IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 203

Magistrate's Appeal No 9016 of 2017/01

Between

TAN GEK YOUNG

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

Magistrate's Appeal No 9016 of 2017/02

Between

PUBLIC PROSECUTOR

… *Appellant*

And

TAN GEK YOUNG

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Sentencing]

Version No 1: 27 Oct 2020 (22:40 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

FACTS **2**

THE CHARGES **4**

THE CHARGES PROCEEDED WITH 6

THE TIC CHARGES 9

DECISION BELOW **11**

PARTIES' CASES **16**

MY DECISION **17**

LEGISLATIVE BACKGROUND 18

DETERRENCE AS THE PRIMARY SENTENCING CONSIDERATION 21

Prevalence of the offence *23*

SHOULD THERE BE SENTENCING GUIDELINES? 25

Previous cases all brought under different criminal provisions *26*

Difficulties with the DJ's and the PP's approaches *30*

SENTENCING GUIDELINES 34

Step 1: Whether the custodial threshold is crossed *34*

Step 2: Sentence-specific aggravating and mitigating factors *37*

Step 3: Whether to impose a fine in addition to a custodial sentence *40*

Step 4: Consecutive sentences *41*

THE APPROPRIATE SENTENCE 43

Individual sentences *43*

(1) The 1st and 3rd charges 45

(2) 7th, 12th, 14th and 16th charges 47

(3) 18th, 20th, 28th, 36th, 44th, 52nd charges 48
(4) 5th and 54th charges.....49
(5) Relevant antecedents.....51
(6) TIC charges.....52
(7) Mitigating factors.....54
Global sentence.....*56*

CONCLUSION.....58

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Tan Gek Young
v
Public Prosecutor and another matter

[2017] SGHC 203

High Court — Magistrate's Appeals Nos 9016 of 2017/01 and 9016 of 2017/02
Chao Hick Tin JA
17 May 2017

17 August 2017 Judgment reserved.

Chao Hick Tin JA:

Introduction

1 The appellant in the first appeal, and the respondent in the second, is Tan Gek Young ("Tan"), a doctor who, over a period of 15 months from 2014 to 2015, sold more than 2,300 litres of cough preparations for non-medical purposes.

2 Following investigations, the Health Sciences Authority ("HSA") tendered 55 charges against Tan. Its prosecuting counsel proceeded with 15 charges, to which Tan pleaded guilty. These comprised 12 charges under s 6(1)(*a*)(i) of the Poisons Act (Cap 234, 1999 Rev Ed), two charges under s 6(3)(*b*) of the Poisons Act, and one charge under s 24 of the Medicines Act (Cap 176, 1985 Rev Ed). Tan also consented to 40 charges being taken into consideration for the purpose of sentencing ("TIC charges"). Of these, 36 were

Version No 1: 27 Oct 2020 (22:40 hrs)

under s 6(1)(*a*)(i) of the Poisons Act, two were under s 6(3)(*b*) of the Poisons Act and two were under s 24 of the Medicines Act.

3 In the court below, the district judge ("DJ") meted out a global sentence of 24 months' imprisonment and a fine of $130,000, in default 12 months 4 weeks' imprisonment. (see *Public Prosecutor v Tan Gek Young* [2017] SGDC 39 ("GD") at [108]). Both Tan and the Public Prosecutor ("PP") filed appeals against the sentence. The first appeal was filed by Tan, while the second was filed by the PP. They relate, respectively, to the excessiveness or inadequacy of the sentence imposed by the DJ. As this appears to be the first time a case concerning the illicit supply or sale of cough preparations has reached the High Court, I reserved judgment to consider the applicable sentencing principles more fully. I now give my judgment, beginning with the facts.

Facts

4 At the time of the offences, Tan was a Singapore Permanent Resident running a medical practice at Meridian Polyclinic & Surgery ("the clinic"), which is located at Block 136 Bedok North Avenue 3 #01-162, Singapore.[1] He would have been between 59 and 60 years of age at the time of the offences given that he was 61 years old at the time of sentencing. The offences were committed at the clinic over some 15 months during the period between January 2014 and June 2015. They came to light following two sets of investigations by the HSA. The first set of investigations concerned the period from January to July 2014 ("the first period") and the second concerned the period from October 2014 to June 2015 ("the second period").

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[1] Statement of Facts ("SOF") at para 2: Record of Proceedings ("ROP") at p 36

Version No 1: 27 Oct 2020 (22:40 hrs)

5 The HSA learnt in March 2014 that the clinic was selling unlabelled bottles of cough preparations containing codeine (henceforth referred to as "codeine cough preparations") to abusers. Codeine is a poison listed in the Schedule to the Poisons Act. On 15 July 2014, its enforcement officers, together with officers from the Central Narcotics Bureau, conducted a joint operation at the clinic.[2] The officers apprehended a number of abusers leaving Tan's clinic. HSA's officers also inspected the clinic's records and discovered a large quantity of codeine cough preparations that the clinic had sold and which was unaccounted for.[3]

6 Though aware that he was being investigated, Tan nevertheless, after a pause, resumed selling codeine cough preparations in October 2014. At first, he sold it in 90-ml bottles as he had done before. But from December 2014, Tan began selling codeine cough preparations in 3.8-litre canisters. Between December 2014 and June 2015 he purchased 400 canisters of such preparations from different companies (amounting to some 1,600 litres) and, in the same period, resold about 200 of the canisters to abusers.[4] In the meantime, he was also selling unlabelled 90-ml bottles of codeine cough preparations to individual abusers. Over the first and second periods, he would sell each unlabelled 90-ml bottle for about $25 to $30 (but only for $15 if it were sold to a genuine patient),[5] and each 3.8-litre canister for about $1,000 to $1,100.[6] Tan knew that, other than the genuine patients, those to whom he had sold the bottles of codeine cough preparations were abusing it and were not using it for treatment of cough.[7] He

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2 SOF at para 4

3 SOF at paras 6–7

4 SOF at paras 22–23

5 SOF at para 24

6 SOF at para 25

Version No 1: 27 Oct 2020 (22:40 hrs)

also knew that some of the abusers to whom he had sold codeine cough preparations in canister form were re-selling the cough preparations to other abusers.[8]

The charges

7 The HSA's prosecuting counsel proceeded on 12 charges under s 6(1)(*a*)(i) of the Poisons Act and two charges under s 6(3)(*b*) of the same Act. The material part of s 6 reads:

> **Prohibitions and regulations with respect to sale of poisons**
>
> **6**.—(1) It shall not be lawful —
>
> (*a*) for any person to sell any poison unless —
>
> (i) he is licensed under this Act to sell poisons;
>
> …

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7 SOF at para 18, 23

8 SOF at para 25

Version No 1: 27 Oct 2020 (22:40 hrs)

> (3) Subject to any rules made under this Act dispensing with or relaxing any of the requirements of this subsection —
>
> > (*a*) it shall not be lawful to sell any poison to any person unless that person is known to the seller or to some pharmacist in the employment of the seller at the premises where the sale is effected, or is introduced by some person known to the seller as a person to whom the poison may properly be sold; and
> >
> > (*b*) the seller of any poison shall not deliver it until —
> >
> > > (i) he has made or caused to be made an entry in a book to be kept for that purpose stating the date of the sale, the name and address of the purchaser and of the person, if any, introducing him, the name and quantity of the substance sold and the purpose for which it is stated by the purchaser to be required; and
> > >
> > > (ii) the purchaser and the person introducing him, if any, have affixed their signatures to that entry.

8 Under s 16(1) of the Poisons Act, a person who contravenes s 6 commits an offence and is liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both. There is an exemption in s 7(1)(*a*) of the Poisons Act, which says: "nothing in section 6 shall apply…to a medicine which is supplied by a medical practitioner for the purposes of medical treatment of his own patients". That exemption is inapplicable to the present case. It is an admitted fact that none of the sales of codeine cough preparations forming the basis of the charges brought against Tan under s 6 of the Poisons Act were for medical treatment.[9]

9 The HSA's prosecuting counsel also proceeded on one charge under s 24 of the Medicines Act which reads:

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[9] SOF at paras 34, 43, 55, 64, 67, 69, 73, 76, 78, 80, 82, 84

Version No 1: 27 Oct 2020 (22:40 hrs)

> **Sale or supply of medicinal products not on general sale list**
>
> **24**. Subject to any exemption conferred by or under this Part, on and after such day as the Minister may appoint for the commencement of this Part (referred to in this Part as the appointed day) no person shall sell by retail or supply in circumstances corresponding to retail sale any medicinal product which is not a medicinal product on a general sale list, unless —
>
> (*a*) the product is sold or supplied on premises which are a registered pharmacy; and
>
> (*b*) that person is or acts under the personal supervision of a pharmacist.

10 A person who contravenes s 24 of the Medicines Act is liable to be punished with a fine not exceeding $5,000, or imprisonment for a term not exceeding 2 years, or both (see s 35(3) Medicines Act).

The charges proceeded with

11 I will now set out, briefly, the salient facts of the 15 charges proceeded with, starting with the 12 charges that were brought under s 6(1)(*a*)(i) of the Poisons Act:

(a) 1st charge:[10] On 15 July 2014 at about 2pm, Tan sold 10 unlabelled 90-ml bottles of codeine cough preparations to an abuser of such preparations named Lou for $300.

(b) 3rd charge:[11] On 15 July 2014 at about 2:35 pm, Tan sold three unlabelled 90-ml bottles of codeine cough preparations to an abuser named Ong for $90.

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10 SOF at paras 31–32

11 SOF at paras 40–41

Version No 1: 27 Oct 2020 (22:40 hrs)

(c) 7th charge:[12] In April or May 2015, Tan sold one 3.8-litre canister of codeine cough preparation to an abuser named Kelvin for $1,000.

(d) 12th, 14th, and 16th charge:[13] On three separate occasions in each month of April, May, and June 2015, Tan sold one 3.8-litre canister of codeine cough preparation to an abuser named Chiam.

(e) 18th, 20th, 28th, 36th, 44th, and 52nd charge:[14] On each of the six monthly occasions between January and June 2015, Tan sold six 3.8-litre canisters of codeine cough preparation to a person named Chew, charging $1,100 for each canister. Tan was told by Chew that the latter would resell the purchased codeine cough preparations to colleagues and friends.[15] I should add that Tan had, in fact, during the four months from February to May 2015, effected four sales each month to Chew involving six 3.8-litre canisters of codeine cough preparations each time. HSA's prosecuting counsel chose only to proceed with the charges arising from the first occasion of sale in each of the months from February to May (and from the single occasions of sale in January and June). Hence, there were 12 additional charges arising from this period which were not proceeded with but only taken into consideration for the purposes of sentencing – see [15] below.

