



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Ms LN

Applicant²

and

Madam YKK

Subject³

Mr CO

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): Dr CHOI Wing-kit

Member referred to in section 59J (3) (c): Ms Angela LEE Shuck-yee

Date of Reasons for Order: 11th September 2013

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 Madam YKK, aged 91, was an indigenous villager. She gave birth to 5 daughters and 2 sons but one of her sons have passed away in tender age. The family migrated to UK in 1970's. After the couples retired in 1997, they moved back to Hong Kong and lived in the village house. Her husband passed away in 1999. Although, all daughters of subject were living in UK, they kept making contacts with subject and paid visits to her once they were backed to HK. The subject's grandchildren in Hong Kong also paid regular visits to her.
- 2 The subject was all along under the care of the only son Mr CO. Mr CO was lived in the vicinity. He, living next door, used to visit the subject several times a day and was employed a domestic maid to take care the daily living of the subject. Mr CO also responded to look after subject's medial needs.
- 3 The applicant, Ms LN, grand-daughter (i.e. the daughter of subject's eldest daughter who passed away in 1991), suggested to employ a full-time nurse and full-time health care worker to provide professional care to the subject after a fall in February 2013. Both reported their work directly to Ms LN. Ms LN gave instructions to them to carry out the caring plan and provide diet as directed by her.
- 4 At the beginning, the caring plan went smoothly. After a few months, there was difference of opinions between Ms LN and Mr CO on subject's daily care e.g. diet, Chinese medicine to be used, living environment etc. Even worse, Mr CO refused to let Ms LN and the nurse visit the subject and police assistance had been sought.

- 5 Due to the conflict between the family members, Ms LN filed the normal guardianship and emergency guardianship applications to the Board in order to safeguard the care quality of the subject.

Summary of evidence adduced at hearing on 11 September 2013

- 6 Ms LN, the applicant, proposed guardian and the granddaughter of the subject, said her first aim for a Guardianship Order was to stop the neglect which was continuing. Once Director of Social Welfare steps in, she liked the subject be cared at home continuously. She liked the subject to have personal care and proper medications at home and did not like the subject to be fed with substances of unknown origin. She liked the subject to live her last years with dignity. Subject's daughters lived in England but it did not mean that the son could monopolize her care. Uncle (the son) had the subject's interests at heart and did care for her but he was misguided and all decisions were deferred to his wife who did not act in the best interests of the subject. There was acrimonious in-law relationship. Guardianship Order could let the subject lived in her house with proper facilities and clean environment. Subject's clothes were moldy and disgusting and covered with mattress and she was even not allowed to go in and clean them. Guardianship Order could make sure that the subject was not fed with unknown substances which will cause her demise. There was absence of proper nursing care and proper medication and the subject should have urgent medical care when needed. Subject had civil rights for food and visitors, both were not allowed. She was stopped visiting since 4 April 2013 (Ching Ming Festival) when there was an incident of calling the police.
- 7 On whether subject had reasonable care currently as assessed by the social enquiry report maker, she said yes because Uncle (the son) has taken subject to hospital appointments. However, no one really knew about

reasons/circumstances of the subject's falls (paragraph 9 of the social enquiry report referred to two falls of the subject respectively in December 2012 and February 2013) and why the secret? Son's wife has acrimonious relationship with the subject. She did not care for the subject and the subject did not like her. She recounted she was not informed of the fall so that the subject was left with no visitors for a few days at hospital during Chinese New Year time, making her to think that no one cared for her. It was not only her that made this complaint.

- 8 From February 2013 onwards, the subject was not in reasonable care, as seen from the nurse journal, the subject was in gastric-intestinal bleeding, why would one stop the medication and force the subject to drink coffee. [The Board referred her to paragraph 1.2 of the son's letter dated 11 September 2013 on reason or history of using Famotidine.] However, the sequence of the doctor appointment (the doctor only came on 21 February 2013—see the supporting medical report by the doctor) did not prove the son's response as true. Even if the subject had those symptoms, resulting in the son stopping the medication, the son should instead take the subject to hospital but he had no right to stop the medication.
- 9 It was her wish and her aunts' wish to let subject stay in her own home with sufficient and personal and nursing care by a nurse and personal care worker, to be financed by her. She referred to letters of 19 June 2013 and 31 July 2013 by aunts expressing the wish and a complaint against the son's wife of denying the subject of nursing care and keeping secret of the fall incident or gastric intestinal bleeding. The wish was to ignore the son's wife from providing care to the subject in future. There should be changes at home and facilities to guard against fall, so that the subject can live in comfort. The current maid was not trained for elderly care and someone should give her proper supervision. The subject could be trained for toileting and

should not be given diapers always. The home environment should be improved, like the peeling offs from the ceiling. There was no air-conditioning too.

