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## HUMAN RIGHTS AUTHORITY- CHICAGO REGION

### REPORT 17-030-9013 CHICAGO LAKESHORE HOSPITAL

Case Summary: The HRA did not substantiate the complaint that the recipient was forced to sign a voluntary application for admission, that the facility did not honor the recipient's 5-day request for discharge, and that the facility administered forced emergency medication. The HRA did substantiate the complaint that the facility did not allow the recipient the right to refuse scheduled medication. The provider response follows the report of findings.

### 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 Chicago Lakeshore Hospital (Lakeshore). It was alleged that a recipient was forced to sign a voluntary application for admission, that the facility then did not honor the recipient's 5-day Request for Discharge, that the facility did not allow the recipient the right to refuse scheduled medication, and that the facility administered forced emergency medication for no adequate reason. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/100 et seq.).

Lakeshore is a 101-bed private psychiatric hospital located in Chicago.

To review this complaint, the HRA conducted a site visit and interviewed the Director of Risk Management and the Administrative Director of Inpatient Services. The HRA obtained the recipient's record with written consent.

### COMPLAINT SUMMARY

The complaint alleges that a recipient was admitted to Lakeshore on a voluntary application for admission under pressure by staff. Reportedly, she was not explained her rights as a voluntary admittee, however when the facility was ready to discharge her she was offered a Request for Discharge after telling the staff for weeks that she wanted to leave. The complaint also alleges that the recipient was pressured to take medication that she objected to because of its

side effects. Additionally, the complaint states that the recipient was administered forced emergency psychotropic medication for no adequate reason.

## FINDINGS

The clinical record for this recipient indicates that she was petitioned for involuntary admission on 11/16/16 at 2:30p.m. by the staff at her nursing home. The reason given is, "Very aggressive behavior, irritable, always yelling to the staff and other residents, always mad with other people, delusional, non-compliant with psych medications [Zyprexa], undirectable." The recipient had absconded from the facility and a police report for an Elderly Missing Person was issued on 11/16/16 at 1:59 p.m., which indicated that, "She suffers from a mental disability and has a heart disorder... Her birthday is November 16 and she may have voluntarily left the residential facility to celebrate her day." It is not known when the recipient was found however she was taken to Lakeshore by police where the patient Facesheet shows that the recipient was admitted on 11/17/16 at 11:30 p.m. on a voluntary application. She remained at Lakeshore until her discharge on 12/07/16.

It should be noted here that the recipient reported to the HRA that she had been abused by the staff at her nursing home. The HRA reported this claim to the Illinois Department of Public Health and their report, issued 2/06/17 indicated that on 11/12/16 the recipient had been "knocked to the floor and sustained a swollen eye with internal bleeding." The event was witnessed by a staff person and the recipient was then hospitalized nearby. The report indicated that the nursing home had committed the violations of physical abuse and neglect.

On 11/18/16 at 2:46 a.m. the recipient signed an Application for Voluntary Admission to Lakeshore. The form indicates that the recipient had been informed of her rights as a voluntary admittee and had been given a copy of the "Rights of Individuals Receiving Mental Health Services." The form also states, "I understand that the facility may discharge me any time that I am deemed clinically suitable for discharge." The form is signed by a mental health worker who certified that the individual had capacity to consent to a voluntary admission, that she was able to understand that she was being admitted to a mental health facility, and that if she submitted a written request for discharge, she understood that within 5 business days she would be either discharged or the facility would initiate civil commitment proceedings.

The Intake Assessment, completed 11/18/16 (no time indicated) states, "Pt. is a 79 year old Caucasian female that was brought in by ambulance from [a nursing home where she resided]. Per nursing home report, pt is non-compliant with her meds. She has been exhibiting aggressive behavior such as yelling to staff and her peers. Pt is displaying persecutory delusions and gets into fights with her peers. Pt is in need of hospitalization due to harm to others, decompensation, and unable to care for self." The Intake Assessment includes a statement from the recipient, "I don't know why I'm here all I was told was that Dr... wanted to talk to me so I came here." The section entitled Current Medical Problems lists Schizoaffective Disorder-Bipolar Type as well as Schizophrenia.

