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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 16-030-9008
Kindred North Hospital

Case Summary: HRA substantiated the complaint that the facility restrained and administered forced emergency psychotropic medication in violation of the Mental Health Code. The HRA has received a non-public provider response.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Kindred North Hospital. It was alleged that the facility restrained and administered forced emergency psychotropic medication in violation of the Mental Health Code. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Kindred North is a 164-bed transitional care hospital that provides intensive long-term acute care to medically complex patients. Kindred serves as a bridge for patients who are medically complex and require acute care, but are unable to recover completely in the traditional short-term acute care hospital setting. The hospital incorporates a 31- bed Behavioral Health Unit.

To review these complaints, the HRA conducted a site visit and interviewed the Director of Quality Management and the Director of Behavioral Health. Relevant hospital policies were reviewed, and records were obtained with the written consent of the recipient.

COMPLAINT SUMMARY

The complaint alleges that a recipient, along with other patients, was watching movies in the milieu, when a male staff member came into the room and turned off the tv. The recipient allegedly objected. The staff member then reportedly stated, “I’m getting sick of you.” The staff member then pushed the recipient into a table and she reportedly told him not to put his hands on her. The complaint alleges that the male staff person was a big man and the recipient felt compelled to defend herself. When she did, she was placed in restraints, injected with medication, and placed in a choke hold. Reportedly, the recipient was hoarse for a week and in

so much pain that she went to a hospital to be xrayed for injuries. Also, the recipient made a complaint to the Director of the Behavioral Health Unit, but that person never returned her call.

FINDINGS

The clinical record indicates that the recipient in this case presented to the emergency department of a Chicago area hospital on 7/30/15. After being examined, she was petitioned for involuntary admission on the same day at 6:04 p.m. by a physician for the following reason: "Patient presents to ER with homicidal ideation and plan to poison her boyfriend or burn his house down. She said she feels homicidal toward her boyfriend because she caught him having sex with men and he stopped financially supporting her when she confronted him about it. Patient has a history of psychiatric hospitalizations." An inpatient certificate was also completed by a physician at the same hospital at 10:40 p.m. the same evening. The clinical observations which served as a reason for the recommendation of inpatient treatment include, "[The recipient] is a 57-year old woman with Bipolar Disorder who comes via 911 and mandated reporting by counselor. She endorses harmful feelings of wanting to poison or hurt her ex-boyfriend. She refuses to give contact information for the boyfriend and continues to endorse ideas of harm on questioning. The patient also meets the criteria for depression. She is engaging in impulsive behaviors of using cocaine and marijuana. She also endorses wanting to go out at night to get in trouble. This patient requires inpatient hospitalization for the protection of her ex-boyfriend, as well as stabilization of irrational thinking, depressed mood, and impulsivity which may leave her open to harm herself." The recipient was then transferred to Kindred at 7:45 a.m. on 7/31/15. At 7:55 a.m. the recipient applied for voluntary admission into Kindred Hospital's Behavioral Health Unit.

On 8/01/15 at 9:20 p.m. progress notes indicate that the recipient had become combative: "Pt. physically attacked staff member in the day room. Per staff member, 'I told them that there is no time to watch another movie, because it's a bed time and the pt under discussion became agitated, combative, and came behind my back.' Staff member reported pt scratching his arm. Patient stated, 'Nothing is wrong with me. Leave me alone. I did not do anything.' At that time this writer observed the patient in the hallway kicking, screaming, and trying to attack staff. Pt placed in restraints for safety and to provide staff and patients security." The Physician order for restraint is included in the record and for the clinical justification for restraint it states, "Physically attacked staff in day room over tv." A Notice of Restriction Regarding Rights of Recipients is also included and states, "Patient attacked staff in Dayroom over tv." Also included is the Restraint Flow Sheet which shows that the recipient was observed continuously and notations were made every 15 minutes when the restraints were checked, vitals taken, and the recipient was offered liquids, toileting, and meals. A physician note is also included in the record and it states, "I was asked to see this pt because she attacked employee and was put in restraints. On exam: Pt is non-cooperative, no evidence of any body injuries. Pt. will remain in restraints for her safety." The record shows that the recipient was released from restraints at 11:30 p.m. Notes entered at this time state, "Pt. was released from restraints. Pt agreed to safety and to go back to her room. Pt. denies pain, injuries, or discomfort. Pt. requested to go to bathroom and is calm, cooperative, and able to follow staff instructions."

The record contains a restraint/seclusion tool which shows that the staff offered the following alternatives to the restraint: "Assessing and treating the cause of the behavior, verbal redirection, reality orientation, 1:1 counseling, and PRN [as needed] medication." This document also indicates that the recipient was not injured and that a staff person was injured. The record contains debriefing documents for the restrained recipient, staff, and remaining patients. The recipient was asked what precipitated the incident and she responded "He attacked me." When asked if her physical, psychological, and privacy needs were met, she responded, "My back hurts."

