



**REASONS FOR ORDER**

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

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**BETWEEN**

**Ms PH**

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

**and**

**Mrs LF**

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

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

**Madam SY**

**Party added<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): Dr Jenny LEE Shun-wah

Member referred to in section 59J (3) (c): Ms LAI Mee-po

**Date of Reasons for order:** the 29<sup>th</sup> day of March 2019.

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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

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

## **BOARD'S ORDER**

1. These Reasons for Decision are for the Board's Order made on 29 March 2019 concerning Madam LF ("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.

## **REASONING OF THE BOARD**

### **Background**

2. The application for the appointment of a guardian for the subject, under Part IVB of the Ordinance, dated 2 October 2018, was registered as received by the Board on 5 October 2018. The applicant is Ms PH, the social worker of Integrated Family Service Centre. The evidence shows that the subject is 94 years of age, woman, with vascular dementia. The subject was unable to handle finances and manage welfare matters.

### **The Law**

3. 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.

## **Issues and Reasoning**

### Reasoning for receiving the subject into guardianship

1. The subject was certified by two doctors as a mentally incapacitated person, incapable to manage her own affairs including accommodation, treatment and finance. It was therefore plainly necessary that she should be received into guardianship. It was also important to observe that the subject was residing at a private old age home and her savings were needed to be mobilised to pay for her monthly maintenance. Further, the Board was rather concerned of the conclusion reached by the Multi-disciplinary Case Conference on Protection of Elder with Suspected Abuse (see paragraph 3.1.2 of the case conference minutes) that there was potential risk of abuse on the subject. (Also see the series of suspicious incidents and events listed in paragraphs 26 to 37 of the social enquiry report).
2. Therefore, the Board received and adopted the views of the two medical doctors as contained in the two supporting medical reports as well as the social enquiry report and the two supplementary information and the views and reasoning for recommending Guardianship Order as contained in the supplementary information dated 26 March 2019 (particularly paragraph 6) and accordingly decided to receive the subject into guardianship in order to protect and promote the interests of welfare of subject.
3. As the Guardianship Order was granted today, the Board accordingly dismissed the Emergency Guardianship Order application.

### Reasoning for choosing the legal guardian

4. In considering the candidature of a guardian, the Board duly took the interests of the subject as paramount. The Board has carefully considered: -

(a) Section 59O, Mental Health Ordinance, viz: -

*“(1) Subject to subsection (3), if, after conducting a hearing into any guardianship application made under section 59M(1) for the purpose of determining whether or not a mentally incapacitated person who has attained the age of 18 years should be received into guardianship and having regard to the representations (if any) of any person present at the hearing to whom a copy of the guardianship application has been sent under section 59N(3) and considering the social enquiry report referred to in section 59P(1) the Guardianship Board is satisfied that the mentally incapacitated person is a person in need of a guardian, it may make an order appointing a guardian in respect of that person.*

*(2) Any guardianship order made under subsection (1) shall be subject to such terms and conditions as the Guardianship Board thinks fit, including terms and conditions (if any) as to the exercise, extent and duration of any particular powers and duties of the guardian.*

*(3) In considering the merits of a guardianship application to determine whether or not to make a guardianship order under subsection (1) in respect of a mentally incapacitated person, the Guardianship Board shall observe and apply the matters or principles referred to in section 59K(2) and, in addition, shall apply the following criteria, namely that it is satisfied—*

*(a)(i) that a mentally incapacitated person who is mentally disordered, is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; or*

*(ii) that a mentally incapacitated person who is mentally handicapped, has a mental handicap of a nature or degree which warrants his reception into guardianship;*

*(b) that the mental disorder or mental handicap, as the case may be, limits the mentally incapacitated person in making reasonable decisions in respect of all or a substantial proportion of the matters which relate to his personal circumstances;*

*(c) that the particular needs of the mentally incapacitated person may only be met or attended to by his being received into guardianship under this Part and that no other less restrictive or intrusive means are available in the circumstances; and (Amended 19 of 2000 s. 3)*

*(d) that in the interests of the welfare of the mentally incapacitated person or for the protection of other persons that the mentally incapacitated persons should be received into guardianship under this Part.”*

(b) Sections 59K, Mental Health Ordinance, viz: -

*“(1) The Guardianship Board shall—*

*(a) consider and determine applications for the appointment of guardians of mentally incapacitated persons who have attained the age of 18 years;*

*(b) make guardianship orders in respect of mentally incapacitated persons and taking into account their individual needs, including the making of such orders in an emergency where those persons are in danger or are being, or likely to be, maltreated or exploited;*

*(c) review guardianship orders;*

*(d) give directions to guardians as to the nature and extent of guardianship orders made under section 59O appointing those guardians, including directions as to the exercise, extent and duration of any particular powers and duties of those guardians contained in such terms and conditions (if any) that those guardianship orders may be subject under subsection (2) of that section;*

*(e) perform such other functions as are imposed on it under this Ordinance or any other enactment,*

*and in so doing shall observe and apply the matters or principles referred to in subsection (2).*

*(2) The matters or principles that the Board shall observe and apply in the performance of its functions or the exercise of its powers are as follows, namely—*

