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Guardianship and Administration Board
Hobart

MO, on the application of Dr G, Medical Practitioner

GAB No. 1598/2003

REASONS FOR DECISION

Anita Smith (Chair - President)

17 July 2003

Consent to medical treatment - amendment to previous determination – notice of applications – urgency not established – question of compliance with oral medications
Guardianship and Administration Act 1995 (Tas), ss 45 and 69

This is an application under part 6 of the *Guardianship and Administration Act 1995* for consent to medical treatment for MO made by her treating doctor, Dr G. There is a current and valid order dated 17 April 2003 which provides consent to:

> "*medical treatment if the patient is not compliant with oral treatment comprising the prescription by a qualified medical practitioner and administration by a qualified health care professional the drug Flupenthixol, first dose 20mg by intramuscular injection followed by 40mg every two weeks by intramuscular injection up to a maximum of 60mg every week by intramuscular injection.*"

Board notes from the last hearing indicate that the order was made to represent an agreement reached between the parties at the hearing. That order will expire on 16 October 2003.

The present application is for amendment by way of substitution with a fresh order consenting to medical treatment.

The applicant initially sought to amend the order to delete the words "*if the patient is not compliant with oral treatment*" thereby removing the contingency which would allow immediate treatment by injection.

The subject of the application, Ms O, is a 42 year old woman. Dr G gave evidence that she has bi polar disorder, a claim that Ms O disputes. The hearing was attended by her mother, her sister, her Mental Health Case Manager and her nurse. She has a daughter who was unavailable for the hearing.

This application under Part 6 was made on the basis that, by reason of her disability, Ms O is incapable of giving consent to the new regime of medical treatment, and the new regime of treatment is in her best interests.

The Disability

The Board received a letter dated 11 July 2003 as well as oral evidence from Dr G, a doctor at the Royal Hobart Hospital. According to Dr G, she and Dr B have treated Ms O since April 2003 for bi polar disorder and she has had that condition for around 25 years.

Hearsay evidence was given by Dr G that Drs B, P, K, C and K have all assessed Ms O's notes and agree with the present diagnosis. As hearsay evidence it has very little weight and it appeared to have been made to dissuade Ms O from seeking a further opinion.

Ms O stated that she does not have bi polar disorder, but has a post-traumatic stress disorder, which has manic phases. She disputed most examples of her behaviour that demonstrate the illness, despite agreement between all other parties as to the general nature of the behaviour disturbances. Some of the behaviours are recorded on files of Tasmania Police and the Board will obtain copies of those notes prior to the next hearing.

Compliance with oral medication

If it is proven that Ms O has been non-complaint with her oral medication, lithium, the conditions of the order dated 17 April 2003 can be invoked.

Dr G stated that Ms O has either not been compliant with her oral medications, or that they are insufficient to control her disability at present. Dr G implied that Ms O's recovery has been impaired by irregular or sporadic ingestion of oral medications that may have been timed to get appropriate results from blood testing which detect levels of lithium. Dr G conceded that lithium levels have been "OK" on blood testing and that the levels are within the therapeutic range. Concern about non-compliance did not appear to progress beyond suspicion due to some unusual fluctuation in levels and a lack of progress in altering the inappropriate behaviours.

Ms O stated that she has been compliant with medication but that digestion issues (vomiting and diarrhoea) had impaired her oral medication taking effect. She stated that she did not realise that she must not take tablets immediately before a test and this may explain the unusual readings on tests. She disputed or gave alternative explanations for the inappropriate behaviours.

The issue of compliance or non-compliance was not satisfactorily resolved. Dr G was not convincing in her statements to support evidence of non-compliance, and Ms O was also not convincing in her protestations of compliance. Mr J offered that oral medication has not been taken appropriately, but was not able to expand. Therefore I can come to no firm conclusions about compliance and, as a result, the condition precedent for treatment described in the order of 17 April 2003 has not been reached.

