



**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.
APRIL 29, 2016**

I.

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:

- x Is competition in the pet medications industry adversely affected by limited consumer knowledge of, and access to, portable prescriptions?
- x Is competition in the pet medications industry adversely affected by manufacturer distribution practices that restrict non-veterinary retailers' access to pet medications?
- x 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,

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>.

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III.

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

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

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, (b) (5) - (4) (r) - 7 (n) (e) - 1 (i) - 2 (i) - 2 (on por) 3 (t)

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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.

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.