



FOR IMMEDIATE RELEASE

HUMAN RIGHTS AUTHORITY - PEORIA REGION
REPORT OF FINDINGS

Case #18-080-9013
Mercyhealth Hospital - Rockton

INTRODUCTION

The Human Rights Authority (HRA) opened an investigation after receiving complaints of possible rights violations involving services at Mercyhealth Hospital - Rockton. The complaint is that a staff member released the patient's private health information without authorization. If found substantiated, the allegations would violate the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110). The facility has a 14-bed inpatient behavioral health unit that averages 11 patients per day. They have 30 staff including RNs, mental health technicians, and assessors.

Complaint Statement

The complaint alleges that staff from the emergency room contacted a patient's sister and disclosed the incidents that led to the patient being taken to the emergency room without the patient's consent. The allegations state that the patient even wrote "no information is to be released" on proposed consents. The sister was contacted after a petition and certificate had already been completed.

Interview with staff (5/2/2018)

Staff stated that the patient was presented to the emergency department (ED) while in police custody. The patient had laboratory work completed while in the ED and spoke with the psychiatric assessor. The psychiatric assessor stated that the patient told him to "talk to his lawyer" twice, even though the assessor explained to the patient that the hospital wanted to give him a chance to discuss what occurred and speak for himself. The assessor stated that he would like to contact the patient's sister and the patient did not respond, so the sister was contacted. Staff said that the patient did not give consent to contact the sister but did not express that he did not want the sister contacted. When the assessor spoke with the patient's sister, the assessor asked about the patient's mental health history. The patient's sister said that he cannot live with her and he has an alcohol problem. On the phone, staff stated that he can only gather information but was not allowed to provide information. Staff explained that they need to know the patient's history and what the family knows about the patient. The staff stated that the patient's sister was

listed as the contact person on the patient's petition. The petition was completed by the police but was redone due to errors on the petition, and it stated that the patient's sister was contacted by the police. The sister also was listed as an emergency contact in the hospital registry. The patient had provided the sister's telephone number, but staff said it must have been on another occasion.

Staff explained that when they make contact for information, it is done over the telephone. The staff explains who they are and that they are from behavioral medicine and then they request the behavioral history of the patient. This gathered information is provided to the physician.

Staff explained that the patient had requested no visitors. Staff said that they would not have called after the patient was transferred from the ED. The call was due to the crisis that was occurring at the time. Staff explained that on the average, with a patient who was cooperating, they would have only contacted someone that the patient wanted them to, but in this case, the police had already contacted her.

Staff believe that if they had let the patient go, he would not have survived. Staff said that in a situation like what was occurring with the patient, they would call an emergency contact. The facility staff discussed the questions they ask when contacting someone about a patient. Staff said they usually ask the last time the patient spoke to family and did they speak in person or over the telephone. Did they seem angry or depressed? Do they receive outpatient counseling currently and are they currently on medication? Have there been past suicide attempts or homicidal ideation? Has the patient had any hallucinations? Has the patient had a history with inpatient psychiatry? They also discuss if the patient has a legal history. The psychiatric assessor takes notes and then the psychiatrist co-signs the notes.

Staff explained that contacting others is usually a clinical decision, and if a patient is forthcoming, they would not need to get collateral information. If the patient is guarded and the police state that the patient is suicidal, they let the patient know that they are trying to contact someone because of the situation. If the patient says, "no" to a preferred contact with key information, then they try to contact someone with consent but may still try the preferred contact. They go with the contacts on the petition for due diligence. Staff said that protecting information on the unit is honored and, in general, they try to have the patient share information. With a voluntary patient, they would request consent for contact and that is in the voluntary admission form as well. If the patient is on the behavioral unit, they get formal signed consents. This situation did cause the facility to review their collateral consent policy.

FINDINGS

According to the record, the patient was admitted to the ED at approximately 10:08 a.m. and met with the psychiatric assessor at approximately 7:20 p.m. The assessor wrote a note on the date of admission, 2/23/2018, about the interaction with the patient and contact with his sister, "Consulted by ED for psychiatric assessment; however, patient repeatedly states, 'Talk to my lawyer,' [Patient] will not confirm his name, date of birth, address. He will not answer any questions about suicidal/homicidal ideation, intent, or plan. He refuses to participate in the interview process." It also stated that the patient arrived with a police officer's petition that contained errors in the assertions, so a new petition would have to be done. The assessor proceeded to contact the sister for more information and learned that, "The patient has a long history of alcoholism. Patient has been living with [sister] for 12-13 years. He is no longer allowed to stay there because of his alcoholism. He has made SI [suicidal ideations] threats in

the past but has never made a suicide attempt or been psychiatrically hospitalized.” The entries make no mention of asking the patient for consent to communicate with his sister. A separate ED Note from 1:30 p.m. on 2/23/2018 states, “Pt [sic] requesting to call his brother but needs his phone to get the phone number. Pts cell phone is locked up in the safe, asked pt if he would like me to get it for him. Pt states ‘just forget about it.’ Pts sisters phone number is under his emergency contact. Informed pt of this and asked if he would like to call her to get phone number for brother. Pt stated ‘no.’”

