

## FTC workshop questions and answers.

I would also like to point out some issues to consider:

1. Veterinarians run actual hospitals with screaming, biting, and scratching patients on shoe string budgets with no third party payment systems while we simultaneously run fully functional outpatient clinics with fully functional pharmacies and laboratory services. All this done at a fraction of the cost for human medicine despite our significant investment (for which many of us will never be repaid). Making efficiency of the utmost importance.

2. Many owners wait until their animals are in advanced stages of disease before initial presentation making aggressive, appropriate, comprehensive therapy necessary to begin immediately.

3. If treatment is not effective, seems expensive or inconvenient then consumers will ask veterinarians to kill their animal for them (in spite of the fact that the veterinarian explained that they can help the pet). Many clients can be heard speaking over their \$300 dollar cell phone with \$200 per month plans, 'I love him but \$200 dollars is a lot of money so we may just put him down.'

\*We have 15 minutes or less to examine, diagnose, plan treatment in the most cost effective and beneficial way, and to convince the owner that the small sum of money invested will pay great dividends in the comfort of the animal and that killing for convenience is not compassionate, it is selfish. While doing this we also must maintain the trust and interest of the client, command of our support staff, and comfort the patient. This is very different from human medicine, particularly optometry.

In spite of these above mentioned items, big retailers want a federal law saying veterinarians have to take an additional 5 minutes of time to fill out a form, write a prescription, get the consumer to fill out a form saying the veterinarian gave them a prescription and told them to go fill it somewhere else. All the while the client's cat is screaming, their dog is having a panic attack, and their anxiety is mounting. I can hear it now, "What a headache, it just isn't worth it to go to the vet any more." When people stop going to the veterinarian this sets off a catastrophic chain of events that leads to increases of zoonotic disease transmission, increase animal and human suffering, etc. But hey, at least 'Retailers' got their money and the big bad veterinarian didn't impose their will on the retail kings & unwitting consumers (sarcasm).

4. For many drugs that are not essential to our hospitals vets must write prescriptions because we have no reason for stocking them.

5. Many states already have laws that require us to provide a written prescription if asked and we gladly comply.

6. Who is going to show the client how to administer the medication or be responsible if they or their pet are injured from inappropriate administration?

7. Often, veterinarians must try several drugs before finding one that the client is willing or able to administer. Often times the cost of these drugs is incurred by the dispenser (since the full prescription has not yet been written). This is for the good of the patient. Will the veterinarian or the retailer incur this cost?

8. Veterinary pharmacology is species specific.

9. Veterinary pharmacology is weight specific.

10. Veterinary pharmacology can vary with breed differences.

11. This is a terrible burden on pharmacists who will require more training or risk putting themselves in legal peril.

12. This is a terrible burden on clients (consumers).

- It would cost more to come back for additional office calls or consultations when the pharmacist can't or won't work with their patients and their owners on administration, dosing, and other common problems for which they are not trained or experienced.

-Recent studies suggest a compliance rate of %30 among human cardiology patients. What can we expect the compliance ratio is in veterinary medicine? Instead of streamlining the process to increase compliance of the consumer this proposal would add additional variables to complicate the process.

## FEDERAL TRADE COMMISSION

☐ ☐ How are pet medications distributed to consumers?

Any number of ways: Internet markets, veterinarians, pharmacies, co-operative agriculture stores, pet stores, illegally/ black market.

☐ ☐ What are the business rationales for various pet medication distribution practices? I can only speak as a veterinarian I distribute medications that are the most essential and commonly used or immediately needed.

I regularly write prescriptions to be filled elsewhere and have had several problems when medications have been filled through retail pharmacies. I would like to be able to trust these pharmacies and much of the time I do because I have made it a point to call and speak with different pharmacist to keep an open line of communication. I do this not for profit but to successfully treat my patients. The small markup in my inventory is for several reasons: 1. To cover the cost of storing, packaging, and inventorying, pharmacy software, medical record keeping, instructions on administering (including the actual administration of a dosage as a demonstration and to ensure the client is comfortable with administration before they leave). 2. To offset the ridiculously low fees we charge for professional services. Traditionally, we charge well below what we feel our services are worth because we love our patients and we don't want to be asked to kill them.

