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I. GENERAL SUMMARY

The most efficient way of understanding the complexities of H.R. 1406 and its future effects on consumers of pet medication(s) is to compare it with a somewhat similar bill that was previously passed. This will allow the public to get a glimpse into the future and assess whether H.R. 1406 may be worthwhile for consumers. It is fairly impossible to find a bill that matches up perfectly, but the Fairness to Contact Lens Consumers Act (FCLCA) is sufficiently similar to give us an idea as to how consumers may benefit from H.R. 1406 if passed.

I will first outline what the FCLCA stands for and what it requires optometrists to comply with. Next I will briefly discuss the business of the contact lens market and how the FCLCA has impacted competition and prices. I will also discuss my personal experience as a contact lens consumer for the past 16 years. Lastly, I will compare the FCLCA with H.R. 1406, highlighting the similarities in both bills and give my prediction as to how consumers will benefit from the pet medication bill.

II. WHAT DOES THE FCLCA ACCOMPLISH FOR CONSUMERS OF CONTACT LENSES?

The Fairness to Contact Lens Consumers Act (FCLCA) was passed in 2004. The main thrust of the bill was to protect consumers of contact lenses by enhancing competition among retailer vendors. To accomplish this goal, the bill required eye doctors to adhere to certain rules. Section 2 of the Act specifically requires doctors to (1) provide each patient with a copy of a prescription for contact lenses, irrespective of whether the patient asked for one after an eye exam, (2) not charge the patient for writing a prescription, and (3) forbids the doctor from obtaining a release of liability as a condition of providing a prescription.

These rules were put in place to give consumers notice of their option to purchase contacts on the open market. Eye doctors, especially an independent eye care professional (IECP), have a vested interest in selling contact lenses directly to patients. Before the bill was introduced, patients were allowed to purchase their contacts on the open market if they chose to do so, but most patients (including myself) were not aware of that option. It's not that doctors were lying to patients; they simply omitted this information during the eye exam. For a long time, patients assumed they could obtain their contacts solely from the doctor. There is usually a showcase in the office, with advertising material listing many of the available brands

of lenses. After an eye exam, I was always summoned to the counter near the showcase and the doctor would immediately start talking about what brands would work best for my vision.

Doctors stand to make a decent profit from selling not only medical services, but the products that go with those services. They don't have an incentive to volunteer information about the consumer's ability to purchase such products with a third party vendor. The FCLCA attempted to correct this problem. After the FCLCA was passed, consumers were in a much better position to assess whether they wanted to purchase their lenses from the doctor, or test the market. Although the FCLCA gave consumers more options, Section 7 of the bill gave some protections to eye doctors. Specifically, if the eye doctor correctly prescribes certain contacts, and a third party vendor is negligent somehow, the eye doctor will not be liable for such actions.

III. DID CONSUMERS OF CONTACT LENSES BENEFIT FROM THE PASSAGE OF THE FCLCA?

In order to assess whether consumers benefited from the FCLCA I will briefly discuss what various retail establishments charge for contact lenses and whether there is an incentive for consumers to shop. In 2005, the Federal Trade Commission (FTC) published an extensive study entitled "The Strength of Competition in the Sale of Rx Contact Lenses." The study looked at the various channels by which consumers could obtain contact lenses. Specifically, these channels were broken up into the following categories:

Online Retailers

Pure Online

Hybrid (Retailers that sell both online and in stores, i.e. Sears and Walmart)

Offline Retailers:

Wholesale Clubs

Mass Merchandiser

Optical Chains

Independent Eye Care Professional (IECP)

Many brands of contacts were tested and the difference in price was more or less the same. The study found that on average, the independent eye care professional (most akin to veterinarians) charged the most when compared to everyone else. Wholesale clubs were the cheapest among the retail vendors. Table 9 of the study shows that on average, wholesale clubs charged thirty-five percent less for contact lenses than IECP's. For some brands (Frequency 55), the IECP's charged almost double the price that wholesale clubs charged. There is enough of a difference in price to conclude that consumers can benefit by shopping on the open market. In my opinion, the passage of the FCLCA was justified.

