



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

LT

Applicant²

and

A

Subject³

The Director of Social Welfare⁴

C

1st Party Added⁵

T

2nd Party Added⁶

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Ms Sumea CHAN Kit-bing

Member referred to in section 59J (3) (c): Ms Lily CHAN

Date of Reasons for order: the 25th day of March 2020.

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

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

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

⁵ S2 of Mental Health Guardianship Board Rules and S59N(3)(b) of Mental Health Ordinance

⁶ S2 of Mental Health Guardianship Board Rules and S59N(3)(b) of Mental Health Ordinance

BOARD'S ORDER

1. These Reasons for Decision are for the Board's Order made on 25 March 2020 concerning Mrs A ("the subject"). The Board appointed the Director of Social Welfare as the guardian of the subject, for a period of one year with powers to make decisions on the subject's behalf, as set out in the Board's Order, and subject to the conditions referred to therein.

REASONING OF THE BOARD

Background

2. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 2 November 2018, was registered as received by the Board on 2 November 2018. The Board also received an Emergency Guardianship Application dated 2 November 2018 for the same subject from the applicant. The applicant is Madam LT, sister-in-law of the subject. The evidence shows that the subject is 78 years of age, woman, with Alzheimer's disease. The subject was unable to handle finances and manage welfare matters.

The Law

3. Section 59O (3) of the Ordinance provides that, in considering whether or not to make a guardianship order, the Guardianship Board must be satisfied that the person, the subject of the application, is in fact a mentally incapacitated person in need of a guardian, having considered the merits of the application and observed the principles and criteria set out in sections 59K (2) and 59O (3) (a) to (d) of the Ordinance respectively.

Directions

4. Since there are emergency guardianship application and normal guardianship application for the same subject, the Guardianship Board directed that the two applications to be heard together.
5. The Board directed that Madam C, the niece of subject, be added as the 1st Party Added and T, the step-son of subject be added as the 2nd Party Added to these guardianship proceedings.

Issues and Reasoning

Reasoning for receiving the subject into guardianship and choosing the Director of Social Welfare as legal guardian

6. Abbreviations and glossary: -
 - 6.1. LT (“the applicant”), sister-in-law of the subject
 - 6.2. C, niece of the subject
 - 6.3. T, step-son of the subject
 - 6.4. E, wife of 2nd Party Added
 - 6.5. T family (includes the applicant, T, E and husband of applicant)
 - 6.6. C family (includes C, subject’s younger brother and subject’s younger sister)
 - 6.7. Committee (refers to M)
 - 6.8. Flat D, E Court, Mid-levels, Hong Kong (“Residence”)
 - 6.9. Removal of subject from a rented apartment and taking her back to the Residence as described in paragraph 10 of the 1st social enquiry report (“Index incident”)
 - 6.10. 1st social enquiry report (refers to Report dated 3 December 2018)
 - 6.11. 2nd social enquiry report (refers to Supplementary report dated 20 June 2019)

- 6.12. 3rd social enquiry report (refers to Supplementary report dated 4 September 2019)
- 6.13. 4th social enquiry report (refers to Letter of social enquiry report maker dated 5 November 2019)
- 6.14. 5th social enquiry report (refers to Supplementary social enquiry report dated 3 February 2020)
- 6.15. 6th social enquiry report (refers to Further supplementary report dated 18 March 2020)
- 6.16. a HCMP action in 2018 (“MP proceedings”)
- 6.17. a HCMH action in 2018 (“MH proceedings”)
- 6.18. C’s 1st affidavit (refers to C’s affidavit in the MP proceedings made on 25 October 2018)
- 6.19. C’s 2nd affidavit (refers to C’s affidavit in the MP proceedings made on 26 October 2018)
- 6.20. C’s 3rd affidavit (refers to C’s affidavit in the MP proceedings made on 30 October 2018)
- 6.21. C’s 4th affidavit (refers to C’s affidavit in the MP proceedings made on 23 November 2018)
- 6.22. C’s 6th affidavit (refers to C’s affidavit in the MP proceedings made on 23 May 2019)
- 6.23. Applicant’s affidavit (refers to Applicant’s affidavit made in the MP proceedings on 1 November 2018)
- 6.24. M’s 1st affidavit (refers to the Committee’s affidavit in the MP proceedings made on 1 April 2019)
- 6.25. M’s 2nd affidavit (refers to the Committee’s affidavit in the MP proceedings made on 21 May 2019)
- 6.26. M’s 3rd affidavit (refers to the Committee’s affidavit in the MP proceedings made on 22 May 2019)
- 6.27. T’s affidavits (refers to T’s 4 affidavits in MP proceedings respectively made on 1 November 2018, 4 December 2018 and 4 December 2018, and 22 May 2019)

