

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN  
[SQUARE BRACKETS]

**ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES,  
OCCUPATIONS OR IDENTIFYING PARTICULARS OF VICTIMS  
PURSUANT TO S 202 CRIMINAL PROCEDURE ACT 2011.**

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**CRI-2015-044-002901  
[2016] NZDC 16202**

**THE QUEEN**

v

**PARK UNG WONG (AKA) TERRENCE WONG**

Hearing: 19 August 2016  
Appearances: M Hardy for the Crown  
A Ross for the Defendant  
Judgment: 19 August 2016

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**NOTES OF JUDGE L I HINTON ON SENTENCING**

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[1] Mr Wong, you appear for sentence today on five charges involving the sale of medicines by you as a pharmacist from the pharmacy you owned and operated in Birkenhead. The first charge is one of making a false document in breach of s 256(1) of the Crimes Act 1961, for which the maximum penalty is 10 years' imprisonment. That is the forgery charge. There are then three charges of criminal nuisance in breach of s 145 of the Crimes Act for which the maximum penalty is one year imprisonment as follows: one charge relating to the sale of the prescription medicine, zopiclone, to your customer [name deleted - customer 1] on four occasions; one representative charge relating to the sale of excessive quantities of restricted medicines containing codeine and ibuprofen to three customers between 11 September 2013 and 16 July

2015, and one charge relating to the sale of restricted medicines containing codeine to one patient on 16 July 2015. The fifth charge is one representative charge of supplying a prescription medicine for which the maximum penalty is three months' imprisonment and that relates to the prescription medicines, Paracetamol and codeine supplied to several patients between September 2014 and 16 July 2015.

[2] The caption sheet provides that between 11 September 2013 and 16 July 2015, you dispensed various medicines in breach of your legal and professional obligations and in a manner that put the life or health of your customers at risk. Your activities included dispensing prescription medicines without a prescription and supplying excessive quantities of restricted medicine to certain persons.

[3] You were a pharmacist in a regulated profession. The regulatory system is designed to reduce the risk to public health. A key part of the Medicines Act 1981 is the regulation of the dispensing and supply of medicines. Scheduled medicines are classified according to the risk they pose to consumers. Prescription medicines are the highest risk category, and may be supplied by a pharmacist only, pursuant to a prescription from an authorised prescriber.

[4] Restricted medicine, also referred to as pharmacist only medicine, may be sold without a prescription but the sale must be made by a registered pharmacist in a pharmacy and details of the sale recorded. Pharmacist only medicine is the lowest risk category of scheduled medicines.

[5] You were a registered pharmacist operating a licensed pharmacy. You were entitled to dispense medicines but only in accordance with the Act and your professional duties. You could not lawfully prescribe prescription medicines. As a health practitioner you had a legal duty to perform your services as a pharmacist with reasonable care and skill and in compliance with legal, professional and ethical standards.

[6] As a practising pharmacist, you were also subject to the Pharmacy Council of New Zealand Code of Ethics. Amongst other things, the Code of Ethics required you to take appropriate steps to prevent the supply by any means of unnecessary or

excessive quantities of any medicine or health care product which you knew or should reasonably be expected to realise was likely to cause or have a potential for misuse, abuse or dependency.

[7] The first criminal nuisance charge relates to the sale of zopiclone. Zopiclone is a prescription medicine used in the treatment of insomnia. It is recommended to be taken on a short-term basis as dependence is known to occur with prolonged use. It is known to pose various risks to the health of patients including a risk of fatal overdose. As a prescription medicine, zopiclone cannot be sold without a prescription. The Ministry of Health data sheet on this product states that a single tablet should be taken before retiring, for a maximum of two to four weeks.

[8] [Customer 1] was a customer at your pharmacy between May 2013 and January 2015. He resided in the area and regularly visited your pharmacy. He had been identified as being dependent on zopiclone. A restriction notice had been issued concerning him. The notice was provided to every prescriber and pharmacist by the Ministry of Health and a copy was located at your pharmacy. You dispensed zopiclone to [customer 1], who presented fraudulent prescriptions to you, despite the restriction notice having been issued precluding this.

[9] On 25 February 2014, [customer 1] presented a particular fraudulent prescription, said to be prescribed by [Doctor 1]. You checked at the relevant medical centre and were advised that [customer 1] had not been prescribed zopiclone and you were informed of the restriction notice in relation to [customer 1].

[10] Despite being informed that the prescription was not valid, and of the restriction notice, you dispensed zopiclone to [customer 1]. You subsequently dispensed it to him in September and October 2014 without valid prescriptions. Again, on 5 January 2015, you dispensed zopiclone to [customer 1] without a valid prescription. Later on 5 January or early on 6 January 2015, [customer 1] consumed zopiclone tablets. He also consumed medicines containing codeine. He had an overdose reaction.