While in the behavioral health unit, the patient did reach out to his sister as mentioned in progress notes from 3/13/2018, “Patient is forward thinking and goal oriented. States he needs to stop at the bank, talked with his sister yesterday and will be speaking with her again today.’ On 3/12/2018, “[The patient] was encouraged today to contact his sister with whom he had been staying before this admission. The patient states that he spoke with her over the phone already.” On 3/8/2018, the patient asked the staff to “Try to get a hold of my sister and give her my code to call” and on 2/25/2018, the “patient states his brother and sister are coming tomorrow and going to get him out of here” but then the “family did not come to visit. He spoke with his sister on the phone calls”. Another progress note on 2/25/2018 reads, “Family did not come to visit. He spoke with his sister on the phone calls.” There are notes documenting his resistance to contacting her or lack of contact in progress notes on 3/11/2018 which state, “Family did not come, no phone call. He said he is not sure that his sister will take him when he was discharge from here.” On 3/6/2018, the “Patient refused to allow patient to talk with his sister or any other family. He stated that he does not want them involved at all.” A 2/27/2018 note states that, “[the patient] doesn’t want to have his sister contacted although will discuss that issue with him again. The patient, again, was angry and upset that this hospitalization led to him being kicked out of his sister’s house” and on 2/26/2018, notes indicate, with regard to “family/significant other involvement in treatment plan: no known family”.

A psychiatric progress note, dated 2/25/2018, states, “He refused to talk with me yesterday but today he talk [sic] with me and report that ‘I am very angry about all this situation, person in the ED’ referring to the psych assessor call and ‘informed my sister that I had gun and was about to harm others, so now I am not allowed to live with her.’”

The HRA was provided a document titled “Your Privacy Is Our Priority” and it appears to be a document provided to patients. The first section is titled “Joint Privacy Notice” and states “This notice describes how medical information about you may be used and disclosed and how you can get access to this information.” Later in the document it states that, “This notice describes how we, the Rockford Health System Organized Health Care Arrangement (OHCA), may use and disclose your protected health information to carry out treatment, payment, or health care operations and for other purposes that are permitted or required by law.” The notice also states, “We are required by law to make sure that medical information that identifies you is kept private; give you this notice of your legal duties and privacy practices with respect to your medical information; and follow the terms of this notice or any subsequent notice that is later in effect.” The notices list different ways the facility is permitted to disclose medical information and includes, treatment, payment, minors, research, to avert a serious threat to health or safety, public health risks, etc. Outside of the listed items, the policy states that the patient’s written authorization is required for other uses and disclosures and states “Other uses and disclosures of your medical information not covered by this Notice or the laws that apply to us will be made only with your written authorization. If you do give us authorization, you may revoke it at any time by submitting a written revocation to our Privacy Officer and we will no longer disclose

medical information under the authorization.” The notice also states that “You have the right to request restriction or limitation on the medical information we use or disclose for treatment, payment or health care operations. You also have the right to request a limit on the medical information we disclose about you to someone who is involved in your care, such as a family member or friend. For example, you could ask that we not share or disclose information about a surgery you had. We are not required to agree to your request. If we do agree, we will comply with your request unless the information is needed to provide emergency treatment.”. However, Mercyhealth also contacts persons that are “collateral contacts” to exclusively gain information about the patient.

CONCLUSION

The Mental Health and Developmental Disabilities Confidentiality Act protects confidential records and communications from disclosure without the recipient’s authorization (740 ILCS 110/4,5), except, “...when, and to the extent, a therapist, in his or her sole discretion, determines that disclosure is necessary to initiate or continue civil commitment or involuntary treatment proceedings...or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical or mental injury....” (740 ILCS 110/11). The Privacy Rule under HIPAA (Health Insurance Portability and Accountability Act) allows the same when, “...necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public....” (45 CFR 164.512j).

According to staff statements and the record, the psychiatric assessor asked the patient for consent but received no response. The original petition from the police officer was written in error, containing inaccurate information, and a new one was pursued partly on what was collected from the sister to initiate commitment proceedings for a patient who presented with an imminent safety risk. A violation is unsubstantiated.