- 6.28. E's affidavit (refers to E's affidavit in MP proceedings made on 24 May 2019)
- 6.29. Court's decision (refers to the reasons of decision made by a Deputy High Court Judge on 11 June 2019, where appropriate, the Order dated the same date under the MH proceedings; also refers otherwise as "Directions Application")
- 6.30. Mr CHOW (refers to counsel for the applicant and T or where appropriate, his written submissions)
- 6.31. Mr LI (refers to counsel for C, or where appropriate, his written submissions)
- 6.32. Mr LO (refers to solicitor, appearing for C, as counsel Mr LI has excused himself from appearing)
- 6.33. Mr MU (refers to counsel for the Committee or where appropriate, his written submissions)
- 6.34. Miss P (refers to Senior Government Counsel, counsel for Director of Social Welfare or where appropriate, her written submissions)

7. Proceedings history

Although having been filed on 2 November **2018**, the applications for guardianship herein went through a tortious course. Due to the particular circumstances of this case, a complete social enquiry report (i.e. one with a conclusion and recommendation) was not filed until 4 September **2019** (i.e. the 3rd social enquiry report). Only since then, the Board was able to make final preparations to list this case for hearing. However, the first offer of time slot of hearing (**14th, 16th or 21st January 2020**) was unfortunately not taken up by the parties. Finally, the diaries of counsel were agreed upon and the date of 11 February 2020 was fixed for hearing. Yet, due to the sudden surge of COVID-19 epidemic and heeding to the Government and Judiciary announcements at that time, the hearing as scheduled was vacated. The hearing was immediately re-fixed to today, i.e. 25 March 2020 as a response to the then more stable public health situation. However, during the week closer to the hearing date, public health

overall was worsened again and heeding to the latest Government and Judiciary announcements respectively on 21st and 22nd March 2020, proposals were made to and by the Board on the manner of conducting the hearing as scheduled. Due to mounting public health concern, the hearing was finally held today with parties' general consensus to limit the number of attending persons. Of note, amongst others, counsel Mr LI has excused himself from attending the hearing and the applicant was not in the list of attending persons provided by her solicitors. There was no application at the hearing to seek to have the applicant appeared.

8. The applicant has filed a normal guardianship application together with an application for emergency guardianship order both on 2 November 2018. The Board directed today to consolidate these two applications to be heard together.
9. At the outset of the hearing today, the Board also directed C and T each be added as a party (respectively 1st and 2nd Party Added).
10. The Board now turns to give reasons of its decision.
11. As agreed at the hearing by the parties, there was no issue as to whether guardianship order should be granted. The Board holds that the serious conflicts between the T family and the C family have adversely affected the well-being of the subject. Accordingly, the Board so orders.

Before leaving this point, the Board must point out that it is settled law that a committee (or receiver) is only a financial manager and as such it explains the fundamental why the Committee has faced so much difficulties in managing the health and welfare of the subject in this case.

12. The only issue to be decided is therefore the appointment of the guardian. As to this matter, Mr CHOW submitted for the T family to have T appointed as guardian while Mr LO submitted for the C family to have C appointed as the guardian, failing which appointing Director of Social Welfare was also preferred. Obviously,

these two families opposed to the appointment of the proposed candidate of the other side.

