

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-02609-GPG-SBP

AMNEAL PHARMACEUTICALS LLC,

Plaintiff,

v.

PHILIP J. WEISER, in his official capacity as Attorney General of the State of Colorado,

Defendant.

~~[PROPOSED]~~ SCHEDULING ORDER

**1. DATE OF SCHEDULING CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

A status conference was held on March 16, 2026. The attendees were:

Counsel for Plaintiff Amneal Pharmaceuticals LLC:

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2. STATEMENT OF JURISDICTION

a. Plaintiff

The Court has jurisdiction over this matter under 28 U.S.C. § 1331 and *Ex parte Young*, 209 U.S. 123 (1908).

b. Defendant

The Attorney General does not concede that the Court has subject matter jurisdiction. However, consistent with the Tenth Circuit's decision in *Teva Pharms. USA, Inc. v. Weiser*, No. 24-1035, 2025 WL 2555552 (10th Cir. Sept. 5, 2025), the Attorney General is not raising lack of subject matter jurisdiction at this time.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff

Colorado law provides that uninsured individuals participating in the State's "affordability program" can acquire epinephrine auto-injectors from any Colorado pharmacy, at a maximum out-of-pocket cost of \$60. The pharmacies can then request free replacements, or full reimbursement for the cost of the auto-injector, from the manufacturer. Plaintiff Amneal Pharmaceuticals LLC ("Amneal") manufactures an epinephrine auto-injector product and has provided hundreds of free replacements to Colorado pharmacies under the program. Amneal contends that Colorado law effects an illegal taking of its property without compensation, in violation of the Fifth Amendment, as a court in this District has already found. See *Teva Pharmaceuticals USA v. Weiser*, 709

F. Supp. 3d 1366, 1376-77 (D. Colo. 2023). Amneal asks that the reimburse-or-resupply requirement be permanently enjoined because it authorizes an endless series of takings that cannot be effectively remedied through an endless series of after-the-fact suits for compensation. See *Pharm. Research & Mfrs. of Am. v. Williams*, 64 F.4th 932 (8th Cir. 2023) (“*PhRMA*”) (holding injunctive relief warranted in materially identical circumstances).

b. Defendant

For more than 500,000 Coloradans, epinephrine auto-injectors (colloquially referred to as “EpiPen®”) are essential medical devices because they are the best way to administer epinephrine when facing life-threatening anaphylactic shock. Unfortunately, epinephrine auto-injector manufacturers have driven up the price of epinephrine auto-injectors for years. The price increases have been so steep that Colorado is now facing an affordability crisis, forcing those with serious health conditions and limited means to make the life and death choice between purchasing or forgoing an epinephrine auto-injector.

To increase access to life-saving epinephrine auto-injectors, Colorado established the Epinephrine Auto-Injector Affordability Program (the “Affordability Program”). See C.R.S. § 12-280-142. Under the Affordability Program, eligible uninsured or underinsured Coloradans can obtain a two-pack of epinephrine auto-injectors from pharmacies for \$60. See C.R.S. §§ 12-280-142(6)-(7). After dispensing the epinephrine auto-injectors, pharmacies may make a claim to manufacturers, and manufacturers either reimburse the pharmacies or send a replacement supply of auto-injectors to pharmacies. See C.R.S. §

12-280-142(8). The Affordability Program allows people to access life-saving medicine that might otherwise be out of reach.

Amneal is a generic epinephrine auto-injector manufacturer. In this suit, Amneal claims that the Affordability Program violates the Takings Clause and is asking this Court to permanently enjoin the Attorney General from enforcing the Affordability Program. The Attorney General disputes that the Affordability Program effects a taking. But even if it does, the Court cannot grant the relief Amneal seeks. It is well-settled that the Takings Clause does not prohibit the taking of private property, but only requires compensation after a taking has occurred. *See, e.g., First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 314-15 (1987). Therefore, as “long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government’s action effecting a taking” and “barring the government from acting will ordinarily not be appropriate.” *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 201, 202 (2019); *see also Williams v. Utah Dep’t of Corr.*, 928 F.3d 1209, 1213-14 (10th Cir. 2019). Colorado provides adequate means for Amneal to obtain just compensation. Accordingly, the Court cannot grant Amneal an injunction here. This case properly belongs in state court.

4. UNDISPUTED FACTS

The following facts are undisputed:

1. Amneal is the manufacturer of the Adrenaclick epinephrine auto-injector.
2. The Adrenaclick product is sold by Colorado pharmacies.

5. COMPUTATION OF DAMAGES

a. Plaintiff

Amneal does not seek damages.

b. Defendant

Even though the remedy for an alleged Takings Clause violation is compensation, see *Knick*, 588 U.S. at 193, Amneal does not seek and cannot obtain damages from the Attorney General in federal court. This case properly belongs in state court.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting.

The Fed. R. Civ. P. 26(f) meeting was held on February 23, 2023.

b. Names of each participant and party he/she represented.

Cole Carter for Amneal

Pawan Nelson for the Attorney General.

c. Statement of when Rule 26(a)(1) disclosures were made or will be made.

Amneal made its initial disclosures on March 13, 2026.

The Attorney General made his initial disclosures on March 25, 2026.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

Both parties agreed that initial disclosures would be due within 30 days of the Rule 26(f) conference (*i.e.*, on or before March 25, 2026).

e. Statement concerning any agreements to conduct informal discovery.

The parties do not have an agreement to conduct informal discovery.