On 11/18/16 (no time given) the recipient received her Initial Psychiatric Evaluation and Treatment Plan which states, "Pt is a 79 year old female with diagnosis of schizophrenia referred

from nursing home due to aggressive behavior and paranoia toward staff and other residents, at interview, patient was pressured, delusional, paranoid, lacked insight, reported non-compliant with meds, was irritable.”

On 11/22/16 the recipient was seen by her physician who documented these notes: “The patient was seen for supportive psychotherapy, medications management, as well as formal weekly staffing with treatment team. The information that I obtained from the referring facility was that the patient apparently was demanding to be discharged, but had nowhere to go and apparently eloped from the facility. She was brought by the police to Lakeshore. It appears that the patient has been noncompliant with her Zyprexa regimen for a while. She again presents as floridly psychotic. The patient now states that the medications will poison her brain. She is actively hallucinating. The patient presented with inappropriate laughter.” The diagnosis is stated as Paranoid Schizophrenia.

On 11/23/16 the recipient was seen by her physician, who documented the interview, stating, “The patient remains floridly psychotic. She was again seen for supportive psychotherapy, medications management, and was staffed by the treatment team. She is now stating that she is refusing both the Haldol Decanoate and Zyprexa. The patient was informed she will not be discharged without medications and now states that she will either just stay here or go to court. The patient’s brother did visit today. Staff reports that the patient’s brothers reality testing appears impaired as well.”

On 11/25/16 the physician notes show that the recipient agreed to take Zyprexa, despite having complained that it keeps her awake in the evenings and tired throughout the day: “The patient was seen for supportive psychotherapy, medications management, as well as staffed with the treatment team. The patient continues to refuse Zyprexa and Haldol Decanoate. She remains delusional. The patient is actively hallucinating. After lengthy discussion, the patient finally agreed to take Zyprexa 10 mg in the morning. She states that Zyprexa actually wakes her up. The patient will not take more than 10 mg.” Progress Notes indicate that the recipient reported, “I’m not taking that damn medicine in the evenings. I had it this morning. I can hardly walk, they’re putting meds in my food.”

A Clinical Services “Clinical Status Note” written 11/28/16 outlines the recipient’s progress in treatment and indicates her “steps towards discharge planning” listed as “Pt needs to be med compliant.”

On 11/28/16 the recipient was seen by her physician, who entered the following notes, “The patient... continued to refuse Zyprexa in spite of several modifications dose wise per her request. She remains floridly psychotic. The patient became progressively agitated when we were discussing medications. The patient was offered Zyprexa IM and eventually agreed to take p.o. [oral] medications. She remains hostile, volatile, and extremely unpredictable. The patient is actively hallucinating.” By 12/01/16 the recipient had agreed to comply with medications but physician notes suggest that although the side effects are troublesome, this is the recipient’s concession so that she can be discharged: “...The patient has been taking her Zyprexa and was complimented on this. She now argues that she still does not need it, but is taking the medications, so she can be discharged. She still appears to be actively hallucinating. The patient

has slowed down. She is less volatile, but now presents with negative symptoms and pretty much has become more guarded and withdrawn. The patient remains delusional.” On 12/02/16 the physician notes state, “... The patient has been compliant with her Zyprexa regimen and was complemented on this. She continues to complain of bizarre side effects like dizziness, but the patient ambulates fine and is alert. She remains floridly psychotic. The patient constantly complains about staff for taking stuff out of her room. The patient hoarded garbage in her room and also stuffed garbage in her gown pants. The patient states it is evidence for her brother. She did agree to continue taking Zyprexa in exchange for early discharge....”

On 12/05/16 the social work progress notes state, “Patient wanting to discharge. I asked again for her to sign a 5 day. She refused. Will ask for Dr... re: discharge today or in next day.” Physician notes from the same day indicate that the recipient has been taking her Zyprexa daily and “is now agreeable to returning to [her nursing home] and states that she will stay there.”

The recipient’s Medication Administration Record (MAR) shows that the recipient received PRN (as needed) psychotropic medication twice, orally, and both times for “anxiety”. There is no record of forced emergency medication. Additionally, the record contains no indication of informed consent by the recipient for her prescribed medication.

