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In the Matter of Cephalon, Inc.

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ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (the “Assurance”) is entered into pursuant to Conn. Gen. Stat. § 42-110j between Cephalon, Inc., Richard Blumenthal, the Attorney General of the State of Connecticut (“the Attorney General” or “OAG”) and Jerry Farrell, Jr. the Commissioner of Consumer Protection (“Commissioner”).

Preamble

WHEREAS, in or around September 2004, the Attorney General initiated an investigation of Cephalon regarding allegations that Cephalon may have violated the Connecticut Unfair Trade Practices Act (“CUTPA”), Chapter 735a of the Connecticut General Statutes, with respect to the promotion of Actiq[®] (oral transmucosal fentanyl citrate) [C-II], Gabitril[®] (tiagabine hydrochloride) and Provigil[®] (modafinil) Tablets [C-IV], and more specifically, that Cephalon had promoted these drugs for indications not approved by the United States Food and Drug Administration (“FDA”) (hereinafter “the Investigation”);

WHEREAS, Cephalon has cooperated with the Attorney General throughout the course of the Investigation and continues to do so;

WHEREAS, Cephalon has created a comprehensive compliance program and has agreed to operate in accordance with the terms of a Corporate Integrity Agreement (“CIA”) with the Office of the Inspector General of the United States Department of Health and Human Services and herein agrees to operate in accordance with those terms with regard to Connecticut health

care programs;

WHEREAS, the Attorney General, Cephalon and the Commissioner of Consumer Protection enter into this Assurance solely for the purpose of resolving all issues related to the Investigation and not for any other purpose, and this Assurance is not intended to be used for any other purpose;

WHEREAS, Cephalon has agreed to make payments to a number of Connecticut-related agencies and programs, including a payment of \$3.8 million in support of Connecticut cancer initiatives, consistent with Cephalon's healthcare mission and ongoing research and development of cancer therapies;

WHEREAS, the Attorney General and the Commissioner of Consumer Protection find the relief and assurances contained in this Assurance appropriate and in the public interest;

WHEREAS, without admitting any of the foregoing or any of the Attorney General's allegations contained herein, Cephalon enters into this Assurance without any court entering any findings of fact or conclusions of law relating to the Investigation;

WHEREAS, neither this Assurance, nor any acts performed nor documents executed in furtherance of this Assurance, are an admission of liability by Cephalon or evidence of liability or wrongdoing on the part of Cephalon, and may not be offered, received, used or construed as an admission or evidence of any liability or wrongdoing by Cephalon in any proceeding; and

WHEREAS, based upon the Investigation, the Attorney General was prepared to allege the following:

1. Cephalon is an international biopharmaceutical company organized under the laws of the State of Delaware and has its principal place of business in Frazer, Pennsylvania.

Cephalon does business in Connecticut, nationwide and in numerous countries throughout the world.

2. Congress has required that the FDA approve all new drugs before they can be marketed and sold in the United States.

3. Before the FDA will approve a drug, the drug must undergo rigorous scientific testing and scrutiny to ensure that there is substantial evidence that it is safe and effective for its intended use.

4. One of the first steps in the formal FDA approval process is for the sponsoring company to submit a New Drug Application (“NDA”) to the FDA, which includes the clinical studies the sponsor believes support a finding that the drug is safe and effective for its intended use.

5. A drug’s indication (its intended use as reflected in its product labeling) is a critical part of the approval process because it reflects the FDA’s determination of the use or uses of the drug that are supported by substantial evidence of safety and efficacy.

6. Because a drug’s indication is a reflection of the uses for which its safety and efficacy have been established with substantial evidence, a drug’s indication establishes the lawful parameters of a drug manufacturer’s promotional activities.

7. The Connecticut Food, Drug and Cosmetic Act, Conn. Gen. Stat. § 21a-91, *et seq.*, prohibits *inter alia* the promotion of drugs by pharmaceutical manufacturers for indications beyond their approved labeling (“off-label promotion”).

8. Although physicians in Connecticut may, with some exceptions not applicable here, lawfully prescribe a FDA-approved drug for any purpose based on their medical judgment,

drug manufacturers are still bound by labeling requirements in that state and federal law prohibit them from engaging in off-label promotion.

