

TherapeuticsMD, Inc.  
Form DEF 14A  
April 25, 2017

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, DC 20549**

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the**

**Securities Exchange Act of 1934**

**(Amendment No. )**

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**TherapeuticsMD, Inc.**

**(Name of Registrant as Specified in its Charter)**

**(Name of Person(s) Filing Proxy Statement, if other than the Registrant)**

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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Date Filed:

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**THERAPEUTICSMD, INC.**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS  
TO BE HELD ON JUNE 16, 2017**

An Annual Meeting of Stockholders of TherapeuticsMD, Inc., a Nevada corporation, will be held at 8:00 a.m., local time, on Friday, June 16, 2017, at the Renaissance Boca Raton Hotel, 2000 NW 19th Street, Boca Raton, Florida 33431, for the following purposes:

1. To elect directors to serve until our next annual meeting of stockholders or until their successors are duly elected and qualified;
2. To approve, on a non-binding advisory basis, the compensation of our named executive officers for the fiscal year ended December 31, 2016 (“say-on-pay”);
3. To ratify the appointment of Grant Thornton LLP, or Grant Thornton, an independent registered public accounting firm, as the independent auditor of our company for the fiscal year ending December 31, 2017; and
4. To transact such other business as may properly come before the meeting or any adjournment thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this notice.

Only stockholders of record at the close of business on April 17, 2017 are entitled to notice of and to vote at the meeting.

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All stockholders are cordially invited to attend the meeting and vote in person. To assure your representation at the meeting, however, we urge you to vote by proxy as promptly as possible over the Internet or by telephone as instructed in the Notice of Internet Availability of Proxy Materials or, if you receive paper copies of the proxy materials by mail, you can also vote by mail by following the instructions on the proxy card. You may revoke your proxy and vote in person at the meeting even if you have previously returned a proxy.

By Order of the Board of Directors,

*/s/ John C.K. Milligan, IV*

JOHN C.K. MILLIGAN, IV  
Secretary

Boca Raton, Florida  
April 25, 2017

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**THERAPEUTICSMD, INC.**

**6800 Broken Sound Parkway NW, Third Floor**

**Boca Raton, Florida 33487**

**PROXY STATEMENT**

**VOTING AND OTHER MATTERS**

**General**

The accompanying proxy is solicited on behalf of TherapeuticsMD, Inc., a Nevada corporation, by our Board of Directors for use at our Annual Meeting of Stockholders to be held at 8:00 a.m., local time, on Friday, June 16, 2017, or at any adjournment thereof, for the purposes set forth in this proxy statement and in the accompanying notice. The meeting will be held at the Renaissance Boca Raton Hotel located at 2000 NW 19<sup>th</sup> Street, Boca Raton, Florida 33431.

In accordance with rules adopted by the Securities and Exchange Commission, or the SEC, that allow companies to furnish their proxy materials over the Internet, we are mailing a Notice of Internet Availability of Proxy Materials instead of a paper copy of our proxy statement and our 2016 Annual Report to most of our stockholders. The Notice of Internet Availability of Proxy Materials contains instructions on how to access those documents and vote over the Internet. The Notice of Internet Availability of Proxy Materials also contains instructions on how to request a paper copy of our proxy materials, including our proxy statement, our 2016 Annual Report, and a proxy card. We believe this process will allow us to provide our stockholders the information they need in a more timely manner, while reducing the environmental impact and lowering our costs of printing and delivering the proxy materials.

These proxy solicitation materials were first distributed on or about May 2, 2017 to all stockholders entitled to vote at the meeting.

**Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting To Be Held on June 16, 2017.** These proxy materials, which include the notice of annual meeting, this proxy statement, and our 2016 Annual Report for the fiscal year ended December 31, 2016, are available at [www.proxyvote.com](http://www.proxyvote.com).

### **Record Date and Outstanding Shares**

Stockholders of record at the close of business on April 17, 2017 are entitled to notice of and to vote at the meeting. On the record date, there were issued and outstanding 203,927,142 shares of our common stock. Each holder of common stock voting at the meeting, either in person or by proxy, may cast one vote per share of common stock held on all matters to be voted on at the meeting.

If, at the close of business on April 17, 2017, your shares were registered directly in your name with our transfer agent, Computershare Trust Company, N.A., then you are a stockholder of record. As a stockholder of record, you may vote in person at the meeting. However, whether or not you plan to attend the meeting, we urge you to vote by proxy over the Internet or by telephone as instructed on the Notice of Internet Availability of Proxy Materials, or to fill out and return the proxy card to ensure your vote is counted. Even if you have submitted a proxy before the meeting, you may still attend the meeting, revoke your proxy and vote in person.

If, at the close of business on April 17, 2017, your shares were held in an account at a brokerage firm, bank, or similar organization, then you are the beneficial owner of shares held in “street name” and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the meeting. As a beneficial owner, you have the right to direct your broker, bank, or other nominee on how to vote the shares in your account. You should have received voting instructions with these proxy materials from that organization rather than from us. You should follow the instructions provided by that organization to submit your vote. You are also invited to attend the meeting in person. However, since you are not the stockholder of record, you may not vote your shares in person at the meeting unless you obtain a “legal proxy” from the broker, bank, or other nominee that holds your shares giving you the right to vote the shares at the meeting.

### **Quorum**

The presence, in person or by proxy, of the holders of a majority of the total number of shares entitled to vote constitutes a quorum for the transaction of business at the meeting.



## Required Votes

Assuming that a quorum is present, the ten persons receiving the largest number of “for” votes of our common stock present in person or by proxy at the meeting and entitled to vote (a plurality) will be elected directors. Stockholders do not have the right to cumulate their votes in the election of directors. We have adopted a majority voting policy as part of our Corporate Governance Guidelines. The majority voting policy is applicable solely to uncontested elections, which are those elections in which the number of nominees for election is less than or equal to the number of directors to be elected. Under the majority voting policy, any nominee for director who receives more “withheld” votes than “for” votes in an uncontested election must submit a written offer to resign as director. Any such resignation will be reviewed by the Nominating and Corporate Governance Committee and, within 90 days after the election, the independent members of our Board of Directors will determine whether to accept, reject or take other appropriate action with respect to, the resignation, in furtherance of the best interests of TherapeuticsMD and our stockholders.

Assuming that a quorum is present, the affirmative vote of a majority of the votes cast will be required to ratify the appointment of Grant Thornton as the independent auditor of our company for the fiscal year ending December 31, 2017. The advisory vote on the compensation of our named executive officers for the fiscal year ended December 31, 2016 (“say-on-pay”) is non-binding, but our Board of Directors and our Compensation Committee of the Board of Directors, or the Compensation Committee, will consider the input of stockholders based on a majority of votes cast.

Votes cast by proxy or in person at the meeting will be tabulated by the election inspector appointed for the meeting who will determine whether a quorum is present. The election inspector will treat abstentions as shares that are present and entitled to vote for purposes of determining the presence of a quorum, but as unvoted for purposes of determining the approval of any matter submitted to the stockholders for a vote. If a brokerage firm, bank, or similar organization indicates on the proxy that it does not have discretionary authority as to certain shares to vote on a particular matter, those shares will not be considered as present and entitled to vote with respect to that matter.

## Voting of Proxies

When a proxy is properly executed and returned, the shares it represents will be voted at the meeting as directed. If no specification is indicated, the shares will be voted (1) “for” the election of each of the ten nominees for director set forth in this proxy statement, (2) “for” the approval of the compensation of our named executive officers for the fiscal year ended December 31, 2016, (3) “for” the ratification of the appointment of Grant Thornton, an independent registered public accounting firm, as the independent auditor of our company for the fiscal year ending December 31, 2017, and (4) as the persons specified in the proxy deem advisable on such other matters as may come before the meeting.