*(a) that the interests of the mentally incapacitated person the subject of the proceedings are promoted, including overriding the views and wishes of that person where the Board considers such action is in the interests of that person;*

*(b) despite paragraph (a), that the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected.”*

and,

(c) Section 59S, Mental Health Ordinance, viz: -

*“(1) A person (other than the Director of Social Welfare) shall not be appointed by the Guardianship Board as a guardian of a mentally incapacitated person received into guardianship under this Part unless the Board is satisfied that-*

*(a) the proposed guardian has attained the age of 18 years;*

*(b) the proposed guardian is willing and able to act as a guardian;*

*(c) the proposed guardian is capable of taking care of the mentally incapacitated person;*

*(d) the personality of the proposed guardian is generally compatible with the mentally incapacitated person;*

*(e) there is no undue conflict of interest, especially of a financial nature, between the proposed guardian and the mentally incapacitated person;*

*(f) the interests of the mentally incapacitated person will be promoted by the proposed guardian, including overriding the views and wishes of that person where the proposed guardian (once appointed) considers such action is in the interests of that person;*

*(g) despite paragraph (f), the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected;*

*(h) the proposed guardian has consented in writing to the appointment as a guardian.*

*(2) Where it appears to the Guardianship Board that there is no appropriate person available to be appointed the guardian of a mentally incapacitated person the subject of a guardianship application, the Guardianship Board shall make a guardianship order appointing the Director of Social Welfare as the guardian of the mentally incapacitated person.*

*(3) In the performance of any functions or the exercise of any powers under this Ordinance the guardian shall ensure-*

*(a) that the interests of the mentally incapacitated person the subject of the guardianship order are promoted, including overriding the views and wishes of that person where the guardian considers that such action is in the interests of that person;*

*(b) despite paragraph (a), that the views and wishes of the mentally incapacitated person are, in so far as they may be ascertained, respected,*

*and shall comply with directions (if any) given by the Guardianship Board in respect of that guardian and any regulation made under section 72(1)(g) or (h).”*

5. The Board will reiterate that past efforts of a relative or friend towards giving care to the subject do not necessarily entail his/her appointment or continual appointment as the legal guardian.
6. In this case, the social enquiry report and the two supplementary information have not recorded any indication or expression of the wish of the Party Added to become the guardian of the subject. Contrarily, in paragraph 4 of the supplementary information dated 26 March 2019, it was recorded that (inter alia) the Party Added has agreed the Director of Social Welfare to be the subject's



guardian. Quite taken by surprise this morning, the Board was suddenly asked by the Party Added to appoint her as the legal guardian. Hence, the Board proceeded to assess the Party Added's suitability at the hearing.

7. The Party Added was assessed not suitable to be appointed as the legal guardian of the subject for the following reasons: -

- (1) The Party Added was not ordinarily residing in Hong Kong and as such was not assessed as being able to carry out the duties of a legal guardian as required upon her. Particularly, if the Party Added (if appointed) was returned to Holland, there was no one here in Hong Kong to make immediate or urgent medical decision should such circumstances arise. Needless to say, it will be difficult (if not impossible) for the Party Added as guardian to perform her many strict financial duties every month, especially the monthly submission requirement of monthly accounts.
- (2) As an ordinary resident of Holland, it was also difficult for the Director of Social Welfare to supervise her, if appointed, during and in the course of term of the Guardianship Order to be granted.
- (3) In paragraph 41 of the social enquiry report, it appears the Party Added did not wholly support guardianship.
- (4) Listening to the relationship web provided by the Party Added at the hearing, the Board cannot establish any sufficient closeness of relationship between the Party Added and the subject. Party Added was probably only a distant relative of the subject, if not a clansman. Probably due to this reason, Party Added was described as possibly not eligible to be the applicant of the impending Part II application (see paragraph 3.3 of supplementary information dated 26 March 2019).

- (5) As this case has suspicious financial abuse background, a public guardian was deemed more appropriate in all circumstances.
8. Accordingly, the Board accepted and adopted the view of the social enquiry report maker who recommended, as contained in the supplementary information dated 26 March 2019 (particularly paragraph 6), the Director of Social Welfare to be appointed as the guardian of the subject in this case.

## **DECISION**

9. The Guardianship Board was satisfied on the evidence and accordingly finds: -
- (a) That the subject, as a result of vascular dementia, was suffering from a mental disorder within the meaning of section 2 of the Ordinance which warranted the subject's reception into guardianship;
  - (b) The mental disorder limited the subject's capacity to make reasonable decisions in respect of a substantial proportion of the matters which related 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 were available as the subject lacks capacity to make decisions on accommodation, her own welfare plan, treatment plan and finances, which has resulted the subject being abused financially;
- In this case, the predominant needs of the subject remained to be satisfied were, namely, decision to be made on future welfare plan, future accommodation, future treatment plan and finance;
- (d) The Board concluded that it was in the interests of the welfare of the subject that the subject should be received into guardianship.

10. The Guardianship Board applied the criteria in section 59S of the Ordinance and was satisfied that the Director of Social Welfare was the only appropriate person to be appointed as guardian of the subject.

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