

Attorney General Slatery Announces Settlement with Pharmaceutical Company that Engaged in Anti-Competitive Conduct

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Attorney General Herbert H. Slatery III today announced that Tennessee, along with 48 other states and the District of Columbia, reached a \$125 million settlement with Cephalon, Inc. and affiliated companies, now part of Teva Pharmaceutical Industries.

The settlement ends a multistate investigation into alleged anticompetitive conduct by Cephalon designed to block generic competition to its sleep-disorder drug, Provigil. That conduct delayed generic versions of Provigil from entering the market for several years, while at the same time Provigil sales in the United States exceeded \$1 billion.

The settlement resolves allegations that Cephalon intentionally defrauded the U.S. Patent and Trademark Office in an effort to secure an additional patent to protect Provigil from generic competition. For nearly six years, Cephalon was able to prevent generic competition by filing patent infringement lawsuits against all potential generic competitors. Cephalon settled those lawsuits in 2005 and early 2006 by paying those competitors to delay the sale of their generic versions of Provigil until at least April 2012. Because of that delay, consumers, states, and others paid hundreds of millions more for Provigil than they would have if generic versions entered the marketplace as expected in 2006.

“The tactics used by Cephalon to prevent competition in the marketplace, harmed consumers and the State,” Attorney General Slatery said. “Most importantly, this settlement will compensate consumers who overpaid for their prescription drugs.”

In total, the states will receive \$35 million for distribution to consumers who purchased Provigil. The State of Tennessee and its consumers will receive an estimated \$3.32 million consisting of: (1) approximately \$1.75 million to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts; (2) an estimated \$1.1 million for distribution to Tennessee consumers for payments for Provigil; and (3) approximately \$466,000 for Tennessee’s share of costs associated with the lengthy investigation.

This multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission. In May 2015, the FTC settled its 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.

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.

In 2012, Cephalon, a U.S. biopharmaceutical company headquartered in Frazer, Pennsylvania, was acquired by Teva Pharmaceutical Industries, Ltd. Conduct related to the settlement happened prior to the 2012 acquisition. The company has denied wrongdoing in the settlement.

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