12 A single charge was brought under s 24 of the Medicines Act:

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12 SOF at para 54

13 SOF at paras 65, 66, 68

14 SOF at paras 74, 75, 77, 79, 81, 83

15 SOF at para 72

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) 9th charge:[16] On one occasion between February and April 2015, Tan supplied one 3.8-litre canister of cough preparations to an abuser named Nigel without charge.

13 The remaining two charges, which were brought under s 6(3)(*b*) of the Poisons Act, are as follows:

(a) 5th charge: From 1 January 2014 to 15 July 2014, Tan sold codeine cough preparations amounting to an estimated 1,175,825ml without recording the sales in the clinic's daily dispensing register. These unrecorded sales were discovered when the investigating team inspected the clinic's dispensing register during their visit on 15 July 2014. The HSA's investigations revealed that he had, in this period, bought about 309 canisters of codeine cough preparations at about $39 each and sold about 13,064[17] 90-ml bottles of codeine cough preparations. In HSA's calculations, the cost of all the canisters would have been about $12,067 and the sales would thus have yielded Tan a profit of between $314,550.38 (assuming he sold each 90-ml bottle at $25) and $379,873.99 (assuming he sold each bottle at $30).[18]

(b) 54th charge:[19] From 1 October 2014 to 1 July 2015, Tan sold a total of 1,143,060ml of codeine cough preparations without recording the sales in the clinic's daily dispensing register. It is not known how much of this was sold in 90-ml bottles or in 3.8-litre canisters, but by HSA's estimate, he would have earned a minimum of $289,073.86, if he

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16 SOF at para 60

17 Annex A to SOF: ROP p 50

18 Annex A to SOF: ROP p 50

19 SOF at para 85

Version No 1: 27 Oct 2020 (22:40 hrs)

had sold all the codeine cough preparations as 3.8-litre canisters for $1,000 each, and a maximum of $369,288.59, if he had sold it all as 90-ml bottles for $30 each.[20]

The TIC charges

14 There were, as mentioned at [2], 40 TIC charges. It is necessary for me to go through these charges briefly so as to give a complete and accurate picture of the scale of Tan's criminality.

15 The 36 TIC charges under s 6(1)(*a*)(i) of the Poisons Act were of two kinds. First, there were charges based on the sales of codeine cough preparations that were separate from those sales which were the subject of the charges proceeded with. There were 12 of these, namely the 22nd, 24th, 26th, 30th, 32nd, 34th, 38th, 40th, 42nd, 46th, 48th, and 50th charges, which were for selling, on each occasion, six 3.8-litre canisters of codeine cough preparations to Chew on separate occasions between February and May 2015. These are the 12 additional charges I alluded to at [11(e)] above.

16 Second, there were also TIC charges based on the same sales of codeine cough preparations forming the basis of the charges proceeded with or the first group of TIC charges mentioned in the previous paragraph. This second group of TIC charges arose from the same acts of sale because the codeine cough preparations sold in the proceeded charges or first group of TIC charges also contained promethazine, another poison listed in the Schedule to the Poisons Act. To take one example: Tan's sale of 10 unlabelled 90ml bottles of cough syrup to Lou on 15 July 2014 constituted two offences: one for selling codeine without being licenced to do so, an offence under s 6(1)(*a*)(i) of the Poisons Act

[20] Annex A to SOF: ROP p 50

Version No 1: 27 Oct 2020 (22:40 hrs)

(see the 1st charge above), and one for selling promethazine without being licenced to do so (see the 2nd charge below). There were 24 TIC charges of this nature:

(a) The 2nd charge and 4th charge were based on the same sales as in the 1st charge and 3rd charge, *ie*, the sales to Lou and Ong;

(b) The 8th charge was based on the same sale as in the 7th charge (*ie*, the sale to Kelvin sometime in April or May 2015);

(c) The 13th, 15th and 17th charges were based on the same sales as in the 12th, 14th and 16th charges, *ie*, the sales to Chiam; and

(d) The 19th, 21st, 23rd, 25th, 27th, 29th, 31st, 33rd, 35th, 37th, 39th, 41st, 43rd, 45th, 47th, 49th, 51st, and 53rd charges were based on the same sales to Chew as those mentioned in [11(e)] and [15] above.

17 There were two TIC charges under s 6(3)(*b*) of the Poisons Act – the 6th charge and the 55th charge. These were based on the same quantity of cough preparations forming the basis of the two proceeded charges under s 6(3)(*b*) of the Poisons Act, but constituted different offences because the codeine cough preparations sold also contained promethazine.

18 Finally, there were two TIC charges under the Medicines Act. The 10th charge and 11th charge were, like the 9th charge, for supplying one 3.8-litre canister of cough preparations to Nigel on occasions which were different from that mentioned in the 9th charge.

19 At this juncture, I should make an observation on the total quantity of codeine cough preparations which Tan had sold over the first and second periods. According to HSA's prosecuting counsel, it amounted to 2,318,885 ml

Version No 1: 27 Oct 2020 (22:40 hrs)

or 2318.89 litres.[21] This is the sum of the quantities which were unaccounted for in the clinic's dispensing register and which formed the basis of the two charges brought under s 6(3)(*b*) of the Poisons Act, namely the 5th and 54th charges; the quantity in relation to the 5th charge is 1,143,060 ml and that for the 54th charge is 1,175,825 ml, giving a total of 2,318,885 ml. This means there is overlap between the s 6(3)(*b*) charges and the other charges as far as the quantity of codeine cough preparations sold is concerned. The 5th charge, which deals with the first period, overlaps with the 1st and 3rd charges, whereas the 54th charge overlaps with the other charges proceeded with as well as the TIC charges. However, not all of the codeine cough preparations which formed the basis of the s 6(3)(*b*) Poisons Act charges were the subject of separate charges brought against Tan under s 6(1)(*a*)(i) of the Poisons Act or under the Medicines Act because the sales were effected to individual abusers whose identities were not known.

Decision below

20 In the court below, the DJ found that this case fell into many of the circumstances identified in *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 ("*Law Aik Meng*") where general deterrence would assume significance and relevance in sentencing (GD at [67]):

> (a) The offences involve professional integrity and the abuse of authority. Doctors are entrusted with prescribing medicine to cure sicknesses and the law must come down hard on those who betray that trust (GD at [68]).

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[21] Schedule of Offences (ROP, p 19); HSA's Submissions (ROP, p 267, 275)

Version No 1: 27 Oct 2020 (22:40 hrs)

(b) The offences affect public health. The potential harm to public health caused by unlicensed sale of poisons is reflected in how Parliament increased the maximum punishment for illegal sale of poisons twice, once in 1980 and once in 1987 (GD at [70]).

(c) The offences are prevalent. The number of cases of illegal sale of cough mixture investigated increased from 44 cases in 2008 to 85 in 2014 (GD at [72]).

(d) The offences are difficult to detect because doctors are expressly exempted from the general prohibitions in the Poisons Act and Medicines Act against selling codeine cough preparations, so long as the sale is for the purpose of treating their patients (GD at [74]).

(e) Errant doctors like Tan have the potential to cause harm to many victims because, as in this case, some of their buyers resell codeine cough preparations to other abusers (GD at [75]).

21 In addition, the DJ held (at [76]) that, on the principles enunciated in *Law Aik Meng* at [22], specific deterrence was also a relevant sentencing consideration in the present case:

(a) Tan had committed the offences with premeditation; there was no merit in his submission that he had sold the codeine cough preparations because he had been harassed or threatened by the abusers (GD at [77]).

(b) Tan had committed the offences over a long period of time. He sold codeine cough preparations in the first period and again in the second period even after HSA had commenced investigations in July

Version No 1: 27 Oct 2020 (22:40 hrs)

2014. During the second period, he sold even greater quantities than during the first period (at [81]).

(c) In January 2010, Tan was suspended for 6 months and fined $5,000 by the Singapore Medical Council ("SMC") for various charges of professional misconduct. These included charges for the inappropriate prescription of drugs like codeine (at [82]). I will refer to this as the "SMC conviction". Although the SMC conviction was for failure to exercise due care in the management of his patients, and although no criminal charges were subsequently brought against Tan, the DJ considered the SMC conviction to be similar in substance to the present offences, though lesser in severity (at [83]).

22 The DJ also considered that a main aggravating factor in this case was the large quantity of codeine cough preparations involved (GD at [85]). Moreover, there were hardly any mitigating factors. Although Tan had no criminal record, he should not be treated as a first-time offender in view of the number of proceeded and TIC charges (at [87]).

23 Having reviewed a number of precedents (which I will come to later in this judgment), the DJ proposed the following sentencing principles. First, in view of the need for a deterrent sentence, a doctor or pharmacist convicted under s 6(1)(*a*)(i) of the Poisons Act for selling or supplying codeine cough preparations without a license should generally expect to receive a custodial sentence and a fine, no matter how small the quantity of codeine cough preparations involved, if it can be shown that he has profited from his illegal trade (at [91]). Second, as a starting point, the offender should receive a sentence pegged to the quantity of codeine cough preparations involved, based on the following sentencing bands (at [92]):

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) Up to 1 litre: up to 3 months' imprisonment and a fine of up to $5,000;

(b) Between 1 to 20 litres: between 3 to 6 months' imprisonment and a fine of between $5,000 to $10,000; and

(c) More than 20 litres: above 6 months' imprisonment and a fine of $10,000.

The starting sentence could then be adjusted to take into account aggravating or mitigating factors (at [93]).

24 In accordance with the sentencing guidelines which he had laid down, the DJ imposed the following sentences in respect of the proceeded charges against Tan:

(a) 2 months' imprisonment and a $5,000 fine for the 1st and 3rd charges, as they each involved less than 1 litre of codeine cough mixture;

(b) 4 months' imprisonment and $10,000 fine for the 7th, 12th, 14th and 16th charges which each involved the sale of one 3.8-litre canister; and

(c) 7 months' imprisonment and $10,000 fine for the 18th, 20th, 28th, 36th, 44th and 52nd charges which involved six 3.8-litre canisters sold on each occasion.

25 For the offence under s 6(3)(*b*) of the Poisons Act, the DJ's view was that the gravamen of this offence was inadequate record keeping, which might be due to inadvertence, and thus, a custodial sentence and a fine should only be

Version No 1: 27 Oct 2020 (22:40 hrs)

imposed if such inadequate record keeping was due to a deliberate attempt to avoid detection of illegal sales of poison (at [94]).

26 For the two charges under s 6(3)(*b*), the DJ found that Tan's inadequate record keeping was a deliberate attempt to avoid detection of his illegal trade. The DJ thus imposed the following sentences: 7 months' imprisonment and $10,000 fine for the 5th charge and 10 months' imprisonment and $10,000 fine for the 54th charge. The DJ imposed a higher sentence for the latter charge in view of Tan's "utter defiance and disrespect for the law" in resuming his illegal trade about three months after the HSA investigations of his illegal sales during the first period (GD at [103]).

