



**REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**Madam E**

**Guardian<sup>2</sup>**

**and**

**Mr F**

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

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

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**Members of Guardianship Board constituted**

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Ms YUNG Lai

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

**Date of Reasons for order for Renewal:** the 11<sup>th</sup> day of October 2016.

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<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 and S59U(4)(b) of Mental Health Ordinance

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(c) of Mental Health Ordinance

## **REASONING OF THE BOARD**

### **Background to review**

1. The subject is 81 years of age, man, with Alzheimer's disease. The original guardianship order had been made on 12 April 2016 for a period of one year, with powers to make decisions on the subject's behalf as set out therein, and subject to the conditions referred to therein.

### **The Law**

2. This Review was conducted under section 59U (2) (b) of the Mental Health Ordinance, which requires that a review must be conducted prior to the expiry of the original Guardianship Order.

### **Summary of evidence adduced at hearing**

3. **Madam E**, the outgoing guardian and wife of the subject, says she cannot remember what the explanation given to her by the Chairperson on her guardian duties last year was. She holds nothing in her mind except the only thought of getting the money back (i.e. the insurance compensation received).
4. She just wants to know why the bank account of the subject (from which she could also withdraw money before) was frozen. [The Board explained to her that it was the second time that she applied for Guardianship Order. The first application as in November 2012 which was withdrawn by her. At that instance, witness summons was issued and only one bank account of the subject was found.]

5. She does not properly explain the problems with her accounts keeping, but repeatedly says that there is no money at her home. The money (i.e. the insurance compensation) is hers and the Board's requirements were too stringent on her, like monthly reporting and coroner's inquest. She spent some of the subject's money, about \$3,000 to \$4,000 on her own use, during this period under guardianship. She has no money and has borrowed from others.
  
6. Despite repeated efforts by the Board to explain the situation to her and engaging her into conversation over her problems with accounts, e.g. no receipts produced or carry-forward amounts in every single monthly account, she simply turned a deaf ear and simply repeats that she just wants to get back the money of the subject. She even says it is her (or their) money and questions why she would need to be supervised in spending money. The Board simply could not bring her back to senses even after several attempts to make her focus on the fact that it was her to have applied for Guardianship Order (twice) and that several social workers working with her (and even the Board) have explained to her on the scope of guardianship financial management. She only voices out that she needs to use the subject's money to repay her younger sister and brother-in-law in Mainland, yet it was not possible for her to get any paper in support.
  
7. **Ms G**, medical social worker and the maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, says she has nothing further to add.

### **Issues and Reasoning**

Reasoning for continuing to receive the subject into guardianship and appointing the Director of Social Welfare as new legal guardian

8. In view of the detail description of the guardian's failure of duties contained in the interim report dated 23 September 2016 filed by the case social worker, the Board comes to a view that the guardian has fundamentally failed and/or breached all her major duties including muddling up all the monthly accounts of the subject since the time when the Guardianship Order was granted this April. It is hopeless to expect the guardian to perform again, due to her adamant and unreasonable stubbornness to seize the autonomy of using of the subject's savings freely and free from any supervision. Indeed, her pledge given to the Board to perform all the accounting duties at the last hearing on 12 April 2016 was only a false pretence with which she was granted the Guardianship Order. Besides, it was alarming to the Board that the guardian frankly admitted that she has used \$3,000 to \$4,000 for her own purposes during this period. Further, the five so-called monthly accounts filed are hopelessly confused and mostly without support of receipts, despite diligent pursuit by the case social worker (see the 5-page tabulation of mistakes/attitudes set out in the interim report). In view of the guardian's attitude, belief and stance taken at the hearing and upon considering the paragraphs 2, 3 and 4 of the interim report, the only conclusion the Board entitled to draw is that the guardian is not suitable to continue her role, particularly due to her weak concepts of accounting and extremely unco-operative attitude held towards the case social worker throughout.
  
9. The Board receives and adopts the interim report and the views and reasoning for recommending the continuation of Guardianship Order and appointing Director of Social Welfare as the new guardian as contained therein and decides to order accordingly.

10. The Board will order an account to be taken with the outgoing guardian and all unused trust money must be returned to the subject, failing which the matter will be reported to the police for investigation. According to the estimation by the case social worker supported by some investigation, the outgoing guardian should return \$38,665 (see supplementary information dated 6 October 2016).

## **DECISION**

11. 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 has resulted in maintenance of the subject's welfare and health. The subject still needs a guardian to make substitute decisions, as the subject lacks 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 is satisfied that there remained no less restrictive or intrusive alternative to guardianship. The Board concludes 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.
12. The Guardianship Board applies the criteria in section 59S of the Mental Health Ordinance and is satisfied that the Director of Social Welfare is the most appropriate person to be appointed the new guardian of the subject.

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