

MEDIATE, ARBITRATE, OR LITIGATE?

Choosing the right path to resolution in life sciences disputes

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Three Perspectives, One Dispute

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THE CONVERSATION

- 1 NovaRx / Meridian: a collaboration in trouble
- 2 The dispute resolution clauses: choose your own adventure
- 3 Mediation: a process, not a day
- 4 Three ways to get a decision
- 5 Confidentiality: what you expect, what you get
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NovaRx / Meridian: A Collaboration in Trouble

THE HYPOTHETICAL (ALL ENTITIES ARE FICTIONAL)

The parties. NovaRx, a Nasdaq-listed clinical-stage biotech, licensed NVX-301, a Phase 2 rare autoimmune asset, to Meridian Pharma.

The economics. \$310M in development and regulatory milestones, \$500M in sales milestones, and 8 to 14% royalties.

The two triggers. \$120M on the first Regulatory Approval. \$90M on a label reflecting a specified benefit “as a result of” the registrational study named in a schedule.

Two agreements. A License Agreement and a Supply Agreement under which Meridian manufactures NVX-301 and supplies NovaRx for its retained rights. Both governed by New York law. NovaRx’s royalty financing is tied to the approval milestone, so a slipped milestone is a funding problem, not just a legal one.

WHAT WENT WRONG

- Meridian was acquired by a large, publicly traded pharma with a competing program.
- Phase 3 slipped twice and the study was redesigned. The JSC has not met in two quarters.
- Royalty reports show a single net number. NovaRx’s audit found deductions it cannot reconcile.
- Meridian has served notice that the redesigned study is the Registrational Study and no \$90M milestone is payable.
- Meridian’s new parent has declined to amend. The label decision on the redesigned study is expected in about nine months.
- NovaRx’s lenders are asking when the approval milestone will be paid. The board wants a recommendation in 30 days.

TODAY’S QUESTION Three problems, three paths, thirty days. What would you tell the board?

The Dispute Resolution Clauses: Choose Your Own Adventure

LICENSE AGREEMENT (NOVARX / MERIDIAN), SECTION 15

15.1 Escalation. Thirty days between senior executives.

15.2 Mediation. Good-faith non-binding mediation “before either Party commences arbitration.” No institution. No time limit.

15.3 Arbitration. “Any Dispute arising out of or relating to this Agreement”: ICC, seated in New York, three arbitrators with pharmaceutical experience. Co-arbitrators choose the chair. No confidentiality provision beyond the ICC rules.

15.4 Carve-outs. Equitable relief in any competent court. Patent validity to the courts. “Calculation of Net Sales or royalties” to an independent accounting expert.

15.5 Governing law. New York, for both agreements.

SUPPLY AGREEMENT (NOVARX / MERIDIAN), SECTION 12

12.1 Disputes. Exclusive jurisdiction of the New York courts. No arbitration, no mediation step. Neither agreement provides for consolidation. If Meridian’s supply failures are part of the deprioritization story, which agreement governs?

THE FIRST SIX MONTHS UNDER SECTION 15 (TYPICAL)

- **Day 0** NovaRx serves notice of a Dispute. The clock on 15.1 starts.
- **Day 30** Escalation ends. Mediation is required, but 15.2 names no institution and sets no deadline. Weeks go to agreeing on a mediator.
- **Month 2** NovaRx files a declaratory claim on the \$90M milestone in court under the carve-out. Meridian moves to compel arbitration.
- **Month 3** Request for arbitration filed. Two to three months to constitute a three-member tribunal. A supply claim is filed separately in New York court.
- **Month 5** Tribunal constituted. Meridian objects to jurisdiction over the milestone; NovaRx objects to jurisdiction over supply. Briefing follows.
- **Month 6** No one has reached the merits. The label decision is three months away.

THE PRACTICAL POINT Which forum, in what order, and who decides. Get that wrong and you spend six months fighting over where to fight, and six months closer to the payment date.

Mediation: A Process, Not a Day

WHAT IT LOOKS LIKE

- Months, not a day. A facilitated negotiation with the neutral engaged throughout.
- Experts in the room, or at least named to the mediator. The damages expert especially.
- The business people who will live with the amendment, at the table.

THE COVER ONLY A NEUTRAL CAN GIVE

- Calling the CEOs in. From counsel it reads as weakness; from the mediator it is process.
- A written risk assessment, ex parte, that in-house counsel can take to the board.
- A mediator's proposal: the gut check, and the record that protects the people who said yes.

WHAT KILLS IT

- Treating a mandatory step as a box to check. The neutral needs time and decision-makers, not a promise it will settle.
- No deal lawyer across the table. Bring one, and insist the other side has one on hand.
- Skipping it because the outcome is "binary." Zero or everything is the reason to mediate, not the reason to skip it.

THE PRACTICAL POINT Mediation ends in a contract, not a ruling. Give the neutral the time and the people, and budget for the agreement itself: the terms you argue over last take the longest.

