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THE PET MEDICATIONS INDUSTRY:

ISSUES AND PERSPECTIVES

FRIDAY, APRIL 29, 2016

House of Representatives,

Subcommittee on Commerce, Manufacturing, and Trade,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:52 a.m., in Room 2322, Rayburn House Office Building, Hon. Michael C. Burgess, M.D., [chairman of the subcommittee] presiding.

Present: Representatives Burgess, Lance, Guthrie, Bilirakis, Brooks, Mullin, Upton (ex officio), Schakowsky, Clarke, Cardenas, Welch, and Pallone (ex officio).

Also Present: Representative Schrader.

Staff Present: Mike Bloomquist, Deputy Staff Director; Elena

Brennan, Staff Assistant; Leighton Brown, Deputy Press Secretary; Rebecca Card, Assistant Press Secretary; Graham Dufault, Counsel, CMT; Melissa Froelich, Counsel CMT; Giulia Giannangeli, Legislative Clerk, CMT; Paul Nagle, Chief Counsel, CMT; Mark Ratner, Policy Advisor to the Chairman; Olivia Trusty, Professional Staff Member, CMT; Dylan Vorbach, Deputy Press Secretary; Michelle Ash, Minority Chief Counsel, Commerce Manufacturing and Trade; Jeff Carroll Minority Staff Director; Lisa Goldman, Minority Counsel, CMT; Dan Miller, Minority Staff Assistant; Caroline Paris-Behr, Minority Policy Analyst; and Andrew Souvall, Minority Director of Communications, Outreach and Member Services.

Mr. Burgess. The Subcommittee on Commerce, Manufacturing and Trade will now come to order. And the chair will recognize himself for 5 minutes for the purpose of an opening statement. And I do want to welcome everyone here this morning. I certainly want to welcome our witnesses.

This morning, we will receive testimony from our witnesses about the status of the pet medication industry. It is important to start this process by understanding the status quo of the industry. From that point, we will build the necessary base to carefully examine whether additional Federal involvement is needed in the veterinary prescription medication space. The pet medication industry is an established market, and it continues to grow.

In calendar year 2015, United States pet owners spent over \$14 billion on pet supplies and over-the-counter medications. An additional \$7 billion was spent on prescription medications. Pet care is a notable component of the family budget for well over two-thirds of the United States households.

Last year, the Federal Trade Commission wrapped up a multiyear study of competition in the pet medication industry. And perhaps this morning, the Federal Trade Commission's witness can speak to the state of the industry with regard to prescription portability and distribution practices.

In the report, the Federal Trade Commission noted that more study could be helpful in a number of areas, including pricing, dispensing errors, and the secondary distribution system.

This morning, it would be helpful to understand whether any of that additional study has been undertaken to date. The veterinarian-pet ownership relationship is an important one, and another part of what we will explore today. I understand that Representative Chaffetz has introduced a bill to federally mandate the release of prescriptions that has been referred to this subcommittee. States have long held the bulk of authority over veterinary practice, and over 30 States have passed legislation dealing with prescription portability. I do remain concerned that this legislation, like legislation passed years ago mandating similar procedures for contact lenses, unduly interferes with the relationship between the doctor and their patient. Procedures currently exist in all 50 States to address the claims, issues, raised by the proponents of this legislation.

So mark me as skeptical that a Federal approach rather than one that works with State regulators truly creates an environment that is beneficial to consumers and their pets.

As we have done with other issues with State involvement, and as a matter of federalism, it is important to understand how States have addressed any of the issues raised with prescription portability and what their level of involvement has been.

I will conclude my opening statement with that, and I will recognize the subcommittee ranking member, Ms. Schakowsky of Illinois, 5 minutes for an opening statement.

Mr. Schakowsky. Thank you, Mr. Chairman. I must disclose that I have a personal interest in this topic. My husband and I have two

very energetic rescue dogs at home, siblings named Franklin and Eleanor. And like any pet owner, that means, of course, they need to be -- we need to buy heartworm prevention and other pet medications.

Ellie actually has Addison's disease. She has to take a pill every day and a shot every month to keep her healthy. Pet owners like me have a -- spend a combined total, as the chairman said, of \$7 billion. I feel like I definitely pay my share on pet medications in 2013. And, now, compared to the spending on human prescriptions, that number is pretty small. But it is a significant cost for pet owners. We need to consider whether consumers are well-served by the existing market.

Right now, the majority of pet meds are bought directly through a veterinarian. There may be some good reasons for this, getting prescriptions right at the vet may be more convenient. The pet owner may also want the vet to administer the medication in some cases. And when consumers prefer that convenience and service, they should buy their pet's medication through the vet. But that said, the pet medication industry needs fair competition.

The Federal Trade Commission looked at competition in the pet medication industry in a 2015 report, hoping to hear more about that. The report concluded that portable prescriptions, having your choice of where to buy your pet's medication, allows for more choice and would likely lower prices. Expanded consumer choices already, the direction we are heading, some States already require prescription portability in some form. Many vets provide prescriptions upon request, and a growing number of consumers are choosing to fill their pet's

prescriptions through retailers and online pharmacies. The question is whether we are currently getting the full benefit of competition. Consumers need to be aware of the choices that they have, and that choice needs to be real. Portable prescriptions do little good if the medications themselves are not available outside the vet's office.

The FTC highlighted exclusive distribution policies as a potential impediment to competition. There is also the related issue of whether generic medications are widely available in the first place. We need competition not only among the sellers of prescriptions, but among the makers as well if we want to see more savings for consumers.

Now, as a dog owner, I am very mindful of safety. As we have this debate, I want to make sure that medication is safe to be dispensed to my pets. I call them my kids. I believe there are -- there is a responsibility for whoever sells medication to fill prescriptions accurately and provide the necessary information to pet owners. The FTC report lays out a good framework for today's hearing. I am interested to hear about the current state of the pet medication industry, how we can improve the market for pet owners as well.

I look forward to hearing from our witnesses, and I thank you for your testimony.

And thank you, again, Chairman Burgess, for holding this hearing.

I yield back.

Mr. Burgess. The gentlelady yields back. The chair thanks the gentlelady.

The chair recognizes the gentleman from Michigan, chairman of the

full committee, Mr. Upton, for 5 minutes.

The Chairman. Well, thank you, Mr. Chairman.

Yes, this hearing is on pet medication industry. It is certainly an interesting look at large industry that most of us, as has been described already, have a very personal connection to. From dogs and cats to guinea pigs, fish, turtles, horses, you name it, millions in Michigan and across the country have opened their home to pets of all shapes and sizes.

In my personal office, just down the hallway, we have always been a nine-to-Fido office. In fact, all four of my offices today have four-legged critters, and we have done that all the years on the Hill.

So, today, we have Gideon. We have a Silky Terrier, Boston Terrier, Pomeranian named Scout, who really got a buzz cut yesterday. I almost didn't recognize him.

But our beloved pets provide a constant source of joy and levity as well as companionship and unconditional love. And I forgot to bring my box of dog biscuits in this careful container that I allow my constituents to feed our friends as well.

But to fully appreciate how large the marketplace is, and how important veterinarians are to keeping our companions healthy, all you have to do is stop and think about how many of our friends, loved ones, colleagues, and neighbors have pets. Two-thirds of American households have a pet. And in 2015, those same families spent over \$60 billion on food supplies, medications.

There is an entire ecosystem from manufacturers, distributors,

retailers, veterinarians, pharmacies, all the way up to pet owners themselves. It is no surprise that over 700 public comments were filed after the FTC's workshop examining the industry back in 2012. Folks care about their pets, for sure.

But the stats reveal visits to the vets are down. The economy is still on shaky ground. After a lackluster recovery, affordable options for chronic and acute medical conditions are a kitchen-table issue. Pet safety is also of highest importance.

I should also note that one of our State universities, Michigan State, is one of the premier institutions in terms of training vets to get to the marketplace.

We should strive to strike a balance between consumers having the marketplace of options to choose from to make sure that their pet's safety receives the care that it needs, but doing so without breaking the bank. We also need to make sure that consumers have the information that they need to make an informed decision with their vets about the best care for their pets.

So I am interested in hearing from all witnesses about the state of the pet medication industry today, what the States are doing to address these issues, and what we can learn from the FTC's deep dive into the nuances of this industry. I want to be clear that just as our pets are part of our extended families, our vets are a trusted part, too, of that equation to keep them healthy and happy.

Today, we are here to listen, understand what role, if any, the Federal Government ought to play. I think we can all agree that the

health and safety of the pets is a top priority for folks not only in Michigan, but around the country.

And I yield back.

Mr. Burgess. The gentleman yields back. The chair thanks the gentleman. The chair recognizes the gentleman from New Jersey, ranking member of the full committee, Mr. Pallone, 5 minutes, please.

Mr. Pallone. Thank you, Mr. Chairman.

Today's hearing is an opportunity to learn more about the present state of the pet medications industry and about the choices that are currently available to pet owners. And as has been stated by my colleagues, many pet owners consider their pet to be a member of their family. Since everybody is talking about their pets, I will have to add that our dog, Valetta, is certainly a member of the family. Although, I have to say, she likes my wife a lot better than me.

Mr. Burgess. We all do.

Mr. Pallone. Thank you. Thank you, Mr. Chairman.

So, in any case, access to safe, effective, and affordable health care for their pets is important.