## **Broker Non-Votes and Abstentions**

Brokers, banks, or other nominees that hold shares of common stock in “street name” for a beneficial owner of those shares typically have the authority to vote in their discretion if permitted by the stock exchange or other organization of which they are members. Brokers, banks, and other nominees are permitted to vote the beneficial owner’s proxy in their own discretion as to certain “routine” proposals when they have not received instructions from the beneficial owner, such as the ratification of the appointment of Grant Thornton as the independent auditor of our company for the fiscal year ending December 31, 2017. If a broker, bank, or other nominee votes such “uninstructed” shares for or against a “routine” proposal, those shares will be counted towards determining whether or not a quorum is present and are considered entitled to vote on the “routine” proposals. However, where a proposal is “non-routine,” a broker, bank, or other nominee is not permitted to exercise its voting discretion on that proposal without specific instructions from the beneficial owner. These non-voted shares are referred to as “broker non-votes” when the nominee has voted on other non-routine matters with authorization or voted on routine matters. These shares will be counted towards determining whether or not a quorum is present, but will not be considered entitled to vote on the “non-routine” proposals.

**Please note that brokers, banks, and other nominees may not use discretionary authority to vote shares on the election of directors or the approval of the compensation of our named executive officers if they have not received specific instructions from their clients. For your vote to be counted in the above, you now will need to communicate your voting decisions to your broker, bank, or other nominee before the date of the meeting.**

As provided in our bylaws, as amended, a majority of the votes cast means that the number of votes cast “for” a proposal exceeds the number of votes cast “against” that proposal. Because abstentions and broker non-votes do not represent votes cast “for” or “against” a proposal, broker non-votes and abstentions will have no effect on the proposal to elect directors, the say-on-pay proposal, or the proposal to ratify the appointment of Grant Thornton as the independent auditor of our company for the fiscal year ending December 31, 2017, as each such proposal is determined by reference to the votes actually cast by the shares present or represented by proxy and entitled to vote.

### **Revocability of Proxies**

Any stockholder giving a proxy may revoke the proxy at any time before its use by furnishing to us either a written notice of revocation or a duly executed proxy bearing a later date, or by attending the meeting and voting in person. Attendance at the meeting will not cause your previously granted proxy to be revoked unless you specifically so request.

### **Election Inspector**

Votes cast by proxy or in person at the meeting will be tabulated by the election inspector appointed for the meeting, who will determine whether a quorum is present. The election inspector will treat broker non-votes and abstentions as shares that are present and entitled to vote for purposes of determining the presence of a quorum, and as described in the “Broker Non-Votes and Abstentions” section of this proxy statement for purposes of determining the approval of any matter submitted to the stockholders for a vote.

### **Solicitation**

We will bear the cost of this solicitation. In addition, we may reimburse brokerage firms and other persons representing beneficial owners of shares for expenses incurred in forwarding solicitation materials to such beneficial owners. Proxies also may be solicited by certain of our directors and officers, personally or by telephone or e-mail, without additional compensation.

### **Annual Report and Other Matters**

Our 2016 Annual Report on Form 10-K, which was made available to stockholders with or preceding this proxy statement, contains financial and other information about our company, but, except as indicated therein, is not incorporated into this proxy statement and is not to be considered a part of these proxy materials or subject to Regulations 14A or 14C or to the liabilities of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act. The information contained in the “Compensation Committee Report” and the “Report of the Audit Committee” shall not be deemed “filed” with the SEC or subject to Regulations 14A or 14C or to the liabilities of Section 18 of the Exchange Act.

Through our website, *www.therapeuticsmd.com*, we make available free of charge all of our SEC filings, including our proxy statements, our annual reports on Form 10-K, our quarterly reports on Form 10-Q, and our current reports on Form 8-K, as well as Form 3, Form 4, and Form 5 reports of our directors, officers, and principal stockholders, together with amendments to these reports filed or furnished pursuant to Sections 13(a), 15(d), or 16 of the Exchange Act.

**We will provide, without charge, a printed copy of our Annual Report on Form 10-K for the fiscal year ended December 31, 2016 as filed with the SEC to each stockholder that requests a copy in writing. Any exhibits listed in the Form 10-K report also will be furnished upon request at the actual expense incurred by us in furnishing such exhibits. Any such requests should be directed to our company's secretary at our executive offices set forth in this proxy statement.**

## **PROPOSAL ONE**

### **ELECTION OF DIRECTORS**

#### **Nominees**

Our amended and restated articles of incorporation and bylaws, each as amended, provide that the number of directors shall be fixed from time to time by resolution of our Board of Directors. Presently, the number of directors is fixed at ten. Our bylaws, as amended, provide that all directors are elected at each annual meeting of our stockholders for a term of one year and hold office until their successors are elected and qualified.

A board of ten directors is to be elected at this meeting. Unless otherwise instructed, the proxy holders will vote the proxies received by them “for” each of the nominees named below. All of the nominees currently are directors of our company. In the event that any nominee is unable or declines to serve as a director at the time of the meeting, the proxies will be voted for any nominee designated by our current Board of Directors to fill the vacancy. It is not expected that any nominee will be unable or will decline to serve as a director.

#### **Vote Required**

Assuming that a quorum is present, the ten persons receiving the largest number of “for” votes of our common stock present in person or by proxy at the meeting and entitled to vote (a plurality) will be elected directors, subject to the majority voting policy in our Corporate Governance Guidelines.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE “FOR”  
THE NOMINEES LISTED BELOW.**

The following table sets forth certain information regarding the nominees for directors of our company.

<b>Name</b>	<b>Age</b>	<b>Position</b>
-------------	------------	-----------------

Tommy G. Thompson	75	Chairman of the Board <sup>(1)(2)</sup>
Robert G. Finizio	46	Chief Executive Officer and Director
John C.K. Milligan, IV	54	President, Secretary and Director
Brian Bernick, M.D.	48	Chief Clinical Officer and Director
J. Martin Carroll	67	Director <sup>(1)(2)</sup>
Cooper C. Collins	38	Director <sup>(2)(3)</sup>
Robert V. LaPenta, Jr.	48	Director <sup>(1)(3)</sup>
Jules A. Musing	69	Director
Angus C. Russell	61	Director <sup>(3)</sup>
Nicholas Segal	34	Director <sup>(3)</sup>

(1)Member of Nominating and Corporate Governance Committee.

(2)Member of the Compensation Committee.

(3)Member of the Audit Committee.

*Tommy G. Thompson* has served as the Chairman of the Board of Directors of our company since May 2012. Mr. Thompson currently serves as the Chief Executive Officer of Thompson Holdings, a consulting firm. As the Governor of Wisconsin from January 1987 to February 2001, Secretary Thompson was perhaps best known for his efforts to revitalize the Wisconsin economy, for his national leadership on welfare reform, and for his work toward expanding health care access across all segments of society. As the former Secretary of the U.S. Department of Health & Human Services, or HHS, from February 2001 to January 2005, Secretary Thompson served as the nation’s leading advocate for the health and welfare of all Americans. Secretary Thompson was a partner in the law firm of Akin Gump Strauss Hauer & Feld LLP, or Akin Gump, from March 2005 to January 2012, when he resigned to run for the United States Senate. Secretary Thompson served as an Independent Chairman of the Deloitte Center for Health Solutions, a health care consulting company, from March 2005 to May 2009. At the Deloitte Center for Health Solutions and at Akin Gump, Secretary Thompson built on his efforts at HHS to work toward developing solutions to the health care challenges facing American families, businesses, communities, states, and the nation as a whole. Secretary Thompson has also served as the President of Logistics Health, Inc., a provider of medical readiness and homeland security solutions, from February 2005 to January 2011. Secretary Thompson has served as a Senior Fellow for the Bipartisan Policy Center, a nonprofit organization focused on bipartisan advocacy and policymaking, since July 2013. Secretary Thompson also serves as a member of the board of directors for the following public companies: C. R. Bard, Inc. [NYSE: BCR], Centene Corporation [NYSE: CNC], United Therapeutics Corporation [NASDAQ: UTHR] and Physicians Realty Trust [NYSE: DOC]. Secretary Thompson

