IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 188

Magistrate's Appeal No 9307 of 2017

Between

NEO AH LUAN

…Appellant

And

PUBLIC PROSECUTOR

…Respondent

JUDGMENT

[Criminal Law] — [Offences] — [Medical Registration Act (Cap 174, 1985 Rev Ed)]

[Criminal Procedure and Sentencing] — [Sentencing] — [Sentencing Framework]

Neo Ah Luan
v
Public Prosecutor

[2018] SGHC 188

High Court — Magistrate's Appeal No 9307 of 2017
Sundaresh Menon CJ
23 April, 11 May 2018

3 September 2018 Judgment reserved.

Sundaresh Menon CJ:

Introduction

1 The appellant, Neo Ah Luan, pleaded guilty before the learned District Judge to two charges under s 17(1)(*e*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("the MRA") of practising medicine as an unauthorised person in contravention of s 13 of the MRA. The basis of these charges was that the appellant had performed dermal filler injections on clients as a freelance beauty service which she provided out of her home. The District Judge imposed a sentence of two months' imprisonment for each charge with both sentences to run concurrently. The appellant appeals on the ground that the sentences were manifestly excessive.

2 Although the appellant had pleaded guilty to the charges and the appeal is only in respect of the sentences imposed, I thought that a question arose as to

whether the offences were made out, given that the appellant had never held herself out to be a medical practitioner. I accordingly adjourned the hearing on 23 April 2018 for the parties to address this issue. The matter was restored before me on 11 May 2018. After hearing submissions on whether the offences are made out, as well as what the appropriate sentence would be if they are, I reserved judgment. This is my decision on both those questions.

3 As I shall explain below, I am satisfied that the charges under s 17(1)(*e*) of the MRA are made out. As for the appropriate sentence, I note that there has been limited discussion in the cases of how punishment should be calibrated for the wide range of possible offences under s 17(1) of the MRA. I, therefore, set out a sentencing framework for such offences and I have applied this in arriving at my decision.

Background

Facts

4 The two proceeded charges against the appellant under s 17(1)(*e*) of the MRA read as follows:

> 1st CHARGE
>
> You, [name and details of the appellant] are charged that you, between 2012 and 13 March 2013, at [address redacted] did practise as a medical practitioner, to wit, by administering injections of "Cross Linked Sodium Hyaluronate" fillers using a syringe and needle to the face of one Guan Na, while being an unauthorised person, that is to say, a person who was not registered as a medical practitioner and who did not possess a valid practicing (*sic*) certificate and you have thereby contravened Section 13(1) of the Medical Registration Act, Chapter 174, and committed an offence punishable under Section 17(1)(e) of the said Act.

> 2nd CHARGE
>
> You, [name and details of the appellant] are charged that you, sometime in January 2014, at [address redacted] did practise as a medical practitioner, to wit, by administering injections of "Cross Linked Sodium Hyaluronate" fillers using a syringe and needle to the face of one Huang Jindi, while being an unauthorised person, that is to say, a person who was not registered as a medical practitioner and who did not possess a valid practicing (*sic*) certificate and you have thereby contravened Section 13(a) of the Medical Registration Act, Chapter 174, and committed an offence punishable under Section 17(1)(e) of the said Act.

5 The appellant admitted to the statement of facts without qualification. In November 2013, the Health Sciences Authority ("HSA") received information that the appellant was providing freelance beauty services, including the administering of dermal fillers. Acting upon this information, officers from the HSA and the Ministry of Health raided the appellant's home on 24 February 2014 and seized various exhibits, including used or partially used syringes containing products under the brand "Promoitalia Skinfill". Some of the vials and syringes of Promoitalia Skinfill product had been re-sealed in packaging with staples and had names, contact details and dates written on them. The officers also seized sheets of paper containing the details of approximately 74 customers dating back to 2009.

6 A statement was recorded from the appellant in which she said that the Promoitalia Skinfill products were used to make the skin firmer. The products were categorised into grades such as "silver, "gold", "diamond", "advanced" and "carbonium", according to their levels of efficacy. The appellant had apparently learnt about Promoitalia Skinfill products when she attended a briefing about these products at an exhibition in Hong Kong. She had purchased the products from Hong Kong at various times between 2010 and 21 February 2014, and had also been given some left-over stock by a

Promoitalia sales manager after she attended an "International Master Course on Aging Skin" in 2013. The appellant claimed that she had been trained in how to administer the products by Italian doctors in Hong Kong in 2010.

7 The appellant started providing home-based beauty services from her home in 2012. All of the Promoitalia Skinfill products seized from there were used in these beauty services. It is not in dispute that her home was a non-sterile environment.

8 The appellant produced a receipt from November 2012 which showed that she had spent between €120 and €130 for each box of Promoitalia Skinfill products of the diamond, gold and advanced grades, and €260 for each box of Promoitalia Skinfill products of the carbonium grade. Each box contained either one or two sets of products, each comprising a syringe, needle and hyaluronic acid. The appellant would charge her customers between $250 and $500 for each set. Based on the average exchange rate in 2012, it was estimated that the appellant made a profit of between $46 and $306 for each set of Promoitalia Skinfill products which she sold. Based on the 33 used or partially used syringes of Promoitalia Skinfill product seized from the appellant's home, she would have made an estimated profit of between $1,518 and $10,098.

9 Between sometime in 2012 and 13 March 2013, a Ms Guan Na ("Ms Guan") visited the appellant for procedures to remove her wrinkles and enhance her appearance. The appellant injected Ms Guan's forehead, cheeks and temple with a Promoitalia Skinfill product called "Skinfill soft". Ms Guan paid the appellant $250 for each visit. After her last visit on 13 March 2013, Ms Guan complained of redness, inflammation and rashes on her face. She met with the appellant and demanded to know what product the appellant had injected into

her face, whereupon the appellant produced a vial containing "Skinfill soft". The procedures which the appellant performed on Ms Guan formed the subject of the first charge under s 17(1)(*e*) of the MRA.

10 During the raid on the appellant's residence, officers found a vial of "Skinfill Carbonium Mini" that had been re-sealed in its original packaging with staples, and which bore the name "Cally" as well as a contact number. Investigations revealed that "Cally" was one Huang Jindi ("Ms Huang"). One of Ms Huang's friends had recommended that she visit the appellant for treatment to enhance her appearance. In January 2014, Ms Huang visited the appellant and the appellant injected her cheeks and nose with "Skinfill Carbonium Mini". After the procedure, the appellant placed the syringe back into its packaging and secured the package with staples as she intended to reuse the remaining product on Ms Huang when she returned for further treatment. Ms Huang was to be charged $250 for the treatment, but she never paid this sum to the appellant because the appellant's flat was raided before Ms Huang had the opportunity to return. It was common ground between the parties that Ms Huang did not suffer any ill effects from the filler injection performed by the appellant. The procedure which the appellant performed on Ms Huang formed the subject of the second charge against the appellant under s 17(1)(*e*) of the MRA.

