

STATE OF ILLINOIS
Bruce Rauner
Governor

GUARDIANSHIP & ADVOCACY COMMISSION

Dr. Mary L. Milano, Director

HUMAN RIGHTS AUTHORITY
LEGAL ADVOCACY SERVICE
OFFICE OF STATE GUARDIAN



MEMORANDUM

DATE: June 27, 2016

TO: Deputy Secretary Gibson, U.S. Senator Durbin, U.S. Senator Mark Kirk, Congresswoman Tammy Duckworth, Illinois State Senate VA Committee Members, Illinois State Representative VA Committee Members, Executive Director Clauss, Illinois Recovery Support Director Nanette Larson, Brent Pope, and Acting VA Medical Center Directors, Annette Walker and Lynette Taylor

FROM: Dr. Mary L. Milano, Director, Illinois Guardianship and Advocacy Commission

The Illinois Guardianship and Advocacy Commission, through its Legal Advocacy Service and Human Rights Authority programs, has encountered ongoing rights violations committed against Illinois veterans with disabilities at the Edward Hines Jr. and Jesse Brown VA Hospitals. Attempts to resolve the violations at these hospitals have either been unsuccessful or ignored. Enclosed, please find a letter to VA Secretary McDonald describing the investigations completed by the Commission's Human Rights Authority, the substantiated rights violations committed against veterans with mental illness and the Commission's unsuccessful attempts to work with the VA hospitals to improve rights protections for Illinois veterans. Please contact Human Rights Authority Director, Teresa Parks at 309-671-3061, with any questions regarding the Authority's investigations and findings.

As an advocate for veterans who reside and receive services in Illinois, you are being notified of these concerns and you are invited to be a part of discussions to improve disability rights protections that are inclusive of Illinois veterans. Please notify Gia Orr at 312-793-5900 or by e-mail (Gia.Orr@illinois.gov) to share your availability to meet.

Thank you for your interest in honoring and protecting those who have honored and protected our country. We look forward to hearing from you.

ENCLOSURE

OFFICE OF THE DIRECTOR

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GUARDIANSHIP & ADVOCACY COMMISSION

Dr. Mary L. Milano, Director

HUMAN RIGHTS AUTHORITY
LEGAL ADVOCACY SERVICE
OFFICE OF STATE GUARDIAN



June 27, 2016

The Honorable Robert A. McDonald
Secretary of Veterans Affairs
U.S. Department of Veterans Affairs
810 Vermont Avenue NW
Washington D.C. 20420-0001

Re: Human Rights Authority Cases #14-030-9023 and #15-030-9003, Edward Hines, Jr. VA Hospital

Human Rights Authority Case #15-030-9005, Jesse Brown VA Hospital

Dear Secretary McDonald:

The Human Rights Authority, the division of the Illinois Guardianship and Advocacy Commission that investigates disability and human rights complaints for Illinois citizens with disabilities, received and investigated the above-named complaints regarding the Edward Hines, Jr. and Jesse Brown Veterans Affairs (VA) Hospitals. Case #14-030-9023 was opened in May 2014 and concerned the forced administration of psychotropic medication, without adequate cause, to a veteran with mental health needs. Case #15-030-9003, opened in September 2014, concerned the issuance of a criminal citation for a veteran exhibiting mental health related symptoms. Case #15-030-9005, opened in October 2014, also concerned the issuance of a citation for behavior being addressed clinically at the Jesse Brown VA Hospital.

In June 2015, after a prolonged lack of VA response to the Authority's inquiries related to the reported VA complaints, the VA agreed to meet with Commission representatives to discuss the complaints, review the Authority's complaint resolution process and consider the next steps in the cases. Included at the meeting were Edward Hines, Jr. VA Hospital Counsel, Bianca Hall and the VA Regional Counsel, Brent Pope. At this meeting, Ms. Hall and Mr. Pope, indicated the VA's willingness to work with the Authority to resolve the concerns. Subsequently and with the veterans' consents, records and policy information were provided to the Authority, and Authority representatives met with and interviewed Hines VA staff. The enclosed reports reflect the Authority's substantiated findings of disability rights violations at the Hines facility. In Case #14-030-9023, the Authority found that the veteran did not meet the standard for dangerousness before forced medication was administered. In Case #15-030-9003, the Authority found that the facility inappropriately issued a criminal citation for a veteran who exhibited behaviors related to his mental illness. These findings were in violation of protections

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guaranteed by the Illinois Mental Health and Developmental Disabilities Code (405 ILCS 5/1 et seq.), the same Code used to involuntarily commit veterans with mental health needs to Illinois VA facilities. The findings included recommendations specific to staff training, the use of restriction of rights notices and the discontinuance of citations for disability related behaviors.

As previously requested by the VA, the reports of findings for Cases #14-030-9023 and #15-030-9003 regarding the Hines VA Hospital were sent to Ms. Hall and Mr. Pope in August 2015 for their response. To date, and even after repeated requests, the VA has failed to respond to these substantiated findings of rights violations for Illinois veterans with disabilities. Due to the lack of VA response the Authority closed these cases on November 10, 2015 and published its findings without any VA response.

The Authority also substantiated rights violations for Case #15-030-9005 concerning the Jesse Brown VA Hospital's issuance of a criminal citation for behaviors associated with a veteran's mental health needs. An unsigned VA response was received after the response deadline which justified the citation as being a legal consequence of behaviors and by indicating that the VA police department versus the clinical staff issued the citation although the Human Rights Authority questions how the VA police would have become involved without notification by clinical staff. The Human Rights Authority finds the Jesse Brown VA response particularly disconcerting when it refers to the citation as "...a legal function not a clinical treatment" but then justifies the citation as being "...in keeping with the Recovery Model of mental treatment." The Human Rights Authority disputes the claim that pursuing criminal action against a veteran for behaviors related to his or her mental illness is reflective of the Recovery Model. Case #15-030-9005 was closed in April 2016 after many delays in interviews and providing requested records.

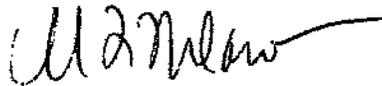
In addition to the Human Rights Authority's interactions with the VA over disability rights, the Commission's Legal Advocacy Service Program has represented veterans at the Edward Hines, Jr. and Jesse Brown VA Facilities in involuntary commitment and court-ordered medication hearings. Legal Advocacy Service attorneys intervened when a veteran with mental illness had been issued a citation but could not attend his hearing due to his in-patient status in a VA behavioral health unit. It took multiple contacts with numerous individuals, including contacts outside of the VA, before the citation was dropped so that the in-patient veteran would not be held in contempt. Yet, despite the interventions of the Legal Advocacy Service and the investigation findings of the Human Rights Authority, the practice of issuing criminal citations to in-patient veterans with mental illness continues. In another instance, a Legal Advocacy Service attorney successfully assisted a veteran with protesting a citation because the police officer who issued the citation and testified in court had not directly witnessed the behaviors; thus, the court granted a directed verdict. Recently, a Legal Advocacy Service attorney's visit with an inpatient

veteran was interrupted by the VA police who entered the room to issue a citation for behaviors exhibited while on the behavioral health unit.

