



**PREPARED STATEMENT OF THE
FEDERAL TRADE COMMISSION**

Before the

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE**

“The Pet Medications Industry: Issues and Perspectives”

**WASHINGTON, D.C.
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I. INTRODUCTION

Chairman Burgess, Ranking Member Schakowsky, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am Tara Isa Koslov, the Deputy Director of the Office of Policy Planning at the Federal Trade Commission (“FTC” or “Commission”), and I am pleased to join you to discuss competition perspectives on the pet medications industry. This testimony describes the FTC’s recent work in this area, including an October 2012 workshop and a May 2015 FTC staff report. This testimony also sets forth a recommended framework for evaluating the competitive impact of limitations on prescription portability for pet medications.¹ The Commission believes that portability likely benefits consumers. Therefore, the Commission generally supports policies that would increase both consumer awareness and veterinarian release of portable prescriptions.

In 2011, FTC staff began actively looking into concerns regarding two issues that could impact competition for the sale of pet medications: first, the limited availability of portable pet medication prescriptions, which consumers may obtain from veterinarians and use to purchase prescription pet medications somewhere other than the prescribing veterinarian’s office; and second, exclusive manufacturer distribution policies to supply pet medications only to veterinary practices.

At that time, proposed federal legislation would have required the FTC to issue and enforce rules providing for prescription portability for pet medications.² FTC staff began

¹ This written statement presents the views of the Federal Trade Commission. Oral testimony and responses to questions reflect my views and do not necessarily reflect the views of the Commission or any individual Commissioner.

² See Fairness to Pet Owners Act of 2011, H.R. 1406, 112th Cong. (2011). Although H.R. 1406 was not enacted, it sparked a debate among industry stakeholders regarding the need for automatic prescription release. Similar bills have since been reintroduced in both the House and Senate. See H. R. 3174, the Fairness to Pet Owners Act of 2015, introduced July 23, 2015, <https://www.congress.gov/bill/114th-congress/house-bill/3174/text>, and S.1200, the Fairness to Pet Owners Act of 2015, introduced May 6, 2015, <https://www.congress.gov/bill/114th-congress/senate-bill/1200/text>. In several significant ways, these bills are modeled after the Fairness to Contact Lens

compiling information concerning these issues, recognizing that American consumers spend more than \$7 billion a year on medications and related services for their pets.

Drawing on the Commission's competition and consumer protection expertise, FTC staff sought to collect information related to three questions:

- Is competition in the pet medications industry adversely affected by limited consumer knowledge of, and access to, portable prescriptions?
- Is competition in the pet medications industry adversely affected by manufacturer distribution practices that restrict non-veterinary retailers' access to pet medications?
- To the extent that competition in the pet medications industry may be adversely affected by current industry practices, are there less restrictive approaches that could enhance competition without compromising animal health and safety?

On October 2, 2012, the FTC conducted a public workshop to advance its understanding of these issues. A variety of industry stakeholders participated in the workshop, including pet medication manufacturers and distributors, veterinarians, retailers, pharmacists, and consumer advocates, representing a broad range of perspectives. In addition, the FTC received and reviewed over 700 written public comments submitted in response to the workshop.³

In May 2015, the FTC issued a report that summarizes the information reviewed by FTC staff, makes recommendations on potential policy choices concerning prescription portability, and

Consumers Act ("FCLCA"), H.R. 3140, 108th Cong. (2003), <http://www.gpo.gov/fdsys/pkg/BILLS-108hr3140enr/pdf/BILLS-108hr3140enr.pdf> (enacted Dec. 6, 2003). The FCLCA requires contact lens prescribers to provide patients with a copy of their contact lens prescriptions, regardless of whether a portable prescription has been requested. Contact lens prescribers are not allowed to charge a separate fee or require patients to sign a waiver of liability in exchange for providing a prescription.

³ See generally *Pet Medications Workshop*, FED.

