**Summary of Legal Powers to Detain or Restrain in the Emergency Department**

**Yes**

**No**

**Does the patient have Mental Capacity ?**

**Impractical or unsafe to assess** Capacity

**Risk of harm to OTHERS? ??**

**Risk of harm to SELF ?**

**Risk of harm to OTHERS? ?**

**Risk of harm to SELF ?**

Yes

Yes

Yes

No

Yes

**Mental**

**Disorder ?**

**Decision Voluntary**

**AND**

**Patient is properly Informed ?**

**Valid AND Applicable Advanced Decision ?**

**Patient’s Decision must be respected**

**Truly Urgent ?**

Yes

No

No

Yes

No

Yes

**Common Law Duty of Significant Harm**

No

Yes

**Consider Mental Health Act Assessment**

**Doctrine of Emergency**

There is a general common law power to take steps as are reasonably necessary & proportionate to protect others from the immediate risk of significant harm. This applies whether or not the patient lacks the capacity to make decisions for him/herself.

**Long Term Incapacity**

**Short Term Incapacity**

**Decision not valid unless voluntary and informed**

Best Interest Principles

● What are the options?

● What would the patient have wanted ?

● Have you considered all medical, emotional and other welfare issues ?

● Have you consulted with family, LPA, IMCA or deputy ?

Principle of Interim Measures.

● Patient likely to regain capacity soon ?

●Can decision reasonably be postponed ?

●Is delay consistent with best interest ?

●What can be done to treat cause of incapacity ?

In an emergency, in a short-term incapacity situation, you must do what is immediately necessary in the defined emergency to prevent a serious deterioration in either physical or mental well-being, but there must be no intervention past the point of crisis.

**No power to compel or Detain**

Key

Has Capacity

MCA

MHA

Common law

ULTIMATE DECISION MUST BE PROPORTIONATE