



Clinical Practice Procedures: Behavioural disturbances/ Mental illness – The legal framework

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Mental illness – The legal framework

February, 2015

The provision of ambulance treatment and/or the transportation of a patient who is suffering from a mental illness may be lawfully provided in one of the following circumstances:

- **Voluntary** with the patient's consent; or
- **Involuntary** under the provisions of the *Mental Health Act 2000* if the patient meets the strict criteria that is set out in the Act.^[1]

Voluntary Patient

A person with a mental illness has the same legal rights as any person in the community. The fact that a person has a mental illness does not necessarily mean that the person lacks the capacity to provide consent for treatment and/or ambulance transport. If the patient is capable of understanding the nature and consequences of their decision to accept the treatment and/or transport that has been recommended, and freely and voluntarily provides consent for that treatment and/or transport, the patient's consent is valid and the treatment/transport can be lawfully provided.

Involuntary Patient

If the person with a mental illness is not capable of providing consent, or the person has unreasonably refused to provide consent, the person may be deemed to be an involuntary patient, if the person meets the strict criteria set out in the *Mental Health Act 2000*.



An involuntary patient is defined in the *Mental Health Act* as a person:

- (a) who is, or is liable to be, detained in an authorised mental health service for assessment; or
- (b) or whom an involuntary treatment order is in force; or
- (c) who is a classified or forensic patient.

The criteria for undertaking an involuntary assessment referred to in paragraph (a) above, includes the following:

- (a) the person appears to have a mental illness;
- (b) the person requires immediate assessment;
- (c) the assessment can properly be made at an authorised mental health service;
- (d) there is risk that the person may:
 - (i) cause harm to him/herself or someone else; or
 - (ii) suffer serious mental or physical deterioration;
- (e) there is no less restrictive way of ensuring the person is assessed; **AND** the person lacks the capacity to consent to assessment or has unreasonably refused to be assessed.

Mental illness is a condition characterised by a clinically significant disturbance of thought, mood perception or memory.

A person must not be considered to have a mental illness merely because of one or more of the following:

- the person holds a particular religious, cultural, philosophical or political belief or opinion;
- the person is a member of a particular racial group;
- the person has a particular economic or social status;
- the person has a particular sexual preference or sexual orientation;
- the person engages in sexual promiscuity;
- the person engages in immoral or indecent conduct;
- the person takes drugs or alcohol;
- the person has an intellectual disability;
- the person engages in antisocial behaviour or criminal behaviour;
- the person is or has been involved in family conflict;
- the person had been treated previously for a mental illness.

A person may however, have a mental illness caused by taking drugs or alcohol or may have a mental illness as well as an intellectual disability.