

Office of the Attorney General

Press Release

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Attorney General Hoke MacMillan Announces Settlement of Drug Marketing Fraud Claims

CHEYENNE -- Wyoming Attorney General Hoke MacMillan announced on October 3, 2001, that the Medicaid Fraud Control Unit of the Wyoming Attorney General's Office, through the National Association of Medicaid Fraud Control Units ("NAMFCU"), has reached an agreement in principle with TAP Pharmaceutical Products, Inc. ("TAP") to pay \$56.7 million to the state Medicaid programs for damages caused by TAP's marketing practices for its drug Lupron, used for the treatment of prostate cancer. As part of the settlement, the State of Wyoming will recover \$43,054.77 in restitution and penalties. The agreement in principle involves all 50 states plus the District of Columbia. To date, 43 states and the District of Columbia have executed settlement agreements.

This state settlement was reached in conjunction with a federal settlement negotiated by the United States Attorney's Office in Boston, Massachusetts. Under the federal agreement, TAP will plead guilty to charges of conspiracy to violate the Prescription Drug Marketing Act, and enter a civil settlement to pay damages to Medicare and other federally funded health care programs. As part of the federal settlement, TAP will pay the federal government \$524.3 million as well as a substantial criminal fine.

These settlements are the culmination of a lengthy investigation into TAP's marketing practices. The marketing practice centered around TAP's provision of free dosages of Lupron to physicians and other providers, knowing that these providers would bill these free dosages to health care insurers, including Medicaid and Medicare. When TAP failed to include the free Lupron in the calculation of its "best price" as required under the federal Medicaid drug rebate program, the State of Wyoming alleged that the state Medicaid program received lower rebate

amounts than due.

A second marketing practice addressed by this settlement involved TAP's inflation of "Average Wholesale Price (AWP)." Medicare and most state Medicaid programs base pharmaceutical reimbursements on "AWP." By inflating "AWP," the State of Wyoming alleged that TAP created an economic incentive for physicians to prescribe its product, because the physician kept the "spread" between the true purchase price and the reported "AWP." This resulted in damage to the various Medicaid programs by causing inflated reimbursement to physicians and others who used TAP's products.

As part of the agreement in principle with the states, TAP will be required to report accurate pricing information to the state Medicaid programs as well as the commercial price reporting services that provide pricing information to the states. Additionally, TAP will cooperate with the states in investigating other health care providers, including physicians, who have damaged the Medicaid programs by taking advantage of TAP's marketing schemes.

Finally, as part of the settlement, TAP has entered into a Corporate Integrity Agreement ("CIA") with the United States Department of Health and Human Service's Inspector General. The CIA will require strict scrutiny of TAP's marketing and sales practices for the next seven years.

Leading the state negotiation team were the respective State Attorneys' General Medicaid Fraud Control Unit Directors from Oregon, Washington, and Ohio. For further information, please contact Barbara Zelner, counsel for NAMFCU, (202) 326-6020, or N. Denise Burke, at the Wyoming Attorney General's Office, Medicaid Fraud Control Unit, (307) 635-3597.