27 Finally, the DJ imposed a sentence of 4 months' imprisonment for the Medicines Act charge.

28 As regards the aggregate sentence, the DJ agreed with the PP that more than two sentences should be ordered to run consecutively because (a) Tan was a persistent offender, (b) there was public interest in deterring his conduct, (c) there were multiple victims in this case as some of Tan's buyers had re-sold the cough preparations to other abusers, and (d) Tan made a huge profit within a short span of time (at [105]). However, the DJ did not accept the PP's suggestion of running four sentences consecutively and opted instead for three. The DJ ordered the sentences for the 5th, 18th and 54th charges to run consecutively, with all other sentences to run concurrently.

29 The aggregate sentence was thus 24 months' imprisonment and a fine of $130,000. The DJ observed that the aggregate imprisonment term of 24 months was the maximum imprisonment term permissible under s 16(1) of the Poisons Act, and that this was sufficient to serve the ends of justice (GD at [107]).

Version No 1: 27 Oct 2020 (22:40 hrs)

Parties' cases

30 In his Petition of Appeal,[22] Tan submitted that the sentences meted out were wrong in principle and/or manifestly excessive, because the DJ erred in:

(a) Failing to consider his psychiatric condition as a mitigating factor;

(b) Placing too much weight on the statistics adduced by the PP on the prevalence of such offences;

(c) Placing too much weight on the SMC conviction; and

(d) Failing to properly consider the sentencing precedents and hence proposing sentencing guidelines that were out of line with the precedents.

31 The PP's case, based on its Petition of Appeal,[23] is that the DJ erred in:

(a) Applying his proposed sentencing guidelines in an overly lenient manner that failed to give effect to the sentencing objectives of general and specific deterrence;

(b) Placing insufficient weight on the aggravating factors in this case; and

(c) Ordering only three sentences to run consecutively, failing to recognise that Tan's case was far more egregious than previous cases, and incorrectly considering that he could not order four sentences to run

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22 ROP p 102–103

23 ROP p 108

Version No 1: 27 Oct 2020 (22:40 hrs)

consecutively because that would result in a global sentence exceeding the statutory maximum imprisonment term permissible under the Poisons Act.

My decision

32 I should start by observing that this case was prosecuted during a period of transition between two legislative schemes. The illicit supply of codeine cough preparations has, for a number of decades, been dealt with by the Prosecution under the Poisons Act and Medicines Act. From 1 November 2016, which was after the charges in the present case were brought, prosecutions for unlawful sale or supply of codeine cough preparations are to be brought under the Health Products Act (Cap 122D, 2008 Rev Ed) ("HPA"). Yet this appears to be the first time a case under the Poisons Act has reached the High Court. It certainly is the first High Court case involving the illicit sale of codeine cough preparations.

33 Thus, apart from the appropriate sentence which should be imposed on Tan for his offences, the present appeal engages the broader and preliminary issue of whether it would be advisable to lay down sentencing guidelines for the offences in question, and, if so, what those guidelines should be. At [23] above, I have already mentioned the DJ's proposed sentencing bands for the offence under s 6(1)(*a*)(i) of the Poisons Act. The PP, too, in his submissions on appeal, urged this court to review the sentencing tariffs that should apply in future cases involving the illegal sale of poisons by medical professionals, although he disagreed with the DJ's suggested guidelines for the s 6(1)(*a*)(i) offence and proposed some of his own. Tan, on the other hand, argued that it was unnecessary to lay down sentencing guidelines for any Poisons Act offences

Version No 1: 27 Oct 2020 (22:40 hrs)

given that future prosecutions for similar offences would, as mentioned, be brought under the HPA.[24]

Legislative background

34 Before I turn to the question of sentencing guidelines, let me say something about the relevant legislation. The Poisons Act has been part of our law since 1938 – at that time, it was the Poisons Ordinance (No 39 of 1938). Its purpose is to regulate, among other things, the sale and supply of poisons. Sections 5 and 6 of the Poisons Act therefore criminalise the unlicensed sale or supply of poisons.

35 At the beginning, the maximum prescribed penalty for a breach was a $1,000 fine or six months' imprisonment or both. Parliament later thought this prescribed range of punishment to be inadequate and, in 1980, passed the Poisons (Amendment) Bill (No 3 of 1980) to enhance the maximum penalty to a fine of $5,000 and 2 years' imprisonment. The then Minister for Health, Dr Toh Chin Chye, observed during the second reading of the Bill that this was necessary to "deter unscrupulous and illegal trading of poisons" (*Singapore Parliamentary Debates, Official Report* (17 March 1980) vol 39 at col 1031). Dr Toh also noted that the amendment would bring the maximum penalty under the Poisons Act in line with that under the Medicines Act.

36 In 1987, Parliament amended the Poisons Act again to increase the maximum fine that could be imposed from $5,000 to $10,000, leaving unchanged the maximum imprisonment term of two years. The then Acting Minister for Health, Mr Yeo Cheow Tong, noted during the second reading of the Poisons (Amendment) Bill (No 12 of 1987) that the penalties were

[24] Tan's Letter to Court, dated 23 May 2017, at para 2

Version No 1: 27 Oct 2020 (22:40 hrs)

"inadequate for the gravity of the offences that [were] being committed", and that the increase in maximum penalties would "serve as a greater deterrent against the illegal sale of poisons and to ensure better compliance [with] the Act" (see *Singapore Parliamentary Debates, Official Report* (28 July 1987) vol 49 cols 1405 – 1407).

37 The Medicines Act was introduced in 1975. During the second reading of the Medicines Bill (No 12 of 1975), the then Minister of State for Health, Dr Ang Kok Peng, noted that the primary purpose of the Act was "to protect the persons who use drugs, that is the customers who, by and large, have no knowledge of factors influencing the safety and usefulness of a medicine." One way to protect the customer was to ensure that he would not "have access to drugs for which he has no need of" (*Singapore Parliamentary Debates, Official Report* (27 March 1975) vol 34 col 1087.[25] The Medicines Act does this by distinguishing between those medicines that are on the general sale list and those that are not; the former may be sold without the supervision of a pharmacist in retail shops, whereas the latter can only be sold or supplied under the supervision of a pharmacist or medical professionals such as doctors (see ss 24 and 27 of the Medicines Act). Codeine is not on the general sale list.

38 The next important development in this chronology was in 2007 when Parliament introduced the HPA. During the second reading of the Health Products Bill (No 3 of 2007), the then Minister for Health, Mr Khaw Boon Wan, noted that the HPA fulfilled the need to "consolidate and streamline the existing medicines control laws", and that, following a review of other laws, pharmaceutical medicines would eventually be brought under the HPA, upon which Parliament would "repeal the Medicines Act, Poisons Act and Sale of

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[25] ROP p 289

Version No 1: 27 Oct 2020 (22:40 hrs)

Drugs Act" (*Singapore Parliamentary Debates, Official Report* (12 February 2007) vol 82 at cols 1264 and 1270). At its inception, the HPA was meant only to regulate medical devices, with other health products to be brought under its purview later.

39 Codeine cough preparations were brought within the regulatory ambit of the HPA with the introduction of the Health Products (Therapeutic Products) Regulations 2016 (S 329/2016) ("HPA Regulations"). The HPA Regulations came into force on 1 November 2016. They must be read with s 17(1) of the HPA, which provides that no person shall supply any health product unless it is carried out in accordance with the prescribed requirements. Reg 14 of the HPA Regulations addresses specifically the supply of codeine cough preparations:

> **Restrictions on supply by retail sale of codeine cough preparations**
>
> 14. (1) A qualified practitioner or qualified pharmacist who supplies by retail sale any codeine cough preparation —
>
> (*a*) must not supply more than a total of 240 ml of any one or more codeine cough preparations to any one individual on any one occasion;
>
> (*b*) must not supply any codeine cough preparation to the same individual more than once within a period of 4 days (including Sundays and public holidays); and
>
> (*c*) must, on each occasion of the supply of the codeine cough preparation by the qualified pharmacist to an individual, provide professional counselling on the use of the codeine cough preparation.
>
> (2) In this regulation, "codeine cough preparation" means any medicine in liquid form that contains codeine and is intended by the manufacturer for the treatment of coughs.

40 Reg 14 was based on a similar regulation in the Poisons Rules (R 1, S 94/1957), that is, Rule 17, which was deleted on 1 November 2016. Rule 17 was however confined to pharmacists and did not apply to doctors:

Version No 1: 27 Oct 2020 (22:40 hrs)

> **Restrictions on sale of codeine cough preparations by pharmacists**
>
> **17.** A pharmacist who sells codeine cough preparations by retail —
>
> (*a*) shall not sell more than a total of 240ml of any one or more codeine cough preparations to any one customer on any one occasion;
>
> (*b*) shall not sell any codeine cough preparation to the same customer more than once within a period of 4 days (including Sundays and public holidays);
>
> (*c*) shall provide professional counselling on the use of codeine cough preparations to each customer to whom he sells any codeine cough preparations; and
>
> (*d*) shall record, on a daily basis in a book which is kept exclusively for this purpose, the following particulars in respect of the sale to each customer of any codeine cough preparation:
>
> (i) the name and identity of the customer; and
>
> (ii) the quantity of codeine cough preparation sold to the customer.

41 Thus, the illicit supply of codeine cough preparations by both doctors and pharmacists will, in future, be prosecuted under s 17(1) of the HPA read with Reg 14 of the HPA Regulations, and will attract the prescribed punishment of an imprisonment term of up to 2 years, or a fine of up to $50,000, or both (s 17(3) HPA). It will be observed that the maximum fine under the HPA is five times that under the Poisons Act and ten times that under the Medicines Act.

Deterrence as the primary sentencing consideration

42 If Parliament has increased the maximum punishment to arrest the growing seriousness of a particular offence, this signals a need for a deterrent stance in sentencing and the courts must have regard to this in developing the appropriate sentencing framework (*Mehra Radhika v Public Prosecutor* [2015] 1 SLR 96 at [27]). Of course, the increase in maximum sentence may be for reasons other than deterrence, for example, to allow for greater flexibility in

Version No 1: 27 Oct 2020 (22:40 hrs)

sentencing (see *Public Prosecutor v GS Engineering & Construction Corporation* [2016] 3 SLR 682 ("*GS Engineering*") at [48]). If that is so, the need for deterrence would have to be justified by reasons other than Parliamentary intent. In this regard, it may be germane to note that the courts have, in relation to other offences, identified some circumstances necessitating a sentencing approach based on deterrence – for example, when the offences in question affect public health, or are prevalent (see *Law Aik Meng* at [24]–[29]).