The Authority is sending the enclosed, published findings for your review and consideration. The Authority remains concerned that the same rights guaranteed to other Illinois citizens with disabilities are not protected for veterans with disabilities residing in Illinois VA facilities. In addition, the Authority contends that the Mental Health and Developmental Disabilities Code, the Illinois statute used by VA facilities to involuntarily commit veterans, is arbitrarily disregarded when it comes to the Code's rights protections.

The Commission respectfully brings these matters of concern to your attention for your review. In addition, the Commission intends to begin a dialogue concerning rights protections for Illinois veterans with disabilities. If you have any questions, please do not hesitate to contact me or our Human Rights Authority Director, Teresa Parks, at 309-671-3061.

Sincerely,



Mary L. Milano, Director
Illinois Guardianship and Advocacy Commission

ENCLOSURES

Cc: Sloan Gibson, Deputy Secretary of Veterans Affairs
United States Senator Dick Durbin
United States Senator Mark Kirk
United States Congresswoman Tammy Duckworth
Illinois State Senator Steven M. Landek, Chair, Government and VA Committee
Illinois State Senator Pat McGuire, Vice-Chair, Government and VA Committee (by Fax)
Illinois State Senator Melinda Bush, Member, Government and VA Committee (by Fax)
Illinois State Senator Thomas Cullerton, Member, Government and VA Committee (by Fax)
Illinois State Senator Michael E. Hastings, Member, Government and VA Committee (by Fax)
Illinois State Senator John M. Sullivan, Member, Government and VA Committee (by Fax)

Illinois State Senator Dan McConchie, Member, Government and VA Committee
Illinois State Senator Kyle McCarter, Member, Government and VA Committee (by Fax)
Illinois State Senator Jim Oberweis, Member, Government and VA Committee (by Fax)
Illinois State Representative Linda Chapa Lavia, Chair, VA Committee (by E-Mail)
Illinois State Representative Jerry Costello, II, Vice-Chair, VA Committee (by E-Mail)
Illinois State Representative Michael P. McAuliffe, Republican Spokesperson, VA Committee (by Fax)
Illinois State Representative Luis Arroyo, Member, VA Committee (by E-Mail)
Illinois State Representative Mark Batinick, Member, VA Committee
Illinois State Representative Terri Bryant, Member, VA Committee (by E-Mail)
Illinois State Representative Avery Bourne, Member, VA Committee (by E-Mail)
Illinois State Representative Katherine Cloonen, Member, VA Committee (by E-Mail)
Illinois State Representative John C. D'Amico, Member, VA Committee (by E-Mail)
Illinois State Representative C.D. Davidsmeyer, Member, VA Committee (by E-Mail)
Illinois State Representative La Shawn K. Ford, Member, VA Committee (by E-Mail)
Illinois State Representative Jack D. Franks, Member, VA Committee (by E-Mail)
Illinois State Representative Randy E. Frese, Member, VA Committee (by E-Mail)
Illinois State Representative Robert Martwick, Member, VA Committee (by E-Mail)
Illinois State Representative Emily McAsey, Member, VA Committee (by Fax)
Illinois State Representative Donald L. Moffitt, Member, VA Committee (by E-Mail)
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Illinois State Representative Andrew F. Skoog, Member, VA Committee (by E-Mail)
Illinois State Representative Brian W. Stewart, Member, VA Committee (by E-Mail)
Illinois State Representative Michael D. Unes, Member, VA Committee (by E-Mail)
Illinois State Representative Patrick J. Verschoore, Member, VA Committee (by E-Mail)
Illinois State Representative Christine Winger, Member, VA Committee (by E-Mail)
Brian Clauss, Executive Director, Veterans Legal Support Center and Clinic (by E-Mail)
Brent Pope, Office of General Counsel, VA (by E-Mail)
Annette P. Walker, Acting Medical Center Director, Jesse Brown VA
Lynette J. Taylor, Acting Medical Center Director, Edward Hines, Jr., VA
Nanette Larson, BA, CRSS, Director of Recovery Support Services, Illinois Department of Human Services, Division of Mental Health (by E-Mail)
Kenya Jenkins-Wright, General Counsel, GAC (by E-Mail)
Gia Orr, Director of Co. Rights, Relationships and Resources, GAC (by E-Mail)
Veronique Baker, Legal Advocacy Services Director, GAC (by E-Mail)
Teresa Parks, Director, Human Rights Authority, GAC (by E-Mail)
Patricia Betzen, Chicago HRA Coordinator, GAC (by E-Mail)

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 14-030-9023
Edward Hines, Jr. VA Hospital

Summary: The HRA substantiated the complaint that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, but it did not substantiate that staff did not adhere to the Code mandated protocol for the administration of emergency medication (by use of a separate standard of dangerousness for veterans).

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Edward Hines Jr. VA (Hines). It was alleged that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, and that staff do not adhere to the Code mandated protocol for the administration of emergency medication. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107).

Hines is a 471-bed Veterans Administration medical facility that incorporates a 29-bed Behavioral Health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Chief of Mental Health Services and VA Office of General Counsel Staff Attorney. Hospital policies were reviewed, and the adult recipient's clinical records were reviewed with written consent.

COMPLAINT SUMMARY

The complaint indicates that the recipient received forced emergency medication with no indication of physically harmful behaviors. Reportedly, the recipient did not resist receiving an injection but understood that the VA police were present to hold him if necessary if he refused. The complaint alleges that the recipient has no history of violent behaviors and was court ordered for medication, not for threatening behaviors but for deterioration of his ability to function only. Additionally, the complaint alleges that the recipient requested the forced medication issue be investigated by the VA, but it was not.

The complaint also alleges that staff on the Behavioral Health Unit have stated that forced medications are given on an emergency basis at the first sign of agitation because military veterans are "trained killers." A unit physician testified to this statement at the involuntary medication hearing of the recipient on 4/03/14, when he stated that medications would not be

administered this way on a "regular" psychiatric unit, but that they are on the VA unit because the patients there are "trained killers."