13. The Committee and Mr MU strongly recommended the appointment of Director of Social Welfare as the public guardian.
14. The 3rd and 4th social enquiry reports did **not** recommend granting a guardianship order on the ground which may, in the initial view of the Board, involve points of law. Hence, Social Welfare Department was invited to consider if legal representation was needed for the hearing.
15. Subsequently, by the 6th social enquiry report, the Director of Social Welfare changed her stance and supported guardianship order to be granted and recommended an appointment of the public guardian. Miss P also submitted for the appointment of the public guardian.
16. The Board has carefully considered the voluminous papers filed in this case, including all letters, emails, letters of solicitors copying to the Board, bundles of documents, the numerous submissions of counsel, oral and written, as well as the oral representations by witnesses and parties appearing.
17. The Board has also duly considered the relevant legal provisions, viz: -

(a) Section 59O, Mental Health Ordinance, viz: -

“(1) Subject to subsection (3), if, after conducting a hearing into any guardianship application made under section 59M(1) for the purpose of determining whether or not a mentally incapacitated person who has attained the age of 18 years should be received into guardianship and having regard to the representations (if any) of any person present at the hearing to whom a copy of the guardianship application has been sent under section 59N(3) and

considering the social enquiry report referred to in section 59P(1) the Guardianship Board is satisfied that the mentally incapacitated person is a person in need of a guardian, it may make an order appointing a guardian in respect of that person.

(2) Any guardianship order made under subsection (1) shall be subject to such terms and conditions as the Guardianship Board thinks fit, including terms and conditions (if any) as to the exercise, extent and duration of any particular powers and duties of the guardian.

(3) In considering the merits of a guardianship application to determine whether or not to make a guardianship order under subsection (1) in respect of a mentally incapacitated person, the Guardianship Board shall observe and apply the matters or principles referred to in section 59K(2) and, in addition, shall apply the following criteria, namely that it is satisfied—

(a)(i) that a mentally incapacitated person who is mentally disordered, is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; or

(ii) that a mentally incapacitated person who is mentally handicapped, has a mental handicap of a nature or degree which warrants his reception into guardianship;

(b) that the mental disorder or mental handicap, as the case may be, limits the mentally incapacitated person in making reasonable decisions in respect of all or a substantial proportion of the matters which relate to his personal circumstances;

(c) that the particular needs of the mentally incapacitated person may only be met or attended to by his being received into guardianship under this Part and that no other less restrictive or

intrusive means are available in the circumstances; and (Amended 19 of 2000 s. 3)

(d) that in the interests of the welfare of the mentally incapacitated person or for the protection of other persons that the mentally incapacitated persons should be received into guardianship under this Part.”

(b) Sections 59K, Mental Health Ordinance, viz: -

“(1) The Guardianship Board shall—

(a) consider and determine applications for the appointment of guardians of mentally incapacitated persons who have attained the age of 18 years;

(b) make guardianship orders in respect of mentally incapacitated persons and taking into account their individual needs, including the making of such orders in an emergency where those persons are in danger or are being, or likely to be, maltreated or exploited;

(c) review guardianship orders;

(d) give directions to guardians as to the nature and extent of guardianship orders made under section 59O appointing those guardians, including directions as to the exercise, extent and duration of any particular powers and duties of those guardians contained in such terms and conditions (if any) that those guardianship orders may be subject under subsection (2) of that section;

(e) perform such other functions as are imposed on it under this Ordinance or any other enactment, and in so doing shall observe and apply the matters or principles referred to in subsection (2).

