



**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

**CHAMBERS OF
George Jarrod Hazel
UNITED STATES DISTRICT JUDGE**

**6500 Cherrywood Lane
Greenbelt, MD 20770
(301) 344-0637**

September 5, 2014

RE: *Hospira Inc., et al. v. Sylvia Mathews Burwell, et al.*
GJH-14-02662

LETTER ORDER

Dear Counsel:

At the request of the parties, the Court held a telephone conference call at approximately 5:15 p.m. today to announce its rulings on pending cross-motions and discuss a request to stay its ruling. Midway through the call, the Court realized that arrangements to record the call had not been made. Given the Court's and the parties' continued desire to expedite these proceedings, the Court proceeded with the call without recording. The Court summarizes its rulings herein.

During the call, the Court announced its final Order to the parties. ECF No. 123. Plaintiff Hospira, Inc. ("Hospira") moved for a stay of the denial of the preliminary injunction pending appeal under Federal Rule of Civil Procedure 62(c). Under Rule 62(c), "[w]hile an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." In the Fourth Circuit, a party seeking a stay of an injunction pending appeal must show: "(1) that he will likely prevail on the merits of the appeal, (2) that he will suffer irreparable injury if the stay is denied, (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay." *St. Agnes Hosp. of City of Balt., Inc. v. Riddick*, 751 F.Supp. 75, 76 (D. Md. 1990) (citing *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970)).

Hospira argued that it has a likelihood of success on appeal given that this case raised serious and difficult issues. Hospira noted that this Court previously granted a temporary restraining order in favor of Hospira, which demonstrates that it has a chance of success on appeal. Hospira also argued that it would suffer irreparable harm if generic versions of its branded drug, Precedex®, were permitted to go back on the market. Hospira contended that the harm to Defendant FDA is non-existent, and Defendant-Intervenors Mylan Institutional, LLC ("Mylan") and Par Sterile Products, LLC ("Par Sterile") already benefitted by putting some of

