

EXHIBIT X.

Disability Rights Maryland
(Esq. Ms. Datnoff) Report/Incidents/Email
(A,B,C)

- A. January 19, 2021 Report
- B. November 10, 2020 Incident
- C. December 18, 2020 Incident

EXHIBIT FACTS/INFO. SHEET



*Due to time constraints, the page herein has not been fully constructed. The “Facts/Info. Sheet” was designed to assist the Finder of Fact when considering exculpatory /substantive information extracted from the following exhibit.

*See Exhibit IV. for a completed “Facts/Info. Sheet”

January 19, 2021

VIA CERTIFIED MAIL

██████████ Assistant Director
Office of Health Care Quality
7120 Samuel Morse Drive
Second Floor
Columbia, Maryland 21046-3422

**Re: Michael Kapneck (DOB: ██████████)
Unlawful Use of Mechanical and Chemical Restraints
Involuntary Medication in Violation of the Standard of Care**

Dear Ms. W██████████

I submit this complaint as a supplement to the email I sent to you on January 19, 2021. As I explained in the email, Disability Rights Maryland (“DRM”) is concerned that Clifton T. Perkins Hospital (“Perkins”) is punishing Michael Kapneck because he is a difficult patient. This complaint covers a series of incidents that occurred on November 10, 2020 and December 18, 2020, which include the unlawful use of mechanical restraints as well as the unlawful administration of involuntary medication.

DRM’s preliminary investigation found evidence that Perkins unlawfully restrained and administered involuntary medication to Mr. Kapneck on November 10, 2020 as well as unlawfully administered involuntary medication to Mr. Kapneck on December 18, 2020.

Notably, Dr. B██████████ Mr. Kapneck’s former treating psychiatrist recognized that Mr. Kapneck was treated differently because he was a difficult patient. On November 7, 2020, Dr. B██████████ noted in a Psychiatry Progress Note:

During our interaction, Mr. Kapneck dominated the conversation, summarizing his history given this was our first meeting; however, his speech was not pressured. While he reported a belief that he was persecuted by staff and some peers, this did not appear to be delusional, rather related to his narcissistic personality traits and entitled attitude. At the same time, there were elements of truth to several of his complaints and concerns, especially considering the strong reactions he tends to provoke given his interpersonal style of interaction.

NOVEMBER 10, 2020 INCIDENT

Unlawful Use of Mechanical Restraints

Based on the evidence, including video surveillance (which OHCQ should request), Perkins mechanically restrained Mr. Kapneck as punishment for his behavior and for the convenience of staff. Just prior to imposition of the restraint, surveillance shows that Mr. Kapneck was isolated on the porch of his unit. Although there is no audio, Mr. Kapneck does not appear to be yelling or speaking to anyone. There is a group of staff speaking to each other in the empty day-room outside of the porch area. Immediately before restraining Mr. Kapneck, the video shows Mr. Kapneck sitting in a chair on the porch, listening to his headphones. Staff appear and Mr. Kapneck walks calmly and unassisted toward the restraint chair and takes a seat. At that time, around 9:45 a.m. (time-stamp on video appears to be incorrect), Mr. Kapneck is restrained.

Mr. Kapneck's progress notes provide a description by three separate staff of the events leading up to the restraint. Corporal (Cpl.) [REDACTED] explains Mr. Kapneck's behavior in the multipurpose room earlier in the morning. He notes:

On 11/10/20 @ approx. 8:30 a.m. Pt. Michael Kapneck #11816 was yelling and screaming insults directed towards myself and nursing staff. He continued until his level was changed to restriction and went back the the [sic] unit. He returned refused redirection and banged on the multipurpose glass at any staff who passed. When asked to stop he continued the behavior – Cpl. [REDACTED] Pt Kapneck also threatened to kill staff if we were on the street.

[REDACTED] C [REDACTED] MD, Mr. Kapneck's treating psychiatrist, described Mr. Kapneck's behavior as follows:

This morning, at approximately 8:50 a.m., I was passing by the Multipurpose Room (MPR), Mr. Kapneck was banging on the glass trying to get my attention. He reported that he "wasn't given his breakfast this morning and therefore I am refusing my medication." He appeared very upset and I informed him that I would speak with him in a setting that respects his confidentiality. Shortly after, I received a phone call from the charge nurse . . . that Mr. Kapneck was being disruptive in the MPR and he was recommending dropping his level to RESTRICTED and sending him to the unit. According to the charge nurse, Mr. Kapneck took his breakfast, started eating and came back stating that he did not get an egg. According to different staff members, he was pressured, yelling, cursing them out, banging at the glass window and very disruptive to the therapeutic milieu in the MPR. Concerned about the instability he was creating in the milieu he was sent back to the unit.

