Guardianship and Administration Board
At Royal Hobart Hospital

E.Q., on the application of PROFESSOR K KIRKBY

GAB No.2364 of 2006

REASONS FOR DECISION

Malcolm Schyvens (Chair)

Hearing 16 January 2006

Consent to medical treatment – - refusal of treatment - application by a psychiatrist for treatment of a patient with a psychiatric disability – grandiose delusions, lack of insight – best interests
Guardianship and Administration Act 1995 (Tas), ss 36, 43, 44, 45

1. This is an application under section 44 of the *Guardianship and Administration Act 1995* ('the Act') for consent for medical treatment for E.Q.. The named applicants were Professor Kirkby, Registrar Dr Anne de Bruyn, RMO Dr N Tomlinson. The proposed treatments for which substitute consent is sought are fortnightly intramuscular injections of 200 mg of Clopixol for a period of two years.

2. The person for whom substitute consent is sought, E.Q., is a 54-year-old divorced male with a university education who has bipolar affective disorder and has had many manic episodes with psychotic features over 25 years. His regular treating psychiatrist is Dr Russell Pargiter. He has minimal support from family but has some support from friends. However, no person is available to act as E.Q.'s person responsible for the purposes of section 43 of the Act.

3. The Guardianship and Administration Board received the application on 11 January 2006. The application stated that the application needed to be heard urgently. Pursuant to section 69(3)(b) the notice period of 10 days was

truncated and the application was set down for hearing on 16 January 2006 at DPM. E.Q. was given written notice of that hearing by facsimile on 12 January 2006.

4. E.Q. was brought to the Royal Hobart Hospital Department of Psychological Medicine (DPM) following an alleged breach of a restraint order and harassment involving a female. He was admitted to DPM on or about the 19th December 2005. Since that time he has refused the medication that the applicants considered would best treat his symptoms of grandiosity, agitation and lack of insight and which is the subject of this application.

5. The hearing was attended by: Dr Anne de Bruyn on behalf of the applicants, E.Q., his solicitors Mr Colin Adams and Mr Timothy Breen, Ms Anne Perks and Ms Anna Curtain Investigation and Liaison Officers of the Board and Mr Jason Lennox a nurse in DPM. The hearing proceeded informally in accordance with the usual procedure of the Board.

6. The documents before the Board included the *Application by a Psychiatrist for the Medical Treatment of a Patient with a Psychiatric Disability*, file note dated 13th January, 2006 by the Ms Anne Perks, Senior Investigation Officer for the Board, and a letter dated the 16th January, 2006 from Dr Russell Pargiter. Dr de Bruyn also supplied the DPM medical file for perusal.

Evidence of Disability:

7. The applicant stated that E.Q. had a background of bipolar affective disorder and "was currently manic with grandiosity, agitation and no insight". Dr de Bruyn confirmed this statement in evidence at the hearing. Dr Pargiter's report also confirmed that diagnosis. E.Q. at one stage during the hearing described himself as "being bi polar" but later, when explicitly asked, stated he did not have this illness.

8. The Board was satisfied for the purposes of section 36(1) of the Act that E.Q. is a person with a disability.

Evidence of Incapacity

9. The application provides that E.Q.'s disability affects his ability to grant or refuse consent to treatment in that:

> "[The] patient's delusions involve a conspiracy theory wherein the hospital and medications are used to control him for economic and political gain. Consequently compliance is very poor and patient continues to be afflicted".

Dr de Bruyn provided oral evidence that E.Q. lacked capacity to consent to treatment adding that E.Q. had been brought to the RHH by police for acting on delusional ideas.

10. Mr Jason Lennox provided an account of his discussions with E.Q. the day prior to the hearing whilst on the Unit which illustrated a lack on insight on the part of E.Q. and grandiose delusions, for example, that he was currently forming a consortium of persons who would move to "close down DPM".

11. A review of the DPM medical file documented incidents confirming the lack of insight stated in the application.

12. E.Q. questioned the evidence presented as to his having a disability resulting in incapacity and on several occasions stated that the application was simply part of a conspiracy involving the Royal Hobart Hospital and Tasmania Police and "others" to discriminate against him.

13. The Board was satisfied that by reason of his lack of insight into his disability and the need for treatment, E.Q. is incapable of understanding the nature and effect of the proposed treatment for the purposes of section 36(2)(a) and incapable of giving consent for the purposes of section 45(1)(b) of the Act.

Section 45(1)(a)

14. Treatment with Clopixol, where there is valid consent, is lawful.

Section 45(1)(c) and 45(2) - The best interests of the person:

15. *45(2)(a) The wishes of the person*: E.Q. made it clear throughout the hearing that he was not in support of the determination sought by the applicant. He expressed concerns about side effects from the medication, which are discussed below. He also stated that he did not wish to remain at DPM and wished to return to his home.