(2) The matters or principles that the Board shall observe and apply in the performance of its functions or the exercise of its powers are as follows, namely—

(a) that the interests of the mentally incapacitated person the subject of the proceedings are promoted, including overriding the views and wishes of that person where the Board considers such action is in the interests of that person;

(b) despite paragraph (a), that the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected.”

and,

(c) Section 59S, Mental Health Ordinance, viz: -

“(1) A person (other than the Director of Social Welfare) shall not be appointed by the Guardianship Board as a guardian of a mentally incapacitated person received into guardianship under this Part unless the Board is satisfied that-

(a) the proposed guardian has attained the age of 18 years;

(b) the proposed guardian is willing and able to act as a guardian;

(c) *the proposed guardian is capable of taking care of the mentally incapacitated person;*

(d) *the personality of the proposed guardian is generally compatible with the mentally incapacitated person;*

(e) *there is no undue conflict of interest, especially of a financial nature, between the proposed guardian and the mentally incapacitated person;*

(f) *the interests of the mentally incapacitated person will be promoted by the proposed guardian, including overriding the views and wishes of that person where the proposed guardian (once appointed) considers such action is in the interests of that person;*

(g) *despite paragraph (f), the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected;*

(h) *the proposed guardian has consented in writing to the appointment as a guardian.*

(2) *Where it appears to the Guardianship Board that there is no appropriate person available to be appointed the guardian of a mentally incapacitated person the subject of a guardianship application, the Guardianship Board shall make a guardianship order appointing the Director of Social Welfare as the guardian of the mentally incapacitated person.*

(3) *In the performance of any functions or the exercise of any powers under this Ordinance the guardian shall ensure-*

(a) that the interests of the mentally incapacitated person the subject of the guardianship order are promoted, including overriding the views and wishes of that person where the guardian considers that such action is in the interests of that person;

(b) despite paragraph (a), that the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected,

and shall comply with directions (if any) given by the Guardianship Board in respect of that guardian and any regulation made under section 72(1)(g) or (h).”

18. The Board has now come to a decision that in this particular case, in order to safeguard the best interests of the subject, the public guardian must be appointed. The Board’s decision is guided by the following observations, rulings and findings.

18.1. Perusing alone the C’s 1st, 2nd, 3rd, 4th and 6th affidavits, the applicant’s affirmation, M’s 1st, 2nd, 3rd affidavits, T’s affidavits, E’s affidavit and the Court’s decision, the Board was overwhelmed by the evidence that the present case was an acute family conflict to an alarming degree of severity. The conflicts between the T family and the C family remain today as persistent, vivid and escalating. In brief, each side has blamed the other side of ulterior monetary motive, lust and providing poor quality of care to the subject. The mistrust between the two camps has just been monumental. The relationship between them was and remains extremely acrimonious.

18.2. There were aggravating events: -

(i) Sudden application for a committee order by the C family in June 2018

It was obvious that the late husband of the subject has carefully mapped out the future financial provision and daily care of the subject before he demised on 7 August 2017. It was originally a scheme made on a fine balance of power, i.e. 2 of the T family (the applicant and her husband) and 2 of the C family (a younger sister and a younger brother of the subject) as the executors of the estate. Put in shortly, C was invited by the subject's late husband to become the paid main carer of the subject who has already exhibited serious symptoms of dementia by 2016. C then moved into the Residence and assumed her duties since 27 August 2017 on a salary basis. This scheme was unfortunately not working towards its intended end. Instead, it ran as a two-edge sword and sowed the seeds of discord.

With \$300 million in the residuary estate of the late husband of the subject and ready for the latter's maintenance, the sudden action of the C family to apply for a committee order is observed as nothing but a clear sign of the insidious falling apart of the working relationship between the four executors. This was confirmed at the hearing that it was the case despite the fact there was absence of open quarrel between these seniors. Amongst others, there must have been early dissensions between the two families which have found its ways into the disagreements over the extent of renovations of the Residence and the consequential alternative accommodation at the a rented apartment.

The sudden MH proceedings were the prelude and a catalyst of a host of conflicts and litigations that were to ensue.

(ii) Index incident

The Index incident occurred on 6 October 2018. The drastic action taken by T and E, on the pretext of bringing the subject out for Yum-Cha, was nothing but a pre-meditated plan to upset the status quo and snatch the subject into their physical control. It was hardly believable that this sudden action was based, as alleged, on a professional advice given by the Hong Kong Police. In the view of the Board, this was an act commonly known as “adult abduction”. On balance, the Board could not see there was concrete evidence suggesting serious physical harm or health concerns of the subject that was proportionate enough to make it a necessity to lay such an ambush, apart from some disagreements over the extent of renovation of the Residence between the two families. The C family, the Board believes, must have been taken by total surprise and caught unprepared completely.

