



**REASONS FOR ORDER**

**Mental Health Ordinance (Cap. 136)<sup>1</sup>**

**(Section 59O)**

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**BETWEEN**

**Madam H**

**Guardian<sup>2</sup>**

**and**

**Mr C**

**Subject<sup>3</sup>**

**The Director of Social Welfare<sup>4</sup>**

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**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Ms YEUNG Mee-ling

Member referred to in section 59J (3) (c): Ms Rosina HON

**Date of Reasons for Order:** 7<sup>th</sup> November 2011.

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<sup>1</sup> Sections cited in this Order shall, unless otherwise stated, be under Mental Health Ordinance (Cap. 136) Laws of Hong Kong.

<sup>2</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(b) of Mental Health Ordinance

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(c) of Mental Health Ordinance

**Background**

1. The subject, C, has been received into guardianship since November 2010 due to his mental incapacity to handle finance. The Board appointed his second wife, H, as guardian for a year with all six powers.
2. The subject was a 88-year-old man suffering from Alzheimer's disease for at least 12 years. The subject had graduated from a University in Shanghai. He moved to Hong Kong in 1944 later became the managing director of 3 to 4 different holding companies. From his two marriages, he got 3 children from 1<sup>st</sup> wedlock and only a son from 2<sup>nd</sup> wedlock. The first wife passed away one year after she joined the subject in Hong Kong in 1957. The subject got married again in 1973 in Taiwan. In 2003, the subject and second wife, H, moved to live in Shenzhen and passed all his businesses to his elder son and son-in-law.
3. Due to the deterioration of health and mental conditions of subject, the couple moved back to Hong Kong since August 2010. At the moment, the second wife (aged 68) insisted to take care the subject at home with the assistance of a domestic helper. The couple's living used to depend on the monthly maintenance (around HK\$10,000-\$12,000) from the elder son. The second wife collected a bank passbook of subject from the elder son. She would like to mobilize the savings (around \$520,000) to cover some of the daily expenses of subject. She therefore filed an application to the Board in mid-2010. The first Guardianship Order was granted on 11 November 2010.
4. In November 2011, the Board reviewed the case. The subject moved to live in a private old age home since June 2011. He adjusted well at old age home and the case social worker arranged waitlisting a subvented nursing

home for the subject. The second wife, H, was willing and agreed to continue to be the guardian and Guardianship Order should be renewed.

5. Regarding the expenses of the subject, H shared the household expenses at the time when the subject had lived at his own home. After the subject moved to old age home, H discontinued the contact of the foreign domestic helper and she paid all household expenses.

### **Mental and health conditions**

6. During the guardianship period, due to various physical illnesses, the subject was admitted to hospital for 5 times and he was on Ryle-tube feeding after the hospitalisation in June 2011. The subject had no response, bedbound and was not communicable in most occasions during the reporting officer's visits to him at hospital or old age home. The subject was arranged to receive psychiatric consultation from Community Psychogeriatric Outreach Service to old age home. The staff of old age home mentioned that the subject's overall health, mental and emotional conditions were stable.

### **Summary of evidence adduced at review hearing on 7 November 2011**

7. The Board explained the aspect of coroner's inquest.
8. Madam H, the guardian and second wife of the subject, said the subject's higher disability allowance was granted with retrospective effect from 7 June 2011, the entire sum of \$12,632 was backpaid on 20 October 2011. The Board required that the future monthly accounts to include this income. She said the Government's special pay-off of \$6,000 was credited to the subject's bank account on 26 October 2011.

9. The case social worker and maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, said the guardian, H, could only give him a complete set of monthly accounts and documents for checking in September this year (2011). It was true that the guardian had kept all receipts all along. He apologized to the Board for not closely monitoring the guardian by requiring her to submit completed monthly accounts on monthly basis (as required under the Standard Conditions of the Order).
  
10. [The guardian, H, reacted very strongly against the report maker's version. She said during monthly visits, she made enquiries with the report maker on how to complete the monthly accounts and she found it hard to keep records of expenses in petty sums, e.g. small purchases at market place. She did not get used to all these petty dealings and the task of keeping financial records as required. Later on, with cash coming in, she sought the report maker's advice to complete the monthly accounts which she did complete those accounts. She had in fact forgone some expenses to be recorded to avoid troubles. She did not agree that it is her fault in not preparing the monthly accounts. The Board did not agree entirely with her as the Guardianship Order had set out the duties clearly. Despite explanations by the report maker at the hearing (by showing the usual forms of accounts and the need to stick the receipts together) as to her duty in preparing the monthly accounts in a completed form, she was still not agreeable to have made omissions as she said she never knew that it was a duty demanding such a strict compliance. She was very emotional at the hearing. The Board and the report maker explain to her what was it meant by a completed monthly account and what supporting documents that needs to be accompanied with. Finally, she was agreeable to prepare the completed monthly accounts every month and submit them to the report maker for checking monthly in the next 12 months.]

11. The Board was rather disappointed by the failed monitoring of the case social worker in this case. With hindsight, the case social worker should assist the guardian to actually complete the monthly accounts as it was quite clear that a great deal of actual assistance was needed to be given to H.

### **Issues and Reasoning**

#### **Reasoning for continuing to receive the subject into guardianship**

12. The Board received and adopted the progress social enquiry report and the views and reasoning for recommending Guardianship Order as contained therein and accordingly decided to continue to receive the subject into guardianship in order to protect and promote the interests of welfare of subject. This case required closer monitoring and therefore the Board decided to renew for a shorter period of 12 months.

#### **Reasoning for continuing to appoint the legal guardian**

13. The Board accepted and adopted the view of the progress social enquiry report maker who recommended Madam H, the second wife, to continue to be appointed as the guardian of the subject in this case. The Board was rather upset by the sight that the guardian, due to her out-burst of emotions, felt almost fainted and had her head almost banged flat on the conference table.

### **DECISION**

14. The Board was satisfied and accordingly found that the subject remains a mentally incapacitated person for whom a guardian should be appointed as the order has resulted in maintenance of the subject's welfare and health.

The subject still needed a guardian to make substitute decisions, as the subject lacked capacity to make reasonable decisions on personal and welfare matters including decision on financial matters. For the same reasons as stated in the original Guardianship Order, the Board was satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concluded that it was in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.

15. The Guardianship Board applied the criteria in section 59S of the Mental Health Ordinance and was satisfied that Madam H still is the most appropriate person to continue to be appointed the guardian of the subject.

(Mr Charles CHIU Chung-ye)  
Chairperson of Guardianship Board