11 The Promoitalia Skinfill products seized from the appellant's flat were subsequently examined by Dr Rama Sethuraman ("Dr Sethuraman") from the HSA's Medical Devices Branch. Dr Sethuraman found that none of the Promoitalia Skinfill products were registered with the HSA as medical devices under the Health Products Act (Cap 122D, 2008 Rev Ed) ("the HPA").

12 Dr Sethuraman also prepared a report in which he stated that the Promoitalia Skinfill products were classified as "Class D" devices. To put this in context, the HSA classifies medical devices into four risk classes – Class A to Class D. At one end of the range, Class A devices are considered "low risk"; while at the other end, Class D devices are considered "high risk". Regulatory controls are imposed based on the risk associated with the use of a medical device. Classification depends on several factors, including how long the device is intended to be in use, whether the device is invasive, whether the device is implantable, and whether the device contains a drug or biologic component. Dr Sethuraman classified the Promoitalia Skinfill products as Class D products because they were implantable medical devices designed for long-term use and were intended to be wholly or mainly absorbed by the human body.

13 Dr Sethuraman's report also discussed the risks associated with unregistered medical devices generally, as well as the dangers associated specifically with unregistered dermal fillers. He noted that unregistered medical devices would not have had their safety and performance assessed, and so may not conform to the HSA's requirements. Unregistered dermal fillers in particular might be defective and unsafe for human use. They might contain harmful substances. They also might not have been manufactured according to the applicable quality standards, and may have been inadequately sterilised, which presented a high risk that such medical devices may be contaminated with microbes. Dermal fillers might also have been inadequately labelled and product owners might not have enough information as to the shelf life and proper usage of these products. Some of the effects which could result from the use of such products included:

(a) injection-related reactions such as bruising, swelling, pain, itching, redness or tenderness;

(b) infections which could lead to complications if untreated;

(c) the formation of hardened or calloused skin or nodules at the site of the injection; and

(d) systemic complications including "vascular compromise" due to the inadvertent injection of an implant into a blood vessel. This could result in blanching, discolouration, necrosis or ulceration. In rare cases, this could lead to visual loss or stroke.

The proceedings below

14 Apart from the two charges under s 17(1)(*e*) of the MRA, the appellant also pleaded guilty to two charges under s 15(1) of the HPA for possession of an unregistered health product (this being the Promoitalia Skinfill products) for the purpose of supply. She also consented to having one charge under s 17(1)(*e*) of the MRA and two charges under s 15(1) of the HPA taken into consideration for the purposes of sentencing.

15 The District Judge accepted the appellant's plea of guilt in respect of the proceeded charges and convicted her accordingly. He sentenced the accused to two months' imprisonment for each of the MRA charges, with both sentences to run concurrently. He also imposed fines of $2,500 and $2,000 for the first and second HPA charges respectively: see *Public Prosecutor v Neo Ah Luan* [2018] SGDC 36 (the "GD") at [2]. I shall discuss his reasons in more detail at [46]–[51] below.

16 The appellant appeals only against the custodial sentences imposed by the District Judge in respect of the charges under s 17(1)(*e*) of the MRA. She does not appeal against the fines imposed in respect of the charges under s 15(1) of the HPA and I therefore do not consider those.

Issues arising

17 As alluded to at [2] above, upon initially reviewing the papers, I thought that there might be a question as to whether the offences under the MRA were made out against the appellant. Section 17(1)(*e*) of the MRA provides that any unauthorised person who contravenes s 13 of the same Act is guilty of an offence. Section 13(*a*), in turn, provides that, subject to an exemption for ships' surgeons, "no person shall practise *as a medical practitioner* or do any act *as a medical practitioner* unless he is registered under the [MRA] and has a valid practising certificate" [emphasis added]. While the appellant had pleaded guilty to the charges, there was some uncertainty as to the meaning of the words "practise as a medical practitioner or do any act as a medical practitioner". Whether the appellant contravened s 13 of the MRA depended on the interpretation to be given to those words. Thus, the following issues arose for determination:

(a) whether the appellant contravened s 13(*a*) of the MRA (which turns on the correct interpretation of that provision); and

(b) assuming the appellant contravened s 13 of the MRA, what the appropriate sentence is.

18 I shall address these issues in turn.

Issue 1: Whether the appellant contravened s 13 of the MRA

19 The charges under s 17(1)(*e*) of the MRA state that the appellant contravened s 13 of the MRA in that she had "*practise[d] as a medical practitioner*, to wit, by administering injections of 'Cross Linked Sodium Hyaluronate' fillers … while being an unauthorised person …" [emphasis added]. The terms "practise as a medical practitioner" and "do any act as a medical practitioner" are not defined within the MRA. On a plain reading, they could carry either of two possible meanings:

(a) practising or doing acts while holding oneself out as, or assuming the identity of, a medical practitioner; or

(b) practising or doing acts which should only be done by medical practitioners (such as diagnosing illnesses, giving medical advice, or performing procedures on patients).

20 It is not in dispute that the appellant had never held herself out as a medical practitioner while administering the dermal filler injections. It is also common ground that neither Ms Guan nor Ms Huang, nor any of the appellant's other clients, was under the misapprehension that the appellant was medically qualified. Instead, the Prosecution's position is that by administering dermal filler injections, the appellant had "practised medicine as a medical practitioner", by which it means that she had engaged in practice which should only be carried out by a qualified and registered medical practitioner. Thus, if s 13(*a*) of the MRA were to be given the first interpretation (at [19(a)] above), then the offences would not be made out. On the other hand, if s 13(*a*) of the MRA were to be given the second interpretation (at [19(b)] above), the offences would be made out.

The meaning of the phrase "as a medical practitioner"

21 It is well-established that where a statutory provision carries two or more possible interpretations, the court should adopt a purposive interpretation or that which promotes the object of the written law, as it is mandated to do by s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) (see *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [36]). As recently set out by the Court of Appeal in *Tan Cheng Bock* at [37] (citing *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 at [59]), purposive interpretation proceeds in three steps.

(a) First, the court ascertains the possible interpretations of the provision, having regard to the text of the provision and the context of that provision within the written law as a whole.

(b) Second, the court ascertains the legislative purpose or object of the statute.

(c) Third, the court compares the possible interpretations of the text against the purposes or objects of the statute, and prefers the interpretation that furthers the objects of the statute.

The possible interpretations

22 Applying the foregoing framework to s 13 of the MRA, the first step is to ascertain the possible interpretations of "practising or doing any act as a medical practitioner". The court must do this by determining the ordinary meaning of the words, having regard to the text of the provision and the context of s 13 within the MRA as a whole (*Tan Cheng Bock* at [37]–[38]).

