

Pharmaceutical Manufacturer Will Pay Vermont Over \$1.6 Million As Part Of Provigil Antitrust Settlement

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Vermont consumers and the State of Vermont will receive a total of over \$1.6 million as part of a settlement concerning the wakefulness drug Provigil, Attorney General William H. Sorrell announced today. The settlement ends a multistate investigation into anticompetitive conduct by Cephalon and affiliated companies (“Cephalon”) to protect the monopoly profits earned from Provigil by delaying generic competition. Vermont and 48 other attorneys general entered into a \$125 million settlement with Cephalon.

“We must do all we can to ensure that the road for generic drugs is not blocked by illegal obstacles such as those Cephalon put in the way,” said Attorney General Sorrell.

As patent and regulatory barriers that prevented generic competition to Provigil neared expiration, Cephalon defrauded the U.S. Patent and Trademark Office into issuing it 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 further 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 if generic versions of the drug were released by early 2006.

The multistate settlement was facilitated by the 2015 settlement of litigation brought by the Federal Trade Commission against Cephalon. The FTC settlement allowed for \$1.2 billion in escrow funds to be distributed for settlement of certain related cases and government investigations, such as those of the states.

Under the terms of the settlement agreement, consumers will receive notice and an opportunity to participate in, object to, or opt out of settlement. The settlement must be reviewed by a court. That review will likely be 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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