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HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 17-030-9024
CHICAGO LAKESHORE HOSPITAL

INTRODUCTION

The Human Rights Authority 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:

1. Due to the hospital repeatedly filing faulty petitions (8), the recipient was hospitalized much longer than he should have been.
2. The recipient was not given alternatives to medication as he requested.
3. The recipient was administered emergency medication for no adequate reason.
4. The recipient had to meet with his attorney in the quiet room on a bare mattress because the facility said they had no other room for them.
5. It is difficult or impossible to have phone conversations between recipients and their attorneys.

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 a Psychiatrist. The HRA obtained the recipient's record with written consent.

COMPLAINT SUMMARY

The complaint alleges that Lakeshore filed numerous faulty petitions which were then rejected by the court, causing the recipient to remain in treatment for much longer than necessary. Also, the recipient was not given the alternatives to proposed medication that he requested- although he requested and participated in group therapy, he also requested but was not provided with individual therapy, in lieu of medication. Additionally, the recipient allegedly received forced emergency medication for no adequate reason and was not issued a restriction of

rights notice for the event. And, he met with his attorney in the unit quiet room on an uncovered mattress because staff said there was no other place to meet, even after contacting the Chicago Lakeshore Community Liaison and requesting an alternate location. Finally, the complaint alleges that it is almost impossible to get a phone call through to someone on the unit. The recipients' attorneys have no mechanism for speaking with their clients- sometimes attorneys are told the recipient is in group, sometimes it is not phone time, and leaving a message is hit-and-miss. As a result, the recipient was not aware that his attorney was coming with the recipient's independent examiner the first day his court-appointed neuropsychologist came to meet with him.

FINDINGS

Complaint #1

The clinical record documents that the recipient was admitted to Lakeshore on 1/04/17 at 5:15 p.m. and discharged on 3/01/17 at 4:01 p.m. The Initial Psychiatric Evaluation and Treatment Plan is included in the record and it further clarifies the recipient's hospitalization timeline and its rationale: "[Recipient] is a 25 year old African American Male who was administratively discharged and then readmitted to CLSH [Chicago Lakeshore Hospital] on 1/04/17 because of his persistent delusions, paranoia, psychosis, risk of harm to himself and others and continued lack of insight of his condition. Pt was originally admitted to CLSH on 12/6/2016 for psychosis. At the time, he states his mother called the paramedics on him because he was keeping her up at night and she could not sleep. The paramedics brought him to CLSH. Patient denies SI [suicidal ideation], HI [homicidal ideation, and AVH [audio visual hallucinations]. He states his appetite and sleep are 'good'. He rates his depression 0/10 anxiety 0/10. Pt is a poor historian, per family patient has had extensive psychiatric hospitalizations and a hx of medication non-compliance. Pt continues to refuse medication and other treatment recommendations because he is 'allergic to them' and they will 'poison him.' Pt states that he has been misdiagnosed with schizophrenia and denies being ever diagnosed with Bipolar Disorder. States he has had 3 prior hospitalizations in the past few years, but he doesn't remember where. Per family pt is regularly non-compliant with medications and has an extensive history of psychiatric hospitalizations." The recipient's Initial Diagnosis is listed as Schizoaffective Disorder.

The record contains a voluntary application for admission completed by the recipient on 12/06/16 and also a Request for Discharge signed on the same day. There is no indication that any action was taken on this information. A Physician Admit Note entered on 1/04/17 states, "25 year old male discharged and immediately readmitted for evaluation of responding only to internal stimuli. No significant past medical history. No home meds for any medical problem…"

The clinical record shows that the recipient remained delusional, paranoid, bizarre, disorganized, and he continued to respond to internal stimuli throughout his hospitalization. The recipient adamantly refused psychotropic medication until 2/21/17 when he agreed to take Tegretol, but then he rescinded that decision and again refused all medication.

