



Chapter 3 Treating adults who lack capacity

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Recent case law (*W v. M* [2011] EWHC 2443 (Fam)) has established, in relation to court approval for treatments that:

- In accordance with paragraph 5 of Court of Protection Practice Direction 9E, all applications to withhold or withdraw artificial nutrition and hydration (ANH) from a patient in both a minimally conscious state (MCS) or a vegetative state (VS) must be made to a High Court judge. (The judgment does not indicate however whether this is also the case where an attorney has been appointed with the authority to make the decision.)

In addition, in the same case, in relation to applications to the court for authorising withdrawal of ANH, the Court held:

- No application for an order authorising the withdrawal of ANH from a patient in VS or MCS should be made unless (1) a Sensory Modality Assessment and Rehabilitation Technique (SMART) assessment (or similarly validated equivalent) has been carried out to provide a diagnosis of the patient's disorder of consciousness and (2) in the case of a patient thereby diagnosed as being in a MCS, a series of Wessex Head Injury Matrix (WHIM) assessments have been carried over time with a view to tracking the patient's progress.
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