



State of North Carolina

Department of Justice
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ROY COOPER
ATTORNEY GENERAL

January 12, 2010

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
Ortho McNeil

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 C.F.R. § 433.320) recoveries in these cases are shared on a pro rata basis by the State and Federal governments.

On October 20, 2009, a Settlement Agreement was executed between Ortho McNeil Pharmaceutical, Inc. ("Ortho") and the State of North Carolina. Ortho is a Delaware corporation with offices in New Jersey. Ortho manufactures and distributes pharmaceuticals. The settlement resolved allegations that Ortho underpaid its rebate obligations under the Medicaid rebate statute and its Medicaid rebate agreement. It was alleged that Ortho sold the drug Dermatop and classified the drug as a "noninnovator" drug when it was in fact an "innovator" drug.

Under the terms of North Carolina's settlement, the State of North Carolina recovered

\$216,743.43. Of that amount, the federal government received \$122,400.62 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina Medicaid Program received \$54,614.55 as restitution and interest. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$37,193.39 will be paid to the Civil Penalty Forfeiture Fund for the support of North Carolina public schools. Pursuant to § 115C-457.2 and G.S. § 108A-70.12(b)(3), the North Carolina Department of Justice will receive \$2,534.87 for investigative and collection costs.

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", with a long horizontal line extending to the right.

Kristi Hyman
Chief of Staff

KH:kds

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