43 Deterrence is indubitably the primary sentencing consideration for the offences under the Poisons Act. This is so for two reasons. First, in enhancing the prescribed maximum sentences for the offences under the Poisons Act, Parliament must have had deterrence in mind. The two enhancements – in 1980 and 1987 – were each accompanied by statements by the respective Ministers about the need to deter the illicit supply of poisons. The third time that Parliament increased the maximum fine – in the HPA – could have been due to the need for flexibility, given the wider range of health products being regulated. But the present appeal does not engage the HPA. As far as the Poisons Act is concerned, there can be no doubt that sentencing must be informed by deterrence.

44 Second, as the DJ observed, the present offences fell into many of the circumstances identified in *Law Aik Meng* as requiring a sentencing approach based on deterrence (see [20] above). I agree with the DJ's observations in this regard, and therefore, I will only address his observation that the offences have become more prevalent. The DJ used this observation to support his view that general deterrence should be the primary sentencing consideration for the offences faced by Tan. However, Tan challenges the determination of the DJ that the offences he had committed have become more prevalent and that is one of his grounds of appeal (see [30(b)] above).

Version No 1: 27 Oct 2020 (22:40 hrs)

Prevalence of the offence

45 On this issue, Tan makes two main points. First, there has not been an increase in the number of HSA's investigations over the years. He suggests that, although there was an increase in cases investigated from 44 in 2008 to 85 cases in 2014 (as the DJ noted at [72] of the GD), this trend is contradicted by the HSA Annual Report of 2015/2016, according to which there were only about 10 investigations into the illicit sale of codeine cough preparations between 2015 and 2016.[26]

46 The relevant paragraph in the HSA Annual Report which Tan relies upon to make his submission reads:

> Six doctors were among 10 individuals investigated for the illegal supply of codeine cough preparations to underground drug syndicates. Joint operations by HSA and SPF also led to the seizure of products with an estimated street value of $200,000. The accused persons were charged and those found guilty were punished with fines and/or jail time.

It seems to me that the paragraph was addressing only investigations involving the supply of cough preparations to drug syndicates. It was not referring to the illicit supply of cough preparations in general. After all, illicit cough preparations could be supplied to individual abusers who are not in drug syndicates, as the present case demonstrates. So this paragraph cannot be relied upon to contend, as Tan suggests, that there has been "an extremely sharp decline" in the number of investigations "from the figure of 85 cases in 2014".[27]

47 Second, Tan argues that even if there has been an increase in the number of investigations, not all investigations resulted in convictions or even

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[26] Tan's Submissions at para 32

[27] Tan's Submissions at para 32

Version No 1: 27 Oct 2020 (22:40 hrs)

prosecutions.[28] I should point out that the PP has, on appeal, produced a graph with updated figures showing that the number of investigations over the past 4 years was as follows: 43 in 2012, 60 in 2013, 61 in 2014, 101 in 2015 and 29 in 2016 (the complete figure for 2016 is not yet available).[29] Figures showing an increase in the number of prosecutions would certainly be stronger evidence of the prevalence of an offence. But I think it would be fair to assume that the HSA would not launch investigations for no good reasons. Hence, I think the increased number of investigations may be indicative of the offence becoming more prevalent.

48 I am also fortified in this view by the number of convictions that have resulted from HSA's investigations. Tan asserts that "there is no publicly available information on how many cases [investigated between 2009 to 2014] led to a conviction".[30] This is incorrect. In a response to a recent Parliamentary question on measures taken to address codeine abuse in Singapore, the Minister of Health replied that "[f]rom 2012 to 2016, HSA convicted 37 offenders and SMC disciplined 5 doctors for inappropriate prescribing of codeine cough preparations"(https://www.moh.gov.sg/content/moh_web/home/pressRoom/Parliamentary_QA/2017/codeine-abuse.html).[31] Thirty seven convictions in five years cannot be viewed as an insignificant statistic.

49 I agree that as a general rule, a judge who makes reference to the prevalence of an offence should have some evidence to support such a view (*Yong Foo Kee v Public Prosecutor* [1992] 1 MLJ 304). In my judgment, the

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28 Tan's Submissions at para 25

29 PP's Submissions at para 42

30 Tan's Submissions at para 28

31 Prosecution's Bundle of Authorities ("PBOA"), p 660

Version No 1: 27 Oct 2020 (22:40 hrs)

available evidence is sufficient to support the DJ's conclusion that the illicit supply of codeine cough preparations is a prevalent problem which needs to be met with deterrent sentences.

Should there be sentencing guidelines?

50 The next question to be addressed is what sentencing guidelines, if any, will be effective to serve the object of the relevant Acts. Both the DJ and the PP have commented that this case is an opportunity for the court to lay down a benchmark sentence. It is undeniable that benchmarks "provide a vital frame of reference upon which rational and consistent sentencing decisions can be based" (*Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24]) and that a "high level of consistency in sentencing is desirable as the presence of consistency reflects well on the fairness of a legal system" (*Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("*PP v UI*") at [19]).

51 The difficulty with formulating a sentencing guideline in relation to the present offences, however, is that many of the available precedents do not contain any grounds of decision and are therefore unhelpful as a guide. Furthermore, they all involve prosecutions under a variety of statutory provisions. Each of the following six cases was brought under six different statutory provisions.

Previous cases all brought under different criminal provisions

52 In *Public Prosecutor v Khoo Buk Kwong* (HSA 778/2008 & 5 ors, unreported) ("*Khoo Buk Kwong*"),[32] the accused was a 49-year-old doctor who pleaded guilty to six charges under s 5 of the Poisons Act, which prohibits

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[32] PBOA, Tab X

Version No 1: 27 Oct 2020 (22:40 hrs)

persons from selling poisons without a licence. Three charges were for selling codeine and three for selling promethazine. The accused and a co-accused sold cough mixture to an Indonesian company on three occasions over a period of nine days. The total amount of cough preparations sold was 2,470 litres[33] and the total revenue was $35,000. The district judge imposed a $10,000 fine for each charge. The global sentence was a $60,000 fine.

53 In *Public Prosecutor v Ho Thong Chew* (HSA 442/2012 & 34 ors, unreported) ("*Ho Thong Chew*"),[34] the accused was a 41-year-old doctor who pleaded guilty to 12 charges under s 6(3) of the Medicines Act, which states that no person shall sell any medicinal product by way of wholesale dealing without a licence. There were 23 TIC charges under the same provision. The accused sold a total of 502 x 3.8-litre canisters of codeine cough preparations on 12 occasions to three different people over five months. This amounted to 1,907.6 litres. The amount of codeine cough preparation sold for the first 11 of the 12 proceeded charges was between 133 and 285 litres per charge (*ie*, 35 to 75 canisters per charge). The 12th charge was for selling two 3.8-litre canisters. He was aware that the three people who bought from him would repackage the cough preparations into 90-ml bottles and resell them. His net profit was $266,824 of which $80,000 was seized from his house. The district judge imposed a sentence of 3 months' imprisonment and a $5,000 fine for each of the first 11 charges; as for the 12th charge, the district judge imposed a sentence of 6 weeks' imprisonment and a fine of $5,000, noting that although for that charge only two canisters of cough preparations were involved, this offence had been committed after HSA had raided his home and office.[35] Three sentences

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33 PP's Table of Sentencing Precedents: PP's Submissions at Annex A

34 PBOA, Tab Y

35 PBOA, p 743

Version No 1: 27 Oct 2020 (22:40 hrs)

were ordered to run consecutively, resulting in a global sentence of 6 months and 6 weeks' imprisonment and a $60,000 fine.

54 In *Public Prosecutor v Liew Kert Chian* (HSA 000330 & another, unreported) ("*Liew Kert Chian*"),[36] the accused was a 44-year-old doctor who pleaded guilty to a single charge under s 6 read with s 7(3) of the Poisons Act. The latter provision essentially requires the seller to record the details of the sale of poisons on the day of the sale or, at the latest, the day after. Failure to comply with that requirement is an offence which, like the other offences under s 6, is punishable under s 16(1) of the Poisons Act. There was a TIC charge under Reg 14(1)(*a*) of the Misuse of Drugs Regulations (S 234/1973) for failing to record the sale of nimetazepam tablets. The accused sold a total of 277.4[37] litres of cough preparations over nine months to more than 30 addicts. He would sell it in the form of 90-ml bottles. The district judge imposed a fine of $4,500.

55 In *Public Prosecutor v Cheng Shao Lin @ Benny Cheng* (HSA 568/2013 & ors, unreported) ("*Benny Cheng*"),[38] the accused was an 80-year-old doctor who pleaded guilty to 5 charges under s 6(1)(*a*)(i) of the Poisons Act; there were a further 37 TIC charges under the same provision. On the whole, the accused sold 504 litres of cough preparations over 2.5 months to three Malaysian gangsters.[39] The five charges he pleaded guilty to were based on 60 litres of cough preparations sold on three occasions over the course of a week.[40] He sold the cough preparations in the form of 120-ml bottles. His total profit over the

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36 PBOA, Tab Z

37 PBOA, Tab Z, p 752 (Statement of Facts at para 5)

38 PBOA, Tab AA

39 PBOA, p 800, para 7

40 PBOA, p 800, para 9

Version No 1: 27 Oct 2020 (22:40 hrs)

2.5 months was $33,600. The district judge imposed a sentence of $7,000 per charge making the global sentence a fine of $35,000. This is the only case on s 6(1)(*a*)(i) of the Poisons Act that I have been referred to.

56 In *Public Prosecutor v Woo Tat Meng William* (DSC 900436/2016 & ors, unreported) ("*Woo Tat Meng*"),[41] the accused was a 58-year-old pharmacist who pleaded guilty to three charges; one was for selling 1.68 litres (14 bottles of 120ml each) of cough preparations, in breach of r 17(*a*) of the Poisons Rules; another was for failing to record the particulars of sales of codeine cough preparations, in breach of r 17(*d*) of the Poisons Rules. A third charge was under s 177 of the Penal Code (Cap 224, 2008 Rev Ed) for furnishing false information to a public servant by providing falsified records of sales of codeine cough preparations. There was also a TIC charge under s 177. He sold a total of 2,452 litres of codeine cough preparations to various persons over 23.5 months. The district judge imposed a sentence of 2 months' imprisonment for the offence under r 17(*a*), 8 months' imprisonment for the offence under r 17*(d*), and 3 weeks' imprisonment for the offence under s 177 of the Penal Code. The sentences for the r 17(*d*) offence and the s 177 offence were ordered to run consecutively. The global sentence was 8 months and 3 weeks' imprisonment.