In 2015, U.S. families spent more than \$60 billion on their pets, and a significant portion of those dollars were in the growing pet medication market. The pet medication industry is in a period of transition, both over-the-counter and prescription pet medications have become more widely available, including through online pharmacies and big box stores. Although retail options have expanded within the industry, many stakeholders believe that the existing system for

distributing pet medications has not evolved accordingly.

In 2012, the Federal Trade Commission held a public workshop to explore the changes taking place in the pet medications market. The workshop received input from a variety of participants, including veterinarians, pet owners, drug manufacturers, drug distributors, retailers, and regulators. Some stakeholders argue that exclusivity agreements between drug manufacturers and distributors can artificially inflate prices and limit consumers' access to medication choice.

For example, some retail outlets report difficulties ensuring that they have brand medications available for customers, and some veterinarians report difficulties ensuring generic medications are available at their clinics. Others reported that consumers are not being sufficiently informed of the options available to them when purchasing pet medications, including the option of receiving a written copy of their pets' prescription from their veterinarian.

After holding the workshop and reviewing stakeholder comments, the FTC issued a report in 2015 on the pet medications industry. It highlighted the troubling lack of generic pet medications available for purchase, and explained that increased availability of generic pet medications could produce significant savings for consumers.

The comparison to the human medication market is notable. Of the top 20 human medications that lost patent protection between 2005 and 2007, 100 percent had a generic version made. Of the top 20 pet medications during that time, only 20 percent went generic.

So we know that generics have a profound impact on health care by drastically lowering drug prices and improving access to effective treatment. FTC's report suggests a number of areas for further study regarding pet medication, distribution, that may be causing inefficiencies and disincentivizing the development of new generics, and I encourage the FTC to proceed with that study.

So I am hopeful that this hearing could also address other challenges facing the pet medications industry. I look forward to hearing from our witnesses on how we can work to ensure affordable pet medications for all pet owners.

And I yield back, Mr. Chairman.

Mr. Burgess. The gentleman yields back. The chair thanks the gentleman. This concludes member opening statements. And the chair would remind all members that pursuant to committee rules, members' opening statements will be made part of the record.

We want to thank our witnesses for being here this morning and taking the time to testify before the subcommittee.

Today's hearing will consist of two panels. Each panel of witnesses will have the opportunity to give an opening statement, following which there will be questions from members. Once we conclude with the questions of the first panel, we will take a brief recess to set up for the second panel.

Our first witness for today's hearing is Ms. Tara Koslov, the Deputy Director of the Office of Policy Planning at the Federal Trade Commission.

And we appreciate you being here this morning. And, Director Koslov, you are now recognized for 5 minutes for purposes of opening statement.

**STATEMENT OF TARA KOSLOV, DEPUTY DIRECTOR, OFFICE OF POLICY PLANNING,
FEDERAL TRADE COMMISSION**

Ms. Koslov. Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee, thank you for the opportunity to appear before you today. I am Tara Koslov, Deputy Director of the Federal Trade Commission's Office of Policy Planning. I am pleased to join you to discuss competition perspectives on the pet medications industry. The Commission has submitted written testimony describing the FTC's recent work in this area, including our October 2012 workshop, staff's reviewing consideration of over 700 public comments received in response to the workshop, and ultimately, our May 2015 staff report.

My oral testimony and responses to questions reflect my own views, and not necessarily those of the Commission or any individual commissioner.

If your household is among the 65 percent in the U.S. with a pet, you know firsthand that pet medications are a major and growing expenditure for many American consumers. Pet owners spend over \$7 billion per year on prescription and over-the-counter pet medications. And this figure is expected to grow to over 8 billion by 2018.

Most consumers purchase pet medications from their trusted veterinarians typically at the end of an office visit. Over the last decade, however, many more retail pharmacies and other retail outlets have been competing with veterinarians to sell pet medications. These

new market participants include a number of online pharmacies that are owned and operated by licensed veterinarians and focus solely on filling veterinarians' prescriptions.

Existing competition between veterinarians and other retailers already appears to have led to lower prices for certain pet medications as well as better service, greater convenience, more choices, and other consumer benefits. But recognizing the size of the industry and the large number of affected American consumers, FTC staff has examined two interrelated issues that may still impact competition for the sale of pet medications.

The first issue is whether consumers know about and have access to portable prescriptions. That means a consumer can obtain a prescription from her veterinarian, then use it to purchase pet medications somewhere other than her veterinarian's office.

Based on our findings, the Commission believes that consumers likely would benefit from increased pet medication prescription portability, which would enhance competition between veterinarians and other retailers of pet medications. Consumers are especially likely to benefit if they can shop around for the lowest prices and greatest convenience when purchasing preventive pet medications or long-term therapeutic treatments for chronic conditions.

In contrast, portable prescriptions may not be appropriate for certain acute care and specialty medications that can only be properly dispensed by veterinarians. Also, consumers may be less likely to comparison shop in an urgent care situation when a pet needs immediate

short-term treatment.

The FTC staff report analyzes various arguments for and against automatic prescription release, whereby veterinarians would always be required to provide a portable prescription regardless of whether the client requests one.

As the report notes, many veterinarians already honor their clients' request for portable prescriptions as required by some State laws and ethical codes.

Some veterinarians may affirmatively offer portable prescriptions as well. But complaints persist that not all requests are honored. Also, many consumers still don't know that they can ask for a portable prescription. Other consumers may know but are uncomfortable asking, especially when their veterinarians require fees or liability waivers or make disparaging statements about competing retailers.

As the report explains, FTC staff are skeptical of some of the alleged health and safety concerns cited by opponents of prescription portability.

To the degree that these concerns are legitimate, existing regulatory measures may be sufficient to address them. We are aware of arguments that automatic prescription release may erode veterinary practice revenues, and force veterinarians to compensate by increasing their service fees. But as our report details, it is difficult to reconcile this argument with simultaneous claims that consumers already are aware of and have complete access to portable

prescriptions, and that pet medication prices already fully account for the competition that exists between veterinarians and other pet medication retailers.

Thus, we believe that the greater prescription portability likely would enhance competition for the sale of pet medications and that consumers would benefit from this competition in the form of lower prices.

The second issue FTC staff have examined is that most manufacturers of pet medications have exclusive distribution policies to supply pet medications only to veterinary practices. Such policies may adversely affect competition. It appears that many nonveterinary retailers have trouble purchasing pet medications directly from manufacturers or their authorized distributors.

Often, these retailers must rely on secondary supplies, who typically buy excess products from veterinarians. Although consumers likely benefit from lower prices than if exclusive distribution were being strictly enforced, this secondary distribution system may be inefficient, and prices might be even lower if there were no such constraints.

As the report highlights, enhanced prescription portability, may increase consumer demand to buy pet medications from nonveterinary retail sources. This, in turn, might incentivize manufacturers to change their distribution policies in response to consumer choices. Continued growth of retail distribution could, as a result, increase competition and lead to even lower prices for pet medications in both

veterinary and retail channels.

Thank you for the opportunity to share the Commission's views and to discuss our efforts to promote competition and protect consumers. I am happy to respond to your questions.

[The prepared statement of Ms. Koslov follows:]

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Mr. Burgess. The chair thanks the gentlelady for your testimony. And we will move into the question portion of the hearing.

I will begin by recognizing myself for 5 minutes for questions.

Director, you -- you mentioned the issue of liability for writing a prescription. Is that actually at issue? Has there -- did you come across, in the course of your study in preparing the report last May, did you come across issues of liability that a veterinarian might encounter for either writing or not writing a prescription?

Ms. Koslov. So liability for not responding to a request for a prescription?

Mr. Burgess. I guess I was thinking along the lines of professional liability, for the prescription either not being filled in a timely fashion or filled correctly. Were there medical practice, or veterinary practice questions that occurred?

Ms. Koslov. So as we explained in the report, our understanding is that a veterinarian would not be liable if a pharmacy made an error in filling a portable prescription. The existing regulations that govern the pharmacist would cover that if it wasn't dispensed as written.

Mr. Burgess. And that would be just part of the normal practice of the dispensing agency, correct?

Ms. Koslov. That is correct. It would be the same as it is for a human prescription. If you take a prescription to a pharmacist, they are required to dispense it as written.

Mr. Burgess. So why would it come up that someone would ask

someone to sign a release of liability if the prescription was not dispensed at the office?

Ms. Koslov. So as we explained in the report, we are not sure why there would be a request for release of liability, because it is our understanding that the existing regulations would already cover it, and you would not need an additional layer of liability release.

Mr. Burgess. That would be my thought as well.

So the subcommittee really appreciates the amount of time the agency spent putting the report together. Obviously, it was a significant report.

Seven hundred public comments; is that correct?

Ms. Koslov. Over 700, yes.

Mr. Burgess. Is that just -- for some people to get a context, is that an unusual amount of comments, or is that about standard when you do an investigation like this?

Ms. Koslov. So it is fairly standard. It was a little bit higher than average for this type of workshop. There were a number of comments that we received that were similar to each other. It is our understanding that perhaps a number of veterinarians may have all been encouraged to send in comments, and they all did. So that was one large group, but then we received a large number of substantive comments from a variety of stakeholders as well.

