

Press Release

Attorney General's office helps secure \$125 million settlement with Cephalon and affiliated companies

8/4/2016

HARRISBURG — Attorney General Kathleen G. Kane's office today announced a \$125 million settlement with Cephalon, a biopharmaceutical company, and affiliated companies to resolve a multistate investigation of anticompetitive conduct. The conduct, which protected profits earned from Cephalon's landmark wakefulness drug, Provigil, delayed generic versions of Provigil from entering the marketplace for several years.

The settlement ends an investigation by 48 states and the District of Columbia. It includes \$35 million for distribution to consumers who bought Provigil in the 48 states and the District of Columbia.

Pennsylvania's total recovery will be approximately \$6.8 million. That figure consists of \$4 million to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts, \$1.8 million for distribution to Pennsylvania consumers for payments for Provigil and \$1 million for Pennsylvania's share of disgorgement and costs.

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.

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 and the District of Columbia.

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 United States District Court for the Eastern District of Pennsylvania, who is currently overseeing other litigation concerning Provigil against Cephalon and others.

This matter was handled on behalf of Pennsylvanians by Senior Deputy Attorneys General Joseph Betsko and Jennifer Thomson of the Office of Attorney General's Antitrust Section. The Antitrust Section is tasked with protecting the free enterprise system by detecting anti-competitive practices and taking legal action to stop them.

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