also served as a member of the boards of directors of Cytori Therapeutics, Inc. [NASDAQ: CYTX] from April 2011 to May 2016, CareView Communications, Inc. [OTCQB: CRVW] from July 2005 to January 2014, Cancer Genetics, Inc. [NASDAQ: CGIX] from 2008 to January 2014, Pure Bioscience, Inc. [NASDAQ: PURE] from February 2006 to August 2009, SpectraScience, Inc. [OTCBB: SCIE] from September 2007 to December 2009, AGA Medical Holdings, Inc. [NASDAQ: AGAM] from August 2005 to November 2010, CNS Response, Inc. [OTCBB: CNSO.OB] from August 2009 to March 2010, and Tyme Inc. (OTCMKTS: TYMI) from May 2016 to February 2017. We believe Secretary Thompson's experience in public service, particularly his services and knowledge related to the health care industry as a whole, makes him well suited to serve on our Board of Directors. Secretary Thompson received both his B.S. and J.D. from the University of Wisconsin-Madison.

*Robert G. Finizio* has served as Chief Executive Officer and a director of our company since October 2011. As co-founder of VitaMedMD, LLC, or VitaMed, our wholly owned subsidiary, Mr. Finizio served as its Chief Executive Officer and a director from April 2008 to October 2011. Mr. Finizio has 16 years of successful early stage company development experience in the health care industry. Mr. Finizio co-founded and served from August 2001 to February 2008 as President of Care Fusion, LLC and then as Chief Executive Officer of CareFusion, Inc., a clinical technology vendor, which was acquired by Cardinal Health, Inc. Mr. Finizio's early business experience was with Omnicell, Inc. (formerly known as Omnicell Technologies, Inc.), a provider of pharmaceutical supply chain management systems and services, and Endoscopy Specialists, Inc. in the health care IT and surgical space. We believe Mr. Finizio's intimate knowledge and experience with all aspects of the business, operations, opportunities, and challenges of our company and experience with early stage company development in the health care industry provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. Finizio earned a B.A. from the University of Miami.

*John C.K. Milligan, IV* has served as President, Secretary, and a director of our company since October 2011. From December 2008 to October 2011, Mr. Milligan served as President and director of VitaMed. Prior to VitaMed, Mr. Milligan co-founded CareFusion, LLC, serving as President and General Manager from August 2001 to February 2008, and then as President and Chief Operating Officer of CareFusion, Inc. From 1997 to 2001, Mr. Milligan was Vice President, Sales and Operations for Omnicell, Inc. Prior to Omnicell, Mr. Milligan also held executive management positions at Serving Software Inc. and HBO & Co., a health care information systems company, both of which were subsequently acquired by McKesson Corporation. We believe Mr. Milligan's significant experience in creating, developing and guiding growth-oriented health care companies and knowledge of our business provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. Milligan is a graduate of the U.S. Naval Academy.

*Dr. Brian Bernick* has served as a director of our company since October 2011. Dr. Bernick also has served as the Chief Clinical Officer of our company since November 2013, and as the Chief Medical Officer of our company from February 2012 until November 2013. As co-founder of VitaMed, Dr. Bernick served as a director of VitaMed from April 2008 to October 2011. Dr. Bernick is a board-certified obstetrician/gynecologist with over 20 years of clinical medical experience. Dr. Bernick was the Department Chair of Obstetrics and Gynecology at Boca Raton Regional Hospital and served on that hospital's Medical Executive Board as well as the Board of Directors of the Palm Beach Medical Society and VitalMD Group Holding, LLC, one of the largest physician-owned and -managed

obstetricians/gynecologists groups in Florida. Dr. Bernick has served on the American College of Obstetricians and Gynecologists' (ACOG) national committee on Professional Liability. Dr. Bernick is the recipient of several national and regional awards, including recognition by his peers as one of the top doctor's in his specialty by Castle Connolly as well as the recipient of the American Medical Association Foundation's Leadership Award. Dr. Bernick has numerous publications in peer-reviewed journals and has presented original research at numerous medical conferences. Dr. Bernick is an affiliate associate professor of obstetrics and gynecology at Florida Atlantic University College of Medicine. Dr. Bernick holds a B.A. in Economics from Northwestern University, received his Doctorate in Medicine from the Chicago Medical School, and completed his residency at the University of Pennsylvania.

*J. Martin Carroll* has served as a director of our company since March 2015. Mr. Carroll previously served as President and Chief Executive Officer of Boehringer Ingelheim Corp. (U.S.) from 2003 until 2011. He also served as global head of strategy and development for Boehringer Ingelheim (Germany) from 2009 through 2012 and served as Chairman of the Board for a number of Boehringer Ingelheim companies. Previously, Mr. Carroll held positions of increasing responsibility with Merck & Co. Inc. from 1976 to 2001, including manufacturing, international (Japan) and marketing and sales. He left Merck serving as its Executive Vice President for Customer Marketing and Sales of the U.S. Human Health Division. From 1972 to 1976, Mr. Carroll served in the United States Air Force. Mr. Carroll has previously served on the board of directors for a number of organizations, including Accredo Health Group Inc., Vivus Inc. [NASDAQ: VVUS], Durata Therapeutics Inc. [NASDAQ: DRTX], and Gwynedd Mercy College, as well as PhRMA. He currently serves as a director of Mallinckrodt PLC [NYSE: MNK], Catalent, Inc. [NYSE: CTLT] and Inotek Pharmaceuticals Corporation [NASDAQ: ITEK]. We believe Mr. Carroll's extensive experience as a pharmaceutical industry executive and his experience as a director of other publicly traded pharmaceutical companies provides the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. Carroll received a B.A. in accounting and economics from the College of Holy Cross and a M.B.A. from Babson College.



*Cooper C. Collins* has served as a director of our company since February 2012. Mr. Collins has served as Chief Executive Officer of Fortis BioPharma since June 2015. Mr. Collins has served as Chief Strategy Officer of Pernix Therapeutics Holdings, Inc. [NASDAQ: PTX], or Pernix, from May 2013 until April 2014, as its President and Chief Executive Officer from March 2010 until May 2013, and as a director from March 2010 until February 2014. Pernix is a specialty pharmaceutical company focused on the sales, marketing, and development of branded and generic pharmaceutical products primarily for the pediatric market. Mr. Collins joined Pernix Therapeutics, Inc., a predecessor of Pernix, in 2002, where he was appointed as a director in January 2007, its President in December 2007, and its Chief Executive Officer in June 2008, serving in those three capacities until March 2010. From December 2005 to December 2007, Mr. Collins served as Vice President of Business and Product Development of Pernix Therapeutics, Inc. and as its Territory Manager from December 2003 to December 2005. Mr. Collins was employed for three years by the National Football League franchise, the New Orleans Saints, in its media relations department. We believe Mr. Collins' specialty pharmaceutical company knowledge and executive experience provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. While on a football scholarship, Mr. Collins received a B.A. from Nicholls State University, where he later received an M.B.A.