[11] On 6 January 2015, [customer 1] was located by his stepfather in a serious medical condition and taken to [Hospital] by ambulance. He had no brain function and was kept on life support throughout [date deleted] in order for his organs to be donated. On [date deleted – the next day] he was disconnected from life support and declared deceased. His death was caused by mixed drug toxicity from both zopiclone and codeine.

[12] The forgery charge concerns your actions following learning of [customer 1's] state of health on [date deleted]. On 8 January 2015, at your pharmacy, you located the previous fraudulent prescription for [customer 1] dated 25 February 2014 and purportedly prescribed by [Doctor 1]. You photocopied the prescription covering the previous dispensing sticker label using a small white sticker.

[13] Using this modified copy, you made a further photocopy, this time covering the date of the prescription and the doctor's signature. You modified this to include the date of 5 January 2015 and forged [Doctor 1]'s signature. This made a document that appeared to be a prescription for [customer 1] dated 5 January for 30 zopiclone tablets.

[14] The remaining two criminal nuisance charges relate to the excessive supply of restricted medicines containing codeine to three customers. First, the supply of codeine products to [customer 1] who would regularly purchase restricted medicines containing ibuprofen and codeine. These were Nurofen Plus and Panafen and Ibucode Plus. On the majority of occasions these products were in packet sizes consisting of 30 tablets. You sold at least 176 packets of these medicines to [customer 1] on at least 114 occasions.

[15] As a pharmacist you knew of the risk to the health of [customer 1] posed by supplying the medicines to him in such high doses and on a regular basis. Specifically you knew or ought to have known that the risks posed by zopiclone and codeine are greater when they are taken together.

[16] The second customer was [customer 2] who was a customer between May 2014 and June 2015. She developed a strong dependency on Nurofen Plus and

purchased increasing amounts of the product on a regular basis from you. There was a regular pattern of purchase of multiple packets of Nurofen Plus on a no questions asked basis.

[17] In June 2015 she was admitted to [Hospital] with life threatening health conditions due to the excessive amount of Nurofen Plus she was consuming. During this hospital stay, she disclosed to hospital staff that she was consuming two packets of Nurofen Plus per day after obtaining easy access to the medicine.

[18] The third customer was [customer 3], a customer between September 2013 and July 2015, who also purchased multiple packets of Nurofen Plus on a 'no questions asked' basis.

[19] As a pharmacist you knew of the risks to her health posed by supplying the medicine to her in such high doses and on a regular basis and, by February 2015, you knew of [customer 1's] death. The final criminal nuisance charge involves the sale of Nurofen Plus to [customer 3] in June and July 2015.

[20] The fifth charge relates to the supply of the prescription medicine, Paracetamol and codeine, without a prescription. To a particular customer, 8300 tablets were sold. To other customers, 3500 tablets were sold.

[21] Mr Wong, you pleaded guilty to these five charges on 26 May 2016 following a sentence indication which I gave to you that day. You have been represented throughout by Mr Ross who has appeared today for you and the Crown has been represented by Mr Hardy.

[22] I have considered considerable material relating to your sentencing today. That includes extensive written submissions, which have been filed by the Crown and on your behalf by Mr Ross. I have considered your affidavit filed in support of the sentence indication, victim impact statements, many reference reports concerning you and a pre-sentence report which has just been made available.

[23] I should note at this juncture that the names of the three customers that I have referred to will be suppressed by formal order at the conclusion of my remarks today.

[24] The exercise that I need to go through, Mr Wong, in open Court now is to fix a starting point and ultimately an end point of imprisonment that is appropriate for your offending taking into account aggravating and mitigating circumstances. There are obvious purposes and principles of the Sentencing Act 2002 that are relevant in relation to this serious offending by you. Your conduct must be denounced and you must be held accountable and responsible. The Court must have an eye however to the least restrictive sentence that it is possible to impose in the circumstances and importantly to the interests of victims of your offending.

[25] An overriding consideration here is deterrence because offending of this nature poses a most obvious risk to public health and it is of the type that affects the integrity of the public health system. The Crown proposes three groups of offending here, each attracting a starting point of imprisonment on a cumulative basis. The lead charge is obviously, and agreed to be, the forgery charge. The Crown suggest that the zopiclone sales charge involving [customer 1] is the second group of offending and that the codeine charges are a third category. That seems to me reasonably logical and of course a totality assessment can then be made.

