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King Pharmaceuticals Pays \$124 Million to Settle Medicaid Fraud Charges Involving Pharmacy Benefit Managers

Whistleblower's Complaint Led to First Settlement of Kind, According to Legal Team of Boyd & Associates and Berg & Androphy

PHILADELPHIA, November 1, 2005 – King Pharmaceuticals Inc. (NYSE: KG) has agreed to pay \$124 million to settle civil charges related to alleged underpayment of rebates to Medicaid and other government programs, the U.S. Department of Justice announced today. This is the first known settlement of a fraud case that focused on a pharmaceutical company's pervasive transactions with pharmacy benefit managers (PBM), according to the law firms of Boyd & Associates and Berg & Androphy.

The Bristol, Tenn.-based pharmaceutical firm was sued in March 2003 for allegedly violating federal law that requires pharmaceutical companies to provide the government its best price information on prescription drugs – generally, the price that the manufacturers charge their largest commercial customers. King reached the settlement with attorneys Samuel L. Boyd and Joel M. Androphy, along with the U.S. Attorney's Office in Philadelphia, and Department of Justice, following an investigation and negotiations, which began when a King executive – Ed Bogart, of Jonesborough, Tenn. – complained of the company's underreporting activities and illicit use of its PBM program.

Mr. Androphy, a partner in Berg & Androphy's Houston office said, "There is nothing inherently wrong providing large rebates to PBMs, but a legitimate business tool was turned in this case into a mechanism to abuse the Medicaid laws. The courageous actions of Ed Bogart exposed serious false claims violations and ensured that the U.S. treasury and taxpayers were saved tens of millions of dollars. He became a whistleblower only after his efforts to report the illicit activity within the company were rejected by top management and attempts were made to discredit him personally and professionally."

Mr. Boyd, founding partner of Dallas-based Boyd & Associates, said: "The federal False Claims Act has worked in this case as intended. Pharmaceutical manufacturers are on notice that efforts to override the Best Price reporting requirements will be met with severe sanctions. As for Mr. Bogart, his share of the settlement will be significant, but it will come at a great personal cost, as he may never work in this industry again."

Mr. Bogart's legal team anticipates that a court hearing will decide his whistleblower share of the settlement, but the False Claims Act allows relators to receive 15 percent to 25 percent of what the government recovers. Because of the operation of the penalty provisions of the FCA, the federal and state governments will actually receive, after deducting Mr. Bogart's award, significantly more than their actual losses.

According to Mr. Bogart, "This ordeal has been extremely difficult for me and for my family. I took these concerns to King with the best of intentions, and they responded by excluding me from meetings

and my responsibilities. I soon ended up with a storage room with mold and leaky ceilings as an office. But I'm not a person who buckles easily, given my military background and my personality. The way they treated me – simply for asking that the company to conduct business in a legal and ethical manner – was astonishingly disappointing and troubling.”

A resident of Jonesborough, Tennessee, Mr. Bogart worked on a farm, subsequently earning a college degree. In 1978, he entered the Air Force, and received training in health care management. He served in the Air Force for 21 years, the last four months during Desert Storm where he ran an air staging facility.

Under the Medicaid Drug Rebate Program, pharmaceutical manufacturers that sell drugs to Medicaid are required to give the government its best available price on each drug. That best price is the same price that manufacturers charge their best customers, which are usually hospitals, HMOs and pharmacy chains.

PBMs act as intermediaries, negotiating discounts with drug manufacturers for large employer groups and health plans. They then distribute the prescriptions with their own network of mail-order pharmacies or through retail pharmacies. They profit by charging customers more for the drugs than what they pay. For example, when a person covered by a PBM fills a prescription at a retail pharmacy, the PBM has already negotiated the price at which it will purchase the drug from the pharmacy. The pharmacy collects and keeps the customer's insurance co-payment, while the PBM bills its client – usually, an employer or health-plan – for the remaining charge of the drug. It then pays the retail pharmacist for the prescription.

The False Claims Act is a Lincoln-era law that allows private citizens with knowledge of fraud on the government to sue and share in the proceeds of any recovery. The law was enacted to combat widespread procurement fraud in the Civil War, but it fell into disuse in the 1940s. Amendments passed in 1986 made the False Claims Act the government's chief weapon in its war on fraud, and the Justice Department used it in its investigations of clinical laboratories and defense contractors in the mid-1990s. In pharmaceutical cases alone, more than \$1 billion was returned to the federal treasury.

Mr. Boyd and Mr. Androphy were assisted by their local counsel, Richard M. Simins of Buchanan Ingersoll PC.

ATTORNEY CONTACTS:

Joel Androphy, Esq.
BERG & ANDROPHY
Houston / New York, New York
(713) 529-5622
www.bafirm.com

Sam Boyd, Esq.
BOYD & ASSOCIATES
6440 North Central Expressway
Dallas, Texas 75206-4101
(214) 696-2300 / Cell (214) 228-7843
www.samboyd-pc.com