23 I begin by considering the text of the provision itself. As mentioned at [19(a)]–[19(b)] above, a plain reading of those words may imply either (a) practising or doing acts while holding oneself out as a medical practitioner, or (b) practising or doing acts which should only be done by a medical practitioner.

24 I turn then to consider the meaning of "practising or doing any act as a medical practitioner" within the *context* of the MRA as a whole. In this regard, it is clear that s 13 should be read alongside s 17(1) of the MRA. For convenience, I reproduce both provisions here:

> **Qualifications to practise**
>
> **13.** Subject to section 66 –
>
> (*a*) no person shall practise as a medical practitioner or do any act as a medical practitioner unless he is registered under this Act and has a valid practising certificate; and
>
> (*b*) a person who is not so qualified is referred to in this Act as an unauthorised person.
>
> **Unauthorised person acting as medical practitioner**
>
> **17.**—(1) Any unauthorised person who –
>
> (*a*) practises medicine;
>
> (*b*) wilfully and falsely pretends to be a duly qualified medical practitioner;
>
> (*c*) practises medicine or any branch of medicine, under the style or title of a physician, surgeon, doctor, licentiate in medicine or surgery, bachelor of medicine, or medical practitioner, or under any name, title, addition or description implying that he holds any diploma or degree in medicine or surgery or in any branch of medicine;
>
> (*d*) advertises or holds himself out as a medical practitioner; or
>
> (*e*) contravenes section 13 or 14,

> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding 12 months or to both and, in the case of a second or subsequent conviction, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 2 years or to both.

25 The question is what the wider context of the MRA, including s 17(1), suggests about the ordinary meaning of s 13. In determining this ordinary meaning, the court may use rules of statutory construction as an aid (*Public Prosecutor v Lam Leng Hung and others* [2018] 1 SLR 659 at [104], citing *Tan Cheng Bock* at [38]). Having regard to the general context of the MRA, including s 17(1) and its various limbs, one rule which appears relevant to the interpretation of s 13 is the principle that Parliament shuns tautology and does not legislate in vain, and the court should therefore endeavour to make sense of and give significance to every word in the statute (*Tan Cheng Bock* at [38], citing *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [43]). Indeed, the Prosecution sought to rely on this principle at the hearing on 23 April 2018 when I raised the question of whether s 13 of the MRA should be read only as a prohibition against holding out as a medical practitioner. It was pointed out that the other limbs in ss 17(1)(*b*), 17(1)(*c*) and 17(1)(*d*) of the MRA already proscribe conduct which involves pretence, holding out, and generally creating a false impression that the offender is a medical practitioner. Thus, it was argued, the words practising or doing any act as a medical practitioner in s 13(*a*) cannot mean "holding oneself out as a medical practitioner" because if that were the case, then s 17(1)(*e*) would be a penal provision against holding out as a medical practitioner, and this, in turn, would render ss 17(1)(*b*)–(*d*) tautologous. Therefore, the words "practise or do any act as a medical practitioner" in s 13(*a*) must refer to any act which should properly be done only by a registered medical practitioner instead.

26 The problem with this reasoning, however, is that there will be tautology within s 17(1) of the MRA regardless of how s 13(*a*) is construed. It is true that interpreting s 13(*a*) as a prohibition against holding out would create a significant overlap between s 17(1)(*e*) and ss 17(1)(*b*)–(*d*), but it must be recognised that there would equally be significant surplusage within the MRA even if s 13(*a*) is interpreted as a prohibition against doing acts which should only be done by a medical practitioner. In particular, if s 13(*a*) of the MRA is interpreted this way, there would be a substantial overlap between s 17(1)(*e*) and s 17(1)(*a*). This is because s 17(1)(*a*) prohibits unauthorised persons from *practising medicine*, which is a subset of "acts which should only be done by a medical practitioner". Section 17(1)(*a*) would therefore be otiose because any contravention of s 17(1)(*a*) would in and of itself be a violation of s 13(a), and therefore punishable under s 17(1)(*e*). Indeed, on this basis, s 17(1)(*c*) would *also* be otiose because s 17(1)(*c*) applies to unauthorised persons who *practise medicine* under styles or titles implying that they are medically qualified. This would necessarily also be a violation of the prohibition against *practising medicine* in s 17(1)(*a*), which would also be a violation of s 17(1)(*e*) (on the interpretation that s 13 prohibits the practise or doing of acts which should only be done by a medical practitioner).

27 In fact, even if one disregards ss 17(1)(*e*) and 13(*a*) altogether, there would nonetheless remain a considerable degree of overlap and tautology within the various other limbs of s 17(1) of the MRA. Section 17(1)(*b*) of the MRA overlaps entirely with s 17(1)(*d*) because any person who "wilfully and falsely pretend(s) to be a duly qualified medical practitioner" under s 17(1)(*b*) would likely, if not necessarily, also be "advertising or holding himself/herself out to be a medical practitioner", under s 17(1)(*d*). And as already mentioned, s 17(1)(*c*) of the MRA is subsumed within s 17(1)(*a*), because any unauthorised

person who violates s 17(1)(*c*) by practising medicine under the style or title of a medical practitioner would, by definition, also be "practising medicine" in breach of s 17(1)(*a*).

28 Given the various overlaps between the limbs of s 17(1) of the MRA, which it appears cannot be avoided regardless of how s 13(*a*) is construed, the principle that Parliament shuns tautology cannot usefully be applied to the provision. Consequently, this canon of statutory construction offers little assistance in determining whether practising or doing any act as a medical practitioner means holding out as a medical practitioner or doing acts which should only be done by medical practitioners. Bearing this in mind, I turn to the second and third steps (see [21(b)] and [21(c)] above) of ascertaining the legislative purpose behind ss 13(*a*) and 17(1)(*e*) of the MRA to shed light on their meaning.

The legislative object(s) and the correct interpretation

29 The Court of Appeal in *Tan Cheng Bock* drew a distinction between internal sources – being the text of the provision itself and its context within the statute – and external sources, which comprise extraneous material not forming part of the written law (at [42]). Primacy is given to internal sources over external sources (at [43]). I thus begin by considering the internal sources within the MRA.

(1) Internal sources

30 The general purpose of the MRA as a whole is expressly defined in s 2A of the Act:

Object of Act

> **2A.** The object of this Act is to protect the health and safety of the public by providing for mechanisms to –
>
> (*a*) ensure that registered medical practitioners are competent and fit to practise medicine;
>
> (*b*) uphold standards of practice within the medical profession; and
>
> (*c*) maintain public confidence in the medical profession.

31 Section 2A of the MRA makes clear that the Act's overarching purpose is to "protect the health and safety of the public" and it is envisioned that this is to be achieved through mechanisms that include those which uphold standards of practice within the medical profession and maintain public confidence in the medical profession.

