

Doctors fear abuse of proposed new powers for pharmacy officers

Danial Azhar - March 28, 2022 9:37 AM



The Poisons Act regulates the import, manufacture, storage, transport, sale and use of certain medicines and psychotropic substances.

PETALING JAYA: Proposed changes to the Poisons Act have given rise to concern over the potential abuse of enhanced enforcement powers for pharmacy officers, and long-term harm to the public health system.

An amendment bill has been tabled in the Dewan Rakyat which proposes to strengthen several penalties for distribution and use of medicines and psychotropic substances.

It also calls for pharmacy enforcement officers to be given extra powers.

However, questions remain about the genuine use of medicines being confused with the criminal trafficking of drugs.

FMT looks at what the Poisons Act is, why it is being amended, and what the new bill proposes.

What is the Poisons Act 1952?

The Poisons Act regulates the import, possession, manufacture, storage, transport, sale and use of certain medicines and psychotropic substances, which are defined as poisonous substances.

To prevent misuse and criminal use, only authorised distributors are permitted to sell such medicines and psychotropic substances.

Typical offences under the Act include the failure to tally records of medicines provided to patients, particularly prescription drugs such as diabetic and hypertension medicines, dispensing unregistered or expired medicines, or dispensing prescription medicines without a prescription.

Why is it being amended?

An amendment bill was previously tabled in 2019 but later withdrawn for review and refinement. The recent proposal to amend the Act is seen as a welcome move.

Malaysian Medical Association (MMA) president Dr Koh Kar Chai said the amendments had been a “long time coming” given that the Poisons Act is in need of updating to reflect the significant changes in the health sector.

Dr Steven Chow, president of the Federation of Private Medical Practitioners’ Associations Malaysia, said the government intends to deal with such matters as counterfeit medicines, trafficking of psychotropics, precursor diversion and computerised record transmission.

The current law lacks provisions on dealing with these problems, including control and curbs on irregularities in the use of chemical substances.

Proposals in the amendment bill

There will be a significant increase in general penalties along with enhancement of the powers of government pharmacy enforcement officers.

The amendment proposes jail sentences of up to five years, a maximum fine of RM50,000, or both. Currently, offenders found guilty serve a jail term of no more than a year, a fine of up to RM3,000, or both.

Further amendments seek to raise the penalty for any act or omission relating to wilful default or culpable negligence which endangered or was likely to endanger a life.

The current law provides for a maximum jail sentence of no more than two years, a fine of up to RM5,000 or both.

The bill proposes a maximum jail term of 10 years, a maximum fine of RM200,000, or both.

The proposed amendments would also grant substantially more power to pharmacy enforcement officers in the public sector to investigate private general practitioner clinics, veterinary clinics, dental clinics and community pharmacies for any medicine-related offences under the Act.

Appointed drug enforcement officers would be allowed to search any premises and seize medicines, equipment, documents or computer data by force if there is reasonable cause to suspect an offence was being committed.

The amendments also seek to protect authorised officers from civil lawsuits or criminal prosecution for any act if it was done "in good faith and in the reasonable belief" that it was necessary to enforce the Poisons Act or its regulations.

Concerns over the amendments

There are fears that the amendments will lump criminal trafficking of drugs with genuine use of medicines.

Chow said the proposed changes call for a blanket increase in fines and jail terms for virtually all offences prescribed in the Act.

"All registered items and their use for medical and health care purposes, are being lumped together with criminal activities dealing with trafficking and diversion," he said, adding that this would open the enforcement process to potential abuse.

He questioned how the amendments would address minor breaches due to lapses of administration or human oversight in the daily operations of private clinics and pharmacies.

Chow said criminal activities must be dealt with in accordance with the appropriate laws and under the Penal Code rather than by the Poisons Act.

Koh said the increase in jail sentences was not justified for certain offences, and would criminalise trivial offences that did not endanger the health of any person.

"Many doctors will be in practice with the sword of Damocles hanging over their neck, more so when the powers of pharmacy enforcement officers are enhanced," he said.

Recommendations for the amendment bill

Chow said the amendments include provisions which would allow for micromanaging the storage and sales of poisons. He suggested that the Act should lay out broad powers, and leave specific details to be spelled out in supporting regulations.

"Offences of a technical nature, such as the recording or labelling of poisons, should be clearly identified by the amendments and an appropriate minimum penalty should be set."

He urged the health ministry to reconsider the proposed increase in fines, as implementing it would mean medical practitioners could have their licences revoked by the Malaysian Medical Council for administrative breaches. This would be detrimental to the long term health of the public, he said.

With the second reading of the amendment bill being postponed to the next parliamentary meeting in July, it remains to be seen if the health ministry will further refine the amendments.