There are some pharmaceutical companies that choose to sell products only to veterinarians and not 'retailers'. This is their decision and the prevailing logic is that they would like the most qualified person to be the one selling their product.

☐☐How has competition to sell medications to pet owners evolved in light of these distribution practices?

It seems that retailers have decided that they can achieve a new source of profit by further regulating the pet medication industry. Competition has not decreased the price that veterinarians can purchase their drugs. There may be instances where consumers have purchased medications at lower prices but overall the market seems unchanged.

☐☐How do these practices affect prices to consumers?

The short sighted and ill-thought out answer would be that these practices lead to increased prices to consumers. The reality appears quite different. Many veterinarians offer price matching services even though they may actually lose money (since small businesses don't have the buying power of 'retailers') to ensure their patients are receiving quality medication with convenience. Other veterinarians are more than happy to write prescriptions for possible customer savings as it means they may actually have money to pay for their professional services. The economic and time impact of HB1406 would leave veterinarians no other choice but to charge fees similar to human medicine for their services (an ovariohysterectomy (spay) for a 100 lb dog costs \$280 at our clinic now but an ovariohysterectomy for a 100 lb woman costs between \$20,000 – 50,000).

☐☐How do these practices affect product supply and quality?

Supply is controlled by those with production facilities and quality should be as well. Unfortunately when medicine becomes more for profit than integrity there are counterfeit medications etc. that arise. Drugs sold through veterinarians are legend drugs that are usually backed by the companies that produce them. Diverted products are not always backed and are not regulated since they are not traceable (if they were traceable then diverters would be in trouble).

☐☐How do these practices affect consumer choice? I have seen many commercials on TV for 1800petmeds, Pet Armor, Frontline, etc. yet I have never heard any mention of my clinic. So I would have to say that consumers are not unaware that they have options. I have also seen commercials for many medications sold at pharmacies. I have never seen a commercial advertising a veterinary clinic, perhaps because it is seen as unethical in most veterinary markets. Most veterinarians are concerned with the treatment and well being of their patients, not controlling consumer choice which cannot be said for those with aggressive marketing campaigns who will never even see the patient and could not care less about their well being.

☐☐How do these practices affect entry into the pet medications market? If an individual wants to enter the market of pet medications then there is nothing stopping them. If they really care for the betterment of animals and in particular, 'pets', then they could make a 4.0 GPA in animal, veterinary, or biologic sciences accumulate hundreds of hours of volunteer experience score well on the GRE, MCAT, of VCAT and apply to veterinary school. The average cost of a 4 year doctorate of veterinary medicine degree is about \$130,000. The average starting pay for veterinarians is around \$35-50,000 annually and after one has established a client base sufficient to pay down some student debt they can purchase their own veterinary clinic and distribute medications. Or in this case they could spend 6 months writing an ill-thought out, wreckless, offensive bill, and throw those that chose the former 'under the bus.'

If a company only wants to sell to veterinary practices than that is their choice.

☐☐How do these practices affect innovation in the pet medications market? This is a leading question. I think the desired answer is to say that these practices stifle the innovation of alternative business models but I think the reality is that veterinary business models are quite diverse. Furthermore, how would

businesses such as Pet Armor (which only sells to WalMart) or PetMedsExpress have ever been created if the current model stifled innovation?

Innovation of pet medications is supported by pharmaceutical companies but conducted in both private and public institutions. As everyone knows innovation is driven by need.

☐ ☐ What efficiencies or inefficiencies are associated with these practices?

The current distribution practices are efficient as are most things in veterinary medicine due to the excessively low profit margin. Remember that despite what we would like to think, people have no problem dropping \$1000 on a minor repair of an automobile but if a trusted pet of 10 years has an illness that may cost a couple of hundred dollars to remedy then they will ask you to kill their pet for them. If you refuse then they will either turn the pet out to die of neglect and its illnesses or they will attempt to kill it themselves, often unsuccessfully. To add steps in the process of animal care will decrease the willingness of owners to treat. If I or any other veterinarian thought this legislation would save animal lives by saving people money then I would whole heartedly support it. I am not that foolish. Distribution practices at every level have developed

☐ ☐ What, if any, product safety or counterfeiting issues exist with respect to these practices? Have there been instances in which false or misleading information about product safety risks was disseminated to consumers? I have had several incidences of consumers bringing in products purchased over the internet that were proven as counterfeit.