Three Ways to Get a Decision

	Arbitration	Rapid arbitration (e.g., Delaware DRAA)	Litigation
The clock	Set by the tribunal and the parties. Often two years. Moves at the pace of the busiest arbitrator.	Hearing in about 90 days. Award in 120 to 180. Fixed by statute, can be faster.	A trial date the court sets and keeps. Mediate against it.
Who decides	One or three arbitrators, as the clause allows.	One or three, chosen by the parties. Industry experts welcome.	The judge you are assigned. Sometimes a jury.
Discovery and motions	Limited production. Dispositive motions rare.	Narrow by agreement, or none. Issues and relief can be capped.	Broad discovery. Dispositive motions often decisive.
Appeal	Only if the clause provides one. Otherwise limited vacatur.	Direct to the Delaware Supreme Court, limited grounds, 15 days. Waivable.	As of right.
Public record	No public filings. Confidentiality depends on the rules.	Confidential.	Public, unless sealed.
Where NovaRx's issues land	The diligence claim against Meridian, under Section 15.3.	Nothing, unless both sides agree to it once they want a resolution.	The \$90M milestone, if pleaded as equitable relief under 15.4. Patent validity. The Supply Agreement claims under Section 12.

THE PRACTICAL POINT You are not stuck with the clause. Once the other side wants a resolution, the process is negotiable: one arbitrator or three, the clock, or a pivot to rapid arbitration.

Confidentiality: What You Expect, What You Get

	Mediation	Arbitration	Litigation
What clients expect	Everything stays in the room.	Nothing becomes public.	Everything is public.
What actually happens	The process is confidential. The result often is not: a settlement with a listed company is disclosable.	It depends: on the rules, on what the law makes you disclose, on whether you have to enforce, and on people.	Public unless sealed. But a listed company has usually disclosed the dispute already, so the added exposure is smaller than you fear.
In our example	Private, but any amendment to NovaRx’s milestones is a disclosure event for NovaRx.	ICC rules only. The parties need their own protocol for the pricing and development data at the heart of the case.	Public filings, against a listed parent.

THE FOUR LEAKS

- **Disclosure law.** SEC and FINRA filings, investor calls, regulators. If it is material, it is public.
- **The rules.** Many bind the institution and the tribunal, not the parties. Read them before you rely on them.
- **Enforcement.** An award you have to enforce becomes a court record.
- **People.** Patent filings, sublicensees and suppliers, former employees. Somebody always knows.

THE PRACTICAL POINT Confidentiality is a business decision, not a legal default. Decide before the dispute what the company can live with disclosing and, if it is public, what it must; bring disclosure counsel in early. That drives the forum, the process and the settlement.

Where the Leverage Comes From in Each Path

M MEDIATION

WHAT MOVES THE OTHER SIDE

- A credible alternative: the filed-ready complaint or request for arbitration.
- Information the other side lacks, and the neutral's evaluation delivered privately.
- The relationship itself: other programs, supply, consents still to come.

WHEN IT PEAKS

The week before filing, and after the first major ruling or document exchange.

A ARBITRATION

WHAT MOVES THE OTHER SIDE

- A filed-ready request for arbitration.
- A disclosure order.
- The hearing going, or not going, your way.
- The threat of an imminent award.

WHEN IT PEAKS

The week before filing, the production ruling, the hearing, and the days before the award.

L LITIGATION

WHAT MOVES THE OTHER SIDE

- A public pleading that a listed counterparty must disclose and explain.
- An early motion that frames the dispute as one sentence.
- Discovery. The party holding the internal record feels it first.
- A trial date. It pushes the settle-or-try call up to the CEO.

WHEN IT PEAKS

Filing. Expedition granted. The first production. The summary judgment motion. The trial date.

THE PRACTICAL POINT Leverage peaks at specific moments on every path. A mediation held with the complaint or the request for arbitration already drafted is a different mediation.

Resolution Is Not Divorce

WHY THESE DISPUTES ARE DIFFERENT

- Collaboration agreements run 10, 15, 20 years. The parties will often be working together after the dispute ends.
- Even a true separation takes years: there is usually too much money to pay at once, so the payment schedule outlives the fight.
- That is why these agreements have tiered clauses and arbitration: public positions taken in litigation are hard to walk back.

DURING THE FIGHT

- Pick teams: who is part of the litigation strategy, and who stays exclusively on the business side. Choose your witnesses wisely.
- A public fight can infect the business relationship. The witness list and the relationship list are often not the same list.
- Be relentless on the merits and civil in the process. Scorched earth has its place; a twenty-year collaboration is rarely it.
- Keep the JSC meeting if you possibly can. The business channel is both leverage and the off-ramp.

