

KEN PAXTON

Attorney General Paxton Joins with 48 Other States to Secure Settlement with Cephalon Over Drug Monopoly

Friday, August 5, 2016 – Austin

AUSTIN – Texas Attorney General Ken Paxton today announced a \$125 million, 49-state settlement with Cephalon, Inc., and affiliated companies. The settlement ends a multistate investigation into anticompetitive conduct by Cephalon seeking to extend its monopoly on its narcolepsy drug, Provigil. That conduct delayed generic versions of Provigil from entering the market for several years.

As the patent on Provigil neared expiration, Cephalon intentionally defrauded the Patent and Trademark Office to secure an additional patent, which a court 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 the 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 launched by early 2006, as expected. In May 2015, the FTC settled its suit against Cephalon for injunctive relief and \$1.2 billion for settlement of certain related cases and government investigations.

The multistate settlement includes \$35 million for distribution to consumers who bought Provigil. 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 to seek approval of the consumer distribution in the Eastern District of Pennsylvania, where the FTC settlement and other litigation concerning Provigil has been filed.

To view the settlement agreement click here:

https://www.texasattorneygeneral.gov/files/eypress/Provigil_executed_Settlement_Agreement_7.28.16.pdf

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