Mr. Burgess. So the conclusion of all of that, and you put together the report, is there any type of economic analysis that you at the FTC do as far as the implications of the report that you are

dispensing? Do you consult with any other agencies or anyone else in the administration, the Bureau of Economics, Office of Management and Budget, about the cost of implementing the procedures in the report?

Ms. Koslov. Sure. So when we initiate a process of designing a workshop and holding a workshop and then generating a report, the staff team always includes a number of people from our Bureau of Economics. That is just our standard practice within the agency. And so our pet meds workshop team did include people from the Bureau of Economics. The report itself does reflect significant economic analysis by our staff internally, in particular, trying to understand the extent to which prescription portability might impact the economics of veterinary practices and also trying to understand how economic theory would predict how prescription portability might impact prices for pet medications.

Mr. Burgess. And what are the general conclusions of the Bureau of Economics?

Ms. Koslov. So --

Mr. Burgess. If you can summarize them?

Ms. Koslov. Sure. So I would absolutely refer you to the report for greater detail. It is woven in throughout the report.

On prescription portability, if consumers -- and this is ultimately all about consumers. It is all about giving consumers information so that they can exercise their choices in the marketplace. That is kind of the fundamental principles of competition that work throughout our economy. We would think it would work the same here.

If consumers have more access to information and more choices in the marketplace, they are more likely to go out and use that information to generate competition, and that should tend to drive down prices.

We think it already has. We see for some pet medication products where veterinarians may already be facing competition from alternative retail distribution, that has tended to bring down prices, and so we would expect to see more of that.

As far as the impact on veterinary practices, if they were to lose revenues from the sale of pet medications, because we understand that is a portion of their revenues right now, I think the average is probably about 20 percent for a practice -- 20 percent of their revenues come from pet medication sales. So if they are going to lose some of those sales, they might need to adjust their service fees and raise them to compensate.

On the other hand, if, as we have heard, there is already a significant amount of competition and veterinarians already are building that competition into the price at which they sell their medications, then we would not necessarily expect them to lose very much revenues, because their prices already would reflect that competition.

Mr. Burgess. If I could just -- in your report, one of the statements made is more information regarding the secondary distribution system for pet medications could allow for deeper analysis of the economic product and safety concerns.

In the years since this report was published, have you, in fact,

done that deeper dive?

Ms. Koslov. We have continued to observe what is going on in the secondary distribution market.

Mr. Burgess. And is there any supplemental statement that the FTC has at this point, a year later, from where you were last May when this report was issued?

Ms. Koslov. We do not have a supplementary statement. As best as we can tell, things have not changed very much in the year since the report was issued.

Mr. Burgess. And I thank you for your prompt answers to the questions.

Ms. Schakowsky, you are recognized for 5 minutes, please.

Mr. Schakowsky. As you said, currently, most major manufacturers of pet medications use third-party distributors to market their products rather than selling directly to veterinarians or alternative retailers. Distributors explain that there are thousands of individual veterinary clinics across the country, and it is hard for manufacturers to reach them without a centralized distributor.

We have also heard that many manufacturers and distributors have signed exclusivity agreements that limit what products distributors can carry and who they can sell those products to.

Now, the FTC has found that exclusivity agreements are common in the pet medications industry. Could you tell us more about what the terms of these types of agreements usually require?

Ms. Koslov. So we have not had access to or looked closely at individual contracts, so, I can't tell you precisely what the terms of those are. Our general understanding, based on the workshop record and our additional research is that a manufacturer might reach an agreement with the distributor, that that distributor would either only carry that manufacturer's product, or that the manufacturer would carry -- that the distributor would carry that product but not a competing generic product.

Mr. Schakowsky. So how do these agreements affect the ability of veterinarians and alternative retailers to offer their customers choices between branded products, or between branded or generic products?

Ms. Koslov. So we do think that these exclusivity arrangements do have an effect on possible penetration of generic competition. So there are a few factors that affect generic entry, and one of them would be that if you don't have a sizable enough market for generic drugs because consumers aren't getting prescriptions for them, there might not be a big enough market to attract generic entry.

As you are well aware, on the human side, we have the Hatch Waxman system, which provides for automatic substitution of generic drugs. We also have the situation where we mostly have insurance. And so our insurance providers are constantly putting pressure to drive down drug prices, and that tends to lead to more -- more of us seeking generic drugs or being required to use generic drugs. We don't have those two factors at play in the pet med industry. So those are two other factors

that affect generic entry.

Mr. Schakowsky. Okay. So I think you have answered this. We want generic drugs makers to get their products to veterinarians and retailers to have access to both branded and generic animal drugs. How can we help pet owners have that choice?

Ms. Koslov. So the position that we have taken in our report is that by enabling greater prescription portability and giving consumers more access to these choices in the marketplace, that, ultimately, that will generate more consumer demand for these alternatives, including, perhaps, more consumer demand where consumers would ask, is there a safe generic alternative? But they would have a conversation with their veterinarian as part of that trusting relationship and start to explore those options and that, in turn, might put more pressure on manufacturers and on the marketplace to create more generic alternatives.

Mr. Schakowsky. I am looking at this chart, I don't know who prepared it, potential savings for pet owners. And we are looking at, like, Rimadyl, generic savings, 53 percent over what would happen at the veterinary clinic, typically. So, you know, there is a lot of money to be saved, potentially.

In the FTC report, you noted that requiring automatic prescription release without addressing the effects of exclusivity agreements would not solve the greater issue facing the pet medications market.

Can you explain why?

Ms. Koslov. The interdependence between those two issues, as I explained in my oral remarks, if you have greater prescription portability, but the distributors of the medications don't have access to enough supply to fill the prescriptions, then all the prescription portability in the world won't really help consumers. So we do see it as interrelated.

Mr. Schakowsky. So is there a way to increase the demand for generics without changing the current distribution system and the distribution channel?

Ms. Koslov. I think that by educating consumers about these options in the marketplace and, again, encouraging them to have these conversations with their trusted veterinarians, these are deep relationships between people who care deeply about the health of the animal. Access to affordable medications is a huge part of taking good care of your pet, and so I think if more consumers have those conversations with their veterinarians and talk about the price constraints they are facing, what options do I have out there in the marketplace, what can we do that is safe for my animal, I think that those conversations will ultimately start to affect the marketplace based on consumer demand.

Mr. Schakowsky. Thank you so much.

I yield back.

Mr. Burgess. The gentlelady yields back. The chair thanks the gentlelady.

The chair recognizes the gentleman from New Jersey, the vice

chairman of the subcommittee, Mr. Lance, 5 minutes for questions, please.

Mr. Lance. Thank you, Mr. Chairman.

And good morning to you, Director.

As I understand the issue, the bill that has been drafted may be based upon the model used regarding contact lenses. And the thought was that this would increase access to contact lenses through online sales.

But there have been some negative consequences, in my judgment, in that space, mainly, as online retailers may have abused the law to market and sell contact lenses to consumers without prescriptions, and that may have put consumers at risk by lessening the doctor-patient relationship.

And I am concerned that if we replicate that model, there may be concerns of safety regarding family pets. And I am interested in your views on that. And I am also interested in what the agency is doing regarding contact lenses. This is a significant issue in the district I represent. We are the medicine chest of the Nation in North Central New Jersey.

Ms. Koslov. So we do see analogies between the situation with contact lenses and the situation with pet medications.

Mr. Lance. Yes.

Ms. Koslov. We enforce the contact lens rule. We have seen in that market that enhanced prescription portability has really opened up an entire marketplace and options for consumers. So we think,

generally, there has been significant benefits for consumers. I recognize the safety concerns that you are citing. As a matter of fact, just recently, in the last couple of weeks, the FTC did send out a series of warning letters related to enforcement of the contact lens rule.

Some of those enforcement letters, warning letters, went to sellers of contact lenses who might not be following the contact lens rule because they are filling expired or invalid prescriptions. However, a number of those warning letters also went to prescribers who may not be honoring the prescription portability requirements of the contact lens rule. So we are looking closely at that issue on both sides. But, obviously, safety is always a consideration.

Mr. Lance. And do you believe that you would be able to give Congress a follow-up report on what is occurring regarding the contact lens situation?

Ms. Koslov. We continue to look closely at contact lenses. There is a rulemaking proceeding open right now, because the contact lens rule is up for review. So as part of that process, we have solicited and received a large number of public comments.

Mr. Lance. I believe in that space, you have received between 600 and 1,000 comments. Is that accurate?

Ms. Koslov. That sounds about right.

Mr. Lance. Thank you.

Mr. Chairman, I would like an analysis of this issue in relationship to the contact lens issue, because I believe there are many similarities. And I hope as the discussion moves forward, we can

examine this space based upon the experience in another space.

I yield back the balance of my time.

Mr. Burgess. The gentleman yields back. I thank the gentleman.

The chair next recognizes, I believe, it is the gentleman from California, Mr. Cardenas, 5 minutes for questions.

Mr. Cardenas. Thank you very much, Mr. Chairman.

Ms. Koslov, thank you for conducting the public workshop to advance the understanding of this important issue.

Our family has three family members that are directly affected by today's committee topic. And our Chihuahua-Yorkie mix, Sophie, who thinks she is a person, really appreciates this. She will act like she understands everything we are saying. Our chocolate Lab, Coco, who knows she is a dog. She is much more well-balanced, and then also, our cat, Gracie, who knows that she rules the house, they all appreciate it, and so do the rest of the family.

