



State of North Carolina

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ATTORNEY GENERAL

August 22, 2008

North Carolina Senate President Pro Tempore Marc Basnight
North Carolina House of Representatives Speaker Joe Hackney
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator John Snow
Senator Ellie Kinnaird
Representative Alice Bordsen
Representative Jimmy Love
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreement for Bristol-Myers Squibb
Company and Apothecon, Inc.

Dear Members:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the State and Federal governments in the above-referenced matter. Pursuant to federal law (42 CRS 433.320) recoveries in these cases are shared on a pro-rata basis by the State and Federal governments.

Bristol-Myers Squibb Company ("BMS") is a Delaware corporation headquartered in New York that marketed and sold pharmaceutical products in the United States. Apothecon, Inc. is a wholly-owned subsidiary of BMS. BMS and Apothecon entered into settlement agreements with North Carolina, 36 other states, the District of Columbia, and the federal government to resolve allegations of illegal drug marketing and pricing of prescription medications paid by the states' Medicaid and various federal health care programs and agreed to pay a total of \$389 million.

The settlement addresses allegations that BMS and ApotHEcon engaged in average wholesale price ("AWP") marketing manipulation by reporting inflated prices for various prescription drugs knowing that Medicaid and various federal health care programs would use these reported prices to pay for BMS and ApotHEcon products; that they paid illegal remuneration to health care providers to induce them to purchase BMS and ApotHEcon products; that they promoted the sale and use of Abilify, an antipsychotic drug, for off-label pediatric use and for treatment of dementia-related psychosis, which the Federal Drug Administration had not approved; and that BMS misreported sale prices for Serzone, an antidepressant, resulting in improper reduction of the amount of rebates paid to the Medicaid program.

Under the terms of North Carolina's settlement, North Carolina will recover \$14,798,689.21. Of that amount, the North Carolina Medicaid Program will be paid \$2,928,130.99 as restitution and interest for the State share of the monies recovered. Of the amount recovered for state penalties, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. §115C-457.1, the Civil Penalty Forfeiture Fund for the support of the public schools will be paid \$2,721,694.27. Pursuant to G.S. §115C-457.2, the North Carolina Department of Justice will receive \$49,446.24 for costs of collection. The balance will go to the federal government to reimburse its share of the Medicaid costs.

As part of the settlement, BMS entered into a Corporate Integrity Agreement with the United States Department of Health and Human Services' Inspector General, under which BMS will be required to report accurately its average sales price and average manufacturers price.

We will be happy to respond to any questions you may have regarding this report.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristi Hyman", followed by a horizontal line.

Kristi Hyman
Chief of Staff

KH:efp

cc: Jean Sandaire, NCGA Fiscal Research Division
Greg McLeod, NCDOJ, Legislative Counsel
Nels Roseland, NCDOJ, Deputy Chief of Staff