

Department of Justice
Office of the Attorney General

News Release

For Immediate Release

August 4, 2016

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Pharmaceutical Manufacturer Cephalon Will Pay New Hampshire over \$650,000 As Part Of Provigil Antitrust Settlement


Anticompetitive conduct delayed generic competition causing New Hampshire and New Hampshire consumers to pay more for Provigil

Attorney General Joseph A. Foster today announced that New Hampshire consumers and the State of New Hampshire will receive a total of over \$650,000 as part of a settlement concerning the wakefulness drug, Provigil. The settlement ends a multistate investigation into anticompetitive conduct by Cephalon and affiliated companies ("Cephalon") to protect the monopoly profits it earned from its wakefulness drug, Provigil, by delaying generic competition. New Hampshire and 48 other attorneys general entered into a \$125 million settlement with Cephalon.


Provigil is marketed to promote wakefulness and is used in the treatment of certain sleep disorders, including narcolepsy, and shift work sleep disorder. The active ingredient in Provigil is modafinil. In 2011, annual Provigil sales by Cephalon exceeded \$1 billion and the drug accounted for more than half of Cephalon's total consolidated net sales.

As patent and regulatory barriers that prevented generic competition to Provigil neared expiration, Cephalon intentionally defrauded the Patent and Trademark Office to secure an additional patent, which a court subsequently deemed invalid and unenforceable. Before that court finding, Cephalon was able to delay 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 the generic competitors to delay 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 than they would have had generic versions of the drug launched by early 2006, as expected.

The settlement includes \$35 million for distribution to consumers who bought Provigil. That recovery amount might be supplemented with recovery from a settlement of a class action lawsuit against Cephalon. The estimated amount for distribution to New Hampshire consumers is \$167,000. The State's share of the settlement will be approximately \$485,000.

This multistate settlement  was facilitated by litigation brought against Cephalon by the Federal Trade Commission. 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.

The settlement is subject to court review, including providing consumers with notice and an opportunity to participate in, object to, or opt out of settlement. The states expect court review will be provided by Judge Mitchell Goldberg of the Eastern District of Pennsylvania, who is currently overseeing other litigation concerning Provigil against Cephalon and others.

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