Our entire family appreciates that this committee is carefully evaluating the pet medication industry today. In your testimony, Ms. Koslov, you discuss automatic prescription releases, and I have some questions.

Did the workshop that the Federal Trade Commission conducted conclude that automatic prescription release is the best way to give a pet owner their portable prescription?

Ms. Koslov. The report did not make a judgment on what the best way would be to approach this, but we did conclude that greater prescription portability would be a very important way to enable

greater competition in the marketplace.

Mr. Cardenas. Okay. Did the workshop evaluate what the costs passed on to veterinarians for automatic prescription release might be?

Ms. Koslov. There is an extensive discussion in the report of potential costs and benefits, including costs that might be incurred by veterinary practices, yes.

Mr. Cardenas. Okay. And, apparently, there is a great interdependence between prescription portability and product distribution. Is this second distribution system resulting in higher prices for pet owners? What is the effect there?

Ms. Koslov. So we don't know the extent to which the secondary distribution system -- we have not been able to quantify the extent to which that might be an increase in prices. Based on our economic modeling and our understanding of the dynamics of the industry, we certainly think that the way the secondary distribution system is operating right now is not as efficient as it would be if distributors had to write access to drugs from manufacturers, and that there is room to push prices down if we could fix some of the problems there?

Mr. Cardenas. If product distribution remains the same, how much will portable prescriptions actually be used? What is the extrapolation there?

Ms. Koslov. Portable prescriptions are already being used. There are a number of situations where veterinarians do honor the requests of their clients. There are also a number of times where a

veterinarian doesn't carry a particular drug, and they offer a prescription to their client. So this is already going on. I think additional prescription portability would enhance competition and lead to even greater competition in that space. I think if consumers are asking for more product, ultimately, manufacturers may need to rethink how they are handling distribution, which may lead to more product flowing into the secondary distribution network.

Mr. Cardenas. So on that point, in order to enhance choice, should manufacturers be able to sell directly to alternative retailers?

Ms. Koslov. Manufacturers can choose however they would like to sell their products.

Mr. Cardenas. Today?

Ms. Koslov. Today. They choose today. They will continue to. It is -- they can unilaterally decide what is most efficient for them, what is most cost-profit maximizing for them. I think as the marketplace changes and evolves, I think many manufacturers may be rethinking their own economic model, their product structure, and trying to figure out how to respond to the changes in the marketplace.

Mr. Cardenas. I have a good friend, Cesar Milan, who knows a lot about dogs. And he told me something interesting, that when he went to Germany, he found out that if you have a pet, the pet doesn't need a license; the human being needs a license to learn how to be -- have that person -- that pet become a family member. I thought that was incredibly advanced.

That being said, did your report in any way analyze what best

practices around the world might help us understand the dynamics that they figured out over there that we might learn from?

Ms. Koslov. So we did not look at that licensing issue. We did look generally --

Mr. Cardenas. What I am saying, on this subject matter, like, for example, Germany, I am sure they -- maybe they have crossed this kind of dialogue and these kinds of regulations, et cetera, in their own country. That is what I mean. With all due respect, I think us, as Americans, we think that we have done everything first or better than everybody in the world. But when it comes to pets, maybe we can learn from other countries. That is my point.

Did your analysis look at any other world practices?

Ms. Koslov. So we did look at practices in a number of other countries. In particular, we looked at the U.K., because it was an area that they were interested in as well. The FTC has extraordinary close and productive working relationships with our competition counterparts in other countries, and so we actually were talking to our counterparts in the U.K., because they were looking at the issue around the same time.

Mr. Cardenas. Were we able to learn from them, and did any of that information get into the report?

Mr. Burgess. Mr. Cardenas, your time is about to expire. We are deep into a vote. The bells are not working in here, because of the construction. I apologize to members that we have let things go, but I wanted to let your question time go through.

Mr. Cardenas. Thank you so much.

Mr. Burgess. But we are going to take a brief recess, and we will reconvene immediately after the vote series. It will not take long.

[Recess.]

RPTR HUMISTON

EDTR ZAMORA

[11:02]

Mr. Burgess. I will call the subcommittee back to order. And thank everyone for their forbearance during the vote series, and thank people for coming back.

We were in the portion of the member questions when we adjourned. So the chair at this point would like to recognize the gentlelady from Indiana, Mrs. Brooks. Five minutes for questions, please.

Mrs. Brooks. Thank you, Mr. Chairman.

Like so many Americans, and even like some of the panel that we have heard from or members that we have heard from today, animals have been an integral part of my life since childhood, including the 10-1/2 year-old dog, Scout, yellow lab, more than just a companion or a hunting dog with my husband, but truly a member of our family. And like a family member, we need to make sure that he has the medicines, all the up-to-date vaccines to keep him healthy and active.

But I also know, because Indiana is the home of Elanco, one of the nation's largest animal health distribution and manufacturing companies, that it takes a lot with respect to create medications and vaccines and so forth for our treasured pets. Whether it is price competition, medications, vet laws, I know these things not only affect consumers, but they also affect the manufacturers and the scientists in Indiana developing these products. So I am looking forward to

hearing not only from you, but to the second panel as well.

Ms. Koslov, were you able to gather the information? And what have you done with respect to the analysis of the, I believe, about 36 States right now by either the State or independent licensing boards or the self-policing associations, what can you tell us about whether or not veterinarians are actually withholding prescriptions from pet owners across the country? I mean, when 36 States already have laws on the books and in place, can you share with us a bit more about what practices you are most concerned about?

Ms. Koslov. So it is our understanding that a number of States do have these laws on the books, and we realize that many veterinarians are honoring their client's requests for prescriptions. However, there are some States that do not have these rules in place. Moreover, there are no States that require a veterinarian to affirmatively offer a prescription.

And in our experience, based on the anecdotal evidence and the testimony at the workshop, we think there are a large number of consumers who just aren't aware that they have the right to ask for a prescription and that would give them the opportunity to shop around in the marketplace. And so we are looking to enhance that part of the market as well.

Mrs. Brooks. And I am sorry, I haven't studied all 36 States' requirements, but certainly of the 36 States, people who ask for a prescription, though, in all likelihood, the veterinarian is required to provide one. Would that be correct?

Ms. Koslov. It is our understanding that they would be required to provide one. However, we have received a number of anecdotes and comments, as part of the workshop, that some consumers are not, in fact, getting prescriptions when they ask for them.

Mrs. Brooks. But then wouldn't that be a licensing problem or something that the consumer would then be able to file a complaint with the licensing board, if that were to take place, at least in the 36 States?

Ms. Koslov. So consumers could choose to file some sort of complaint with the licensing board, or in some States it might actually be a law or a regulation. So it could be the board or it could be, if it is an ethical code in the State that requires veterinarians to do it, there might be other places they could complain.

Mrs. Brooks. And do you know if those complaints have been filed in the 36 States, and if so, how many?

Ms. Koslov. So we did not do an exhaustive study of how many complaints were filed in each State.

Mrs. Brooks. Have any been filed in those 36 States?

Ms. Koslov. I am not aware of whether any have been filed in those States. I know that we did receive a number as part of our comment process.

Mrs. Brooks. But would that number be in the 36 States or are they in the other States that haven't yet moved in that manner with respect to regulations?

Ms. Koslov. I don't know which States they were in.

Mrs. Brooks. Has the FTC ever done any consumer campaign to inform consumers that they can ask for a prescription?

Ms. Koslov. So the day that we issued the pet medications report last May, we actually did issue, at the same time, a consumer education piece that came out through our Bureau of Consumer Protection. We also shared it with a number of stakeholders in this industry and encouraged them, veterinarians and other consumer interest groups, so that consumers would get better information and be educated about their opportunities.

Mrs. Brooks. And you are aware of concerns by the FDA regarding medications obtained online for pets, and we are also aware of some safety issues regarding something that Congressman Lance from New Jersey brought up with respect to contact lenses obtained online.

Has the FTC taken any steps to educate consumers about safe sources of whether it is contact lenses or whether it is online pet medications, and if so, can you please explain what the FTC has done with respect to online purchases of medications?

Ms. Koslov. Yes. In that consumer education piece that I just mentioned, one of the guidance pieces that we gave to consumers was that it would be helpful to look for a vet that is accredited pharmacy if they are looking at purchasing pet medications online. That accreditation process involves a number of safety mechanisms to ensure the authenticity of the medications and just to make sure that the process is as safe as possible. So we did encourage consumers to look for that certification.

Mrs. Brooks. And is the FTC conducting any investigations of online purchases?

Ms. Koslov. I can't comment on any nonpublic investigations and whether we are doing them or not. We are generally aware that there is a robust online marketplace for pet medications, and we are doing our best to keep an eye on it.

Mrs. Brooks. Thank you. I yield back.

Mr. Burgess. The chair thanks the gentlelady. The gentlelady yields back.

Seeing no other members of the subcommittee, it would now be my great honor to recognize a member of the full committee, Dr. Schrader from Oregon, 5 minutes for questions.

You may have to move to a microphone that is actually working. I promise I didn't turn yours off. And thank you for being here, Doctor.

Mr. Schrader. Thank you very much, Mr. Chairman.

And, Ms. Koslov, I appreciate you being here. A difficult position, FTC trying to talk about health safety and price competition at the same time.