32 The presumptive position is that a statute is a coherent whole and the purpose of a specific provision is "subsumed under, related to, or complementary to" the general purpose of the statute (*Tan Cheng Bock* at [41]). In the absence of any evidence or suggestions to the contrary, I proceed on the basis that the specific purpose of ss 13(*a*) and 17(1)(*e*) of the MRA is "subsumed under, related to, or complementary to" the MRA's general purpose.

33 Bearing the general purpose of the MRA in mind, it could be argued that this points to an interpretation of s 13(*a*) as a prohibition against unauthorised persons doing acts which should only be done by medical practitioners, and not just a prohibition against unauthorised persons holding themselves out as medical practitioners. Arguably, preventing unauthorised persons from engaging in any medical practice whatsoever, whether or not they hold themselves out as medically qualified, would better serve the wider legislative purposes of protecting public health and safety, upholding standards of practice, and maintaining public confidence in the medical profession.

34 As against this, it might be argued that the *alternative* interpretation – which is, that s 13(*a*) is a prohibition against holding out or falsely pretending to be a medical practitioner – is also consistent with the same legislative purposes underlying the MRA. After all, if rules are in place to prevent unauthorised persons from holding themselves out as medical practitioners, this would help members of the public to distinguish between those practitioners who do not have the necessary skills, training and experience to offer treatment, and those who do. This would conduce to public health and safety insofar as fewer people would take the risk of seeking medical treatment from unqualified practitioners. In my judgment, however, this advances only a narrower interest of ensuring that the users of such services have adequate information before they make their choice as to who their service provider will be. This would suggest that the MRA does not mean to restrict those who may provide such services as long as the consumers of such services are not misled as to the qualifications of those providers. This seems to me to be an unduly narrow view of the proper objects to be served by the MRA especially given that the first two objects identified in s 2A are concerned with fitness and qualifications of practitioners and with upholding standards of practice.

35 In my judgment, the better interpretation of s 13(*a*) would be to construe it as prohibiting those not qualified as medical practitioners from doing acts which should only be done by a qualified medical practitioner, regardless of whether that also extends to falsely holding out as a qualified medical practitioner. This would better comport with the wider purposes expressed in s 2A of the MRA.

(2) External sources

36 In that light, I turn to the external sources to ascertain whether these confirm the foregoing interpretation. The most relevant external source is the Parliamentary debates at the Second Reading of the Medical Registration Bill (Bill No 2/1997) on 25 August 1997. These debates indeed reveal that a specific type of mischief intended to be addressed by s 17 of the MRA is the illegal performance of procedures and treatments which *should be performed only by qualified medical practitioners*, regardless of whether those who perform these illegal treatments hold themselves out as medically qualified. This is abundantly clear from the remarks of the Minister for Health, Mr Yeo Cheow Tong ("the Minister for Health") (*Singapore Parliamentary Debates, Official Report* (25 August 1997) vol 67 ("*Parliamentary Debates*") at cols 1562, 1567–1568 and 1603) concerning cl 17 of the Bill (which was later enacted as s 17 of the MRA):

> Another problem that we face from time to time is the illegal conduct of procedures and treatments which are to be performed only by qualified and registered medical practitioners. Often, these illegal procedures are done improperly, and patients need to go to qualified specialist doctors for corrective treatment … Many of these illegal procedures are conducted by beauticians or other lay persons who unscrupulously mislead their clients into believing that they are qualified to undertake such procedures.
>
> …
>
> [Clause 17] will enable the Government to act effectively against unauthorised persons who are illegally providing medical treatment and procedures, *even though they had not claimed to be registered medical practitioners.* These enhanced penalties very clearly signal that the Government is determined to stamp out such abuses.
>
> …
>
> The objective of this Bill is to make sure that unauthorised people who carry out medical procedures, and therefore threaten the health of the person they are treating, would be facing very heavy penalties. …

[emphasis added]

37 The comments of other Members of Parliament and the examples of scenarios which they envisioned would be addressed by s 17(1) also bear out this suggestion that the legislative intent was to address a wide range of conduct which included *both* the illegal conduct of medical procedures being carried out by unqualified individuals, *as well as* unauthorised practice which was accompanied by misleading or deceptive behaviour which would amount to holding out as a medical practitioner. For example, Member of Parliament Dr Lily Neo commented that cl 17 would enable the authorities to respond effectively to "unfortunate situations" including a man who had performed a dangerous colon-cleansing procedure without having the appropriate qualifications, as well as a "bogus doctor who had worked in the General Hospital … for more than six months" (*Parliamentary Debates* at col 1576).

38 The Parliamentary debates, in my judgment, confirm that the legislative object behind s 17(1) was to target the mischief of unauthorised persons *doing acts which should only be done by medical practitioners* whether or not they had held themselves out as qualified medical practitioners. Section 13(*a*) of the MRA must therefore be interpreted in such a way as to give effect to that purpose.

39 The appellant seeks to downplay the significance of these statements made in the Parliamentary debates by contending that a "distinction must be made between Parliament's intention as regards s 17 of the MRA and Parliament's intention as regards s 13 of the MRA". She cites the observations of the Court of Appeal in *Tan Cheng Bock* at [121] to the effect that only statements that specifically relate to the provision in question are to be relied

upon to determine the purpose behind the particular provision. I reject this argument for two reasons.

40 First, the Court of Appeal made no such observation in *Tan Cheng Bock*. In fact, such an observation would be inconsistent with the court's holding that the court may look to the general purpose of the statute as a whole to shed light on Parliament's intention behind a specific provision (at [41]). Seen in context, the court declined to place weight on the Parliamentary statements which the appellant in that case relied on because those statements *did not relate* to the *specific issue* before the court which was whether in passing Art 164 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the "Constitution"), Parliament retained for itself the discretion to decree that the first presidential term to be counted for the purpose of Art 19B of the Constitution was the last term of office of President Wee Kim Wee (*Tan Cheng Bock* at [119]–[124]). The Parliamentary statements which the appellant sought to rely on related generally to the *concept* of a reserved election and were therefore of limited, if any, assistance in determining the specific intention behind Art 164 of the Constitution.

41 Secondly, unlike the position in *Tan Cheng Bock*, Parliamentary statements on s 17 *are* directly relevant to the interpretation of s 13(*a*) of the MRA. This is because s 17(1)(*e*) is the only penal provision applicable to the prohibition in s 13 of the MRA. Section 13 contains the prohibition, and s 17(1)(*e*) prescribes the punishment for the offence constituted by the contravention of that prohibition. Indeed, Parliament's act in legislating the prohibition, and then the punishment for the offence constituted by its contravention, can be said to be two sides of the same coin. The short point is that any remarks made in Parliament about the mischief intended to be

addressed by the penal provisions in s 17(1) are quite directly applicable and pertinent to the interpretation of s 13 of the MRA.