Upon returning to the unit, Dr. C [REDACTED] explained that Mr. Kapneck's behavior continued:

[Mr. Kapneck] appeared hypervocal, pressured and difficult to engage. . . . Mr. Kapneck was observed pacing in the dayroom and making verbally abusive statements to staff. At this point, peer #14,512 threatened that he would like to “fuck him [Mr. Kapneck] up” and rushed to left porch where Mr. Kapneck was. Staff intervened and continued to counsel peer #14,512. Mr. Kapneck then came out and made statements that staff were discriminating against him by favoring Black patients. . . . When I tried to speak with him, Mr. Kapneck turned and yelled, “I don’t want to speak to you. You are a faggot. I tell you about my problems in confidence and you run to the director and the police to get me in trouble. Just get out of my face.” Mr. Kapneck was pressured in his speech, irritable and unwilling to listen to anything staff were saying. He continued making racial comments to staff about “being treated very badly by these Africans.” At this point, he was considered very disruptive in the milieu and agitating vulnerable peers . . . on the unit. It was determined that he was placing himself at imminent risk of being assaulted by a peer who got upset at Kapneck’s statements and behavior.

A Nursing Shift Note, entered on November 10, 2020, provides:

Pt is disruptive in the milieu and calling staff names and refusing redirection to stop disruption and abuse of staff. This started in the multipurpose room. The psychiatrist ordered the patient taken to the conference room on the unit. While waiting to go to the porch the guy came into the dayroom and was yelling and challenging everybody and getting other patients [sic]. Pt was redirected to stop disrupting. He called this writer a motherfucker and kept disrupting the milieu. Pt refused quiet time and refused PRN medication. . . . Pt was about to escalate on the porch. Security was called and patient was placed in chair restraint at 9:45 a.m.

CMS Standard § 483.13(e) provides, in part, that “[a]ll patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff. Restraint or seclusion may only be imposed to ensure the immediate physical safety of the patient, a staff member, or others and must be discontinued at the earliest possible time.” Similarly, Maryland regulations provide that physical restraints may only be imposed to “[p]revent and reduce serious, destructive, and damaging actions by a patient to the patient or to another” and/or to “[p]revent serious disruption of the therapeutic environment.” Staff, however, “may not use a restraint . . . [a]s a mode or course of treatment . . . [a]s punishment; or . . . [f]or convenience.” COMAR 10.21.12.03(a), (b).

As previously stated, the video belies Perkins’s justification for restraining Mr. Kapneck. The video does not support that restraint was necessary for the immediate safety of Mr. Kapneck or any of the staff members. See CMS Standard § 483.13(e). Nor does it support that Mr. Kapneck was disrupting the milieu. Rather, the video shows Mr. Kapneck sitting on the porch listening to headphones while the unit dayroom is occupied only by staff, not patients. Additionally,

the video shows Mr. Kapneck calmly walking toward the restraint chair and, without assistance, taking a seat.

Undoubtedly, Mr. Kapneck was loud, rude, and disrespectful to staff. It thus appears that staff restrained Mr. Kapneck for their own convenience to manage and to punish him for this behavior. CMS Standard § 483.13(e); COMAR 10.21.12.03(a), (b).

Perkin's Decision to Forcibly Medicate Mr. Kapneck After He Was Mechanically Restrained is a Violation of Maryland Law

Maryland law provides that a patient has a right to refuse medication and may only be forcibly medicated in an emergency, where the individual presents a danger to the life or safety of the individual or others. HG § 10-708(b). Under Maryland law, a patient also has a right to “be free from restraints or seclusions” unless they are used during an emergency “in which the behavior of the individual places the individual or others at serious threat of violence or injury.” Md. Health Gen. § 10-701(c)(3). Accordingly, involuntary medication and use of restraints are two separate methods that may be used to address an emergency situation, when a patient presents a danger to themselves or to others. In other words, a hospital has the option to use restraints or forcible medication to address a situation it deems to be an emergency, *but a hospital cannot contemporaneously use both.*

In the case of Mr. Kapneck, on November 10, 2020, Perkins forcibly medicated him while he was already restrained in a chair. According to the nursing note entered on November 10, 2020 at 9:30 a.m., Mr. Kapneck received olanzapine 10 mg PO and Lorazepam 1 mg PO “**for agitation**” while being mechanically restrained. Just as there was no legal justification to mechanically restrain Mr. Kapneck, there was equally no legal justification to administer involuntary medication. Even assuming Mr. Kapneck presented a danger to the life and/or safety of himself or others (which he did not), that danger ceased to exist once Mr. Kapneck was mechanically restrained. Unlike CMS standards, Maryland law makes no distinction between chemical restraints and standard treatment or dosage for the patient’s condition. *See* CMS Standard § 482.13(e)(1)(i)(B). Rather, Maryland law instructs that a patient may only be forcibly medicated *in an emergency*. For this very reason, Perkins violated Maryland law when it forcibly medicated Mr. Kapneck *after* he had been mechanically restrained.

