

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PAR PHARMACEUTICAL, INC.,
PAR STERILE PRODUCTS, LLC, and
ENDO PAR INNOVATION COMPANY,
LLC,

Plaintiffs,
v.

EAGLE PHARMACEUTICALS INC.,

Defendant.

C.A. No. 18-823-CFC-JLH

PAR PHARMACEUTICAL, INC.,
PAR STERILE PRODUCTS, LLC, and
ENDO PAR INNOVATION COMPANY,
LLC,

Plaintiffs,
v.

AMNEAL PHARMACEUTICALS OF
NEW YORK, LLC, et al.,

Defendants.

C.A. No. 18-2032-CFC-CJB
(Consolidated)

**STIPULATION AND [PROPOSED] ORDER TO PERMIT LIVE TRIAL
TESTIMONY OF GERHARD WINTER, PH.D.
VIA CONTEMPORANEOUS TRANSMISSION**

WHEREAS, a consolidated, in-person bench trial as to infringement/non-infringement in the C.A. No. 18-823-CFC-JLH action and as to invalidity/validity in both of the above-captioned actions is scheduled to begin July 7, 2021 (the “July 7, 2021 trial”);

WHEREAS, one of the Amneal Defendants' expert witnesses, Gerhard Winter, Ph.D., resides in Germany and anticipates that it would be extremely difficult, if not impossible, for him to attend the July 7, 2021 trial in person in the United States in light of the ongoing health risks and travel restrictions resulting from the COVID-19 pandemic (*see, e.g.*, Ex. A at Sec. 2, Jan. 25, 2021 Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons who Pose a Risk of Transmitting the Coronavirus Disease);

WHEREAS, Dr. Winter is able to travel to Brussels, Belgium, to testify live but remotely at the July 7, 2021 trial from Brussels, Belgium, under oath, via contemporaneous audio and visual transmission in full compliance with all applicable laws; and

WHEREAS, the Court previously indicated that it will allow Dr. Winter to testify live but remotely at the July 7, 2021 trial, under oath, and via contemporaneous audio and visual transmission from Brussels, Belgium. (*See* 5/26/21 Tr. at 48-49).

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their undersigned counsel and subject to the approval of the Court, pursuant to Fed. R. Civ. P. 43(a) and with good cause having been shown, that the following procedures shall govern Dr. Winter's testimony and attendance at the July 7, 2021 trial, unless otherwise instructed by the Court:

1. The contemporaneous audio and visual transmission of the trial proceedings relating to Dr. Winter shall be provided by TrialGraphix via its Zoom trial platform (“TrialGraphix Platform”).

2. Amneal is responsible for ensuring that Dr. Winter is familiar with the TrialGraphix Platform and that Dr. Winter has the following equipment to participate in the proceeding without undue delays: means for transmitting audio (*e.g.*, microphone, phone, headset), means for video transmission (*e.g.*, internal or external web camera), and means for displaying the TrialGraphix Platform (*e.g.*, laptop, monitor, television screen, or tablet). Counsel may wish to ensure that Dr. Winter is able to participate in the videoconference with one device (or screen) and review exhibits on another.

3. Dr. Winter must participate in at least one test session in advance of his testimony in which Dr. Winter practices using the TrialGraphix Platform, becomes familiar with the process for viewing electronic exhibits, and tests all audio and video equipment (including settings) that will be used at trial. Amneal must provide to the Parties and the Court the telephone number and email address to be used to reach TrialGraphix for any technical issues that arise during Dr. Winter’s testimony.

4. When Dr. Winter is called upon to testify at trial, the oath may be administered to Dr. Winter by the courtroom deputy remotely in accordance with any further instructions or orders of the Court.

5. During Dr. Winter's testimony, a live video transmission of Dr. Winter shall be displayed in the courtroom, and Dr. Winter shall be provided video of at least: the Judge; the examining attorney; and any demonstratives and/or exhibits that are shown contemporaneously in the courtroom.

6. During Dr. Winter's testimony, Dr. Winter shall not use any virtual backgrounds unless otherwise agreed upon by the parties and the Court, Dr. Winter's face must be clearly visible and, to the extent possible, the camera shall be positioned at face level relatively close to Dr. Winter. Dr. Winter may not set his audio on "mute" at any time while testifying on the record. Dr. Winter must also stop speaking when either counsel objects.

