FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY-SPRINGFIELD REGION

REPORT 17-050-9008
HSHS ST. JOHN'S HOSPITAL

INTRODUCTION

The Human Rights Authority (HRA) conducted an investigation into the care provided to a patient within St. John's behavioral health program, Generations. Allegations are that the patient was restrained, treated inhumanely and medicated, and restricted from telephone communication in violation of the Mental Health and Developmental Disabilities Code (405 ILCS 5).

An affiliate of the Hospital Sisters Health System, St. John's Generations serves older adults only. Issues were discussed with nurses involved in this patient's care and a hospital attorney. Policies were reviewed, as were relevant sections of the patient's record with authorization.

Complaint Summary

The patient's court-appointed attorney submitted a written statement of his concerns following a visit at the hospital one day in December 2016. Excerpts allege that he entered the unit that afternoon where a nurse showed him to the patient who had just defecated on the dining room floor. They approached the patient whose scrubs were around his ankles and the nurse said, 'Your attorney is here and now he can see what you did on the floor'. The patient agreed to talk with his attorney in his room although he said he was hungry after being restrained all day. The two headed toward his room as his soiled pants kept falling down exposing himself to other patients. He was steering his walker with one hand and trying to hold his pants with the other when the attorney suggested he ask the nurse for help, which he did. The nurse returned to her chair nearby and told the patient to do it himself. They made it to the room on their own where the attorney helped him wash and change pants. They discussed his court case for about ten minutes when the nurse entered with a syringe and two security guards, saying it was time for a shot. The patient objected loudly and cursed. The guards approached him and he continued to resist. The attorney left the room without seeing any instance of imminent physical risk from the patient.

The patient's access to the phones were also said to be restricted entirely for unknown reasons.

FINDINGS

Restraints

The HRA spoke with a charge nurse and the nurse manager, both on duty during the alleged events. They described the patient as someone they were fond of although he was unfit for their program. He needed care on an acute unit and they had made three attempts at petitioning to a state hospital. Restraints were used quite a bit during his early time at St. John's but for necessary reasons like physically attacking other patients and staff. He was restrained on the day in question for hitting, throwing objects and using his walker to hit windows. They follow the rules whenever restraints are applied, including making timely assessments for range of motion, breathing and pain, the need for food or water and use of the bathroom. Orders are good for sixteen hours with at least four-hour reassessments, and the patient is under frequent observation throughout a restraint's duration, as should be supported in this patient's record.

Restraints were initiated at 1:30 a.m. on December 15, which were applied after the patient tried busting windows and doors with his walker and then punching the staff who tried to redirect him. The order was valid for four hours, and on the physician's corresponding note it was determined that the restraints posed no risk to the patient's health. Orders were continued another four hours at 5:30 a.m., stating that he remained extremely agitated, cursing at the staff and not complying with release expectations, and again at 9:18 a.m. after the patient continued to yell and refuse to be calm. The physician wrote that he checked the restraints for appropriate tightness; the patient denied having pain, and his right arm was released so he could eat breakfast, which he ultimately refused at that time. The staff were also directed to release one extremity at a time and assess for tolerance through the remaining order that ended at 1:30 p.m. when he was fully released.

According to nursing entries for the same restraint episode, the patient's preference for emergency intervention was followed after calm approaches and simple instructions failed to redirect him. Observed every fifteen minutes, he was described as calm and sleeping most of the early morning hours until he awoke just after 5:00 a.m. screaming at the nurse, saying he would 'beat her ass down main street'. He was offered water several times when he was awake, accepting some and refusing others with profanities, he demanded hot coffee and made more threats. He was cleaned and changed when incontinent and his restraints were adjusted when needed. When he calmed down he was given coffee, juice and breakfast, refusing most of the food, and shortly after his right arm was released from the restraint. There were further attempts for him to eat lunch and he kept refusing, and although he continued to curse at the nurses, his left leg was released. He tried kicking a nurse yet remained free of that restraint. He was sleeping at about 1 p.m., and he was fully released thirty minutes later.

There were several other restraint incidents over the next two weeks that, by documentation, were employed for similar reasons. Each was accompanied with an appropriate order, assessment and continuous observation, and each with a completed rights restriction notice that was missing from the December 15 restraint reviewed here.

CONCLUSION

Health System policy states that restraints may only be used to protect from harm when less restrictive measures are ineffective. Observations for safety must be documented every fifteen minutes at which time the patient's level of distress, continued need, range of motion and circulation is assessed. Food and toileting are offered while the patient is awake. Restraints are valid for four hours for adults and may be continued with renewed orders if needed. They are to be discontinued at the earliest possible time.