9. The prohibition of off-label promotion by drug manufacturers seeks to ensure that the pharmaceutical company's promotional activities are limited to indications for which the FDA has found the drug safe and effective based on substantial evidence.

10. Although off-label prescribing can be safe and effective and is often supported by substantial evidence and in some instances constitutes the standard of care, off-label prescribing based on limited or marginal evidence can pose a danger to patients in certain circumstances.

Actiq

11. Actiq consists of a lozenge containing fentanyl, a potent opioid. Fentanyl has been commercially available in the United States for over forty years, is the active ingredient in numerous FDA-approved products made by multiple pharmaceutical companies, and is indicated for the treatment of a variety of medical conditions.

12. Actiq's NDA was submitted by Anesta Corp. ("Anesta") in November 1996. At that time, Abbott Laboratories ("Abbott") held the exclusive rights to the manufacturing, sale, marketing and distribution of Actiq upon FDA approval of the product. As part of the FDA approval process, on September 17, 1997, representatives from Anesta and Abbott made a presentation to the FDA's Anesthetic and Life Support Drugs Advisory Committee ("the Committee"), which was tasked with making a recommendation to the FDA as to Actiq's safety and efficacy for its proposed indication.

13. Anesta and Abbott representatives and FDA officials agreed that there needed to be safeguards applied to the marketing of Actiq due to its unique delivery system and the fact

that it is fentanyl-based.

14. The FDA approved Actiq in November 1998 for the “**management of breakthrough cancer pain in patients with malignancies who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain.**” (Emphasis in the original).

15. Following Cephalon’s acquisition of Anesta Corp. in October 2000, a detailed Risk Management Program (“RMP”) governing Actiq was put into place dated August 1, 2001. The “key messages” in the RMP were safety, prevention of abuse and diversion, and “proper patient selection.” As to proper patient selection, the RMP provided that the Actiq Package Insert would contain information from the label which included the proviso that Actiq “**must not** be used in opioid non-tolerant patients. . . . ACTIQ is intended to be used only in the care of cancer patients and only by oncologists and pain specialists who are knowledgeable of and skilled in the use of Schedule II opioids to treat cancer pain.” (Emphasis in original). The RMP further provided for an Actiq Launch Program which described the group of clinicians to be targeted for the promotional launch of Actiq. This “target audience” was defined as “oncologists, pain specialists, their nurses and office staff.”

16. In approving Actiq, the FDA required a “black box” warning, the strongest warning for any FDA approved drug. In addition, the FDA informed Anesta in writing that Subpart-H “restrictions on distribution and use of Actiq are needed to assure safe use of the product” and that the agency had concluded that Actiq’s safety and efficacy had been shown “when marketed in accordance with the terms of restricted distribution and use described in the Risk Management Program . . . and as recommended in the . . . final labeling text . . .” The FDA stated that the RMP was “integral” to approval and “an essential component” of the marketing of

Actiq in the United States. Finally, the FDA stated that Actiq was “approved ONLY for the management of breakthrough cancer pain” and any “promotional statements” that Actiq was “safe and efficacious in the treatment of diseases or patient populations beyond that contained in the approved labeling may be considered a violation of the [federal] Act.”

17. Actiq was launched in the United States on March 31, 1999 by Abbott. In October 2000, Cephalon acquired Anesta Corp., along with all of Anesta’s rights to Actiq. Thereafter, Actiq’s sales in Connecticut steadily increased, going from approximately \$400,000 in 2001 to \$4,479,870 in 2006.

18. At times following Actiq’s re-launch, in addition to marketing the drug for its approved indication, Cephalon promoted Actiq for uses not approved by the FDA.

Gabitril

19. Epilepsy is a neurological condition that causes brief disturbances in the normal electrical functions of the brain. Normal brain function is characterized by organized signaling between nerve cells in the brain.

20. Epilepsy occurs when the normal brain function is interrupted by intermittent and intense bursts of disorganized neuronal signaling. This sudden, excessive discharge of neuronal activity may transiently affect a person’s level of consciousness, bodily movements or sensations for a short amount of time. These disruptions of normal central nervous system functioning are referred to as epileptic seizures.

