



DEPARTMENT OF THE ATTORNEY GENERAL

DAVID Y. IGE
GOVERNOR

DOUGLAS S. CHIN
ATTORNEY GENERAL

For Immediate Release
August 4, 2016

News Release 2016-49

PROVIGIL MANUFACTURER AND OTHERS TO PAY MORE THAN \$1 MILLION TO HAWAII FOR HINDERING RELEASE OF GENERIC VERSIONS TO CONSUMERS

HONOLULU – Attorney General Doug Chin today announced a \$125 million multistate 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 wakefulness drug, Provigil. That conduct delayed generic versions of Provigil from entering the market for several years.

The settlement includes \$35 million for distribution to consumers in 48 states plus the District of Columbia who bought Provigil. Based on pharmaceutical retail sales data, Hawaii consumers' share of the \$35 million is estimated to be \$160,000, depending on the number and quality of claims submitted. In addition, Hawaii is expected to receive about \$1,020,543.05. This amount consists of \$400,994.62 to compensate for Provigil purchases by certain state entities or authorized purchases from state contracts and \$619,548.43 for Hawaii's share of disgorgement and costs.

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 if generic versions of the drug had launched by early 2006, as expected.

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.

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For more information, contact:

Joshua A. Wisch
Special Assistant to the Attorney General
(808) 586-1284
Joshua.A.Wisch@hawaii.gov
<http://ag.hawaii.gov>