FINDINGS

The Progress Notes for the recipient contain an Assessment of the recipient: "[Recipient] is a 61 year old African American with PPHx [past psychiatric history] of schizoaffective disorder with first psychotic episode in military in 1979, which resolved with Thorazine and Lithium, who presented as a transfer from [another VA hospital] after decompensating over the past several months resulting in patient isolating himself from his family and his work, failing to manage his finances, failing to care for himself, presenting with very strong erotomanic delusions regarding [a psychiatrist at another hospital], some paranoia, and significant hyperreligiosity. Spoke with patient's daughter today, who stated that patient has been acting very bizarre since his prostate surgery in 11/2013, and since this time he has been hyper-religious, having what sounds like command AH [audio hallucinations] of witches and spirits telling him what he can and cannot do, and preoccupied with [former attending psychiatrist]. Daughter denied any history of violence or aggression, and denied that he has ever had any fixed false beliefs similar to his preoccupation with [psychiatrist] prior to now. [Psychiatrist] has been informed of [recipient's] erotomanic delusions through 'Duty to Warn', and she is concerned for her safety. Given that [psychiatrist] is potentially in harm's way, and based on the fact that [the recipient] failed to provide for his basic needs (eating, going to the bathroom, leaving his house, paying bills, etc), he is in need of inpatient psychiatric admission for safety, stabilization, prevention of harm to others and himself." The recipient's diagnosis is Schizoaffective Disorder. He was admitted to the Behavioral Health Unit on March 16, 2014.

Progress Notes from 3/16/14 at 6:01 p.m. describe an emergency medication situation: "Social Work approached by Veteran, who wanted to speak with this worker as he wanted to report 'a recollection of events on 3/12'. Social Work previously attempted to speak with this veteran yesterday, and was unable to obtain pertinent information as he would only respond 'I don't know.' Upon meeting with the Veteran today, he was agitated and argumentative, presents with paranoia during his conversation with 2S staff. Hines Police and Nursing Service present during this interaction, as Veteran refusing to take prescribed medications. Veteran first informed Social Work that he wanted it documented that he has had a 'recollection of events', which includes him being brought to Hines VAMC 'against my will' and being 'taken into custody for no reason.' Veteran reporting that his daughter and ex-wife 'did not contact the police' prior to his admission. He is also requesting it to be documented that he has court on 3/18 at 1:30 p.m. 'in Watseka Illinois, Iriquois County' for a DUI and 'six tickets'. Veteran reporting 'I am innocent.' Social Work advised the Veteran that his statements/concerns would be documented, and when asked if there was anything else he wanted to discuss, Veteran reported 'more statements to come tomorrow.' Veteran subsequently agreeable to medication, reporting 'I will take this shot against my will.'"

Progress Notes from 3/16/14 at 10:38 p.m. describe an emergency injection: "Patient was waiting at the hallway in front of conference room to talk to a social worker who at that time was talking to another patient in the conference room. While waiting this patient was getting

paranoid and agitated towards other patients who pass by him and asking him, 'Why he was standing on the spot?' Patient was offered meds to help him calm down, but patient was refusing meds initially PO [orally] or IM [intramuscularly]. Patient was getting more agitated at that time. Patient finally accepted Haldol 5 mg and Ativan 1 mg at 5:25 p.m. with police presence and standby...."

Progress Notes from 3/19/14 describe another emergency injection: "Patient was noted to pacing the hallways frequently this shift. Verbalized, 'I am doing great' when asked. Has denied SI [suicidal ideation]/ HI [homicidal ideation]/ AVH [audiovisual hallucination] but appeared internally preoccupied and anxious. Later this shift he started yelling while pacing on the hallways. At 11:05 p.m.... accepted Haldol 5 mg and Lorazepam 1 mg IM at this time...."

Progress Notes from 3/22/14 describe another emergency medication injection: Patient states, 'I have already contacted your boss in prayer and I have the okay to have pizza tonight! Pick up the phone and call for pizza!' Patient with angry affect; Pt not listening to any redirections by staff, getting louder and verbally threatening to staff; Patient insisting that it's a Pizza night tonight today and demanding to know why we have not ordered yet. Patient remains delusional and hard to redirect; Patient had not been compliant with medications; Police Assistance was needed to administer PRN [as needed] of Ativan 1 mg and Haldol 5 mg IM each 6 hours as ordered..."

Progress Notes from 3/29/14 describe another emergency medication injection: "You know who I am. Your wife and children are dead. I just have to speak it.' 'My wife and my brother are going to come at lunch time to marry me to [former psychiatrist].' Paced the unit off and on. Suddenly approached staff reporting he is god, and staff's wife and children are going to be killed. Also, delusional about marrying his former Doctor. Police arrived and Haldol/Ativan IM given..."

Progress Notes from 4/01/14 state, "'I want my rights. I want to file a complaint.' Patient spoke with doctor, then came out of his room to complain of his rights were violated. He signed the rights form with another RN. Referred to speak with CNM [Clinical Nurse Manager]. Patient upset that he received an IM injection on Saturday after he had become threatening, delusional, hyper religious, and unpredictable. However, on Sunday, he joked about the injection and laughed with me and other staff, as he was attempting to convince us to order pizza. On Sunday, he displayed no psychotic symptoms, and actual psychosis was questioned by several nursing staff. He was appropriate, and jovial in regards to events leading up to Saturday's injection. He was attempting to manipulate staff to order pizza. He was quite cheerful and pleasant the whole shift on Sunday. On Saturday, he reported he was god, and told me to call my wife and children or they will be killed as he is god. Also, he reported he would have his wife and brother visit to marry him to an outside doctor. Police had to be called and he took the injection complaining that he did not want it, but took it anyway...."

On 4/03/14 the recipient attended a court hearing where he was ordered involuntary treatment with medications. At that hearing a staff physician from Hines VAMC testified and the partial transcribed notes from this testimony state:

Attorney: You testified that Respondent has expressed his willingness to participate in non-medical therapy, correct?

Physician: He's inquiring about this daily, yes.

Attorney: And he has offered to continue to participate in psychotherapy and in substance abuse treatment, correct?

Physician: Correct.

Attorney: Can you explain a reason why the Respondent has all four of his PRN's or emergency medications given either on a weekend or the afternoon shift-

Physician: Yes

Attorney: - when the regular team isn't there?