I guess to make a comment here, I mean, in your own report, you acknowledge that there is increased competition in the veterinary prescription marketplace. Prices are going down already. PetMed Express claims to have 2.5 million customers, 50 percent of the business being prescription meds.

I guess I would ask, where is the problem here? Where is the

problem here?

Ms. Koslov. We think that consumers benefit whenever they have additional information that enables them to exercise their choices in the marketplace. And based on the record that we developed as part of this workshop, although our understanding is that many consumers have a very close and trusting relationship with their veterinarians and they are already having these discussions about prescription portability, we think there is room for improvement.

Mr. Schrader. Well, there is probably always room for improvement in anything. I think it is a point of diminishing returns. And also, to be honest with you, the tone a little bit is impugning my profession. I have been a veterinarian for 35 years, and I could have made a lot more money in a lot of other professions. I went to school for an exhaustive period of time, in my opinion, and I chose veterinary medicine because I love working with animals.

The prescription piece is a small part of what we do. And I think some of the testimony, with all due respect, that you have is outdated. You know, 20 percent of the business being prescriptions, I will wager you in this day and age, it is actually much less. My own practice over time back in the dark ages when I started, yeah, medications were a big part, because there weren't a lot of opportunities elsewhere. That has changed. I think it has changed for the better for, you know, frankly, a lot of the folks out there, whether the client or the actual pet itself.

And the trend in veterinary medicine, just so you are aware and

my colleagues, is to pay for services, not for items dispensed. It is much like what we are seeing in human medicine, it is a value added type of reimbursement system. Veterinarians have voluntarily in recent years, last, I would say, 6, 8, 10 years reduced the number of vaccines they give, because good research has shown they don't need to be doing that. And I think that is a tribute to the profession. It is not about making money; it is about providing the best health care to the pet.

And I appreciate the FTC comes at it from a different standpoint, you know, your background is in competition and getting the best price, best opportunity for the consumer, and that is fair, but that is not what veterinary medicine is all about. We are about protecting the health and safety of these animals.

To be honest, as Ms. Brooks pointed out, these so-called complaints, you can't verify where they have come from, who they have come from. My guess is they come from, frankly, the PetMed type of distributors out there, who their one single motivation is to make money. You know, I respect that, this is America, it is a market system, but they do not have the best interest of the pet at all in their sights.

And the biggest thing that I would recommend the FTC also look at as they go on with this -- if they are going to go on with this, is to look at, you know, what is the -- you know, what is the implication of allowing these big national distribution chains to issue prescription medications at liberty? In other words, what we find in

the veterinary field is you will have a prescription that says 30 days' worth of, you know, thyroid medication for your animal, and PetMeds will come back and give them 120 days. How does that give the veterinarian the chance to make sure that that client does not go beyond what is safe for that pet, to make sure that pet is getting the needed check, and to make sure that medication is actually working correctly for them?

There is a huge disconnect between where I think you are going with regard to how the veterinarians act, and the real culprit, the real worry is how these prescription distribution business companies are. It is purely to take advantage of the marketplace. And I am all in favor of, you know, free market enterprise. I don't try -- I always encourage, like I think most veterinarians, to get the best deal.

They come to us initially, you give them initial prescription, if it is chronic medication -- consumers are very sophisticated these days. There may be a few that don't understand they can go online or, you know, get medications elsewhere, but I think in this day and age, most of them are very sophisticated. I have clients coming in saying, hey, doc, can I get my Rimadyl or my Heartgard from somebody else? I say, sure, because I am not making much money on it. I am probably losing money on it. You mark it up a tiny bit because of the competition that is out there, that is good. But it is there in case my clients need it in a crunch. They know I am going to be there for them. You know, PetMeds may take, you know, 24, 36 hours to get them their needed medication.

So I would just add the health and safety thing in there. I think that is something that is being totally missed in the discussion at this point in time.

The other issue I would bring up real quick, and hopefully would be commented on in the second panel, is the idea that somehow the distribution system is limiting generics for veterinary patients or veterinary clients. Nothing could be further from the truth. I get calls all the time as a veterinarian, member of the United States Congress, on, you know, gosh, you know, we are having trouble getting generic medications. And it is not because of the distribution network, it is because, frankly, the consolidation that has gone on in the generic industry, some of the health and safety standards, some of the people that are doing these things. And that is a whole different subject.

The idea that this is a big problem for generic distributions is absolutely completely wrong. And most veterinarians, they don't deal with one distributor, they deal with multiple distributors. As a matter of fact, if you can't get it through a distributor, we go to -- most of the Prednisone prescriptions, we go through a pharmacy, for goodness sakes. But that is getting to be difficult to afford compared to the old days. Prednisone used be a very inexpensive medication, wide, broad-spread effectiveness, one that you need to check on, because chronic administration can cause serious problems. So even if it is a generic medication doesn't mean that it doesn't need veterinary supervision.

I think it is real important for the panel to understand, you know, what is going on here. The basic issue we have here is, who do you trust? Is this about trusting PetMeds, that is in this purely from a business standpoint to make money off of your pet, or is this about trusting your veterinarian, which has the best interests of you and your pet in mind? And I would urge the FTC to put a little bit of that heart into that business background that you are using as you go forward.

And with that, I yield back, Mr. Chair.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentleman from Oklahoma, Mr. Mullin. 5 minutes for your questions, please.

Mr. Mullin. I am not sure how you follow that up. I think you summed it up pretty well.

I have also got a letter here I want to present for the record from Oklahoma State University from the dean, that also opposes this.

Mr. Burgess. Without objection, so ordered.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Mullin. I also would like to follow up on a couple of questions. Was there an epidemic of people reaching out to you on asking for this to happen? I mean, was there an overswell of the public that was saying, we are being cheated, we are being taken advantage of, we want it to be required that all vets write a prescription before they can give the drug to us so we have an option? Was that taking place?

Ms. Koslov. So our study was prompted by legislation that was originally introduced in, I believe, 2011. And the reason that we did the study was that the legis- --

Mr. Mullin. Prompted by --

Ms. Koslov. So --

Mr. Mullin. Prompted by what?

Ms. Koslov. We don't know what it was prompted by, but the legislation, if enacted, would have given us rulemaking authority.

Mr. Mullin. So what did your --

Ms. Koslov. And given that we would have had --

Mr. Mullin. What did the study do? What did the study come up with? I mean, did you find out that there was a large outcry from the public that was wanting this?

Ms. Koslov. Well, one of the things we needed to study was, given that the legislation would require prescription portability --

Mr. Mullin. No. That --

Ms. Koslov. -- we needed to understand --

Mr. Mullin. But that -- I know. But when --

Ms. Koslov. -- how that would fit in.

Mr. Mullin. -- you did the study, did the study come out and say, wow, there is a huge problem here?

Ms. Koslov. We found that there were a number of consumers who were either unaware of their right to take --

Mr. Mullin. What is the number? What is the percentage that you use? Because, look, I have lived on a farm my whole life, and this whole comparison that you are using the same legislation for contact lenses, huge difference, big difference. Contact lenses, people didn't even know they needed a prescription. They didn't understand the difference between glasses and contacts. They didn't understand the reverse effect that would happen. My kids wear glasses -- wear contacts and so does my wife, until she had Lasix, but they didn't understand that the different material you put in your eye could cause problems. They didn't understand that there is a difference between one contact brand and the next contact brand.

This is vets that are there with their patient, that are prescribing the medication right then. There is already over 30 States that already have legislation in place that says that if a patient asks for it, that the vet will provide it. And I would say the other States, the vet would do it anyway. So why? Tell me the percentage to make you say that this has to be the legislation that you guys are proposing, because all it does -- all it sounds like to me is just more regulation on an industry that is struggling the way that it is now. There is a shortage of vets, especially in rural America. We cannot find enough

of them. And this is just another reason to keep people out of it.

Ms. Koslov. So the commission hasn't actually taken a position on the pending legislation. So the report focused more qualitatively on what is going on in the marketplace --

Mr. Mullin. But you already support it --

Ms. Koslov. We have --

Mr. Mullin. -- so you have taken a position.

Ms. Koslov. The commission has not come out in support of any specific legislation. We are supportive generally of measures to increase prescription portability.

Mr. Mullin. Which is essentially saying that you support the legislation without saying you support the legislation. That is the way we do it all the time up here.

So my point is, is why? What was the percentage that prompted you to think that this is a good idea?

Ms. Koslov. I don't have a specific percentage for you. The report focused much more on the policy of --

Mr. Mullin. So this is just another piece of regulation that is being pushed out by a Federal agency without a need for it.

Ms. Koslov. Well, we are not pushing the legislation.

Mr. Mullin. I know that.

Ms. Koslov. We are responding to the legislation.

Mr. Mullin. But it doesn't matter.

Ms. Koslov. We identified a need from consumers. Consumers need more information in this huge marketplace to be able to exercise

their options.

Mr. Mullin. Was there a lack of information being provided?

Ms. Koslov. Our understanding is that a number of consumers did not have the --

Mr. Mullin. Understanding. What was the study that showed that you are -- you are speaking that there was a lack of information. So speak in specifics by saying what draw that. I don't want assumptions. What is the percentage that said that there was a lack of information being out there to the consumer?

Ms. Koslov. I don't have a percentage for you. I would point you to --

Mr. Mullin. So then you can't say --

Ms. Koslov. -- the record of our workshop --

Mr. Mullin. Then you can't say that there was --

Ms. Koslov. -- and our 700 public comments.

