer.

(c) If the actions of a health care provider who fails to comply with any direction or decision by the agent are substantially in accord with reasonable medical standards at the time of reference and the provider cooperates in the transfer of the patient pursuant to subsection (b) of Section 4-7 of this Act, the provider shall not be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with the agent.

(d) no agent who in good faith acts with due care for the benefit of the patient and in accordance with the terms of a health care agency, or who fails to act, shall be subject to any type of civil or criminal liability for such action or inaction.

Section 45/4-10 (a) states, *No specific format is required for the statutory health care power of attorney other than the notice must precede the form. The statutory health care power may be included in or combined with any other form of power of attorney governing property or other matters.*

HOSPITAL POLICY

Norwegian provided the hospital policy and procedure for Patient Rights and Responsibilities (#BM3.050). It states, "It is the policy of NAH that patients receive considerate and respectful care at all times and under all circumstances with recognition of personal dignity in a humane environment that affords appropriate privacy and reasonable protection from harm. Patients have a right to receive prompt and appropriate treatment for any physical or mental disability. Patients have the right to the least restrictive conditions necessary to achieve treatment purposes. No patient, except as otherwise provided by the applicable state law, shall be denied legal rights solely by virtue of being voluntarily admitted or involuntarily committed. These rights include voting, making wills, entering into contracts and other rights held by any citizen." The hospital policy also states, "Patients have the right to be free from unnecessary or excessive medication. Patients requiring emergency medication for control of behavior deemed dangerous to themselves or others should be evaluated by a physician prior to ordering such medications, but if this is impractical, a written order may be entered on the basis of telephonic authority received from a physician. Medications shall not be used as a punishment; for the convenience of staff, or in quantities which interfere with the patient's treatment plan." Additionally, the policy states that if a valid and sufficient reason exists to restrict a patient's rights, "the patient must be promptly notified of any restriction and the reason for imposing the restriction." Norwegian did not provide policy on rights specific to communication.

CONCLUSION

The Mental Health Code states that communication by mail, telephone, or visitation may be reasonably restricted by the facility director only in order to protect the recipient or others from harm, harassment, or intimidation. In this case the recipient authorized Norwegian to disclose relevant information about his treatment progress to his wife and even demanded to be discharged back to her. He repeatedly requested to speak with her and he may have intended for her to serve as his agent under a Power of Attorney, even though we cannot substantiate that this was valid at the time. Despite this, the hospital made an assumption that the recipient's contact with his wife would be harmful to him, without any evidence to support it. This is a violation of his rights as a recipient, and it deprived him of very valuable advocacy. The HRA substantiates the complaint that the facility did not follow Code procedures when it restricted a recipient's visitation/communication rights.

RECOMMENDATION

1. Train staff that communication may be restricted only in order to protect the recipient from harm, harassment, or intimidation.

2. Develop policy that addresses recipients' communication rights.

SUGGESTION

1. Remind staff that relying on holistic medicine is not in itself harmful or neglectful and many professionals might justly believe that psychotropic medications, especially for elderly dementia patients, are as harmful as no treatment at all. Also, the patient and his substitute decision maker have the right to refuse any and all medications (5/2-107).

2. The recipient in this case was administered psychotropic medication after being evaluated as lacking decisional capacity, and thus he was not able to consent to treatment until a guardian was appointed by the court. Remind staff that in this case there are two options absent an emergency: give no treatment until there is a substitute decision maker, or give no treatment until a court order is obtained for involuntary medication.

3. Ensure that the record contains a physician statement of decisional capacity.