57 In *Public Prosecutor v Ashley Jas Ang Wei Hoon* (DAC 902443/2015 & ors, unreported) ("*Ashley Jas*"), the accused was a 38-year-old sales manager at a pharmaceutical company. She faced 30 charges under s 24 of the Medicines Act and 30 charges under s 468 of the Penal Code for forging invoices *ie*, by stating on the invoices that the canisters were delivered to a clinic when they were not. Over a period of a year (June 2009 to May 2010), she supplied various drugs including a total of 5,344 x 3.8 litre canisters or 20,307.2 litres of cough

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[41] PBOA, Tab BB

Version No 1: 27 Oct 2020 (22:40 hrs)

preparations, although only 984 x 3.8 litre canisters of codeine cough preparations formed the basis of the 30 charges proceeded with under s 24 of the Medicines Act. The accused claimed that she was paid about $10,000 for all the deliveries she made. The accused was sentenced to 3 months' imprisonment for each of 29 of the charges under the Medicines Act (and 1 month's imprisonment for the remaining charge). She was sentenced to 4 months' imprisonment for each of the forgery charges. Six sentences were ordered to run consecutively (three of the sentences for the Medicines Act charges of 3 months' imprisonment per charge and three of the sentences for the forgery charges of 4 months' imprisonment per charge), making a global sentence of 21 months' imprisonment.

58 The lack of precedents makes it difficult enough to discern any trend in sentencing; all the more so when every case that has come before the court has been brought under a different statutory provision. The DJ and the PP have attempted to start from a clean slate by proposing new guidelines. However, as I will now explain, I do not think their suggested guidelines are free from difficulty.

Difficulties with the DJ's and the PP's approaches

59 I see two problems with the DJ's sentencing guidelines. The first and main problem is that, to use the PP's words, the DJ "did not explain how or why he arrived at the prescribed volumes of drugs for each sentencing range"[42] (*ie*, less than 1 litre, between 1 and 20 litres, and more than 20 litres). A second and related problem, in my view, is that there is no explanation for the starting points for each proposed sentencing range (*ie*, 3 months and 6 months): see [23] above.

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42 PP's Submissions at para 56(a)

Version No 1: 27 Oct 2020 (22:40 hrs)

60 In response, the PP proposes his own guidelines. He suggests that for an offence under s 6(1)(*a*)(i) of the Poisons Act, a custodial sentence and fine must be imposed whenever the offender is a medical practitioner who has profited from the illegal supply of codeine cough preparations, regardless of how small the quantity supplied.[43] Next, the indicative sentence should be tied to the volume of codeine cough preparation supplied, in the following manner:

(a) Up to 240ml: up to 3 months' imprisonment and a fine of up to $5,000;

(b) More than 240ml, where the quantity sold does not suggest resale: above 3 months' imprisonment and a fine of at least $5,000; and

(c) More than 240ml, where the quantity sold suggests resale: above 6 months' imprisonment and a fine of $10,000 (the statutory maximum).

61 The PP bases this approach in part on the new Reg 14 of the HPA Regulations which prohibits doctors from prescribing more than 240ml of codeine cough preparation at any one time. The PP submits that, on account of that regulation, it may reasonably be inferred that the sale or supply of codeine exceeding 240ml is not for a *bona fide* purpose – that is his explanation for the distinction in the starting sentences between the first and second bands. Furthermore, the PP submits that a stiffer sentence is required where the quantity sold is suggestive of resale – that explains the distinction in starting sentences between the second and third bands.

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[43] PP's Submissions at para 60

Version No 1: 27 Oct 2020 (22:40 hrs)

62 I see three problems with the PP's approach. First, as with the DJ's sentencing framework, there is no explanation for the selection of 3 months' and 6 months' imprisonment as the starting points for the individual bands.

63 The second problem – and this is more in the nature of a question that I have rather than a serious disagreement – relates to the issue of resale in band two and band three. I agree with the PP that there is a difference in culpability between an offender who sells codeine cough preparations to an abuser for his own personal consumption, and an offender who sells it to an abuser who would in turn resell it to other abusers. I accept that in the latter scenario, the offender's actions have the potential to cause greater harm to society by extending the reach of the illicitly-sold cough preparations to more abusers. The PP's approach appears to use the quantity of codeine cough preparations sold as the key indicator of whether the offender in question was selling it for the purpose of resale. However, it seems to me that whether a transaction was for resale would depend both on the quantity involved and the way the transaction was carried out. The PP submits that the sale of 3.8 litres of codeine cough preparation in a canister must be for the purpose of resale. On the other hand, 900ml (that is, 10 x 90-ml bottles) is not a quantity that suggests resale.[44] It is not clear why this must be so. It is conceivable that a buyer of 10x 90ml bottles of cough preparations could more easily effect a resale, since the buyer does not have to repack the cough preparations for that purpose. All the factual evidence relating to the charge would be critical to the determination of the question whether the offender knew that the buyer intended to resell what he had sold to the buyer.

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44 PP's Submissions at para 89

Version No 1: 27 Oct 2020 (22:40 hrs)

64 Third, in any event, it seems inflexible, and possibly wrong, to insist that as long as there is a quantity that "suggests resale", the offender should face a higher starting sentence of 6 months' imprisonment. I accept that when an offender sells cough preparations to a person who then resells them, that should be taken as an aggravating factor. However, it is not immediately apparent why this particular factor *per se* should be given such weight as to justify a higher starting sentence of 6 months' imprisonment. One could argue that a judge should, instead, be allowed to take this as an aggravating factor in deciding how much more above the proposed starting point of 3 months' imprisonment the sentence should be enhanced on account of that factor.

65 Furthermore, there is another issue common to both the DJ's and PP's sentencing frameworks. Both deal only with the offence under s 6(1)(*a*)(i) of the Poisons Act. What can be seen from the past cases, however, is that the offences created under the various statutory provisions target the same underlying criminal conduct: the illicit sale of codeine cough preparations. Therefore, any sentencing guidelines that the courts articulate should be general enough such as to be applicable regardless of which statutory provision the offence is brought under, whether it is under the Poisons Act, the Medicines Act or even the new HPA.

66 In my judgment, it would not be wise to lay down sentencing bands tied to the quantity of codeine cough preparations supplied, in the way that the DJ or PP have suggested. I acknowledge that it is the desire for consistency that has motivated them to propose their respective sentencing bands, and that consistency is an important sentencing objective. However, I think there are not enough precedents at the moment to guide the formulation of such sentencing bands. Without a sufficient body of precedents, it is difficult for a court to do these: first, identify the circumstances when a fine is no longer appropriate and

Version No 1: 27 Oct 2020 (22:40 hrs)

the custodial threshold is crossed; second, identify a range of offending conduct so as to determine the point at which an offender's culpability would cross from one sentencing band into the next; and third, determine an appropriate indicative sentence for each sentencing band. The circumstances surrounding the commission of an offence under s 6(1)(*a*)(i) are unlike the offence concerning, for example, trafficking in drugs where the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) expressly provides what would be the minimum sentence and what would be the maximum sentence based on the quantity of drugs which were involved: see for example *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [47] and *Suventher Shanmugam v Public Prosecutor* [2017] SGCA 25 at [29]. The fact is that the Poisons Act, the Medicine Act and the HPA do not lay down any similar framework. Based on the PP's suggested framework, if an offender were to sell to an abuser three bottles of 90ml codeine cough preparations (amounting to 270ml), knowing that the abuser would be passing a bottle to another abuser, a 6-month imprisonment term would have to be imposed on the offender. I think that would be extremely harsh. Even where deterrence is called for, proportionality should not be disregarded. I will return to this point a little later. Accordingly, it seems to me better if benchmarks for this offence (and similar offences) emerge organically from the steady accretion of judicial decisions (see *Ong Chee Eng v Public Prosecutor* [2012] 3 SLR 776 at [24]). After a sufficient corpus of decisions has been built up, perhaps at that point a judge could then review the precedents and determine whether a more detailed sentencing framework could be formulated for future use (see the similar sentiments expressed by See Kee Oon JC in *GS Engineering* at [73]).

67 Having said that, for precedents to serve as a useful guide, they must be clearly reasoned. The sentencing judge needs to identify the relevant factors which he has considered in arriving at the sentence, and explain how each factor has affected his assessment of the appropriate sentence. Hence, in the next few

Version No 1: 27 Oct 2020 (22:40 hrs)

sections, I will suggest some factors which may be germane to determining the appropriate sentence for the present type of offence. Although the factors are targeted at the particular offences in this case, there is no reason why they cannot, by analogy, apply to other offences which also target the illicit sale of codeine cough preparations.

Sentencing guidelines

Step 1: Whether the custodial threshold is crossed

68 In my view, it is necessary to ask, firstly, whether a custodial sentence is appropriate for the case at hand. This follows from the principle that where the prescribed punishment for an offence is a fine, a custodial sentence, or both, the court should determine when it would be appropriate to impose a custodial sentence rather than a fine or, putting it another way, the court needs to determine the circumstances in which the custodial threshold is crossed (*Public Prosecutor v Chow Yee Sze* [2011] 1 SLR 481 at [15(b)]; *Public Prosecutor v Chow Chian Yow Joseph Brian* [2016] 2 SLR 335 at [20]). A custodial sentence should not "be lightly or readily imposed as a norm or a default punishment" unless the nature of the offence justifies its imposition on the basis that general or specific deterrence is called for (*Yang Suan Piau Steven v Public Prosecutor* [2013] 1 SLR 809 at [31]). Although a deterrent sentence may usually take the form of a custodial sentence, a fine may yet be sufficient if "it is high enough to have a deterrent effect" (*Public Prosecutor v Cheong Hock Lai* [2004] 3 SLR(R) 203 at [42], cited in *Public Prosecutor v Lim Choon Teck* [2015] 5 SLR 1395 at [26]).

69 In this case, I am unable to agree with the DJ and the PP that, *regardless* of the quantity supplied, a custodial sentence and a fine should be imposed on a medical practitioner or pharmacist convicted of selling codeine cough

Version No 1: 27 Oct 2020 (22:40 hrs)

preparations without a licence. I appreciate that such a rule is meant to deter potential offenders, but it seems to exclude entirely the possibility of a fine ever being imposed even though that is a sentencing option which Parliament has expressly stipulated. I would reiterate that as important as deterrence may be, proportionality and fairness remain critical considerations. In my view, a custodial sentence is unnecessary if the quantity of codeine cough preparations supplied or sold (even if for profit) is small, and/or the sale or supply was a one-off transaction. If there is only a single transaction, it shows that the offender's act could be due to a moment's weakness or folly, or a technical breach arising out of oversight. In such cases the risk of re-offending would be low and I think a substantial fine would sufficiently deter the offender without compromising the law's deterrent stance towards such an offence. Moreover, for one-off offenders, the shame or embarrassment of being prosecuted would in itself provide some form of deterrence (*Wuu David v Public Prosecutor* [2008] 4 SLR(R) 83 at [22]). That would be amplified where the offender is a doctor or pharmacist since his professional standing and reputation would also be affected.

