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AG Kilmartin Secures Recovery for Consumers and the State for Cephalon Efforts to Preclude Provigil Competition

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Anticompetitive conduct delayed generic competition causing Rhode Island and Rhode Island's consumers to pay more for Provigil

State of Rhode Island to Receive \$886,693 and Consumers to Receive \$193,031

Attorney General Peter F. Kilmartin today announced a \$125 million, 48 state settlement with Cephalon and affiliated companies ("Cephalon"). The settlement ends a multistate investigation into anticompetitive conduct by Cephalon to protect the monopoly profits it earned from its landmark wakefulness drug, Provigil. That conduct delayed generic versions of Provigil from entering the market for several years.

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.

"Cephalon knew delaying the entry of generic versions of the drug Provigil to the market would result in hundreds of millions of dollars of profits, at the expense of consumers and states of course," said Attorney General Kilmartin.

"Today's settlement is a message to other pharmaceutical companies that we are not going to allow anyone to employ dirty tactics to pad the bottom line."

The settlement includes \$35 million for distribution to consumers who bought Provigil. (This settlement has no impact on the pending class action lawsuit against Cephalon.) Rhode Island's total recovery will be approximately \$1,079,725 consisting of: \$576,782 to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts; an estimated \$193,031 for distribution to Rhode Island consumers for payments for Provigil; and \$309,911 for Rhode Island's share of disgorgement and costs.

This multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission. In March 2016, the FTC filed a lawsuit 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.



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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 **EMPLOYMENT (/employment/)**

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