

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Merrimack Superior Court
163 North Main St./PO Box 2880
Concord NH 03302-2880

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<http://www.courts.state.nh.us>

NOTICE OF DECISION

**MARY E. MALONEY, ESQ
NH ATTORNEY GENERALS OFFICE
33 CAPITOL STREET
CONCORD NH 03301-6397**

Case Name: **State of NH Dept. of Environmental Services v Omnicare, Inc., et al**
Case Number: **217-2014-CV-00098**

Please be advised that on February 27, 2014 Judge McNamara made the following order relative to:

Assented-To Motion to Enter Consent Decree

"Granted"

Consent Decree

Approved. COPY ATTACHED.

February 27, 2014

William S. McGraw
Clerk of Court

(485)

C: George Dana Bisbee, ESQ

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT
SUPERIOR COURT

State of New Hampshire
Department of Environmental Services
v.

2014 FEB 24 PM 3 36

Omnicare, Inc. and Omnicare Pharmacy of New Hampshire

Docket No.:

CONSENT DECREE

NOW COME the Petitioner, the State of New Hampshire Department of Environmental Services (hereinafter "State" or "Department"), by and through its attorneys, the Office of the Attorney General, and the Respondent, Omnicare, Inc. and Omnicare Pharmacy of New Hampshire (hereinafter "Omnicare"), by and through its attorneys, Devine, Millimet & Branch, P.A. and hereby agree to the following settlement of claims asserted by the State in this case.

A. INTRODUCTION

1. The Department, located at 29 Hazen Drive, P.O. Box 95, Concord, New Hampshire, 03301-0095, is the State agency responsible for the administration and enforcement of New Hampshire's Hazardous Waste Management Act, RSA chapter 147-A, and the administrative rules adopted thereunder.

2. RSA 147-A:17, I, authorizes the State to seek a civil forfeiture of up to fifty thousand dollars (\$50,000.00) against a person for each day of each continuing violation of any provision of RSA 147-A or any rules adopted relative to RSA 147-A.

3. Respondent, Omnicare, Inc. is a Delaware corporation with its principal offices and mailing address at 900 Omnicare Center, 201 E. Fourth Street, Cincinnati, Ohio, 45202.

4. Omnicare Inc., d/b/a Omnicare of New Hampshire (“Omnicare”) operates a pharmaceutical provider and return business located at 13 Commerce Way, Londonderry, New Hampshire, 03053.

5. Concurrently with the submittal of this Consent Decree, the State is filing with the Merrimack County Superior Court a Petition for Civil Penalties against Omnicare, alleging specific violations of RSA chapter 147-A and the rules adopted thereunder.

6. The State and Omnicare, wishing to avoid the expense of litigation, agree, without adjudication of the facts or law, that settlement of this matter is in the public interest and that entry of this Decree without further litigation is an appropriate way to resolve any dispute.

7. The State and Omnicare consent to entry of this Decree.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

B. JURISDICTION AND VENUE

8. This Court has jurisdiction over the parties and this action pursuant to RSA 147A:4, RSA 147-A:9 and RSA 147-A:17 (2005). Venue is proper in this county because the Department is located in Concord, New Hampshire.

C. CIVIL FORFEITURE

9. Omnicare shall be assessed a total civil forfeiture of two hundred ninety-eight thousand and one hundred dollars (\$298,100.00), in exchange for a release and full settlement of the specific violations alleged in the Petition relating to hazardous waste statutes, rules, and permits committed at the Omnicare facility located at 13 Commerce Way, Londonderry, New Hampshire, 03053.

10. The total civil forfeiture provided by this Decree shall be satisfied through cash payment in the amount of two hundred and ninety thousand dollars (\$290,000.00) to the State’s

Hazardous Waste Cleanup Fund established by RSA 147-B, and through a payment of eight thousand and one hundred dollars (\$8,100.00) to the Northeast Environmental Enforcement Project (“NEEP”). These payments shall be made within thirty (30) days of the entry of this Decree as an Order of the court.