Surprisingly, since the passage of the FCLCA, the market share of the various retail vendors has not changed much over the past several years. The independent eye care professionals (who were afraid of losing profits) still held a healthy 40% market share in 2011 for all contact lens sales according to the Vision Counsel who conducted a study. The Vision Counsel published the following statistics:

Contact Lens Market Share:

Independent Eye Care Practice:

2001: 42%
2004: 41.3%
2008: 37.7%
2011: 40.1%

Mass Merchants & Wholesale Clubs:

2001: 20.5%
2004: 21.2%
2008: 25.2%
2011: 24.9%

The study tends to prove that the vast majority of consumers still elect to purchase their contact lenses from their doctor, rather than shopping on the open market. This is despite being given a prescription by the doctor and notice that they can shop either online or with a third party retail store. These numbers negate the argument made by optometrists that they will lose profits if they must comply with the FCLCA. The statistics don't lie. They barely lost any business.

These statistics are somewhat puzzling. Especially when there is ample difference in price between what IECP's and wholesale clubs charge for contact lenses. However, it seems that most consumers don't believe it's worth the time to shop either online or through a retail pharmacy or store. Some consumers simply cannot wait 2 weeks until they get their shipment in online, or don't want to bother hopping from store to store comparing prices. Moreover, when you build a relationship with your doctor, and it's a good one, most people don't mind giving them the business, even if they pay a little more. There may be various reasons why IECP's have not lost market share, but the bottom line is the FCLCA did not destroy IECP's. What it did do, is give consumers a right to notice. Some consumers, including myself, saved a lot of money as a result of the FCLCA. Consumers should know they have the option to shop. What they decide to do afterwards is their business. I would say that the FCLCA benefitted consumers as a whole.

IV. My Experience As A Consumer of Contact Lenses

As a consumer of contact lenses for the past 16 years, I can attest to the benefits and efficiencies I've received after the FCLCA was passed in 2004. Prior to the Act, I along with most patients were held hostage by eye doctors. Specifically, I was under the impression that I could only purchase my contacts from the doctor's office. I knew of no secondary market or the possibility of purchasing my lenses online. Looking back, my doctor manipulated and formed an impression on me that he was the only person I could purchase from. He never explicitly said that, but he implied it by the manner in which he led his conversations with me.

The first time I was fitted for contact lenses, the eye doctor conducted a battery of tests to see if I was a good candidate. Apparently contacts are not a good fit for all patients. The doctor stated that depending on the condition of an individual's eye, a contact lens can actually damage the cornea, leading to infection and potential blindness. So it is imperative that an eye doctor conduct an eye exam to establish whether someone is a good candidate or not. He also explained that there were different sizes and if I did not get the correct one, I could potentially become blind. He reiterated time and time again, that if I did not get a professional examination and guidance on exactly which contact lens to wear, bad things would happen to my eye. The message was loud and clear.

In the back of my mind I always wondered why I could not purchase my contacts on the open market once the doctor conducted an eye exam and settled on a prescription. I asked my optometrist outright after I saw what he was charging me for my prescription. He kept reiterating why a doctor should diagnose the patient to eliminate the possibility of damaging an eye. He was dancing around the question, probably because he could not come up with a logical answer. It is understandable that people should not be able to buy contacts over the counter. The condition of a human eye can change dramatically over a short period of time, which is why it is recommended that you obtain an eye exam every 1-2 years. But filling a prescription with a vendor other than the doctor, once a diagnosis has been made, does not have the potential to lead to catastrophic results. Over time, it was apparent to me that my doctor was resistant to giving me a prescription because he would lose income.

Before the FCLCA was passed, I paid approximately \$120 for a pair of contact lenses, which were only good for 6 months. This was aggravating because I really wanted the daily wear brand. Wearing a single pair of contacts for 6 months is not the healthiest thing for your eye. You dramatically decrease the chance of infections by using a new pair every day or even every week. But I could not afford to pay what the doctor's office was charging for the daily wear prescription. It would have cost me approximately \$600 for a year supply.