AT SETTLEMENT

- Who is in the courtroom, and who is in the conference room? Keep some business people clear of the fight so they can carry the relationship through it.
- The settlement is almost always a check and an amendment: money, plus a reset of diligence, milestones and reporting. Success is staying in the marriage.
- Draft the amendment term sheet before you file. Knowing what the relationship looks like afterward makes every step more credible.
- Hand the hardest terms to a neutral rather than let them unwind the deal at the end.

THE PRACTICAL POINT Resolution is not divorce. The settlement is almost always a check and an amendment, so protect the people who will have to make the amendment work.

What You Tell the Board

THE RECOMMENDATION: NOVARX'S GENERAL COUNSEL TO THE BOARD

The question. Meridian says the redesigned study is the Registrational Study and no \$90M is payable. The label decision is nine months out. The lenders are asking.

What we recommend.

1. The \$90M milestone: a declaratory claim, filed-ready, pleaded as equitable relief under 15.4. Then the mediation the clause requires, with the draft on the table.
2. The diligence failure: the ICC arbitration the clause requires. A targeted information request now; preserve; build the timeline.
3. The deductions: expert determination under the carve-out. Finish the audit and frame the question tightly.

What we need from you. Authority to file. A business owner for the relationship track who is not a witness. A decision on what the company can live with disclosing.

FIVE QUESTIONS EVERY BOARD MEMO ANSWERS

- 1 Is there a payment event we can accelerate, or must defend?
- 2 Do we need this relationship next year?
- 3 Does a public record help us or hurt us?
- 4 Where are the counterparty's money and management?
- 5 Will a number settle this, or do we need a decision that governs the rest of the relationship?

THE PRACTICAL POINT Multi-track is the norm. The skill is sequencing: which process starts first, which waits, and which stays a draft in a drawer.

At Signing and at Settlement

WHAT SECTION 15 SHOULD HAVE SAID

15.2. A named institution and a 45-day clock. Then either side may proceed.

15.3. One arbitrator for disputes under a threshold, three above it. A hearing within a year. “Pharmaceutical experience” is a preference, not a qualification that leaves three names.

15.4. Name the court. Say that declaratory relief is permitted. Define “calculation” so the expert and the tribunal are never deciding the same question.

Section 12. Same forum as Section 15, or a consolidation clause. One law in two rooms is still two rooms.

WHO SHOULD HAVE BEEN IN THE ROOM

No deal signs without a litigator reading Section 15. It is negotiated when leverage is highest and no one expects to use it.

No settlement closes without a deal lawyer. Litigators cannot draft the amendment; bring the licensing partner, and make sure the other side has one.

It is a contract dispute. Plain language and canons first, course of performance second. Judges and juries start with the words.

The neutral need not be a scientist. If you cannot explain the science to the mediator, you will not explain it to a jury.

THE PRACTICAL POINT The deal team needs the litigators at signing. The litigators need the deal team at settlement. Most disputes went wrong at one of those two moments.

AI, Judgment, and Getting to Resolution

WHAT WE ARE SEEING

- Clients run the briefs through AI and ask the odds. The answer comes back 90%, and compromise gets harder.
- Same inputs, opposite outcomes: one of those clients won, another lost. The difference was judgment.
- The board wants a number and the tool gives one. Someone still has to say whether it is right.

USE IT, WITH GUARDRAILS

- It makes the work faster: timelines, summaries, where each issue stands. Neutrals and counsel use it for exactly that.
- Closed system only. Nothing trains anyone's model; nothing leaves. Disclose it in writing.
- Never a substitute for judgment, on either side of the table.

THE DISCOVERABILITY PROBLEM

- Prompts and outputs are discoverable unless privileged. Asking the tool how strong the argument is creates a document.
- Put those queries on the litigation hold. Regulators and opposing counsel are asking for them.
- Sealed exhibits and transcripts do not go into an open tool. Give the business team rules first.

THE PRACTICAL POINT AI prompts are discoverable. Put them on the litigation hold, and set rules for the business team before they ask the machine how strong the case is.

Mediate, Arbitrate, or Litigate? Four Things to Remember

1

Read the clauses first.

The threshold fight is won or lost before anyone sends an email, and it usually costs six months.

2

Choose the forum with intentionality.

Decide what you want to be holding at the end, then pick the process that produces it. Often that is more than one.

3

Know when leverage peaks.

Hold the draft in the drawer. Mediate with it on the table. File when the other side's calculation changes, not when the calendar says.

4

Resolution is not divorce.

Pick the team before the forum. Draft the amendment before you file. Protect the record, including what the business team asked the machine.

THE LAST PRACTICAL POINT The answer to the title is usually all three. The teams that do this well put a litigator, an arbitration lawyer and a deal lawyer at the table from the first call, and make that call when the relationship starts to wobble, not when the first letter goes out.

NEXT IN THIS SERIES

Part III · Thursday, November 19, 2026

Proving the Case: Science, Patents, and Damages, with Charlotte Jacobsen and Mary Beth Maloney.

QUESTIONS

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