

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. 2350

**EVERGREEN PHARMACEUTICAL
OF CALIFORNIA, INC.**

14735 Califa Street
Van Nuys, California 91411,

Applicant/Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy of the Department of Consumer Affairs, as its Decision and Order in this matter.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STEVE LITSEY
Board President

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of the State of California
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10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

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In the Matter of the Statement of Issues Against:

Case No. 2350

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EVERGREEN PHARMACEUTICAL OF
CALIFORNIA, INC.

STATEMENT OF ISSUES,
STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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14735 Califa Street

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Van Nuys, CA 91411

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CARL E. WOOD, JR., President

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JOSEPH M. MAXIMINI, Vice President

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BRADLEY S. ABBOTT, Treasurer

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THOMAS R. MARSH, Asst. Treasurer

20

CATHERINE I. GREANY, Secretary

21

JOHN B. CHIN, Pharmacist-In-Charge

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Applicant/Respondent.

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STATEMENT OF ISSUES

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Complainant alleges:

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PARTIES

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1. Patricia F. Harris ("Complainant") brings this Statement of Issues solely in
25 her official capacity as the Executive Officer of the Board of Pharmacy, Department of
26 Consumer Affairs, and is represented in this matter by Bill Lockyer, Attorney General of the
27 State of California, by Robert A. Heron and Stephen S. Handin, Deputy Attorneys General.

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2. On or about November 11, 1996, the Board of Pharmacy issued Pharmacy

1 License Number PHY 41760 to Premiere Institutional Pharmacy ("Premier"), a corporation, to
2 operate a community pharmacy at 14735 Califa Street, Van Nuys, California 91411, with
3 Howard Weiss as President, Leslie J. Collins as Pharmacist-In-Charge until October 12, 1998,
4 Jeffrey M. Weiner as Pharmacist-In-Charge until October 29, 1999, Tamar Kalayjian as
5 Pharmacist-In-Charge until March 20, 2000, and John B. Chin as Pharmacist-In-Charge until the
6 present time. The license has been renewed annually and has been in full force and effect at all
7 times relevant to the charges brought herein and will expire on November 1, 2001, unless
8 renewed.

9 2. On or about April 1, 1998, Premier sold the pharmacy at 14735 Califa
10 Street, Van Nuys, to PIP Acquisition Corp. ("PIP"), a corporation. Pharmacy License Number
11 PHY 41760 was not transferred to PIP.

12 3. On or about May 29, 1998, PIP, doing business as West-Val Premier
13 Pharmacy, at 14735 Califa Street, Van Nuys, with Solomon Goldner as President, Monty Busby
14 as Vice President, Brad Abbott as Treasurer, and Catherine I. Greany as Secretary, and Jeffrey
15 M. Weiner as Pharmacist-In-Charge, submitted an application for a change of ownership of the
16 license of Premier for a home health care, board and care, and skilled nursing facility community
17 pharmacy. PIP is a wholly (100%) owned subsidiary of Omnicare Holding Company, a
18 Delaware corporation, with Joel F. Gemunder as President, Cheryl A. Hodges as Vice-President
19 and Secretary, and Thomas R. Marsh as Treasurer. Omnicare Holding Company is a wholly
20 (100%) owned subsidiary of Omnicare, Inc., a Delaware corporation, with Joel F. Gemunder as
21 President, Patrick E. Keefer as Executive Vice-President, David W. Froesel, Jr., as Chief
22 Financial Officer, Cheryl A. Hodges as Secretary, and Thomas R. Marsh as Treasurer. The
23 application was denied on July 17, 2000. On August 15, 2000, PIP requested a hearing.

24 4. On or about August 15, 2000, PIP changed its corporate name to
25 Evergreen Pharmaceutical of California, Inc.

26 5. On or about February 7, 2001, Evergreen Pharmaceutical of California,
27 Inc. ("Evergreen"), doing business as Evergreen Pharmaceutical of California, Inc.-Van Nuys,
28 ("Applicant/Respondent"), with Carl E. Wood, Jr., as President, Joseph M. Maximini as Vice-

1 President, Bradley S. Abbott as Treasurer, Thomas R. Marsh as Assistant Treasurer, and
2 Catherine I. Greany as Secretary, and John B. Chin as Pharmacist-In-Charge, submitted an
3 application for a new pharmacy license at 14735 Califa Street, Van Nuys, for a retail, skilled
4 nursing facility, and board and care community pharmacy. Evergreen is a wholly (100%) owned
5 subsidiary of Omnicare Holding Company, which in turn is a wholly (100%) owned subsidiary
6 of Omnicare, Inc. The application was denied on October 24, 2001.