Physician: Again, my order specifies severe agitation and threatening behavior, please offer the patient oral medication before proceeding with IM medications. That's my full order. Why the medications were delivered because the patient was receiving medications per my order because he was agitated and presented threatening behaviors. And every time my patient gets PRN medications, the next day I'm asking the nurses who were present, why did you shoot my patient with oral- with haloperidol, so I know why they did it. And I'm very careful about this. You have to understand what my unit consist of, whom we are treating. In fact, I have an inpatient unit that treats non—(inaudible), lawyers for that matter, I wouldn't use emergency medications at all. But these are trained killers. These are people who were trained to kill people. And I'm not going to take any chances that anybody, including the patient, will be hurt. That's why medications are used wisely and I trust my nurses. They always have a good reason why they gave emergency medications. These are trained soldiers with very good skills, even 40 years after Vietnam, they can do a lot of harm. That's why they get emergency medication when situation calls for it.

Attorney: So generally, according to staff on the unit, at the first sign of any agitation, emergency medication is administered because these men are trained killers?

Physician: That is not true.

Progress Notes from 4/05/14 state, "Came to desk calling male staff names and telling him, 'I want my wife!' went back to his room but keeps talking loud, cursing and extremely agitated; offered prn meds but was cursing staff and 'there's no way you gonna give me that shit; you have to put me in restraints first', police was called, with two officers and four nursing staff, vet was ready to fight and saying that he will fight and challenging who would come first; three more police officers came to assist and meds were given shortly after that which made me believe that the show of force somewhat worked in this situation; 2 mg Ativan and 5 mg Haloperidol both given; nursing supervisor made aware of above."

HOSPITAL REPRESENTATIVES' RESPONSE

Facility representatives were interviewed about the complaint. They stated that the culture of the VA Behavioral Health Unit has tended to be the opposite of what has been alleged in this complaint. The Chief of Mental Health Services indicated that he has never seen a bias towards the veterans in terms of determining dangerousness and that generally with his young interns he has had to encourage the use of emergency medication when patients are dangerous because of their reluctance to use this intervention. When emergency medications are utilized, the physician must assess not only dangerousness but also the capacity to inflict harm, and this

can be very difficult. Generally, when emergency medication is considered, the staff err on the side of the veteran's rights and not on the forced medication. Generally, staff believe that veterans are treated better within the VA hospital than they would be treated outside the VA, and that includes the administration of emergency medication.

Hospital representatives were interviewed about the use of the VA Police for the administration of forced emergency medication. They indicated that most of the Police are veterans themselves and they intervene to allow staff to administer the medication safely. Staff reported that they have worked very hard on developing the VA Police in terms of their intervention on the unit, and the Police have become a stabilizing show of force, often with the effect of calming patients and preventing physical acting out.

The staff had not read this complainant's chart, however from our discussion and the HRA presentation of the Progress Notes, the staff felt that the descriptions did not adequately demonstrate an imminent threat of physical harm. The unit staff complete Restriction of Rights Notices for all emergency medication cases but these do not print from the general record and perhaps a clearer rationale is presented there. The HRA asked if the veterans complete their Preferences for Emergency Treatment because it was referred to in the clinical record and they did not know, however they are willing to develop this form. They were also asked about the physician statement of decisional capacity and they indicated this is included in the record.

STATUTES

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

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

(a-5) If the services include the administration of...psychotropic medication, the physician or the physician's designee shall advise the recipient, in writing, of the side effects, risks, and benefits of the treatment, as well as alternatives to the proposed treatment, to the extent such advice is consistent with the recipient's ability to understand the information communicated.

The physician shall determine and state in writing whether the recipient has the capacity to make a reasoned decision about the treatment. If the recipient lacks the capacity to make a reasoned decision about the treatment, the treatment may be administered only (i) pursuant to the provisions of Section 2- 107 [below]...." (405 ILCS 5/2-102).

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient threatens serious and imminent physical harm to himself or others:

"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).

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).

HOSPITAL POLICY

Hines provided hospital policy and procedure regarding medication orders, monitoring psychotropic medication, distribution of medication and reconciliation of medication, however they did not have policy which specifically described the patients' rights regarding medication. Patients are apprised of their rights when they are given the Rights Regarding Mental Health and Developmental Disabilities Services and the Rights of Admittee at admission.

CONCLUSION

The Mental Health Code mandates that all recipients shall be informed of their right to refuse treatment, including medication. If such services are refused, they must not be given unless they are necessary to prevent the recipient causing "serious and imminent physical harm" to the recipient or others. In this case the record does not support the case for forced emergency injections except perhaps for one administered on 3/22/15 which mentions verbal threats but no specifics. Both of the entries for 3/16/15 fail to meet the standard for dangerousness- the first entry even stating "Veteran subsequently agreeable to medication." Entries which show that the recipient was "anxious", "pacing", "delusional", "agitated", or "manipulative" do not convey that he was also a threat of imminent physical harm.

The record shows that the unit physician testified in court that veterans are considered "trained killers" and thus are held to a different standard when making decisions regarding emergency medication. The HRA cannot assign decisions made on the unit to this stereotype,

however we condemn this image and ask all staff to apply the same Mental Health Code standard for dangerousness that is practiced in all Mental Health treatment facilities across the State.

The HRA substantiates the complaint that the facility did not follow Code procedure when staff administered forced psychiatric medication to a veteran, but it does not substantiate that staff did not adhere to the Code mandated protocol for the administration of emergency medication (by use of a separate standard of dangerousness for veterans).

RECOMMENDATIONS

1. Review with all the staff the Mental Health Code section which describes the administration of forced treatment (405 ILCS 5/2-107), and ensure that if 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." Apply this same standard to all Illinois veterans.

2. The record mentions the use of Restriction of Rights Notices as well as Preferences for Emergency Treatment, however the HRA did not receive these as they are not copied in the CD of this file. The HRA reminds the VA staff that these are Mental Health Code requirements and must be utilized when veterans are administered forced emergency treatment.

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 15-030-9003
Edward Hines, Jr. VA Hospital

Summary: The HRA substantiates the complaint that the Jesse Brown VA did not follow Code mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights.

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Edward Hines Jr. VA Hospital (Hines). It was alleged that the facility did not follow Mental Health and Developmental Disabilities Code (the Code) mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights. If substantiated, this would violate Section 2-107 of the Code (405 ILCS 5/2-107). Also, as the Illinois Supreme Court pointed out In re Stephenson (67 Ill. 2nd 544, 554-556 (1977)), mental illness is not a crime, and because someone needs mental health treatment does not make him a criminal. Instead, that person's fundamental, protectable liberty interest is self-evident, and he should receive beneficial treatment and care with minimal ostracism, confinement and infringement.

Hines is a 471-bed Veterans Administration medical facility that incorporates a 29-bed Behavioral Health unit.

To review these complaints, the HRA conducted a site visit and interviewed the Chief of Mental Health Services and the VA Office of General Counsel Staff Attorney. Hospital policies were reviewed, and the adult recipient's clinical records were reviewed with written consent.