*Robert V. LaPenta, Jr.* has served as a director of our company since February 2012. Since August 2011, Mr. LaPenta, Jr. has been a partner of Aston Capital, LLC, a private equity investment firm with a current focus on investments in the aerospace, defense, and intelligence markets. From April 2007 through July 2011, Mr. LaPenta, Jr. served as Vice President of Mergers and Acquisitions and Corporate Strategy for L-1 Identity Solutions, Inc., or L-1, a provider of technology, products, systems and solutions, and services to the U.S. Government and assisted L-1 management with sourcing acquisition targets, due diligence, structuring, valuation, execution, and related financings. Prior to L1, Mr. LaPenta, Jr. spent 13 years as an institutional equity trader focused on the health care sector trading for both customer and proprietary accounts and most recently served as a Managing Director, Co-Head of Equity Trading at Banc of America Securities LLC, where he managed capital commitment, proprietary trading, and risk management within cash trading. Previously, as a Senior Associate at Coopers & Lybrand LLP, Mr. LaPenta, Jr. participated and managed engagements in auditing, consulting, due diligence, and SEC reporting. Mr. LaPenta, Jr. also serves as a member of the board of directors of Revolution Lighting Technologies, Inc. [NASDAQ: RVLN], a company engaged in the design, manufacture, marketing and installation of LED lighting systems. We believe Mr. LaPenta, Jr.'s diverse investing background, capital markets knowledge, and his relationships within the financial community provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. LaPenta, Jr. graduated in 1991 from Boston College with a B.A. in Accounting and Finance and is a registered CPA (inactive) in the State of New York.

*Jules A. Musing* has served as a director of our company since May 2013. In the course of Mr. Musing's 36-year career in the pharmaceutical and biotechnology industry, specifically at Johnson & Johnson and its affiliates, he has been responsible for the worldwide licensing and acquisition of pharmaceutical and biotechnology products and technologies and the establishment of strategic alliances. This included the establishment of new scientific, technology and product collaborations in various therapeutic areas, the negotiation of licensing and alliance agreements with biotechnology and pharmaceutical companies worldwide, and the partnering, spin-out and out-licensing of company pharmaceutical and biotechnology assets. Prior to moving into those roles, Mr. Musing was Vice President Marketing International for the Janssen Pharmaceutical Group of Companies Worldwide from March 1982 to December 1984; President of Pitman-Moore, Inc., a U.S.-based Johnson & Johnson company from January 1985 to June 1987; Managing Director of Janssen Pharmaceutical in Portugal from July 1987 to March 1990; President of Serono, Inc. in

the United States and Executive Vice President with responsibilities for North and South America from April 1990 to January 1993; Member of the board of directors of Ortho Biotech, Inc. from January 1993 to October 1999; and Managing Director of Ortho Biotech in France (a Johnson & Johnson affiliate) from October 1999 to January 2003. From January 2003 to his retirement in September 2010, Mr. Musing served as Vice President, Licensing and Acquisitions for the Pharmaceutical Group at Johnson & Johnson, where he was responsible for the worldwide licensing and acquisition of pharmaceutical and biotechnology products in all therapeutic areas. He has served as a director of Delphi Digital, Inc. since March 2012 and Chairman of the Scientific Board of Advisors for Noble Capital Financial Markets since February 2012. Mr. Musing also served as a director of iBio, Inc. [NYSE MKT: IBIO] from July 2011 to December 2012. We believe Mr. Musing's more than 36-years' experience in the pharmaceutical and biotechnology industry, including the establishment of numerous strategic and global partnerships and various new product collaborations provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. Musing received his Master's Degree in Biological Sciences from the University of Brussels (Belgium) and his Graduate Degree in Economics and Financial Sciences from the University of Antwerp (Belgium).

*Angus C. Russell* has served as a director of our company since March 2015. Mr. Russell previously served as Chief Executive Officer of Shire PLC, a biopharmaceutical company, from June 2008 until April 2013. Mr. Russell served as the Chief Financial Officer of Shire from 1999 to 2008 and also served as Executive Vice President of global finance. Prior to joining Shire, Russell served at ICI, Zeneca and AstraZeneca PLC for 19 years, most recently in the role of Vice President, Corporate Finance at AstraZeneca. He is a chartered accountant, having qualified with what is now PriceWaterhouseCoopers LLP. Mr. Russell also serves as a director of Mallinckrodt PLC [NYSE: MNK] and BioTime Inc. [NYSE MKT: BTX] and as the chairman of the board of Revance Therapeutics, Inc. [NASDAQ: RVNC]. Mr. Russell previously served as a director of Shire PLC [NASDAQ: SHPG], Questcor Pharmaceuticals Inc. [NASDAQ: QCOR] and InterMune Inc. [NASDAQ: ITMN]. We believe Mr. Russell's extensive experience as a pharmaceutical industry

executive and his experience as a director of other publicly traded pharmaceutical companies provides the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. Mr. Russell holds an honorary Doctor of Business Administration from Coventry University, U.K.

*Nicholas Segal* has served as a director of our company since February 2012. Since June 2007, Mr. Segal has served as a director of Seavest Capital Partners, or Seavest, a private investment company that invests in early and growth-stage companies, primarily in the education, health care, consumer technology, and media sectors. Representing investments of Seavest, Mr. Segal previously served as a director of VitaMed from May 2010 until October 2011. Mr. Segal also serves on the board of directors of Tout Industries, Inc., a private company focused on real-time mobile video publishing, and on the board of directors of GlobalEcho Foundation, a non-profit organization focused on environmental education. Mr. Segal founded and currently serves as Chief Executive Officer of Polar Generation, LLC, an early-stage consumer products company. Prior to joining Seavest, Mr. Segal served as a senior analyst in the Finance and Business Development group at ESPN from September 2004 to April 2007. We believe Mr. Segal's broad base of knowledge in technologies and products directed to the consumer market provide the requisite qualifications, skills, perspectives, and experience that make him well qualified to serve on our Board of Directors. He graduated with a B.A. from Duke University in 2004.

## Executive Officers

The following table sets forth certain information regarding our executive officers as of December 31, 2016:

<b>Name</b>	<b>Age</b>	<b>Position</b>
Robert G. Finizio	46	Chief Executive Officer and Director
John C.K. Milligan, IV	54	President, Secretary and Director
Daniel A. Cartwright	59	Chief Financial Officer and Treasurer
Mitchell L. Krassan	51	Executive Vice President and Chief Strategy Officer
Michael Donegan	49	Vice President – Finance

Listed below are biographical descriptions of our executive officers. For Mr. Finizio's and Mr. Milligan's information, see the description under "Election of Directors" above.

*Daniel A. Cartwright* has served as Chief Financial Officer and Treasurer of our company since October 2011 and served as Vice President of Finance from October 2011 to April 2013. From July 2011 to October 2011, Mr. Cartwright served as Chief Financial Officer of VitaMed. From May 1996 to July 2011, Mr. Cartwright served as Chief Financial Officer and Executive Vice President of Circle F Ventures, LLC, an Arizona venture capital firm that made investments in more than 50 companies. During the same period, Mr. Cartwright served as Chief Financial

Officer and Treasurer of Fleming Securities, formerly a registered broker dealer involved with raising capital for public and private companies. From 1993 to 1996, Mr. Cartwright served as Chief Financial Officer of American Wireless Systems, Inc., a provider of entertainment video services. Mr. Cartwright currently serves as a member of the board of directors of Primetrica, Inc., a private information research company for the telecommunications industry, and formerly served on the board of directors of Antenna Technologies Company, Inc. and WEB Corp. Mr. Cartwright earned his B.S. in Accounting from Arizona State University.

*Mitchell L. Krassan* has served as Executive Vice President and Chief Strategy Officer of our company since October 2011. From April 2010 to October 2011, Mr. Krassan served as Chief Strategy and Performance Officer of VitaMed. Mr. Krassan has been a partner with EquiMark Limited, a private investment partnership, since October 1997. From November 1994 to July 1997, Mr. Krassan served as Chief Financial Officer and Chief Operating Officer of The Reich Group/Telespectrum Worldwide, a fully integrated direct marketing firm that provided clients expertise in market research and analysis, strategic planning, marketing, creative, and production services, telemarketing and database development. Mr. Krassan earned a B.S. in Accounting from the University of Maryland, received his certification as a CPA in the state of Maryland, and earned his M.B.A. in Management from New York University.