HOSPITAL REPRESENTATIVE RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that a Mental Health Technician had entered the room in which recipients were watching tv and he announced that the tv would be turned off because it was time for patients to be directed to their rooms for the night. The recipient in this case was standing near the Technician who was escorting patients out of the room, placing his hand on the recipient's back. The recipient initially objected to the tv being turned off and then escalated to shouting at the Technician while moving into the hallway. Once in the hallway the recipient began screaming and kicking the Technician and when the recipient swung at the Technician staff were called to assist. The recipient was then escorted into the quiet room where she was placed in restraints and administered emergency medication. The hospital representatives stated that the recipient never fell onto a table at any time and was never placed in a choke hold. They indicated that the recipient had complained that her shoulder hurt after the event and she was then examined by a physician, who did not observe any injuries. Hospital staff stated that there was a video of the event from the beginning of the event until the entry into the hall and then again in the quiet room, however it is no longer available for viewing. Staff stated that the video was reviewed by staff and also that the Director reviewed it with the Technician as a training tool. The Director also reported that he spoke with the recipient after the event and told her that he would complete an investigation of the matter and also informed her that staff had reviewed the video. He then asked her if she wanted to file a formal grievance and she declined. These two conversations are not documented in the clinical record. Staff indicated that all staff are trained in applying restraint and the Director also personally trains his staff on Crisis Prevention Intervention techniques.

Staff were asked if the recipient had completed a Preferences for Emergency Treatment document and if the recipient's preferences were utilized in this event. They indicated that the recipient did not complete this form. The Director indicated that the Unit will now be implementing a preferences document.

STATUTES

The Mental Health Code (405 ILCS 5/2-102 (a)) guarantees all recipients adequate and humane care in the least restrictive environment. "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:

"Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the facility shall advise the recipient as to the circumstances under which the law permits the use of emergency forced medication under subsection (a) of Section 2-207, restraint under section 2-208, or seclusion under Section 2-109. At the same time, the facility shall inquire of the recipient which form of intervention the recipient would prefer if any of these circumstances should arise. The recipient's preference shall be noted in the recipient's record and communicated by the facility to the recipient's guardian or substitute decision maker, if any, and any other individual designated by the recipient. If any such circumstances subsequently do arise, the facility shall give due consideration to the preferences of the recipient regarding which form of intervention to use as communicated to the facility by the recipient or as stated in the recipient's advance directive."

The Mental Health Code describes the requirements for the administration of psychotropic medication and its refusal:

"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 a-5).

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 that restraint may be used only as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others. Restraint may only be applied by a person who has been trained in the application of the particular type of restraint to be utilized. In no event shall restraint be utilized to punish or discipline a recipient, nor is restraint to be used as a convenience for the staff. In no event may restraint continue for longer than 2 hours unless within that time a nurse with supervisory responsibilities or a physician confirms in writing that the restraint does not pose an undue risk to the recipient’s health in light of their medical condition. Orders for restraint must include the events leading up to the need for restraint and the length of time the restraint will be employed, not to exceed 16 hours.

Restraint is to be employed in a humane and therapeutic manner and the person restrained must be observed by a qualified person as often as is clinically appropriate but no less than once every 15 minutes. The person must maintain a record of the observations. Unless there is an immediate danger that the recipient will physically harm himself or others, restraint must be

loosely applied to permit freedom of movement. Also, the recipient must be permitted to have regular meals and toilet privileges free from the restraint, except when freedom of action may result in physical harm to the recipient or others. Every facility that employs restraint shall provide training in the safe and humane application of each type of restraint used. Whenever restraint is used, a member of the facility staff will remain with the recipient at all times unless the recipient has been secluded. A person who has been restrained and secluded shall be observed by a qualified person as often as is clinically appropriate but in no event less than every 15 minutes. Whenever restraint is used, the recipient shall be advised of his right to have any person, including the Guardianship and Advocacy Commission or the agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act notified of the restraint.

HOSPITAL POLICY

Kindred North Hospital provided their policy for Emergency Medication and Restraint (MH-0052and MH-0078), which complies with all Mental Health Code requirements.

CONCLUSION

The events described in the clinical record for this case demonstrate a level of dangerousness which may reasonably result in restraints and forced emergency medication for a recipient. Also, the restraint documentation complies with all the procedural guarantees mandated by the Mental Health Code regarding restraint. It is unfortunate that the video was not saved as the recipient specifically requested this in her release of information, however she had not seen the tape herself and did not know its contents or its possible usefulness in the investigation. Although the record shows that the recipient was offered alternatives to restraint, the record is missing a Preferences for Emergency Treatment document, and staff have assured the HRA that this will be implemented as soon as possible. Without this Code mandated requirement, the HRA substantiates the complaint that the facility restrained and administered forced emergency psychotropic medication in violation of the Mental Health Code.

RECOMMENDATION

1. Implement the use of a Preferences for Emergency Treatment document and ensure that the preferences are noted in the treatment plan and accessible should the need arise.

SUGGESTION

1. Attempt to retrieve and save the recorded event whenever a restraint episode is questioned by a recipient.

2. Remind staff that the record must reflect the clinical decisions and measures taken which affect the recipient during their hospitalization. If a recipient indicates that she does not wish to pursue a grievance following a restraint episode, this should be documented in the record.