This was yet another aggravating incident to fuel the conflicts and as could be seen later, has led to the proliferation of litigations that ensued in the MP proceedings. This incident has shattered and eradicated any hope of building trust.

(iii) Exparte injunction order and various court orders made under the MP proceedings and MH proceedings

The series of court orders made in the MP proceedings, including the ex-parte injunction order on 25 October 2018, the court order made on the returnable date 2 November 2018 and the last court order made on 6 December 2018 were supposed to be able to put conflicts under control. This should have been especially forthcoming because of the advantage of the appointment of Committee a month earlier than the said last court order, i.e. on 9

November 2018. The Committee, according to terms of the said last court order, was empowered to take over the overall management of the affairs of the subject as from 7 January 2019 (see paragraph 5(ii) of the order). From February 2019, the Committee has tried hard to roll out his visitation plan, which was (and still is) a major scope of conflict. However, all these system devices had not worked out in the way they should, sadly.

One salient and shocking feature was that T and E have not duly complied with the several court orders, notably the one made on the returnable date 2 November 2018, for (inter alia) the due deliverance of a full set of keys to the Residence. In that regard, the Board fully accepted M's 2nd affidavit as evidence proving their wilful non-compliance (see paragraphs 10 to 14 thereof). The total failure to reinstate peace and order has said it all when the Committee had to file the Directions Application on 1 April 2019 (initially under the MP proceedings). The Committee thereby sought court's further directions on taking possession of the Residence, set up rules of visitation, installing 3 CCTV cameras, taking charge of employment of the carers (and other personnel) and the purchase of the new car. On perusing M's 1st, 2nd, and 3rd affidavits, as well as the T's affidavits and E's affidavit plus her various letters and emails to the Board etc., the only conclusion that the Board is driven to draw is that T and E were, at all material times, flouting the rules of visitation set up by the Committee and have strenuously opposed to the Directions Application without reasonable grounds. It is worth noting that the court has ruled against T and E.

Echoing the Court's decision in paragraph 14 (stating inter alia that there was no need to rehash everything said by T and E), the Board, in observing the case development to-date, hastens to make it a

point that the couple remains in the same stance as follows (and the Board quotes): -

- (a) They are of the view they have better judgment on what is in the best interests of the subject.
- (b) Hence it would not be necessary or desirable to leave the affairs into the hands of the Committee.
- (c) In a nutshell, they want everything to be done in accordance with their wishes and in their control.

It was further observed that even after the Court's decision approving all the directions sought by the Committee, the conflicts continued and both T and E's position just remained the same. Hence, C has continued to complain against E (and her team of carers) to have frustrated the proper functioning of the CCTV system and the visitation schedule imposed by the Committee (see e.g. paragraph 8 of the 6th social enquiry report). In sum, all the court orders and the Directions Application have virtually been frustrated by the wilful non-compliance of E and T.

The Board comes to a finding that, agreeing with the Committee (see M's 1st affidavit (paragraph 31)) and Mr LI's written submission (paragraph 24), E and T were not only not law-abiding but also habitual breakers flouting court orders and Committee's decisions (particularly on rules of visitation) to the bounds farthest they can reach. Actually, it is noted by the Board that there were even various accusations and complaints laid against the Committee by the couple, including an assertion of partiality in favor of C. As observed from the latest two hospitalizations of the subject (respectively on 20th February and 22nd March 2020), the same kind of adverse tension, dynamics or conflicts continued as between E, Committee and C without any signs of subsidence (see

paragraphs 3, 4, 5, 6 and 7 of the 6th social enquiry report, also the most recent letters of the Committee to the Board dated 23rd March and 24th March 2020). E was complained by others of late notification of hospitalization, transfer of hospital, discharge the subject from hospital unilaterally, refusing or slow to co-operate with production of medical information and records, not permitting immediate access or visits by others to the Residence after discharge, including the new family doctor Dr LEE appointed by the Committee etc.

