



Attorney General Maura Healey

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MAURA HEALEY
ATTORNEY GENERAL

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Media Contact

Emily Snyder
(617) 727-2543

AG Healey Secures \$5.2 Million Settlement Over Pharmaceutical Company's Efforts to Delay Generic Competition

Anticompetitive Conduct Caused Massachusetts Entities and Consumers to Pay More for Wakefulness Drug Provigil

BOSTON – Following a multistate investigation into anticompetitive conduct, Attorney General Maura Healey today announced a \$125 million settlement with pharmaceutical company Cephalon for delaying generic versions of a wake-promoting drug used to treat certain sleep disorders like narcolepsy from entering the market for several years.

The AG's Office, along with 47 other states, reached this settlement as a result of an investigation into Cephalon and its affiliated companies. In the settlement, Massachusetts will recover approximately \$5.2 million for both consumers and the state. This includes more than \$3.6 million for state entities, such as MassHealth, that purchased the drug Provigil, and an estimated \$761,000 for consumers.

"Anticompetitive practices aimed at preventing low-cost generic drugs from entering the market hurt consumers and our state," said AG Healey. "We will continue to work with our state and federal counterparts to ensure that drug manufacturers that wrongfully delay the introduction of more affordable generic alternatives are held accountable."

The states allege that as patent and regulatory barriers that prevented Provigil's generic competition neared expiration, Cephalon intentionally defrauded the Patent and Trademark Office to secure an additional patent, which a court subsequently deemed invalid and unenforceable in November 2011. Before that court finding, Cephalon delayed generic competition for nearly six years by filing patent infringement lawsuits against all potential generic competitors. Cephalon settled those lawsuits in 2005 and early 2006 by paying competitors to delay the sale of their generic versions of Provigil until at least April 2012. Because of that delayed entry, consumers, states, and others paid hundreds of millions more for Provigil.

This multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission (FTC). In May 2015, the FTC settled its suit against Cephalon for injunctive relief and \$1.2 billion, which was paid into an escrow account. The FTC settlement allowed for those escrow funds to be distributed for settlement of certain related cases and government investigations, such as those of the 48 states announced today.

Today's settlement is subject to court review, including providing consumers with notice and an opportunity to participate in, object to, or opt out of settlement.

This matter was handled by Assistant Attorney General Matthew Lyons, Division Chief William Matlack, and Kyle Barr, Paralegal and Economic Analyst of Attorney General Healey's Antitrust Division.

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