

Powers of Guardians

- Guardians have powers conferred on them by the Guardianship Order. In exercising these powers, guardians have responsibilities which are set out in the MHO and its subsidiary legislation. A guardian can make decisions on issues of accommodation, medical and finance on behalf of the Subject with an aim to promote and protect the best interests of the person under guardianship.
- ✧ Guardians may apply for a review of the Order under the MHO with the aim of varying or revoking the Order. Other persons may also do so.
- ✧ If a guardian encounters any problems or difficulties in performing their functions, they must immediately inform the assigned case social worker.
- ✧ Guardians may relinquish their functions by giving written notice and the Director of Social Welfare will assume the function until a review of the Guardianship Order is made by the Board.

For further details, please refer to:

Procedural Guidelines



Financial Reporting Guidelines



Medical Guidelines



For more information, please contact the Board Secretariat or visit our website:

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IMPORTANT NOTE

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Overview of Guardianship



The Guardianship Board

The Board is an independent body corporate and operates under Part IVB of Mental Health Ordinance, Cap. 136 ("MHO"), which stipulates that functions and powers of the Board, most of the orders it can make, and the principles and criteria to be applied when the Board is making decisions.

The Board is authorized to appoint guardians for *adults 18 years of age and over* who are mentally incapable of making their own decisions about their personal affairs, financial matters or medical or dental treatments.

The Board may decide to appoint a private guardian (a family member or friend) or the public guardian (Director of Social Welfare).

Guardianship Order

Guardianship Orders involve one or more of the following powers under section 59R(3):

- (a) to require the Subject to reside at a specific place;
- (b) to convey the Subject to a specific place and use reasonable force for the purpose;
- (c) to require the Subject to attend at a place and time for medical or dental treatment, special treatment, occupation, education or training;
- (d) to consent to medical or dental treatment (other than special treatment) if the Subject is incapable of understanding the general nature and effect of the treatment;
- (e) to require access to the Subject to be given to any registered medical practitioner, approved social worker or other person specified in the Orders;
- (f) to hold, receive or pay a specified monthly sum for the maintenance or other benefit of the Subject.

Guardianship applications are decided by the Board constituted by at least three members who have no personal interest or conflict in the manner.

What are Guardians?

- Under section 59S of the MHO, the Board may appoint an appropriate person to act as the guardian of the Subject. Such a person is commonly known as the private guardian. If there is no suitable person that can be found and the Subject should be received into guardianship, the Director of Social Welfare may be appointed (public guardian).
- A guardian must be a single person. There is no system of co-guardianship.

Please consider before applying

Guardianship Order is necessary only where there are no effective informal arrangements to achieve the care related purposes.

1. The Board may authorize the guardian to make important decisions relating to personal circumstances for mentally incapacitated adults about his/her place of residence or consenting to his/her medical or dental treatment. The guardian may also be authorized to operate the subject's bank account(s) and manage a limited amount of that person's money. Such powers will be monitored closely under the Guardianship Order.
2. The guardians' powers are limited by the MHO. For example, they are unable to deal with Mandatory Provident Funds, insurance policies, landed property, stock and investment, probate, civil claims and access rights, etc.
3. Withdrawal of applications must be determined by the Board after a hearing.
4. Subjects under a Guardianship Order who pass away fall within the ambit of the Coroners Ordinance.

Duties of Guardians

- Guardians are required to comply with the **standard conditions** and **special conditions** in the Guardianship Orders appointing them.
- Guardians must also familiarize themselves with the Board's **Medical Guidelines** and **Part IVC of the Mental Health Ordinance** to understand the applicable provisions relating to the exercise of medical consent.
- Private guardians are required to comply with the reporting requirements of the Board's **Financial Reporting Guidelines** and to follow the additional advice or instructions of the Director of Social Welfare or his/her delegate in relation to complying with the requirements.

- A private guardian should also perform the following duties as required by the **Mental Health (Guardianship) Regulations**, Cap.136D, which is a subsidiary legislation to the MHO. For example:
 - ❖ to permit access to the person concerned of visits by or on behalf of the Director of Social Welfare;
 - ❖ to notify the Director of Social Welfare not later than 14 days of any changes of place of residence of him/her or the person concerned;
 - ❖ to notify the Director of Social Welfare when the person concerned has been absent for a continuous period of 28 days from the place last notified to the Director as the concerned person's place of residence as soon as possible and in any event not later than 14 days after the end of the continuous period of 28 days;
 - ❖ to furnish the Director of Social Welfare with such reports or information on the person concerned as the Director may require;
 - ❖ to notify the Director of Social Welfare within 14 days if he/she will be unable to discharge the duties of guardian for any period of time;
 - ❖ if the person under guardianship passed away: -
 - (i) to notify the Director of Social Welfare not later than 14 days after the concerned person's death; also to report the death to the Coroner via the Commissioner of Police; and
 - (ii) immediately inform the hospital of the subject's guardianship status in order that the funeral can be arranged smoothly;
 - ❖ to notify the Director of Social Welfare not later than 14 days of the marriage or intended marriage of the person concerned;
 - ❖ to notify the Director of Social Welfare not later than 14 days when there is changes in the nature and location of employment, training or educational course being taken up by the person concerned;
 - ❖ to give the Director of Social Welfare at least 2 weeks' notice of the concerned person's intended departure from Hong Kong; and
 - ❖ to take all reasonable steps to ensure the safety and welfare of the concerned person and to arrange for the provision of adequate care for him/her.

If the guardian without reasonable excuse contravenes or fails to comply with the duties, he/she commits an offence.