

Guardianship and Administration Board
HOBART

MS K.X.A, on the application of DR N G

GAB No. XXXX of 2004

REASONS FOR DECISION

Anita Smith (President)

14 July 2004

Consent to medical treatment – refusal of treatment - application by a psychiatrist for treatment of a patient with a psychiatric disability – paranoia, anxiety, lack of insight into illness – best interests – oral vs injectable treatments, side effects

Guardianship and Administration Act 1995 (Tas), ss 36, 44, 45, 69 and 76

- 1 Dr G , the applicant, is presently the treating practitioner for Ms K.X.A. (Ms A) and is therefore a person with ‘a proper interest in the matter’ for the purposes of section 44(1) of the *Guardianship and Administration Act 1995* (‘the Act’). He has applied for consent to medical treatment for Ms A with intramuscular injections of Fluphenazine between 12.5 mg every 4 weeks and 25 mg every 2 weeks.
- 2 Ms A is a 59 year old woman. She has no immediate family or any person who might be able to undertake the role as ‘person responsible’ for the purposes of Part 6 of the Act. Though she normally resides at XXXX, at the time of the hearing she was at the Royal Hobart Hospital as an involuntary patient subject to a continuing care order under the *Mental Health Act 1996*.
- 3 The Application and Health Care Professional Report (as one document) were received on 8 July 2004 by facsimile. The applicant informed the Board that a hearing was required urgently on the basis that Ms A has paranoid

schizophrenia and was experiencing delusions that people in her immediate community were plotting to kill her. Ms A had objected to medical treatment proposed by the applicant but the applicant believed that consent to treatment was urgently needed.

- 4 The Board was satisfied that the matter was urgent because Ms A was experiencing distress. A hearing was convened on short notice pursuant to section 69(3) of the Act on the 9 July 2004. On that occasion Ms A expressed a desire to have legal representation. At her request, a copy of the application, information about the *Mental Health Act* order and some details of free legal and advocacy services were supplied to her and the hearing was adjourned to the 14 July 2004.
- 5 Unfortunately, Ms A was unable to obtain any legal representation or independent advocacy. Sadly, when she approached the Legal Aid Commission, the Hobart Community Legal Centre and Advocacy Tasmania she was told that they do not provide advocacy for Guardianship and Administration Board hearings. A hospital social worker, Mr I did attend with her to provide support on 14 July 2004.
- 6 On 14 July 2004, Dr G gave evidence that a hearing and an order were required by reason of urgency because if Ms A was not treated her delusions would become worse, lead to greater isolation and perhaps become more entrenched, thus more difficult to treat. He stressed the need to start treatment and monitor the results as soon as possible to ease her suffering. Given her failed attempts, Ms A did not expect to obtain any legal advice at any future time. I determined that it was appropriate to proceed with the hearing for reasons of urgency in accordance with section 69(3) of the Act.
- 7 The Board received a written submission from Ms A at the start of the hearing. This and the application were the only written materials before the Board, apart from details of two previous orders by the Board in January and February 2001.

Dr G and Ms A gave oral evidence. Mr I provided assistance and explanation from time to time in the hearing. Ms A presented as an articulate and intelligent woman who was experiencing a high degree of agitation that brought with it an understandable level of confusion.

- 8 The applicant stated that Ms A has had paranoid schizophrenia for approximately 4 years, which manifests in delusions that people are making death threats and have other malign intentions towards her. He gave evidence that Ms A rejects his diagnosis and insists that the death threats are real. He submitted that because she has no insight into her illness, she lacks the capacity to make appropriate treatment decisions.
- 9 Ms A disagreed with the diagnosis by Dr G . She reiterated a number of threats by a number of people and her written evidence confirmed that she held these beliefs. Ms A stated that effect of the treatment would be to ‘... sedate me and stop my brain. They will be able to kill me more easily’. When asked why there was no evidence of any person trying to kill her, Ms A stated that: ‘They are waiting for a change to a Liberal Government.’ I did not accept Ms A’s evidence that various people are trying to kill her.
- 10 **Section 45(1)(b):** I accepted Dr G ’s evidence of Ms A’s disability and incapacity to make reasonable decisions about treatment for the purposes of section 36(1) and 45(1)(b) of the Act in that, because of her denial of the illness, she is unable to understand the nature and effect of the treatment or to reasonably give or refuse consent.
- 11 **Section 45(1)(a):** When administered with consent, the administration of the proposed treatment is lawful.
- 12 **Section 45(1)(c) and (2):** Ms A rejects the need for any treatment. As stated above, she believes that treatment will dull her responses to those people who she believes have malign intentions towards her.