Under the Code, restraints may be used as a therapeutic measure to prevent physical harm, on order of a supervisory nurse or physician who is clinically satisfied of the need and confirms, in writing, that restraints beyond two hours pose no undue risk to the patient's health. They are employed in a humane manner, and the patient being restrained shall be personally observed no less than once every fifteen minutes, verified by documentation. Orders shall state the need for restraints and not exceed sixteen hours unless clinically indicated with new orders that follow these same requirements. The patient is advised of his right to have any person or agency, including the Guardianship and Advocacy Commission notified whenever restraint is used. (405 ILCS 5/2-108 and 2-201).

The complaint is that the patient was restrained in violation of the Code. In this case he was physically violent with objects and then with staff as they tried less restrictive measures to redirect. Restraints were applied for twelve hours and were followed with the required orders, assessments and observations. Only the Code requirement to allow the patient a chance to have any person or agency of his choosing be notified of this restraint was missed. A violation is substantiated.

RECOMMENDATION

Staff must complete restriction notices whenever restraints are applied, provide notice as the patient directs and enter evidence of the notification in the record. (405 ILCS 5/2-108 and 2-201).

SUGGESTION

Illinois' restriction notice requirement should be noted in the Health System restraint policy.

Inhumane treatment and medication

Regarding the allegation that the patient was made to walk in front of others exposed and unassisted, the charge nurse involved recalled differently that she had spent a good amount of time with the patient before his attorney arrived trying to get his pants up and encouraging him to use the bathroom without much success. She said that when the attorney came in she offered to get the patient dressed but he repeatedly refused, and she knows the attorney was standing right there. The attorney said he would get him and then took him to his room. And, on the issue of the forced medication, she said the patient had been threatening others and she talked with him about needing his medication prior to the attorney coming in. She went into his room with security because the patient always asked for them to be there. The attorney was still in the room when she came in and he said he was leaving; she then gave the injection and did not remember the patient objecting. The nurse

manager said that he arrived right after the attorney left. What he recalled was that the patient was angry, still refusing to put his pants on or use the bathroom.

According to the charge nurse's documentation, "It was reported to me that [pt.] had made a large bowel movement on the floor…. I immediately went in…and observed [pt.] attempting to pull his pants up and staff were cleaning the floor…attempted to help him get his clothes back up and get him to his room so that he could get into clean garments. [Pt.] refused assistance, started yelling, screaming, cursing, 'No bitch! I can walk! I don't need your help!' [Pt.] refused any assistance. He walked to his room with his pants around his legs, escorted by his Attorney. [Pt.] refused any further assistance from staff and stated, "I'm going to talk to my attorney. I don't need your assess."' There was no mention of the medication in her notes, but administration records for that time registered a 2mg Ativan PRN injection given in the right deltoid. There is no corresponding comment or restriction notice, and no evidence of informed consent for the medication either by the patient's determined capacity to give informed consent or by his legal guardian. We were given a copy of a blank consent form that the hospital uses, but a completed one was not found anywhere in the record provided.

The HRA also inquired as to whether video recordings on the unit that day were preserved and we were informed through the hospital attorney and nurse manager that recordings are never made in these areas of the unit.

CONCLUSION

St. John's involuntary treatment policy states that, regarding consent (IV A), a patient is determined to have decisional capacity unless the physician documents the lack of capacity in the medical record. It mentions nothing of the Code's required *informed* consent via written drug information to the patient and any substitute decision maker or the written capacity determination whether the patient has decisional capacity or not, until a petition for court-ordered treatment has been filed. Through the policy (IV B), a patient may be given medication on an emergency basis, against his will, in order to prevent serious harm.

That Code guarantees every recipient of services adequate and humane care (405 ILCS 5/2-102a). They also enjoy the right to refuse medication, which may not be given unless it is necessary to prevent serious and imminent physical harm and no less restrictive alternative is available. (405 ILCS 5/2-107). Psychotropic medication is otherwise given after written drug information is shared with a patient and after a physician determines in writing that the patient has the decisional capacity to consent. The same written information must be shared with any substitute decision maker as well. (405 ILCS 5/2-102a-5). Facility directors shall adopt in writing policies and procedures as are necessary to implement Chapter II of the Code, which may amplify or expand, but shall not restrict or limit any of the rights within. (405 ILCS 5/2-202).

The Code prohibits patient abuse, which includes mental injury. (405 ILCS 5/2-112 and 5/1-101.1). The Hospital Licensing Act prohibits abuse as well and defines mental injury as intentionally caused emotional distress from words or gestures that would be considered by a reasonable person to be humiliating, harassing, or threatening and which causes observable and substantial impairment. (210 ILCS 85/9.6).