COMPLAINT SUMMARY

The complaint in this case is that a 67 year old Vietnam combat veteran was cited for "disorderly conduct" on 6/05/14 by the Hines VA police resulting from police assistance on the mental health unit in administering an emergency treatment intervention. The Veteran in this case took psychotropic medication for 25-30 years until his VA doctor tapered down his dosage because of renal insufficiency. The veteran then became symptomatic and was admitted to the Hines VA mental health unit. On 9/05/14 the Veteran became symptomatic and required emergency medication. When VA police were called to assist in this procedure, they also issued a citation for "disorderly conduct" and the veteran was mandated to appear in court on 8/11/14. Additionally, the citation was forwarded to the veteran's home- had his daughter not been asked to collect his mail, the veteran would not have known of his duty to appear.

FINDINGS

The record (Initial Psychosocial Assessment) shows that the recipient is a 67 year old Vietnam War veteran with a long history of Schizoaffective Disorder Bipolar type. He was involuntarily admitted to Hines on 6/04/14. The recipient was petitioned for involuntary psychotropic medication as a person who lacked capacity to make decisions about medication for himself. On 7/24/14 the Court adjudicated the recipient as "mentally ill" and granted the petition for involuntary medication.

Nursing Notes from 6/05/14 at 8:54 a.m. describe the recipient's initial encounter with the Hines police: "Reasons for use of emergency medications: Pt with increased agitation loud verbally inappropriate and threatening MD and others with physical harm. Veteran was posing significant risk of harming self and others., reassurance and attempts to verbally de-escalate the patient failed., HVA Police Department was called for assistance. The patient was handed Notice Regarding Restriction of Rights of the Individual and given emergency medications. SO [Subjective/Objective]: 'Fuck you, [nurse]. You guys want to kick my ass. I'm going to fight all the way.' Pt hostile with labile affect. Yelling and screaming in milieu. Threatening nursing staff and specifically MD. A [Assessment]: Ineffective individual coping/danger to others... loud, hostile, verbally threatening others to physically hurt them. P [Plan]: Redirection to new task, 1 to 1 conversation with staff ineffective in de-escalating pt behaviors. IM meds given for severe agitation and pt being a danger to others. Monitor effects of meds in 1 hour. Restriction of rights given to pt."

Later on the same day at 4:59 p.m. a Mental Health Attending Note states, "Pt seen three times today. The first time was early this morning after he got prn injections secondary to verbal aggression against providers. Police were called and pt received restriction of rights. Pt accused me of being responsible that he got 'abused by police.' Informed pt that medications would not be given to him, as he is refusing them, unless he is threatening to others. Later he saw me again, and he asked me to get him in touch with a lawyer. Writer informed pt that defense attorney would be coming today to see him today and that they could discuss his strategy for his care but that I had concerns about his welfare and that I did not feel comfortable discharging him. Pt saw me again around 5 pm and asked to speak to me. This time he spoke about being given a high dose of prn and that I was 'insisting on oppressing' him and that he had a second evaluation by another doctor and that she thought that he was not psychotic and that two against one was good to beat me in court because I was dumb. Informed pt that he had the right to ask for a second opinion if he wanted one and that he should ask his attorney if he wished to have a second opinion."

There is no mention in the progress notes that the recipient was issued a citation for these events.

The record contains a United States District Court Violation Notice. The date and time of the offense is listed as 6/05/14 at 8:25 a.m. for "Disorderly Conduct." The Notice indicates that the recipient is to pay \$275 or appear in court on 8/11/14. A letter to the recipient from a VA police officer is included in the record and it states, "Due to your repeated aggressive and violent behavior toward staff at Edward Hines, Jr. VA Hospital, you have been issued a citation for disorderly conduct. We made contact with you, having to physically restrain you, preventing

you from causing harm toward staff members. On another date, you were contacted due to making statements toward a nursing staff member, using profanity, and needed to be redirected by VA Police." There is no date on this letter.

Journal entries from the VA Police Operations Journal for 6/05/14 at 8:25 a.m. describe the interaction with the recipient: "Employee called the VAPD station, she reported [recipient] is being rude towards staff. Dispatch informed all units. Officers [3] responded to this call. Officer called a magazine disconnect. Officers made contact with staff and [recipient]. Upon Officers arrival on two south [staff] informed officers that [the recipient] was aggressive and argumentative toward staff nurse also explained that [the recipient] had been making several racial slurs, yelling from his room that was located down the hallway. [The recipient] was informed that he would be mandated a shot medication of Haldol and Ativan. [The recipient] refused, stating, 'You're going to have to beat me up. Is that why you have your gloves on? You don't want to get my blood on you?' [The recipient] repeatedly refused nursing staff to administer medication. The patient sat in a chair, and stated he would fight police. Officers [all three] initiated empty hand control techniques to subdue [the recipient] to the ground. While [2] officers had control of [the recipient's] wrists, he was administered the medication by RN. After shouting various racial comments toward Officer, stating, 'I'll kill your black ass.' He was informed to calm his behavior so that he could be released. [The recipient] then agreed to cooperate, and was assisted to his feet, and escorted to his room. He then complied, and police assistance was no longer needed. Officers then departed without further incident..." Another entry into the Journal then states, "Violation Issued to: [The recipient] for on 6/05/14 nursing staff contacted police, requesting assistance. They reported police that [the recipient] was being aggressive toward Nurse and was overheard yelling profanity and racial slurs. Police had to utilize empty hand control technique to subdue [the recipient] due to his aggressive behavior, and for the safety of others on the ward. At 6:26 a.m. on 6/10/14, nursing staff reported that [the recipient] called a nurse a 'bitch', telling her to shove an oxygen monitor up her ass. When confronted about the incident, [the recipient] admitted to making the comment to the nurse. [The recipient] was given the choice to pay the collateral fine or appear in court on 8/11/14. Action dropped and citation voided; per criminal investigators on Friday, August 8, 2014"

HOSPITAL REPRESENTATIVES' RESPONSE

Hospital representatives were interviewed about the complaint. They indicated that if a Police Officer issues a citation it would probably not be described in the clinical record because this is not a physician's, or clinical, decision. Generally, these citations would go to federal court where they would be voided immediately because the veterans who are hospitalized are not capable of presenting to the Court. The veteran's social worker should notify the Court that the veteran is hospitalized and the citation would be dismissed. It is very rare that a Police Officer would issue a citation independent of the unit staff, however this does happen. In this case, staff felt that the Officer knew the veteran from previous incidents (there were many), and this is supported in the record. Staff indicated that sometimes incidents occur that are not related to the veteran's clinical issues but in this case, they agreed it was not appropriate to cite a man for being forced to receive treatment. Staff believed that the citation had been voided and that is why there was no mention of it in the record. They indicated that they will meet with the Police Chief and address this issue in ongoing training.

