

# NPPA Should Use Power Sparingly: S-G

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In July, NPPA shook the pharma industry by cutting prices of 108 drugs citing huge inter-brand price differences in various categories of drugs. NPPA termed the price differences as "extraordinary".

But in a nine-page opinion, reviewed by ET, Kumar has told the department of pharmaceuticals that NPPA's July orders invoking public interest to fix prices of non-essential drugs "are not in consonance" with the drug pricing control order, 2013.

The solicitor-general has held that the power NPPA has exercised should be used sparingly under truly extraordinary circumstances such as "epidemic, financial deficit, restricted supply of life-saving drugs" in public interest for a fixed time period.

On Monday, NPPA said in a brief note that it was withdrawing the May guidelines on the direction of department of pharmaceuticals. It did not elaborate.

Government officials said that NPPA and the pharma department have had differences over the manner in which a special provision was being used by the pricing regulator to expand the number of drugs under price control. Consequently, the pharma department had sought the solicitor-general's view on the matter. The solicitor-general has held that the special clause NPPA has invoked cannot be used in a routine manner. NPPA cannot use a residuary and emergency power as a method of general dispensation, said Kumar. Further, the reasons cited by the regulator do not qualify as "extraordinary circumstances" and "public interest".

Also, considering NPPA can only exer-

cise powers delegated to it by the government, it can be asked to "modify the guidelines and change its stand", he has held. Pharma industry officials said the turn of events validates their stand. "It confirms the industry position that para 19 (special clause) is not the correct instrument for modification of DPCO 2013," said DG Shah, secretary-general, Indian Pharma Alliance, a grouping of domestic drugmakers.

Drug companies — both domestic and MNCs — have been up in arms against the pricing regulator's actions. Industry bodies representing drugmakers have challenged NPPA's decision in the high courts of Delhi and Mumbai.

Before moving the court, the Indian drugmakers sought the intervention of Ananth Kumar, Union minister of chemicals and fertilisers, claiming that inter-brand differences cannot be termed as "extraordinary".

"The inter-brand differences have always existed and were in existence when the NLEM was drawn up. Also, the inter-brand differences would be found in every single formulation which is manufactured by more than one formulator," the IPA's letter to the minister said, arguing by that logic every drug which has more than one player will come under price control, negating the purpose of NLEM 2011, and national pharma pricing policy, 2012.

However Tuesday's developments will not reverse price caps NPPA has already set for hundreds of cardiological, diabetes and other drugs. For that, NPPA would have to withdraw price notification it has issued since July. However, it would restrain NPPA from issuing similar orders for other drugs in future.

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