42 Based on the foregoing analysis, I am satisfied that s 13(*a*) read with s 17(1)(*e*) of the MRA bear the object of preventing unauthorised persons from doing acts which should only be carried out by medical practitioners. If a person who is not qualified or registered as a medical practitioner carries out such acts, he or she contravenes s 13(*a*) even if that person never holds out or pretends to be a medical practitioner.

Application to the present case

43 As the District Judge noted at [47] of the GD, the Singapore Medical Council's "Guidelines on Aesthetic Practices for Doctors (2016 Edition)" state that filler injections are minimally invasive procedures which can only be performed by doctors. This is not seriously challenged by the appellant. It follows, given my interpretation of s 13 of the MRA, that the charges under s 17(1)(*e*) read with s 13 of the MRA are made out against the appellant because she has practised or done acts which should only be done by a medical practitioner, even though she had never held herself out as such. There is thus no reason to disturb the appellant's conviction upon her plea of guilt.

44 At the hearing on 23 April 2018, I suggested to the parties that a single act of administering a filler injection might constitute doing *an* act as a medical practitioner, but may not constitute practising as a medical practitioner, as the term "practise" implies a sustained course of conduct. While the second charge under s 17(1)(*e*) of the MRA originally alleged that the appellant had "practised as a medical practitioner", it only related to a single instance in which the appellant administered a filler injection on Ms Huang. In view of this, the

Prosecution submits that the charge may be amended to refer to the appellant "doing an act as a medical practitioner" instead of practising as a medical practitioner. It is clear that this court is empowered, under ss 390(3) and 390(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), to frame an amended charge even where the appellant has pleaded guilty and been convicted on the original charge. I find that it is appropriate to amend the second charge to refer to the appellant "doing an act as a medical practitioner". As required by s 390(6) of the CPC, I obtained confirmation from the appellant that she did not intend to offer a defence to the charge as amended.

45 This leads me to the next issue, which is the appropriate sentence.

Issue 2: The appropriate sentence

The District Judge's grounds of decision

46 In determining the appropriate sentence for the charges under s 17(1)(*e*) of the MRA, the District Judge considered the legislative object behind the MRA. He concluded, based on the same Parliamentary materials canvassed at [36]–[37] above, that the penalties in s 17(1) of the MRA were intended to deter unauthorised persons from providing medical procedures. Thus, he concluded that there was a need for a custodial sentence in this case to deter others from committing similar offences (GD at [33] and [36]).

47 The District Judge further noted the dangers and risks involved in the injection of dermal fillers that had not been registered with the HSA. Such products were untested and there was no way of telling whether they conformed with the relevant regulatory requirements for safety and performance. He also noted that dermal fillers were classified as "high risk" Class D devices (GD at

[39]–[42]), and that there was no evidence that the appellant had received adequate training as to how to administer these safely (GD at [46]).

48 With regard to the various sentencing precedents cited by the parties, the District Judge took the view that the appellant's culpability was lower than that of the offender in *Public Prosecutor v Kulandaivelu Padmanaban* [2010] SGDC 407 ("*Kulandaivelu*"), where the offender had been sentenced to three months' imprisonment (after the sentence was revised on appeal). The offender in that case had held himself out to be a qualified medical practitioner and had diagnosed and treated patients by giving patients injections and prescribing them medicines (GD at [67]–[68]).

49 In the District Judge's consideration, the appellant's culpability was most similar to that of the accused in the unreported case of *Public Prosecutor v Consumido Daisy Sagum* (DSC 00005 of 2012) ("*Consumido*"), where the offender had performed breast and buttocks enhancing procedures by injecting her patients with collagen fillers. She too was sentenced to three months' imprisonment. The District Judge held that the procedures carried out by the appellant in this case and the accused person in *Consumido* were essentially the same – namely, providing filler injections (GD at [69]–[71]).

50 The District Judge took note of the following as aggravating factors:

(a) that the use of unregistered dermal fillers created a very high potential for harm, and the health risks were further exacerbated by the fact that the appellant was not a qualified medical practitioner (GD at [72]);

(b) that the appellant did not have professional liability insurance that would cover complications or injuries suffered by her clients (GD at [73]);

(c) that the risk of harm was exacerbated by the fact that the appellant had administered the treatments from her residential flat, which was a non-sterile environment; and further that she had reused syringes which were improperly stored (GD at [74]); and

(d) that the appellant had been providing these treatments since 2009 and had provided the treatments to approximately 74 clients, and had profited from her actions (GD at [80]).

51 As against these aggravating factors, the District Judge accepted that there was no evidence of actual harm caused to any of the appellant's clients (GD at [77]). He also noted that the appellant appeared to be genuinely remorseful, had cooperated with the authorities and had stopped providing the unauthorised treatments (GD at [84]). Nevertheless, bearing in mind the potential for harm and the appellant's culpability, he was of the view that the custodial threshold had been crossed (GD at [85]). He concluded that a sentence of two months' imprisonment would be appropriate.

The appellant's submissions

52 The appellant raises two broad grounds of appeal. First, she contends that the District Judge relied on an erroneous fact that the appellant had provided dermal filler treatments since 2009 to approximately 74 clients, and in treating this as an aggravating factor. While the statement of facts recorded that a folder had been found containing the details of about 74 clients dating back to 2009,

the appellant argues that this did not give the District Judge a basis to infer that she had administered dermal filler injections to all of these clients from 2009. On the contrary, the statement of facts stated that the appellant had only purchased the Promoitalia Skinfill products in *2010* and had started providing the service of performing these filler injections in *2012*. The Prosecution accepted that the District Judge erred in this regard.

53 The appellant's second broad ground of appeal is that the District Judge erred in placing insufficient weight on the lack of *actual* harm, and placing undue emphasis on the *potential* for harm. In this regard, the appellant submits that Parliament's intention behind s 17 of the MRA was to address the problem of victims who actually suffer harm as a result of illegal procedures, and thus the punishment for offences under s 17 of the MRA should correspond to the actual harm caused to the victim.

54 The appellant also argues that her level of culpability is low, given that she did not hold herself out to be a medical practitioner, and that she had "exercised some degree of care" by obtaining some level of training in how to administer the filler substance. She also submits that Promoitalia "appears to be a reputable Italian company and has held out that its products [are] in compliance with European Union Directive 93/42/EEC pertaining to medical devices".

55 The appellant contends that the sentence for each of the charges under s 17(1)(*e*) of the MRA should be reduced to a fine of $5,000; or alternatively to a term of no more than one month's imprisonment, with both sentences to run concurrently.

The Prosecution's submissions

56 The thrust of the Prosecution's case is that the District Judge did not err in imposing the two-month custodial sentences in light of the high potential for harm engendered by the appellant's actions. It argues that the sentence imposed by the District Judge was consistent with, and justifiable according to, the sentencing framework which it proposed.