*Michael Donegan* has served as Vice President – Finance of our company since April 2013. Mr. Donegan has a 23-year background in accounting and finance. From August 2012 to April 2013, Mr. Donegan served as an independent consultant exclusively for our company, where he conceptualized, designed and executed our Sarbanes-Oxley 404 compliance program. From August 2007 to August 2012, Mr. Donegan served as an independent consultant designing and implementing Sarbanes-Oxley 404 compliance programs for various non-accelerated filers and executed on pre-designed Sarbanes-Oxley 404 compliance programs for certain large accelerated filers. From January 2005 to August 2007, Mr. Donegan served as an independent consultant exclusively for Tyco International, where he enhanced and executed the Sarbanes-Oxley 404 compliance model with their corporate headquarters group. From November 2001 to December 2004, Mr. Donegan was Manager of Financial Systems at Tyco International at its global headquarters. From 1994 to 2001, Mr. Donegan held various positions in the global consolidation/SEC reporting group at Sensormatic Electronics Corporation culminating with the acquisition of Sensormatic Electronics Corporation by Tyco International in the fall of 2001 when he was the Manager of Financial Systems. Mr. Donegan began his career at Ernst & Young, LLP where he worked in both the audit and tax departments. Mr. Donegan earned his Bachelor of Science in Accounting and his Master of Accounting from the University of Florida.

## Non-Executive Officers

Listed below are biographical descriptions of our non-executive officers. For Dr. Bernick's information, see the description under "Election of Directors" above.

*Julia Amadio* has served as Chief Product Officer of our company since January 16, 2012. Ms. Amadio has more than 25 years of experience in general management with leading pharmaceutical marketing and product development organizations. From June 2011 to January 2012, Ms. Amadio was President of JMA Consulting, LLC, her own consulting company that she formed in 2008. From June 2009 to May 2011, she served as Global Vice President of Marketing for MeadWestvaco Healthcare Division. Previously, Ms. Amadio was President of a start-up, Patients' & Consumers' Pharma, in 2007. She was Vice President of Marketing & Marketing Services with Daiichi Pharmaceutical from 2004 to 2006; Vice President of Aventis Pharmaceutical from 1997 to 2004; Senior Director, New Products Women's Health at Wyeth from 1991 to 1997; and started her career at J&J's McNeil Pharmaceutical. Ms. Amadio is an active member and leader in the Healthcare Businesswomen's Association. She was an adjunct lecturer at St. Joseph's University in the pharmaceutical MBA program and authored a chapter on Marketing, Market Research and insights in the book *Pharmaceutical Development for Woman* (Wiley & Sons). Ms. Amadio earned a B.S. in Accounting from St. Joseph's University and a Masters in Business Administration from Drexel University.

*Dr. Sebastian Mirkin* has served as the Chief Medical Officer of our company since November 2013. Dr. Mirkin has more than 15 years of experience and leadership in clinical development and medical affairs in women's health in global pharmaceutical companies. From October 2009 to November 2013, Dr. Sebastian was Clinical Lead and Global Clinical Lead of Women's Health, Clinical Research at Pfizer. From October 2005 to October 2009, he was Director and Senior Director, Clinical Research, Women's Health at Wyeth, and from October 2004 to October 2005 he was Global Lead Medical Services, Women's Health at Organon. Dr. Mirkin oversaw the development and successful marketing authorization of several novel medicines, including Duavee®, Conbriza®, Lybrel®, and Premarin Vaginal Cream® in the United States, Europe, and Japan. Dr. Mirkin holds a Doctor in Medicine degree from National University, Argentina. Trained in Obstetrics/Gynecology, Dr. Mirkin completed his fellowship in Reproductive Medicine at The Jones Institute of Reproductive Medicine in Norfolk, Virginia.

*Dawn Halkuff* has served as the Chief Commercial Officer of our company since October 2016. Prior to that, Ms. Halkuff held numerous senior level positions over 20 years of commercial and marketing experience. Ms. Halkuff was previously at Pfizer, Inc. (NYSE: PFE), where she held various leadership roles in women's health since 2010. Most recently, Ms. Halkuff was Senior Vice President of the Pfizer Consumer Healthcare Wellness Organization and a member of the Consumer Global Leadership Team. Prior to that, Ms. Halkuff was the commercial lead for sales and marketing of the Pfizer Women's Health Division, focusing on the company's reinvestment in hormone therapy treatment, including Premarin Vaginal Cream® and oral hot flash treatments. From 2005 to 2010, Ms. Halkuff was Head of Global Innovation at Weight Watchers International (NYSE: WTW), where she created new weight-loss products, services, and solutions for women worldwide. Ms. Halkuff holds a BS in Psychology from University of Connecticut and an MBA from Pennsylvania State University.

*Jason Spitz* has served as Vice President - Marketing of our company since December 2011. Mr. Spitz has more than 24-years of marketing, advertising, and general management experience in pharmaceutical and biopharmaceutical markets. From June 2008 to December 2010, Mr. Spitz served as Managing Director, Oncology & Hematology at Beacon Healthcare Communications, a company specializing in pharmaceutical and health care advertising. From September 2004 to June 2008, he served as General Manager, Canada and Commercial Strategy and Development at MGI Pharma (later acquired by Eisai, Inc.), a company specializing in oncology and cancer supportive care products. From February 2004 to September 2004, he served as Vice President of Marketing and Sales at Aesgen, Inc., a company specializing in cancer products and drug delivery systems that was acquired by MGI Pharma. Mr. Spitz began his career at Schering Plough as a sales representative, rising within the organization over 15 years to lead a global pharmaceutical franchise. Mr. Spitz earned his Bachelor of Business Administration in Marketing from The University of Texas at Austin and his Master of Business Administration in Pharmaceutical Studies from Fairleigh Dickinson University.

*Yulii Bogatyrenko* has served as the Executive Vice President, Corporate Development of our company since October 2016. Mr. Bogatyrenko has over 20 years of experience in biopharmaceutical and consumer businesses, with extensive experience in women's health. Most recently, Mr. Bogatyrenko was Senior Vice President of Business Development at Paratek Pharmaceuticals, Inc.(NASDAQ: PRTK), where he developed global and regional partnerships for the company's anti-infective products and led the company's U.S. alliance with Allergan for Paratek's dermatology products. Previously, Mr. Bogatyrenko was Vice President and General Manager at Teva Pharmaceuticals Industries, Ltd. (NYSE: TEVA), where he led a specialty women's health business in Latin America, Asia, Middle East, India and Africa. Prior to Teva, Mr. Bogatyrenko had global responsibility for Bayer Healthcare's women's health franchise. From 2006-2011, Mr. Bogatyrenko was at the Pfizer Women's Health Division, where he was responsible for the cross-functional product teams in strategic planning and alliance management. Mr. Bogatyrenko holds a MA in Foreign Language and Literature from Moscow Linguistics University and an MBA from New York University.

*Christian Bloomgren* has served as Vice President - Sales of our company since June 2011. Mr. Bloomgren has more than 14 years of leadership experience in the pharmaceutical, bio-technology, and diagnostic industry. From 2005 to 2011, Mr. Bloomgren served as Region Manager at ViaCell, Inc., a biotechnology company dedicated to enabling the widespread application of human cells as medicine, later acquired by PerkinElmer, Inc. While at ViaCell, Mr. Bloomgren built a successful national sales channel and helped lead the Specialty Diagnostics business. From 2000 to 2002, Mr. Bloomgren served as a specialty Account Manager at Eli Lilly & Co. and from 2002 to 2005 as District Manager at KV Pharmaceutical. Mr. Bloomgren served as an Officer in the United States Air Force and holds a Bachelor of Science degree from California State University and a Master of Science degree from Troy State University.

