

Request for Comments and Announcements of Workshop on Pet Medications Issues

Federal Trade Commission

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Dear Sir or Madam,

My name is William Allen and I am commenting in regards to the Workshop on Pet Medications issue. I am commenting as a former pet owner and current law student. My comments will address some general and legal concerns regarding proposed legislation H.R. 1406, also known as the Fairness to Pet Owners Act.

General Thoughts on Prescription Pet Medications

As I understand it, the Act would require veterinarians to provide their clients with written prescriptions for all pet medications whether they ask for it or not, and inform them that they have the right to have the prescription filled somewhere else. It also prohibits veterinarians from charging a fee or requiring a waiver of liability for providing written prescriptions. It is my understanding that many veterinarians already provide written prescriptions when requested, and in fact the American Veterinary Medical Association advises its members to honor a client's request for one. However, I do not think that legally requiring veterinarians to provide a written prescription and to inform clients that they can get the medication somewhere else is necessary or always in the best interest of the animal. While I agree that veterinarians should not charge a fee for writing prescriptions that will be filled somewhere else, I do not think there is anything wrong with requiring a waiver of liability for prescriptions that will be filled somewhere else.

While I understand that the purpose of this proposed legislation is to provide customers with more affordable choices for their pet's medication, more affordable choices may not be in the best interest of the animal. If pet owners decide to purchase medications from online or other retail pharmacies, how will these businesses be regulated? Would there be licensed veterinarians filling these prescriptions? While licensed pharmacists understand how human medications work, they are not taught how different medications affect different animals. Where a pharmacist may catch some prescription error for human medications, the same pharmacist likely would not catch an error for pet medication. Online retailers also run the risk of filling prescriptions incorrectly, as they cater to a larger customer base than a local veterinarian. Some online retailers also may not be as reputable as others. If the medication has been illegally imported or otherwise not licensed, how is the pet owner to know?

The medications that veterinarians receive and distribute are more likely to be correct, as they know where the drugs are coming from, they have a relationship with animal and know how the drugs will affect it. If a veterinarian is not comfortable having his patient's prescriptions filled somewhere else, he should not be legally required to inform clients that they can get them filled elsewhere. Veterinarians should be allowed to use their expert judgment on these matters. If a client is unhappy with their veterinarian's judgment, they can go to another veterinarian who will comply with their request.

Thoughts on Liability of Veterinarians

Further, if veterinarians are required to provide written prescriptions and inform clients of their right to have them filled elsewhere, they should be allowed to require a waiver of liability on those prescriptions. If the veterinarians do not fill the prescriptions themselves, they should have some protection from liability in the event something happens to the animal. If they are not protected, they are open to many more lawsuits when they may have done nothing wrong. If an animal suffers an injury from a prescription medication, the person likely to be sued first is the veterinarian. This will subject the veterinarian to costly litigation to show that it was not his fault and that the medicine he prescribed was correct. The blame would then be shifted to whoever filled the prescription. But this would pose a problem to the pet owner. To what standard would the prescription filler be held? Veterinarians are held to a certain standard of care for their patients. If a pharmacist filled the prescription, would he be held to a normal standard for a pharmacist, the standard of a veterinarian, or something else entirely? If the prescription was filled by an online company, what standard of care would be applied to them?

In regards to the wording of the Fairness to Pet Owners Act, I think there should be some clarification to the definition of "animal drug." It is defined as a drug that is intended to be administered to an animal that may not be dispensed without a prescription. What is unclear is whether this means a drug that was made for animals or a drug that a veterinarian prescribes for an animal. Sometimes veterinarians prescribe human drugs for animals to treat certain problems. Are these drugs included in the definition of "animal drugs?" If so, that could pose additional problems if veterinarians are required to provide a written prescription to be filled elsewhere. When human drugs are prescribed to animals the dosages are often not the same and pharmacists or online retailers may make mistakes in this area causing harm to the animal.

If an animal does die as a result of improper medication, what recourse is there for the pet owner? Typically, damages are limited to economic damages. Economic damages in the case of a lost animal would typically be the fair market value of the animal. However some courts are starting to allow non-economic damages such as emotional distress loss of companionship. This is an evolving area of the law and should be of interest to those who are filling prescriptions or being required to provide a written prescription to be filled somewhere else. It seems unfair to

subject a veterinarian to liability for these types of damages if they did not fill prescriptions themselves.

Comparison to the Fairness to Contact Lens Consumers Act

With respect to the comparison to the Fairness to Contact Lens Consumers Act, I think there are a few key differences between the contact lens industry and the pet medications industry. First, the possible consequences from getting the wrong contact lenses are not the same as getting the wrong prescription pet medication. Serious harm can come to an animal that gets the wrong medication whereas the same cannot be said for someone who gets the wrong contact lenses. Second, the person who chooses to get his contact lenses online or from some other retailer is doing so at his own risk. The person who wants to get prescription pet medication from somewhere besides a veterinarian is doing so at his own risk, but it is also at the risk of the animal. It is a sad truth that pet owners do not always know or do what is right for their pet. However a licensed veterinarian's job is to do what is best for the animal. They can ensure that a pet gets the medication that it needs.

Alternative to the Fairness to Pet Owners Act

The main purpose of the Act is to provide consumers with more affordable pet medication by allowing for more competition in the marketplace. However I do not think this is best done by the regulations put forth in the Act. I think a better alternative would be to put regulations on how much a veterinarian can charge for the medications they prescribe. If other retailers can get the medications for less, the veterinarians should be able to get the medications at the same price. This way, the well-being of the animal is not taken from the vet and the consumer gets more affordable pet medications.

Conclusion

I feel it would be important to address the above issues before any regulations be put on veterinarians regarding their prescription practices. Consumers certainly deserve to have affordable medication for their pets; however, animal well-being and protection of innocent veterinarians should not have to be sacrificed in order to get that result.

Thank you for your consideration.

Sincerely,
William Allen