The question is whether the patient was treated inhumanely and medicated in violation of the Code. Two very different accounts of the first issue are provided: one saying the nurse refused to assist the patient who was made to walk in front others naked and the other saying the patient refused the nurse's help. While the detailed complaint is not discredited, it remains in dispute between one person's word and another's and it cannot be proven after the fact what actually occurred, whether the patient was treated inhumanely, intentionally mentally injured or humiliated with substantial impairment. That part of the complaint is unsubstantiated. Although the Ativan was injected, there is no documented indication that it was forced, there is no accompanying rights restriction notice and the nurse who administered it did not recall the patient objecting to it. In that case, the Code requires informed consent, evidence of which is missing from the record provided. A violation is substantiated.

RECOMMENDATIONS

Train and require appropriate staff to document decisional capacity statements and secure *informed* consent before psychotropic medications are started. (405 ILCS 5/2-102a-5).

The hospital's involuntary treatment policy, consent section (IV A), remains in error and out of Code compliance by ignoring informed consent via written drug information to the appropriate parties and by assuming decisional capacity unless a physician documents the lack of decisional capacity. This policy must be revised to meet Code requirements and to adequately direct and support St. Johns' staff. (405 ILCS 5/2-102a-5; 2-202).

SUGGESTION

The emergency/involuntary section (IV B) should be revised to include the patient's right to be given an opportunity to refuse medication, to be given emergency/involuntary medication when no less restrictive alternative is available and have a rights restriction notice given to anyone he requests as provided by the Code. (405 ILCS 5/2-107 and 2-201).

St. Johns provided policies for detecting and reporting elder abuse, neglect and exploitation for patients coming into their hospital, but nothing on investigating and reporting on prohibited patient abuse *in the hospital* by any hospital administrator, agent, employee or member of medical staff, or the mandate to train on detecting patient abuse on a periodic basis. A policy should be developed to meet Hospital Licensing Act requirements. (210 ILCS 85/9.6).

Phone restriction

The staff said that from the onset the patient was calling attorneys, the police, 911, his sister and many others at whom he was yelling, harassing without a real need to reach them. Several asked the hospital to make him stop and it was decided to restrict his outbound calls. There were times when the restriction was relaxed and he was able to take any call that came in for him.

The first documented reference appeared four days into his stay when a physician wrote that the staff reported the patient spending a lot of time on the phone screaming and cursing at whoever on

the other end and that his sister/guardian called to ask that he not reach her for a few days. An order restricted outbound calls and a rights restriction notice was completed. He was making calls again a few days later and resumed the same behavior, this time adding an insurance agency to his list. A restriction was ordered for no outgoing calls and another notice were completed. He was permitted outbound calls about a week later when he again began screaming at the people he called, this time including 911 operators. He was asked to stop but would not and another set of orders and notices were completed. There were five more outbound call restrictions over his first month there, all for the same reasons and all with required notices. There were no more through his discharge several weeks later.

CONCLUSION

A Health System rights policy for behavioral health states that patients will be given a state-printed Rights of Recipients form and be given assistance with contacting the Guardianship and Advocacy Commission if any believe their rights to be violated. Rights restriction notices will be maintained in a file for three years. The Rights of Recipients form includes the right to telephone communication and other forms of communication unless necessary to prevent harm as under the Code.

The Code allows all recipients the right to private, unimpeded and uncensored communication by telephone with persons of his choice, which may be reasonably restricted to prevent harm, harassment or intimidation. (405 ILCS 5/2-103). Whenever a right is restricted notice shall be promptly given to the patient, his guardian and any person or agency he chooses (405 ILCS 5/2-201).

The patient's outbound calls were restricted after making numerous harassing calls to several destinations. He was not prohibited from inbound calls, and he was given opportunities to regain the ability to make calls, which was completed restored when he did so appropriately. A rights violation is not substantiated.

SUGGESTION

None of the restriction notices clearly indicated whether the patient wished anyone other than his guardian to be notified of his communication restriction. The Code allows him that choice, regardless of having a guardian, and the staff should be reminded to complete this restriction process thoroughly and accordingly. (405 ILCS 5/2-200 and 2-201).

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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August 16, 2017

Ms. Tara Dunning, Chair
Illinois Guardianship & Advocacy Commission
401 South Spring Street
521 Stratton Building
Springfield, Illinois 62706

Re: St. John's Hospital's Response to the Illinois Guardianship & Advocacy Commission's Findings and Recommendations
#17-050-9008
G & G File No. M-13481

Dear Ms. Dunning:

Please consider the attached St. John's Hospital's response to the Commission's recommendations.

