



PRESS RELEASE

Colorado Department of Law
Attorney General Cynthia H. Coffman

FOR IMMEDIATE RELEASE

November 16, 2016

AG Coffman Secures \$2.27 Million for Colorado from Provigil Settlement

Denver - Attorney General Cynthia H. Coffman today announced that Colorado will recover approximately \$2.27 million as part of a \$125 million, 48-state settlement with Cephalon and its affiliated companies. The settlement ends a multistate investigation into Cephalon for engaging in anticompetitive conduct to delay generic competition with Provigil, its landmark wakefulness drug.

“Consumers should have access to less expensive generic versions of prescription drugs as early as possible,” said Attorney General Coffman. “It is indefensible that Cephalon would stifle competition for Provigil in order to enrich itself at the expense of Colorado consumers.”

Colorado’s total recovery amount will consist of the following: approximately \$710,000 to compensate for Provigil purchases by certain state entities or authorized state contracts; an estimated \$860,000 for distribution to Colorado consumers who purchased Provigil; and roughly \$700,000 for Colorado’s share of penalties, disgorgement, and costs.

This multistate settlement was facilitated by litigation brought against Cephalon by the Federal Trade Commission (FTC). According to the FTC, as expiration of the patent and regulatory barriers preventing generic competition neared, Cephalon intentionally defrauded the Patent and Trademark Office in order to secure a new patent for Provigil. A court later deemed this new patent invalid and unenforceable. Prior to that court finding, Cephalon was able to postpone 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 refrain from launching generic versions of Provigil until at least April 2012. As a result of the delay in generic versions coming to the market, consumers, states, and others paid hundreds of millions of dollars more for brand-name Provigil than they would have had generic versions of the drug launched by early 2006 as expected.

The FTC settled its suit against Cephalon in May 2015, obtaining both injunctive relief and a \$1.2 billion payment. These funds were placed in an escrow account to be distributed for

settlement of certain related cases and government investigations, including the multistate investigation pursued by the 48 settling states. The settlement announced today includes \$35 million for distribution to consumers in the settling states who purchased Provigil.

The settlement includes provisions to give affected consumers notice and opportunity to either participate or opt out of the settlement. Judge Mitchell Goldberg of the Eastern District of Pennsylvania, currently is overseeing other litigation concerning Provigil and has given the proposal his preliminary approval.

####

CONTACT

Annie Skinner

Colorado Attorney General's Office

720-508-6553

Annie.Skinner@coag.gov