Mr. Mullin. -- there was a lack of information to the public. You are making that general analysis, and it is -- and you are making it off of your belief, but there is no analogy to back that up.

Ms. Koslov. We are making it based on the record of the testimony at our workshop, the 700 public comments, and the additional research that we conducted.

Mr. Mullin. Then what was the percentage of the 700 that you got that information from?

Ms. Koslov. We did not quantify what percentage of consumers --

Mr. Mullin. Well, I think that would be pretty --

Ms. Koslov. -- had asked for this information.

Mr. Mullin. -- important. I mean, don't you? If we are going to come out in favor of legislation, which I know you haven't, but you have, wouldn't that be important for this committee to know?

Ms. Koslov. I don't think that we need to be able to quantify a specific percentage of consumers who are --

Mr. Mullin. Well, yes, it would, because if there is a few bad apples, let's go after the bad apples, let's not go after the entire industry and use a one-size-fits-all approach that we do so often up here.

Ma'am, I appreciate the position that you are at and I appreciate you coming here and talking to us, but even though you are not supportive, you are speaking in favor of it, yet you are not able to tell us why you are speaking in favor, other than you are saying that the consumers need it, but you can't tell us why the consumers need it.

So I yield back, Mr. Chairman.

Mr. Burgess. The gentleman yields back. The chair thanks the gentleman.

Seeing no other members wishing to ask questions, I do want to thank our witness for being here today. Mrs. Brooks had to leave. And we will try to get a question for the record in writing to you. I think this is an important point of the number of complaints that were received, the type of complaints that were received. So if we can get some quantification of that, I think that would be helpful to

the subcommittee.

And I do also want to stress this is not a legislative hearing. This is a hearing that was called on the basis of the report. And as you commented, you did the report because you saw legislation that would require you to enter into rulemaking. So it is proactive. And I appreciate having preventive medicine. I am a believer in having preventive medicine, but I do want to stress this is not a legislative hearing on a particular piece of legislation.

Does the gentlelady from Illinois seek to --

Ms. Schakowsky. I just wanted to make a comment. This hearing was requested by the majority based on a report that came from legislation that had been suggested. And I just felt the tone of the questioning was a bit of badgering of the witness, who, you know, is fulfilling her job, and I appreciate it, at the Federal Trade Commission.

And given the number of pet owners, I think the issue is certainly important to many, many people, regardless of whether or not there is a percentage known of how many people; and that, you know, the idea, the possibility of more competition was raised in a piece of legislation that would have affected the Federal Trade Commission. So I want to thank you for the study that was produced. And then, of course, it is always up to us on whether or not we proceed forward with any kind of legislation.

And I yield back.

Mr. Burgess. The gentlelady yields back. The chair thanks the

gentlelady.

Seeing no other members wishing to ask questions from our witness, I do want to thank our witness for being here today. I appreciate your forbearance through the voting recess that we took.

This will conclude our first panel. We will take a brief, underscore brief, recess to set up for the second panel, and the committee will resume at that time. The committee stands in recess.

[Recess.]

Mr. Burgess. I will call the subcommittee back to order. I want to thank everyone for their patience, taking the time to be here today. We are going to move into the second panel for today's hearing. We will follow the same format as the first panel. Each witness will be given 5 minutes for an opening statement and then we will have questions from members.

For our second panel, we have the following witnesses:
Mr. Nathan Smith, the vice-president of True Science; and Dr. John de Jong, chair of the board of directors at the American Veterinary Medical Association.

We appreciate both of you being here with us this morning.

We will begin the panel with you, Mr. Smith. You are recognized for 5 minutes for an opening statement, please.

STATEMENTS OF NATHAN SMITH, VICE PRESIDENT, TRUE SCIENCE, AND DR. JOHN DE JONG, CHAIR, BOARD OF DIRECTORS, AMERICAN VETERINARY MEDICAL ASSOCIATION

STATEMENT OF NATHAN SMITH

Mr. Smith. Mr. Chairman, Ranking Member Schakowsky, and members of the subcommittee, my name is Nate Smith and I am the vice president of strategy and international for True Science. I appreciate you allowing me to testify today.

True Science is a pet medication and wellness company founded in 2010. We deliver premium prescription and over-the-counter pet medications and veterinarian-recommended products. We are dedicated to pet owners, the two of three American households who have at least one dog or cat. Americans love their pets. They provide us companionship and comfort.

Pets are part of our families, which begs the question: Shouldn't we have the same access to affordable medications for our pets as we do for medications for our children, the same access to generics, and the same right to choose our pharmacy? We believe we should. That is why we support the Fairness to Pet Owners Act, a bipartisan bill to give pet owners the right to copies of their pets' prescriptions so they can shop around for the price, service, and convenience which suits them best.

This bill will help pet owners and their pets. First, the 80 million American households who own pets will save money, have more choices, and better access. Second, the marketplace will be more competitive and grow. We know competition and free markets work. Third, our pets will be better off. With medications more affordable and easier to obtain, pet owners will be better able to care for their dogs and keep them longer.

At the outset, let me make clear that we cherish our vets, as do pet owners. We entrust them with the care of the pets we love. This is not an us-verse-them type issue. We just see the marketplace and its potential differently. We believe that if the market for pet medication is open to competition, everyone will benefit: manufacturers, veterinarians, pet owners, and pets alike.

Today, the market for pet medication is bifurcated between those who can afford to buy pet medication and have reasonable access to vet clinics, and those with lower incomes or who do not have ready access.

For pet owners who get their prescriptions, the savings can be significant. If we can pull up the chart, and this is the page that was referred to earlier. Heartgard is the leading heartworm preventative. Pet owners can save around 20 percent if they buy from a big box or club store, 25 percent buying online, and 35 percent if they purchase the generic. Rimadyl is a painkiller used for treating arthritis in pets. Pet owners can save 22 percent at big box clubs or stores, 28 percent online, and 50 percent if they purchase the generic.

Mr. Chairman, in announcing this hearing, you asked whether Federal involvement is needed in the veterinary prescription medication space. That is an important question, since American households spend \$7 billion every year on pet medications, \$5.2 billion of which requires a prescription.

The fact is the Federal Government is already involved in the pet medication space, and in a major way. The government prevents pet owners from purchasing most pet medications without the approval of a prescriber, including medications pet owners in other industrialized countries can be purchased over the counter. If the Federal Government is going to tell pet owners, you can't buy this without a prescription, shouldn't it give those pet owners the right to copies of their prescriptions so they can shop around for the price, service, and convenience they prefer?

The problem is, anytime the government restricts access to a product by making it available only by prescription but permits the prescriber to sell what they prescribe, it sets up a conflict of interest in which the consumer is put squarely in the middle. Pet owners must ask the veterinarian, on whom they rely for their pet's healthcare, for permission to take their business elsewhere, and that is only if pet owners know they have a choice.

Policies and laws requiring pet owners to ask for a copy of their prescription simply do not work. We know they don't work, otherwise, far more pet owners would be buying generics and saving 50 percent, just like they do with human medications. These policies don't solve

the conflict of interest. They don't let consumers know they have a choice. They lead to discriminatory prices, they deter interstate commerce, and they are unenforceable.

Rather, the solution to this is simple, it is easy, and it is proven. Simply give pet owners a right to a copy of their prescription without having to pay a fee, sign a waiver. This is no -- there is no easier, more efficient or more effective way to let pet owners know they have a choice. It has worked with human medications, with eyeglasses, contact lenses; it will work with pet medications.

Thank you for considering our views. I look forward to answering your questions.

[The statement of Mr. Smith follows:]

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Mr. Burgess. The chair thanks the gentleman.

The chair recognizes Dr. De Jong. 5 minutes for your statement, please.

STATEMENT OF DR. JOHN DE JONG

Mr. De Jong. Thank you, Mr. Chairman.

Good morning, Mr. Chairman, and members of the committee. My name is Dr. John de Jong. I am the chair of the board of directors of the American Veterinary Medical Association and I am a companion animal practitioner in Massachusetts.

The American Veterinary Medical Association represents more than 88,000 member veterinarians worldwide engaged in a wide variety of professional activities and dedicated to the art and science of veterinary medicine. Every day, my staff and I strive to serve the best interests of both our animal patients and their human owners. Whether it is a routine visit to the veterinarian or an emergency, we all want our pets to receive the very best veterinary care.

Veterinarians understand that their clients must make financial decisions when planning and paying for services and medications, which is exactly why we support policies that give our clients the flexibility to choose where they fill their prescriptions. However, the Fairness to Pet Owners Act will require veterinarians to provide a written copy of every prescription for a companion animal, whether or not the client needs or even wants it. This is unnecessary and will place undue

regulatory and administrative burdens on veterinarians and small businesses.

Though not required by Federal law, the AVMA's Principle of Veterinary Medical Ethics and its policy on client requests for prescriptions call on veterinarians to write a prescription in lieu of dispensing a medication when desired by a client, and a majority of states have similar laws or policies.

In some cases, veterinary medications are only available through a veterinarian, negating the need for a written prescription. In other situations, the client might choose to have the medication dispensed by their veterinarian for a variety of reasons, including convenience and timeliness. But if this bill were to pass, veterinarians would still be required to provide the written prescription to these clients, take the piece of paper back, and then dispense the medication. This creates an administrative burden for veterinarians, who should be spending their time and resources taking care of their animal patients.