*Marlan Walker* has served as our General Counsel since March 2016. Mr. Walker previously served as our Corporate and Intellectual Property Counsel from June 2013 until he became our General Counsel. Mr. Walker's experience is focused in the life science industries, including long-term portfolio strategy and management, patent preparation and prosecution, contract negotiation and drafting, life-cycle management, and Hatch-Waxman. After law school, he took a position at Greenberg Traurig, LLP in August 2005. In March of 2009, he moved to Luce Forward Hamilton & Scripps. Mr. Walker accepted an in-house position as Intellectual Property Counsel for Medicis Pharmaceutical Corp. in June 2011, which was acquired by Valeant Pharmaceutical International, Inc. in December 2012. In February 2013, Mr. Walker accepted a position at Kilpatrick Townsend & Stockton, but chose to move in-house again in June 2013, when he accepted a position at our company. Mr. Walker graduated from Arizona State University's Sandra Day O'Connor College of Law with his J.D. in 2004, and an LL.M. in Intellectual Property Law at The George Washington University Law School in 2005. He holds a Master's Degree in Molecular Biology and a Bachelor of Science degree, both earned from Brigham Young University.

*C. Christine Miller, Pharm. D* has served as our Chief Compliance and Regulatory Officer since November 2016. Ms. Miller previously served as our Vice President, Regulatory Affairs, Quality Assurance and Technical Operations from May 2014. Dr. Miller has over thirty years of experience in pharmaceutical regulatory affairs, quality assurance, and drug development. Dr. Miller has submitted and obtained approval for 505(b)(1) and 505(b)(2) new drug applications, including applications for new chemical entities, fast track and orphan designated products. She also has experience with generic drugs, OTC drugs, dietary supplements, and international regulatory submissions. From April 2010 to May 2014, Dr. Miller was NDA Regulatory Practice Lead at Lachman Consultants and President of PharmaReg Solutions where she served as a consultant in all aspects of pharmaceutical regulatory affairs. She was Senior Vice President of Drug Development at Sirion Therapeutics and COO of Rx Development Resources from 2006 to 2010; Vice President of Regulatory Affairs and Quality Assurance at Santarus from 2001 to 2006; Global Vice President of Drug Regulatory Affairs at Bausch & Lomb from 1994 until 2001; Associate Director of Regulatory Affairs at Bayer Corporation from 1991 to 1994; Senior Regulatory Affairs Associate at Mallinckrodt Medical from 1987 to 1991 and at KV Pharmaceutical Company from 1986 to 1987; Regulatory Analyst and Senior Regulatory Analyst at Sandoz Consumer Healthcare Corporation from 1983 to 1986 and started her career as a clinical pharmacist. Dr. Miller holds a Doctor of Pharmacy degree from University of Nebraska.

## **CORPORATE GOVERNANCE**

### **Director Independence**

Our common stock is listed on the NYSE MKT. Under the rules of the NYSE MKT, independent directors must comprise a majority of a listed company's board of directors.

Our Board of Directors has affirmatively determined, after considering all the relevant facts and circumstances, that each of Messrs. Thompson, Carroll, Collins, LaPenta, Jr., Russell and Segal, is an independent director, as "independence" is defined under the applicable rules and regulations of the SEC and the listing standards of the NYSE MKT, because they do not have a relationship with us (either directly or as a partner, stockholder, or officer of an organization that has a relationship with us) that would interfere with their exercise of independent judgment in carrying out their responsibilities as directors. Accordingly, a majority of our directors are independent, as required under the applicable NYSE MKT rules. Messrs. Finizio, Milligan, and Musing and Dr. Bernick are not considered independent directors because of their executive positions or other relationships with our company. There are no family relationships among any of our directors or officers.

### **Committee Charters, Corporate Governance, and Code of Ethics**

Our Board of Directors has adopted charters for the Audit, Compensation, and Nominating and Corporate Governance Committees describing the authority and responsibilities delegated to each committee by our Board of Directors. Our Board of Directors has also adopted Corporate Governance Guidelines, a Code of Conduct and Ethics, and a Code of Ethics for the Chief Executive Officer and Senior Financial Officers. We post on our website, at [www.therapeuticsmd.com](http://www.therapeuticsmd.com), the charters of our Audit, Compensation, and Nominating and Corporate Governance Committees; our Corporate Governance Guidelines, Code of Conduct and Ethics, and Code of Ethics for the Chief Executive Officer and Senior Financial Officers, and any amendments or waivers thereto; and any other corporate governance materials contemplated by the SEC or NYSE MKT regulations. These documents are also available in print to any stockholder requesting a copy in writing from our corporate secretary at our executive offices set forth in this proxy statement.

### **Executive Sessions**



We regularly schedule executive sessions in which non-employee directors will meet without the presence or participation of management, with at least one of such sessions including only independent directors. Mr. Thompson, as the Chairman of our Board of Directors, chairs the executive sessions.

## **Board Committees**

Our Board of Directors has an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee, each consisting entirely of independent directors.

### **Audit Committee**

The purpose of the Audit Committee is to oversee our financial and reporting processes and the audits of our financial statements and to provide assistance to our Board of Directors with respect to its oversight of the integrity of our financial statements, our company's compliance with legal and regulatory matters, the independent registered public accountant's qualifications and independence, and the performance of our independent registered public accountant. The primary responsibilities of the Audit Committee are set forth in its charter and include various matters with respect to the oversight of our accounting and financial reporting process and audits of our financial statements on behalf of our Board of Directors. The Audit Committee also selects the independent registered public accountant to conduct the annual audit of our financial statements; reviews the proposed scope of such audit; reviews accounting and financial controls with the independent registered public accountant and our financial accounting staff; and reviews and approves any transactions between us and our directors, officers, and their affiliates.

The Audit Committee currently consists of Messrs. LaPenta, Jr., Segal, Collins, and Russell, each an independent director of our company under the NYSE MKT rules as well as under rules adopted by the SEC pursuant to the Sarbanes-Oxley Act of 2002. Mr. LaPenta, Jr. serves as the Chairman of the Audit Committee. Our Board of Directors has determined that Mr. LaPenta, Jr. and Mr. Russell (each of whose background is detailed above) qualifies as an "audit committee financial expert" in accordance with applicable rules and regulations of the SEC.

### **Compensation Committee**

The purpose of the Compensation Committee includes determining, or recommending to our Board of Directors for determination, the compensation of our Chief Executive Officer and other executive officers and discharging the responsibilities of our Board of Directors relating to our compensation programs. Pursuant to its charter, the Compensation Committee may delegate any of its responsibilities to a subcommittee comprised of one or more members of the Compensation Committee. The Compensation Committee currently consists of Messrs. Collins, Thompson, and Carroll, with Mr. Collins serving as Chairman.



## **Nominating and Corporate Governance Committee**

The purpose of the Nominating and Corporate Governance Committee includes the selection or recommendation to our Board of Directors of nominees to stand for election as directors at each election of directors, the oversight of the selection and composition of committees of our Board of Directors, the oversight of the evaluations of our Board of Directors and management, and the development and recommendation to our Board of Directors of a set of Corporate Governance Guidelines applicable to us.

Our Nominating and Corporate Governance Committee will consider persons recommended by stockholders for inclusion as nominees for election to our Board of Directors if the information required by the rules adopted by the SEC is submitted in writing in a timely manner addressed and delivered to our corporate secretary at the address of our executive offices set forth in this proxy statement. Our bylaws, as amended, require that, subject to certain exceptions, a stockholder provide information regarding a director nomination to us no earlier than the 120th day and no later than the 90th day prior to the first anniversary of the preceding year's annual meeting of stockholders and update and supplement such information.

The Nominating and Corporate Governance Committee identifies and evaluates nominees for our Board of Directors, including nominees recommended by stockholders, based on numerous factors it considers appropriate, some of which may include strength of character, mature judgment, career specialization, relevant technical skills, diversity, and the extent to which the nominee would fill a present need on our Board of Directors.