St. John's Hospital disagrees with the alleged violation of the Mental Health Code requirement regarding notification of the patient's family or agency regarding use of restraints. St. John's Hospital staff on numerous occasions notified this patient's sister who was his agent under a Healthcare Power of Attorney. The sister, POA, was notified on each instance of physical restraint, forced medication, or telephone restriction. Telephone restrictions were implemented due to the patient calling 911 and other persons and entities on numerous occasions.

Unfortunately, restraints were required on many occasions due to the patient's very difficult mental status.

1. Staff must complete restriction notices whenever restraints are applied, provide notice as the patient directs and enter evidence of the notification in the record. (405 ILCS 5/2-108 and 2-201).

Response: In spite of the foregoing response, St. John's Hospital will endeavor to have notices provided to any person or agency that a patient directs in the event of use of restraints and will have such notification entered in the record.

Additionally, St. John's Hospital also provides medication information to its Behavioral Health Unit patients prior to administration of any medications.

2. Train and require appropriate staff to document decisional capacity statements and secure *informed* consent before psychotropic medications are started. (405 ILCS 5/2-102a-5)

Response: St. John's Hospital will provide appropriate training to its behavioral health staff regarding documentation of decisional capacity and regarding securing informed consent prior to starting psychotropic medications.

3. The hospital's involuntary treatment policy, consent section (IV A), remains in error and out of Code compliance by ignoring informed consent via written drug information to the appropriate parties and by assuming decisional capacity unless a physician documents the lack of decisional capacity. This policy must be revised to meet Code requirements and to adequately direct and support St. Johns' staff. (405 ILCS 5/2-102a-5; 2-202)

Response: St. John's Hospital will also revise its involuntary treatment policy consent section (IV A) to include provision of written drug information to appropriate parties and by amending further to include a statement regarding decisional capacity.

St. John's Hospital Behavioral Health Unit management will also consider the suggestions regarding further revisions to the emergency/involuntary section (IV B) regarding patient's rights to be given opportunity to refuse medication, etc.

St. John's Hospital Behavioral Health staff will also review and consider the suggestion on Page 6 regarding restriction notices and indications of anyone other than a guardian that the patient wishes to have notified.

St. John's Hospital is committed to operating in full compliance with all applicable state and federal laws and regulations and will endeavor to make the foregoing modifications. Thank you for bringing these matters to our attention.

Sincerely yours,

Richard J. Wilderson

RJW/cmb
cc: Charles Lucore, M.D., Pres., CEO
Randy Obert
Brenda Vilayhong
Leonard Pease

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October 27, 2017

SENT VIA EMAIL
Ms. Tara Dunning, Chair
c/o Jon Burnett
Human Rights Authority
401 South Spring Street
521 Stratton Building
Springfield, Illinois 62706

Re: #17-050-9008
St. John's Hospital
G & G File No. M-13481

Dear Ms. Dunning:

In response to your October 4, 2017 letter, St. John's Hospital supplements its August 16, 2017 letter to you with the following additional information.

All Behavior Health Unit staff either have been or will be by the end of November, trained using the attached Objectives of Training and Purpose of Training. Training is conducted by the Behavioral Health Unit manager.

The Hospital regularly provides training materials to all of its staff and the Behavioral Health Unit will be particularly focused on the issues contained in the attached documents.

We hope that this additional information is responsive to your recent requests. Thank you for your cooperation.

Sincerely yours,

Richard J. Wilderson

RJW/cmb
Encls.
cc: Dr. Charles Lucore
Jon Burnett
Randy Obert
Brenda Vilayhong
Leonard Pease

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December 7, 2017

Ms. Tara Dunning, Chair
Human Rights Authority
Springfield Region
Illinois Guardianship and Advocacy Commission
401 South Spring Street
521 Stratton Building
Springfield, Illinois 62706

Re: HRA #17-050-9008
St. John's Hospital
G & G File No. M-13481

Dear Ms. Dunning:

Attached is revised policy regarding involuntary treatment.

Also enclosed are copies of the RN training sign-in sheets demonstrating the completed training.

We believe that we have now provided all that HRA has requested. If you need anything further, please let us know. Thank you for your cooperation.

Sincerely yours,

Richard J. Wilderson

RJW/cmb
Encls.
cc: Dr. Charles Lucore
Allison Paul
Rebecca Ray
Randy Obert
Leonard Pease