Although some of the bill's advocates claim that veterinarians are only interested in profiting from filling prescriptions in house, that is not the case. A report issued by Federal Trade Commission staff in 2015 did not find evidence of veterinarians withholding written prescriptions from their clients. Until we have real evidence showing that a problem actually exists, it is premature to consider such a sweeping Federal mandate.

Thirty-six States have laws, regulations, or policies that require veterinarians to provide their clients with a written

prescription upon request. If clients feel these requirements are not met, they can file a complaint for unprofessional conduct with any State's veterinary licensing board. And even in States that have not adopted formal laws or regulations in this area, state boards of veterinary medicine could find that a failure to honor a client's request for a prescription constitutes unconditional conduct, leading to discipline against a veterinarian.

In addition to the threat of discipline, veterinarians have other incentives to honor client's requests for prescriptions. A veterinarian who denies such a request risks alienating clients and harming his or her practice. In cases where the patient's condition may worsen quickly without medication and the client wishes to fill the prescription at a pharmacy, denial of a written prescription may place the veterinarian at legal risk.

The FTC report concluded that more study is needed on whether competition in the pet medication industry is affected by consumer knowledge of and access to portable prescriptions. There is no evidence that consumers in States without a requirement are adversely affected as to price or quality of pet medication services. In addition, the consumer outcry that would demand such a dramatic remedy simply does not exist.

If pharmacies believe consumers are unaware of the option to obtain products from them, then they are free to market and advertise their services, much like they do for other products.

We understand the financial burdens facing many of our clients,

and we all want what is best for a pet's well-being, but we do not believe that this legislation would advance those goals. We are honored by the ongoing confidence and trust of pet owners, and we look forward to maintaining that trust. Thank you.

[The statement of Dr. De Jong follows:]

***** INSERT 2-2 *****

Mr. Burgess. The chair thanks the gentleman.

The chair would first recognize Mr. Mullin from Oklahoma.
5 minutes for questions, please.

Mr. Mullin. Thank you, Mr. Chairman.

And if I come across, you know, I guess badgering, it is not badgering, it is passion and frustration. Because badgering, to me, seems like someone that is trying to pick a fight. I am not someone to pick a fight, but I do have frustration when we have something that is claiming to be needed and it is not needed, but yet the vets themselves and the associations are saying they don't like it, but yet they are saying -- the other side is saying there is a need for it.

And then, Mr. Smith, as you and I spoke in my office yesterday, the day before yesterday, we had, you know, a cordial conversation, and we agree to disagree on the issues. But I do take some -- I have some concerns about one thing that you said a while ago. You said that the system doesn't work, because if it did work, essentially there would be more prescriptions being bought online or from pharmacies? Am I summing up your opening statement and what you said there?

Mr. Smith. As a part of the consortium of organizations that support this bill, we work with a lot of the leading pharmacies in the country and we also have online pet pharmacies that are part of it. And every day, they experience thousands of people who weren't able --

Mr. Mullin. But you said it wasn't working because there wasn't enough prescriptions being bought online and through pharmacies. Is that fair to sum up what your statement said?

Mr. Smith. As a result of people not being able to get their prescriptions and having the intent or the --

Mr. Mullin. But you are basing that on what, on what data? You are basing that on the fact because there is not enough people buying it, or maybe that is because there is not a problem with it?

Mr. Smith. I am basing it on the experience of the members of our consortium, who --

Mr. Mullin. Which are who?

Mr. Smith. Which are the National Community Pharmacists --

Mr. Mullin. But these aren't the vets and these aren't the patients?

Mr. Smith. These are the licensed pharmacies that have the ability to dispense --

Mr. Mullin. But they are not the vets and the patients.

Mr. Smith. -- if someone shows up with a prescription, which --

Mr. Mullin. But, Mr. Smith, I am saying that you are basing your opinion not on the vets or the patients; the consumers. Are they the one asking for it or is it your clients?

Mr. Smith. Every day, thousands of pet owners show up to licensed pharmacists --

Mr. Mullin. No. I am asking --

Mr. Smith. And we are basing it on that, like, the actual experience.

Mr. Mullin. Okay. But are they asking for it?

Mr. Smith. Yes, they are --

Mr. Mullin. Who?

Mr. Smith. -- asking for it.

Mr. Mullin. Who is asking for it?

Mr. Smith. Pets owners who come into every Walgreens, Walmart. Petcarerx.com.

Mr. Mullin. They are coming in there because they already have a prescription, don't they?

Mr. Smith. No, no. Ten percent of people who show up to petcarerx.com, for instance, have a prescription, despite wanting to buy it because of lower prices.

Mr. Mullin. So did they ask -- had they asked their vet for one?

Mr. Smith. Yes. And in many cases --

Mr. Mullin. They had? Because the doctor that just testified said that there is already a system in place, and the letter I submitted earlier for the record specifically stated to two regulations that requires them to do that even outside the States that don't have it. So I don't think you are actually getting the correct information.

Also, I want to get to it before I run out of time. You also mentioned that this doesn't go to large animals, it specifically goes to companion pets. Is that what you told me in my office?

Mr. Smith. Yes.

Mr. Mullin. And yet we had this conversation that, what is considered a companion pet, because pigs are considered a companion pet now. So wouldn't that open the door to large animals? I mean, Shetlands are considered a companion pet now, and lot of people consider

those horses. Wouldn't that open the door to large animals too?

Mr. Smith. As we discussed in your office, our intent -- the \$7 billion being spent on pet medications is largely for dogs and cats --

Mr. Mullin. But this is piece -- what my point was, is that this intent opens the door to larger regulations, it goes into unintended consequences. Once you go down this road, how do you stop it? How do you put it back in a box?

And I am really concerned that we are going after an issue that you are in favor of that isn't needed. It is just undue regulation on an industry, as I stated earlier, that is already hurting.

I mean, I haven't -- I haven't had anybody to actually give me the numbers of what is causing this support for this to go through, other than assumptions, and that is simply what I am hearing from you too. While I support your position to be able to have an opinion, I do think you are on the wrong side on this.

I yield back, Mr. Chairman.

Mr. Burgess. The chair thanks the gentleman. The gentleman yields back.

The chair recognizes the gentlelady from Illinois, Ms. Schakowsky. 5 minutes for questions, please.

Ms. Schakowsky. Thank you.

So as we have heard, exclusivity agreements between manufacturers and distributors force some retailers to acquire medications they sell through secondary distributors. As much as 25 percent of all pet

medication being sold in the United States may have been acquired through secondary distributors.

Mr. Smith, is this figure consistent with what you are seeing in your experience?

Mr. Smith. Yes. We are a secondary distributor, so we supply all the leading human pharmacies the pet medications they have available, both Rx medications requiring a prescription and some of the leading over-the-counter medications.

We have had -- in terms of attempts to supply our generics, for instance, to veterinary clinics, the leading distributors for drugs going to veterinary clinics oftentimes have blocking agreements that won't allow our generic medications to go to the veterinarian so long as the brand from the pharmaceutical company is being offered through that distributor.

Ms. Schakowsky. So to obtain the medications they sell, secondary distributors have to buy products that are diverted from the traditional supply chain. In some cases, secondary distributors acquire medications by purchasing overstock from veterinarians. Is that correct?

Mr. Smith. Yeah, that is correct. We source in a couple of different ways. Sometimes, just as you mentioned, we will buy excess inventory from veterinarians, sometimes we buy straight from distributors, and at other times we have even -- we have been able to source direct from manufacturers. So we -- different drugs travel in different ways. We carry a wide range of medications, but we have a

broad array of ways that we get the product to then sell on to human pharmacies.

Ms. Schakowsky. Okay. So, Dr. De Jong, has the American Veterinary Medical Association surveyed veterinarians to find out how widespread the practice of reselling to secondary distributors is, and if so, what was the result?

Mr. De Jong. We have never surveyed our members as far as that specifically. We do find out from our veterinarians all over the country that they are strongly opposed to this legislation. But as far as what percentage of veterinarians are actually buying and selling to secondary distributors, I could not tell you that.

Ms. Schakowsky. So let's consider a branded flea and tick over-the-counter medication that is being sold at a big box store. The manufacturer has made the medication, sold it to a distributor, who sold it to a veterinarian, who sold it to a secondary distributor, who sold it to an alternative retailer, who then sells it to a consumer.

So, Mr. Smith, it is not uncommon for pet medications to be sold three or four times within the distribution network before they are ever sold to an actual pet owner, correct?

Mr. Smith. That is correct. The supply chain is longer. There are more players in it, more expense of moving things, additional profits being taken by each player. But despite that, on the example you mentioned, Frontline, Frontline Plus, generally speaking, those clubs will still, despite the additional costs, have a 20 percent lower price than the price offered --

Ms. Schakowsky. But isn't it fair to say that everybody in the supply chain is hoping to make a profit from these transactions, or at least to recoup their administrative costs? Isn't that right?

Mr. Smith. For sure.

Ms. Schakowsky. And most of them aren't selling the product at a loss, right?

Mr. Smith. No.

Ms. Schakowsky. So, therefore, it is possible that the price of these pet medications has been marked up multiple times long before they are sold to consumers, right?

Mr. Smith. That is correct.