Although Dr. C [REDACTED] claims that “Mr. Kapneck eventually agreed to take the medication by mouth for medication,” his decision to take the medication was under duress because he wanted to avoid being injected with a needle. Perkins cannot claim patients voluntarily agree to take medication when they are mechanically restrained, knowing that a refusal will result in forced injection. That is the same as a police officer claiming that an individual voluntarily agreed to speak with them under threat of arrest. Had Mr. Kapneck voluntarily agreed to take medication he would have done so before he was restrained when it was initially offered to him. *See* Nursing Note, dated 11-10-202 entered at 9:30 a.m. (“Patient refused quiet time and refused PRN medication”).

Mr. Kapneck Suffered Patient Abuse While Mechanically Restrained

According to medical records, Mr. Kapneck was released from restraint around 11:30 a.m. About one hour later, around 12:35 p.m., he was transported to the emergency department at Howard County General Hospital. As Dr. C█████ reported in the Psychiatry Progress Note, dated November 10, 2020: "During restraint placement, Mr. Kapneck stated that he was not willing to flex his left knee because it was hurting and he 'has been limping the whole morning.'" Dr. C█████ further noted, after evaluating Mr. Kapneck's leg, that his "left knee appeared red and felt warm." Dr. C█████ justified restraining Mr. Kapneck's left leg as follows: "Earlier in the morning, . . . Mr. Kapneck was observed walking normally without a limp. Then during the restraint process, he was seen crossing his legs and putting the left ankle over his right knee with the left knee flexed at a right angle without worsening his discomfort." Soon after Mr. Kapneck was released from restraints, he was transported to Howard County General Hospital for his knee pain.

Mr. Kapneck filed a complaint with the Resident Grievance System claiming that he sustained patient abuse when Perkins forcibly restrained his left leg. The patient rights advisor, upon viewing the surveillance, validated the complaint of patient abuse. However, S█████ M█████ MD, the Clinical Director (who apparently was involved in the decision to restrain Mr. Kapneck) invalidated the grievance. OHCQ should request the RGS file regarding the allegation of patient abuse.

DECEMBER 18, 2020 INCIDENT

Unlawful Administration of Involuntary Medication on December 18, 2020

Based on DRM's investigation, Perkins administered involuntary medication to Mr. Kapneck on December 18, 2020, because he was loud and disrespectful to staff, not because he presented a danger to the life or safety of the individual or others as required by Maryland law. HG § 10-708(b). As the RN Shift Note, entered on 12/18/2020 at 6:45 a.m. indicates, Mr. Kapneck's behavior was "disruptive, aggressive, assaultive (**verbal**)."

(Emphasis added). The note explains that, around 2:45 a.m., Mr. Kapneck became mad that he had to wait until 6:00 a.m. to receive his glasses. He started to call the nurse "names 'motherfucker bitch, you all such dummies, I need to teach you because you don't do anything.'" He was offered PRN "to go back to sleep, but refused offer several times." The note further states:

Patient was restless, kept coming in/out of his room, coming to the nursing station and teaching this writer what to do to staff and patients of this unit. Pt then later went to the right hallway, loudly talking to staff sitting on 1:1, redirected to be calm and softly talk and that patients were sleeping. Pt started to claim his right to talk, loud became higher and higher, cursing and using profanity, PRN offered again and refused. This disruption and aggressiveness cont'd till [sic] 6:00 a.m. and **this writer called OD for medication to help him focus and calm down.**

RN SHIFT NOTE, dated 12/18/2020 (emphasis added).

Notably, nowhere in the RN shift note is there a description of Mr. Kapneck threatening staff or presenting a danger to patients or staff. *See* HG § 10-708(b). The note only describes Mr. Kapneck's behavior as loud, rude, and inconsiderate. However, such behavior does not justify the administration of involuntary medication under Maryland law, and certainly Perkins cannot forcibly medicate a patient so they can "focus and calm down."

The RN shift note further indicates that Mr. Kapneck agreed to take the medication after the IM order was placed. *See* RN SHIFT NOTE, dated 12/18/2020. For the reasons explained above, any decision to take medication after an IM order has been placed is not voluntary.

I thank you for your immediate attention to this request for investigation. Please feel free to contact me with any questions or concerns. Please keep me updated on the investigation and its findings. I can be reached at (410) 727- [REDACTED] but it is best to reach me on my cell phone at 443- [REDACTED] as I am working from home.

Sincerely,

[REDACTED]

E [REDACTED]

Attorney