



**REASONS FOR ORDER**

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

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**BETWEEN**

**Ms L**

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

**and**

**Madam M**

**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): Ms Florence HO Kwai-ying

Member referred to in section 59J (3) (c): Ms Rosina HON

**Date of Reasons for order:** the 16<sup>th</sup> day of January 2017.

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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 29 September 2016, was registered as received by the Board on 29 September 2016. The applicant is Ms L, social worker of Hostel. The evidence shows that the subject is 51 years of age, woman, with schizophrenia. The subject was unable to handle finances and was incapable of consenting to treatment.

## **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**

3. **Madam M**, the subject, says she takes a car to come here from Hostel. She has a stuffed nose and is taking medication. Elder sister keeps visiting her. She repeatedly complains of being bullied by others at hostel and sheltered workshop. She remembers she was hospitalized before. She cannot remember how long it was. She will do exercises so that she can walk again. She does not want to use wheelchair anymore. She remembers she spent overnight leaves at 3<sup>rd</sup> elder sister's home and likes to do it again. She understands she needs to walk again first. She agrees to co-operate if she is allowed to return home for overnight leave in future.

4. **Ms L**, the applicant and social worker of Hostel, says the main reason for the present application was due to the fact that after subject's home leaves to her 3<sup>rd</sup> elder sister (Madam K), the subject's medications-taking was rather chaotic. On return from home leaves since 2010, the subject was found to be poor in hygiene, have confused mental conditions and exhibit behavioural problems. The subject required a few days to settle herself down. Since 14 April 2016, due to decline of health, the subject needed to use wheelchair. The hostel was very concerned as to what has happened to the subject during home leaves as the subject's conditions were evidently and completely reversed after each such overnight accesses in these years. Since 14 April 2016, no overnight access was allowed to the subject.
  
5. **Madam K**, the 3<sup>rd</sup> elder sister of subject, says the subject was controlled by the hostel staff who has not allowed various things be done for the subject on ground of interests of the subject. She and subject were baptised. Then she talks a lot about God or God's love or Jesus and her church life. She says she just wants to take subject home or pays visit to flower marker during Lunar New Year. The staff even disallowed the subject to go to church with her. She and the churchmates just want to pray for her. [**The applicant** says recently (around October 2016) at mental clinic, doctors has assessed that the subject can enjoy outside activities for 15 minutes with the sister. The [3<sup>rd</sup>] elder sister took the subject out once which has, due to rain, lasted only for about 5-10 minutes. There was no more such request since. The 3<sup>rd</sup> elder sister wishes to take subject home for overnight stay for durations longer than one night. Due to subject's need for thickener and to rely on wheelchair, the hostel will not allow home leaves for now.] She says her life depends on God. She does not love the world which is evil. She just hopes to make the subject happy. She keeps on talking and repeating her religious views.

6. **Miss T**, the maker of social enquiry report, on behalf of the Director of Social Welfare, says she has nothing to add.
7. The Board would like to thank Miss T for her very clear reports.

### **Issues and Reasoning**

#### Reasoning for receiving the subject into guardianship

8. Considering the reports, the applicant's chronology for the years June 2010 to April 2016 and the oral representations by the applicant and the 3<sup>rd</sup> elder sister of the subject Madam K, the Board comes to a view that the access and the welfare of the subject was far less than satisfactory in these recent years. The main conflict lies between the hostel and Madam K. The aforesaid chronology is a solid evidence that the subject's interests of welfare have been jeopardized after having returned home for overnight leaves. In order to protect the interests of the subject, 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 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

9. Having come to a view that subject's interests were jeopardized after home leaves to the 3<sup>rd</sup> elder sister Madam K, it is a logical and only conclusion that the Director of Social Welfare as the neutral public officer is suitable to be appointed as the guardian of the subject.

10. The Board accepts and adopts the view of the social enquiry report maker who recommended, as contained in the report, the proposed guardian the Director of Social Welfare to be appointed as the guardian of the subject in this case.

## **DECISION**

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

- (a) That the subject, as a result of schizophrenia, 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, treatment plan and finances, which has resulted caused conflict between hostel and family member 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, future treatment plan and finance;

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

12. 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.

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