



**REASONS FOR ORDER**

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

**(Section 59O)**

-----

**BETWEEN**

**Mr B**

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

**and**

**Mr A**

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

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

---

**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr WONG Chee-wing

Member referred to in section 59J (3) (c): Ms Wandy KWOK Man-ye

**Date of Reasons for Order:** 12<sup>th</sup> July 2010.

---

<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

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

**Background**

1. The subject, Mr A, was a 51 year-old man suffering from mental handicap since birth. He was single. His parents passed away in 1990 and 2005 respectively. He has two younger brothers. He had all along lived with his parents till his admission to the hostel in 2000. Mr A lived on CSSA and one of his younger brothers acted as his appointee.
2. The subject had a fall in the hostel in January 2009 and hurt his forehead. He was brought to attend the Accident and Emergency Department (AED) twice. Finally, he was admitted into hospital and surgical operation for his left femur fracture was done in early February 2009. Unfortunately, the subject had a fall on the ground again in ward in March 2009.
3. After two and half months' hospitalisation and rehabilitation, Mr A was able to walk with a frame with two persons' assistance. He was discharged from hospital by the end of May 2009. He was required to attend medical follow-ups at the Orthopaedic and Traumatology Clinic at a 4 to 6 weeks' interval.
4. After discharge from hospital in May 2009, the subject had another three attendances at AED and subsequent admissions to Specialty Ward of Department of Urology of a hospital due to acute retention of urine and blood stain urine from foley from May 2009 to June 2009. Also, Mr A had another eight attendances at AED from August 2009 to May 2010, of which, the subject had two and four admissions to Surgical Ward and Medicine and Geriatrics Ward respectively due to abdominal distension, urethritis (UTI), coffee ground vomiting and loss of consciousness.

**Circumstances leading to the Application**

5. Due to the frequent admissions of subject, the visiting medical officer hoped to have a tailor-made healthcare programmes for the subject. The doctor encouraged the family member to apply for a Guardianship Order for the subject in the hope to facilitate the application to join the “Public-Private Interface-Electronic Patient Record Sharing Pilot Project (PPI-ePR)” of Hospital Authority. But, the visiting medical officer knew well that the powers of the legal guardian to apply the PPI-ePR were out of the scope of a Guardianship Order.
  
6. According to the leaflet of the PPI-ePR, with the patient’s consent, private medical practitioners registered in the project can view patient’s clinical information online, which is stored in Hospital Authority’s Clinical Management System. The sharing of electronic record between different healthcare carers was advertised as benefiting patients with more effective and convenient healthcare and enhanced continuity of care without recourse to carrying their own medical records.
  
7. The younger brother applied for Guardianship Order and proposing the youngest brother to act as the guardian, after his initial application as a family member for PPI-ePR lodged with the Hospital Authority had been rejected. The applicant’s central intention for applying guardianship was to facilitate the visiting medical officer to achieve the medical information, e.g. discharge summaries, diagnosis, medications, allergy, laboratory and radiological reports for the visitng medical officer to formulate better rehabilitation program for the subject.

**Mental and health conditions**

8. According to the medical report of the approved doctor, the subject was a person of mental handicap. His intellectual assessment done in 1980 at his age of 21 revealed his performance IQ was 38 by Wechsler Adult Intelligence Scale. He has no speech, lacking communication ability and has significant cognitive impairment. He needs very close supervision and individual attention. He lacks the capacity to make reasonable decisions on his personal and welfare matters including consent to medical treatment.

**Hearings at the Board on 12 July 2010**

9. The applicant and 1<sup>st</sup> younger brother of the subject asked what he could do if he would like to proceed with the matter of obtaining authorization to consent to the transfer of the subject's medical record in Hospital Authority to the private doctors.
10. The proposed guardian and 2<sup>nd</sup> younger brother of the subject said he had nothing to add.
11. The maker of social enquiry report, on behalf of the Director of Social Welfare, said she had nothing to add.

**Reasoning of the Guardianship Board**

12. The Guardianship Board can only exercise its powers under section 59O to make an order if it is satisfied on certain criteria. The Board echoes that none of the six statutory powers of a legal guardian set out in s. 59 R (3), Mental Health Ordinance is relevant to the present case. [The “essential

powers approach” in interpreting the powers of a legal guardian as explained in HCMP 953/2008 refers.]

13. The Guardianship Board was NOT satisfied that the subject’s particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means are available.

## **DECISION**

14. The Guardianship Board observed and applied the principles contained in section 59K (2) and applied the criteria set out in section 59O (3) of the Mental Health Ordinance. The Guardianship Board was satisfied: -

- (a) The subject is a mentally incapacitated person suffering from mental handicap, within the meaning of section 2 of the Mental Health Ordinance;
- (b) the mental handicap limits the subject in making reasonable decisions in respect of all or a substantial proportion of the matters which relate to the subject’s personal circumstances.

15. The Guardianship Board cannot exercise its jurisdiction to make a guardianship order as insufficient evidence has been furnished to satisfy the criteria in section 59O (3) (c) and (d) of the Mental Health Ordinance (Cap 136) namely: -

- (a) that the particular needs of the subject, may only be met or attended to by guardianship and that no other less restrictive or intrusive means are available in the circumstances; and
- (b) that it is in the interests of the welfare of the subject that the subject should be so received.

16. The Guardianship Board, for the reasons set out in its Reasons for Order, **DISMISSES** the application for guardianship and **REFUSES** to order that the subject be received into guardianship.

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