[26] There are quite obvious aggravating factors that must be taken into account to assess the starting point. First and foremost is your abuse of your position of trust and authority as a registered pharmacist operating a licensed pharmacy. You held a privileged and responsible position. As the Crown puts it, pharmacists are professional health practitioners who act as the gatekeepers and protectors of public health and safety within New Zealand's regulatory regime for medicines. The public health system relies on the honesty and accuracy of recordkeeping managed by pharmacists. You have special training, skills and knowledge.

[27] Mr Ross for you suggests that a suggestion of breach of trust to patients puts it too highly, but that you rather allowed customers' professed needs to cloud your professional judgement. That you certainly did, and your affidavit frankly recognises that. You had also become friends with [customer 1] which assisted to cloud your

judgement. You accept that there has been a breach of professional standards and a breach of trust to the community in general, but that community includes your patients.

[28] There are pronounced general public health risks posed when prescription medicines are supplied outside the regulatory screen. There is a very good reason for some medicines being prescription only by a medical professional. You flouted that fundamental requirement, notwithstanding that there may have been a brief period of inadvertence, which was nevertheless substandard, in relation to the restriction notice which had been issued in relation to [customer 1].

[29] I do not accept that your transgressions can be masked wholly by naivety, Mr Wong. Harm was caused by your offending. Zopiclone in particular is a prescription medicine that is known to cause dependence and pose a risk of fatal overdose. The Crown suggests that an appropriate inference can be drawn that [customer 1] died from consuming drugs that were supplied unlawfully by you.

[30] The Crown accepts, however, that the proximate cause of [customer 1's] death was his own voluntary consumption of the medicine. Mr Ross submits that it is improper to draw the conclusion that the medicine you supplied was in fact the cause of [customer 1's] death and that some drugs may have been supplied from elsewhere. Your conduct, Mr Wong, was sensibly a factor in [customer 1's] death. We all have to recognise that, but I do not assume you are responsible for his death. Other patients have suffered from codeine addiction that was debilitating at least.

[31] Turning briefly to the victim impact statements, [customer 1's mother], , refers to [customer 1] having an addiction problem and their being unable to afford the help he needed to stop the dependency. [Customer 1's] problems had been brought on by the death of a [family member at a young age] and depression. [Customer 1's mother] says that Mr Wong must have known [customer 1] had a serious problem.

[32] The victim impact statement of [customer 2] states that her addiction to Nurofen Plus was substantial. She went from being a fit [age deleted] year old who walked and swam regularly, she says, to being unable to carry groceries up 10 steps to her house. She says she was admitted to hospital about three times but was always

too dependent on Nurofen Plus to admit her addiction because she would no longer be able to access it. She says, and I quote: “Of course it was becoming an addict which was the cause of my troubles, and it was not Mr Wong who caused that in any way. However, I believe that had I not been able to get so much of the substance from the Birkenhead Pharmacy so easily, I would have had a better chance of facing the problem sooner. However, it may also be true that I would have spent a full day each week trying to find other pharmacies from which to buy my needs and that would have been very hard to do.”

[33] You profited from your offending, Mr Wong – not greatly, but you did profit. I accept, however, that you were not commercially motivated. Your offending was repetitive and over a reasonably lengthy period involving several patients.

[34] Turning now then to the starting point, in relation to the forgery charge. The Crown and defence are agreed that an appropriate starting point is 12 months’ imprisonment. I agree with that assessment having regard to the relevant authorities. Your forgery was a one-off and a cover up exercise to avoid detection in relation to prescriptions of zopiclone prior to the death of [customer 1]. That rather distinguishes your situation from other more culpable conduct which is more sophisticated and prolonged involving significant dishonesty.

[35] Moreover, you have acted in a moment of panic or naivety, as Mr Ross put it. You say that you panicked. You were scared and worried, but also devastated to have heard about [customer 1]. Those factors distinguish your case from other more serious instances of forgery meriting a higher starting point.

[36] In relation to the criminal nuisance charges, I agree with the Crown’s submission that the degree of culpability is the gist of the enquiry in criminal nuisance. Your culpability here is high. You were aware of the regulatory framework and your responsibilities as a practitioner and the dangers that could arise if you failed to follow your pharmaceutical training and ethical responsibilities. In that regard, I put to one side some comments which are in the pre-sentence report which the Crown has referred to this morning and Mr Ross has responded to briefly.

[37] The important point here in relation to your following of correct procedures or not, or the lack of precise training that you may have had, Mr Wong, is that you have accepted responsibility for this offending according to the caption sheet summary of facts that I have referred to earlier.

[38] I frankly agree with Mr Hardy that your offending is near or within the most serious of cases for which the penalty for criminal nuisance is prescribed. I give you the benefit of the doubt that the legislature may have had in mind a more serious infraction, but I believe that a starting point in relation to the zopiclone charge of 10 months imprisonment is appropriate. You helped expose [customer 1] to enormous risk from medicine he was restricted from receiving, but that you dispensed based on fraudulent prescriptions.