11. The cash payment due to the State under this Decree shall be due and payable without any demand from the State. The payment shall be delivered by hand or certified mail to the Office of the Attorney General, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire, 03301, Attn: Mary E. Maloney, Assistant Attorney General. Omnicare shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

12. The cash payment to NEEP shall be due and payable without any demand by the State or NEEP. The payment shall be made out to the “Northeast Environmental Enforcement Training Fund” and delivered by certified mail to the Northeast Environmental Enforcement Project, 25 Market Street, P.O. Box 101, Trenton, New Jersey, 08625. Attn: Connie Morder. Omnicare shall pay interest on any late payment, which interest shall accrue at a rate of 10% per annum, per RSA 336:1, I.

14. No payment made under this decree shall be tax deductible.

D. OTHER TERMS AND CONDITIONS

15. The Department, by and through the Attorney General, releases and covenants not to sue or take any administrative action against Omnicare and its successors and assigns for the violations alleged in the Petition or for violations that might have been alleged based on specific material facts alleged in the Petition, through the effective date of this Decree. The State expressly reserves the right to sue or to bring administrative actions against Omnicare and its

successors and assigns with regard to claims or liability for violations not alleged in the State's Petition and Omnicare reserves any and all defenses with regard to such State claims. The State and Omnicare each also reserves the right to bring an action to enforce the terms of this Decree.

16. The parties acknowledge that Omnicare and its successors and assigns have a continuing obligation to remain in compliance with all applicable federal and state laws, rules and permits relating to its facility. The State reserves the right to bring any administrative, civil, or criminal action for any hazardous waste, solid waste, or other environmental violation arising after the effective date of this Decree. This reservation of rights includes, but is not limited to, violations that occur in connection with the terms of this Decree. Omnicare reserves any and all defenses with regard to such State claims.

17. It is the intention of the parties that this Decree be entered and enforced as an Order of the Court, subject to all the power of the Court at law and equity. Omnicare acknowledges that any violation of the Decree or the agreements reflected herein may be cause for Omnicare being adjudged in contempt of court and hereby waives any objections to jurisdiction or service of process if such remedy is sought by the State.

18. The State's failure to enforce any provision of this Decree after any breach or default shall not be deemed a waiver of its right to enforce each and all of the provisions of this Decree upon further breach or default.

19. This Decree contains the entire agreement of the parties, and any material modifications hereto must be agreed to in writing by both Omnicare and the State, acting through the Attorney General's Office, and filed with the Court. The parties may agree in writing without Court approval of non-material modification, such as modification to schedules

established by this Decree with no effect on statutory, regulatory, or permitted obligations. Such non-material modifications become effective upon execution by both parties.

20. The effective date of this Decree shall be the date upon which it is entered as an Order of the Court.

21. This Decree shall be construed in accordance with the laws of New Hampshire.

22. Each party shall bear its own costs and attorneys' fees.

23. This matter may be closed after ninety (90) days of the Court's approval of this Decree. The Court shall retain jurisdiction of this matter for purposes of enforcement of the Decree and shall reopen the case upon motion by either party for enforcement of its terms.

THE STATE OF NEW HAMPSHIRE

By its attorney,
JOSEPH A. FOSTER
ATTORNEY GENERAL

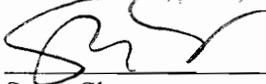
Dated: Feb. ~~24~~, 2014

By:

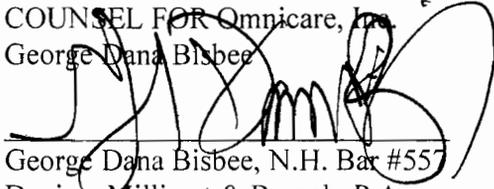


Mary E. Maloney, N.H. Bar # 1603
Assistant Attorney General
Environmental Protection Bureau
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3679

Dated: Feb. 19, 2014

OMNICARE, INC.,
By: 
Steve Skwara,
Chief Compliance Officer
Omnicare, Inc.
900 Omnicare Center
201 E. Fourth Street
Cincinnati, OH 45202

Dated: Feb. 20, 2014

COUNSEL FOR Omnicare, Inc.
George Dana Bisbee
By: 
George Dana Bisbee, N.H. Bar #557
Devine, Millimet & Branch, P.A.
111 Amherst Street
Manchester NH 03101
(603) 695-8626

I hereby enter this Consent Decree as an Order of the Court.

Dated and entered this 27th day of February, 2014.


Justice of the Superior Court