



**REASONS FOR ORDER**

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

**(Section 59O)**

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**BETWEEN**

**The Director of Social Welfare**

**Guardian<sup>2</sup>**

**and**

**Mr TS**

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

**Madam YP**

**Party added<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 YUNG Mei-tuen

Member referred to in section 59J (3) (c): Ms Lily CHAN

**Date of Reasons for order for Renewal:** the 17<sup>th</sup> day of July 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 and S59U(4)(b) of Mental Health Ordinance

<sup>3</sup> S2 of Mental Health Guardianship Board Rules and S59U(4)(a) of Mental Health Ordinance

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

## **REASONING OF THE BOARD**

### **Background to review**

1. The subject Mr TS is 71 years of age, man, with brain injury. The earlier renewed guardianship order had been made on 26 July 2016 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) (b) of the Mental Health Ordinance, which requires that a review must be conducted prior to the expiry of the original Guardianship Order.

### **Directions**

3. **TAKE NOTICE** that the Board directed that Madam YP, the daughter of the subject, be added as a party to these guardianship proceedings.

### **Summary of evidence adduced at hearing**

4. **Madam YP**, the Party Added and daughter of the subject, says she wishes and agrees to an extension of Guardianship Order. [**The Board** surprisingly notes it is a completely different stance from that recorded in the progress social enquiry report.] She would like to be the new guardian though. She thinks she can manage the accounts of income and expenses of the subject. The Board plainly informs her that, as she also remembers, her similar application was rejected at the last hearing.

5. **Madam HK**, the wife of subject, says she also shares the same view of her daughter, the Party Added.
  
6. **Ms JC**, the delegated guardian and medical social worker, on behalf of the Director of Social Welfare, says, being probed regarding the 4 paragraphs of the progress social enquiry report (9, 10, 14 and 15) which affirmatively and unequivocally stated that the family requested a discharge of order today, the family members have told her they were committed to pay expenses of the subject and there was no need to renew the Guardianship Order at the time when the report was prepared. The Board was so supervised by the answer.

### **Issues and Reasoning**

#### Reasoning for continuing to receive the subject into guardianship

7. This is a peculiar case, having taken an unduly tortuous course in the past 11 years. Today's hearing is its 6<sup>th</sup> review.
  
8. The Board is gravely concerned by the misleading report (see paragraphs 9, 10, 14 and 15 of the progress social enquiry report), which carried just the opposite stance of the family shown today. In the report, the case social worker strongly advocated for a cessation of Guardianship Order in unequivocal terms.
  
9. The case social worker and her supervisor is hereby seriously reprimanded.
  
10. In fact, and in view of sizeable bank savings of the subject (both in his own bank account and in the DSWI account plus compensation held at District Court), and upon reading those disturbing paragraphs, the Chairperson has

raised a requisition dated 5 July 2017 as follows: -

*“1. Referring to paragraphs 9, 10, 14 and 15: -*

*(a) please provide the Declaration in Chinese (**copy enclosed**) duly signed by wife (Madam HK), daughter (Madam YP) and son (Mr CM) that upon cessation of Guardianship Order, they will not seek to apply to District Court to use subject’s compensation in future AND they are committed to use their own resource to pay for subject’s expenses in future.*

*(b) will case social worker check with the correctness of the three names of the family members (especially name of son in Chinese) signing this document?*

*(c) please precisely explain to the family that **nothing of the above shall be perceived as an indicate of any inclination of the Board in making any action at the conclusion of the upcoming hearing.***

*(d) the supplementary information shall confirm compliance of (b) and (c) above by the case social worker.”*

The Declaration in Chinese was in the following terms: -

**“聲明書**

致：監護委員會（檔案編號：GB/P/8/17）

區域法院（案件編號：DCEC）

**有關：Mr TS（“當事人”）**

**監護令覆核聆訊**

**日期：2017年7月17日**

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本人確認本人等主動要求終止當事人的監護令，故此，本人等就此向委員會及區域法院作出摯誠及嚴肅聲明，本人等莊嚴承諾若當事人的監護令獲得終止，當事人 TS 先生日後的一切開支，均由本人等自身致力承擔及支付，本人等更嚴肅聲明日後不會向區域法院申請動用積存於法院（案件編號：DCEC）的意外賠償金額，更不會再作出監護令申請。