21. According to the Epilepsy Foundation, epilepsy is most often treated by neurologists, pediatric neurologists, pediatricians, neurosurgeons, internists and family practice physicians, but it may be treated by other physicians as well.

22. Treatment options for epilepsy vary, but the most common approaches are drug therapy, surgery, a special diet, or an implanted device programmed to stimulate the vagus nerve. The most common treatment, and the first often tried by most physicians, is drug therapy.

23. There are a number of medications currently available to control the onset of a seizure. These seizure-preventing drugs are commonly known as AEDs, the shorthand for antiepileptic, or anticonvulsant drugs. This class of drugs is widely prescribed by physicians off-label to treat a variety of medical conditions.

24. One of the drugs used to treat epilepsy is tiagabine hydrochloride, which is known by its trade name, Gabitril®. Gabitril was developed by Abbott.

25. Gabitril was first approved by the FDA in September 1997 as an adjunctive, or add-on, therapy for adults and children 12 years and older in the treatment of partial seizures, and launched by Abbott shortly thereafter. In June 1999, Abbott entered into a co-promotion agreement with Cephalon for Gabitril in the United States. Under the agreement, Abbott would maintain responsibility for the clinical development of Gabitril while both Cephalon and Abbott would market and sell the product. Pursuant to the agreement, Abbott was responsible for marketing Gabitril to designated targeted physicians and Cephalon was responsible for marketing Gabitril to a list of physicians primarily made up of neurologists.

26. Cephalon's marketing campaign under the agreement with Abbott resulted in a modest increase in Gabitril's sales in 2000, although the drug's sales performance was still below that forecasted – in light of Abbott's reluctance to encroach on sales of its own epilepsy product, Depakote, and Cephalon's agreement not to engage in any promotional activities that negatively positioned Depakote or any other Abbott epilepsy product. In late 2000, Cephalon acquired all U.S. rights to Gabitril from Abbott.

27. Cephalon's sales of Gabitril in Connecticut increased from \$558,149 in 2001 to \$730,806 in 2005.

28. At the time Cephalon acquired and re-launched Gabitril, its effectiveness and safety outside of epilepsy had not been established through Phase 2 and 3 clinical trials. Cephalon began conducting clinical studies of Gabitril, including Phase 2 and 3 clinical studies that evaluated Gabitril for the treatment of generalized anxiety disorder in nearly 2,000 patients, in the hope of ultimately securing an expanded indication for Gabitril outside of epilepsy. The company never submitted a supplemental New Drug Application ("sNDA") to the FDA for an expansion for Gabitril's indication. Cephalon continued to pursue the development of case studies, small exploratory studies and letters to editors of medical journals supporting Gabitril for off-label uses.

29. Drug manufacturers are required to report serious adverse events that may be associated with their drugs to the FDA through its MEDWATCH program. While the MEDWATCH reporting system is mandatory for drug companies, it is only voluntary for healthcare providers. According to the FDA, the number of adverse events reported to the FDA is "probably less than the actual number of reactions that have actually occurred . . . although it is impossible to know what the difference might be."

30. One specific type of serious adverse event reported with respect to Gabitril was classified as "New Onset Seizures" – the occurrence of a seizure in someone who never before had experienced such an event. There were also several reports about status epilepticus, where patients have continuous epileptic activity without regaining consciousness between seizures.

31. On July 15, 2004, Cephalon sent a letter to the FDA alerting the agency that Cephalon's post-marketing safety surveillance had detected thirty-nine cases nationwide of post-

marketing adverse drug reactions of seizures in patients who had no previously reported history of seizures.

32. Cephalon and the FDA then collaborated on the best way to respond. This collaboration ultimately resulted in the issuance of a Public Health Advisory that informed prescribers that a bolded warning would be added to Gabitril's label cautioning them of the "risk of seizures in patients without epilepsy being treated with this drug." The FDA advisory observed that: "Most of these uses were in patients with psychiatric illnesses. Such so-called off label prescribing is a common practice among physicians." According to the FDA's health advisory, "[a]lthough most of the patients in whom seizures occurred were also taking other medication that may infrequently cause seizures," the temporal relationship and number of reports "strongly suggests that the seizures were caused by Gabitril." Cephalon initiated an educational campaign to discourage healthcare professionals from prescribing the drug for off-label uses. Cephalon then voluntarily ceased its sales and marketing efforts of Gabitril to physicians.

