



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Guardian²

and

Madam L

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr Amy FUNG Shuk-man

Member referred to in section 59J (3) (c): Mrs KONG MA Yuk-kum

Date of Reasons for Order: 22 October 2008.

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

² S2 of Mental Health Guardianship Board Rules and S59U(4)(b) of Mental Health Ordinance

³ S2 of Mental Health Guardianship Board Rules and S59N(4)(a) of Mental Health Ordinance

Background

1. The subject, Madam L is an 84-year-old woman with a stroke causing cognitive deficits. She used to live alone in her property. She is single and ranking the second among 15 siblings. Both of her youngest brother and two nieces would not be able to take up her guardianship.
2. Madam L first suffered from heart, skin, rheumatic diseases for which she needed to attend out-patient treatments at hospital. On June 2007, the subject was sick and escorted by her youngest brother to consult a private doctor, Dr Y. Upon the advice of the private doctor, the subject was admitted to a private hospital.
3. On 1 July 2007, the subject suffered from a serious stroke attack shortly afterwards and she therefore stayed in the private hospital continuously for in-patient treatment. She is bed-bound and totally dependent in daily activities. She is incapable of verbal communication. The private doctor insisted that the subject was not suitable for transfer to a public hospital even the subject could not afford in a long run the expensive charges and medical consultation fees of private hospital.
4. A nephew filed the application with the assistance from a social worker in order to mobilise the bank savings (around \$700,000) of subject to pay the hospital charges and consultation fees. Soon afterwards, the nephew refused to involve in the guardianship process due to the conflict with the younger brother of subject.

5. During the enquiry, the report officer found that Dr Y, the private doctor, who was the treating doctor of the subject, has settled the outstanding hospital fee (around \$200,000) for the subject.
6. The guardianship order had been made on 9 November 2007 and appointed the Director of Social Welfare as the guardian to protect the welfare and interest of the subject. The Board also recommended the Director of Social Welfare to apply for a Part II Committee Order from High Court in order to handle the financial affairs of subject.
7. After the Order granted, Dr Y still showed unco-operative attitude towards the case social worker of the public guardian. He failed to provide a medical summary and relevant medical report to facilitate the process for the Part II application. The case social worker called a special meeting with the private hospital to discuss the outstanding hospital and medical consultation fees. The accumulated outstanding hospital of subject was \$211,740 and outstanding consultation fee for Dr Y was \$517,286. They understood that they would not be paid until the Part II Order has concluded.
8. On 10 March 2008, the case social worker successfully transferred the subject to the care of another private specialist doctor, Dr Z. Dr Z's medical consultation fees are lower and also assisted the public guardian with substantial support.
9. Soon after, Dr Z assessed the subject as fit for discharge to an old age home. On 1 April 2008, the subject was finally and successfully discharged from the private hospital and was admitted to a private old age home.

Mental and health conditions

10. After the stroke in July 2007, the subject is bed-bound and totally dependent in daily activities. She is on tube feeding and wears diapers. She is unable to communicate verbally. She can only give unclear sounds or some eye contacts.

11. Under the care of Dr Y, the subject underwent MRI Scan on right hip and biopsy of right hip synovium. Dr Y also proposed insertion of Percutaneous Endoscopic Gastrostomy tube at the same period. The public guardian refused to sign the consent form for such a decision as it was deemed to be non-essential nor urgent for the immediate moment. After few days, the subject underwent the ultrasound for the right hip. On 4 March 2008, the results indicated that there was no neoplastic proliferation or malignancy.

12. Under the care of Dr Z since 10 March 2008, the doctor advised that for subject's better quality in life, insertion of PEG was not recommended. The subject needed some medications and cream to relieve the striated muscle in her right hip as subject had not been in any physical exertions for a long time due to her prolonged confinement to bed. Dr Z found that the subject also suffered from urinary infection and fungal nails on 18 March and 15 March 2008 respectively. Dr Z also increased the volume of tube feeding, titration of warfarin and diabetic drug was given.

13. After the subject admitted to old age home, her health conditions became stable. She is able to communicate in simple sentences, although her speech is slurred and not clear. The subject received physiotherapy, occupational treatment and speech training since her admission into the old

age home. Dr Z commented that the subject's prognosis was good and was likely to be a long survivor provided future medical events could be treated promptly.

14. According to the progress social enquiry report, the subject showed slight improvement in movement. Her weight was increased and the subject could give responses to questions through eye contacts and slurred words. On 26 September 2008, the MMSE score of subject was 0/30.

Welfare Plan

15. Madam L was receiving proper care and adjusted well after admission to the old age home. The new environment was favourable to her rehabilitation. Still, for the best interests and long-term rehabilitation of Madam L, placement at infirmary care had been applied. From a multi-disciplinary infirmary assessment conducted, the subject was assessed and confirmed to be eligible for infirmary care. The younger brother has agreed to the course of welfare plan for the subject.

Review hearing at the Board on 22 October 2008

16. The case social worker mentioned that on 20 October 2008 all papers were submitted to the Department of Justice regarding the Part II application. The subject's nephew objected to the application in writing without stating the reasons. In fact, the nephew had once agreed to it earlier in the same year. It was understood that it was his family's view after discussions.

17. The case social worker also confirmed that no interim receiver was ever appointed in this case. On being asked by the Board, she agreed to use a total of three bank accounts, including two newly found ones, of the subject during the next renewed period. She was open to the duration of the next renewed period of the Guardianship Order.

18. The case social worker supplemented that the subject was on tube-feeding and looked happier than before. The subject's current body mass index was 20. After observing the subject at bath, she was able to confirm that the subject did not have any bedsores. The subject joined the weekly worship service held at the chapel which was situated at the lower floor of the present aged home. The subject could speak some French and English.

19. The Board thanked the case social worker and her team for their superb and conscientious case work rendered to the subject as well as the very thorough reports submitted to the Board.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

20. The Board accepts and adopts the views of medical officer as contained in the medical report dated 26 September 2008 as well as the progress social enquiry report and the views and recommendations 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 the subject.

Reasoning for choosing the legal guardian

21. The Board accepts and adopts the view of the progress social enquiry report maker who recommended the Director of Social Welfare to continue to be appointed as the guardian of the subject in this case.

DECISION

22. The Board is satisfied and accordingly finds that the subject remains a mentally incapacitated person for whom a guardian should be appointed as the order had 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 is in the interests of the welfare of the subject to continue to be under guardianship and that the original guardianship order should be renewed.
23. The Guardianship Board applied the criteria in section 59S of the Mental Health Ordinance and was satisfied that the Director of Social Welfare is the most appropriate person to continue to be appointed the guardian of the subject.

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