本人等明白本文件的本質內容及後果。本人等更明白有充足機會及有權於簽署本文件前獲取獨立法律意見。

本人等再次確認本人等自願簽立本件。

當事人妻子 HK 女士：

簽署： \_\_\_\_\_ 日期： \_\_\_\_\_

當事人女兒 YP 女士：

簽署： \_\_\_\_\_ 日期： \_\_\_\_\_

當事人兒子 CM 先生：

簽署： \_\_\_\_\_ 日期： \_\_\_\_\_

見證人： \_\_\_\_\_

個案社工 JC 姑娘”

11. Yet, the proposed Declaration has never been signed as requested by the three family members involved. It remained so up to the start of the hearing today. The Board is indeed surprised and doubtful whether it was true that the family member did ever pledge to financially support and afford the subject’s future expenses as pleaded in the report. The lie therefore flies in the face of the Chairperson’s requisition.

Reasoning for continuing to appoint Director of Social Welfare as legal guardian

12. Consistent with all previous reasoning on choosing the public guardian, the Board decides to continuously appoint the Director of Social Welfare as the legal guardian, but this time with full six powers and for a duration of 3 years. The Board would not repeat the previous reasoning here but suffice to mention that the Board heavily relies, and hereby adopts once again, on the Reasons for Decision made at last hearing on 26 July 2016: -

“1. The Party Added HY (another daughter of subject) seeks to become the new guardian in the place of the Director of Social Welfare, who

has been the subject's legal guardian since August 2007, upon the setting aside of the wife's appointment due to misappropriation of subject's money. The wife has not given up her hope to become guardian again since that time and eventually she sought a review for her appointment which was heard by this Board in October 2014. Her application was refused on 28 October 2014. In reviewing the case history and suddenness of the Party Added's request herein, the Board cannot eliminate the possibility that it is in fact the wife's application in real essence and the Party Added is the means towards that end. In support of this proposition, the Board takes note of the following records in the past progress social enquiry reports: -

- (i) [paragraph K of progress social enquiry report dated 9 July 2010]

**“(K) Views and Wishes of daughter, YP**

*YP was married and lived apart. She was a home helper and had to take care of her family. She was financially independent from her mother. She satisfied with the Director of Social Welfare's ongoing assistance as a public guardian for her father. The daughter expressed she was too busy to act as her father's guardian. She wished the Director of Social Welfare to continue to act as subject's legal guardian to manage his welfare and finance.”*

- (ii) [paragraph K of progress social enquiry report dated 11 April 2014]

*“(K) Views and Wishes of daughter, YP*

*YP was married and living apart. She was working full-time and had to take care of her family. She was financially independent. In relation to subject’s welfare and financial matters, YP expressed that she was not available to take up the role and duties of a guardian. Meanwhile, she supported Madam HK’s application to become the guardian.”*

2. The Board has therefore strong reservation on the genuineness and motive of the Party Added.
3. Secondly, in view of the engagement of long working hours of manual work and her average education level, the Board has no confidence that Party Added has the ability to comply with the strict financial reporting requirements of a legal guardian.
4. Thirdly, the current financial mechanism has been established and continuously involved the partnership between the Court and public guardianship and any change will entail a legal procedure to follow. Hence, in result of a change to private guardianship, delays and time gap will inevitably occur and will upset the current equilibrium which has been well in place for a long period of around 7 years.
5. Fourthly, upon hearing from the Party Added and the wife at the hearing and considering the reports, the Board does not find a cogent, pressing and urgent reason for a change of appointment of guardian.
6. Fifthly, any change to private guardianship will likely have a



potential impact on the status quo which has been well settled for so many years as well as the probability of throwing the existing financial and care arrangement into uncertainty. Further and conversely, the Board does not see any benefits to be brought about by a change of guardian.

7. Sixthly, regarding the provision of medical information of the subject to the wife and the Party Added, it can be adequately dealt with by a direction of disclosure.
  8. Seventhly, regarding the provision of traditional Chinese medicine, the Board is minded to limit the public guardian's power to financial management only. By this, the Board would imply that the family members, like non-guardianship cases, can assume more freedom and autonomy in negotiating with the ward staff and the medical team. The Board hopes the public guardian will bring this particular arrangement to the attention of the ward in-charge. This is a sad case that due to entanglement of various kind, the subject is deprived of traditional Chinese medicine.
  9. For the above reasons, the Party Added's request to become the new guardian of the subject in the place of the Director of Social Welfare be dismissed."
13. On passing, the Board would express his disappointment on the past performance of the public guardian in this case ever since the grant of the first review on 13 August 2007.

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