Ms. Schakowsky. So in your experience, how much does this affect the prices that pet owners end up paying out of pocket for pet medications? I heard you say that there still, at the end of the day, can be a lower price for consumers, but this does not seem to be an efficient supply chain, to me, in terms of best buy for the consumer.

Mr. Smith. Prevailing prices, and we don't know exactly, but you would imagine prices could fall an additional 15 to 30 percent, based on the elimination of those extra steps in the supply chain.

Ms. Schakowsky. Thank you. And I yield back.

Mr. Burgess. The chair thanks the gentlelady. The gentlelady yields back.

And the chair would like to exercise the chairman's prerogative and ask Mr. Schrader if he would like to go next in the questioning. And I will yield to you. 5 minutes, sir.

Mr. Schrader. Thank you very much, Mr. Chairman. I appreciate it.

Mr. Smith, where are you from?

Mr. Smith. Utah.

Mr. Schrader. Utah. Do you know where the sponsor of the bill, pet fairness medication, is from?

Mr. Smith. Yes, I do.

Mr. Schrader. And where is that?

Mr. Smith. Utah.

Mr. Schrader. Okay. Okay. Could you tell me a little bit about how you distribute your two products that you manufacture? How do you distribute them? And what do you manufacture?

Mr. Smith. We manufacture generic versions of all patent medication. We also manufacture pet treats and pet wellness products, including hip and joint kind of -- a medicinal line for hip and joint, dental products. So we have a wide range of things that we manufacture and sell ourselves.

Mr. Schrader. You also manufacture, as I understand it, Carprofen and --

Mr. Smith. We do.

Mr. Schrader. -- your version of ivermectin/pyrantel?

Mr. Smith. We do. It is called TruProfen.

Mr. Schrader. Very good. Good commercial. That is fine. I am okay with that. Good businessman.

So it is my understanding you sell only direct to pharmacies, is

that correct, for at least those last two medications?

Mr. Smith. Yes, we sell to human pharmacies.

Mr. Schrader. Just to pharmacies. Isn't that correct?

Mr. Smith. We have attempted to sell through the leading distributors of all the medications to veterinary clinics, but because of the blocking agreements, we have been told that they are unable to carry substantially similar generics to the brands without losing their ability to distribute the brands.

Mr. Schrader. That certainly hasn't been my experience.

Dr. De Jong, do you want to comment on that, please?

Mr. De Jong. Not necessarily.

Mr. Schrader. Yeah. I mean, what we have seen here is that there are usually a lot of opportunities. Now, the fact that you are prescribing and distributing only to pharmacies as opposed to direct to the patients, direct to other distributors, the secondary market that Congresswoman Schakowsky talked about, why aren't you distributing direct to them?

Mr. Smith. We are a 6-year-old business, so our initial start was dealing with the big pharmacies. Our whole infrastructure is set up to work in large quantities sufficient to meet the needs of the country's biggest pharmacies in the country.

Mr. Schrader. So what you have done is made a business choice to limit the distribution of your products to make money, and I get that. Doesn't this fly in the face of your argument a moment ago about increased competition and making sure it is available through all

different outlets?

Mr. Smith. As our company has grown, our intent actually is to expand to more direct to veterinary opportunities. We have started the process of trying to figure out a way to sufficiently distribute broadly.

Mr. Schrader. But currently the bottom line is you restrict access to your medications.

So to be honest with you, Mr. Chairman, I think that flies in the face of what we are talking about. I don't know too many businesses that are advocating for more Federal involvement, particularly in an area that is not a problem, I think it has been clearly stated.

Just a last comment if I may, Mr. Chair. I am very concerned about the tone that -- what we are trying to do with this type of approach to distribution of prescription medications and other things that, frankly, need some sort of doctor-patient, you know, relationship on an ongoing basis, it flies in the face of a lot of what we passed yesterday out of our full committee.

We are very concerned about overprescription, overuse of opioids. And here we are going down a track of trying to make these medications, many of which are very dangerous to our pet populations, more widely distributed, more subject to potential abuse. I think that, you know, based on what this committee has been working on, this sort of flies in the exact opposite direction.

I would also argue, respectfully, that the administration has made it a point to be very concerned about the overuse of antimicrobials

and other medications in livestock operations. And, again, you know, we are trying to pull it back from some of the over-the-counter use, not because we don't want the farmers or ranch communities to be successful; we are worried about, you know, inadvertent circumstances and problems without direct veterinary supervision.

So, Mr. Chairman, with all due respect, I think that this whole approach to the distribution and, frankly, the impugning of the veterinary community is exactly the opposite of where this committee has been going. And I hope that this is the first and last hearing we have on this sort of bill, with all due respect.

I appreciate everyone's time. Thank you.

Mr. Burgess. The gentleman yields back. The chair thanks the gentleman for his forthright testimony.

And Dr. Schrader touched on something, Dr. De Jong, that I was going to ask, and I will anyway because it is now my time. And I yield to myself 5 minutes for questions.

You know, a lot of parallels to the contact lens legislation from 2003 have been drawn. And one of the concerns that has come up now several years later is that a contact lens prescription is written and then it is refilled. Yes, the prescribing physician has an opportunity to interject some professional opinion when it is presented for a refill to the online contact lens dispenser, but there is also a fairly finite period of time in which the prescriber can reply, and if they don't, by default, it was approved.

So you get into these situations where the office was queried,

but perhaps if it was the wrong time of day, the time frame was short, nobody responded, so I guess it is okay, here is your stuff, we will ship it this afternoon.

Dr. Schrader brought up the question, or an observation with a medication like Prednisone. And Prednisone is something that you want to be thinking about. You just would never want to write an indefinite prescription for Prednisone to take forever, even though we recognize there are some conditions where a patient, in this case a pet or an animal, is going to require the medication over a long period of time, still there needs to be some real physician or veterinarian interaction and some questions asked.

So is that something which you are in general agreement about, that there would be a hazard just by these indefinite refillings of prescriptions if we followed the same pathway as the contact lens legislation?

Mr. De Jong. Absolutely. I think it is important that we have to monitor our patients on a regular basis if they are being given any medication that has side-effects, and just about every medication out there potentially does have side-effects. If you were to give an indefinite prescription without monitoring the patient, you could do real harm to the patient.

Mr. Burgess. You know, and everybody else has talked about their pet today. I didn't as I started my opening statement. Now I am regretting that I didn't, because if my dog is watching, I am sure he feels left out.

Ms. Schakowsky. Go for it.

Mr. Burgess. But February a year ago, our little dog Sammy, who at that time was 15 years old, developed signs and symptoms of congestive heart failure. And my wife took him to the vet and said, please, what can you do? We would miss our little friend. And he said, well, I can't do much, but I will give you some stuff, and we might get 1, 2, or 3 months out of it. Well, doggone it, that little dog is still going strong today. But every month, basically, my wife goes back to the vet to get the medications.

Sure, we could get them from an on -- if I had had any idea he was going to live this long, maybe I would have. But I always thought it was a short-term venture, but it is also helpful, because there is an interaction that takes place of how's little Sammy doing, and is he looking good, you know, does he need to come in for a recheck? And several times, in fact, that recommendation has been made and followed and a medication adjustment has been made, which you wouldn't have had the opportunity to do, while I guess you could have taken a picture with your iPhone and sent it in to the 1-800 number and gotten some advice back, but let's face it, we are not to that level of sophistication.

So I realize that is anecdotal, and the plural of anecdote is not data, and I get that, but at the same time, I think there is some value in the pet owner-veterinarian interaction that takes place, and I think that brings value to the transaction. I think that is something that I would be uncomfortable about just saying that it -- I would discount

that and that is not important. Sure, people should be able to make their own decisions.

Have you ever denied a patient or an animal owner a written prescription if they asked you for one?

Mr. De Jong. Never. And I can't think of any veterinarians or colleagues that I know that have.

I can tell you that in my almost 31 years in practice next month, I have had plenty of clients ask, can you give me a written prescription, or can I call online and have it sent in? We get them in our office every day. But I have never, ever experienced a client say, is that an option?

I think the knowledge base of the consumer, of the general public is well aware. The amount of commercials for online pharmaceuticals are on every TV station in America, and the consumers today are educated. With the advent of the Internet and commercial advertising, they know it is out there.

Mr. Burgess. I am sure there are Facebook ads. And I agree with Dr. Schrader. I think that is a positive thing that consumers do know that they have more choices.

I just have to make one other editorial comment. Many people have said today that, you know, we spend a lot of money on pet medications, true enough, we do, and should we not have the same options for our pets that we do for our families.

I would just caution people to be careful what you wish for. I know my dog wouldn't want to go to an HMO. And the fact that my dog

is taken care of by a veterinarian where it is a cash transaction, I recognize they may get a little bit better attention than I get when I go to my HMO. And there is just -- there is nothing like a cash business. People ought to be careful what they wish for, because, after all, our pets are pretty darn important.

Is there anyone on the panel that wishes a followup or additional or redirected question?

Seeing no additional members wishing to ask questions for this panel, I do want to thank our witnesses for being here today.

Before we conclude, I would like to submit the following documents for the record by unanimous consent: a letter from the Animal Health Institute, a letter from Consumers Union, a letter from Oklahoma State University.

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Burgess. Pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record, and ask the witnesses that they submit their responses within 10 business days upon receipt of those questions.

So without objection, the subcommittee is adjourned. And thank you all for being here.

Mr. De Jong. Thank you.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]