



SOWK3030
LECTURE 6:
PROTECTING THE DISADVANTAGED

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CASE STUDY I



- You are a social worker at the Western Hospital, a hospital run by the Hospital Authority.
- Madam Kong is a 78 year old lady suffering from dementia and cognitive disorder
- She was admitted to the Western Hospital last week as she was suffering from severe flu B.
- According to the doctor and the nursing staff, she is taken care of by her son, King Kong (“KK”).
- Upon admission, it was observed that Madam Kong had some new and old bruises all over her limbs and her torso. KK told the doctor that Madam Kong had recently sustained a fall at home.
- Yesterday, when KK was visiting Madam Kong hinted to the on duty nursing staff that he would not be coming to pick up his mother when she would be ready for discharge tomorrow.
- The case is now referred to you. What do you do?

CASE STUDY I - ISSUES

- Factually:
 - Are there other family members/carers whom you can contact?
 - Are the bruises consistent with those sustained from a fall?
 - Is she fit for discharge?
 - If so, is she able to look after herself after she is discharged? Where she go?
 - Is she able to make decisions for herself?
- Legally:
 - What can we do about the bruises?
 - What will happen if she falls ill again?
 - What legal protection is Madam Kong entitled do?



STARTING POINT

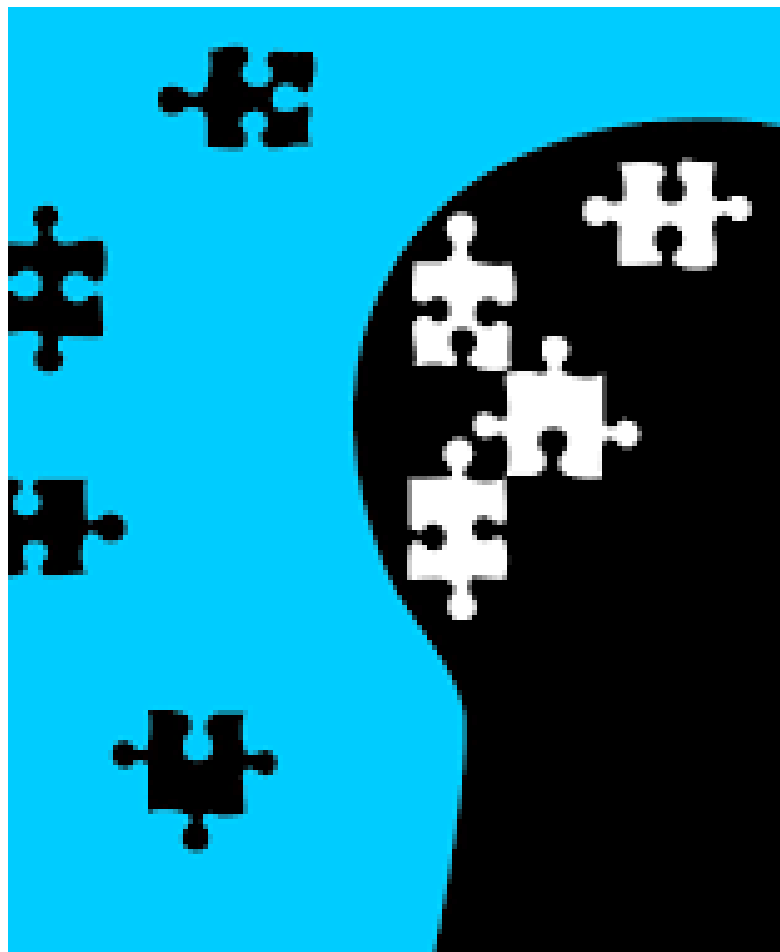
- Mental Health Ordinance 精神健康條例 (Cap. 136) (“MHO”)
 - to provide for the management of the property and affairs (財產及事務的處理) of mentally incapacitated persons;
 - to provide for the reception, detention and treatment (收容、羈留及治療) of mentally incapacitated persons who are mentally disordered persons or patients;
 - to provide for the guardianship (監護) of such patients and for mentally incapacitated persons generally;
 - to make provision for the giving of consent for treatment (進行治療或特別治療而給予的同意) or special treatment in respect of mentally incapacitated persons who have attained 18 years of age;
 - Etc...
- Also relevant:
 - Enduring Powers of Attorney Ordinance 持久授權書條例 (Cap. 501) (“EPAO”)

WHAT IS AN MIP?

