

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NOVO NORDISK INC.

and

NOVO NORDISK PHARMA, INC.,

Plaintiffs,

**UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
et al.,**

Defendants.

Civil Action No. 3:21-cv-00806
Chief Judge Freda L. Wolfson

**PLAINTIFFS' RESPONSE TO
MOTION TO INTERVENE BY
AMERICAN HOSPITAL
ASSOCIATION, ET AL.**

Plaintiffs Novo Nordisk Inc. and Novo Nordisk Pharma, Inc. (together, “Novo”) take no position on the motion to intervene filed on March 2, 2021, by the American Hospital Association, 340B Health, America’s Essential Hospitals, Association of American Medical Colleges, Children’s Hospital Association, and American Society of Health-System Pharmacists. *See* ECF No. 20.

If the Court allows the movant-intervenors to participate in this case, however, Novo requests that the Court ensure that their participation does not interfere with the expeditious and efficient resolution of the issues raised in Novo’s complaint.

Any filings by the movant-intervenors should be made in accordance with the schedule that is set for the plaintiffs and defendants.

District courts are permitted under Rule 24 of the Federal Rules of Civil Procedure to “impose conditions on intervention.” *Puget Soundkeeper All. v. EPA*, No. C13-1839, 2014 WL 12104034, at *3 (W.D. Wash. Feb. 18, 2014). As the Advisory Committee notes to Rule 24 recognize, intervention “may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings.” Fed. R. Civ. P. 24, Advisory Comm. notes to the 1966 Amendment. “[P]ragmatism is a substantial factor that must be considered” when determining whether intervention should be conditioned on reasonable requirements. *Kleissler v. U.S. Forest Service*, 157 F.3d 964, 970 (3d Cir. 1998) (citing 7C Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1908, at 301 (1986)); *see also United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991) (suggesting options for the district court “to condition ... intervention in this case on such terms as will be consistent with the fair, prompt conduct of this litigation”).

Restrictions are warranted here to ensure that the movant-intervenors do not interfere with the fair adjudication of this case. As an example, in attempting to justify their intervention request, movant-intervenors do not accurately describe Novo’s position or the issues raised in its complaint. Contrary to their suggestions,

Novo has never failed to offer each covered entity—including each of the movant-intervenors' members that qualify as covered entities—the ability to purchase its covered outpatient drugs at or below the applicable 340B ceiling price. *See* 42 U.S.C. § 256b(a)(1). Novo's initiative merely refuses to transfer drugs at the 340B discounted price to an unlimited number of commercial pharmacies, which do not qualify as covered entities under the 340B statute and have no right to access drugs at discounted prices.

Respectfully submitted,

/s/ Israel Dahan

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Dated: March 22, 2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been filed electronically on the 22nd day of March, 2021. Notice of this filing will be sent to counsel of record for the parties by operation of the Court's electronic filing system.

/s/ Israel Dahan
Israel Dahan, Esq.