All nominees for election to our Board of Directors at our Annual Meeting of Stockholders are current directors of our company.

The members of the Nominating and Corporate Governance Committee are Messrs. Thompson, LaPenta, Jr., and Carroll. Mr. Thompson serves as Chairman.

## **Board's Role in Risk Oversight**

Risk is inherent in every business. As is the case in virtually all businesses, we face a number of risks, including operational, economic, financial, legal, regulatory, and competitive risks. Our management is responsible for the day-to-day management of the risks we face. Our Board of Directors, as a whole and through its committees, has responsibility for the oversight of risk management.

In its oversight role, our Board of Directors' involvement in our business strategy and strategic plans plays a key role in its oversight of risk management, its assessment of management's risk appetite, and its determination of the appropriate level of enterprise risk. Our Board of Directors receives updates at least quarterly from senior management and periodically from outside advisors regarding the various risks we face, including operational, economic, financial, legal, regulatory, and competitive risks. Our Board of Directors also reviews the various risks we identify in our filings with the SEC as well as risks relating to various specific developments, such as debt and equity placements and product introductions.

The committees of our Board of Directors assist our Board of Directors in fulfilling its oversight role in certain areas of risks. Pursuant to its charter, the Audit Committee oversees the financial and reporting processes of our company and the audit of the financial statements of our company and provides assistance to our Board of Directors with respect to the oversight and integrity of the financial statements of our company, our company's compliance with legal and regulatory matters, the independent auditor's qualification and independence, and the performance of our independent auditor. The Compensation Committee considers the risks that our compensation policies and practices may have in attracting, retaining, and motivating valued employees and endeavors to assure that it is not reasonably likely that our compensation plans and policies would have a material adverse effect on our company. Our Nominating and Corporate Governance Committee oversees governance-related risks, such as director independence, conflicts of interests, and management succession planning.

## **Board Diversity**

We seek diversity in experience, viewpoint, education, skill, and other individual qualities and attributes to be represented on our Board of Directors. We believe directors should have various qualifications, including individual character and integrity; business experience and leadership ability; strategic planning skills, ability, and experience; requisite knowledge of our industry and finance, accounting, and legal matters; communications and interpersonal skills; and the ability and willingness to devote time to our company. We also believe the skill sets, backgrounds, and qualifications of our directors, taken as a whole, should provide a significant mix of diversity in personal and professional experience, background, viewpoints, perspectives, knowledge, and abilities. Nominees are not to be discriminated against on the basis of race, religion, national origin, sex, sexual orientation, disability, or any other basis prohibited by law. The assessment of directors is made in the context of the perceived needs of our Board of Directors from time to time.

All of our directors have held high-level positions in business or professional service firms and have experience in dealing with complex issues. We believe that all of our directors are individuals of high character and integrity, are able to work well with others, and have committed to devote sufficient time to the business and affairs of our company. In addition to these attributes, the description of each director's background sets forth above indicates the specific experience, qualifications, and skills necessary to conclude that each individual should continue to serve as a director of our company.



## **Board Leadership Structure**

We believe that effective board leadership structure can depend on the experience, skills, and personal interaction between persons in leadership roles as well as the needs of our company at any point in time. We currently maintain separate roles between the Chief Executive Officer and Chairman of the Board of Directors in recognition of the differences between the two responsibilities. Our Chief Executive Officer is responsible for setting our strategic direction and day-to-day leadership and performance of our company. The Chairman of the Board of Directors provides input to the Chief Executive Officer, sets the agenda for board meetings, and presides over meetings of the full Board of Directors as well as executive sessions of our Board of Directors.

## **Compensation Committee Interlocks and Insider Participation**

During our fiscal year ended December 31, 2016, Messrs. Collins, Thompson, and Carroll served as members of the Compensation Committee.

None of Messrs. Collins, Thompson, or Carroll have been at any time one of our officers or employees or had any relationship with us that requires disclosure under Item 404 of Regulation S-K under the Exchange Act.

During the fiscal year ended December 31, 2016, none of our executive officers served on the compensation committee or board of directors of any entity whose executive officers serve as a member of our Board of Directors or Compensation Committee.

## **Compensation Recovery Policy**

Currently, we have not implemented a policy regarding retroactive adjustments to any cash or stock-based incentive compensation paid to our executive officers and other employees where the payments were predicated upon the achievement of financial results that were subsequently the subject of a financial restatement. We intend to adopt a general compensation recovery, or clawback, policy covering our annual and long-term incentive award plans and arrangements after the SEC adopts final rules implementing the requirement of Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act.

## **Board and Committee Meetings**

Our Board of Directors held a total of five meetings during the fiscal year ended December 31, 2016. No director attended fewer than 75% of the aggregate of (i) the total number of meetings of our Board of Directors and (ii) the total number of meetings held by all committees of our Board of Directors on which such director was a member.

During the fiscal year ended December 31, 2016, the Audit Committee held four formal meetings; the Compensation Committee held three meetings; and the Nominating and Corporate Governance Committee held one meeting.

## **Annual Meeting Attendance**

We encourage our directors to attend each annual meeting of stockholders. To that end, we have scheduled a meeting of our Board of Directors on the same day as our annual meeting of stockholders. All of our directors attended the annual meeting of stockholders last year.

## **Communications with Directors**

Interested parties may communicate with our Board of Directors or specific members of our Board of Directors, including our independent directors and the members of our various board committees, by submitting a letter addressed to our Board of Directors of TherapeuticsMD, Inc. at the address set forth in this proxy statement c/o any specified individual director or directors. Any such letters are forwarded to the indicated directors.

## COMPENSATION DISCUSSION AND ANALYSIS

### Background

Our Board of Directors has appointed a Compensation Committee, consisting of independent members of our Board of Directors, to review and approve corporate goals and objectives relevant to the compensation of our Chief Executive Officer, or CEO, evaluate the performance of our CEO in light of those goals and objectives, and determine or recommend to our Board of Directors the compensation of our CEO based on this evaluation. The Compensation Committee also recommends to our Board of Directors, or as directed by our Board of Directors, determines and approves, the compensation of our other executive officers. The Compensation Committee makes every effort to ensure that our executive compensation program is consistent with our values and is aligned with our business strategy and corporate goals.

### Executive Summary

We maintain a pay for performance philosophy driven by the use of a pay mix that emphasizes variable and performance-based pay that is tied to corporate performance results and our stock price. We believe such a philosophy serves to support our company's business strategy of developing and commercializing innovative new products targeted exclusively for women to the benefit of our company's current stockholders and future customers.

The three core elements of our executive compensation program each serve a different purpose:

<b>Core Element</b>	<b>Purpose</b>
Base Salary	We set base salaries at a level designed to attract, motivate and retain the key executives needed to drive our business forward.
Annual Incentive Compensation	Annual incentive compensation is designed to motivate our executives to achieve our annual drug development and commercialization goals and objectives.
Stock-Based Awards	Stock-based awards, which we have primarily granted in the form of stock options, are designed to align our executive and stockholder interests by providing the opportunity for our executives to earn significant compensation based on the increase in our share price as driven by the success of our business strategies over time.



We discuss below our performance outcomes and related compensation decisions for 2016.

*2016 Performance*

During 2016, we achieved the following major goals and objectives related to our drug development efforts:

Filed a New Drug Application, or NDA, with the U.S. Food and Drug Administration, or the FDA, for TX-004HR, our applicator-free vaginal estradiol softgel drug candidate for the treatment of moderate to severe dyspareunia (vaginal pain during sexual intercourse), a symptom of vulvar and vaginal atrophy, or VVA, in post-menopausal women with vaginal linings that do not receive enough estrogen;

Announced positive top-line results from the completed REPLENISH Trial, our phase 3 clinical trial of TX-001HR, our bio-identical hormone therapy combination of 17 $\beta$ - estradiol and progesterone in a single, oral softgel drug candidate, for the treatment of moderate to severe vasomotor symptoms, or VMS, due to menopause in post-menopausal women with an intact uterus;

Prepared for the potential launch of our TX-001HR and TX-004HR drug candidates, if approved, through scale-up and manufacturing activities; and

Identified and explored business development opportunities for our drug candidates.