33. Following Cephalon's acquisition of Gabitril from Abbott and up through the time it ceased its marketing efforts of the drug, Cephalon at times promoted Gabitril through various means for certain uses not approved by the FDA.

Provigil

34. Provigil is Cephalon's best-selling drug, with approximately \$6 million in Connecticut sales in 2007.

35. The FDA approved Provigil in 1998 to treat excessive daytime sleepiness ("EDS") associated with narcolepsy, a sleep disorder that impacts up to 200,000 adults in the

United States.

36. On January 3, 2002, the FDA issued an “untitled letter” to Cephalon objecting to the company’s dissemination of certain promotional materials for Provigil, which the agency concluded were false or misleading. In that letter, the FDA objected to Cephalon’s use of those materials to market Provigil for the treatment of EDS unrelated to narcolepsy, noting that the identified “claims are misleading because Provigil is not approved to treat such symptoms as sleepiness, tiredness, lack of energy and fatigue. Therefore, the claims promote Provigil for unapproved uses.”

37. The FDA also objected to Cephalon’s “Misleading Mechanism of Action Claims,” noting that the promotional materials at issue, despite their proviso that “the precise mechanism of action is not known,” implied that Provigil’s mechanism of action was understood, while the labeling “specifically states that ‘the precise mechanism(s) of action through which modafinil promotes wakefulness is unknown.’”

38. Based on guidance from the FDA, Cephalon conducted additional clinical trials of Provigil and, in 2004, FDA granted Cephalon an expanded indication that included excessive sleepiness associated with shift work sleep disorder and obstructive sleep apnea/hypopnea syndrome.

39. Cephalon at times promoted Provigil through various means for certain uses not approved by the FDA.

WHEREAS, Cephalon denies these allegations and would assert defenses to any claims asserted by the Attorney General or the Commissioner,

WHEREAS, the parties to this Assurance recognize the uncertainties of the outcome of

litigation and the likelihood that any final result would require complex litigation and substantial expense.

Terms and Conditions

NOW THEREFORE, for and in consideration of the representations set forth above, and the mutual promises, covenants and obligations set forth below, and for the good and valuable consideration as stated herein, the OAG and Cephalon agree as follows:

The Settlement Payment

40. Cephalon agrees to the following payments described below. For purposes of payment logistics only, these separate payments will be aggregated into one disbursement of six million one hundred and fifty thousand dollars (\$6,150,000) (the “Settlement Amount”), made by wire transfer, certified check or bank teller check made payable to “Treasurer, State of Connecticut” and delivered to Michael Cole, Chief, Antitrust Department, Office of the Attorney General, 55 Elm Street, Hartford, CT 06106. Cephalon shall make its payment no later than thirty (30) business days from the Effective Date of this Assurance (as defined below).

41. The separate payments consist of:

i. Compensatory payment in the amount of two million one hundred thousand dollars (\$2,100,000), consisting of:

1. One million five hundred thousand dollars (\$1,500,000) in restitution and compensatory damages for Connecticut agencies and Connecticut-sponsored medical assistance programs (including ConnPACE, state administered general assistance and general assistance, but not including Connecticut’s Medicaid program);

and

2. The sum of three hundred thousand dollars (\$300,000) to the Connecticut Department of Consumer Protection to be deposited into the consumer protection enforcement fund pursuant to Conn. Gen. Stat. § 21a-8a. Of that amount, (a) two hundred thousand dollars (\$200,000) shall be used to fund and maintain an electronic prescription drug monitoring program, pursuant to Conn. Gen. Stat. § 21a-254, and (b) one hundred thousand dollars (\$100,000) shall be used to fund positions and other related expenses for the enforcement of Department of Consumer Protection licensing and registration laws; and
 3. The sum of three hundred thousand dollars (\$300,000) to the General Fund for the OAG's internal attorneys' fees and costs of investigation.
- ii. A contribution in the amount of three million eight hundred thousand dollars (\$3,800,000) to the Connecticut Department of Public Health, pursuant to Conn. Gen. Stat. § 19a-73b, to be used for comprehensive cancer initiatives; and
 - iii. A penalty payment in the amount of two hundred fifty thousand dollars (\$250,000) as a civil penalty for Cephalon's alleged conduct, pursuant to Conn. Gen. Stat. § 42-110o; and
 - iv. In addition to the amount set forth in paragraph 40 above, Cephalon