- 10 She was not allowed do the home improvement or cleaning now.
- 11 She would like the Director of Social Welfare to act as guardian to ensure proper medication. This was a medical case. It was important for the subject to take the nutritional milk “Ensure”, now stopped by the son. Subject used to have low hemoglobin level, thereby suspecting intestinal ulcer but was discharged from hospital by the son. Hiring of a nurse for the subject was needed.
- 12 She explained that she liked her manager to speak to the son because she could not have smooth dialogue with him. She said, under the son’s care, the subject was not given dental treatment for twenty years. Yet, she took the subject for dental treatments eight to nine times (in years 2007, 2008, 2010 and 2013). Subject did refuse her suggestion to dental treatment and said “uncle” (the son) would do it. But if dental treatment was to be taken at the public sector, that will be a long wait.
- 13 **Nurse LEE**, the nurse, said her statement/journal (exhibit marked “LYM-1” to her affidavit dated 10 September 2013) was recorded by others and she just spoke in Cantonese. She has re-read it before signing. She confirmed the truthfulness and correctness of her affidavit.
- 14 She agreed that it was usual that the main door of the house was kept open. She said that the environment was not good because she saw ants under the sponge of the washing basin at the kitchen. Ants also got into the bottle storing the drinking water of the subject. At around 7:00 p.m., there were a

lot of mosquitoes coming in the house. Mosquito bites were itching to the subject and her. In daytime, the air was very stuffy. One fan was not enough and the subject told her it was hot. Fan speed was kept at the lower rate of 1 or 2. She suggested the speed should be 3.

- 15 She regarded the blisters of the subject's legs as the beginning stage of bed sore. At the time when she left, there was no more dressing needed and they recovered well.
- 16 The things placed around at the house were dusty. She asked the maid to clean and it was partially done. Yet, soon after, the dust appeared again. There were so many used cans kept at the house.
- 17 She had five to six similar jobs taken before, i.e. on one-to-one basis at an elder's place. She was an enrolled nurse of three and a half years experience. She worked for the first year in St Paul's Hospital, then at a residential care home for elderly and at Quality Health clinics. For now, she got jobs through nursing agency. On an evaluation, she thought the subject's house environment was the poorest amongst the seven jobs she finished so far. She added that the food provided was not healthy or fit for elders like subject, e.g. chicken meat was not fresh enough.
- 18 **Mr CO**, the son of subject and Party Added, pleaded strongly that there should be no Guardianship Order as it may entail an autopsy should the subject pass away. He felt shameful to be here today as family matter comes to the open.
- 19 He said there has been no neglect on the subject at all. The so-called unknown substance was medication properly prescribed by a registered Chinese medical doctor. As one can see, the subject's hypertension and eye

illness were stabilized, and thus the medical follow ups at hospital and Wong clinic were becoming less frequent.

- 20 Poor in-law relationship was just a normal happening in families.
- 21 He has not seen ants around the house or utensils. Even if there were, it was not a strange thing in a village setting. All it took was to wash them away and make sure the drinking water was clean.
- 22 He thanked Nurse LEE who has really done a good job. It was about April this year that the subject has recovered from fall injuries, thus there was no need to keep the nurse. The nurse had little to do since then and sometimes went to half sleep in the house, or watching TV or doing her own homework behind the half-open door. Till June 2013, he called one of his younger sisters and sisters agreed that there was no further need of a nurse. He then told Nurse LEE on 1 June 2013. Thus, there should not be any surprises when he stopped the nurse from getting into the home on 16 June 2013.
- 23 The applicant called in Dr X twice without having first informed him. He happened to be around at the doctor's first visit. Regarding Dr Y's visit (the psychiatrist), he was not informed at all.
- 24 He has a record of taking subject to dental treatments. He recalled the day when applicant's manager Mr P called him. It was raining at that time and the reception was poor. Upon returning home, his wife found contacts of private dentist and therefore he called back Mr P, informing him that he could handle the dental treatment by himself. But Mr P told him that since everything was booked, he might need to pay for them. He just let them do it. He has never been told of such a long history of dental treatments provided by the applicant to the subject before.

