

April 28, 2016

The Honorable Michael Burgess, Chairman  
The Honorable Janice Schakowsky, Ranking Member  
Subcommittee on Commerce, Manufacturing, and Trade  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Burgess and Ranking Member Schakowsky:

Consumers Union, the public policy and advocacy division of Consumer Reports,<sup>1</sup> appreciates the attention the Subcommittee is bringing to the issue of how consumers obtain prescription medications for their pets.

We are familiar with the workshop held by the staff of the Federal Trade Commission in 2012, and its continuing examination of the issue, leading to the report published last May. We believe this is an important consumer issue, warranting the Subcommittee's consideration.<sup>2</sup>

According to one estimate, Americans spend \$5.2 billion each year on prescription pet medications.<sup>3</sup> This is a significant household expense for consumers.

Unlike with prescription medications for family members, which are obtained from a retail pharmacy that typically has no affiliation with the prescribing doctor, prescription medications for pets are often obtained directly from the prescribing

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<sup>1</sup> Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union is an expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves. It conducts this work in the areas of telecommunications reform, health care reform, food and product safety, financial reform, and other areas. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

<sup>2</sup> "Competition in the Pet Medications Industry: Prescription Portability and Distribution Practices," Federal Trade Commission Staff Report, May 2015, <https://www.ftc.gov/system/files/documents/reports/competition-pet-medications-industry-prescription-portability-distribution-practices/150526-pet-meds-report.pdf>

<sup>3</sup> George Puro, *Packaged Facts: Pet Medication in the U.S.* (4th Edition, October 2015) , at 17.

veterinarian. As of 2012, roughly two-thirds of prescription pet medications were obtained in this way.<sup>4</sup>

We recognize that many consumers appreciate the convenience of having the option of obtaining the medications directly from the veterinarian. But when that is their *only* option – when their veterinarian refuses to give the consumer a copy of the prescription, or fails to make the consumer aware of the option to get a copy, or will only write it for a shorter period of time, or imposes other costs or restrictions on consumers who want to obtain their pet medications elsewhere, or when manufacturers refuse to market pet medications through alternative distribution channels – consumers lose the benefits of competition.

First and foremost, they lose the benefit of obtaining more affordable pricing. When consumers cannot comparison shop, veterinarians feel less competitive pressure to hold down costs on what is a major profit center for them.

But the effects of less competition go beyond the immediate effect felt by the veterinarian. A veterinarian who is protected from price competition has more incentive to develop cozy relationships with pet medication manufacturers, and to support manufacturer efforts to resist competitive market entry by lower-cost generic alternatives. This closed marketing chain also has the effect of dampening incentives for innovation of better, more effective medications.

These kinds of adverse effects are hallmarks of a marketplace where competition is not permitted to work.

But there is another characteristic of the pet medication/ veterinary marketing chain that creates further risk to consumer satisfaction. The veterinarian is the professional gatekeeper for deciding which medication is appropriate in a given situation. If the veterinarian is also able to profit by selling the medication, that can create a conflict of interest. Manufacturers have an incentive to court veterinarians by offering them a higher suggested retail markup, and to offer additional bonuses to veterinarians who prescribe their medications to the exclusion of rival medications.

That risk inherently stems from having the provision of professional veterinary services tied to the sale of prescription medications. This tie is generally not present for physicians and the medications they prescribe for pet owners and their families. That separation between the prescriber and the seller is one of the safeguards in helping ensure physicians exercise independent medical judgment.

This same kind of tie, between prescribing and sale, was once prevalent in the prescribing and sale of contact lenses. As with many veterinarians now, many eye doctors sold the contact lenses right out of their offices, and many refused to give their

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<sup>4</sup> TheBark.com: “Making Pet Meds More Affordable,” 2012, <http://thebark.com/content/making-pet-meds-more-affordable>. More recent estimates suggest the veterinarians’ share of the overall prescription pet medications market may be slightly lower, in the range of 60 percent.

patients a copy of the prescription. Or they discouraged patients from taking it, by requiring them to sign a liability release before they could get it. Consumer complaints led to investigations in a number of states, and ultimately to enactment in Congress of the Fairness to Contact Lens Consumers Act of 2003. This legislation requires eye doctors to give their patients a copy of the contact lens prescription, at no charge, without the patient having to request it. This requirement is supplemented by an established expedited procedure for an outside retailer to verify the prescription and address any issues.

And this same kind of tie was once prevalent in the prescribing and sale of eyeglasses, and was addressed by the FTC in a rulemaking 40 years ago.

The Fairness to Pet Owners Act is modeled on the 2003 Act. It requires the veterinarian to give the pet owner a copy of the prescription – including electronically – whether or not requested, and at no extra charge.

At Consumers Union, our mission is to work for a fair, just, and safe marketplace for consumers, and to empower consumers to protect themselves. Safety is thus a cornerstone concern for our work, along with square dealing, and competitive alternative choices for consumers. And we do not see any reason why any of those goals should be compromised in the name of pursuing any of the others. All are critically important.

Veterinarians have a strong and legitimate interest – indeed, a professional responsibility – in overseeing the prescription medications given to the pets in their care, to ensure the safety of their animal patients. But that responsibility can be exercised without controlling who sells those prescriptions to the pet owners. Many veterinarians are accustomed to having the in-office dispensary as an additional means of monitoring. But physicians are able to do quite well in partnering with pharmacists, whether at “brick and mortar” stores or on-line – and with appropriate regulatory oversight – to ensure the safety of their human patients.

The FTC staff report documents a number of situations where veterinarians and manufacturers have successfully adjusted to a more open distribution system, bringing greater choice and lower prices to consumers without compromising pet safety.

*Consumer Reports* wrote about the benefits of shopping around for pet medications a few years ago.<sup>5</sup> Obviously, being able to shop around is dependent on having a copy of the prescription in hand.

This simple step – requiring that the consumer be given a copy of the prescription, to enable the consumer to choose where to purchase – has been of tremendous benefit to consumers in shopping for a variety of contact lenses and eyeglasses at the most affordable prices. Similarly, the separation of prescription writing and prescription filling

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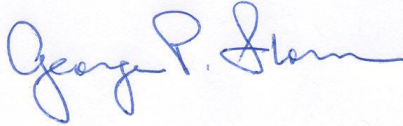
<sup>5</sup> “Don’t automatically get pet medicines from the vet,” *Consumer Reports*, Aug. 2011, <http://www.consumerreports.org/cro/magazine-archive/2011/august/money/pet-costs/dont-automatically-get-pet-medicines-from-the-vet/index.htm>

for human medications has helped bring lower prices for consumers at the pharmacy or through the mail, while also giving them confidence in the independence of their doctor's recommendations.

We believe the benefits of consumer choice are likewise an important consideration for the prescribing and sale of pet medications. The FTC report notes that a number of states have already enacted laws to require veterinarians to offer pet owners this choice. And that in other instances, some veterinarians voluntarily take the initiative to offer it. We hope the Subcommittee will keep those benefits in mind as it considers the Fairness in Pet Medications Act.

We respectfully request that this letter be included in the official record of the hearing.

Sincerely,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name "George" being the most prominent.

George P. Slover  
Senior Policy Counsel  
Consumers Union