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Christopher S. Porrino
 Attorney General



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For Immediate Release:

August 4, 2016

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New Jersey to Receive \$2.7 Million from Multi-State Settlement Resolving Allegations that Drug Maker Engaged in Anti-Competitive Conduct

[View Settlement Agreement](#)

TRENTON – Attorney General Christopher S. Porrino announced today that New Jersey will receive approximately \$2.7 million as a result of its participation in a multi-state settlement with Cephalon that resolves allegations the company engaged in anti-competitive conduct to protect monopoly profits earned from its sleep disorder drug Provigil.

The alleged anti-competitive conduct by Cephalon kept generic versions of Provigil, which promotes wakefulness, from reaching the market for years.

“This settlement represents a fair resolution to a troubling matter,” said Attorney General Porrino. “The unlawful, anti-competitive conduct alleged by the states in this investigation is the kind of thing that burdens everyone – patients, businesses and taxpayers alike – with higher costs for prescription medications. Working with our multi-state and federal partners, we are committed to combating this kind of alleged market manipulation.”

Under terms of the multi-state settlement, Cephalon and affiliate companies will pay a total of \$125 million to the participating states.

The multi-state investigation alleged that, as patent and regulatory barriers blocking generic competition neared expiration, Cephalon intentionally defrauded the U.S. Patent and Trademark Office to secure an additional patent for Provigil. A court subsequently deemed the patent invalid and unenforceable.

Before that court finding, however, Cephalon was able to maintain a market monopoly for Provigil 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 into the market, consumers, states and others paid hundreds of millions of dollars more for Provigil than they would have if generic versions of the drug had launched by early 2006, as expected.

The settlement announced today includes \$35 million for distribution to consumers who bought Provigil in New Jersey and throughout the other 47 participating states. It is anticipated that a court-approved Claims Administrator will administer the individual consumer recovery aspect of the settlement.

A multi-state review of Cephalon's conduct with regard to Provigil began a year ago, and is rooted in litigation brought against the company 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 Provigil-related cases and government investigations, such as the multi-state settlement announced today.

The multi-state Cephalon settlement is subject to review by U.S. District Court Judge Mitchell Goldberg, who presides in the Eastern District of Pennsylvania in Philadelphia.

Deputy Attorneys General Labinot A. Berlajolli and Glenn Graham of the Division of Law are representing the State in the Provigil matter.

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