- “MIP” = Mentally Incapacitated Person 精神上無行為能力的人
- Section 2 MHO, mental incapacity means:
 - Mental disorder 精神紊亂
 - or
 - Mental handicap 弱智

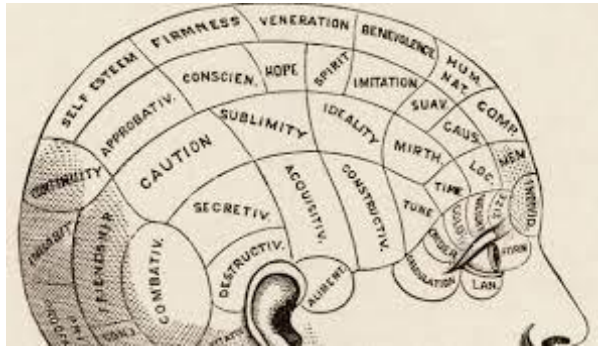


MENTAL DISORDER



- “mental disorder” (精神紊亂) means—
 - (a) mental illness 精神病;
 - (b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned 屬智力及社交能力的顯著減損的心智發育停頓或不完整的狀態，而該狀態是與有關的人的異常侵略性或極不負責任的行為有關連的;
 - (c) psychopathic disorder 精神病理障礙; or
 - (d) any other disorder or disability of mind which does not amount to mental handicap 不屬弱智的任何其他精神失常或精神上無能力
- Under MHO, a person will not be construed as mentally disordered by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs 不得單純因濫交或其他不道德行為、性偏差，或單純因對酒精或藥物的依賴，而將某人視為患有精神紊亂 (see section 2(5) MHO)

MENTAL HANDICAP



- Means sub-average general intellectual functioning with deficiencies in adaptive behaviour
- “Sub-average general intellectual functioning” (低於平均的一般智能) means an IQ of 70 or below according to the Wechsler Intelligence Scales for Children or an equivalent scale in a standardized intelligence test

WHAT CAN WE DO IN MADAM KONG'S CASE?



- Make an application to the Guardianship Board 監護委員會
- Part IVB of the MHO deals with “Guardianship”
- Powers of the Guardianship Board:
 - (a) consider and determine applications for the appointment of guardians of MIPs who have attained the age of 18 years;
 - (b) make guardianship orders 監護令 in respect of MIPs 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 MHO or any other enactment

HOW DOES THE GUARDIANSHIP BOARD EXERCISE ITS POWERS?

- 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 MIP 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 精神上無行為能力的人的利益獲得促進，包括在委員會認為否定該人的意見及願望是符合該人的利益時，否定該人的意見及願望；
 - (b) despite paragraph (a), that the views and wishes of the MIP are, in so far as they may be ascertained, respected 雖然(a)段已有規定，該精神上無行為能力的人的意見及願望在可以被確定的範圍內被尊重。

HOW DOES THE GUARDIANSHIP BOARD EXERCISE ITS POWERS?

In addition, in making a Guardianship Order, the Guardianship Board will need to be satisfied:

- (i) that an MIP who is mentally disordered, is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; or (ii) that an MIP who is mentally handicapped, has a mental handicap of a nature or degree which warrants his reception into guardianship (i)屬精神紊亂的精神上無行為能力的人的精神紊亂的性質或程度，足以構成理由將他收容監護；或(ii)屬弱智的精神上無行為能力的人的弱智的性質或程度，足以構成理由將他收容監護;
- that the mental disorder or mental handicap, as the case may be, limits the MIP in making reasonable decisions in respect of all or a substantial proportion of the matters which relate to his personal circumstances 上述的精神紊亂或弱智，限制該精神上無行為能力的人就與其個人情況有關的所有或佔相當比例的事宜作出合理的決定；
- that the particular needs of the MIP 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 該精神上無行為能力的人的特定需要只有在根據本部獲收容監護的情況下方可獲得滿足及照顧，且在有關的情況下沒有其他較少限制或侵擾的方法可用; and
- that in the interests of the welfare of the MIP or for the protection of other persons that the MIP should be received into guardianship 為該精神上無行為能力的人的福利或為保護他人着想，該精神上無行為能力的人應根據本部獲得收容監護。

WHEN CAN AN APPLICATION BE MADE?