TRADE COMM'N (Oct. 2, 2012), <http://www.ftc.gov/news-events/events-calendar/2012/10/pet-medicationsworkshop>. A transcript of the proceedings is available at *Transcript of Pet Medications Workshop*, FED. TRADE COMM'N (Oct. 2, 2012), http://www.ftc.gov/sites/default/files/documents/public_events/pet-medicationsworkshop/petmedtranscript-1.pdf. All comments received are available at *List of Public Comments Regarding Pet Medications*, FED. TRADE COMM'N, <http://www.ftc.gov/policy/public-comments/initiative-433>.

identifies areas that could benefit from additional study.⁴ The staff report is based on the workshop transcript and public comments received in response to the workshop, discussions between staff and various industry stakeholders in preparation for the workshop, and other publicly available information compiled by staff before and after the workshop.

II. INTEREST AND EXPERIENCE OF THE FTC

Competition is at the core of America's economy, and vigorous competition among sellers in an open marketplace can provide consumers the benefits of lower prices, higher quality products and services, and greater innovation. In furtherance of that national policy, the FTC Act grants the Commission broad enforcement authority with regard to both competition and consumer protection matters in most sectors of the economy.⁵ In addition, Section 6 of the FTC Act provides, among other things, a general authority to investigate and report on market developments in the public interest, as well as authority to make recommendations based on those investigations.⁶ This distinct charge supports the agency's research, education, and competition advocacy efforts. To fulfill its mission, the FTC seeks to identify private, public, and quasi-public restrictions that may unreasonably impede competition.

⁴ FED. TRADE. COMM'N STAFF REPORT, COMPETITION IN THE PET MEDICATIONS INDUSTRY: PRESCRIPTION PORTABILITY AND DISTRIBUTION PRACTICES (May 2015), <https://www.ftc.gov/system/files/documents/reports/competition-pet-medications-industry-prescription-portability-distribution-practices/150526-pet-meds-report.pdf>.

⁵ The FTC's authority reaches "[u]nfair methods of competition" and "unfair or deceptive acts or practices" that are "in or affecting commerce." 15 U.S.C. § 45(a)(1) (2014). With some exceptions, the FTC's authority ranges broadly over "commerce" without restriction to particular segments of the economy. *Id.* at § 45(a)(2).

⁶ Under Sections 6(a) and (f) of the FTC Act, the FTC is authorized "[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce," and "[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest." 15 U.S.C. § 46(a), (f) (2014).

III. FTC STAFF REPORT FINDINGS

A. Consumer Options for Purchasing Pet Medications Are Expanding

Historically, nearly all major manufacturers of pet medications distributed their products only to licensed veterinarians, or to authorized distributors that sold only to veterinarians. As a result, consumers purchased virtually all pet medications from their veterinarians, typically at the end of an office visit for the examination and diagnosis of their pet. This is still how most consumers purchase prescription pet medications today. Indeed, consumer surveys indicate that veterinarians remain the most trusted source for pet medications.

Local pharmacists (who are authorized to dispense both human and animal drugs) have always been part of the veterinarian-focused distribution model, but generally only to a limited extent. As several commenters at the FTC workshop have noted, veterinarians have long relied on local pharmacies to fill prescriptions for drugs that the veterinarians do not ordinarily stock, particularly human generic drugs dispensed for use in animals. In addition, veterinarians typically have maintained relationships with local compounding pharmacies to ensure their ability to meet the needs of pets requiring specialized concentrations, sizes, or flavors of medications.

Over the last decade, coinciding with increased consumer demand for pet medications, there has been a significant increase in the number of retail pharmacies and other retail outlets that compete with veterinarians to sell pet medications. In the late 1990s, online pharmacies began selling pet medications, often at discounted prices. Many of these online pharmacies are owned and operated by licensed veterinarians and focus solely on filling veterinary prescriptions. More recently, brick-and-mortar big-box retail stores, supermarkets, and chain retail pharmacies

have begun selling some of the largest-volume pet medications, and many of these retailers advertise even greater discounts than online pharmacies.