☐ ☐ Are there other factors that should be considered when analyzing the competition and consumer protection issues related to the distribution of pet medications? There are many other issues to consider but I would refer to my opening statement.

### **Prescription Portability for Pet Medications**

All industry participants agree that pets should be properly examined and diagnosed by a veterinarian to determine the most appropriate course of treatment for any medical condition, including whether any medication should be prescribed. When a veterinarian writes a prescription for a medication to be dispensed and subsequently administered by a pet's owner, the prescription must be filled with the correct medication and dosage and the owner must have access to relevant information about the medication and proper administration techniques. Some observers argue that veterinarians are in the best position to carry out these responsibilities; these observers believe, therefore, that veterinarians alone should dispense prescription pet medications to their clients. Others argue that licensed pharmacists are equally capable of dispensing pet medications to consumers, provided the pharmacists dispense the correct medication and dosage as prescribed by a veterinarian; these advocates point out that veterinarians can still provide relevant information and follow-up care to their clients even if they do not dispense the medication. Concerns about the safety of pet medications dispensed by pharmacists appear less pronounced for OTC medications, which do not require a prescription and typically do not require direct supervision by a veterinarian.

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6 See Principles of Veterinary Medical Ethics of the AVMA, III.C.1.

7 See Fairness to Pet Owners Act, H.R. 1406,

112th Cong. (2011), available at <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1406ih/pdf/BILLS-112hr1406ih.pdf>.

A consumer cannot legally obtain prescription pet medications from a retailer without a written, portable prescription from a veterinarian. The American Veterinary Medical Association (AVMA) advises veterinarians to honor a client's request for a prescription, provided that a valid veterinarian-client-patient relationship exists.<sup>6</sup> This guidance is not mandatory, however. State regulations vary as to whether veterinarians are legally required to provide written prescriptions to clients, and it is unclear to what extent such regulatory obligations may be actively enforced against veterinarians. It appears that, while many veterinarians provide written prescriptions to their clients when requested, some veterinarians have refused to provide prescriptions or otherwise have discouraged their clients from obtaining pet medications from retailers.

Federal legislation proposed in House Bill 1406 ("H.R. 1406" or "the Bill") would require veterinarians to provide clients with written prescriptions for all pet medications, regardless of whether requested, and to inform clients of their right to have pet medications dispensed elsewhere.<sup>7</sup> The Bill also would prohibit

veterinarians from charging a fee or requiring waivers of liability for providing written prescriptions. H.R. 1406 would require the Federal Trade Commission to promulgate rules implementing the statute within 180 days of its enactment. In the workshop, the Commission seeks to examine issues related to the portability of pet medication prescriptions from practical, economic, and legal perspectives. The Commission invites public comment on questions relevant to this topic, including:

☐ ☐ How varied are current veterinarian practices with respect to providing written, portable prescriptions to clients?

Every practice I have spoken with in my area fully complies with the AVMA policy to provide a prescription to any client requesting. Additionally, if a client lets me know about any financial constraints I will usually counsel them on money saving options including but not limited to filling a prescription elsewhere.

☐ ☐ To what extent are consumers aware that they can request a portable prescription from their veterinarian and have the prescription dispensed elsewhere? Consumers are inundated with TV commercials where they claim "I paid much less than I would at the vet and I saved a visit too." This is misleading (a veterinarian cannot legally dispense or prescribe medications without first seeing and diagnosing an animal – a visit) and baseless as nobody from that company or any other has ever inquired about my prices. Occasionally I will still get the question, "where do I fill this" when I write a prescription for a medication and I just say at the pharmacy of your choice.

☐ ☐ Which states require prescription portability for pet medications? Which do not? Are there states in which a proposal for prescription portability for pet medications was rejected by the legislature and, if so, why? I cannot answer this question.

☐ ☐ In states that do require prescription portability, what recourse do consumers have if a veterinarian refuses to provide a written, portable prescription? I would assume they could report their concerns to the state board of veterinary medical examiners or other licensing boards where a consumer protection agency (state run, appointed by the governor in LA) would decide appropriate disciplinary action.

