



Attorney General Doug Peterson

News Release

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Nebraska Attorney General Secures Recovery for Consumers and the State in Response to Cephalon's Efforts to Preclude Competition with Provigil *Anticompetitive conduct delayed generic competition causing the State of Nebraska and Nebraska consumers to pay more for Provigil*

Attorney General Douglas J. Peterson 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. Cephalon's 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 U.S. 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 the sale of their generic versions of Provigil until at least April 2012. Due to the delayed generic entry, consumers, states, and others paid hundreds of millions more for Provigil than they would have if generic versions of the drug had launched, as expected, by early 2006.

The settlement includes \$35 million for distribution to consumers who bought Provigil. It is possible that the \$35 million consumer recovery may be supplemented with a recovery under an ongoing private class action against Cephalon concerning the same conduct, assuming a favorable resolution of the matter. The State of Nebraska's total recovery will be about \$1.8 million consisting of: (1) approximately \$1.2 million to compensate for Provigil purchases by certain state entities or authorized purchases off state contracts; (2) an estimated \$250,000+ for distribution to Nebraska consumers for payments for Provigil; and (3) approximately \$285,000 for the State of Nebraska's share of disgorgement and costs.

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 the current investigation that is being resolved.

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 that 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 related parties.