- A guardianship application may be made in respect of a mentally incapacitated person on the grounds that—
 - (a) in the case of—
 - (i) An MIP who is mentally disordered, he is suffering from mental disorder of a nature or degree which warrants his reception into guardianship 屬精神紊亂的精神上無行為能力的人的精神紊亂的性質或程度，足以構成理由將他收容監護; or
 - (ii) An MIP who is mentally handicapped, he has a mental handicap of a nature or degree which warrants his reception into guardianship 屬弱智的精神上無行為能力的人的弱智的性質或程度，足以構成理由將他收容監護;; and
 - (b) it is necessary in the interests of the welfare of the MIP or for the protection of other persons that the MIP should be so received 為該精神上無行為能力的人的福利或為保護他人着想，該精神上無行為能力的人應根據本部獲得收容監護.

(Section 59M(2) MHO)

IS MADAM KONG AN MIP?

- A guardianship application shall be accompanied by and founded on the written reports of 2 registered medical practitioners (neither of whom being the applicant), and each report shall include—
 - (a) a statement that in the medical or other opinion of the registered medical practitioners the grounds set out in section 59M(2); i.e. that the person is an MIP
 - (b) such particulars as may be prescribed of the reasons for that opinion so far as it relates to the grounds set out section 59M (2)(a) – i.e. that the MIP’s condition warrants guardianship; and
 - (c) a statement of the reasons for that opinion so far as it relates to the grounds set out in section 59M(2)(b) – i.e. that it is necessary in the interest of the welfare of the MIP or for her protection.



- Is Madam Kong:
 1. An MIP?
 2. Does her condition warrant guardianship?
 3. Is guardianship in the interests of the welfare of Madam or for the protection of other persons?
- If so, an application can be made and in considering the application, the Guardianship Board will consider the best interests of Madam Kong and respect her wishes if they can be ascertained

WHO CAN MAKE THE APPLICATION?



- Section 59N MHO: A guardianship application under section 59M(1) shall be in the prescribed form and may be made by—
 - (a) a relative 親屬 of the MIP;
 - (b) a social worker 社會工作者;
 - (c) a registered medical practitioner 註冊醫生; or
 - (d) a public officer in the Social Welfare Department 社會福利署的公職人員
- Note that no guardianship application under may be made by any person in respect of the MIP unless the applicant has personally seen the MIP within the period of 14 days ending immediately prior to the date of the application.

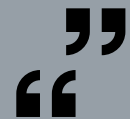
WHAT HAPPENS NEXT?



Once the application is received, the Guardianship Board will notify the MIP, any relative that it thinks fit and the Director of Social Welfare



These parties will be informed of the time and place of the hearing



At the hearing, the Guardianship Board will examine all information and evidence collected (including a social enquiry report 社會背景調查報告). It may interview the MIP and relevant witnesses.

THE DECISION



If the **Guardianship Board** is satisfied that the **MIP** is a person in need of a guardian, it may make an order appointing a guardian in respect of that person.



A guardian must:

Be at least 18

Be willing, capable, and of compatible personality with the MIP 願意且能夠以監護人身分行事

Have no undue conflict of interest, especially financial in nature 沒有不當的利益(尤其是屬財務性質的利益)衝突

Act in the MIP's best interests

Respect the wishes of the MIP

Consent in writing



To require the MIP to reside at such place as may be specified by the guardian;



To convey, or to arrange the conveyance of, the MIP to the place so specified by the guardian, and such reasonable force may be used as is necessary for the purpose;



To require the MIP to attend at places and times so specified by the guardian for the purpose of treatment or special treatment (within the meaning of section 59ZA of MHO) or occupation, education or training;



To consent to that treatment (other than special treatment) on behalf of the MIP but only to the extent that the MIP is incapable of understanding the general nature and effect of any such treatment;



To require access to the MIP to be given, at any place where the MIP is residing, to any registered medical practitioner, approved social worker, or other person (if any) specified in the order;



To hold, receive or pay such monthly sum (within the meaning of section 44B(8) MHO) specified in the order on behalf of the MIP for the maintenance or other benefit of that person as if the guardian were a trustee of that monthly sum

POWERS OF THE GUARDIAN

EFFECT OF GUARDIANSHIP ORDER

Duration: not exceeding 1 year, renewable but not exceeding 3 years on renewal

Reviewable prior to expiry

Note Guardianship Orders are subject to appeals to the High Court



PART TWO –
VOLUNTARY
PATIENTS /
PATIENTS
UNDER
OBSERVATION

CASE STUDY 2



- You see Jack in a counselling session.
- Jack may be suffering from some mental problems. He told you that he had been bullied at his work place. He seems to be stressed and tense and you believe that he may be mentally unstable. He indicated an intention to kill one of his colleagues but when you press him to disclose more details, he tells you that he is in a hurry and left the consultation room.