The record contains a letter handwritten by the recipient on 12/02/16 to the staff at Lakeshore which states, “I’m writing to you because I requested a five-day release form, but the staff at Chicago Lakeshore Hospital (on Marine Drive) did not want to give me one. The staff made threats to me, saying I would be taken to their court, and that I would never get to go home if I signed a five-day release. I wanted to sign the five-day release. Any letter to be released was supposed to be just like the 5-day release form. Therefore I demand to be released today because of staff who stated false statements about signing a 5-day release along with statements of my never going home.”

#### Hospital Representatives’ Response

Hospital representatives were interviewed about the complaints. They indicated that the recipient was sent to Lakeshore because she had become aggressive and delusional from being non-compliant with her medications at her nursing home. The goal during her hospital stay at Lakeshore was to stabilize the recipient on medication so that she could return to her home. Staff did not believe the recipient was forced to sign a voluntary application. Additionally, they were not sure if the recipient had been given the form to request discharge, however if the letter that is part of the record is the only time in which she submitted a request (12/02/16), then she was discharged within the proper amount of time to comply with a voluntary admission. Staff also pointed out that the Thanksgiving holiday occurred during her hospital stay and this might have affected the number of business days within which a request for discharge could have been processed. The improvements in the recipient’s symptoms after her compliance with her medication suggest that she was discharged when she had stabilized and after she had submitted a written request for discharge.

Hospital representatives were interviewed about the recipient being unable to refuse scheduled medication. Staff indicated that the Clinical Care Managers meet with patients daily

and explain to them their symptoms and the need for medication. Additionally, they explain that patients must be stable in order to be discharged, so they are urged to be compliant with medication. The treatment team (physician, resident, if any, and the Clinical Care Manager) then meet to discuss the patient's progress toward stabilization. They consider the patient's symptoms, their presentation, and other behaviors and then the physician decides on how to proceed. They are encouraged, but not forced to take medication. The facility does not use chemical restraints and forced emergency medication is administered only if the patient becomes dangerous. The recipient in the extant case did not receive emergency medication while she was hospitalized at Lakeshore and she refused psychotropic medication, which was not given, from the day of her admission until 11/28/16.

## STATUTES

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.... 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. Upon admission the right to be discharged shall be communicated orally to the recipient and a copy of the application form shall be given to the recipient and to any parent, guardian, relative, attorney, or friend who accompanied the recipient to the facility." (5/3-401). Additionally, the Code 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 Mental Health Code guarantees all recipients adequate and humane care in the least restrictive environment, and 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 5/2-102a-5).

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:

"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).

## HOSPITAL POLICY

Lakeshore provided its policy on Admissions, Psychotropic Medication Informed Consent, and Patient Rights/Restriction of Rights.

The Admission policy states that the Intake Department will admit patients in accordance with the legal guidelines set forth in the Mental Health and Developmental Disabilities Code. It states that all Involuntary Admissions will provide a completed petition and certificate. For voluntary admissions, the policy indicates that the patient will sign consents for admission. The policy also indicates that "Patients shall be admitted under the care of a physician who shall be a member of the medical staff or has temporary privileges according to the medical staff bylaws. The patient's condition and provisional diagnosis shall be established on admission by the patient's physician.

The Psychotropic Medication policy states that the physician shall determine and state in writing whether the recipient has the capacity to make reasoned decisions regarding his treatment/medication. For each medication ordered for administration to the recipient, the physician or physician's designee must advise the recipient in writing of the benefits of the treatment, the risks of the treatment, the side effects, and alternatives to the proposed treatment. The physician order form includes a check box that reads that the psychiatrist has spoken to the recipient and informed him/her of the risks, benefits, side effects and right to refuse the medication. When an order is written for routine psychotropic medication the physician will check this box stating that they have provided this information to the patient. The psychiatrist should make an entry into the daily progress notes indicating that they have secured informed consent for the new routine medication being ordered, and a Medication Consent Form should be placed in the MAR for each recipient.

The Patient Rights policy states that Lakeshore Hospital complies with all Mental Health and Developmental Disabilities Code, Illinois Department of Public Health regulations, and all standards of the Joint Commission On Accreditation of Health Care Organizations. Policy states that only attending physicians may order a restriction of rights within the parameters of the Mental Health Code. To initiate a restriction, the attending physician will order and include the justification and objectives of the restriction. The attending physician will review the restriction on an ongoing basis and will indicate if the restriction is to be discontinued.