57 The starting point under that framework is that the punishments for offences under s 17(1)(*e*) of the MRA should use the full spectrum prescribed under s 17(1) of the MRA – which ranges from a fine to a maximum of 12 months' imprisonment. The Prosecution submits that this range may be divided into three bands, corresponding to the level of actual or potential harm caused by the offence; while the precise sentence to be imposed within each band would depend on the offender's level of culpability. The Prosecution illustrates the proposed framework using the following table, which it submits should apply to a first-time offender who claims trial:

		Culpability		
		Low	**Medium**	**High**
Harm	**Low**	Low fine	⟷	High fine
	Medium	At least a short custodial term	⟷	Up to 6 months
	Serious	At least 6 months	⟷	Up to 12 months

58 As for how the level of harm may be assessed, the Prosecution submits that this would depend on both the potential for harm, and any actual harm.

Potential harm may be assessed by considering the seriousness of the harm risked and the likelihood of that harm arising (citing *Public Prosecutor v GS Engineering & Construction Corp* [2017] 3 SLR 682 ("*GS Engineering*") at [77(c)]). The actual harm should be assessed by reference to the nature and degree of personal injury caused. Using these factors, the Prosecution proffers the following guidelines:

(a) harm is "low" where no or negligible actual harm was caused and there was low potential for harm;

(b) harm is "medium" where there was some actual harm or significant potential harm; and

(c) harm is "serious" where significant actual harm materialised, including injuries which are permanent in nature and/or which necessitate significant surgical attention.

59 With regard to culpability, the Prosecution suggests that this depends on the following non-exhaustive factors: whether the offender intentionally engaged in unauthorised practice; whether the offender gained any profit from the unauthorised practice; the duration of the offending behaviour; whether the offender held himself or herself out to be a registered medical practitioner; and whether any steps were taken to avoid detection or prosecution.

60 The use of this framework would yield an indicative starting point which may then be adjusted based on aggravating or mitigating factors. Aggravating factors would include relevant antecedents, any offences committed while the offender was on bail, and other charges taken into consideration. Mitigating

factors would include genuine remorse, as evidenced by cooperation with the authorities or a guilty plea.

61 Applying the proposed framework, the Prosecution submits that the appropriate classification of the harm in this case is medium. Although no actual harm was caused, the appellant's actions created the potential for significant harm, including not only superficial injury but also infection. Further, it is said that there was, in this case, a high likelihood of harm, given that the appellant was untrained and carried out the procedures in a non-sterile environment.

62 The Prosecution also argues that the appellant's culpability should be assessed as medium, given that she intentionally engaged in unauthorised practice for a period of about two years, and had made financial gains of at least $1,518. Thus, if the appellant had claimed trial, the Prosecution says that the applicable starting point would have been around three months' imprisonment for each charge, this being the mid-point of the sentencing range for "medium" harm.

63 Bearing these factors in mind, the Prosecution argues that the sentence of two months' imprisonment per charge was not manifestly excessive.

The appropriate sentencing framework

64 I generally agree with the sentencing framework proposed by the Prosecution and find that it may be a useful means of calibrating sentences to meet the wide range of offences encompassed by the various limbs of s 17(1) of the MRA. However, this is subject to some clarifications relating to two aspects of the sentencing framework: first, the conception of harm; and second, the factors going towards culpability.

The conception of harm

65 I make two points regarding the conception of harm. The first pertains to whether it is appropriate for *potential* harm to be taken into consideration. This is a point of some significance in the present appeal because, as discussed at [53] above, the appellant argues that the District Judge had placed undue weight on the *potential* for harm and correspondingly accorded insufficient weight to the absence of *actual* harm inflicted on the victims. On the other hand, the Prosecution argues that it is appropriate to take a "prophylactic approach", and that the potential for harm should be given significant weight.

66 In my judgment, it is appropriate to have regard to the *realistic potential* for harm that may be caused by conduct constituting an offence under s 17(1) of the MRA, when it comes to sentencing. The legislative intent behind enhancing the penalties for unauthorised practice in the present MRA (as compared to the 1985 MRA) was to provide a stronger deterrent against the illegal conduct of procedures by unauthorised persons. For example, during the Second Reading of the Medical Registration Bill, the Minister for Health noted that the much weaker penalties found in the 1985 MRA were a "grossly inadequate deterrent" (*Parliamentary Debates* at col 1562) and that the enhanced penalties would "enable the Government to act effectively against unauthorised persons who are illegally providing medical treatment and procedures" (*Parliamentary Debates* at col 1567).

67 Deterrence would not be served if an unqualified individual who successfully performed an extremely risky medical procedure involving a high level of potential harm were to receive a lenient sentence, just because actual harm did not materialise. Significantly, other recent decisions setting out sentencing guidelines for offences affecting public health and safety have also

placed weight on potential harm, and not just actual harm (see for instance, *GS Engineering* at [77(c)] and *Public Prosecutor v Koh Thiam Huat* [2017] 3 SLR 1099 at [41]). This is not surprising if one considers that the very purpose of imposing criminal penalties for such offences is to minimise the *risks* to society by discouraging irresponsible behaviour that endangers public health and safety, even if no actual harm is caused by a particular instance of offending behaviour. Seen in this light, the incidence of actual harm might be seen as a further aggravating factor. However, I emphasise that it would only be appropriate to have regard to potential harm if there was a *sufficient likelihood* of the harm arising and this in turn should be assessed in the light of the gravity of the harm risked (*GS Engineering* at [77(c)]). Not every remote possibility of harm arising should be taken into account in determining the appropriate sentence.

68 The second point I make in this connection is that this should not be limited to *bodily* harm or harm to a particular patient or victim. Apart from actual or potential bodily injury, courts may take into account other types of harm which may be caused by offences under s 17(1) of the MRA, including, where appropriate, serious mental distress and harm to public confidence in the medical profession. For example, an unauthorised person may hold himself out as a medical practitioner and, in that guise, deceive a victim into believing that he or she suffers from a serious disease calling for a sham course of treatment. In such a situation the victim might suffer no actual, or even potential, bodily harm, but instead might suffer significant mental distress, and in my judgment, this may fairly be taken into account in determining the appropriate sentence. Similarly, if an unqualified person masqueraded as a doctor in a large hospital for a significant amount of time (an example cited by Dr Lily Neo during the Parliamentary debates on the Second Reading of the Medical Registration Bill – see [37] above), such an incident might cause a serious loss of public

confidence in the medical profession or the healthcare system and this could be viewed as causing serious harm. This is so because maintaining public confidence in the medical profession is one of the express aims of the MRA (see s 2A of the MRA).

69 There may yet be other types of harm which might be relevant for the purposes of sentencing. For example, there could be situations where an offence under s 17(1) of the MRA has caused the victim serious economic loss, and this too may be relevant in determining the appropriate sentence. Much will depend on the factual circumstances of each case and given the dearth of precedents, it would not be appropriate to be unduly prescriptive. But my main observation is that the conception of harm should be a sensible one that is neither unduly constrained, nor unduly extensive.