Staff were asked if the veterans complete a Preferences for Emergency Treatment document. They indicated that this information is obtained on the initial nursing assessment completed upon each veteran's arrival on the Behavioral Health Unit.

STATUTES

Section 2-102 of the Code guarantees all recipients adequate and humane care and services in the least restrictive environment. As a means to this end, recipients should be informed of and participate in formulating and reviewing their proposed treatment to the extent possible:

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

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

If a recipient refuses treatment, Section 2-107 of the 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 (West)).

Additionally, Section 2-201 of the Code states that whenever any rights of a recipient of services are restricted, prompt notice must be given to the recipient, his designee, the facility director or a designated agency, and the restriction must be recorded in the recipient's record (ILCS 405 5/2-201 (West)).

VA HOSPITAL POLICY

Hines VA provided policy regarding investigations of alleged wrongdoing on VA premises. It states, "It is the responsibility of the officer assigned or receiving a complaint to initiate a preliminary investigation and complete a Uniform Offense Report.... Persons appointed as VA police officers are authorized to conduct investigations on VA premises into alleged violations of Federal law and VA rules occurring on Department property, Police officer appointees include all persons issued a VA Form 1479, regardless of other titles used, e.g. police officer, detective, or investigator. Investigations will be conducted to the extent necessary to determine whether a crime has been committed and to collect and preserve basic information and evidence relative to the incident. Allegations of crimes against persons, non-government property or other non-fraudulent criminal matters will be referred to the appropriate U.S. Attorney, FBI, or local law enforcement agency after consultation with regional Counsel. Crimes involving fraud, corruption, or other criminal conduct related to VA programs or operations shall be referred to the Inspector general...."

CONCLUSION

The Illinois Mental Health Code provides for forced emergency treatment interventions when a person is at risk of serious and imminent harm, and it outlines procedural and clinical requirements for this intervention. At times hospitals will contact security (or in the case of Hines VA, the VA Police) to assist with imposing or enforcing an emergency treatment intervention. Such an intervention is always considered a part of *treatment*. The emergency intervention should not have precipitated a criminal citation for those behaviors which were treated. Persons who need mental health treatment are not "criminals" and their fundamental liberty interests should be protected rather than violated (*In re Stephenson*, 67 Ill. 2nd 544, 554-556 (1977)). Additionally, the imposition of criminal citations for behaviors resulting from mental illness on a behavioral health unit may prevent other mentally ill veterans from seeking the mental health treatment they need and deserve. The HRA substantiates the complaint that the Jesse Brown VA did not follow Code mandated procedure when a recipient received a criminal citation from the Hines VA police for disorderly conduct related to the police responding to an emergency restriction of the recipient's rights.

RECOMMENDATION

1. Ensure that all staff are trained to apply the standards set forth in the Mental Health Code for forced emergency treatment (405 ILCS 5/2-107) and refrain from issuing criminal citations for behaviors which are being (or should be) addressed clinically.

SUGGESTION

1. Although there are times when hospitalized veterans may present behaviors which are not related to their mental illness and require a criminal citation, it seems to the HRA that everything that occurs while a veteran is hospitalized on the Behavioral Health Unit should relate to his/her clinical needs. The HRA suggests that the clinical staff meet with the VA Police Department staff before issuing a citation so that there is clinical input into these interventions. Also, the citation was not mentioned in the Progress Notes. Since this is a clinically significant event that occurred on the Behavioral Health Unit, we suggest that the circumstances surrounding it should be described in the Progress Notes.

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 15-030-9005
Jesse Brown VA Medical Center

INTRODUCTION

The Human Rights Authority of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving a complaint of possible rights violations at Jesse Brown VA Medical Center (Jesse Brown). It was alleged that the facility issued a disorderly conduct citation for a veteran receiving involuntary treatment on the inpatient psychiatric unit. If substantiated, this would violate the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107), which the Illinois Supreme Court considers a civil statute (*In re Stephenson*, 67 Ill. 2nd 544 (1977)).

Jesse Brown is a 200-bed acute care facility that provides services to approximately 58,000 veterans and contains a 38-bed behavioral health unit.

To review these complaints, the HRA conducted a site visit and spoke with the Staff Attorney, the Chief of the Hospital Psychiatry Section, a Staff Psychiatrist, the Deputy Chief of Police and the Chief of Police. Hospital policies were reviewed, and the adult recipient's clinical records were reviewed with written consent.

COMPLAINT SUMMARY

The recipient, a 26 year old army veteran, was a patient at Jesse Brown VA Center receiving involuntary treatment and psychotropic medication on the Behavioral Health Unit. On 8/24/14 the recipient received a criminal citation for disorderly conduct due to an altercation with another recipient.

FINDINGS

The record shows that the recipient in this case was hospitalized at Jesse Brown VA from 7/07/14 until 1/20/15. The recipient's Hospital Course and Assessment are described in the treatment episode Discharge Summary completed 9/10/14: "The patient was admitted to 7 West, formal/voluntary. He was afforded group, individual, and milieu therapy. The patient was initially placed on precautions. He was restarted on quetiapine 100 mg at bedtime. This was gradually increased. The patient remained psychotic throughout most of his hospitalization. He

quickly asked to leave the hospital and signed a 5-day request. He was not thought to be stable for discharge. It was felt that patient had no discharge plan and no housing and would be unable to care for himself. The patient became easily agitated. He was continued to be encouraged to rescind his 5-day. The patient was using his cellphone inappropriately. He required the police. He became very agitated requiring prn's [as needed medications]. He remained delusional and paranoid although denied suicidal ideation throughout. The patient refused medications despite education and encouragement. He was changed to involuntary status and a certificate and petition were filled out. A petition was also filled out for involuntary medications. The patient continued to act inappropriately at times, disorganized, easily agitated, and psychotic. He had no housing or aftercare plan. He was taken to court and the court found in favor of giving involuntary medications. The patient became very agitated about this, threatening his treatment provider and family. He was given strict feedback about this. The patient's court order for involuntary commitment was prolonged. The patient was restrained during his hospitalization and he became agitated and threatening. He also got into another fight with another patient. The patient was given Haldol decanoate 50 mg and then given Haldol decanoate 100 mg. He tolerated these without significant difficulty. The patient continued to deny suicidal ideation. The patient was somewhat isolative, but would come out for groups. He was more appropriate on the unit and did not demonstrate any further hostility, agitation, or threats. Although, he still remained likely psychotic his symptoms had improved significantly...."