- 25 He questioned why the applicant by-passed him in all things. The applicant should respect him because it was his own house and the subject was his own mother. There have been many times that he told the applicant that he was fine to handle the subject's care and asked her to let him do it. He complained that the applicant just entered his house and "touched" things here and there. He felt annoyed because the applicant has just not taken him seriously.
- 26 He admitted that he had not informed anyone about the subject's fall in February 2013. It was because he did not want to make others worried. He thought he could handle it and the subject's care.
- 27 Regarding stopping the stomach medication, he said the doctor asked him to come back in the afternoon to the hospital to discharge the subject, as the blood test in the morning showed low hemoglobin level. But, the hospital suddenly sent the subject back home directly. Famotidine was continued for the subject but was stopped on 18 or 19 February 2013 because of her stomach swelling. Mr P called on 25 February telling him that subject's hemoglobin level was low and advised to give beef and Famotidine to subject. He did so till 8 April when Dr X came again. Mr P called him again informing that the hemoglobin level of subject was 11.5, but the new result had no paper yet. He continued to give Famotidine to subject till 9 July 2013 when the subject was seen at clinic. The doctor there told him that the hemoglobin level of the subject was 10.4 (11.9 normal). The doctor advised that it was acceptable to stop Famotidine for the subject as the reading was acceptable in respect of an elder. He was told to wait for the 23 September week for a further blood test and if the result was OK, then there would be no need for Famotidine anymore. Another appointment was booked for 8 October for viewing the new blood test result. In the meantime, Famotidine was temporarily stopped.

- 28 Regarding daily care, he went to market with wife and bought food for all. The Indonesian maid attended to the subject 24 hours a day. The maid also cooked for the subject while his wife cooked for him. His wife would cook soup and dishes and brought them to the subject. He helped in bathing the subject together with the maid and paid a few visits a day. He bought medicine from the Chinese medical doctor and the eye drops. In case of vertigo, he would bring subject to see private doctor.
- 29 On why the wife did not cook for the subject but the maid, Mr CO explained that the subject used to have salty food, like curry, and subject's meal time are quite early, e.g. lunch at 12:00 noon, that might not suit his time table. Sometimes, his wife did cook some dishes for the subject.
- 30 On rooms of improvement, he said the house was quite confined in physical shape and partitioning and thus the wheel-chair could not be pushed directly to the toilet. On the questions of lot of used cans lying around, he said these were old things that the subject loved. On whether they could be cleaned, he showed agreement but added that in these few months, he was so disturbed by the guardianship application and therefore so far he just told the maid not to touch them.
- 31 Subject did not like others to clean up her own room upstairs or the stuff inside.
- 32 He recapped that he did call up his younger sisters. A said she was not informed of such application by the applicant. B agreed there was no need for the nurse, but she liked to have a couple of weeks more to think. She did call back later and there was some dispute over this matter. Afterwards, there was no more dialogue between them. C said nothing on the care of the subject. She also said she knew nothing.

- 33 His other younger sister D said since her husband became ill, she could not come back to Hong Kong.
- 34 He confirmed there have been two falls of the subject, the second fall was serious, leading to four days' hospitalization.
- 35 Since 1997, the subject never had chronic skin problem and indeed has no skin problem.
- 36 He disagreed there was mosquito problem at the house of the subject at all.
- 37 He asked to keep subject under his care. If his sister B would like to let the subject stay at a care home, he would prefer TP area so that he can pay daily visits to her. TP was a convenient place because of his own daily travelling routine. He liked his other sisters to come and sat down to talk about this matter of future care.
- 38 He would like to be left alone. As a son, it was natural for him to care for his mother, the subject.
- 39 He emphasized that the poor in-law relationship has never come to play down the quality of his care given to his mother. It was a tradition that males dominated family affairs.
- 40 The medical social worker of hospital and the maker of social enquiry report, on behalf of the Director of Social Welfare, said both sides are genuine to the subject. The case was now referred to a government family services centre for assistance.