CASE STUDY 2 - ISSUES



- **Factually:**
 - Is Jack in a fit state to leave the consultation on his own?
 - Should you contact his family members?
 - What about his intention to harm his colleague, what should you do about this?
- **Legally:**
 - Can you report Jack to the police because he has an intention to harm his colleague?
 - If you report Jack's condition to anyone, will you breach your duty of confidentiality towards Jack?
 - What can you do to make sure Jack's condition is being monitored by someone responsible?

IS JACK A VOLUNTARY PATIENT 自願入院病人?



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- If a person appears to require treatment in a mental hospital and if he, or in the case of a person under the age of 16 years, his parent or guardian—
 - (a) is desirous that such person should receive such treatment 希望該人接受該項治療; and
 - (b) completes an application in writing 填具一份申請書 ; and
 - (c) lodges the application with a medical superintendent 將該份申請書遞交院長 ,
- the medical superintendent may admit such person as a voluntary patient 則該院院長可收納該人為自願入院病人 .

VOLUNTARY PATIENTS

(a) shall be entitled to leave the mental hospital after the expiration of 7 days from his notice in writing; or, in the discretion of the medical superintendent, verbal notice, to the medical superintendent of the intention of the voluntary patient to leave the mental hospital; provided that a medical superintendent may in his absolute discretion discharge a voluntary patient at any time within such period of 7 days 有權離開該精神病院，而該通知內須述明該自願入院病人意欲離開該精神病院; and

(b) shall leave the mental hospital within 72 hours after he has received from the medical superintendent notice in writing, signed by the medical superintendent, stating that the medical superintendent is satisfied that it is not necessary that the voluntary patient should remain in the mental hospital and that the voluntary patient is required to leave the mental hospital 接獲一份由院長簽署的書面通知後的72小時內，須離開該精神病院，而該書面通知須述明院長信納該自願入院病人無須留在該精神病院內，並述明該自願入院病人須離開該精神病院。

PATIENTS UNDER OBSERVATION 接受觀察病人

- An application may be made to a District Judge 區域法院法官 or magistrate 裁判官 for an order for the detention of a patient for observation 羈留以作觀察 on the grounds that the patient—
 - (a) is suffering from mental disorder of a nature or degree which warrants his detention in a mental hospital for observation (or for observation followed by medical treatment) for at least a limited period 該病人患有精神紊亂，而其精神紊亂的性質或程度，足以構成理由將他羈留在精神病院內至少一段有限的期間，以接受觀察(或接受觀察後再接受治療); and
 - (b) ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons 為該病人本身的健康或安全，或是為保護他人著想，應該將該病人如此羈留.
- Such application shall be founded on the written opinion in the prescribed form of a registered medical practitioner who has examined the patient within the previous 7 days, that the above conditions are met
- (Section 31, MHO)

ORDER FOR DETENTION FOR OBSERVATION

Upon receipt of an application, the District Judge or magistrate may make an order authorizing the removal of the patient to a mental hospital for the purpose of detention and observation 以作羈留和觀察 during the period not exceeding 7 days from and including the date of the order.

Such order allows the applicant and every public officer with such assistance in each case as may be necessary, to use such reasonable force as may be necessary 合理所需的武力 in order to remove to a mental hospital the patient and if for any reason it is not practicable forthwith to remove him to a mental hospital to detain him in a place of safety for a period not exceeding 48 hours.

WHAT HAPPENS NEXT?

- If 2 registered medical practitioners have examined the patient and are of the opinion that she is required to be detained in a mental hospital, for a further period for the purpose of observation, investigation and treatment, they may complete a certificate and forward it to the District Judge
- If he considers it necessary, the District Judge will countersign the certificate
- Only one further period of extension for detention of 21 days can be made unless the patient becomes a voluntary patient

CERTIFIED PATIENTS

- If 2 registered medical practitioners have examined a voluntary patient or a patient under observation and are of the opinion that the patient is suffering from mental disorder and need of treatment necessary for his own health or for the protection of others, they may complete a certificate and forward it to a District Judge
- If he considers necessary, the District Judge will countersign the certificate if he considers that it would be a danger to the patient or others if the patient is discharged or the patient is abnormally aggressive or his conduct is irresponsible 具異常侵略性或行為極不負責任的病人
- The patient may then be detained in a mental hospital for observation, investigation and treatment and may be transferred to any other mental hospital
- Section 36, MHO

DISCHARGE

- On recovery
- Or before recovery – on application of a friend or relative of a patient – see section 42, MHO
- Also note conditional discharge of violent patients under section 42B, MHO



SUMMARY



- Is Jack:
 1. A voluntary patient/a patient under observation/a certified patient?
 2. Does his condition warrant a detention?
 3. Is he required to be detained in a mental hospital, for the purpose of observation, investigation and treatment?