The Case Opening letter from the HRA requested "all petitions for involuntary admission and all court filings" for the period of the recipient's latest hospitalization. The hospital forwarded the following documents:

1. An Order for Hearing CoMH 000056, sent on 11/01/16 for a Case Management Conference on 1/10/17
2. An Attending Physician statement to the Court regarding the administration of authorized involuntary treatment dated 1/04/17.
3. A Notice of Hearing for Case Management Conference set for 1/10/17 (CoMH 000055), 1/11/17 (CoMH 000056), and 1/17/17 (CoMH 000124).
4. A Notice of Hearing for a Case Management Conference (CoMH 000121) for 1/18/17.
5. An Attending Physician statement to the Court regarding the administration of involuntary treatment dated 1/10/17.
6. A Petition for Involuntary/Judicial Admission which on page 3 is dated 1/10/17 and on page 4 is dated 1/04/17. Two certificates accompany this petition and are both dated 1/10/17.

The HRA also requested the petitions for involuntary admission from the recipient's attorney and the documents, along with the court's response, include:

1. 12/13/2016 CoMH 4225 A petition for commitment was filed and dismissed as defective (no rights given within 12 hour timeframe (rights document was not signed until 12/27/16 and there were no relatives listed).
2. 12/22/16 CoMH 4319 A petition for involuntary medication was filed and dismissed as "defective pleading".
3. 12/28/16 CoMH 4366 A petition was filed for involuntary commitment and was dismissed because it was filed 8 days late.
4. 1/03/17 CoMH 0026 A petition was filed for involuntary medication and it was dismissed as "defective".
5. 1/04/17 CoMH 0055 A petition was filed for involuntary medication and it was dismissed because it was filed while another cause of action for the same thing was pending.
6. 1/05/17 CoMH 0056 for commitment was dismissed because it was filed prematurely while another cause for the same thing was pending.

The last filed involuntary medication petition (2017 CoMH 0124) went to trial over two days on 2/08/17 and continued until 3/01/17. It was denied. The hospital then decided not to go forward with the commitment petition (CoMH 0121) after the medication petition was denied and thus the State dismissed the commitment petition and the recipient was discharged on 3/01/17. The recipient, initially a voluntary applicant for admission, was petitioned for involuntary commitment and involuntary medication 8 times between 12/06/16, his initial admission, and 3/01/17.

<u>Complaint #2</u>

The record includes Daily Psychiatric Progress Notes which document individual treatment sessions between the recipient and his Attending Physician. Notes from these sessions

show the full range of therapeutic issues, including the recipient's need for medication, education regarding particular medications, the recipient's refusal of medication, involvement of family, and discharge issues.

Complaint #3

The HRA requested, but did not receive, documentation from Lakeshore related to forced emergency medication. The recipient's attorney file contained A Seclusion and Restraint- RN Note which describes an incident on 12/07/16 resulting in forced medication: "Aggressive, threatening, posturing and grabbed a chair in order to attack staff … [illegible] redirected away from phone calling 911." The recipient was also placed in a physical hold in order to administer the medication. A Seclusion and Restraint Order from the recipient's physician is included in the documentation and it states, "Pt was constantly dialing 911 after redirecting pt away from the phone Pt became aggressive, threatening to beat up staff. Posturing and grabbed a chair in order to assault staff. Patient is danger to self and others." The accompanying Medication Administration Record (MAR) shows that the recipient was administered Haldol 5 mg, Ativan 2 mg, and Benadryl 50 mg by injection at the time of incident. At the site visit for this investigation the facility provided a Restriction of Rights Notice for this event. It indicates that the recipient's preference for emergency intervention was utilized and that he wanted no one notified of the restriction. There is no additional documentation of this event in the record provided by Lakeshore or the attorney file.

Complaint #4

The complaint alleges that the only place the recipient was able to meet with his attorney was in the unit quiet room on a bare mattress. The attorney file shows that every time the attorney met with the recipient they met in the quiet room and that no other room was available. The progress notes do not indicate where the recipient met with his attorney and there is no mention of a complaint by the recipient, however the recipient filed a complaint regarding this matter to the Chicago Lakeshore Community Liaison on 2/02/17 and this is recorded in the attorney file. Allegedly, the Liaison was present the same day the attorney visited because he was addressing a group of nursing home representatives who also were complaining about not having an appropriate place to meet. The recipient's attorney also spoke with the Liaison about the matter and although the Liaison took the attorney's contact information, he never contacted her regarding the matter.

Complaint #5

The complaint alleges that there is no mechanism for attorneys to speak with their clients by phone. Attorneys use the same phones that are utilized by all the recipients on a unit when they make personal calls and this causes undue delays and sometimes messages are given but sometimes they are not.