- 41 The social worker of Integrated Family Services Centre, on behalf of the Director of Social Welfare, said this case was referred to her centre. She has seen both sides already. Various community services were introduced. Whether a Guardianship Order was granted or not, the case will not be closed. Her centre will assess the case needs and whenever there was need, the case will be followed up.

Reasoning of the Guardianship Board

- 42 This case was a clear family conflict case. The main conflicting parties were the applicant (the grand-daughter) of the one part and the son (and his wife) of the subject of the other part. The subject was a 91 years old widow, an indigenous villager. Despite her previous migration to United Kingdom, the subject returned to Hong Kong in 1997 and lived at the present village house since. The subject was cared for by her son, Mr CO (“the son”), ever since.
- 43 The Board had read and considered voluminous documents, social enquiry report, medical reports, statements, letters and affidavits filed by both sides. Upon further considering the evidence heard at the hearing today, the Board came to a view that Guardianship Order should not be granted. The Board so ordered and dismissed the application both of the emergency application and the main guardianship application herein.
- 44 The Board gave its reasons.
- 44.1 It was not difficult to discern that the parties’ relationship turned sour since the subject’s second fall incident in February 2013. It was clear also that the applicant then intervened deeply into the caring matters of the subject, out of good will as the Board believed. Due to her

observation that the subject was not properly looked after or even neglected and the house environment poor, the applicant then provided, out of her own resources, an enrolled nurse and a personal care worker to look after the subject in addition to the Indonesian maid. However, the matter had not proceeded well as thought and there were clashes and suspicions on various care matters over the subject, such as feeding the subject with unknown substance (later found out to be Chinese medicine prescribed by a registered Chinese medical doctor), absence of medical treatment, poor hygiene of the place and poor air ventilation, mosquitoes and ants problems, absence of dental treatments, stoppage of stomach medication, calling in of private doctors (without notifying the son), refusal of physiotherapy, doubtful food quality, refusal to use nutritional milk “Ensure”, use of skimmed milk, for want of installation of bedrails etc. The relationship got even worse on 4 April 2013 when the disputes or quarrel escalated to summoning for police intervention. The applicant was, since then, gaining no access to the subject. The breaking point occurred when, while believing in the recovery of the subject, the son stopped the service of the nurse on 16 June 2013. Ten days later, the applicant filed the emergency guardianship application and the main application i.e. 26 June 2013.

44.2 In considering the evidence on a whole, whilst it may be true that the subject’s physical conditions in February 2013 were not well because of the fall and the house environment may not be tidied up to the expectation of the applicant, it was in the view of the Board that the totality of the situation did not amount to a neglect of care to the subject by the son. In his last letter dated 11 September 2013 to the Board, the son has shown a receipt dated 12 March 2013 regarding his purchase of adult diapers and a bed side rail. The social enquiry report maker, who paid a home visit at 4:00 p.m. on 8 July 2013, found

the home environment clean and tidy and the subject was observed to have no sweating. This finding was compatible to the observations made during the Board's visit to the subject on 5 September 2013. The full interview record was reproduced below: -

- “1. The house of the subject faced a large open terrace within the boundary of which there were many adjoining village houses of similar type and style.*
- 2. Down the terrace, there was a large open space apparently being used as a car parking lot.*
- 3. There were several steps leading up to the entrance of the house. As the house was longitudinal and thus the main door served to provide the flow of air, light and ventilation of the ground floor of the house. At the back end of the ground floor were the kitchen and bathroom. Thus, the ventilation would be good if both the main door and the main window of the kitchen were kept wide open.*
- 4. Entering the main door was the sitting room, which was apparently turned into the subject's rest and activity centre as her bed and wheelchair were properly placed inside.*
- 5. Subject was seen neat and tidy, sitting comfortably on a high back cushion which was placed on top of the long sofa. The sofa and her bed respectively occupied one of the two side-walls. The place was*

kept clean and tidy. When further viewing the kitchen and bathroom, they were rather spacious, clean and tidy. During the inspection, no ants or mosquitoes were noticed. Perhaps due to raining, the ventilation of the place was found to be satisfactory and the temperature inside the place was comfortable.