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The parties do not anticipate extensive discovery in this matter and, accordingly, have adopted lower limits on depositions and written discovery than are permitted by default.

g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

The parties anticipate that many of the documents and communications that the Attorney general intends to seek from Amneal are stored electronically, although Amneal reserves the right to object to the requests on relevance grounds.

h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The parties have discussed the potential for resolution of this case, and have agreed to continue those conversations.

7. CONSENT

All parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

The parties agree to a limit of 5 fact witnesses and 15 interrogatories, **including discrete subparts.**

b. Limitations which any party proposes on the length of depositions.

The parties agree that the length of depositions should be governed by Fed. R. Civ. P. 30(d)(1). **Each deposition shall be limited to 1 day of 7 hours.**

c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

The parties agree to a limit of 15 requests for production and 15 requests for admission.

d. Deadline for service of Interrogatories, Requests for Production of Documents and/or Admissions:

The parties agree that interrogatories, requests for production, and requests for admission will be served no later than September 15, 2026 (*i.e.*, approximately 45 days before the proposed discovery cut-off date).

e. Other Planning or Discovery Orders

The parties intend to negotiate a protective order and will submit a proposed order to the Court as soon as possible. **In the event that a discovery dispute arises and cannot be resolved through conferral, the parties shall notify Chambers by submitting Joint Discovery Dispute statement (“JDS”) via email to Prose_Chambers@cod.uscourts.gov. The JDS must describe the parties’ conferral efforts and the disputes at issue. A JDS**

must set forth the parties' positions with regard to each dispute and provide the names of the attorneys who participated in the discovery conferral and the date the conferences were held. The JDS shall be no more than ten (10) pages and shall attach only the necessary portions of the discovery and/or conferral history at issue. Additional guidance regarding Judge Prose's informal dispute resolution procedures may be found on the court's website.

9. CASE PLAN AND SCHEDULE

a. Deadline for Joinder of Parties and Amendment of Pleadings:

April 30, 2026.

b. Discovery Cutoff:

The parties agree to a discovery cut-off of October 30, 2026.

c. Dispositive Motion Deadline:

The parties agree to a dispositive motion deadline of December 18, 2026, although Amneal reserves the right to file its motion for summary judgment in advance of that deadline.

d. Expert Witness Disclosure:

1. The parties shall identify anticipated fields of expert testimony, if any.

The parties do not anticipate any expert testimony in this case, but reserve the right to do so.

2. Limitations which the parties propose on the use or number of expert witnesses.

The parties do not anticipate needing expert testimony in this case, but propose a limit of one expert witness per side.

3. The parties shall designate all affirmative experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before ____, 20__.

The parties agree that affirmative experts will be disclosed by August 31, 2026.

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before __, 20__.

The parties agree that rebuttal experts will be disclosed by September 30, 2026.

e. Identification of Persons to Be Deposed:

<i>Name of Deponent</i>	<i>Expected Length of Deposition</i>
Marty Ross (the declarant)	1-3 hours

The Attorney General will determine additional deponents based on discovery received from Amneal. Amneal does not anticipate requesting any depositions, although it reserves the right to conduct direct examinations of witnesses whom the Attorney General deposes.

10. DATES FOR FURTHER CONFERENCES

a. Status conferences will be held at the following dates and times:

~~[Magistrate Judge to insert date and time]~~

_____, 20__ at ___ o'clock ____m. **None at this time. Future status**

conferences may be set at the request of the parties or the Court.

b. A final pretrial conference will be held at the following date and time:

~~[Magistrate Judge to insert date and time]~~

~~_____, 20__ at __ o'clock ____ m.~~

~~A Final Pretrial Order shall be prepared by the parties and submitted to the Court no later than seven (7) days before the final pretrial conference. If no summary judgment motions are filed, the parties shall contact Judge Gallagher's chambers jointly via email within ten days after the dispositive motions deadline to set a Final Pretrial Conference. If dispositive motions are filed, the parties shall contact Judge Gallagher's chambers jointly via email within thirty days after the Court has issued a ruling (assuming the case survives a motion for summary judgment) to set a Final Pretrial Conference. A Trial Preparation Conference and trial dates will be given to the parties at the Final Pretrial Conference.~~

11. OTHER SCHEDULING MATTERS

a. Identify those discovery or scheduling issues, if any, on which counsel after a good faith effort, were unable to reach an agreement.

None.

b. Anticipated length of trial and whether trial is to the court or jury.

Plaintiff's Position: Plaintiff does not anticipate that a trial will be necessary in this case because Plaintiff's request for an injunction will rise or fall on purely legal grounds. Were a trial to somehow be necessary, Plaintiff anticipates a single-day bench trial.

Defendant's Position: The Attorney General proposes a 2-day bench trial before the Court.

c. Identify pretrial proceedings, if any, that the parties believe may be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/ Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, La Plata County Courthouse, 1060 E. 2nd Avenue, Suite 150, Durango, Colorado 81301.

None.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a), the Uniform Civil Practice Standards for Magistrate Judges, and any additional Order of the assigned Magistrate Judge regarding discovery dispute procedures [if any].

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

This scheduling order cannot be altered or amended except upon a showing of good cause.

DATED at **Denver**, Colorado, this **8th** day of **April**, 2026.

BY THE COURT:



Susan Prose
United States Magistrate Judge

APPROVED AS SUBMITTED ON April 8, 2026:

s/Cole T. Carter

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