70 Following from my comments at [66], the 3rd charge here for selling three 90-ml bottles of codeine cough preparations would clearly be a small quantity and I would say that the custodial threshold should not be crossed had that been the only charge here. However, the custodial threshold would usually be crossed if the quantity of codeine cough preparations involved is substantial, or if there are multiple charges indicating that the offender sold codeine cough preparations regularly.

71 Of the precedents cited in argument, there are three cases in which only fines were imposed.

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) *Khoo Buk Kwong* was a case where codeine cough preparations were exported to Indonesia rather than distributed to abusers in Singapore. Different sentencing considerations might probably come into play in that kind of a case.

(b) *Benny Cheng* must be regarded as an outlier. The quantity there was certainly substantial and the accused faced many charges. Yet he was given only a fine. That sentence is defensible, if at all, only on the basis of the principle that an older offender might be entitled to a moderation in his punishment if a term of imprisonment would be "disproportionate and crushing" by reason of his age (*Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [88]). I note that the court in that case added that if the accused were to be suffering from handicaps that would render the punishment imposed on him more onerous, the sanction should be adjusted so that it would not have an undue or disproportionate impact on him (at [91]). Benny Cheng was advanced in age (80 years) and had a litany of medical conditions that would make serving an imprisonment term unduly harsh for him. Such a situation is a recognised factor which the court can take into account in sentencing.

(c) Finally, in *Liew Kert Chian*, the offender faced only a single charge under s 6 read with s 7(3) of the Poisons Act for failing to enter particulars of codeine cough preparations that he had dispensed. Although he faced only a single charge, the plain fact is that he supplied a huge amount of codeine cough preparations (277 litres in all) to a number of abusers. I would regard the $4,500 fine imposed on the offender as being inadequate. The custodial threshold was clearly crossed.

Version No 1: 27 Oct 2020 (22:40 hrs)

Step 2: Sentence-specific aggravating and mitigating factors

72 Once it is determined, in relation to a case in hand, that the custodial threshold has been crossed, the focus must then shift to a consideration of all relevant factors, aggravating and extenuating, that would be germane in deciding the appropriate length of the imprisonment term. A distinction should be drawn between factors which aggravate the individual charges, and factors which relate more to the general culpability of the offender – these have been referred to as "specific aggravating factors" and "cumulative aggravating features" respectively (*ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 ("*ADF*") at [92]). As the Court of Appeal explained in that case:

> Where multiple distinct offences have been committed, sentencing is a two-stage process. First, the sentence for each individual offence [has] to be determined. Second, the court has to determine whether the sentence for these multiple offences ought to run concurrently or consecutively and if consecutively, which combination of sentences ought to be made and whether the overall sentence properly comprehends the criminality of the multiple offender… If sentence specific aggravating factors are present, the sentence for each particular offence should be appropriately enhanced. Cumulative aggravating features, on the other hand, are features that ordinarily have primary relevance at the second stage of sentencing, particularly as regards to the issue of whether the global sentence should be enhanced by consecutive sentencing, when multiple distinct offences have been committed.

73 I set out below a non-exhaustive list of aggravating factors which I regard as ordinarily relevant in deciding on the sentence for each individual offence. These are the sentence-specific aggravating factors. They help a judge assess whether the sentence for the individual charge should be higher or lower than the sentences for the individual charge in previous cases. They are also useful in assessing whether there should be a differentiation in sentencing between the different charges faced by an accused.

Version No 1: 27 Oct 2020 (22:40 hrs)

(a) First, the quantity of codeine cough preparations involved. This is a proxy for the question of the degree of harm which could be caused by the offence. By and large, if there are two charges involving different amounts of codeine, and one charge discloses a significantly higher amount of codeine than the other, the sentence for the former charge should be heavier. But it is not correct for sentences to increase in mathematical proportion to the amount of codeine cough preparations involved.

(b) Second, the role of the offender. As I have alluded to at [63] above, a distinction in culpability must be drawn between an offender who has sold codeine cough preparations to individual abusers and one who has sold them to buyers who in turn resold them to individual abusers. The latter operates nearer the apex of the distributive pyramid and thus should receive a heavier sentence to match his higher level of culpability. Very often the circumstances of the sale would indicate that the sale by the offender was for purposes of resale. Sale by the canister, for example, would give rise to a strong inference that the buyer would be reselling it to other individual abusers, although, as noted at [64], it is also conceivable that the sale of multiple smaller bottles of cough preparations could be for the purposes of resale too.

(c) Third, whether the particular offence was committed while the offender was under investigation. I accept the PP's submission that an offender who does this is analogous to one who has reoffended while on bail.[45] A stiffer sentence is called for to reflect the offender's "blatant disrespect for the law" and stronger sanctions must be imposed on those

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[45] PP's Submissions at para 88

Version No 1: 27 Oct 2020 (22:40 hrs)

who pass up an opportunity to show contrition (see *Chen Weixiong Jerriek v Public Prosecutor* [2003] 2 SLR(R) 334 at [26]; *Public Prosecutor v Loqmanul Hakim bin Buang* [2007] 4 SLR(R) 753 at [59]).

(d) Fourth, the amount of profit made. The inquiry here is into the offender's motives for having sold the cough preparations. It is recognised that those who commit crimes out of pure self-interest and greed will rarely be treated with much sympathy. Conversely, the offender who has been coerced or pressured into committing the criminal act may be regarded as less culpable (*Zhao Zhipeng v Public Prosecutor* [2008] 4 SLR(R) 879 at [37]; *Lim Ying Ying Luciana v Public Prosecutor and another appeal* [2016] 4 SLR 1220 at [45]).

(e) Fifth, the presence of relevant antecedents. In addition to previous criminal convictions, I am of the view that in the context of medical professionals such as doctors and pharmacists, disciplinary inquiries should also be considered as relevant antecedents. However, I would add two clarifications: (a) the inquiry must have led to a sanction being imposed, and (b) one must carefully examine the misconduct forming the subject of the disciplinary inquiry to see if it is similar to the conduct forming the basis of the charges in the instant case.

(f) Sixth, the number of TIC charges. It is well-established that TIC charges should generally enhance the sentences for the charges proceeded with though that is not to say the court must necessarily do so in every such instance (see *PP v UI* at [38]).

74 The court should then consider the mitigating factors. It will be difficult to list here all the mitigating factors which can be considered. This is because

Version No 1: 27 Oct 2020 (22:40 hrs)

they will vary greatly from one case to another or one offender to another. The factors which are well recognised in the case law include those relating to the offender's personal circumstances at the time of the offence (*eg*, the presence of a psychiatric condition) and the offender's response to the offence and prosecution (*eg*, whether the offender has indicated genuine remorse).

Step 3: Whether to impose a fine in addition to a custodial sentence

75 Having decided on the appropriate custodial sentence for each charge, the court should then consider whether to impose a fine as well. The purpose of imposing a fine in addition to an imprisonment term is to disgorge the offender's substantial benefit from his offending (*Ding Si Yang v Public Prosecutor and another appeal* [2015] 2 SLR 229 at [109]). In most cases where the offender has profited, this would be necessary unless the profit has already been surrendered, confiscated or it has been established that the profits made had already been squandered and the offender has no means to pay any fine imposed.

Step 4: Consecutive sentences

76 Having determined the individual sentence, the sentencing judge should then, having regard to the cumulative aggravating factors, decide how many of the individual sentences should be ordered to run consecutively, *ie*, the aggregate sentence. In *ADF*, the Court of Appeal observed (at [146]) that a judge should consider ordering more than two sentences to run consecutively when one or more of four circumstances are present. I will elaborate briefly on each of them in relation to the context of this case.

(a) First, when the offender is a persistent or habitual one. In the present context, the court should look at the total number of charges.

Version No 1: 27 Oct 2020 (22:40 hrs)

The more charges there are, the more irrefutable it is that the offender manifests the qualities of a habitual offender. I would add that it is also relevant to observe if there was an escalation in the severity of the offending. In the present context, if there is an increase in the quantity of codeine cough preparations involved per charge (and correspondingly, an increase in the amount of profit made), or if there is a decrease in the time lapse between successive charges, this would show that the offender's criminal enterprise has grown in intensity. In these circumstances, it would be harder to refute the inference that he was a persistent and habitual offender.

(b) Second, when there is a pressing public interest in discouraging the type of criminal conduct. Given that I have already found that deterrence is a primary sentencing consideration when dealing with the problem of illicit sale of codeine cough preparations (see [43] to [44] above), this factor would likely always be present.

(c) Third, the presence of multiple victims. Here, the court should take into account the number of abusers that the offender has sold or supplied codeine cough preparations to. Given that the prolonged use of codeine may lead to dependence and even to death, an offender who sells to a variety of abusers threatens the lives of more people and ought to receive a harsher sentence.

(d) Fourth, where other peculiar cumulative aggravating factors are present. However, as mentioned in *ADF* at [92], one should guard against "re-inputting" the individual aggravating factors. This is the danger of double counting against the offender. The DJ considered that the total amount of profit made by Tan in a short span of time was a cumulative aggravating factor (GD at [105(d)]). Given that the amount

Version No 1: 27 Oct 2020 (22:40 hrs)

> of profit made is already treated as an individual aggravating factor, the total amount of profit made should not be regarded as a cumulative aggravating factor, as that would result in the same factor (amount of profit) being counted twice over. The same goes for a factor such as the total quantity of codeine cough preparations sold. If the quantity involved has already been considered when determining the individual sentence for each charge, then the total quantity involved in all the charges should not come into play again.

77 With these principles in mind, I will now turn to address the question of the appropriate sentences to be imposed on the charges proceeded against Tan.

The appropriate sentence

Individual sentences

78 For ease of reference, I set out in the table below the sentences imposed by the DJ for the individual charges brought against Tan alongside the PP's and Tan's suggested sentences in respect thereof.[46] The sentences under Tan's column represent the maximum sentence that should, according to him, be imposed for each charge brought against him.