acknowledges that the State of Connecticut may receive an amount of money based on any claims or recovery from any judgment or settlement resulting from the settlement between Cephalon, the United States and the Medicaid Participating States (including Connecticut) under any settlement agreement related to the Investigation or resulting from any claim under the Federal False Claims Act as reimbursement for Connecticut Medicaid expenditures.

42. In the event that Cephalon, at any time subsequent to the execution of this Assurance, enters into any future settlement agreement or other similar pre-verdict agreement related to the allegations, acts, omissions, transactions, or matter discussed in this Assurance or related to the Investigation (“Settlement Agreement”) with any State or agency of any State other than Connecticut (“Other State”) resolving investigations, allegations, or litigation: (1) (a) with respect to all three of the drugs Actiq, Gabitril and Provigil or (b) with respect to any combination of the three drugs; and (2) such Settlement Agreement does not involve any other Cephalon drug; and (3) such Settlement Agreement contains financial terms on a per capita basis (“Per Capita Settlement Amount”) more favorable to such Other State, Cephalon agrees that the terms of this Assurance will be revised so that Connecticut shall receive the benefit of the more favorable Per Capita Settlement Amount. The financial terms of this Assurance, however, shall not be revised based on any such Other State Settlement Agreement if such agreement is entered into after: (a) the impaneling of the jury (or in the event of a non-jury trial, the commencement of trial), or any severed or bifurcated portion thereof; or (b) any court order or judicial determination relating to such litigation (other than a stipulated judgment, consent decree or order settling the matter by agreement) that (i) grants summary or other judgment (in whole or

part) against Cephalon or (ii) grants injunctive or other relief that affects the assets or on-going business activities of Cephalon. Accordingly, in such an event, Cephalon shall pay Connecticut, in addition to the amount set forth in Paragraph 40 above, an amount no greater than necessary to ensure that Connecticut's financial recovery is equally as favorable as the Other State Settlement Agreement(s). For purposes of determining whether any future terms in such Other State Settlement Agreement(s) are more favorable than the financial terms contained in this Assurance, the financial term(s) shall be measured based on the per capita populations of Connecticut and the other State(s) according to the 2000 United States Census. The Connecticut Per Capita Settlement Amount shall be determined by dividing the Settlement Amount by Connecticut's census population described above. The Other State(s)' Per Capita Settlement Amount shall be determined by dividing the Other State(s)' total settlement amount (irrespective of whether that settlement involves one or more of the drugs Actiq, Gabitril, or Provigil) by the Other State(s)' census population as described above.

Compliance Provisions

43. The CIA by and between Cephalon and the Office of the Inspector General of the Department of Health and Human Services ("OIG") executed September 29, 2008, is fully incorporated herein by reference. Except as otherwise provided in this Assurance, Cephalon's obligations as set forth in the CIA are deemed to be obligations of Cephalon to the State of Connecticut under this Assurance. If, subsequent to the date of this Assurance, the CIA is amended or modified in any way by agreement between OIG and Cephalon, Cephalon shall promptly notify the OAG in writing.

44. All references in the CIA to Federal health care programs (as defined in 42 U.S.C. §1320a-7b(f)) shall, for purposes of the applicability of the CIA to this Assurance, be

deemed to apply to State of Connecticut Health Care Programs, defined to include, but not be limited to, programs operated by Connecticut agencies and officers, Connecticut-sponsored medical assistance programs (including ConnPACE, state administered general assistance and general assistance) and Connecticut's Medicaid program.

45. Cephalon agrees that the State of Connecticut has the right, in its sole discretion, to enforce a violation of the CIA only as a breach of this Assurance, and only to the extent of obtaining injunctive relief to enforce those provisions that relate to or affect a State of Connecticut Health Care Program. Any decision by the State of Connecticut to waive any rights it has to enforce any particular provision of the CIA shall in no way be deemed as a waiver of its rights to enforce the same or any other provisions of the CIA as it deems appropriate in its sole discretion.