☐ ☐ What evidence exists to support a need for federal legislation requiring veterinarians to provide written prescriptions to their clients? NONE. It is a solution looking for a problem.

☐ ☐ What price and non-price benefits can accrue to consumers from prescription portability for pet medications? This is irrelevant because they can already get a prescription and fill it anywhere they wish. Prescription portability already exists and if a particular veterinarian does not comply then they can find another veterinarian if they wish.

☐ ☐ What risks or inefficiencies may be posed by prescription portability for pet medications? Example: I once prescribed Tylenol #4 with codeine to a canine patient. Since I do not stock this controlled medication I wrote a prescription. The owner called me an hour later yelling that I was trying to kill his dog, since that is what the pharmacist told him. I had to explain that acetaminophen is toxic to cats and that ibuprofen is toxic to dogs. I assured him that the pharmacist meant well but was mistaken. The prescription was filled and the patient recovered well. I also never received an apology from the pharmacy. I defer to my opening statement for inefficiencies.

☐ ☐ Is there a need for federal legislation requiring veterinarians to notify clients that they have the right to fill their prescriptions at the pharmacy of their choice? NO. It is a solution looking for a problem. Is there a need for federal legislation to be passed so that every pharmacy that sells pet medications be required to inform their pet owning clients that they should be following routine follow up exams in accordance with the medications. Oh, that would be like having the pharmacists do the veterinarians job. Why is the reverse needed?

☐ ☐ Is it appropriate to deny veterinarians the ability to charge a fee or require a waiver of liability for providing a written prescription to clients? Veterinarians will have to pay for the additional cost of prescription pads, the lost revenue from the time spent with additional paper work, pay our staff to keep the records in accordance with state and federal law, answer all the questions from consumers. How can it be appropriate to be held liable for mistakes you did not make? This is ridiculous, unfair, and poorly thought out. If a lawyer can charge for his time then so can a veterinarian. Consider the time it takes to find a file, determine appropriate treatment, write a prescription and get the prescription to the owner. Will the 'retailers' be buying my prescription pads, ensuring their security, updating my practice software and medical records? If not then I deserve to charge an appropriate fee to cover those costs.

☐ ☐ How might the passage of H.R. 1406 affect price, consumer choice, and other forms of competition in the pet medications market?

□□How can the prices charged to consumers for pet medications by veterinary clinics and retailers best be quantified and compared? That is difficult to answer because veterinary clinics are small businesses but one could look at the corporate veterinary practices for comparison. By in large I would say it is just as unpredictable as the human pharmaceutical market pricing. I would say most veterinarians price the 'shopped for' medication at a minimal markup and/or have price matching policies. Some companies will reimburse veterinarians for trading traceable, bona fide medications for internet bought medication in an effort to prevent illegal diversion of products.

□□To what extent do retailer prices for pet medications affect the prices of medications sold at veterinary practices, or other aspects of veterinary clinic operations? Veterinary clinics are mostly independently managed small businesses so I can only speak for my clinic. My prices go up then consumers prices go up. When

□□To what extent would H.R. 1406 affect veterinarians' sales of pet medications? It would most likely decrease sales but I do not think it would increase pharmacy sales elsewhere. I think there will be a lot of unfilled prescriptions and untreated animals but at least the retail pharmacies wouldn't be missing out on their opportunity (isn't that what's really important???)

□□What compliance costs would veterinarians face if H.R. 1406 were enacted? That depends on how it is enacted. If we are expected to keep all the records, be responsible for wrongly filled prescriptions (that we are unaware of), counsel and work with pet owners, and spend time educating unqualified pharmacists then the costs would be quite significant. Maybe (and it is in their prospective investment plans) the retail giants will go ahead and provide veterinary services so that all veterinary hospitals and clinics would have to go out of business any way

□□How might the passage of H.R. 1406 affect pet medication distribution practices? It would complicate an uncomplicated system.

□□Should possible amendments to H.R. 1406 be considered? The entire bill is shameful, useless, and a solution looking for a problem. A profit was made with contact lenses so they'll keep looking for any other revenue sources possible until they have squeezed every dollar out of every small business in America.