Charge	**Quantity involved**	**DJ's Sentence**	**PP's Submission**	**Tan's Submission**
Section 6(1)(*a*)(i) Poisons Act – first period of investigations				
1st	10 x 90ml = 900 ml	2 months and $5,000 fine	4 months and $10,000 fine	$5,000 fine

[46] Tan's Submissions at para 61; PP's Submissions at para 89

Version No 1: 27 Oct 2020 (22:40 hrs)

3rd	3 x 90ml = 270 ml	2 months and $5,000 fine	3 months and $10,000 fine	$5,000 fine
Section 6(1)(*a*)(i) Poisons Act – second period of investigation				
7th	3.8 litres	4 months and $10,000 fine	6 months and $10,000 fine	3 weeks and $5,000 fine
12th	3.8 litres	4 months and $10,000 fine	6 months and $10,000 fine	3 weeks and $5,000 fine
14th	3.8 litres	4 months and $10,000 fine	6 months and $10,000 fine	3 weeks and $5,000 fine
16th	3.8 litres	4 months and $10,000 fine	6 months and $10,000 fine	3 weeks and $5,000 fine
18th	6 x 3.8 = 22.8 litres	7 months and $10,000 fine	12 months and $10,000 fine	6 weeks and $5,000 fine
20th	6 x 3.8 = 22.8 litres	7 months and $10,000 fine	12 months and $10,000 fine	6 weeks and $5,000 fine
28th	6 x 3.8 = 22.8 litres	7 months and $10,000 fine	12 months and $10,000 fine	6 weeks and $5,000 fine
36th	6 x 3.8 = 22.8 litres	7 months and $10,000 fine	12 months and $10,000 fine	6 weeks and $5,000 fine
44th	6 x 3.8 =	7 months and	12 months	6 weeks and

Version No 1: 27 Oct 2020 (22:40 hrs)

	22.8 litres	$10,000 fine	and $10,000 fine	$5,000 fine
52nd	6 x 3.8 = 22.8 litres	7 months and $10,000 fine	12 months and $10,000 fine	6 weeks and $5,000 fine
Section 6(3)(*b*) Poisons Act				
5th	1,175.825 litres	7 months and $10,000 fine	10 months and $10,000 fine	4 months and $10,000 fine
54th	1,143.060 litres	10 months and $10,000 fine	12 months and $10,000 fine	6 months and $10,000 fine
Section 24 Medicines Act				
9th	3.8 litres	4 months	-	3 weeks

79 I will now address specifically Tan's and the PP's arguments on the sentences for the individual charges.

(1) The 1st and 3rd charges

80 I will deal with the 1st and the 3rd charges first. I reject Tan's submission that a fine for these charges would suffice. Tan does not support this submission with any cogent explanation. To the extent that Tan attempts to rely on previous cases in which fines were imposed (see [71] above), I will say this: the sentences in those cases were either explicable by the peculiar facts of the case, or were clearly inadequate. On my analysis as set out above (at [68] to [70]), I think the custodial threshold is crossed because Tan's conduct was hardly a one-off transaction. A fine is therefore inappropriate.

Version No 1: 27 Oct 2020 (22:40 hrs)

81 However, although the custodial threshold was clearly crossed, I do not think the custodial term here need be substantial given that the quantity of codeine cough preparations involved was low. The sentence of 2 months' imprisonment was, in my judgment, excessive. This is especially when compared with the 12th charge in *Ho Thong Chew*'s case, where the accused was given a 6-week imprisonment term for a charge involving the sale of 7.6 litres of codeine cough preparations, and the first charge in *Woo Tat Meng*'s case, where the accused was given a 2-month imprisonment term for selling 1.68 litres of codeine cough preparations. Admittedly, the sentences in *Ho Thong Chew*'s case and *Woo Tat Meng*'s case cannot be easily reconciled, given that the latter involved a lower amount of codeine cough preparations but a higher sentence. But even as a matter of rough comparison, the sentence of 2 months' imprisonment for the 1st and 3rd charges here would seem excessive given that the quantity of codeine cough preparations involved was only 900 ml and 270ml respectively. I therefore reduce the sentence of 2 months' imprisonment to 1 month's imprisonment for both the 1st and 3rd charges.

82 In this regard, I should add that I do not agree with the PP that as between the 1st and 3rd charges, the sentence for the 1st charge must "necessarily" be higher than that of the 3rd charge to reflect the higher amount of codeine cough preparations sold.[47] The difference between selling three and ten bottles to an abuser is not so significant as to "necessarily" warrant an increase in the term of imprisonment in all cases where 10 bottles were sold. Indeed the PP recognises in another part of his submissions that the quantity sold or supplied should not be the sole or overriding consideration and that adopting a linear approach in pegging the sentence to the amount of codeine cough preparations sold/supplied would be simplistic.[48] Apart from the difference in quantity, the

[47] PP's Submissions at para 91

Version No 1: 27 Oct 2020 (22:40 hrs)

level of culpability of Tan in these two charges was not as high as in the subsequent charges as he did not sell the cough preparations for the purpose of reselling, and the sales were not effected while Tan was under investigation.

83 Further, I do not accept the PP's contention that the maximum fine should be imposed for these two charges. Indeed, the PP's point is that the maximum fine should be imposed for all the charges. The PP takes this stance because in his view that is the only way to disgorge as much of Tan's profit as possible.

84 I would reiterate that in as much as it is important to strip Tan of his ill-gotten gains, I do not think that objective should be pursued at the expense of proportionality. Looking at the 1st and 3rd charges, Tan made less than $100 for the 1st charge and no more than $300 for the 3rd charge. It is clearly disproportionate to impose the maximum fine of $10,000 in response. The PP's submission implies that the maximum fine should be imposed for every single charge that is brought against an offender like Tan unless it would result in a total fine that exceeds the total amount of profit made. That would leave the sentencing judge no room to calibrate the quantum of fine to fit the culpability of the offender for each individual charge. I do not think that is correct. The quantum of the fine must be high enough to deter, but it should still be commensurate with the gravity of the offending conduct for which it is imposed. The need for deterrence does not mean one should go overboard. In this regard, it is critical not to lose sight of the fact that besides paying the fines, Tan will be serving an imprisonment term.

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[48] PP's Reply Submissions at para 21

Version No 1: 27 Oct 2020 (22:40 hrs)

(2) 7th, 12th, 14th and 16th charges

85 I turn to the 7th, 12th, 14th and 16th charges. These relate to the sale of one 3.8-litre canister of codeine cough preparations on four separate occasions.

86 I reject Tan's submission that a custodial sentence of 3 weeks' imprisonment is sufficient. This suggested sentence would be even lower than that imposed for the first charge in *Woo Tat Meng*'s (under Rule 17(*a*) of the Poisons Rules) where the accused was given a sentence of 2 months' imprisonment for selling 1.68 litres of codeine cough preparations. The present four charges are more aggravated because the quantity was higher, Tan was selling to someone for the purpose of resale, the offences were committed while he was under investigation, and he had a relevant antecedent in the form of the SMC conviction (I will elaborate on the SMC conviction at [97] to [100] below).

87 I also reject the PP's proposed sentence, which is based on the premise that there should be a starting custodial sentence of 6 months as long as the offender has sold a quantity of codeine exceeding 240 ml and which is meant for resale. I have said (at [63] above) that I do not accept that starting point because there is no explanation for it. In this case, a sentence of 4 months' imprisonment will convey a strong enough deterrent message, especially where the offender is a professional like Tan.

88 Hence, I do not see any reason for interfering with the DJ's sentence of 4 months' imprisonment and a $10,000 fine for each of these charges.

Version No 1: 27 Oct 2020 (22:40 hrs)

(3) 18th, 20th, 28th, 36th, 44th, 52nd charges

89 As for these six charges, I reject Tan's proposed sentence of 6 weeks' imprisonment for each charge. Again, taking the 1st charge in *Woo Tat Meng* as a basis for comparison, his proposed sentence is woefully inadequate.

90 On the other hand, the term of imprisonment of 7 months seems to me to be on the high side. I would take as a basis for comparison the sentences for the first 11 charges in *Ho Thong Chew*. Ho sold 35 to 75 canisters per charge. He was charged under the Medicines Act rather than the Poisons Act but his sentences are still relevant precedents because, as I have said, the relevant provisions under the two Acts target similar criminal behaviour and the maximum custodial sentences under each Act are the same. He was given 3 months' imprisonment for each of the charges and a $5,000 fine. Tan sold fewer canisters here – only six on each occasion. However, I accept that Tan's offences are probably more aggravated because he had a relevant antecedent and committed these offences even while under investigation. Nonetheless, I still think it was not necessary to impose a sentence as high as 7 months' imprisonment as the DJ did.

91 In my judgment, a sentence of 5 months' imprisonment for each of these six charges is sufficient. I hence reduce the terms of imprisonment for the 18th, 20th, 28th, 36th 44th and 52nd charges to 5 months per charge. The fine of $10,000 for each charge is to stand.

(4) 5th and 54th charges

92 I will now turn to the two s 6(3)(*b*) Poisons Act charges.

Version No 1: 27 Oct 2020 (22:40 hrs)

93 For the 5th charge, the quantity of codeine involved (1,175 litres) far exceeded that of the other charges for which the same custodial sentence of 7 months was imposed by the DJ (*ie*, the 18th, 20th, 28th, 36th, 44th, and 52nd charges). As mentioned previously (see [19] above), part of that quantity also formed the basis of the 1st and 3rd charges brought under s 6(1)(*a*)(i) of the Poisons Act. The total amount of codeine cough preparations involved in the 1st and 3rd charges is only 1,170ml or 1.17 litres. Leaving that aside, there is still about 1,174 litres of codeine cough preparations which are not duplicated in the other charges. And Tan admits that these were sold to abusers of codeine cough preparations purely for profit and not for any therapeutic purposes.[49] The difference between a few hundred litres and a thousand litres is significant. The sentence for this charge must be sufficiently higher compared to the s 6(1)(*a*)(i) charges to reflect how much more severe the offence is. In my judgment, the sentence of 7 months' imprisonment is inadequate here. Therefore, I increase the custodial sentence for the 5th charge to 9 months. For the avoidance of doubt, the fine of $10,000 is to stand.

94 The sentence for the 54th charge should be higher than that for the 5th charge given that Tan reoffended while under investigations. Tan accepts this.[50] On the other hand, the quantity of codeine cough preparations involved that is not duplicated in the other charges is less. The charges with duplicated quantities comprise all the s 6(1)(*a*)(i) Poisons Act charges proceeded with which fell within the second period and the s 6(1)(*a*)(i) TIC charges that were based on separate sales of codeine cough preparations (see [11(c)], [11(d)], [11(e)] and [15] above). In total there are four charges of selling one 3.8 litre canister and 18 charges of selling six 3.8 litre canisters. The quantities involved

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49 SOF at para 49

50 Tan's Submissions at para 76

Version No 1: 27 Oct 2020 (22:40 hrs)

in these charges amount, in my calculations, to 425.6 litres. Subtracting that from the quantity involved in the 54th charge (1,143 litres) gives about 717 litres. That is the quantity of codeine cough preparations sold in the second period to cough preparations abusers whose identities remain unknown. It is significantly lower than the quantity involved in the 5th charge which is not duplicated in the other charges (1,174 litres). On the other hand, I regard it as highly aggravating that Tan continued to sell so much codeine cough preparations even after he was investigated for what he did during the first period. I therefore think that a slight increase over the sentence imposed for the 5th charge is still warranted to signal that the law will not tolerate such blatant re-offending. I therefore impose a sentence of 10 months' imprisonment – this is the same sentence imposed by the DJ but my reasons for doing so are different. For the avoidance of doubt, the fine of $10,000 is to stand.