46. To the extent the CIA requires the reporting of Reportable Events (as defined therein), Cephalon shall be similarly obligated to submit such reports to the State of Connecticut in the manner and at such times as required by the CIA, but only to the extent that such Reportable Event relates to or affects a State of Connecticut Health Care Program. Otherwise, Cephalon shall not be required to submit to the State of Connecticut any other reports or submissions required by, or made pursuant to, the CIA.

The OAG's Release of Cephalon

47. In consideration of the obligations of Cephalon set forth in this Assurance, and the CIA, and conditioned on Cephalon's paying all sums required by paragraphs 40-42 of this Assurance and the terms of paragraphs 53-55 below, the OAG, the Commissioner and the State of Connecticut do hereby fully and finally release Cephalon, its subsidiaries and affiliates,

predecessors, successors, and assigns as well as their current and former directors, officers, and employees from any civil or administrative claim, action, suit or proceeding for damages, penalties or other injuries allegedly suffered by the State of Connecticut, including all *parens patrie* claims and consumer protection claims, that the State of Connecticut or the OAG have or may have asserted pursuant to CUTPA for the sales and marketing practices that were the subject of the Investigation (“the Released Conduct”).

48. The Released Conduct is expressly limited to conduct which: a) occurred prior to the Effective Date of this Assurance; b) relates to Actiq, Gabitril and Provigil; and c) was the subject of the Investigation. The payment of all the amounts required by this Assurance in accordance with its terms fully discharges Cephalon from any obligation to pay additional restitution (not including any other restitution or other financial recovery pursuant to, or incurred as a result of, any settlement or judgment obtained pursuant to Paragraphs 41(iv) and 42), civil penalties, and additional costs and expenses of investigation, including attorneys’ fees, to the State of Connecticut pursuant to the Released Conduct.

49. In consideration of the obligations of Cephalon set forth in this Assurance, and the CIA, and conditioned on Cephalon’s paying all sums required by paragraphs 40-42 of this Assurance, the OAG, the Commissioner and the State of Connecticut agree to release and refrain from instituting, directing, recommending or maintaining any action seeking exclusion from the State of Connecticut’s Medicaid program or Connecticut-sponsored medical assistance programs against Cephalon for the Released Conduct. Nothing in this Assurance precludes the State of Connecticut from taking action against Cephalon in the event Cephalon is excluded from participation in any federal healthcare program by the federal government, or for conduct and practices other than the Released Conduct, or for any civil or administrative liability under any

statute, regulation, rule, policy, contract or of any other sort not expressly released by this Assurance.

50. Notwithstanding any other provisions of this Assurance, the following are specifically reserved and excluded from the scope and terms of this Assurance, and from the scope and terms of the Release contained herein:

- a. Any claims based upon such obligations as are created by this Assurance;
- b. Any claims based on the Released Conduct relating to Medicaid and federal healthcare programs;
- c. Any claims based on the Released Conduct for violations of the Connecticut Antitrust Act, Conn. Gen. Stat. § 35–24 *et seq.* or the Sherman Act, 15 U.S.C. § 1 *et seq.*;
- d. Any monetary claims related to any pharmaceutical manufactured, marketed or sold by Cephalon, other than Actiq, Gabitril and Provigil;
- e. any criminal liability of any sort;
- f. Any claims relating to Best Price, Average Manufacturer Price, Average Wholesale Price, Wholesale Acquisition Cost, or Average Sales Price reporting practices;
- g. Any claims for rebates paid to the State of Connecticut under any federal or state healthcare program or any law or contract;
- h. Any liability of any sort under State of Connecticut revenue codes;
- i. Any express or implied warranty claims for defective or deficient products or

services, including quality of goods and services, provided by Cephalon;

- j. The subrogation rights to claims for personal injury or property damage arising from usage by a participant in the Medicaid or state-sponsored health programs of any of Cephalon's drugs;
- k. Any claims based on a failure to deliver items or services due;
- l. Claims of natural persons or consumers, or claims the State could assert on behalf of such natural persons or consumers, including for co-payments or co-insurance under Medicare, occurring prior to the Effective Date of this Assurance.

