



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

BETWEEN

Madam E

Applicant²

and

Mr N

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-yee

Member referred to in section 59J (3) (b): Dr MA Hon-ming

Member referred to in section 59J (3) (c): Mr HA Siu-pang

Date of Reasons for order: the 3rd day of September 2018.

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

Direction of Consolidation

1. 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.

BOARD'S ORDER

2. These Reasons for Decision are for the Board's Order made on 3 September 2018 concerning Mr N ("the subject"). The Board appointed Madam E 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.
3. AND the Board, pursuant to section 59Q, DISMISSES the application for emergency guardianship.

REASONING OF THE BOARD

Background

4. The emergency guardianship application and normal guardianship application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, both dated 20 July 2018, was registered as received by the Board on 20 July 2018. The applicant is Madam E, elder sister. The evidence shows that the subject is 57 years of age, man, with mental handicap. The subject was unable to handle finances and was incapable of consenting to treatment.

The Law

5. 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.

Summary of evidence adduced at hearing

6. **Mr N**, the subject, says, after asking the applicant, he came from home. After asking the applicant again, he says he is 57. Being tested, he can see from a distance with his both eyes. He says his right eye is not so good.
7. **Madam E**, the applicant, proposed guardian and elder sister of the subject, says she likes to become the guardian of the subject for his eye surgery of his right eye (the eye was found bleeding). On 19 June 2018, she recalls that the doctor told her to apply for becoming the guardian as the subject cannot sign for the surgery. She told the doctor that the family agreed to the surgery. The doctor said it still needed a guardian to sign.
8. The subject did sign for right eye cataract surgery back in 2015.
9. The bleeding situation of the subject's right eye has started for about one year before 19 June 2018.
10. [**Ms C**, the niece of subject, says she will accompany the applicant to the next follow-up at the eye clinic. At the last medical up at the eye clinic on 14 August 2018, a lady doctor told her that the subject will need a cataract surgery of his left eye now (as cataract did not require consent). That will be done in about one year's waiting time. At that occasion, the subject's right eye operation (which will be under general anaesthesia) was only briefly touched upon and the attending doctor said it needed to enquire with Dr L. Subject has later done a scanning of his eyes on 20 August 2018.]

11. **Miss T**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says she has not talked to Dr L directly at all.
12. She will assist by contacting Dr L's office once she receives the notice of Guardianship Order having been granted.

Issues and Reasoning

Reasoning for receiving the subject into guardianship

13. The Board reluctantly granted this application by appointing the applicant as guardian. There is no one opposing to the proposed surgery of the subject's right eye. It is wrong in principle to ask for an appointment of guardian to discuss about treatment. Indeed, Dr L should discuss with the family and come to conscious medical decision first. This application is either pre-mature or totally unnecessary. In fact, the treating doctor should proceed with treatment by relying on Part IVC of Mental Health Ordinance instead of requiring the family to apply for Guardianship Order. The treating doctor is obviously mistaken that an elective surgery cannot invoke Part IVC.
14. The Board receives and adopts the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the views and reasoning for recommending Guardianship Order as contained therein (particularly paragraphs 27 to 30) and accordingly decides to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.

Reasoning for choosing the legal guardian

15. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report (particularly paragraphs 27 to 30), the proposed guardian Madam E, elder sister, to be appointed as the guardian of the subject in this case.

DECISION

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

- (a) That the subject has a mental handicap within the meaning of section 2 of the Ordinance which warrants the subject's reception into guardianship;
- (b) The mental handicap 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, his own welfare plan and treatment plan;

In this case, the predominant need of the subject remained to be satisfied is, namely, decision to be made on consent to surgery of his vitreous bleeding on the right eye.

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

17. The Guardianship Board applies the criteria in section 59S of the Ordinance and is satisfied that Madam E is the only appropriate person to be appointed as guardian of the subject.

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