



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

The Director of Social Welfare

Guardian²

and

Mr K

Subject³

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr WONG Wing-yin

Member referred to in section 59J (3) (c): Ms WONG Lai-ming

Date of Reasons for Order: 26 June 2013.

Background

1. The subject, Mr K, has been received into guardianship since July 2012 due to his lacking capacity to make decision on medical treatment.

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 S59U(4)(a) of Mental Health Ordinance

2. The subject was a 78-year-old man suffering from schizophrenia since around 1967. He was admitted to different mental hospitals repeatedly. He had difficulties in finding employment and living in community. No family member or relative could be traced. He relied on CSSA for living.
3. According to the hospital records, except schizophrenia, the subject was also suffered from hypertension and inguinal hernia. He has a history of prostatic hypertrophy, vitamin B12 deficiency, anaemia and gastrointestinal bleeding. In January and March 2011, due to falls, the subject broke his left wrist and right hip respectively.
4. In January 2012, the subject was diagnosed with bilateral inguinal reducible hernia. The case medical officer considered surgery as the definitive treatment but there was no absolute indication for surgery judging from the subject's age and relative inactiveness. After the applicant (medical social worker) provided the Guardianship Board's leaflet no. 13 "Guide to doctors / dentists - Consent to Medical and Dental Treatment of mentally incapacitated person ("MIP") in the context of Part IVB & Part IVC, Mental Health Ordinance (Cap. 136)", the case medical officer still decided not to invoke Part IVC and proceed with the surgery. Then, the applicant filed the guardianship application for the subject in May 2012.
5. During the social inquiry period, the report maker directly discussed with the case medical officer again, particularly on the aspect of "best interests" which mentioned in the said leaflet. The doctor emphasized that the surgery was totally elective and had no urgency. He thought that a guardian should be appointed to give consent to treatment in order to avoid relatives popped up later to accuse the hospital for such surgery/treatment.

6. On 6 July 2012, the Board granted the Order and appointed the Director of Social Welfare as guardian for a year with power to consent to treatment. The reasoning of the Board for receiving the subject into guardianship was stated: -

“The Board is rather reluctant to grant the Guardianship Order today as the surgeon of Hospital should rely on Part IVC, Mental Health Ordinance to carry out the surgery for the subject’s hernia. There is no disagreement to the pending surgery to be carried out for the subject. Thus, virtually there is no need to apply for a Guardianship Order as insisted upon by the medical officer-in-charge. The doctors are hereby reminded that Part IVC applies, as it is now well established and recognized even by Hospital Authority Head Office, to both emergent and elective surgeries. Whether the surgery is “absolutely indicated” is beside the point as the sole significance for the provision of the surgery is whether it is in the best interests to the subject. The Board well knows that there are many treatment options for a single medical condition. Part IVC thus defines “best interests” as: -

“in relation to the carrying out of treatment or special treatment, as the case may be, in respect of a mentally incapacitated person, means in the best interests of that person in order to-

(a) save the life of the mentally incapacitated person;

- (b) prevent damage or deterioration to the physical or mental health and well-being of that person; or*
- (c) bring about an improvement in the physical or mental health and well-being of that person;”*

This application can be well avoided but for the unreasonable and wrong decision or insistence of the treating doctor to require the applicant to lay the present application. Due to the unjustified insistence of the treating doctor, the Board is forced upon to make the present Guardianship Order in order to facilitate an early operation for the subject, or in other words, eliminate any possible further delay of the treatment. The treating team is hereby reminded that similar application should not be laid again with this Board.”

7. After the hearing, the Board wrote a letter to the case medical officer and extracted the reasoning of the order.
8. In June 2013, the Board conducted a review hearing. The Board noted, from the progress social enquiry report, that the subject received the operation on 17 September 2012 and discharged on the next day to old age home. The delegated guardian gave medical consent to the operation after he learnt about the benefits and risks of the operation from the doctors and found that it is in the best interests of the subject. The subject recovered well after the surgery. He needed to attend follow-ups in hospital for his other illnesses. There was no further medical consent required in the near future.

9. Taking into account of the continual and satisfactory care provided to the subject by the old age home, the Board concludes that the subject's best interests and welfare needs can be met without the renewal of the Order.
10. Accordingly, the Board accepts and adopts the views and recommendations of the progress social enquiry report and decided not to review the Guardianship Order.

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