Hospital Representatives' Response

The hospital Director of Risk Management was interviewed about this complaint. Particularly, the HRA requested information about the recipient's "administrative discharge." She indicated that this discharge was made under the direction of the legal department and it served to "override" the physician and "reset" the legal paperwork. In effect, the recipient was originally admitted voluntarily on 12/06/16 and signed a Request for Discharge the same day. The facility then decided to petition the recipient, however the petition was dismissed yet the recipient remained in the hospital until he was "administratively discharged" on 1/04/17 and immediately readmitted the same day. Although the record offers few clues as to what occurred with the recipient's hospitalization, the Director of Risk Management thought that perhaps the recipient was too ill to be discharged and that he had no place to be discharged to. She indicated that he was non-compliant with his discharge plan and there was no willingness on the part of his family for him to return home. The Director of Risk Management has already begun a Performance Improvement Project to review the admission process and has reviewed numerous files in an effort to develop a training program on admission processes.

The Director of Risk Management was asked about the recipient's request for individualized treatment and she indicated that the Psychiatric Notes show that the recipient had nearly daily sessions with his physician. She also noted that the recipient had one episode of forced emergency medication and the record shows that he was a danger to himself and others and that a Restriction of Rights Notice was completed for this event.

The Director of Risk Management was asked if the recipient and his attorney had to meet in the quiet room because there were no other rooms available for them and she indicated there would always be room somewhere if the attorney asked. The Director was reminded that the facility Liaison had spoken with the recipient's attorney on 2/02/17 and that he had told the attorney that he would look into the matter but that he never did. The Director stated that the Community Liaison is the person who presents marketing information to the community and is not involved in patient care- he would not have this information. The Director did remember, however, that during a previous investigation the HRA was assured that staff would receive a notice about making rooms available for staff and she indicated that she would check to see that staff received this notice.

The Director of Risk Management was asked about the ability of attorneys to phone their clients on this recipient's unit. She stated that there is one phone per 6-8 patients on this unit and perhaps up to 21 patients on other units. There is also a phone at the nurse's desk and she assured the HRA that attorneys can call the nursing phone and the staff will call the recipient at any time.

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 states that when a person is asserted to be in need of immediate hospitalization, any person 18 years of age or older may complete a petition (5/3-600), which specifically lists the reasons (5/3-601). The petition is to be accompanied by the certificate of a qualified examiner stating that the recipient is in need of immediate hospitalization. It must also indicate that that the qualified examiner "personally" examined the recipient not more than 72 hours prior to admission. It must contain the examiner's clinical observations and other factual information that was relied upon in reaching a diagnosis, along with a statement that the recipient was advised of certain rights (3-602), including that before the examination for certification the recipient must be informed of the purpose of the examination, that he does not have to speak with the examiner, and that any statements he makes may be disclosed at a court hearing to determine whether he is subject to involuntary admission (5/3-208). Upon completion of one certificate, the facility may begin treatment, however at this time the recipient must be informed of his right to refuse medication (3-608). As soon as possible, but no later than 24 hours after admission, the recipient must be examined by a psychiatrist or released if a certificate is not executed (5/3-610). Within 12 hours after his admission, the recipient must be given a copy of the petition (5/3-609). Also, within 24 hours, excluding Saturdays, Sundays and holidays, after the recipient's admission, the facility director must file 2 copies of the petition, the first certificate, and proof of service of the petition and statement of rights upon the recipient with the court in the county in which the facility is located. Upon completion of the second certificate, the facility director must promptly file it with the court. Upon the filing of the petition and first certificate, the court shall set a hearing to be held within 5 days, excluding weekends and holidays, after receipt of the petition (5/3-611).

The Mental Health Code 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:

"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 (405 ILCS 5/2-103) states, "Except as provided in this Section, a recipient who resides in a mental health or developmental disabilities facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation." Section (a) states, "The facility director shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available." Section (d) states, "No facility shall prevent any attorney who represents a recipient or who has been requested to do so by any relative or family member of the recipient, from visiting a recipient during normal business hours, unless that recipient refuses to meet with the attorney."

The Illinois Hospital Licensing requirements (77 Ill. Admin. Code 250.2280 e) state, "The following additional requirements for psychiatric units in general hospitals and psychiatric hospitals shall be provided for patient care units: A) Adequate office space for psychiatrists, psychologists, nurses, social workers, and other professional staff, B) Conference room, day room and dining room. C) Patient's laundry room."