- (iv) The Board will reiterate that past efforts of a family member or friend towards giving care to a subject do not necessarily entail his/her appointment or continual appointment as the legal guardian. The paramount concern of the Board in appointing a candidate as guardian is obviously one of the best interests of the subject. Hence, in this case, the only conclusion that can be reached must be an appointment of the public guardian in view of the persistence of acute conflicts between the two families. The Board believes in severe family conflict case of this kind, the best and sure way to ensure adequate and timely decisions to be made for the subject will be appointing the public guardian.

- (v) In reaching the decision, the Board does have the following worries should a private guardian be appointed: -
 - (a) Appointing a private guardian in this peculiar situation will, in the assessment of Board, result in more complications as the private guardian's decision will be very likely challenged by the other side. Actually, each decision of a private guardian will become a bone of contention, just like what was met by the Committee since his appointment.

- (b) Also, a complaint by the other side against the private guardian will unlikely be perceived to be fairly, openly and properly investigated or dealt with.
- (c) The situation will likely be that the already acute conflicts between the two families will further escalate in result and end up in further jeopardy of the interests of the subject. Likewise, more litigations will be proliferated.
- (d) In a nutshell, a private guardian will be difficult to act in his/her roles and duties timely and efficiently, due to conflicting relationships, for the best interests of the subject.

19. Perhaps, it is apt to register here the following **further** observations of the Board on why neither T nor C is a suitable person to be appointed.

19.1. T and E have proved themselves as paying no respect to the law and court orders (including the rules of visitation set down by the Committee, be them before and after the Court's decision) at all. How can the Board appoint a legal guardian with such a horrendous demerit? How can the Board expect such a person to fully co-operate with the future supervising officer of Social Welfare Department and the Committee? Actually, both T and E have ruthlessly taken the law into their own hands and were uncontrollable. Considering the last four paragraphs of the letter dated 9 August 2019 of T's solicitors to the Committee and the 6th social enquiry report, the Board concluded that the couple remained dictating all the affairs of subject. The rules (including the so-called Medical and Healthcare Committee) set up by the Committee were challenged and ignored. The proper functioning of the CCTV was frustrated. The couple continued to dominate and tightly control the caring personnel to the exclusion of the Committee. In one word, the couple was just ruleless.

- 19.2. T and E have exhibited behavior risking the health and welfare of the subject when staging the Index incident. Particularly, and alarmingly, the whole pre-meditated plan has simply ignored the subject's medical interests of the need to use the breathing machine BiPAD (paragraphs 10 and 18 of 1st social enquiry report and paragraphs 42(18) and (20) of C's 1st affidavit). The entire plan of ambush was aimed solely and ruthlessly at the seizure of the person of the subject.
- 19.3. On the other hand, C has been and remains an active key player of the serious family conflicts in this case and her relationship with T and E were extremely antagonistic. Given the hostile and un-cooperative attitude of T and E, the Board plainly has no confidence, if at all, that C will be able to perform her duties and carry out her plans timely or effectively if appointed as guardian. The challenges that Committee has been and is facing are very demonstrable.
- 19.4. Both T and C were and still are key players of conflicts against each other. By virtue of their very stances, none of them is a suitable candidate to be appointed ab initio. The last thing the Board would want to see is the victimization of the subject due to these acute conflicts.
20. Therefore, the Board accepts the respective submissions of Mr MU and Miss P and rejects those of Mr CHOW, Mr LO and Mr LI.
21. In line of the above reasonings of choosing the guardian, the Board would now register briefly the reasons of not permitting the playing of the video clips mentioned in paragraphs 27, 30 and 35 of Mr CHOW's written submission. At the hearing, Mr CHOW also submitted that those video clips were mainly used to show the inadequacies of C (and hence not suitable to be appointed as guardian). The Board's reasons are as follows: -

