



## **REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**Madam Applicant**

**Applicant<sup>2</sup>**

**and**

**Mr W**

**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-yee

Member referred to in section 59J (3) (b): Mr SUEN Lai-sang

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

**Date of Reasons for Order:** 10<sup>th</sup> October 2014

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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

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(a) of Mental Health Ordinance

<sup>4</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

## **Background**

- 1 The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 14 May 2014, was registered as received by the Board on 14 May 2014. The applicant is subject's wife. The evidence shows that the subject is 62 years of age, man, with a stroke causing cognitive deficits. The subject was unable to handle finances and was incapable of consenting to treatment. However, the subject, indeed, did not have any assets or bank savings, except an insurance policy carrying some cash value around \$100,000. In the past decade, the subject relied on CSSA (i.e. social security money).

## **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.

## **Summary of evidence adduced at hearing on 10 October 2014**

- 3 The applicant, proposed guardian and the granddaughter of the subject said she was not willing to apply for Guardianship Order, but she was pressed hard by Social Welfare Department to seek the order under the threat of stoppage of CSSA if she did not apply. Whilst already stressed enough in giving daily care to subject, she was under additional tremendous pressure in applying for (and in complying) a Guardianship Order. She hoped the Board would respect her wish and reject the application.

- 4 The medical social worker of a Psychiatric Centre and the maker of social enquiry report, on behalf of the Director of Social Welfare, said she has nothing to add.

### **Reasoning of the Guardianship Board**

- 5 This case was a clear case of a waste of public resources to insist the applicant to apply for guardianship. The wife-applicant was assessed to be genuine and able to give good care to the subject in the past ten years. The subject was aged 61. Given the very small amount of savings (\$4,884) and MPF entitlements (\$4,192), the Board failed to understand why the relevant Field Unit still pressurized the applicant to apply with the threat of stopping CSSA. The wife-applicant told the Board that she was pressurized, apparently succumbed to the threat of stoppage of CSSA, and finally made the present application. The Board felt strongly for the wife-applicant and sympathized her position. Regarding the limited financial power of the Board, a guardian might only be authorized to spend monthly sum (cash) as determined from time to time. It was trite that a guardian does not have power to terminate an insurance policy or otherwise deal with the matter, which was a financial affair beyond the jurisdiction of the Board. As public officers, the case handling officer and his/her supervisor at the relevant Field Unit should well know that this was the long standing legal limitation. The Board found the present application did not deserve any merits at all and accordingly dismisses it. The Board so ordered. Further, should the application of similar nature come before the Board again, the officer-in-charge of the relevant Field Unit will be summoned to appear before the Board for critical examination. The Board hereby reprimanded the relevant officers at relevant Field Unit in this case. As the key player in this case, the Board noted that no officer of relevant Field Unit has attended the hearing today.

- 6 The Guardianship Board could only exercise its powers under section 59O to make an order if it was satisfied on certain criteria.
- 7 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