- 6. The bed of the subject was placed with a ripple mattress. (The mattress, told by the son, was purchased by the applicant.) One side of the bed is by the wall, while the open side was guarded by two bedrails, with a rail-free section in the middle.*
- 7. There was a fan near the sofa on the other side, facing the bed. However, the split-unit air-conditioner has been out of order for some time.*
- 8. The Indonesian maid was met. She was able to speak some Cantonese and was pleasant. Her interactions with the Subject were natural and looked harmonious.*
- 9. The Subject was a polite and friendly old lady and could be easily engaged in social conversation. She was in settled and good mood and very spirited. She was able to speak quite clearly and relevantly. She told that it was not hot today. When enquiring about her meals, she said she has taken her breakfast but not yet her next meal. She admitted not seeing well*

but forgotten entirely about her fall incident early this year. She nevertheless repeatedly told that she did not feel pain of her shoulder. Later she said she had occasional left shoulder pain and dizziness. Although she could not recall the day of the week, she could tell correctly which was her left shoulder and right hand. She could tell she could not walk up the stairs and now slept on the ground floor level. She even could answer correctly one out of the two simple subtraction problems put to her. She was ready to recognize the respective voices of the maid and her son and engaged in conversations with her son spontaneously and naturally.

10. She could tell repeatedly that she had pain in her left leg. She remembered she had early marriage and has been living in the same house for many years. She was eager to waive good bye and in a happy mood, she asked us to return to visit her again.”

44.3 In deciding whether to grant a Guardianship Order, the Board was mindful of whether there was a significant problem arising in the welfare of the subject. Considering the evidence, the subject, an indigenous villager, has been under the care of the son in the past 16 years during which she lived in the same village house. That was the station of life where she found herself in. That was also the overall environment she was in, to say for the least, during the past 16 years. It was undisputed that she recovered well from her fall and was now being cared by an Indonesian maid and her son. Considering the applicant's various allegations over care, treatment and living

environment, the evidence supporting such allegations and the replies by the son, the Board cannot be convinced that there have been neglect of care or treatment. Instead, it was certain that there was mistrust and serious communication problem between them. It was, as assessed by the Board, a matter of difference of expectations on the quality of care that set the applicant and the son apart. As there can never be a definitive formula defining what is a quality care, the ultimate question to ask, rather, or therefore, was whether the current care arrangement was sufficient for the needs of the subject. Judging from the submissions and letters from the son and on considering the observations and conclusion of the social enquiry report (which did not recommend Guardianship Order), the Board tended to believe that the present care, as it were, under the son was reasonable and sufficient. The Board also drew inference from the fact that since the cessation of the nursing service on 16 June 2013, the subject remained in stable health and apparently lived happily at her village house. In sum, the Board cannot find a significant problem in the welfare of the subject that calls for a grant of Guardianship Order. In the circumstances, the Board decided to dismiss the present two applications.

44.4 For the record, the Board did not find the sound recordings or the video recordings (in total of 11 of them) of any probative value and declines to open any of them. The decision was made on basis that the Board's concern was more on the problem of the current care of the subject. Besides, there were sufficient and ample evidence to be considered by the Board on almost all aspects of allegations made by the applicant. Indeed, the son has not disputed the happenings as recorded in those incidents. Nevertheless, since all transcripts were exhibited in the affidavits of the applicant, the nurse and the applicant's manager, they did form part of the evidence in this case already.

44.5 Lastly, the Board made two recommendations in this case, while dismissing the applications. First, the Director of Social Welfare shall continue to follow up this case as a family case by an Integrated Family Service Centre. Secondly, the son should continue to seek and accept professional advice from social workers in order to enhance the quality of care of the subject in future, as the needs of an elder may change in course of time.

45 The Guardianship Board can only exercise its powers under section 59O to make an order if it was satisfied on certain criteria.

46 The Guardianship Board was NOT satisfied that the subject's particular needs may only be met or attended to by guardianship, and no other less restrictive or intrusive means were available.

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