As a result of the emergence of alternative retail outlets, many consumers no longer view veterinarians as the sole source for pet medications. It also appears that veterinary practices have lost some portion of their pet medication revenues to these emerging competitors. According to one estimate, in 2014, veterinarians accounted for 58 percent of sales of pet medications, with brick-and-mortar retailers accounting for 28 percent and Internet/mail order retailers accounting for 13 percent.

B. Prescription Portability for Pet Medications Gives Consumers the Benefits of Competition, Including Lower Prices and More Choice

The Commission believes that portability likely benefits consumers, and therefore generally supports policies that would increase consumer awareness of the availability of portable prescriptions and veterinarian release of prescriptions to consumers.

To purchase prescription pet medications from a retail pharmacy, consumers must first obtain portable prescriptions from their veterinarians. A portable prescription may take the form of a written prescription that is provided to the client, who can then present the prescription to a retail pharmacy of her choice. Alternatively, a veterinarian may transmit an electronic prescription to a retail pharmacy on behalf of a client. A veterinarian may also verify a new prescription or refill request received directly from a retail pharmacy, provided a valid veterinarian-client-patient relationship (“VCPR”) exists and use of the medication is deemed appropriate.⁷

⁷ The American Veterinary Medical Association (“AVMA”) describes the VCPR as the basis for interaction among veterinarians, their clients, and their patients. Under prevailing ethical guidelines for the practice of veterinary medicine, a veterinarian must establish a VCPR before prescribing or dispensing a prescription pet medication. A VCPR typically exists when: (1) a veterinarian assumes responsibility for making clinical judgments regarding the health of the animal and the need for medical treatment, and the client agrees to follow the advice of the

Consumers are more likely to request portable prescriptions when seeking refills of preventative medications or long-term therapeutic treatments for chronic conditions, as opposed to treatments for acute conditions. For example, anti-inflammatory drugs and heartworm preventative medications are more commonly “shopped” by consumers seeking to save money on the long-term use of such products. Some consumers may find it more convenient to purchase pet medications from alternative retailers, such as online pharmacies, or the retail pharmacies where they normally shop for other items. On the other hand, some consumers may prefer the convenience of leaving the veterinary clinic with necessary medications in hand, especially if their veterinarian is matching prices available at retail outlets.

FTC staff’s findings suggest that consumers of pet medications may already benefit, to at least some extent, from price competition between veterinarians and alternative retailers. This competition is most significant for flea and tick control products and heartworm preventatives, the two largest categories of pet medications. Likewise, the benefits of price competition could be especially important for owners of pets with chronic health conditions that require the use of long-term medications. Continued growth of retail distribution could increase competition and lead to even lower prices for pet medications in both veterinary and retail channels.

It should be noted that under some circumstances, it might not be appropriate for consumers to obtain portable prescriptions, particularly for acute care and specialty medications that can only be properly dispensed by veterinarians. For example, in an emergency care situation where the animal requires immediate short-term treatment, it could be medically

veterinarian; (2) the veterinarian has sufficient knowledge of the animal to diagnose the medical condition of the animal, which typically means that the veterinarian has examined the animal; and (3) the veterinarian is readily available, or has arranged for emergency coverage, for follow-up evaluation in the event of adverse reactions or failure of the treatment regimen. A VCPR also typically requires that veterinarians maintain medical records of their patients.

inappropriate to delay treatment so that pet owners could comparison-shop for the lowest-priced medications. In addition, consumers may be less likely to realize a significant benefit from comparison shopping in these situations because there are unlikely to be recurring medication costs associated with emergency care.

