



**REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**Ms L**

**Applicant<sup>2</sup>**

**and**

**Mr W**

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

**The Director of Social Welfare**

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**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Miss CHAN Pui-yi

Member referred to in section 59J (3) (c): Ms Nora LEUNG Yee-ping

**Date of Reasons for Order:** 28<sup>th</sup> July 2008.

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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

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

**Background**

1. The subject, Mr W was a 74-year-old man suffering from senile dementia. Therefore, Mr W provided very limited information about his own background. The background of the subject mainly obtained through the subject's nephew, NGO case social worker (i.e. applicant) and relating housing officer.
2. The nephew, Mr T is being found to be the only relative of the subject. According to Mr T, Mr W was born in Toi Shan. He is single and never married. The subject has a drinking habit and he can drink more than 10 cans of beer a day.
3. According to the case social worker, the subject was found wandering and sleeping in the streets with dirty clothes and urinating everywhere about 2 to 3 years ago. The condition of the subject aroused the concern of the public in the vicinity and his case was referred to her organization.
4. When the case social worker approached the subject, he could not tell the address of his own public housing unit, but revealed that he could not enter his unit as his nephew kept the door key. The nephew claimed that he has been living in the subject's public housing unit for many years, but he is not the authorized tenant. According to the housing officer of the estate and the case social worker, the subject is the only authorized tenant of the unit and moved in the housing unit in 1996.

5. After the subject's admission to the elderly home arranged by the case social worker on 19 February 2008, his attire is observed to be tidy and clean. Now he joins other residents to take meals in the dinning area rather than staying in his own cubicle.

### **Circumstances leading to the Application**

6. The condition of the subject was desperate during the persistent cold spells in early 2008. The subject accepted the advice of the case social worker and started to live in the present elderly home on 19 February 2008. As the subject was not capable of looking after his welfare while he did not have a reliable relative to support him, the case social worker lodged the present application on 10 April 2008 and proposed the Director of Social Welfare to be the legal guardian of the subject.

### **Welfare Plan**

7. The social enquiry report maker supports the views of the applicant-case social worker that the subject is not suitable to live on his own and requires permanent residential care considered his weak mental functioning. To enhance the quality of residential care, the subject is recommended to apply for a subvented or bought-place placement at an elderly home for long-term care. For his public housing unit, the future guardian of the subject should liaise with the housing officer of the Estate for the handover of the unit. To increase the CSSA entitlement, the subject will be assessed for disability supplement in his medical follow-up at psychiatric centre on 20 May 2008.

8. The subject did attempt to leave the elderly home shortly after admission, but adjusted to residential living shortly afterwards. The subject is friendly and cooperative with the staff of the elderly home. He is obedient to staff's instruction.

### **Mental and health conditions**

9. The subject, Mr W, is thin and about 5 ft. tall. He is clean and tidy. Regarding self-care ability, he is independent in mobility, toileting, dressing and feeding. But he requires assistance in bathing. In the cognitive aspect, the subject has been diagnosed with senile dementia. He cannot recognize the case social worker or the staff of the elderly home. He does not know where he is. However, he can be engaged in meaningful conversation. His speech is relevant to some extent, though he is always unable to recall or answer questions. According to the record of Community Geriatric Assessment Team, the subject scored 10 out of 30 points in the Mini-Mental State Examination (MMSE) on 8 April 2008. His score indicated that his mental state functioned in the moderate to severe range. Due to the lack of information on the subject's family history and lacking further medical examinations, the psychiatrist commented that it was difficult to ascertain the cause of the subject's dementia.
10. The subject is suffering from hypertension and is currently taking Nifedipine. He is required to attend monthly medical follow-up at a general out-patient clinic.
11. At the first psychogeriatric consultation session at the psychiatric centre on 20 May 2008, subject scored 8 out of 30 points in the MMSE.

**Recommendation of the Social Welfare Department**

12. The subject is suffering from senile dementia to the extent that he is unable to care for himself independently. However, he lacks a reliable relative or friend to look after his welfare. To protect his interests, the social enquiry report maker supports the present application and recommends the subject to be received into guardianship of the Director of Social Welfare.

**Hearings at the Board on 2 June 2008**

13. The applicant, Ms L, said the subject had not been waitlisted for a subvented placement. There was no further incident that the subject asked to leave the aged home apart from the occasion as recorded in paragraph 11 of the social enquiry report. The conditions of the subject improved a lot since living in the aged home. The subject was co-operative and related well particularly to a staff of the aged home. The subject now could communicate a bit, as different from before. The subject was able to walk to toilet and turned on the television set at the aged home. The case was referred to her by the District Council's office at Eastern District that the subject was sleeping on the street for a long time and much needed welfare assistance. The neighbors said the subject was wandering and sleeping in the street for over a year. She then told the Board the details of the subject's street-sleeping habit and the living conditions of the subject during that period, which largely corroborated with the contents of the social enquiry report. She was of the view that the Guardianship Order should be granted today.

