Attorney General Doug Peterson

News Release

FOR IMMEDIATE RELEASE
April 18, 2017

Contact: Suzanne Gage
402.471.2656
Suzanne.gage@nebraska.gov

AG Peterson Urges Eligible Nebraska Residents to Submit Claims for Provigil Settlement

To receive settlement funds, claims must be filed by June 25

Attorney General Doug Peterson is urging Nebraska residents to file claims or make their views known on a $125 million multistate settlement that provides $35 million for distribution to consumers who paid for the brand-name drug Provigil or generic modafinil from June 24, 2006, to March 31, 2012.

Provigil, which includes the active ingredient modafinil, is approved by the federal Food and Drug Administration (FDA) to improve wakefulness in adult patients with excessive sleepiness associated with narcolepsy, obstructive sleep apnea, and shift work disorder.

In August 2016, Nebraska and 47 other state attorneys general announced the settlement with biopharmaceutical company Cephalon and its affiliated companies, including Teva Pharmaceutical Industries, Teva Pharmaceuticals USA and Barr Laboratories, that resolved allegations that the companies engaged in unlawful "pay-for-delay" anticompetitive conduct involving the patent exclusivity for Provigil.

The settlement included $35 million to compensate eligible consumers who may have been harmed by the alleged conduct. While the claims period has been advertised for several months, many consumers may not realize that the claims period will close. **Originally, the deadline for consumers to file claims seeking to receive some of that $35 million or object to the settlement was Thursday, April 13, 2017. The states sought and were granted an extension of the time to claim or object to June 25, 2017.**

Eligible consumers are those who reside in a participating state or the District of Columbia and who paid for brand-name Provigil or generic modafinil from June 24, 2006, to March 31, 2012. Nebraska residents are eligible for approximately $250,000 in restitution payments through this settlement.

For more information or to obtain a claim form, visit www.StateAGProvigilSettlement.com **or call 1-877-236-1413.**

"Pay-for-delay" conduct occurs when a branded drug company seeks to unlawfully maintain its exclusive rights by paying a would-be generic competitor to delay entry into the market and thus keep prices at artificially high levels.

As the patent for Provigil neared expiration in 2001, the states alleged that Cephalon intentionally mislead the United States Patent & Trademark Office (PTO) in order to secure an additional patent for the purpose of preventing competition. By misleading the PTO, Cephalon was able to obtain FDA exclusivity for modafinil until June 2006 and extend patent exclusivity until April 2012. A court subsequently deemed the additional patent invalid and unenforceable, but prior to that ruling, Cephalon was able to delay generic competition for over a decade by filing patent infringement lawsuits against all potential generic competitors.

Cephalon later settled lawsuits with its generic competitors in 2005 and early 2006 by paying them to delay the sale of their generic versions of Provigil until at least April 2012 – six years after expiration of FDA exclusivity but three years before patent expiration. The delayed entry cost consumers, states, and others hundreds of millions more for Provigil than if generic versions of the drug had launched by early 2006, as expected.

###