C. The Benefits of Competition from Portable Prescriptions Can Be Limited by Exclusive Distribution Policies

Although today's hearing focuses on the portability of pet medication prescriptions, it is important to understand the interdependence of prescription portability and product distribution. The availability of portable prescriptions to consumers from their veterinarians is unlikely to have any significant effect on competition for pet medication purchases if non-veterinary retailers lack adequate access to pet medications to fill the prescriptions. Likewise, increasing distribution of pet medications to non-veterinary retail outlets is unlikely to affect competition if consumers are unable or unlikely to obtain portable prescriptions from their veterinarians. Any reduction of supply through restrictive distribution may also affect consumer demand for those alternative sources of supply, especially if consumers perceive that non-veterinarian retail sources are unreliable or slow to fill orders. Additionally, several stakeholders have suggested that a financial conflict of interest arises when the exclusive right to prescribe is combined with de facto exclusive authorization to dispense. The combination, they assert, could cause veterinarians to be reluctant to provide portable prescriptions to consumers.

Nearly all major manufacturers of pet medications appear to maintain formal policies that restrict sales of pet medications to veterinarians or veterinary distributors. Some stakeholders have reported that, despite these stated policies, large retail pharmacies and stores have been able to purchase pet medications directly from the manufacturers, although no manufacturers have confirmed to FTC staff that they engage in this practice. While some distribution through non-

veterinary retailers does occur, retail pharmacies and other retail stores have expressed the view that it remains difficult to purchase pet medications directly from manufacturers or their authorized distributors. Often, these non-veterinarian retailers must rely on secondary suppliers of pet medications, who typically purchase excess product from veterinarians. The existence of this secondary distribution system likely results in lower prices than would otherwise prevail if exclusive distribution were being strictly enforced. This secondary distribution system nevertheless has been described as inefficient, and may result in higher prices than would prevail in the absence of any constraints on sales by manufacturers to non-veterinary retailers. As the FTC staff report highlights, efforts to enhance prescription portability may increase consumer demand for pet medications at non-veterinary retail outlets, and thereby create economic incentives for manufacturers to alter their distribution policies to be more responsive to consumer choices.

D. Automatic Prescription Release

If prescription release were “automatic,” veterinarians would be required to provide portable prescriptions for all prescribed medications, regardless of whether clients request them. Industry stakeholders have expressed different views about the need for, and potential impact of, automatic prescription release mandated by federal or state law.

Non-veterinary retailers and consumer advocates argue that automatic prescription release is the most effective means for creating consumer awareness about the ability to obtain portable prescriptions. Furthermore, they claim that this is the best way to help ensure that all consumers receive a portable prescription when they would like one, but may be too afraid or uncomfortable to ask. In response, veterinarians contend that automatic prescription laws are

unnecessary because most consumers are already aware that they can request and obtain portable prescriptions, and because most veterinarians honor these requests.

As the FTC staff report notes, observers agree that many veterinarians provide portable prescriptions to clients upon request and, in some instances, may affirmatively offer portable prescriptions to clients. Indeed, the AVMA's Principles of Veterinary Medical Ethics state that its members should honor client requests for prescriptions whenever appropriate. This guidance is not binding, however; nor does it require veterinarians to affirmatively offer prescriptions or inform clients of the option to request a portable prescription. Some, but not all, states require that veterinarians provide prescriptions to clients upon request or provide notice to clients that they may request a portable prescription.

Complaints persist that some veterinarians do not always honor requests for prescriptions, and it is unclear to what extent statutory requirements, if they exist, are enforced by state veterinary boards. Furthermore, anecdotal evidence indicates that some consumers either are not aware that they can receive a portable prescription upon request from their veterinarian, or may be uncomfortable asking for one. Affirmatively asking for a prescription can be intimidating to consumers, and this intimidation factor can be amplified when veterinarians require waivers of liability, make disparaging statements about non-veterinary retailers (e.g., suggesting that a product may be counterfeit), or charge extra fees for prescriptions.