□□Are there other factors that should be considered when analyzing the competition and consumer protection issues related to the portability of pet medication prescriptions? One obvious but not yet stated factor is that veterinarians must have certain drugs in their practices to treat patients. Vets also dispense these medications and if vets are required to write a prescription and inform consumers that they can fill it anywhere they like then we will most likely be answering all of the follow up questions. Such as: 'What do you mean?' 'why can't I buy it here?' 'Are you trying to pull something on me?' 'Are you in cahoots with some pharmacy' 'Didn't you used to sell this' 'Is it cheaper there?' 'is it the same medication?' 'why is your cost different from theirs' In effect veterinarians would be federally mandated to advertise and/or endorse their competitors. This is insane. Not other industry would consider such absurdity (except that it already happened to optometrists)

#### **Comparison to Fairness to Contact Lens Consumers Act**

Some restricted distribution and prescription portability issues existed in the contact lens industry at the time that Congress passed the Fairness to Contact Lens Consumers Act ('FCLCA'), Public Law 108-164. Industry participants have noted both similarities and differences between the contact lens industry and the pet medications industry. The workshop will examine whether consumer experiences with the FCLCA might provide insights about the potential impact of H.R. 1406. The Commission invites public comment on questions relevant to this topic, including:

□□What was the impact of the FCLCA, if any, to consumers? I am not sure. I no longer see commercials for contact lenses on television

□□What was the impact of the FCLCA, if any, to optometrists and ophthalmologists? I'm not either so I cannot answer this question but I would challenge you to find the number of independent optometrists vs. corporate (retail) optometrist today vs. 10 years ago. My casual observation is that many independent small business optometrists went out of business. Coincidentally, there is now an optometrists in every Sam's Club Club.

□□What was the impact of the FCLCA, if any, on entry into the contact lens industry? I am not qualified to answer this question.

□□What was the impact of the FCLCA, if any, on innovation in the contact lens industry? I am not qualified to answer this question.

□□What was the impact of the FCLCA, if any, to contact lens distribution practices? I am not qualified to answer this question.

□□Are there significant similarities or differences between the contact lens industry and the pet medications industry, particularly with respect to industry distribution practices and issues of prescription portability? If so, how should those similarities or differences be taken into account in assessing the likely effects of H.R. 1406 compared to the FCLCA? Contact lenses are limited to 1 main product that has few if any contraindications, no interactions, is non-weight or breed or species specific. There are no classes of controlled contact lenses, misuse of contact lenses cannot cause harm to humans and animals, contact lenses are never prescribed to prevent zoonotic diseases nor are they given in acute phase treatments. Patients don't die from waiting for their contact lenses, contact lenses can not be misused to cause harm. Optometrists are rarely bitten as a result of pain endured by a patient when a client does not fill their prescription for contact lenses correctly.

□□Are there other factors that should be considered when analyzing the competition and consumer protection issues related to the FCLCA, and how consumer experiences with the FCLCA might provide insights about the potential impact of H.R. 1406? I cannot fully answer this question but I can say that H.R. 1406 is exactly the type of Good Ole' boy politics that infuriates most voters. This should be thrown aside and we should all spend our times more productively. If major retailers want a piece of the animal market then perhaps they should learn the business instead of trying to pass legislation.

In response to Mrs. Kathy Brady and other like minded consumers. It sounds as if you do not trust your veterinarian. I am not willing to speculate why but I would suggest not seeking the help of those for which you view as "sticking it to you" in any fashion. The majority of veterinarians I know are hard working, caring, and vastly underpaid for their services. Perhaps you have not experienced this and for that I apologize on behalf of my profession. However, have you considered that the veterinarian may be getting stuck with his prices and just passing it on? As prices sore in human medicine they also do for veterinarians. We use the same supplies but without government assistance and third party payment systems to offset the costs. So while I do not want to be quick to judge you, maybe you should not be so quick to judge your veterinarian. The next time you feel like a veterinarian is sticking it to you perhaps you should ask for a prescription as it is already the policy of the AVMA to provide this when asked. Good luck and I hope you find a vet you feel better about.