



**REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**Madam YY**

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

**and**

**Madam S**

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

**Madam KH**

**Party added<sup>4</sup>**

**The Director of Social Welfare<sup>5</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 NG Ting-shan

Member referred to in section 59J (3) (c): Ms YUEN Yuen-yau

**Date of Reasons for Order:** 2<sup>nd</sup> April 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)(b) of Mental Health Ordinance

<sup>5</sup> S2 of Mental Health Guardianship Board Rules and S59N(3)(c) of Mental Health Ordinance

## **BOARD'S ORDER**

1. These Reasons for Decision are for the Board's Order made on 2 April 2014 concerning Madam S ("the subject"). The Board appointed the Director of Social Welfare 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.

## **THE HEARING ON 2 APRIL 2014**

2. The following persons gave evidence to the Board: -
  - (a) Madam S, the subject;
  - (b) Madam YY, the applicant and proposed guardian;
  - (c) Madam KH, the 3<sup>rd</sup> daughter of the subject and Party Added;
  - (d) Madam LH, the 8<sup>th</sup> daughter of subject;
  - (e) Mr LO, the 6<sup>th</sup> son of subject;
  - (f) Madam WM, the 2<sup>nd</sup> daughter of subject;
  - (g) Mr C, a solicitor of Party Added's side;
  - (h) Mr D, a public officer, on behalf of the Director of Social Welfare.
3. The subject was interviewed by the Chairperson on 26 March 2014.

## **REASONING OF THE BOARD**

### **Background**

4. The emergency guardianship application dated 17 March 2014 was registered as received by the Board on 17 March 2014. The normal guardianship application for the appointment of a guardian for the subject,

under Part IVB of the Ordinance, dated 9 December 2013, was registered as received by the Board on 9 December 2013. The applicant is Madam YY, a daughter. The evidence shows that the subject is 87 years of age, woman, with vascular dementia. The subject was unable to make decision on her accommodation and welfare plan.

### **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. **Madam S**, the subject, says she saw the social enquiry report maker a few times before and knows that he is a social worker. Yet, she says she has not seen the Chairperson before. She feels better in these few days. Her feet were less swelling and painful. She took bus to the Board today. She identifies the applicant as her daughter and recalls her name correctly. She now stays with her third daughter Madam KH (whom she positively identifies) and she likes to stay there continuously. She says the applicant is working and cannot take care of her. She says she stayed at an aged home before and her skin suffered from sores there. She will not like to return to live there. She says the applicant's maid only took care of the applicant's mother-in-law.

7. **Madam YY**, the 9<sup>th</sup> daughter of subject, applicant and proposed guardian, says living at a care and attention home is the best arrangement for the subject. She likes to be appointed as guardian of the subject today. She is seriously concerned of the taking away of the subject from the care and attention home on 14 March 2014. Afterwards, the other siblings said the subject did not like to see her. Another thing is about a letter sent to her allegedly from the subject whose thumb mark was impressed on it. She wonders what the purpose was of sending this letter to her. She believes that there must be someone manipulating the subject behind. Subject cannot understand things much now. She is most concerned of the subject's long term care. At S Hospital, the subject was showed to have continued deteriorations. It was the doctors' advice that the subject needed long term rehabilitation and treatment (including her skin and mental problems) under supervision. Thus, she believes that a placement at previous care and attention home fits the subject's needs well. She can help to give care to the subject as she works just a few floors up in the same building. She is a registered nurse at a stroke rehabilitation ward of Y Hospital. There at the care and attention home, the subject can be visited by all children. There will be equal opportunity to all her siblings to give care and pay visits to the subject. Giving care to subject at her home, she believes, though financially affordable by her to hire a maid, will not be better than a care and attention home because it has a full professional team.
  
8. She has no access to the subject after the taking away incident. She did request for it on 17 March 2014 through police at the scene of a family conflict at the corridor outside the subject's own flat at HL Court. She also raised the issue of access later with social enquiry report maker, though not strongly.

9. **Madam KH**, the 3<sup>rd</sup> daughter of the subject and Party Added, says she very much likes the subject to stay with her and to be cared for by her. She does not mind of the tiring job. She claims that she has the support of her husband and other siblings. Financially, she has no problem with this arrangement. She would not like the subject to stay at an old age home. For this dire wish, she asks to be appointed as guardian. On further probing, she says she has no problem if the Director of Social Welfare becomes the guardian because to her, the most important thing is to have the subject continuously lived with her.
  
10. **Madam LH**, the 8<sup>th</sup> daughter of subject, says she wishes that the subject can continue to stay with her sister Madam KH. She lives close by and pays daily visits to subject after work and full day during weekends. She believes that Madam KH should better be the guardian. She questions why a child is not better than a social worker as the legal guardian. She says she can put down all grudges and disputes, if her end is achieved.
  
11. **Mr LO**, the 6<sup>th</sup> son of subject, says the subject should live with his sister Madam KH who is genuine in giving care to the subject. She is devoted in heart and with love. Siblings have placed much trust on her too. She carries out dirty caring duties for the subject willingly and such works are not welcomed by any of his siblings. He would like the subject to live peacefully and comfortably at her remaining days without going to an old age home. That is his main goal and thus he has no preference over the choice of the guardian. He likes to leave the decision to the Guardianship Board. Just like his other sister Madam LH, he can join to support the subject financially as they are still gainfully employed. He doubts, even given a professional team, if the nursing home personnel can serve the subject with love.