- 13 The consequences of not treating Ms A, according to the applicant are that she will continue to live in unnecessary fear, operate at a high level of distress believing her life to be in danger, and that the delusions will become more entrenched and harder to treat. In contrast, the proposed treatment would reduce her preoccupation and anxiety about perceived threats upon her life.
- 14 Alternative drugs, such as other injectable drugs and oral treatments, were discussed at the hearing. The treatment selected by Dr G was particularly requested because it is the most affordable and has been shown to have positive effects for Ms A in the past. Injectable drugs were preferable to oral medication because of the certainty of administration.
- 15 Ms A made a specific request for oral treatment or treatment that did not require injection in the buttocks. Her objection to having a male nurse attend her alone at her home for the purpose of injecting her in the buttocks is entirely reasonable. Dr G agreed and stated that he would endeavour to find alternative arrangements, preferably a female nurse.
- 16 The applicant described the known risks associated with the drug Fluphenazine such as Parkinsonism, tardive dyskinesia and drowsiness or lethargy. He countered this, however, by stating that the incidence of such risks is reasonably low and the role of mental health nurses is to monitor any evidence of such risks and to refer back to the treating psychiatrist should any symptoms appear. He also said that most side effects are reversible if detected at an early stage. While this evidence was not directly contested, it did cause Ms A a great deal of anxiety.
- 17 Ms A gave evidence about shaking and a rash on her legs that had been mildly irritating which she attributed to an injection of Fluphenazine shortly before 8 July 2004. Dr G said that shaking was not attributable to the injection but agreed that the rash might be an initial reaction to the use of the drug. The rash would be likely to subside very quickly with superficial treatment and in any

event is less distressing than the delusions that the treatment is prescribed to prevent.

- 18 The proposed course of treatment was to administer a minimum 12.5 mg of Fluphenazine every 4 weeks up to a maximum of 25 mg every fortnight (or a total of 50 mg every 4 weeks, four times the starting dose). One injection of the minimum dosage had been administered prior to the first hearing date. Dr G believed it was likely that there would be a need for an increased dose, but stated that all increases are monitored carefully and imposed incrementally. The maximum dosage would allow for responsible treatment of the condition if a steady progression through lower dosages had failed to bring about the desired improvement in Ms A's condition.
- 19 Because of the depth of Ms A's beliefs about the threats to her life, and the evidence of Dr G, I determined that delaying treatment would not abate the need for treatment nor improve her capacity to consent to treatment.
- 20 Given all of the above, I was satisfied that the proposed course of medical treatment would be in Ms A's best interests for the purposes of section 45(1)(c) of the Act.
- 21 **Section 45(4):** Ms A had received one 12.5 mg injection of Fluphenazine just before the first hearing date on 9 July 2004. That injection would have effect for 4 weeks until approximately 6 August 2004. It is possible that the period of appeal for the purposes of section 76 might not conclude until approximately 25 August 2004 (because of the operation of section 76(3)(c)).
- 22 While Ms A did not require an injection until approximately 6 August 2004, it is important that the course of treatment be continuous and consistent. For that reason, I determined that the order should commence immediately such that when the next injection is due, it can be administered with the Board's consent without the need for delay while the period of appeal is being observed. I

considered that the need for treatment is urgent for the same reasons as given in paragraph 6 above.

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 12.5mgs every 4 weeks of the drug Fluphenazine to a maximum of 25mgs every 2 weeks if required.

THE BOARD FURTHER ORDERS

1. That this order remains in effect for a period of six months.
2. That pursuant to s.45 (4) of the *Guardianship and Administration Act 1995* the treatment may commence immediately.

Anita Smith
PRESIDENT