Although the record indicates that the recipient had been threatening and physically violent during his hospitalization, it is not clear from the record that a plan to proactively address aggression or violence was ever implemented. On 8/12/14 the recipient was aggressive and verbally threatening staff and he refused PRN (as needed) medication. The police were called to the unit and the recipient was placed in restraints and administered emergency medication. The record shows that he was returned to the unit with the orders to continue with his plan of care. The recipient's general plan of care involved monitoring his mood and sleep pattern, encouragement to verbalize his thoughts and feelings in an appropriate manner, and medicate with PRN medication as needed. The record does not reflect a plan to address violent or aggressive behaviors.

Progress Notes from 8/24/14 describe the situation for which the current complaint was filed: "Vet isolative to his room most of the am. Up to dining room because it was getting close to lunch time – 12:20 pm. This vet initiated a verbal confrontation with a peer which resulted in a physical altercation. The two vets were physically fighting down on the floor. Vet moved to the 7W side of the unit to separate the two. This vet was given PO Ativan – able to follow redirect- and calm down." The action taken for this event states, "Physical altercation with a peer. PRN medication, able to calm down and regain control." The record contains a United States District Court Violation Notice, issued to the recipient on 8/24/14 at 12:22 p.m. for the following reason: "Disorderly conduct which creates loud and ...[illegible] and impede [sic] the normal flow of operation, fighting in the medical unit." There is no documentation in the unit progress notes indicating this police action.

The record contains an Order for Administration of Authorized Involuntary Treatment issued by the Clerk of the Circuit Court of Cook County on 8/12/15. On the testimony of the physician from Jesse Brown VA Center, the clerk ordered the recipient to be administered

psychotropic medication after his physician found that: "The recipient has a serious mental illness, the recipient has refused to submit to treatment by Psychotropic Medication, the recipient exhibits deterioration of his ability to function, suffering or threatening behavior, and the illness or disability has existed for a period marked by the continuing presence of such symptoms set forth in item number 3 above or the repeated episodic occurrences of these symptoms and the benefits of the treatment outweigh the harm, and the recipient lacks the capacity to make a reasoned decision about the treatment, and other less restrictive services were explored and found inappropriate...."

The record also contains a Petition for Involuntary/Judicial Admission completed on 7/16/14 which gives as the basis for the assertion that the recipient is in need of immediate hospitalization the following: "Patient is delusional, psychotic, threatening towards his doctor and other staff members. He [is] refusing to take his schedule [sic] medications, throwing stool on the unit. He also remains paranoid, destroying government property, yelling on unit, hitting the glass in front of nursing station." There was never a commitment trial for the recipient on this petition due to continuances until the recipient stabilized on medications.

On 11/10/14 the recipient appeared in Federal Court along with his attorney. The peace officer who issued the citation was present and testified before the judge. Since the peace officer did not witness any of the events leading to the altercation between the recipient and another patient, the attorney argued for a directed verdict against the State, which was granted.

FACILITY REPRESENTATIVES' RESPONSE

The record for this case was obtained after a signed Release of Information was submitted by the recipient. The case was delayed, however, and at the time of the site visit, the release had expired. The record that was authorized by the recipient is presented herein, however the staff who were interviewed were not questioned about this specific recipient, but only about the general policy and practice on the Behavioral Health Unit.

Facility staff discussed the situations that would necessitate the order for a criminal citation on the Behavioral Health Unit. They stated that if a patient was dangerous, destructive to property or a threat of physical harm to himself or others, the VA Police may be called. When they are notified, and once the patient is stabilized, they consult with the treatment team and specifically the patient's physician, to determine the appropriateness of issuing a citation. Staff indicated that the Police are a separate entity apart from the clinical team and they make decisions based on what they determine is a violation of the law. Unit psychiatrists stressed that just because a patient has a mental illness does not mean that they cannot commit a crime. They indicated that it is a necessary element of the patient's treatment that he accept responsibility for his actions, and that it would be unhealthy for patients with mental illness to operate on the assumption that they are immune from the natural consequences of their behaviors. Additionally, as the psychiatrist stated, he and other staff would probably not feel comfortable working in an area where patients were immune from consequences.

Facility staff indicated that all patients are assessed for the potential for violent behavior at Intake. If there is a history or indication of violence, the Veteran's file is flagged and they are

placed under a protocol for violent patients which may indicate a single room, removal from the stimulus of other patients, or monitored on precaution. They also stated that the patients on the Behavioral Health Unit complete preferences for Emergency Treatment and that these preferences are taken into consideration for patients who lose control. The Unit also completes Restriction of Rights documents and issues them to the patients when their rights are restricted, however the file does not generally contain a physician statement of the patient's decisional capacity for those who are prescribed psychotropic medication.

STATUTORY BASIS

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

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

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

Should the recipient wish to exercise the right to refuse treatment, the Mental Health Code guarantees this right unless the recipient threatens serious and imminent physical harm to himself or others:

"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).

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 addresses the occurrence of a recipient as a perpetrator of abuse: "When an investigation of a report of suspected abuse of a recipient of services indicates, based upon credible evidence, that another recipient of services in a mental health or developmental disability facility is the perpetrator of abuse, the condition of the recipient suspected of being the perpetrator shall be immediately evaluated to determine the most suitable therapy and placement, considering the safety of that recipient as well as the safety of the other recipients of services and employees of the facility." (405 ILCS 5/3-211)

HOSPITAL POLICY

Jesse Brown provided policy regarding investigations of alleged wrongdoing on VA premises. It states, "It is the responsibility of the officer assigned or receiving a complaint to initiate a preliminary investigation and complete a Uniform Offense Report.... Persons appointed as VA police officers are authorized to conduct investigations on VA premises into alleged violations of Federal law and VA rules occurring on Department property. Police officer appointees include all persons issued a VA Form 1479, regardless of other titles used, e.g. police officer, detective, or investigator. Investigations will be conducted to the extent necessary to determine whether a crime has been committed and to collect and preserve basic information and evidence relative to the incident. Allegations of crimes against persons, non-government property or other non-fraudulent criminal matters will be referred to the appropriate U.S. Attorney, FBI, or local law enforcement agency after consultation with regional Counsel. Crimes involving fraud, corruption, or other criminal conduct related to VA programs or operations shall be referred to the Inspector general...."