Amendment to the order of 17 April 2003

In the event that non-compliance with the oral medication could not be proven, Dr G asked the Board to amend the order:

(i) to substitute Constra for Flupenthixol,
(ii) to include oral and injectable medication together rather than as alternate, and
(iii) to extend the order to 12 months expiring 16 July 2004.

Such an amendment is more substantial than the letter of 11 July 2003 disclosed and would take effect as a new order.

Ms O has been given 1 day's written notice of the hearing. Section 69(1) of the Act requires that the person in respect of whom a hearing is to be held be given 10 days notice of that hearing. Notice can be dispensed with where the Board thinks it proper by reason of urgency under section 69(3)(b).

Ms O has been taking her oral medication voluntarily while in the Royal Hobart Hospital. She objects to treatment by injection, not oral treatment. Should she refuse all oral medication, the order of 17 April 2003 could be invoked. Ms O is currently detained in the hospital under a Mental Health order and subject to a current and valid order of the Board. No reasons for urgency were given for the amendment.

Ms O followed the discussions of the hearing with great interest. She was well versed in her rights and mentioned discussions with her solicitor. She was somewhat distressed, but not to a level that was inappropriate given that the discussion was very personal and the contents of some statements were accusatory, albeit well meaning.

There was no evidence that a delay of another 10 days will cause any specific distress or ill effects. At its highest, the argument for urgency was that Ms O will remain in hospital until her treatment regime is settled.

Further time to prepare for a hearing may allow Ms O to give instructions to her solicitor and to seek a second or independent medical opinion. It is appropriate that Ms O be given an opportunity to provide alternative evidence and to prepare a case with at least 10 days notice as prescribed by the Act.

Additionally, the applicant's case was scantily put and requires further background information before the Board would be moved to amend the order.

Both parties are advised to prepare for the application the following questions:

(i) What level of improvement was expected of Ms O if she adhered to the oral medication regime?
(ii) To what extent that level has or has not been reached?
(iii) Is a new drug regime necessary and why?
(iv) Can the Board be satisfied of the conditions set out in section 45 of the *Guardianship and Administration Act 1995*?

Conclusion

The application to amend the order is adjourned for at least 10 days. Notice will be given to the parties of a hearing after the expiration of 10 days.

Ms O obtained agreement from the hospital staff that they will facilitate the seeking of a second opinion from either Dr W or another independent psychiatrist. Ms O has previously sought a second opinion from Dr A but this has been denied because he is "too busy". There was discussion that independent psychiatrists are difficult to see due to long

waiting lists. The Board will consider a longer adjournment to facilitate an independent psychiatric opinion. Ms O is advised to provide a copy of these reasons for decision to the psychiatrist giving an opinion.

THE BOARD ORDERS

1. That the application be adjourned for a period not less than 10 days.
2. That evidence presented to the next hearing of the application will include an opinion from an independent psychiatrist.

Anita Smith
PRESIDENT

Consent of Board

45. (1) On hearing an application for its consent to the carrying out of medical or dental treatment the Board may consent to the carrying out of the medical or dental treatment if it is satisfied that –

(a) the medical or dental treatment is otherwise lawful; and

(b) that person is incapable of giving consent; and

(c) the medical or dental treatment would be in the best interests of that person.

(2) For the purposes of determining whether any medical or dental treatment would be in the best interests of a person to whom this Part applies, matters to be taken into account by the Board include –

(a) the wishes of that person, so far as they can be ascertained; and

(b) the consequences to that person if the proposed treatment is not carried out; and

(c) any alternative treatment available to that person; and

(d) whether the proposed treatment can be postponed on the ground that better treatment may become available and whether that person is likely to become capable of consenting to the treatment; and

(e) …

(f) any other matters prescribed by the regulations.

(3) Subject to subsection (4), a decision of the Board to give its consent to medical or dental treatment has no effect until the period of appeal under section 76 has expired or, if an appeal has been instituted, it is set aside, withdrawn or dismissed.

(4) If –

(a) an application for the consent of the Board for the carrying out of medical or dental treatment on a person has been made under section 44; and

(b) the Board considers that the treatment is urgent –

the Board may give its consent for the treatment to be carried out immediately.