- 21.1. The filing of the video clips, attached to counsel's submission, was far too late and without prior leave of the Board.
 - 21.2. The inordinate lateness would be unfair to other parties.
 - 21.3. There was no priorly submitted proofs of source and/or proper production.
 - 21.4. There was a total absence of written description of background and contents of the videos, not to mention the absence of transcripts of dialogues of the footage.
 - 21.5. The contents of the videos, as briefly described by Mr CHOW at the hearing, were irrelevant to the central issue today in the sense that C, being a key player of the conflicts, also preferred Director of Social Welfare to be appointed. In other words, C was not actively seeking an appointment, though she wished to be so appointed.
 - 21.6. The videos are of no probative value. Actually, proving C's inadequacies will not assist the appointment of T in the circumstances of the case.
 - 21.7. It would be a waste of time of the Board and all parties.
22. The Board takes full note that even the court-appointed Committee has faced tremendous difficulties to carry out his plans, including the employment of a professional nurse. This was even so despite the full backing of the High Court of Hong Kong SAR was given. It is therefore the most distressing situation as far as the health and welfare interests of the subject is concerned. Now that under the so-called care of E, the subject has had repeated hospitalizations lately and since then put on Ryles-tube feeding. The entire situation becomes most undesirable and unbearable. Hence, in all, the present case is one of the most serious family conflict case heard by the Board.
23. Indeed, the Board would thank the Committee and his legal representatives to have given great assistance not only to the Board in disposing this application but also for his strenuous efforts to safeguard the subject's interests other than financial, against the extremely acrimonious backdrop, during the interim before a legal

guardian is duly appointed. The Committee is hereby authorized to disclose a copy respectively of the Guardianship Order and Reasons for Order herein to High Court in his future reports.

24. Accordingly, the Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the 6th social enquiry report, the Director of Social Welfare to be appointed as the guardian of the subject in this case.
25. The Board so orders.
26. For the purpose of record, the application of emergency guardianship order is hereby dismissed.
27. As the subject's health is apparently declining, the public guardian must work with the Committee closely, first and foremost, to immediately take steps to re-assess the swallowing ability of the subject and seek the best medical treatment and speech therapy and professional guidance in order that the swallowing ability of the subject may revive. This will greatly improve the quality of life and health conditions of the subject. To achieve this, it may also need to have a very patient, experienced and well trained carer to attempt hand-feeding skillfully and tirelessly under the supervision of a speech therapist. On the same note, it is abundantly clear that a properly qualified nurse should be employed, be her an enrolled nurse or a registered nurse. Besides, it should be time for the Committee and the public guardian to consider whether a geriatrician should be retained for the subject.
28. Further, the public guardian and the Committee are expected to work together to re-orientate the existing team of carers in that the persons in-charge from now on and to whom they are held accountable to are the Committee and the public guardian and no others (see paragraph 4 of M's 1st affidavit). Failing to give full obedience and allegiance, the whole team should be immediately, in the view of the Board, replaced. Having said all the above, the Board does not mean to curtail

the appointment of a full-time and sleep-in person (even on pay) to be the head of the caring team, if both the public guardian and the Committee would think fit.

29. Before closing, the Board wishes the public guardian may make full use of the advantage of her position as the Relevant Person under Personal Data (Privacy) Ordinance (Cap. 486) and the Eligible Person under Electronic Health Record Sharing System Ordinance (Cap. 625) to obtain all the medical records of the subject in the past or in future.
30. The Board would thank counsel for their assistance and the Director of Social Welfare for her reports.

DECISION

31. The Guardianship Board was satisfied on the evidence and accordingly finds: -
 - (a) That the subject, as a result of Alzheimer's disease, was 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 limited 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, her own welfare plan and treatment plan which has caused conflict between family members in making decisions for subject's welfare or treatment plan;

In this case, the predominant needs of the subject remained to be satisfied are, namely, decision to be made on future welfare plan, future accommodation and future treatment plan;

(d) The Board concluded that it is in the interests of the welfare of the subject that the subject should be received into guardianship.

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

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