Shortly after the FCLCA passed I started to get a prescription from my doctor after each eye exam. At the time, I had no idea what the FCLCA was or what was going on. I did not start purchasing contact lenses online until 2006. Frankly, I was too busy at the time to shop or look into the possibility of purchasing my lenses from someone other than my doctor. It took sometime before I realized that I had the option to shop. When I researched prices online I was

blown away. The specific brand I wore was *Frequency 55*. I was surprised to learn that I was paying more than double the price that online vendors were charging. Moreover, if I purchased in bulk I could save approximately 70% of what I was currently paying the doctor.

Aside from benefitting from lower prices, I was able to conduct my own research online and learn about the many benefits each brand had to offer. I would do this before I conducted an eye exam so I could talk with my doctor about my options. There are so many choices out there and the doctor is certainly not going to go over every available brand. This way, I could screen the contacts that most interested me and have a conversation with my doctor. Eye doctors are no different from a cardiologist or a general practitioner. They are susceptible to pushing certain brands of contact lenses because of the incentives (money) they get from companies. My ability to do the research was enhanced by the FCLCA.

V. Comparing the FCLCA with H.R. 1406

The impact of the FCLCA on consumers of contact lenses was huge for the simple fact that it gave consumers notice of their option to shop. I believe that H.R. 1406 will have the same positive impact on consumers of pet medicine. Congressman Jim Matheson, who introduced H.R. 1406, purposely modeled the bill after the FCLCA. In fact, much of the provisions are identical to one another. Specifically, H.R. 1406 states, (1) The prescriber of an animal drug is required to give the pet owner a prescription whether or not they ask for one, (2) the prescriber may not charge a fee for the prescription, (3) the prescriber cannot obtain a release of liability as a condition of providing a prescription.

According to the Federal Trade Commission, American households spend an astounding seven billion dollars per year on pharmaceutical drugs for their pets. With such numbers it is not hard to see why lobbyists such as the American Veterinary Medical Association are trying to kill H.R. 1406. They are making similar arguments that eye doctors made in 2004. Specifically, veterinarians are in the best position to administer the drugs, so it's better that pet owners purchase drugs directly from them. Granted, contact lenses are not exactly analogous to pharmaceutical drugs. There is a risk that a pet owner may not administer a drug correctly to their pet. But veterinarians can absolutely discuss the proper manner in which to administer drugs before the doctor visit is over. Moreover, a pharmacist at a local drug store will go over proper procedures when the consumer picks up the medication(s). If a consumer is purchasing the medication online, there will most likely be instructions on how to administer them. But most important, if all else fails, the consumer can pick up the phone and call the doctor for advice.

The bottom line is that veterinarians are against competition because they make a decent profit on administering medications themselves. This monopoly also insulates the drug companies from having to deal with many competitors and that keeps prices up. If a consumer would like the doctor to administer the drug, they still have the option of doing so under H.R. 1406. But certain prescriptions can be administered by lay people and the public should have the option of choosing to pay a cheaper price on the open market and "do it yourself."

Veterinarians are indispensable when it comes to diagnosing medical problems just as optometrists are indispensable when it comes to fitting a patient for contact lenses. But once they have completed their diagnosis, their expertise starts to diminish, especially when it comes to administering drugs. H.R. 1406 is absolutely necessary. The average Joe cannot afford to pay for their pet's medication(s) under the status quo. Competition will solve this problem (by lowering prices in the long term) and alleviate some of the pain that pets go through because their owner simply cannot afford their medications. I'm sure there are many pet owners who don't fill a prescription for their pet because the current prices are astronomical.

Just as with the FCLCA, I predict that most consumers of pet medications will continue to fill their prescriptions with their doctors if H.R. 1406 passes. Nonetheless, the public should have the option of filling their pet medication prescriptions with a third party retailer. I suspect that if a consumer is purchasing medication for a routine treatment, they will probably shop for the drug. If a pet is coming out of surgery, or needs a drug to treat a severe condition, the owner will most likely defer to the doctor and let him/her administer the drug.

VI. CONCLUSION

In closing, H.R. 1406 is important for two reasons. The first is obviously to reduce prices of pet medications over the long term by increasing competition. The second and probably most overlooked reason is to increase the probability that pets actually get proper treatment. If something does not change, and if prices do not come down, many pets will continue to suffer because their owners cannot afford their medications. Rich people don't have a patent on pet ownership. There are many middle class and poor people who own several pets. Let's stop the suffering. Vote yes on H.R. 1406!