## CONCLUSION

The original petition to detain this recipient, completed on 11/16/16 at 2:30 p.m. expired 24 hours later, when within that time the certificate of a qualified examiner was not produced. Thus, when the recipient was admitted to Lakeshore, it is not clear under what authority she was held. Also, she was taken by police to Lakeshore with the petition, so although she was admitted to Lakeshore Intake at 11:30 p.m. on 11/17/16, she was not voluntarily admitted until 11/18/16 at 2:46 a.m. More importantly, the recipient had not received her rights under the Mental Health Code, or a copy of the petition, so it is understandable that when she arrived at Lakeshore, she was confused about what was happening to her. The Intake Assessment shows that she did not understand her position at the time: "I don't know why I'm here all I was told was that Dr... wanted to talk to me so I came here." This confusion persisted throughout her hospitalization. Nevertheless, the recipient was determined by her physician to have decisional capacity as indicated on the voluntary application and admitted as such, however there is insufficient documentation to substantiate that the recipient was forced to sign the document. The HRA does not substantiate the complaint that the recipient was forced to sign a voluntary application for admission.

There is only one Request for Discharge in the record and it is in the form of a letter, written by the recipient on 12/02/16, which also indicated that she had asked for the discharge form numerous times without having received it. A progress note from 12/05/16 also references a discharge request, but suggests that the recipient had been offered the form previously and had refused to sign: "Patient wanting to discharge. I asked again for her to sign a 5 day. She refused. Will ask for Dr... re: discharge today or in next day." If we reference the earliest signed request for discharge on 12/02/16, which is the only one in the record, then the recipient was discharged within the statutorily mandated timeframe. The HRA does not substantiate the complaint that the facility did not honor the recipient's 5-day request for discharge.

The record in this case is very confusing overall, however one theme emerges throughout, and that is that the recipient's discharge was contingent upon her taking her prescribed medications. In fact, upon refusing Zyprexa on 11/23/16 the progress notes indicate that she "would just stay in the facility or go to court" but would not agree to medication. There is no indication from the record that the recipient gave consent for the medication, even though the effects were discussed frequently. Eventually the recipient, despite experiencing adverse side effects, agreed to her medication "so she can be discharged" and we feel this is unacceptable. If a physician feels that a prescribed medication is absolutely necessary for a patient and the patient refuses it, then the physician should petition the court and present his case for court mandated medication. To hold an unwilling patient until they agree to an objectionable medication does not honor the recipient's guaranteed right to refuse medication absent an emergency under the Mental Health Code and it most probably suggests that after they are discharged they will discontinue its use. The HRA substantiates the complaint that the facility did not allow the recipient the right to refuse scheduled medication.

There is no indication from the record that the recipient received forced emergency medication while hospitalized at Lakeshore. The HRA does not substantiate the complaint that the facility administered forced emergency medication.

### RECOMMENDATION

1. Review with staff the Mental Health Code rules regarding medication. Ensure that patients consent to scheduled psychotropic medication and if they do not, that physicians allow them the right to refuse that treatment, absent an emergency, unless the physician pursues a court order to administer it involuntarily.

### SUGGESTION

1. Remind staff to ensure that voluntary recipients are given a request for discharge form when they indicate a desire for discharge.

2. Remind staff to provide recipients with rights information and copies of petitions consistent with Mental Health Code requirements.



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## **RESPONSE**

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

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May 23, 2017

**Ashley Casati, HRA Chairperson**

ILL Guardianship and Advocacy Commission

1200 S. 1<sup>st</sup> Ave. Box 7009

Hines, IL 60140

RE: 17-030-9013

**Dear Ms. Casati:**

In response to the letter dated May 11, 2017 the action plan is as follows for the recommendation:

Training will be provided to the Physicians and Registered Nurses to obtain consent before administering psychotropic medications to patients, and if they refuse, that physicians allow them the right to refuse treatment, absent an emergency, unless the physician pursues a court order to administer it involuntarily. The training is scheduled to be completed by June 30, 2017.

Sincerely,

A handwritten signature in cursive script that reads 'Neena Mehta'.

**Neena Mehta, CNO**