The treatment of mentally ill patients can raise difficult issues for medical practitioners, particularly where a patient refuses treatment, even more so where such refusal takes place in an emergency department or emergency setting.

In Queensland the Mental Health Act 2000 (Qld) stipulates that the powers it provides to involuntarily assess or restrain a mentally ill patient must be exercised so that any adverse effect on a person’s liberty and rights is minimised. A medical practitioner or health service may be exposed to criminal liability or civil liability for unlawful imprisonment if a patient is detained contrary to the relevant provisions.

Doctors and hospitals are understandably cautious about admitting a person for treatment or detaining a person for medical reasons where that person’s clear wish is for this not to occur. With mentally ill patients that decision is further complicated by the duty of care that a medical practitioner or health service may owe to a patient or third party to prevent the patient from hurting themselves or others. Doctors must (despite not necessarily having particular expertise in mental health issues) assess whether a patient appears to have a mental illness, and make a judgement on whether there is a risk that the patient may harm themselves or others or suffer serious physical or mental deterioration. The interaction between the relevant statutory powers and the common law duty of care has not been explored in detail by the courts.

Exposure to potential liability is an obvious concern. Courts should have some sympathy for the difficult nature of the task in question, but otherwise medical practitioners are best protected by doing what they can to show that they have complied with the relevant statutory requirements, or that it was otherwise appropriate for them to exercise the power to have a patient involuntarily assessed and treated.

In Queensland, the relevant statutory powers derive from the Mental Health Act 2000 (Qld). Similar legislation exists in other jurisdictions. Apart from the circumstances set out in the Act, restraint (but not treatment) of a mentally ill patient would otherwise only be justified where a medical practitioner is acting in self defence or the defence of others.
Under the *Mental Health Act 2000* (Qld) any involuntary assessment requires a request for assessment from an adult who has observed the person within 3 days of the request and reasonably believes they require assessment, and a recommendation for assessment from a doctor or authorised mental health practitioner who is satisfied that:

- The patient appears to have a mental illness
- The patient requires immediate assessment
- The assessment can properly be made at an authorised mental health service
- There is a risk the person may harm themselves or others or suffer serious physical or mental deterioration.
- There is no less restrictive way of ensuring that the person is assessed.
- The person lacks capacity to be assessed or has unreasonably refused to be assessed.

An emergency examination order can also be made by a police officer, ambulance officer or psychiatrist where they reasonably believe that a person has a mental illness, that there is an imminent risk of physical harm being sustained by the person or someone else, and that proceeding through the normal assessment process would cause dangerous delay.

Given the multitude of ways in which a mental illness can present, applying these criteria is more often than not a challenging process. Medical practitioners and health care services will place themselves in the best position to explain their actions if the medical records clearly show that the relevant assessment criteria have been considered and the basis on which they have been applied.

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1 S358 Criminal Code Act 1899

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