7 JURISDICTION

8 6. This Statement of Issues is brought before the Board of Pharmacy
9 ("Board"), under the authority of the following sections of the Business and Professions Code
10 ("Code").

11 7. Section 480(a)(3) of the Code states that a board may deny a license
12 regulated by this code on the grounds that the applicant has done any act which if done by a
13 licentiate of the business or profession in question, would be grounds for suspension or
14 revocation of a license.

15 8. Section 4300(c) of the Code states that the Board may refuse to issue a
16 license to an applicant guilty of unprofessional conduct, that the Board may, in its sole
17 discretion, issue a probationary license to an applicant for a license who is guilty of
18 unprofessional conduct and who has met all the other requirements for licensure, and that the
19 Board may issue the license subject to a term or condition not contrary to public policy,
20 including, but not limited to, compliance with the laws and regulations governing the practice of
21 pharmacy.

22 9. Section 4110(a) of the Code, in pertinent part, states that no person shall
23 conduct a pharmacy in California unless he or she has obtained a license from the Board, that a
24 license is required for each pharmacy owned or operated by a specific person, and that a separate
25 license is required for each of the premises of a person operating a pharmacy in more than one
26 location.

27 10. Section 4035 of the Code defines "person" to include a firm, association,
28 partnership, corporation, limited liability company, state governmental agency, or political

1 subdivision.

2 11. Section 4301 of the Code, in pertinent part, states that the Board shall take
3 action against a holder of a license who is guilty of unprofessional conduct which includes, but is
4 not limited to:

5 . . .

6 (j) The violation of any of the statutes of this state or of the United States
7 regulating controlled substances and dangerous drugs.

8 . . .

9 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
10 abetting the violation of or conspiring to violate a provision or term of Chapter 9 (commencing
11 with Section 4000) of the Code or of the applicable federal and state laws and regulations
12 governing pharmacy, including regulations established by the Board.

13 12. Section 4059 (a) of the Code states no person shall furnish any dangerous
14 drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.
15 No person shall furnish any dangerous device, except upon the prescription of a physician,
16 dentist, podiatrist, optometrist, or veterinarian. Section 4059(b) of the Code states that Section
17 4059(a) does not apply to furnishing any dangerous drug by a pharmacy to another pharmacy.

18 13. Section 4037(a) of the Code defines "pharmacy" as an area, place, or
19 premises licensed by the Board.

20 14. Section 4076(a) of the Code states that a pharmacist shall not dispense any
21 prescription except in a container that meets the requirements of state and federal law and is
22 correctly labeled.

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1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that a probationary community pharmacy license be
3 issued to Evergreen and that the license be on probation for three (3) years upon the following
4 terms and conditions.

5 **1. OBEY ALL LAWS**

6 Evergreen shall obey all federal and state laws and regulations substantially
7 related or governing the practice of pharmacy and the operation of a pharmacy.

8 **2. REPORT TO THE BOARD**

9 Evergreen shall report to the Board or its designee quarterly. The report
10 shall be made either in person or in writing, as directed. If the final probation report is not made
11 as directed, probation shall be extended automatically until such time as the final report is made.

12 **3. INTERVIEW WITH THE BOARD**

13 Upon receipt of reasonable notice, Evergreen's officers or pharmacist-in-
14 charge shall appear in person for interviews with the Board or its designee upon request at various
15 intervals at a location to be determined by the Board or its designee. Failure to appear for a
16 scheduled interview without prior notification to Board staff shall be considered a violation of
17 probation.

18 **4. COOPERATION WITH BOARD STAFF**

19 Evergreen shall cooperate with the Board's inspectional program and in the
20 Board's monitoring and investigation of Evergreen's compliance with the terms and conditions of
21 its probation. Failure to cooperate shall be considered a violation of probation.

22 **5. PEER REVIEW**

23 Evergreen shall submit to peer review as deemed necessary by the Board.

24 **6. PROBATION MONITORING COSTS**

25 Evergreen shall pay the costs associated with probation monitoring as
26 determined by the Board during each and every year of probation. Such costs shall be payable to
27 the Board at the end of each year of probation. Failure to pay such costs shall be considered a
28 violation of probation.

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7. STATUS OF LICENSE

Evergreen shall, at all times while on probation, maintain a current license with the Board. If Evergreen submits an application to the Board, and the application is approved, for a change of location, change of permit or change of ownership, the Board shall retain continuing jurisdiction over the license, and Evergreen shall remain on probation as determined by the Board or its designee.