7. After Dr. Winter has commenced his examination, there shall be no unrecorded or unnoted communications between Dr. Winter and any person (including any counsel), by any means, including through telephone, electronic chat, email, or text message, while the trial is on the record. When the trial is off the record, Dr. Winter and counsel for Dr. Winter may communicate by any means, such as in a "break-out room" or by telephone call or email, as would be permitted for in-person testimony.

8. Once cross-examination commences, Dr. Winter shall not communicate with anyone else regarding the substance of his testimony (absent express permission of the Court) until such time as Dr. Winter has concluded his testimony on cross-examination.

9. All software programs on Dr. Winter's computer must be closed during the trial testimony, except for the TrialGraphix Platform. Other than the copies of direct examination exhibits, potential cross-examination exhibits, or redirect examination exhibits, as described in paragraphs 10-11 below, and demonstratives for his testimony, Dr. Winter shall not have access to any additional documents, either electronically or in paper, or programs accessible or opened, including social media, chat, messaging, or email applications during his testimony, including any chat function within the TrialGraphix Platform. There may not be any other person in the same room as Dr. Winter during the proceedings, except that another person may be present for the sole purpose of assisting Dr. Winter with any technical difficulties he may encounter.

10. Box(es) or other packages containing any hard copy exhibits and any demonstratives sent to Dr. Winter for direct examination may be opened before the direct examination, but the copy of the hard copy binders and/or demonstratives provided to and used by Dr. Winter during direct testimony shall at all times exactly match what is being provided to the Court. No one may annotate the hard

copy binders and/or demonstratives in any way (*e.g.*, no handwritten notes, no highlighting (other than what is highlighted in the demonstratives provided to the Court and Opposing Counsel), no physical markers (other than the tabs used to separate exhibits), etc.).

11. Notwithstanding Paragraph 32 of the Revised Pretrial Order in 18-cv-2032 (D.I. 282), examining counsel shall disclose the exhibits to be introduced through Dr. Winter by no later than 7:00 pm three days before Dr. Winter is expected to testify. Counsel for Par will make reasonable best efforts to send Dr. Winter one set of hard copies of potential cross-examination exhibits and Dr. Winter's deposition transcript such that it arrives at Dr. Winter's designated shipping address no later than one calendar day before Dr. Winter is expected to testify, via FedEx or UPS (or other means that can be tracked). For any voluminous exhibit (*i.e.*, greater than 100 pages), counsel may provide hard copies of excerpts of the exhibit that might be specifically referenced during the examination; the entire exhibit will be available electronically to the Court, Dr. Winter, and the parties' outside trial counsel and their legal staff members via the TrialGraphix Platform. While counsel for Plaintiffs and counsel for Defendants will make reasonable best efforts to provide in advance pre-marked, hard copies of all potential cross-examination or redirect examination exhibits, nothing in this provision precludes either counsel for Plaintiffs or counsel for Defendants, if on redirect, from electronically marking and using

additional exhibits not provided in hard copy during the cross-examination and redirect. The boxes or other packages containing the cross-examination exhibits will be sealed and shall remain sealed until cross-examining counsel instructs Dr. Winter to open them during the trial on camera.

12. Dr. Winter's designated shipping address is below:

HOYNG ROKH MONEGIER BV
Avenue des Nerviens 9-31, 4th Floor
1040 Brussels
Belgium

13. If counsel wishes to use a document for impeachment purposes during Dr. Winter's testimony that was not previously disclosed as a trial exhibit, counsel shall make any such document electronically available to Dr. Winter in its entirety via the TrialGraphix Platform.

14. Dr. Winter shall not retain copies of trial exhibits after the conclusion of the trial and shall promptly delete or otherwise remove from his personal computer (*e.g.*, desktops, laptops, or tablets) any electronic copies of exhibits that are downloaded during the trial and destroy any physical copies of exhibits.