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 them 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 clinical record shows that the recipient in this case was admitted voluntarily on 12/06/16 at which time he signed a Request for Discharge. He should have then been discharged on 12/13/16 but on that day was petitioned for involuntary admission due to his persistent psychosis. This petition was dismissed as defective on a motion by his attorney, however the hospital felt that the recipient was too ill to be discharged and they held him while they pursued an involuntary admission in court. In effect, as is stated in the Hospital Representative Response (above) the recipient remained in the hospital until he was "administratively discharged" on 1/04/17 (not leaving the facility) when he was immediately readmitted the same day. The hospital Risk Manager indicated that this decision was made by the legal department to override the decision of the physician and "reset" the legal documentation, however the recipient was held in the hospital the entire time until he was then discharged in March. In the interim, the hospital filed the numerous petitions which were dismissed for various reasons, in essence detaining the recipient without granted authority from the court.

There is no classification of discharge under the Mental Health Code for "administrative discharge" and due to the liberty interests involved in involuntary admission, there is no "reset" for the documents which allow for the detention of persons who are in need of immediate hospitalization. It is disruptive and sometimes traumatic to be forced into treatment (or held with no legal authority) and for this reason every measure should be taken to adhere to the strict mandates of the Mental Health Code. In this case there appears to have been a misunderstanding of the legal processes which direct both voluntary and involuntary admissions, because both of these types of admission were mishandled, causing the recipient to remain hospitalized longer

than he should have been. Whether or not the recipient was clinically suitable for admission, discharge or involuntary admission, the legal processes which ensure the procedural rights of this recipient were not followed. The HRA substantiates the complaint that due to the hospital repeatedly filing faulty petitions, the recipient was hospitalized much longer than he should have been.

The record does not support the allegations that the recipient was not given individual therapy as an alternative to medication as he requested, and also, the documentation supports the justification for the use of forced emergency medication in the one instance in which it was used. The HRA does not substantiate these complaints.

The hospital record does not include any documentation that the recipient and his attorney complained about meeting space, however the attorney documentation is compelling. The HRA has also recently investigated another Chicago Lakeshore complaint (case #17-030-9022) that recipients were forced to meet in the hallway, and in that report the HRA asked the provider to remind staff of the process for obtaining a room for attorneys and their clients, and that staff contact the nursing supervisor, nursing manager, or administrator on call if they are unable to readily secure an appropriate room. The HRA also suggested that the hospital's visitation policy address this matter as well. It is not clear whether these measures were implemented. This violates the Illinois Hospital Licensing requirements for adequate office space for professional staff. The HRA substantiates the complaint that the recipient had to meet with his attorney in the quiet room on a bare mattress because the facility said they had no other room for them.

The complaint alleges that it is almost impossible to get a phone call through to someone on the unit. The HRA holds that with one phone on the unit and 8-21 patients, this could very well be the case, violating the right to communicate by phone per 5/2-103 of the Mental Health Code. The HRA substantiates the complaint.

RECOMMENDATION

1. Train all staff and physicians on the process and procedures for the accurate and timely completion of all admission and discharge documents and adhere to the Mental Health Code timeline for the legal filing of those documents with the court (405 ILCS 5/3 Admission, Transfer and Discharge Procedures for the Mentally Ill).

2. Ensure that all Requests for Discharge are considered and processed in accordance with the Mental Health Code (405 ILCS 5/3-400 Voluntary Admission of Adults).

3. Provide meeting rooms for recipients and their attorneys. Ensure that all staff are aware of alternate locations should the need arise and that they contact the nursing supervisor, nursing manager, or administrator on call if they are unable to readily secure an appropriate room.

4. Train staff that recipients have a right to communicate with their attorneys and that attorney calls made to the nurses' station are transferred to the recipient. Ensure that messages are given to recipients from their attorneys. Also, consider the installation of additional phones

so that recipients are able to communicate with outside parties in accordance with the Mental Health Code.

SUGGESTION

1. The record the HRA received was not complete. Documents to explain the progression of the recipient through treatment were not included in the HRA record and thus, the recipient's legal record was consulted by necessity. The HRA suggests that all legal documents that show the recipient's legal progress through hospitalization be made part of the clinical record.