8. NOTICE TO EMPLOYEES

Evergreen shall, upon or before the effective date of this decision, ensure that all employees involved in license operations are made aware of all the terms and conditions of probation, either by posting a notice listing all the probation terms and conditions, circulating such notice, or both. If the notice required by this provision is posted, it shall be posted in a prominent place and shall remain posted throughout probation. Evergreen shall ensure that any employees hired or used after the effective date of this decision are made aware of all the terms and conditions by posting a notice, circulating a notice, or both. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

9. OWNERS AND OFFICERS: KNOWLEDGE OF THE LAW

Evergreen shall provide, within thirty (30) days after the effective date of this decision, signed and dated statements from its owners, including any owner or holder of 10% or more of the interest in Evergreen or Evergreen's stock, and any officer, stating said individuals have read and are familiar with federal and state laws and regulations governing the practice of pharmacy and the operation of a pharmacy.

10. FINE

Evergreen shall pay to the Board a fine in the amount of Ten-Thousand Dollars (\$10,000.00), payable on the effective date of the Board's Decision and Order. Failure to pay the fine shall be considered a violation of probation.

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1 **11. VIOLATION OF PROBATION**

2 If Evergreen violates probation in any respect, the Board, after giving
3 Evergreen notice and an opportunity to be heard, may revoke probation and order the imposition
4 of appropriate discipline, up to and including revocation of the community pharmacy license. If a
5 petition to revoke probation or an accusation is filed against Evergreen during probation, or if a
6 request for preparation of such a petition or accusation has been forwarded to the Office of the
7 Attorney General, the Board shall have continuing jurisdiction, and the period of probation shall
8 be extended, until the petition to revoke probation is heard and decided. If Evergreen has not
9 complied with any term or condition of probation, the Board shall have continuing jurisdiction
10 over Evergreen, and probation shall automatically be extended until all terms and conditions have
11 been met or the Board has taken other action as deemed appropriate to treat the failure to comply
12 as a violation of probation, to terminate probation, and to impose the penalty which is stayed.

13 **12. COMPLETION OF PROBATION**

14 Upon successful completion of probation, Evergreen's license will be fully
15 restored.

16 ACCEPTANCE

17 I have carefully read the above Statement of Issues, and the Stipulated Settlement
18 and Disciplinary Order for issuance on probation of a community pharmacy license to Evergreen
19 Pharmaceutical of California, Inc., a corporation, and I understand their contents, terms and legal
20 effects. I admit for this Stipulated Settlement and Disciplinary Order on behalf of Evergreen that
21 Complainant could establish factual basis for the acts or omissions constituting cause for denial
22 of a license. By resolution entered into the corporate minutes of Evergreen, I am authorized to
23 sign this Stipulated Settlement and Disciplinary Order on behalf of the corporation.

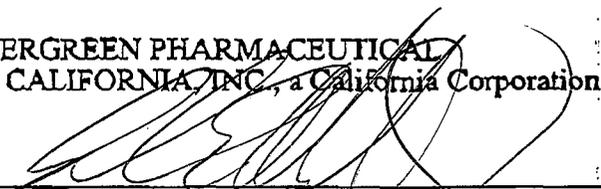
24 I freely and voluntarily execute this Stipulated Settlement and Disciplinary Order
25 on behalf of the corporation with full knowledge that as a result of the foregoing, it will be issued
26 a probationary license, which will be subject to the stipulated terms and conditions set forth
27 above, and that should probation be revoked by the Board of Pharmacy, Evergreen

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1 Pharmaceutical of California, Inc. will not then be authorized or permitted to exercise any of the
 2 privileges of a pharmacy within the State of California, and that pursuant to section 4307 of the
 3 code any manager, administrator, owner, member, officer, director, associate, or partner of the
 4 corporation, and while acting as such had knowledge of or knowingly participated in any conduct
 5 which causes revocation of probation, shall be prohibited from serving as a manager,
 6 administrator, owner, member, officer, director, associate, or partner of a licensee for a period of
 7 five (5) years.

8
 9 DATED: 11/06/01

EVERGREEN PHARMACEUTICAL
 OF CALIFORNIA, INC., a California Corporation

11 By: 
 12 CARL E. WOOD, JR., President

13 I have read and fully discussed with Applicant/Respondent Evergreen
 14 Pharmaceutical of California, Inc. the terms and conditions and other matters contained in the
 15 Statement of Issues, and Stipulated Settlement and Disciplinary Order. I approve its form and
 16 content.

17
 18 DATED: 11/06/01

HOOPER, LUNDY & BOOKMAN, INC.

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 20 By: 
 21 PATRIC HOOPER
 22 Attorneys for Applicant/Respondent

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 24 Los Angeles, CA 90067-2799
 Telephone: (310) 551-8111

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: NOV. 7, 2001.

BILL LOCKYER, Attorney General
of the State of California



ROBERT A. HERON
Lead Supervising Deputy Attorney General

Attorneys for Complainant

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