15. Subject to the approval of the Court, and without interrupting or causing delay to the live, in-person proceedings in Delaware, Dr. Winter will be provided live streaming access for the duration of the trial during the times at which he is not testifying. If live streaming access is granted, such access shall be provided via the

TrialGraphix Platform, and (1) Dr. Winter may be provided video of, at the Court's discretion: the Judge, the testifying witness, the examining attorney, and any demonstratives and/or exhibits that are shown contemporaneously in the courtroom and (2), while he is not testifying, Dr. Winter shall be muted on the TrialGraphix Platform and need not appear on video. In the event of technical difficulties prohibiting Dr. Winter's live streaming access, Amneal may arrange for Dr. Winter to listen to the live, in-person proceedings via telephone until such technical difficulties are resolved.

16. Any recording of the trial by anyone other than the court reporter, including "screen-shots" or other visual or audio copy, is strictly prohibited. Any "record" function in the TrialGraphix Platform will be disabled by TrialGraphix. Violation of these prohibitions may result in sanctions, including restricted entry to future hearings, denial of entry to future hearings, removal of Court-issued media credentials, or any other sanctions deemed appropriate by the Court.

Dated: July 5, 2021

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*Attorneys for Defendant Eagle
Pharmaceuticals Inc.*

SO ORDERED, this 7th day of July, 2021.



The Honorable Colm F. Connolly
Chief Judge, U.S. District Court for the District of Delaware

28307703.1

EXHIBIT A

BRIEFING ROOM

Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease

JANUARY 25, 2021 • PRESIDENTIAL ACTIONS

The Federal Government must act swiftly and aggressively to combat coronavirus disease 2019 (COVID-19). The national emergency caused by the COVID-19 outbreak in the United States continues to pose a grave threat to our health and security. As of January 20, 2021, the United States had experienced more than 24 million confirmed COVID-19 cases and more than 400,000 COVID-19 deaths. It is the policy of my Administration to implement science-based public health measures, across all areas of the Federal Government, to prevent further spread of the disease.

The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services, working in close coordination with the Department of Homeland Security, has determined that the Republic of South Africa is experiencing widespread, ongoing person-to-person transmission of SARS-CoV-2, the virus that causes COVID-19, including a variant strain of the virus known as B.1.351. The World Health Organization has reported that the Republic of South Africa has over 1,400,000 confirmed cases of COVID-19. Another variant strain, known as B.1.1.7, is widely circulating and has been traced to the United Kingdom. Furthermore, a third variant strain, which is known as B.1.1.28.1 and may impact the potential for re-infection, has been identified in Brazil. Based on developments with respect to the variants and the continued spread of the disease, CDC has reexamined its policies on international travel and, after reviewing the public health situations within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa, has concluded that continued and further measures are required to protect the public health from travelers entering the United States from those jurisdictions.

In my Executive Order of January 21, 2021, entitled “Promoting COVID-19 Safety in Domestic and International Travel,” I directed the Secretary of Health and Human Services, including through the Director of CDC, and in coordination with the Secretary of Transportation (including through the Administrator of the Federal Aviation Administration) and

the Secretary of Homeland Security (including through the Administrator of the Transportation Security Administration), to further examine certain current public health precautions for international travel and take additional appropriate regulatory action, to the extent feasible and consistent with CDC guidelines and applicable law.

While that review continues, and given the determination of CDC, working in close coordination with the Department of Homeland Security, described above, I have determined that it is in the interests of the United States to take action to restrict and suspend the entry into the United States, as immigrants or nonimmigrants, of noncitizens of the United States (“noncitizens”) who were physically present within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa during the 14-day period preceding their entry or attempted entry into the United States.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that the unrestricted entry into the United States of persons described in section 1 of this proclamation would, except as provided for in section 2 of this proclamation, be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Suspension and Limitation on Entry. (a) The entry into the United States, as immigrants or nonimmigrants, of noncitizens who were physically present within the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, and the Federative Republic of Brazil during the 14-day period preceding their entry or attempted entry into the United States, is hereby suspended and limited subject to section 2 of this proclamation.

(b) The entry into the United States, as immigrants or nonimmigrants, of noncitizens who were physically present within the Republic of South Africa during the 14-day period preceding their entry or attempted entry into the United States, is hereby suspended and limited subject to section 2 of this proclamation.

Sec. 2. Scope of Suspension and Limitation on Entry.