[39] I have a starting point of 12 months' imprisonment in relation to the other charges including the two criminal nuisance charges. Similar factors are relevant in the analysis. Additionally, some offending is post your knowledge of [customer 1's] particular difficulties. So that the total starting point that I have for imprisonment is two years and 10 months.

[40] There are no aggravating factors personal to you, but there are mitigating factors which entitle you to a deduction from the starting point identified.

[41] You are of previous good character. You have no previous convictions. Mr Ross has supplied to the Court various references which speak very well indeed of you.

[42] The Crown view is that you should not be given significant credit for previous good character because of the number of offences you appear on. The Crown submits that any discount for previous good character should not exceed 10%.

[43] There are many references which have been submitted. These are from persons who have known you personally in business, from church, or through other relationships. They speak universally highly of you as a devoted and proud father, and an ethical person of good character. You are spoken of as a person of the utmost

integrity, a kind, generous and loyal friend, and a contributor to your community and church. Your wife speaks of you as selfless and dedicated. You and your wife have a sponsored child in South Africa whom you have been sponsoring since 2012. You are involved in your church's mission to help improve the health and lives of families in Tonga. Customers speak of your cheerful and helpful manner with the public. It is crystal clear that you have considerable support across a range of referees. You have the support of local medical practitioners and their patients.

[44] There is a reference from the pharmacist with whom you trained as a pharmacy intern in 2010 and subsequently worked with as a locum until you started your own business. This person has remained in touch with you. Their reference attests to your honesty and forthrightness in business dealings and ability to deal compassionately with patients in delicate circumstances. He believes you will continue to be an asset to the community if you are able to practice as a pharmacist again.

[45] You have cooperated with the police. You appear to be genuinely remorseful. You accept responsibility and I accept you are distressed by the effects your offending has had. You are willing to pay reparation which is substantial. You are entitled also to a discount of 25% for your guilty plea.

[46] There are other personal factors that can be taken into account, including the particular impact on you and your family. You will rightly be held accountable by your profession and are unable to practise as a registered pharmacist.

[47] You are thus entitled to total discounts of 45% from a starting point of 34 months. This results in an end sentence of 19 months. The deductions are 15% for your previous good character, 25% for your guilty plea, and 5% remorse and reparation.

[48] As the starting point of imprisonment is less than two years the Court is able to consider imposing a sentence of home detention.

[49] The question here is whether the purposes and principles of the Sentencing Act can be met by a sentence of less than imprisonment.

[50] As I mentioned at the outset, the question of deterrence is the dominant factor. The sentence that you receive must of course reflect the seriousness of your offending and hold you accountable, but it must act as a deterrent to you and others from engaging in this sort of offending.

[51] I have concluded that a sentence of home detention should be imposed on you. I consider that in the circumstances a substantial term of home detention acts as a sufficient deterrent. That decision is made against the backdrop of all the circumstances here.

[52] There is no presumption in favour of imprisonment, as there is with some offending where a sentence of less than imprisonment would be the exception.

[53] I accept that the impact on you of the offending has been severe. You are not in good financial circumstances. You have reopened your business operating as a retail health and beauty store with a significant reduction in turnover and your future is uncertain. You have nevertheless been prepared to pay reparation, and this is relevant in the overall assessment.

[54] The Court must recognise too that you have been frank in accepting responsibility, are remorseful, and have demonstrated empathy with customers who have suffered. You did not stand firm enough and think about the consequences. You were naïve and inexperienced, as you put it.

[55] You were held in evident high esteem by many people who have testified to your good qualities. Amongst those persons are professionals in a position to know you well.

[56] Against that backdrop home detention is an appropriate sentence for you and meets the purposes and principles of the Sentencing Act. Some community work should also be undertaken too.

[57] So, Mr Wong, you are convicted in relation to each of these charges. You are sentenced to home detention for a period of 10 months. The conditions are set out and

number 1 to 4 in your pre-sentence report. I will not read those all out at the moment. Standard post-detention conditions will apply and there is a special post-detention condition number 1 that will apply for six months following the term. That is that you continue to engage in and complete any programme to address any issues that are identified to the satisfaction of the programme facilitator and your probation officer.

[58] In addition, you must undertake 200 hours of community work. In addition, you must make an emotional harm reparation payment of \$30,000 to [customer 1's family member] in one sum on 26 August 2016.

[59] There is an order made for the suppression of the names of each of [customer 1, customer 1's mother, customer 2 and customer 3] or of any particulars likely to lead to any of them being identified.

L I Hinton  
District Court Judge