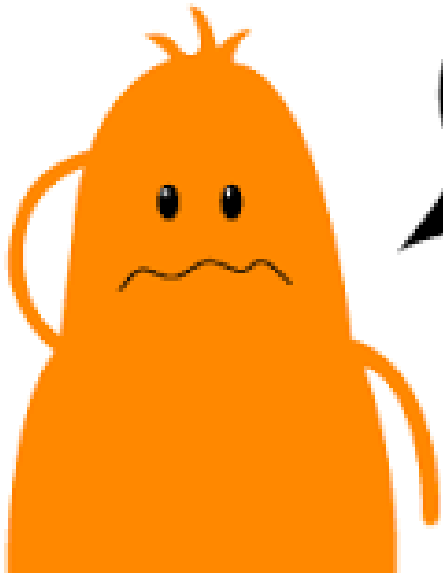
SECTION 71A, MHO

- An **approved social worker** can, on oath, lay information before a magistrate that there is reasonable cause to suspect that:
 - (a) A person believed to be an **MIP**;
 - (b) **Has been, or is being, ill-treated, neglected or kept otherwise than under proper control** 曾受或正受虐待、疏忽或缺乏適當控制的扶養; or
 - (c) **Is in need of care or control** and, in his own interests or for the protection of other persons, may need to be taken to a **place of safety** 需要接受照顧或控制，而且為其本身的利益或為保護他人著想，可能需要被帶往安全地方
- Upon considering the information, the magistrate may issue a warrant authorising any police officer or other person to enter premises and **remove the patient to a place of safety**
- On execution of the warrant, the patient should be accompanied by an approved social worker or a community psychiatric nurse
- Reasonable force may be used on execution of the warrant
- “Place of safety” = A&E Department of a general hospital



PART THREE – PROPERTY MANAGEMENT ISSUES

CASE STUDY 3



- Susan suffers from dementia and is often forgetful. She is unable to withdraw money from the ATM machine as she often forgets the password.
- She wants her relatives to help her manage her property.
- She also heard that she should prepare a will.
- What should she do??

FORMALITIES OF MAKING A WILL

- All intentions should be in writing
- It should be dated
- It should be signed by the person making the will
- The signature should be witnessed by 2 persons aged 18 or above
- The witness and his/her spouse should not be a beneficiary of the will
- The will can cover:
 - Who will be the executor of the estate
 - Distribution of assets
 - Appoint legal guardian for minors
 - Funeral arrangements /how to deal with the body of the deceased



WHAT IF SUSAN HAS NO VALID WILL?

- If the deceased has no issue, parent, siblings or issue of siblings – then spouse entitled to residuary estate
- If the deceased has spouse and issue:
 - Spouse – all personal chattels + \$500,000
 - Remaining estate – divided in half – one half to spouse, one half equally distributed amongst the children
- If the deceased has spouse, parents and siblings but no issue:
 - Spouse – all personal chattels + \$1,00,000
 - Remaining estate – divided in half – one half to spouse, one half to surviving parents (siblings only entitled if the deceased leaves no issue and no parents)
- Illegitimate children – enjoy same rights as legitimate children after 19 June 1993
- Legally adopted children – same rights as natural children



ENDURING POWERS OF ATTORNEY ORDINANCE (CAP 501) (“EPAO”)

- 持久授權書條例
- An adult may, while he is mentally capable, appoint an attorney to take care of his financial matters in the event he subsequently becomes mentally incapacitated
 - Currently restricted to the donor’s property and financial affairs
 - Need to execute the power of attorney in the prescribed form and signed before a solicitor and registered medical practitioner
 - Takes effect when the donor is mentally incapacitated (certified by a registered medical practitioner)
 - Requires registration at the High Court
- Note: new Bill: Continuing Powers of Attorney Ordinance
 - Proposed to replace EPAO
 - Extending to donor’s personal care