70 Finally, in assessing the level of harm or potential harm, the sentencing court should be careful not to double-count any factors which may already have been taken into account in assessing the level of culpability. If a factor has been fully taken into account at one stage of the sentencing analysis, then it generally should not feature again at another stage (*Public Prosecutor v Raveen Balakrishnan* [2018] SGHC 148 at [87]).

Culpability and the duration of offending

71 The second comment I make in respect of the Prosecution's proposed sentencing framework relates to the facts which should be taken into account in assessing the offender's culpability. The Prosecution has argued that one matter which should be considered is the offender's intent, and specifically whether the offender was merely negligent or has intentionally engaged in unauthorised

practice. As an example of a "negligent" offender, the Prosecution cites the example of a qualified doctor who forgets to renew his practicing certificate.

72 I broadly agree with the Prosecution's submission that the offender's state of mind may be relevant to the question of culpability. However, I also note that a wide variety of offending behaviour might come within s 17(1) of the MRA, and such offences might be committed with a correspondingly wide range of possible states of mind. The courts ought to take a nuanced approach in determining the offender's culpability; in particular, it might be insufficient to categorise all conduct as simply "negligent" or "intentional". For instance, in the present appeal, the Prosecution argues that the appellant "intentionally engaged in unauthorised practice", but it is not entirely clear what is meant by this. The Prosecution stops short of arguing that the appellant knew that she was engaging in acts which should only be carried out by a medical practitioner, although in oral submissions it was argued that she "must have known" that what she was doing was not quite appropriate. I will return to this point shortly.

73 The second point I make relates to the relevance of the duration of offending. In *Logachev Vladislav v Public Prosecutor* [2018] SGHC 12 ("*Logachev*") at [59], I noted that all other things being equal, an offence perpetrated over a sustained period of time would generally be more aggravated than a one-off offence. This is because the duration of offending indicates how determined the offending conduct is. The longer the period of time over which the offences have been committed, the more likely it is that the offender manifests the qualities of a habitual offender (*Logachev* at [59], citing *Public Prosecutor v Fernando Payagala Waduge Malitha Kumar* [2007] 2 SLR(R) 334 ("*Fernando*") at [43]). It should be noted, however, that both *Logachev* and *Fernando* involved cheating offences which inherently involve intentional

dishonesty and deliberately wrongful conduct. That reasoning might apply with less force in a situation where the crime is accompanied by some less culpable state of mind. For example, if an offender has negligently or unwittingly engaged in unauthorised practice over an extended period of time, the duration of the offending is not an indication of "how determined" the offender is, and cannot be taken to mean that the offender "manifests the qualities of a habitual offender". On the other hand, if an offender has engaged in such conduct rashly or recklessly, then the duration of offending *does* make the offence more aggravated insofar as the offender has taken a risky and irresponsible course of behaviour over a longer period of time. Ultimately, the weight to be given to the duration of offending behaviour in determining culpability should be carefully considered in the circumstances of each case.

Summary

74 To summarise the foregoing analysis, I am generally in agreement with the Prosecution's proposed framework, subject to some adjustments. In my judgment, for a first-time offender who claims trial, the approach to sentencing for an offence under s 17(1) of the MRA should proceed as follows.

(a) The first step would be to identify the level of harm and the level of culpability.

(i) Harm includes actual and potential bodily harm, as well as emotional or psychological harm to the victim, or the undermining of public confidence in the medical profession. The level of harm may be characterised according to the following broad guidelines, though this is not to be applied in a rigid or mechanistic way:

Low	- Where no actual personal injury was caused and there was low potential for personal injury; - where the offence did not cause actual psychological or emotional harm to the victim; and/or - where the offence did not undermine public confidence in the medical profession and the healthcare system.
Medium	- Where there was some actual personal injury or substantial potential for serious personal injury; - where the offence caused psychological or emotional harm to the victim; and/or - where the offence undermined public confidence in the medical profession and the healthcare system.
High	- Where the offence caused serious personal injury, including injuries which are permanent in nature and which necessitate surgical attention; - where the offence caused serious mental injury, in the sense of a recognisable psychiatric illness; and/or - where the offence seriously undermined public confidence in the medical profession and the healthcare system.

(ii) Culpability would depend on the following non-exhaustive factors: the offender's state of mind; the extent of profits gained by the offender from the unauthorised acts; the duration of the offending behaviour having regard to the circumstances underlying the continuance of the offending conduct; whether the offender held himself or herself out to be a registered medical practitioner; the sophistication involved in the offence, including the lengths to which the offender may have gone to evade detection or to perpetrate the misimpression that

he or she was a duly qualified practitioner; the extent of premeditation and planning involved, including whether the offender came into Singapore for the purpose of committing the offences; and the extent to which the offender may have abused any position of trust, such as where the accused made use of his or her employment at a hospital or other healthcare institution to perpetrate the offence.

(b) The second step would be to identify the indicative sentencing range, according to the following matrix:

		Culpability		
		Low	**Medium**	**High**
Harm	**Low**	Low fine	⟷	High fine
	Medium	At least a short custodial term	⟷	Up to 6 months
	Serious	At least 6 months	⟷	Up to 12 months

(c) The third step would be to adjust the starting point according to offender-specific aggravating and mitigating factors that have not yet featured in the analysis. Aggravating factors would include offences taken into consideration for sentencing purposes, relevant antecedents and an evident lack of remorse. Mitigating factors would include a plea of guilt and cooperation with the authorities.

(d) The fourth step would be to make further adjustments to take into account the totality principle, particularly where an offender has been

punished with three or more sentences of imprisonment (see *Logachev* at [81] and *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [72]).

Sentencing precedents

75 Before I address the application of this sentencing framework to the present facts, I pause to make some observations about the precedents cited by the parties and the District Judge, namely, *Kulandaivelu* and *Consumido*.

76 In *Kulandaivelu*, the offender was a foreigner who came to Singapore on a social visit pass from time to time and would remain here for periods of between ten and 14 days, staying in certain premises and using them to see patients each time he visited Singapore (*Kulandaivelu* at [5]). The level of potential harm was somewhat higher than that in the present case, given that the offender was diagnosing illnesses, prescribing medicines for common ailments such as diarrhoea and fever, and also performing minimally invasive procedures such as injections. The level of culpability was significantly higher in that the offender was effectively operating a medical clinic (as opposed to offering beauty services) and patients believed that he was a qualified doctor (at [5]). Furthermore, he entered Singapore for the purpose of carrying out illegal activities and this has been recognised as a particularly aggravating factor: see *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [28]. It follows that if he had been sentenced under the framework I have proposed, the offender would likely have received a sentence approaching six months, which corresponds to the higher end of the range for offences involving a medium level of harm.

