



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Ms WW

Applicant²

and

Madam K

Subject³

Madam C

Party added⁴

The Director of Social Welfare⁵

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Miss Emma CHAN Tak-mun

Member referred to in section 59J (3) (c): Ms WONG Mee-ling

Date of Reasons for Order: 27th May 2015.

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)(b) of Mental Health Ordinance

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

Background

1. The emergency guardianship application and normal guardianship application for the appointment of a guardian for the subject, under Part IVB of the Mental Health Ordinance (Cap 136), both dated 13 February 2015, was registered as received by the Board on 16 February 2015. The applicant is Ms WW, medical social worker. The evidence shows that the subject, K, is 76 years of age, woman, with mixed-type dementia. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

2. 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.

Issues and Reasoning

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

3. At the start of the hearing at 10:09 a.m., the Guardianship Board ordered the daughter of the subject Madam C (“the daughter”) to be added as a Party to these guardianship proceedings.
4. The hearing did not go through long as the daughter strongly questioned why the hearing could proceed in the absence of the subject.

5. Thus, the Board ordered to stand this case down and urgent arrangement was made with the subvented care attention home where the subject now stayed for setting up a hearing venue right away.
6. At 11:35 a.m., the hearing resumed at the hall of the subvented care attention home in the presence of the subject.
7. In this case, the focus is whether the subject was physically abused and/or neglected in her care and if so, whether the subject should be received into guardianship.
8. On 23 January 2015, the subject was sent to hospital by police and ambulance as a result of complaints by the neighbour who suspected elder abuse occurred. Subject was along living with the daughter, who is her main and full-time carer. According to the evidence by the hospital, i.e. from the written reasons provided by the applicant (who is a medical social worker of the hospital) and the doctor in charge of this case Dr CHAN (who provided a total of four medical reports), the subject was found on admission to have sustained from a number of bruises all over her body.
9. Dr CHAN's reports were of the following dates: -
 - a. 2 February 2015 (this report was filed in support of the guardianship application);
 - b. 10 February 2015;
 - c. 18 February 2015 (enclosing 7 photos and another report dated the even date but of identical contents of the report set out in (b) above);
 - d. 19 March 2015.

10. The Board carefully considered all the evidence, including the medical reports, social enquiry reports, the oral evidence given at the hearing by parties, and having seen and talked to the subject, came to a conclusion that the subject should be received into guardianship with the Director of Social Welfare appointed as the legal guardian in order to safeguard her personal safety and her long term welfare interests. The Board's decision is based upon and guided by the following findings and observations.

a. Medical report dated 18 February 2015 (with photos attached) clearly showed that the subject suffered from various physical injuries with several bruises on her body: -

- (1) found on her left eye and cheek (suggestive occurred more than a week) and left angle of mouth (relatively recent and around a few days) and over chin [see photo no. 1],
- (2) lower right arm (suggestive more than a week) [see photo no. 2],
- (3) upper chest wall (suggestive of at least 2-3 weeks) [see photo no. 3],
- (4) a brownish bruise over pelvic area (suggestive of recent injury) [see photo no. 4],
- (5) bruise over left thigh outer and inner area (suggestive of more than two weeks) [see photos no. 5 and 6], and
- (6) bruises over lower right leg extended half length of leg (suggestive of more than two weeks) [see photo no. 7].

All these 7 photos were taken on 24 January 2015, i.e. the following day after hospital admission.

b. All the above injuries and bruises were rather extensive and prominent particularly with those appeared on the subject's face appeared in Photo

no. 1. The most serious and recent bruise was found to be at subject's pelvic area as appeared in Photo no. 4.

