



REASONS FOR ORDER

Mental Health Ordinance (Cap. 136)¹

(Section 59O)

BETWEEN

Mr FC

Guardian²

and

Madam S

Subject³

The Director of Social Welfare⁴

Members of Guardianship Board constituted

Chairperson of the Board: Mr Charles CHIU Chung-ye

Member referred to in section 59J (3) (b): Dr Jenny LEE Shun-wah

Member referred to in section 59J (3) (c): Mrs Josephine WONG CHU Yin-ping

Date of Reasons for order for Renewal: the 29th day of June 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 and S59U(4)(b) of Mental Health Ordinance

³ S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

⁴ S2 of Mental Health Guardianship Board Rules and S59U(4)(c) of Mental Health Ordinance

REASONING OF THE BOARD

Background to review

1. The subject is 97 years of age, woman, with cerebral vascular accident. The original guardianship order had been made on 1 February 2018 for a period of one year, with powers to make decisions on the subject's behalf as set out therein, and subject to the conditions referred to therein.

The Law

2. This Review was conducted under section 59U (2) (a) of the Mental Health Ordinance, at the request of the guardian Mr FC.

Summary of evidence adduced at hearing

3. The Board asks **Mr FC**, the guardian and son of the subject, to read out Appendix 9 of the last social enquiry report, which was his acknowledgement of, inter alia, possible autopsy and coroner's inquest, duly signed.
4. He explains he still chose to proceed with the Guardianship Order last year because of the disputes with his younger brother.
5. After recess, Mr FC handed up an apology letter under his own hands.
6. **Ms Y**, social worker and the maker of Progress Social Enquiry Report, on behalf of the Director of Social Welfare, says she has nothing to add.
7. The Board would like to thank Ms Y for her urgent report.

Reasoning of the Guardianship Board

8. This is an unusual application for review for the purpose of avoiding an inquest of coroners and a possible autopsy. The Board must record that, while fully realizing the consequence of coroner's inquest and possible autopsy (see Annex 9 and paragraph 22 of the last social enquiry report dated 24 August 2017 and Annex 3 and paragraph 10 [refusing to withdraw] of Supplementary Information dated 29 January 2018 [the applicant's own affirmative reply by email]), the guardian still chose to proceed for the Guardianship Order as sought on 1 February 2018, despite advices. The guardian's chosen path rendered today's so-called urgent application as the subject currently fell into critical conditions. It is therefore no ground at all for an urgent hearing, particularly the written grounds as set out by his solicitors was made in such way as if the matter of post-mortem examination and coroner's inquest was a new matter of a total surprise to the applicant. Further, ironically, if post-mortem examination is not carried out at a mortuary of a public institution, where else would the place be? The solicitors for the applicant (of the same firm at the last hearing) evidently should have been aware of the fact that the present request for an urgent hearing is entirely groundless and should humbly seek the Board's accommodative indulgence instead of hard pressing the Social Welfare Department and the Board to hear this matter at once. Nothing in the written submissions by the solicitors' letters have showed an apologetic attitude or given a correct account of facts.

9. Nonetheless, for what is worth, the Board has decided to grant the order of discharge as sought. The Board makes it known that the present decision shall only be treated as an extremely exceptional case.

10. This entire case is therefore clearly a waste of public resources. Further, the Board does not find the letters dated today from the applicant's solicitors have shown due courtesy to the Board as a legal tribunal or apologetic towards the applicant's sudden and swift change of attitude.

11. The Board reiterates that it is alarming that in a short span of about 4 hours today, the applicant has not only applied to discharge but also through his solicitors forced the Board to hold an immediate and urgent hearing to entertain them on a groundless application. This act alone is grossly disrespectful. Both the applicant and his solicitors are therefore seriously warned and reprimanded.

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