CONCLUSION

The recipient in this case was determined by a physician to have a serious mental illness and to lack the capacity to make decisions regarding his treatment, including medications. He was then court ordered to remain hospitalized to treat his mental illness and petitioned to take forced psychotropic medications. On 8/24/14, when the recipient exhibited behaviors which staff determined to be dangerous to himself and others, he was administered forced emergency treatment in the form of medication. The record describes the action and its effect: "Physical altercation with a peer. PRN medication, able to calm down and regain control." This description of the incident appears to adhere to the process mandated by the Mental Health Code for overriding a recipient's right to refuse treatment. It documents dangerousness and applies prescribed treatment. Beyond this event the staff took measures which resulted in a criminal citation for those very behaviors for which the recipient was court ordered to receive treatment.

The documentation does not mention the citation or describe what events necessitated a criminal citation- the HRA wonders how this event differed from the event on 8/12/14 when the recipient was placed in restraints and administered forced psychotropic medication without a citation. As the Illinois Supreme Court found *In re Stephenson*, persons in need of mental health treatment are not “criminals” and their fundamental liberty interests should be protected rather than violated. *In re Stephenson*, 67 Ill. 2nd 544, 554-556 (1977). Finally, the imposition of criminal citations for behaviors resulting from mental illness on a behavioral health unit may prevent this recipient and other veterans with mental illness from seeking the mental health treatment they need and deserve. The HRA substantiates the complaint that Jesse Brown VA Medical Center issued a disorderly conduct citation for a veteran receiving involuntary treatment on the inpatient psychiatric unit, violating the rights of the recipient, and, in effect, *criminalizing* mental illness.

RECOMMENDATIONS

1. Ensure that all staff are trained to apply the standards set forth in the Mental Health Code for forced emergency treatment (405 ILCS 5/2-107) and refrain from issuing criminal citations for behaviors which are being addressed clinically.

SUGGESTION

1. The clinical record of this event does not mention the issuance of a criminal citation. Since this action is a very important event that affects the clinical picture of this recipient’s treatment episode, the HRA feels that it should be documented in the clinical record.

2. The Mental Health Code mandates a physician statement of decisional capacity for those recipients receiving psychotropic medication. Although the HRA realizes this is not part of the extant complaint, we think it does impact the case and expect that this information will be included in further treatment planning for all recipients.

3. It is unclear from the record that the protocol which was described by staff for physically aggressive patients was implemented for this recipient. Even after a restraint and forced medication event on 8/12/14, the recipient’s status remained the same with no altered plan to address physically aggressive behaviors. We suggest the treatment plan and the recipient’s chart reflect that a protocol is in place to address physical aggression.

4. The HRA did not find the Mental Health Code mandated Restriction of Rights Notices in this recipient’s clinical record. If these Notices are completed and issued to the recipient, we suggest that the record reflect this or include a copy of the document.

Response to REPORT 15-030-9005

Jesse Brown VA Medical Center

April 14, 2016

JBVA Medical Center Response:

1. The citation was not given as a result of "measures taken by staff". It was given based on the behavior of the recipient during the incident. Court mandated treatment is for treatment of a mental illness (not behaviors) with the goal of preventing dangerous behaviors. Part of such treatment involves teaching recipients that they are accountable for their behavior whether or not they have a mental illness. Such a therapeutic stance is in keeping with the Recovery Model of mental health treatment, which we value highly. The issuing of a citation is a legal function not a clinical treatment. Clinical treatment includes helping recipients understand that mental health treatment can help them gain better self-control and avoid criminal behaviors and legal consequences of such behaviors.
2. Conducting violent or criminal behavior is not one of the "fundamental liberty interests." Recipients are made aware in writing of the "Rights of Recipients." We work with involuntary patients to gain self-control and insight so they can move from an involuntary to voluntary status and then to outpatient treatment as soon as possible. During this process we do not violate those rights unless it is necessary according to law. Restriction of rights documentation is completed and a copy is given to recipients according to mental health code law and our policy.
3. Neither Jesse Brown VA Medical Center nor any of its clinical staff issued a citation to the recipient. The citation was issued by VA Police Officers. Mental illness was treated by clinical staff as effectively as possible while VA Police performed their role in protecting the facility, patients and employees. Such a response does not criminalize mental illness and is in keeping with the Recovery Model of mental health treatment.

JBVA staff are well trained to apply the standards set forth in the Mental Health Code for forced emergency treatment (405 ILCS 5/2-107) and did so appropriately in this case. ~~JBVA clinical staff do not issue citations. Authorized to protect the facility, its patients and employees, VA Police make an independent decision whether to issue citations.~~

About the Jesse Brown VA Medical Center

The Jesse Brown VA Medical Center consists of a 200-bed acute care facility and four community based outpatient clinics (CBOCs). Jesse Brown VAMC provides care to approximately 62,000 enrolled veterans who reside in the City of Chicago and Cook County, Illinois, and in four counties in northwestern Indiana. In FY10, the medical center had over 8100 inpatient admissions and 560,000 outpatient visits. A budget of over \$355 million supports approximately 2,000 full-time equivalent staff, including 200+ physicians and 450 nurses, with 500+ volunteers providing service and care at Jesse Brown VAMC and CBOCs.

In May 2008, the medical center opened its new inpatient bed tower pavilion, which includes seven surgical suites, cystology, intensive care, inpatient dialysis, an outpatient surgical center and a chapel. The medical center's strategic priority is the "heart of the Veterans Community" and as Provider of Choice for veterans in the Chicago area. JBVAMC established a "We Are Here" outreach campaign to inform veterans about the health care benefits they have earned through their service to our country and the specific services available to them at Jesse Brown VA Medical Center. Formerly known as the West Side VA Medical Center, the facility was renamed in 2004 for the Honorable Jesse Brown, who served as Secretary for Veterans Affairs from 1993 to 1997.

Affiliations: Feinberg School of Medicine of Northwestern University and University of Illinois at Chicago Medical School, with over 900 program residents caring for our veterans yearly.

CHICAGO REGIONAL HUMAN RIGHTS AUTHORITY

HRA CASE NO. 15-030-9005

Jesse Brown VA Medical Center

Pursuant to Section 23 of the Guardianship and Advocacy Act (20 ILCS 3955/1 *et seq.*), we have received the Human Rights Authority report of findings.

IMPORTANT NOTE

Human Rights Authority reports may be made a part of the public record. Reports voted public, along with any response you have provided and indicated you wish to be included in a public document, will be posted on the Illinois Guardianship and Advocacy Commission Web Site. (Due to technical requirements, your response may be in a verbatim retyped format.) Reports are also provided to complainants and may be forwarded to regulatory agencies for their review.

We ask that the following action be taken:

We request that our response to any recommendation/s, plus any comments and/or objections be included as part of the public record.

We do not wish to include our response in the public record.

No response is included.

FOZ 
Annette P. Walker, MSHA, BSN

Acting Medical Center Director

4-22-16
DATE