14. Being questioned by the subject's nephew, the case social worker said towards the end September 2007, she received a call from the District Councilor as a referral. She then enquired with a security guard of a garden. The security guard told her there was a street sleeper who met the description of the subject.
  
15. On her next visit to the garden, she found the subject in the vicinity sleeping near an MTR station, covering himself with some newspapers and there were a number of empty beer cans around him. She then opened a file for the subject and then followed up on this case. Soon she received a call from a neighbor who liked to visit the subject. Another welfare agency also called and checked with this case. There was subsequently a long cold spell during the winter, she made frequent visits to the subject on the street. She found that the subject was covering himself with newspapers, or thin blankets which were different every time when she saw the subject. She finally succeeded to persuade the subject to go to live at the present private old age home on 19 February 2008. There were totally around 20 visits that she made to the subject during the period from early October 2007 to date of admission to the aged home. She did not know of the nephew during the period.
  
16. The applicant had some information that the subject's home was occupied by someone else. The subject mentioned the name of his nephew to her. After the subject's stay at the aged home started, the nephew called up her office and her manager had discussed with him on the accommodation plan of the subject.

17. The nephew, Mr T, at the hearing, asked if the applicant knew that it was he who provided the blankets to the subjects while sleeping in the street. He further said he reported to the police three days after the disappearance of the subject. He then accused the applicant as having gone against the wish of the subject and received subject into her care. He then turned to ask the subject as to where he liked to live in future. He accused the social workers and the Board in not being able to understand the subject's real wish of returning home as the subject must be communicated in Toi Shan (台山) dialect or Cantonese with Toi Shan accent. The Board attempted to ascertain the wish of the subject by asking him where he would like to live in various ways including asking him in private and in the presence of all parties, the subject nevertheless gave inconsistent answers.
18. The social enquiry report maker, said the present aged home did not participate in Enhanced Bought Place Scheme of her Department. Although the environment of the home was only fair, the subject was nevertheless adjusted to it. Subject still received the monthly CSSA through his own bank account. The Board was quite surprised to take note of this as the subject was certified a mentally incapacitated person as early as April this year by two medical doctors.

Reasoning for receiving the subject into guardianship

19. The Board accepts and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the supplemental information and the views and recommendations as respectively contained therein and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of the subject.

20. The Board took due notice that both of the two medical reports have certified that the subject is limited in his capacity, inter alia, to make decisions on personal care and accommodation. The Board further considered the evidence and came a view that the attitude of the nephew of the subject, had caused a grave concern to the Board as it was likely that the subject, if for whom no guardian is appointed, would have a real risk of being returned to his care.
  
21. The nephew opposed to a grant of Guardianship Order on the main ground that the subject was not mentally incapacitated and thus should be given the freedom to wander and sleep in the street and to drink his beer. He liked to restore the subject back home. The Board observed that under the so-called previous care of the nephew, the subject became a street-sleeper for a year before the intervention of the applicant, Ms L, in early October 2007 and was since found living in an extremely deplorable and degrading state, as one read the social enquiry report and took into the account of the oral testimony of the applicant today, both of which the Board duly accepted as evidence. The Board has no hesitation to say that the subject has self-neglected in his own daily care due to lack of insight.
  
22. Further, if what the nephew said was true, namely, that the subject was under his care all along, then the nephew would be guilty of wilful neglect of the subject. Equally, the Board observed that the subject's conditions have been greatly improved and he lives with dignity as a demented elder in a private old age home. To preserve the status quo and to protect the interests of welfare of the subject, a Guardianship Order is therefore necessary because the future guardian will have the legal right to finally decide on where the subject should live and how his money should be spent. The Board noted that the nephew is now occupying the public housing unit



of the subject as an unauthorized occupier. The proposition by the nephew that the subject be restored home would unlikely be made without material consideration behind.

23. Finally, the Board wishes to state that the subject is observed to be able to communicate in social conversation by Cantonese but most of his answers are quite irrelevant and incoherent. As a frail and demented elder, the subject is clearly vulnerable, susceptible to suggestions and easily coaxed to agree to an act or omission. It is a clear case that the subject needs supervised residential care and particularly the need to restrict his drinking habit.

Reasoning for choosing the legal guardian

24. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian, the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

**DECISION**

25. The Guardianship Board is satisfied on the evidence and accordingly finds:-
- (a) That the subject, as a result of senile dementia, is suffering from a mental disorder within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;

- (b) The mental disorder limits the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which relate to the subject's personal circumstances;
  
- (c) The subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available as the subject lacks capacity to make decisions on accommodation, his own welfare plan, treatment plan and finances, which has caused conflict between family members, relatives and friends in making decisions for subject's welfare or finance;  
In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future welfare plan upon discharge from hospital, future accommodation, future treatment plan and finance;
  
- (d) The Board concludes that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

26. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare is the only appropriate person to be appointed as guardian of the subject.

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