16. *45(2)(b) Consequences of not treating*: Dr de Bruyn stated that the consequences of not treating were that E.Q. would experience further delusions and manic episodes, leading to a longer stay or possible readmissions to DPM.

17. *45(2)(c) Alternative treatment available:* The written statement provided by Dr Pargiter provided that:

> " ... attempts to replace Clopixol with other anti-psychotic medications were not successful. It would appear that his condition was kept under control with the Clopixol at two to three weekly intervals. Attempts to reduce the drug were unsuccessful."

18. Much of the discussion at the hearing regarding alternative treatments compared oral medication to injectable medication due to a preference elucidated by E.Q. for oral medication. Dr de Bruyn provided evidence at the hearing that E.Q. had been an inpatient at the DPM for one month and oral treatment provided during that time and accepted by E.Q. had resulted in no improvement in his condition.

19. *45(2)(d) Postponing treatment:* For the reasons stated in paragraph 16 above, postponement of treatment is not in E.Q.'s best interests and is

unlikely to result in him regaining capacity to provide consent to treatment.

20. *Conclusion regarding best interests:* Evidence suggested that E.Q., when successfully treated, functions adequately in the community. When he is not adequately treated E.Q. suffers from delusions, which may result in his admission to hospital as it has on the current occurrence. The statement provided by Dr Pargiter confirmed that E.Q.'s condition had previously been "kept under control" with Clopixol and that no other treatment had exhibited such success.

21. E.Q. stated that Clopixol had caused him significant tremors and associated side effects, which caused him to voluntarily admit himself to hospital last year. Dr de Bruyn confirmed that there had been reports of side effects when E.Q. was treated with Clopixol. She also stated that such side effects could be treated and that the consequences of the side effects upon E.Q.'s ability to function are far less than the dramatic imposition of manic delusional episodes.

22. Further, in relation to the effect of Cloxipol upon E.Q., Dr Pargiter reported that:

> "no major adverse effects were noted apart from a flapping tremor of the hands which is probably due to the previous antipsychotic medications, and in any case, never worried the patient."

23. The principles in section 6 of the Act also require that the Board consider the means that are the least restrictive of the person's freedom of decision and action. In these circumstances, treating E.Q. in the manner proposed will hasten his discharge from hospital and reduce his current level of restriction.

24. The Board determined that the benefits of treatment outweigh the risks of side effects, which can in any event be successfully treated. In light of each of the elements in section 45(2)(a) – (d) of the Act, and the fact that

E.Q. has experienced successful treatment in the past, treatment with the proposed drug is in E.Q.'s overall best interests.

25. Dr de Bruyn stated that it was in E.Q.'s best interests to commence on the proposed treatment as a matter of urgency and as such sought a determination pursuant to section 45(4) of the Act. For reasons discussed above, delaying treatment by a possible 28 days (or possibly more) would not be in the best interests of E.Q. and, accordingly, the Board considers the treatment urgent and should commence immediately for the purposes of section 45(4)(b) of the Act. However taking into account submissions put by E.Q.'s solicitor, such treatment is delayed until Wednesday 18 January to allow E.Q. to obtain legal advice regarding the order.

Conclusion:

26. The documentary and oral evidence presented at the hearing provided sufficient support to grant in favour of the determination that was sought. Without treatment, which has proven effective in the past, E.Q. will continue to remain under the care of DPM or a similar facility and will not be able to function adequately within the community, which is his clearly expressed desire.

27. Medical evidence provided both by the applicant and Dr Pargiter categorically supported the commencement of the proposed treatment as the only treatment, which has previously proven successful with E.Q.

28. E.Q.'s concerns and evidence as to possible side effects stemming from the proposed treatment suggest a determination in respect of the duration of treatment which is less than that sought in the application to ensure an assessment is undertaken concerning the effect of same in the immediate future.

DETERMINATION:

After hearing an application for the consent of the Board to medical treatment for E.Q. (hereinafter called the 'patient')

The Board was satisfied that

- the medical treatment is otherwise lawful, and
- the patient is incapable of giving consent to the medical treatment,
- the medical treatment would be in the patient's best interests, and
- that the medical treatment is urgent for the purposes of section 69(3)(b) and 45(4)

THE BOARD consents to medical treatment for the patient comprising the prescription by a qualified medical practitioner and administration by a qualified health care professional of an intramuscular injection of up to 200mgs each fortnight of Clopixol.

THE BOARD FURTHER ORDERS

1. That this order remains in effect for a period of three months.
2. That pursuant to s.45(4) of the *Guardianship and Administration Act 1995* the treatment may commence on Wednesday 18th January 2006.

DATED this 16th day of January 2006.

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Malcolm Schyvens

MEMBER