77 As for *Consumido*, the level of harm was comparable to that in the present case, in that the offender there was also administering filler injections. However, there too, the offender's level of culpability was higher than that of the appellant. According to the statement of facts, as was the case in *Kulandaivelu*, the accused had also entered Singapore on a social visit pass for the specific purpose of performing buttock and breast enhancement procedures. The case therefore was marked by a higher level of sophistication and organisation. The decision was unreported and the full surrounding facts are unclear, but it is likely that the offender there would have received a sentence of around six months if she had been sentenced under the proposed framework, depending on the mitigating and aggravating factors.

Application to the present case

78 Applying the framework to the present facts, the first step would be to identify the level of harm and culpability. I agree with the District Judge and the Prosecution that while no actual harm was suffered, the potential for harm was not insubstantial, given that the fillers were unregistered health products and their safety for use had not been tested or verified. Further, there was a significant prospect of actual harm occurring because the procedures were carried out in a non-sterile environment, and these were invasive procedures which could result in complications. I disregard some of the other theoretically possible consequences referred to in Dr Sethuraman's report because it was not clear to me how realistic those potential consequences were. The potential for some bodily injury places the offences at the low to medium level of harm.

79 I pause here to comment on the relevance of an offender's lack of professional liability insurance. The District Judge considered that the potential for harm was exacerbated by the fact that the appellant did not have such

insurance. He noted that if any of the appellant's clients had suffered injuries or ill effects, they would have had limited recourse against the appellant and may have been saddled with the cost of obtaining medical treatment (GD at [73]). The appellant argues that this is an irrelevant factor and ought not to have been taken into account.

80 In my judgment, in an offence of this nature it would generally be inappropriate for a court to treat the offender's lack of professional liability insurance as an aggravating factor. To begin with, the law generally does not treat factors which are inherent in an offence as aggravating (*Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [83] and *Pittis Stavros v Public Prosecutor* [2015] 3 SLR 181 at [68]). Here, almost inevitably, any person who violates s 13 of the MRA by practising or doing acts as a medical practitioner without proper registration and certification will not be covered by professional liability insurance. In that sense, the lack of professional liability insurance, though not *inherent* in the offence, is a *logical consequence* of the offence which would be present in every case. It would, moreover, be duplicative to consider *both* the risk of injury *and* the risk that the victim would not be able to recover civil compensation for such injury in assessing the level of potential harm. I therefore do not consider that this is a factor which should be taken into account in sentencing for offences under s 17(1) of the MRA.

81 I turn to the second stage of the sentencing framework, which concerns the offender's culpability. It may have been an overstatement for the Prosecution to claim that the appellant had "intentionally engaged in unauthorised practice". There is no evidence to show that the appellant *knew* that she was carrying out procedures which should only be carried out by medical practitioners. Indeed, the fact that the appellant never held herself out

to be a qualified doctor while offering these services suggests that she may not have known that dermal filler injections could only be carried out by qualified medical practitioners.

82 However, the Prosecution did adduce evidence of brochures accompanying the Promoitalia Skinfill products used by the appellant. These brochures stated in express terms that the products "must be injected by a legally approved practitioner" and were "designed for use in doctor's cabinet", and that it was "necessary to work in the appropriate aseptic conditions". They also stated that the syringes and remaining product should be discarded after use and should not be re-sterilised or reused. It is not clear whether the appellant read and then disregarded these instructions. I note that she does not appear to be proficient in English and was aided by an interpreter in this appeal. Yet even on the most innocent explanation possible, the most generous inference that could be drawn was that the appellant had injected these Promoitalia dermal filler products into the faces of several clients without having understood the accompanying instructions. That suggests that even if the appellant was not *intentionally* engaging in unauthorised practice, she was at least grossly negligent or even reckless, and her conduct in that sense displayed some degree of disregard for her clients' safety.

83 The appellant argues that she had exercised a degree of care by receiving training on administering the filler injections. In a similar vein, in her mitigation plea, the appellant claimed that she believed that she had fulfilled all the requirements for administering Promoitalia Skinfill products because she had attended training sessions with a doctor. In my judgment, the District Judge rightly gave little weight to this claim (GD at [46]). The appellant had furnished no details of these alleged training sessions, and the only supporting evidence

which she adduced was a certificate which simply stated: "This Certificate is Presented to [the appellant] For Successfully Completing the TRAINING PROGRAM of Skinfill". The certificate also was not signed by any doctor. In other words, there is no evidence to support the appellant's claim that she actually attended training sessions with a properly qualified doctor. If she did, it is hard to imagine that the trainers would not have highlighted the aforementioned safeguards described in the product brochures. On any view, the appellant's conduct showed a lack of concern or consideration for her clients' health and safety. In light of this, it *is* a somewhat aggravating factor that the appellant had offered these dermal filler injections over a period of about two years.

84 The appellant's culpability must also be assessed in light of the scale of the operation which she was running from her flat. The District Judge mistakenly believed that the appellant performed dermal filler injections on a far larger number of clients and for a far longer period of time than she in fact did. Nevertheless, it *is* clear, from the number of syringes and sets of filler product recovered from the flat, that she had a sizeable number of clients. As for the profits which she earned from administering these filler injections, the amount which the appellant earned may have been as modest as $1,518 and, given the uncertainties, I do not think it would be appropriate to afford this aggravating weight. I also note that the appellant never held herself out as a medical practitioner and that there is nothing to suggest that her clients believed she was anything more than a beautician.

85 Having regard to these factors, I would characterise the appellant's culpability as being in the medium range. Taking reference from the table at

[74(b)] above, a low to medium level of harm and a medium level of culpability would yield a starting point of about two months' imprisonment per charge.

86 Proceeding to the third step of the framework, it may be noted that a third charge was taken into consideration for sentencing purposes. On the other hand, the appellant pleaded guilty and cooperated with the authorities, and this should be accorded mitigating weight. In my judgment, having regard to all the circumstances in the round, a sentence of about six weeks' imprisonment on each charge is appropriate and I allow the appeal to this extent.

87 Finally, it is appropriate that the sentences on both of the charges should run concurrently. Although the offences were separate in the sense that they involved unauthorised acts being performed on two different victims, the total duration of the appellant's offending behaviour has already been taken into account in determining the level of her culpability (see [82]–[83] above). In this regard, the total sentence of six weeks' imprisonment is a just and proportionate reflection of the appellant's overall criminality.

Conclusion

88 For these reasons, I allow the appeal as aforesaid.

Sundaresh Menon
Chief Justice

Peter Cuthbert Low and Priscilla Chia Wen Qi (Peter Low & Choo LLC) for the appellant; and
Peggy Pao-Keerthi Pei Yu and Teo Lu Jia (Attorney-General's Chambers) for the respondent.