Notwithstanding the foregoing, the State covenants not to sue Cephalon based on the claims reserved from the scope of the State's release by this subparagraph (l) if such claims are based on the Released Conduct; and
- m. Any claims or recovery from any judgment or settlement resulting from a settlement with the United States and the Medicaid Participating States (including Connecticut) under any settlement agreement related to the Released Conduct or resulting from any claim under the Federal False Claims Act.

Cephalon's Release of the OAG

51. In consideration of the obligations set forth in this Assurance, Cephalon and all of its officers, employees and directors, do hereby fully and finally release the OAG, the Commissioner and the State of Connecticut and any of its agents and employees from any and all claims in any way related to the events that gave rise to this matter, including, but not limited to, claims based on the Investigation. Nothing in this Assurance shall bar Cephalon from raising any defense with respect to the claims reserved by the OAG, the Commissioner or the State of

Connecticut.

Notice to Parties

52. Unless otherwise stated in writing subsequent to the Effective Date of this Assurance, all notifications and communications made pursuant to this Assurance shall be submitted to the persons listed below:

a) For the OAG:

Michael Cole, Assistant Attorney General
Chief, Antitrust Department
Office of the Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5040
fax (860) 808-5033
Michael.Cole@po.state.ct.us

b) For Cephalon:

Gerald J. Pappert
Executive Vice President & General Counsel
Cephalon, Inc.
41 Moores Road
Frazer, PA 19355
(610) 344-0200
fax (610) 738-6590
jpappert@cephalon.com

Eric W. Sitarchuk, Esq.
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5000
(215) 963-5001
esitarchuk@morganlewis.com

Cooperation with the OAG

53. Cephalon agrees that its parent corporation(s), subsidiaries and affiliates, predecessors, successors and assigns shall fully and promptly cooperate as set forth below with the OAG with regard to the OAG's Investigation of, and related proceedings and actions against any third party corporation, entity or individual (but not Cephalon or any released person or entity identified in paragraph 47 of this Assurance). Cephalon agrees that it and any of its subsidiaries and affiliates shall use their reasonable best efforts to ensure that all of its officers, directors, and employees also cooperate as set forth below with the OAG's Investigation and related proceedings and actions, except to the extent any such persons are represented by separate counsel. Cephalon, however, in fulfilling its obligations of cooperation, shall not be required to waive any applicable privilege or any work product protection.

54. Cooperation with the OAG's Investigation shall consist of the following:

a) Cephalon shall accept service of subpoena(s) and shall produce pursuant thereto any information and all documents or tangible evidence reasonably requested by the OAG and any non-privileged compilation or summaries of information or data that the OAG reasonably requests be prepared, subject to the receipt of reasonable assurance of confidential treatment of such production;

b) Except to the extent such persons are represented by separate counsel, subject to the receipt of reasonable assurance of confidential treatment of such production, and except inconsistent with Cephalon's interests in defending any Third Party Payor litigation, such as that currently pending in the Eastern District of Pennsylvania, investigation or administrative proceeding, and subject to applicable rules of evidence and procedure, Cephalon shall use reasonable best efforts to cause its current officers, directors, and employees to attend any proceedings at which the presence of any such persons is reasonably requested by the OAG and

use its reasonable best efforts to have such persons answer any and all inquiries that may be put by the OAG (or any of the OAG's deputies, assistants or agents) to any of them at any proceedings or otherwise ("proceedings" include but are not limited to any meetings, interviews, depositions, hearings, trial or other proceedings) and Cephalon counsel shall have the right to be present at any such proceeding;

c) In the event any document is withheld or redacted on grounds of privilege or work product protection, a written statement shall be submitted to the OAG by Cephalon indicating:

- i. The type of document;
- ii. The date of the document;
- iii. The author and recipient of the document;
- iv. The general subject matter of the document;
- v. The reason for withholding the document; and
- vi. The number of pages of the document, with their Bates numbers or range of Bates numbers.

55. Nothing herein shall prevent Cephalon and its successors and assigns from providing such evidence to other law enforcement agencies, regulators, or as otherwise required by law.