(a) Section 1 of this proclamation shall not apply to:

- (i) any lawful permanent resident of the United States;
- (ii) any noncitizen national of the United States;

- (iii) any noncitizen who is the spouse of a U.S. citizen or lawful permanent resident;**
- (iv) any noncitizen who is the parent or legal guardian of a U.S. citizen or lawful permanent resident, provided that the U.S. citizen or lawful permanent resident is unmarried and under the age of 21;**
- (v) any noncitizen who is the sibling of a U.S. citizen or lawful permanent resident, provided that both are unmarried and under the age of 21;**
- (vi) any noncitizen who is the child, foster child, or ward of a U.S. citizen or lawful permanent resident, or who is a prospective adoptee seeking to enter the United States pursuant to the IR-4 or IH-4 visa classifications**
- (vii) any noncitizen traveling at the invitation of the United States Government for a purpose related to containment or mitigation of the virus;**
- (viii) any noncitizen traveling as a nonimmigrant pursuant to a C-1, D, or C-1/D nonimmigrant visa as a crewmember or any noncitizen otherwise traveling to the United States as air or sea crew;**
- (ix) any noncitizen**
 - (A) seeking entry into or transiting the United States pursuant to one of the following visas: A-1, A-2, C-2, C-3 (as a foreign government official or immediate family member of an official), E-1 (as an employee of TECRO or TECO or the employee's immediate family members), G-1, G-2, G-3, G-4, NATO-1 through NATO-4, or NATO-6 (or seeking to enter as a nonimmigrant in one of those NATO categories); or**
 - (B) whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement;**
- (x) any noncitizen who is a member of the U.S. Armed Forces and any noncitizen who is a spouse or child of a member of the U.S. Armed Forces**
- (xi) any noncitizen whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee; or**
- (xii) any noncitizen whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees.**

(b) Nothing in this proclamation shall be construed to affect any individual's eligibility for asylum, withholding of removal, or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws and regulations of the United States.

Sec. 3. Implementation and Enforcement. (a) The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of noncitizens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish.

(b) The Secretary of State, the Secretary of Transportation, and the Secretary of Homeland Security shall ensure that any noncitizen subject to this proclamation does not board an aircraft traveling to the United States, to the extent permitted by law.

(c) The Secretary of Homeland Security may establish standards and procedures to ensure the application of this proclamation at and between all United States ports of entry.

(d) Where a noncitizen circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry, the Secretary of Homeland Security shall consider prioritizing such noncitizen for removal.

Sec. 4. Termination. This proclamation shall remain in effect until terminated by the President. The Secretary of Health and Human Services shall, as circumstances warrant and no more than 30 days after the date of this proclamation and by the final day of each calendar month thereafter, recommend whether the President should continue, modify, or terminate this proclamation.

Sec. 5. Amendment. Section 5 of Proclamation 9984 of January 31, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk), and section 5 of Proclamation 9992 of February 29, 2020 (Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus), are each amended to read as follows:

“Sec. 5. Termination. This proclamation shall remain in effect until terminated by the President. The Secretary of Health and Human Services shall, as circumstances warrant and no more than 30 days after the date of the Proclamation of January 25, 2021, entitled

“Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019,” and by the final day of each calendar month thereafter, recommend whether the President should continue, modify, or terminate this proclamation.”

Sec. 6. Effective Dates. (a) The suspension and limitation on entry set forth in section 1(a) of this proclamation is effective at 12:01 a.m. eastern standard time on January 26, 2021. The suspension and limitation on entry set forth in section 1(a) of this proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 12:01 a.m. eastern standard time on January 26, 2021.

(b) The suspension and limitation on entry set forth in section 1(b) of this proclamation is effective at 12:01 a.m. eastern standard time on January 30, 2021. The suspension and limitation on entry set forth in section 1(b) of this proclamation does not apply to persons aboard a flight scheduled to arrive in the United States that departed prior to 12:01 a.m. eastern standard time on January 30, 2021.

Sec. 7. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, public safety, and foreign policy interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 8. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of January, in the year of our Lord two thousand twenty-one, and of the Independence of the United States of America the two hundred and forty-fifth.

JOSEPH R. BIDEN JR.