

August 10, 2016

AG Fox Secures Cephalon Settlement For Consumers, State

Montana Attorney General Tim Fox announced today that his office and 47 other states and the District of Columbia entered into a \$125 million 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.

“Consumers benefit greatly from having generic options when they’re purchasing pharmaceutical drugs,” said Attorney General Tim Fox. “We need to do what we can to break down barriers that delay entry of generic drugs into the marketplace. This settlement holds Cephalon accountable for its anticompetitive conduct and will put some money back into the pockets of consumers who overpaid; it also compensates taxpayer funded state programs that overpaid for Provigil.”

The settlement includes \$35 million for distribution to consumers in the 48 states and District of Columbia who bought Provigil. The states hope this \$35 million consumer recovery will be supplemented with recovery from a settlement of a class action against Cephalon. Montana’s total estimated recovery will be about \$695,000 that will compensate Montana consumers and the State of Montana.

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.

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.