Compliance with all Laws

56. Except as expressly provided in this Assurance, nothing in this Assurance shall be construed as:

a) Relieving Cephalon of its obligation to comply with all state laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule; or

b) Limiting or expanding in any way any right the OAG or the State of Connecticut may otherwise have to obtain information, documents or testimony from Cephalon pursuant to any state law, regulation or rule.

Miscellaneous Provisions

57. The OAG may make such application as appropriate within his legal authority to enforce or interpret the provisions of this Assurance (including the CIA, subject to paragraph 45 above) or, in the alternative, maintain any action within its legal authority for such other and further relief as the OAG may determine is proper and necessary for the enforcement of this Assurance. Cephalon acknowledges and recognizes that the State of Connecticut's remedy at law regarding enforcement of this Assurance is inadequate and agrees that the Connecticut Superior Court has the authority to specifically enforce the provisions of this Assurance, including the authority to award equitable relief. The exclusive forum for resolving any disputes under this Assurance shall be the Connecticut Superior Court for the Judicial District of Hartford.

58. This Assurance shall be governed by the laws of the State of Connecticut, without regard to its choice of law rules.

59. Nothing in this Assurance shall be construed to create a waiver of the State of Connecticut's sovereign immunity.

60. This Assurance constitutes the complete agreement between the OAG, the State of Connecticut and Cephalon and may not be amended except by a writing signed by the OAG, the State of Connecticut and Cephalon.

61. The bold-faced paragraph captions in this Assurance are for convenience only and do not add to, detract from or change the substantive language or terms of this Assurance.

62. The undersigned individuals signing this Assurance on behalf of Cephalon warrant that they are duly authorized by Cephalon to execute this Assurance.

63. The undersigned individuals signing this Assurance on behalf of the OAG and the State of Connecticut represent that they are signing this Assurance in their official capacities and that they are duly authorized to execute this Assurance.

64. The OAG and Cephalon agree that should any nonmaterial portion or portions of this Assurance be found to be void, unenforceable or otherwise invalid by the Superior Court of the State of Connecticut, Judicial District of Hartford after the exhaustion of all rights to appeal, the entire Assurance shall not be nullified and such invalid portion or portions shall be severed from the remainder of the Assurance as if they had never been entered into and the remainder of the Assurance shall be enforced.

65. This Assurance may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same agreement.

66. The Effective Date of this Assurance shall be the date upon which all of the Parties below have executed this Assurance.

67. Cephalon is entering into this Assurance without trial or adjudication of any issue of fact or law. No part of this Assurance shall constitute evidence against Cephalon with respect to any issue of law or fact. No part of this Assurance shall be treated or construed as an admission of liability or wrongdoing by Cephalon.

68. This Assurance does not constitute an approval by the OAG or the Commissioner of Consumer Protection of any of Cephalon's business practices, including its promotional or marketing practices, and Cephalon shall make no representation or claim to the contrary.

IN WITNESS WHEREOF, the OAG, the Commissioner of Consumer Protection and Cephalon set their hands and seals on the dates set forth below:

WHEREFORE, the following signatures are affixed hereto this Sept 26, 2008.

RICHARD BLUMENTHAL



Attorney General of the State of Connecticut
55 Elm Street, P.O. Box 120
Hartford, CT 06141-1020

JERRY FARRELL, JR.

Commissioner
State of Connecticut Department of Consumer Protection
165 Capitol Avenue
Hartford CT 06106

MICHAEL P. STARKOWSKI

Commissioner
Connecticut Department of Social Services
25 Sigourney Street
Hartford, CT 06106-5033

CEPHALON, INC.

Gerald J. Pappert
Executive Vice President & General Counsel
Cephalon, Inc.
41 Moores Road
Frazer, PA 19355

Eric W. Sitarchuk, Esq.
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

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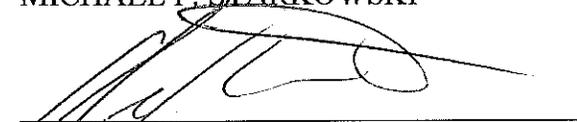
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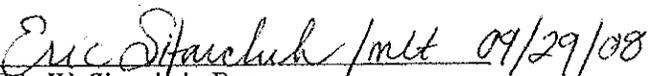
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CEPHALON, INC.

 9/29/08

Gerald J. Pappert
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 /mt 09/29/08

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