Illinois Guardianship & Advocacy Commission

FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY- CHICAGO REGION

REPORT 15-030-9005
Jesse Brown VA Medical Center

Case Summary: The HRA substantiated the complaint that the facility issued a disorderly conduct citation to a veteran receiving involuntary treatment on the inpatient psychiatric unit. The provider response follows.

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

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

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.