- c. The subject could not give a definitive account of what has happened to her. She told many versions, including telling the doctor at emergency department that she was hit by her younger sister in her face with shoes, pushed by her and kicked at her private part by her. Yet, later she told other versions, including denying having been hit by the daughter as well as admitting various previous occasions of physical conflicts with the daughter who assaulted her by slaps and kicks and with shoes and other objects. That was understandable as the subject was assessed to be of moderate degree of dementia. On the point that the subject remained a mentally incapacitated person lacking capacity to decide on her own affairs (which the daughter is disputing), the Board has taken a long conversation with the subject and agreed with the findings of two supporting medical reports which concluded the subject's mental incapacity. Even taking into account of improvement of MMSE score from 14 to 19 (which, apparently, Dr CHAN has taken into consideration, as the same was set out in paragraph 4 of her own report dated 18 February 2015), the Board opines that the scores were still low at any rate. The Board observes that the subject is grossly disoriented and has marked cognitive deficits including extremely poor memory. Hence, the subject's will and wishes, expressed verbally at the hearing, would carry little weight in the assessment of future welfare plan.
- d. The daughter has strongly opposed to a grant of Guardianship Order. She flatly denied any attack made towards the subject. She even denied noticing any bruise of the subject at all. On this point, the applicant informed the Board (recorded in her written reasons for application) that the daughter told that she "did not know" why there were bruises

on the subject, nor the positions of such bruises. When seen together with Dr CHAN on 5 February 2015, the daughter told the same version. The daughter only suspected the bruises were caused by subject's own falls and the side effect of aspirin. The above information was also recorded in the last two paragraphs in page one of Dr CHAN's report dated 18 February 2015. Facing the (same) enquiry by the social enquiry report maker Mr Y on 13 March 2015, as recorded in paragraph 23 of the social enquiry report, the daughter offered only a bare denial (as what she did at the hearing today) and even told Mr Y she did not notice the (prominent) bruises all over the subject's face. At the hearing, the daughter disputes the accuracy of all these records and has made unsubstantiated challenges against Dr CHAN's report and Mr Y's report. The Board does not accept this change of version because no reasonable grounds were shown.

- e. The daughter could not give a convincing account of happenings on the 23 January 2015, i.e. the day on which the police was summoned to the scene by the neighbour who suspected elder abuse, and particularly why the subject was kept outside the door for long hours and yet the daughter (according to her) could get on sleeping inside for that long.
- f. Dr CHAN has observed correctly that, as seen from the Medical Enquiry Form dated 19 March 2015, "MIP's bruises over her inner thigh and perineum are not likely due to fall or bump, and may be related to physical assault".
- g. The Board agreed with report maker Mr Y's observation, set out in paragraph 31 of the social enquiry report, that based on the fact of recent injuries sustained by the subject and the daughter's claim of

absence of awareness of such injuries, the daughter was considered to be negligent in the subject's care.

- h. In the same line of reasoning, the Multi-disciplinary Case Conference on Suspected Elder Abuse held at the hospital on 20 May 2015 was correct to conclude that the present case is a serious neglect case and hence an elder abuse case. [Minutes of the case conference was annexed as Appendix 1 of Mr Y's supplementary report.]
 - i. Therefore, the only conclusion the Board is entitled to draw in the circumstances of this case is that the subject was in serious neglect of care, resulting in extensive injuries, and as such, a Guardianship Order with Director of Social Welfare appointed as the public guardian was necessary to be granted to protect the subject from further abuse.
 - j. A passing remark is that allowing an elder with moderate dementia and unsteady gait due to Parkinsonism to freely going out onto the street all on her own is by itself a sign of serious neglect.
11. In this particular case, the Guardianship Board reminds that the public guardian should seriously consider residential care to be arranged for the subject. The Board also recommends for applying for a committee order under Part II, Mental Health Ordinance to, at least, dispose of the subject's stocks so that the subject could be eventually arranged to stay at a quality care home operated by a renowned charity or non-government organization.
12. For the record, the application for emergency Guardianship Order is dismissed. The Board noted that the subject was transferred to an emergency placement at the present subvented care attention home from hospital on 18 February 2015.

13. The Board would like to thank Mr Y, the applicant and Dr CHAN for their clear reports and helpful analysis.

DECISION

14. The Guardianship Board is satisfied on the evidence and accordingly finds: -

- (a) That the subject, as a result of mixed-type 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, her own welfare plan, treatment plan and finances, which has resulted the subject being abused physically;

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, 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.

15. The Guardianship Board applies the criteria in section 59S of the Ordinance and is 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