12. **Madam WM**, the 2<sup>nd</sup> daughter of subject, says family disputes exist today and they need help. The applicant has her points. Her other sister Madam KH was full of love towards the subject as seen from her care given to the subject before. Subject had a long difficult life in the past as her husband was not supporting the family. Both her said sisters have good intention and loves for the subject. She tends to think that aged home cared the subject less well than by own family numbers. She tried to persuade the applicant three times before to give up her stance, but of no avail.
13. Guardian appointment is not big problem to her. If Madam KH is appointed, it will be better and the working simpler. She thinks respecting subject's wish is important. Madam KH's husband is good and supportive.
14. **Mr C**, the solicitor, submits that he will rely on his written submission filed with the Board yesterday. He submits that convenient and timely treatment can be provided to the subject if Madam KH is appointed as guardian. Further, if Madam KH is allowed to manage the daily living of the subject, his clients will agree to the appointment of Director of Social Welfare as guardian. He further submits that the subject expressed clearly of her wish to stay with Madam KH. He seeks for a direction/condition in the Guardianship Order to that effect.
15. [**Mr PW**, the son-in-law of subject and **Ms HM**, the granddaughter of subject, attending.]
16. **Mr D**, medical social worker and the maker of social enquiry report, on behalf of the Director of Social Welfare, says he has nothing to add. He confirms that the subject has four sons and five daughters. According to the applicant, the subject's bank account now holding about \$22,000 was an account which was used for mortgage repayment before and the applicant

used to deposit money into it for such payments. [The applicant confirms the position and further says that by each month she deposited \$11,000 into the account. Thus, she tends to believe that the remaining \$22,000 should belong to her.]

## **Issues and Reasoning**

### Reasoning of receiving the subject into guardianship and appointing the Director of Social Welfare as legal guardian

17. The subject started to reside at the care and attention home since 23 September 2013 under the arrangement of the applicant, without the agreement of her other siblings. Subject was then formally discharged from S Hospital on 30 September 2013. This residential arrangement has ignited the family dissension ever since. Paragraph 17 of the social enquiry report has set out the attempts made by other siblings to take the subject away from the care and attention home. The conflicts between the children have caused the applicant to file the present guardianship application on 9 December 2013. However, the breaking point was the subsequent forced taking away of the subject from the care and attention home on 14 March 2014 by the Party Added Madam KH in the company of her lawyer and her camp of family members back to her own home; at which place the subject was kept till today and such an incident has necessitated the applicant in further filing an Emergency Guardianship Order application on 17 March 2014. Police interventions were frequent during this period.
  
18. The present case is a clear case of family dissensions over the long-term care of the subject who is now 87 years of age. The applicant (the youngest daughter) on the one side is rather insisting on returning the subject to the care and attention home while the subject's four older children appearing

today (three of them, Madam KH, Mr LO and Madam LH are legally represented by Mr C) oppose to it and are rather firmly of the view that the subject should remain in the care of the Party Added. Since the dispute remains unresolved today, the Board assesses that the subject needs to be received into guardianship in order that a guardian can decide on the accommodation of the subject. There is no dispute between the parties or the family members that Guardianship Order should be granted. The Board so orders.

19. The second matter that the Board has to deal with is the appointment of guardian. Again, each side asked to be appointed as guardian of the subject and to make accommodation decision for the latter. Due to the live and strong disagreements and mistrust between the two sides, it is impossible to appoint any of them to be the private guardian. One of the reasons is that a decision made by a private guardian in such circumstances will unlikely be supported by the other side and the implementation of the decision will be difficult. Further, when challenged, the private guardian cannot be perceived or seen to be properly, fairly and impartially dealing with the complaints or investigating the same. Against the applicant, though not strongly canvassed at the hearing, the other siblings have the accusation that she uses the subject's property for the occupation of her mother-in-law while keeping the subject at an aged home. That poses a problem to her appointment as there is an apparent conflict of interests of a financial nature between her and the subject.
  
20. Accordingly, 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 supplementary information and the views and reasoning for recommending guardianship order and the Director of Social



Welfare as the guardian of the subject as contained therein and accordingly decides to receive the subject into public guardianship.

21. As both sides have their arguments and points of importance towards the future care plan, the Board decides to require the public guardian to submit a proposed welfare plan of the subject for the period up to the next review for the approval of the Chairperson. Such an interim report by the public guardian is to be filed with the Board in three months' time.

## **DECISION**

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

- (a) That the subject, as a result of vascular 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 and treatment plan, which has caused conflict between family members in making decisions for subject's welfare or accommodation;

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 and future treatment plan;

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

23. 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.

### **Recommendation**

24. Upon making of the Guardianship Order herein on 2 April 2014, the Guardianship Board makes the following recommendations: -

#### **Recommendation for Access order**

The Board does not have jurisdiction over restricting or monitoring access arrangement of the subject (HCMP 953/2008). The Board therefore recommends the public guardian, if thought fit, to apply to High Court of Hong Kong SAR for an order defining the question over access to the subject by the applicant. The public guardian should file an interim progress report on the recommended legal proceedings within 6 months from today.

#### **Recommendation regarding Polypharmacy**

The public guardian would need to discuss with treating doctors if the number of drugs can be reduced as the subject is currently taking far too many medications.

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