95 As for the sentence for the charge under the Medicines Act, I see no basis for disturbing it. The PP has not made any submissions on it either. For the same reason that I have rejected his submission in respect of those other offences involving the same quantity of codeine cough preparations (see [86] above), I reject Tan's submission that the appropriate sentence here should only be three weeks.

96 I should add that in considering what would be the appropriate sentence for each of the 15 individual charges proceeded with against Tan, I have taken into account the fact that (a) the SMC conviction showed that this was not the first time Tan was selling codeine cough preparations illicitly, (b) there were 40 TIC charges, and (c) there were hardly any mitigating factors in this case. I will elaborate on them below since Tan and the PP have adversely commented on the DJ's approach to each of these factors.

Version No 1: 27 Oct 2020 (22:40 hrs)

(5) Relevant antecedents

97 Tan argues that the DJ erred in treating his SMC conviction as a relevant antecedent. Tan characterises the SMC conviction as being "wholly different in nature and substance" to the offences he has been convicted of here.[51]

98 I reject this argument. Five of the charges in the SMC's Notice of Inquiry are of a similar nature. They were for Tan's failure to exercise due care in the management of his patients by inappropriately prescribing benzodiazepines and codeine cough mixtures.[52] The PP tendered the Schedules to the Notice of Inquiry showing the detailed breakdown of these inappropriate prescriptions. The Schedules show that Tan prescribed Dhasedyl cough preparations to individual patients regularly. One Schedule even shows that Tan prescribed Dhasedyl almost every few weeks, amounting to 3.15 litres over an 11-month period.[53] The others show a similar pattern of Tan prescribing Dhasedyl fairly frequently (at intervals of a few weeks).

99 The PP submits that the sheer quantities of codeine cough preparations prescribed in those instances (in the SMC conviction) suggest that, as in this case, Tan was selling cough mixture to abusers.[54] It is not entirely clear that those patients were indeed abusers, but what is clear is that Tan was prescribing cough mixture there with the same frequency as he did in the present offences. More importantly, the SMC explicitly said that it was necessary to deter doctors like Tan who were "indiscriminately prescribing" cough mixtures containing codeine.[55] Pursuant to that, the SMC ordered Tan to give an undertaking that he

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51 Tan's Submissions at para 40

52 SMC's Disciplinary Inquiry at para 5: PP's BOA at p 668

53 PP's Reply Submissions, Tab C, Schedule 30.

54 PP's Reply submissions at para 17

Version No 1: 27 Oct 2020 (22:40 hrs)

would not repeat any of the conduct complained of. Yet he continued to engage in such conduct, as evidenced by the charges he faced here.

100 In the circumstances, I agree with the PP that the DJ was right to place weight on the SMC conviction as an aggravating factor.[56]

(6) TIC charges

101 I also took into account the fact that there were 40 TIC charges. I note the PP's argument that the DJ did not appear to have factored in the TIC charges in arriving at the global sentence.[57] I do not think the DJ's omission to do so was by itself a ground for interfering with the sentences he imposed.

102 In my view, these TIC charges must be seen in proper perspective. I do think that the TIC charges aggravate the principal offences to the extent that they show that there were further occasions where codeine cough preparations were also sold illegally by Tan. There were 14 such occasions (see [15] and [18] above). On the other hand, factoring in these TIC charges does not result in an increase in the total amount of cough preparations Tan had sold. This is because the total amount of cough preparations sold, as I have explained at [19] above, is already captured in the two s 6(3)(*b*) charges. As for the rest of the TIC charges relating to the sale of promethazine, these were, as I have explained, duplicates of the proceeded charges or TIC charges dealing with the sale of cough preparations containing codeine. Again, these do not show that there was an increase in the total amount of cough preparations sold.

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55 PP's BOA, Tab W, p 672

56 PP's Reply Submissions at para 19

57 PP's Submissions at para 86

Version No 1: 27 Oct 2020 (22:40 hrs)

103 Hence, because of this special circumstance, I do not think that the TIC charges significantly aggravate Tan's culpability. As mentioned in *PP v UI*, the court has a discretion whether to increase the sentences imposed for the offences proceeded with on account of the TIC charges (at [38], referring to *Public Prosecutor v Mok Ping Wuen Maurice* [1998] 3 SLR(R) 439 at [19]). I would thus have chosen not to increase the sentences for the individual charges on that account. Even if the TIC charges here would warrant an increase in the sentences for the charges proceeded with, I would not have been inclined to enhance the sentences significantly. Hence, in my view, there is no basis to interfere with any of the individual sentences imposed by the DJ on account of the TIC charges.

(7) Mitigating factors

104 There are hardly any mitigating factors in this case. It is opportune now to address Tan's argument that the DJ failed to consider his psychiatric illness as a mitigating factor. Tan is right to say that the DJ did not, in his GD, address the report of the psychiatrist, Dr Ang Yong Guan.[58] However, having considered the report myself, I do not think that it supports Tan's argument that his psychiatric illness at that time should be given mitigating weight in determining the sentence to be imposed on him.

105 Dr Ang's medical report notes that Tan had "chronic stress disorder presenting with anxiety" arising from a number of sources: his marital problems, his worries over his children (one of whom has Asperger's Syndrome), his worries about his elderly mother, his financial burden, and his own failing health. Tan also had "underlying low self-esteem".[59] This meant, in

[58] Tan's Submissions at para 19

[59] Dr Ang's Report at paras 38 – 39: ROP at p 224

Version No 1: 27 Oct 2020 (22:40 hrs)

Dr Ang's assessment, that he had found it difficult to say no to the patients who had requested cough preparations from him, and that his judgment was impaired on each occasion he committed an offence.[60]

106 I should say that the fact that an offender has a mental disorder does not necessarily render general deterrence and specific deterrence irrelevant as sentencing considerations. In *Lim Ghim Peow v Public Prosecutor* [2014] 4 SLR 1287, the Court of Appeal noted that (a) the sentencing objective of general deterrence should still be accorded full weight if the mental disorder is not serious, not causally related to the offence, or if the offence is a serious one (at [28]); and (b) specific deterrence would be less relevant as a sentencing consideration if the mental disorder has seriously inhibited the offender's ability to make proper choices or appreciate the nature of his actions (at [36]). The crucial question is whether the mental disorder in question can be said to have contributed so significantly to the offending conduct that it diminishes the offender's capacity to exercise self-control and restraint (*Chong Yee Ka v Public Prosecutor* [2017] SGHC 47 at [82]).

107 Tan's submission is that his chronic stress disorder "had a bearing" on why he supplied cough preparations to patients who harassed him (Nigel, Kelvin, and Chiam).[61]

108 Three points should be noted here. First, the DJ found "no merit" in the suggestion that Tan had been harassed, since he could simply have called the police (GD at [77]). Given this finding, which is not challenged, any link between Tan's supposed psychiatric condition and his commission of the

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60 Dr Ang's Report at paras 43 – 44: ROP at p 224

61 Tan's Submissions at para 18

Version No 1: 27 Oct 2020 (22:40 hrs)

offences is tenuous. Second, even if there was some causal connection between Tan's condition and the offence, he has not shown how his condition was serious enough as to inhibit his ability to appreciate the nature of his criminal conduct, or impaired his ability to exercise self-control and restraint. Dr Ang's report does not comment on the seriousness of Tan's chronic stress disorder and Tan has not attempted to show how his stress disorder significantly impaired his judgment. Third, in any case, if the people who harassed him were the only ones he sold excessive codeine cough preparations to, perhaps the point could be given some consideration. But that was not so. He also sold to people who did not harass him. The truth appears to be that he wanted to make some easy profits. The alleged harassment is just a convenient excuse.

109 In the circumstances, like the DJ, I do not think any weight should be placed on Tan's alleged psychiatric condition.

Global sentence

110 I now address the issue as to which sentences should be ordered to run consecutively. In my view, applying the guidance set out in *ADF*, there was ample basis for ordering more than two sentences to run consecutively here. I should reiterate that the factors already taken into account for the individual sentences should not be considered again. That leaves the following considerations:

(a) First, many charges were proceeded with against Tan. More importantly, Tan went from selling codeine cough preparations by the bottle during the first period, to selling it by the canister during the second period. It is also significant to note that Tan's illegal sales outstripped his legitimate sales – it accounted for at least half of his total sales. For the first period, Tan's illegal sales were 89% of the stock he

Version No 1: 27 Oct 2020 (22:40 hrs)

bought, and for the second period, it was 50 to 75%.[62] This gives rise to a compelling inference that Tan saw an extremely lucrative opportunity in selling codeine cough preparations and exploited it to the fullest. The PP's submission that Tan acted more like a drug peddler than a doctor is not entirely without basis. At the very least, however, it is hardly unreasonable to call Tan a persistent and habitual offender.

(b) Second, there is a pressing public interest concern in discouraging the illicit sale or supply of codeine cough preparations.

(c) Third, there were multiple victims. Tan sold codeine cough preparations to at least six regular customers who were abusers. There were probably other abusers whose details are not known because of his failure to record them. There are also probably other abusers who bought cough preparations from those who bought directly from Tan.

111 However, I think it would be unnecessary to order four sentences to run consecutively. As it is, ordering more than two sentences to run consecutively is only done in "exceptional cases" (see *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [81(j)]). Furthermore, the many aggravating considerations in this case can be given effect to by ordering not just three sentences to run consecutively but the three longest ones. Indeed, that was what the DJ did. I would do the same.

112 Based on the revised sentences which I have found to be appropriate in relation to the proceeded charges (see [80] to [95] above), that would still result in a global custodial sentence of 24 months. The sentences for the 18th, 5th, and

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62 PP's Submissions at para 80

Version No 1: 27 Oct 2020 (22:40 hrs)

54th charges, as set out hereunder, are ordered to run consecutively and the sentences for the other charges are to run concurrently.

18th	5 months' imprisonment and $10,000 fine
5th	9 months' imprisonment and $10,000 fine
54th	10 months' imprisonment and $10,000 fine

Conclusion

113 In the circumstances, both appeals are dismissed except that I have varied the individual sentences for some of the proceeded charges as stated earlier (see [81], [91] and [93]). The aggregate sentence shall remain at 24 months' imprisonment and a total fine of $130,000. The default sentence to be served in lieu of payment of fines shall remain as no arguments were raised in relation thereto.

Chao Hick Tin
Judge of Appeal

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Tan Wen Hsien and Grace Lim (Attorney-General's Chambers) for the Respondent/Appellant.

Version No 1: 27 Oct 2020 (22:40 hrs)