Veterinarians, manufacturers, and distributors generally believe that veterinarians are in the best position to dispense pet medications to consumers, and tend to oppose automatic prescription release for a variety of reasons. As analyzed extensively in the FTC staff report, opponents of automatic prescription release argue that it would threaten the integrity of the VCPR; that pharmacists typically lack training in veterinary pharmacology and are incapable of

safely dispensing pet medications; that pharmacists routinely alter pet prescriptions without authorization from the prescribing veterinarian or otherwise make dispensing errors; and that pharmacists routinely provide inaccurate information to pet owners regarding administration techniques, dosing, side effects, and potential drug interactions. Veterinarians also have expressed concerns about automatic prescription release relating to the administrative burdens and costs to comply with legislative mandates; the potential liability when pet medications are dispensed incorrectly by pharmacists or when the products that pharmacists dispense are somehow compromised (e.g., counterfeit, expired, stored improperly, or otherwise adulterated); and the potential for increased fraud and abuse of prescription pet medications by humans.

Ultimately, as explained in the report, FTC staff has concluded that the health and safety concerns expressed by some veterinarians to support limitations on prescription portability are likely exaggerated or are pretextual, at least in part. Moreover, there may already be sufficient regulatory measures to address any legitimate safety concerns.

Another common concern expressed by veterinarians is that automatic prescription release could lead to significant erosion of their revenues, and they often suggest the possibility of increasing their service fees to compensate for any lost prescription revenues. As explained in great detail in the report, FTC staff's research allows for a qualitative description of the possible economic effects of and strategic responses to automatic prescription release, but data currently available to staff do not permit a reliable quantification of the likely economic impact of automatic prescription release on veterinarians and consumers. However, there is an apparent inconsistency between two key arguments: on the one hand, the seemingly widespread concern among veterinarians that increased prescription portability would lead to a significant loss of revenue; and on the other hand, their arguments that prescription portability is not currently

constrained and that their prices for pet medications have already been adjusted to account for retail competition. With respect to portability, if most consumers already know about and exercise their ability to obtain portable prescriptions, and veterinarians already provide these prescriptions without any limitations, then proposed legislation mandating automatic prescription release should not result in any significant loss of revenues beyond what has already occurred.

IV. RECOMMENDED ANALYTICAL FRAMEWORK AND CONCLUSIONS

To evaluate the competitive impact of possible limitations on prescription portability imposed by veterinarians on consumers, as well as proposals for reform that would promote greater prescription portability, the Commission recommends that policymakers consider several factors, including:

- The existence and extent of any current limitations on prescription portability;
- The degree to which any such limitations impede competition and have adverse consequences for consumers;
- Whether purported health and safety concerns cited in support of any such limitations (e.g., perceived risks of harm to animals) are genuine and supported by evidence, or are instead pretextual or speculative;
- Whether any limitations on prescription portability being imposed by market participants are narrowly tailored to eliminate genuine risks of harm, or are instead more restrictive of competition than necessary; and
- The potential costs and benefits of any measures that would mandate greater prescription portability.

The Commission generally believes that the competitive process should determine output and pricing, including for pet medications and veterinary services. Consumers typically benefit from a market-based approach, driven primarily by the interaction of suppliers and well-informed consumers.

Based on the FTC workshop record and related staff research, it appears that some consumers are able to secure prescriptions and purchase their pet medications through non-veterinary retail channels, but other consumers may be unaware of their ability to secure a portable prescription or are otherwise inhibited from doing so. Both perspectives support the proposition that prescription portability for pet medications has the potential to yield significant procompetitive benefits for consumers, including lower prices, improved service, more choices, and greater convenience.

Based on the workshop record, additional information regarding the pet medications industry, observations from other industries, and the relevant economic literature, the Commission believes that there currently are constraints on prescription portability and that these constraints likely are limiting competition between veterinarians and retailers in the sale of pet medications, which may result in harm to consumers. While the workshop and comments identified some possible rationales for limiting access to prescription portability, these rationales were not supported by evidence sufficient to rebut the basic presumption favoring competition, and at least some of the limitations appear to be greater than necessary to address the concerns expressed. Although the precise degree of access to portable prescriptions is unknown, as is the magnitude of any harm from restricted access, the Commission concludes that greater prescription portability likely would enhance competition in the pet medications market, and thereby benefit consumers of pet medications.

Thank you for the opportunity to share the Commission's views and to discuss our efforts to promote competition and protect consumers.