The Compensation Committee and our Board of Directors have determined that we achieved 100% of our drug development and pre-commercialization goals and objectives for 2016.

*2016 Pay Decisions*

During 2016, we made the following pay decisions based on the achievement of the above performance goals and objectives, as well as an analysis of the pay levels of our executive officers compared to the pay levels of similar companies in the drug development business:

At the beginning of 2016, we increased overall base salaries for our named executive officers by approximately 27%, with individual increases ranging from approximately 9% to approximately 61%. These adjustments were primarily driven by the results of a pay study performed by the Compensation Committee's outside consultants, Blaise Group International, or Blaise Group, in late 2015 and also took into account the substantial progress we made during 2015 in meeting our drug development goals and objectives.

We paid target annual incentive compensation to our named executive officers for their achievement of our target 2016 drug development and commercialization goals and objectives noted above.

We did not grant any stock options to our named executive officers during 2016 because we made a stock option grant in December 2015 that was intended to be a multi-year grant. We made a stock option grant in March 2017 that was sized to be an annual grant – we expect to standardize and follow an annual grant process in future years.

As a result of the above decisions:

Total pay for our named executive officers declined significantly from 2015 to 2016 because of the lack of a stock option grant in 2016 versus the multi-year grant in late 2015.

Cash compensation for our named executive officers in 2016 rose versus 2015 because of the salary increases described above and because of the achievement of our drug development goals and objectives resulted in our named executive officers receiving their target annual incentive compensation.

In general, the Compensation Committee has begun to take steps to refocus our executive compensation program as we transition from a drug development company to a company undertaking the commercialization of its drug candidates, if approved. We anticipate these changes will include:

The use of annual stock option grants rather than our historic stock option grant practice, which included both annual and multi-year grants, which the Compensation Committee believes will yield more predictable pay outcomes for our executives and aid our ongoing recruitment efforts, a practice that we began with our 2017 stock option grants; and

The use of more financial metrics in our annual incentive plan as we move toward commercialization of our drug candidates, if approved, a practice that we anticipate beginning in 2018.

We believe the above changes to our executive compensation program reflect our evolution as a company. The Compensation Committee will continue to monitor our executive compensation program and consider further changes as our business continues to evolve in the future.

#### *Results of Say-on-Pay Vote*

Since we conducted our first stockholder advisory vote on the compensation of our named executive officers (commonly referred to as a “say-on-pay” vote) in August 2013, we have had overwhelming support from our stockholders, achieving more than 95% support in each of the four annual votes from 2013 through 2016.

Consequently, the Compensation Committee and our Board of Directors did not make any significant changes to our executive compensation program, or their decision-making process, in recent years. However, as discussed above, the Compensation Committee has begun to take steps to refocus our executive compensation program as we transition from a drug development company to a company undertaking the commercialization of its drug candidates, if approved.

#### **Role of the Compensation Committee and Chief Executive Officer**

The Compensation Committee determines, or recommends to our Board of Directors for determination, the compensation of our CEO and our other executive officers. At least annually, our Compensation Committee evaluates the performance of our CEO and determines, or recommends to our Board of Directors for determination, the compensation for our CEO in light of the goals and objectives of our executive compensation program for that year. Our Compensation Committee and our Board of Directors, together with our CEO, annually assess the performance of our other executive officers. Based on the determinations of our Compensation Committee and our Board of Directors after receiving recommendations from our CEO, when applicable, our Compensation Committee and our Board of Directors determine the compensation for our other executive officers. Our Compensation Committee may also receive input from independent compensation consultants that it may engage from time to time.

At the request of our Compensation Committee, our CEO generally attends a portion of some of our Compensation Committee meetings. This enables our Compensation Committee to review the corporate and individual goals the CEO regards as important to achieve our overall success. Our Compensation Committee also requests that our CEO assess the performance of and goals for our other executive officers. The Compensation Committee makes all decisions regarding individual and corporate goals and targets. Our CEO does not attend any portion of meetings at which his compensation is determined.

### **Compensation Surveys and Compensation Consultants**

In determining compensation levels, we periodically review the compensation levels of companies we deem to be similar to our company, which we deem appropriate to enable us to attract executives from other companies and to retain and motivate our executives. We use peer group information as a point of reference, but do not generally benchmark or target our compensation levels against our peer group.

From time to time, we retain the services of independent compensation consultants to review a wide variety of factors relevant to executive compensation, trends in executive compensation, and the identification of relevant peer companies. When engaged by our Compensation Committee, our compensation consultants report directly to the Compensation Committee and the Compensation Committee makes all determinations regarding the engagement, fees, and services of our compensation consultants.

The Compensation Committee engaged Blaise Group in 2013 and in 2015 to assist it in connection with the development of our incentive compensation program for our executive officers. No member of the Compensation Committee or any named executive officer had any affiliation with Blaise Group.

During 2016, the Compensation Committee retained Pay Governance LLC, or Pay Governance, to provide executive compensation services to the Compensation Committee, primarily for compensation decisions related to 2017. Pay Governance analyzed and proposed changes to our company's peer group, provided information with respect to market competitive pay levels for executives and outside directors and assisted the Compensation Committee with the refocus of our executive compensation program discussed above in the Executive Summary.

In accordance with the requirements of applicable SEC rules and the listing standards of the NYSE MKT, the Compensation Committee has reviewed the independence of Blaise Group and Pay Governance and has determined that both consultants meet the independence criteria established under such rules and listing standards.

## **Compensation Elements**

### ***Base Salary***

We set base salaries at a level sufficient to attract, retain, and motivate our executives taking into account that our executives have the opportunity to receive significant incentive compensation if they are able to achieve performance goals set from time to time. Base salaries for executive officers are established based on an executive's position, responsibilities, skills, and experience. In determining base salaries, we also take into account individual performance and contributions, future potential, competitive salary levels for comparable positions at other companies, salary levels relative to other positions within our company, and corporate needs. The evaluation of the Compensation Committee and our Board of Directors of the foregoing factors is subjective, and the Compensation Committee and our Board of Directors do not assign a particular weight to any factor.

### ***Annual Incentive Compensation***

Annual incentive compensation reflects our pay-for-performance philosophy. We generally adhere to the following process in determining annual incentive compensation:

Our Board of Directors approves our annual operating plan, which forms the basis for the corporate performance measures and individual performance goals and objectives for our annual performance-based incentive compensation.

The Compensation Committee reviews and sets the framework for the annual performance-based incentive compensation for the year, including:

Confirming the plan participants;

Establishing a target annual incentive opportunity for each participating executive officer; and

Reviewing the corporate performance measures and individual performance objectives for the fiscal year.

We may establish objective performance criteria when setting performance goals for the incentive compensation program for a particular year or may use subjective factors. These performance criteria may include a wide range of factors, including:

Filing Initial New Drug Applications with the FDA;

Beginning clinical trials;

Completing clinical trials;

Filing NDAs with the FDA;

Receiving new drug approvals from the FDA;

Reaching sales goals; and

Increasing cash flows from operations.

The performance criteria may vary on a year-to-year and executive-by-executive basis depending on the goals then deemed important for our company as a whole and for the particular executive officer and may be established for all or a portion of a year or for multiple years. We attempt to set each of our performance goals at a level that can be realistically achieved, but at a level that is challenging and consistent with achieving the desired corporate goal. In establishing performance goals, the Compensation Committee and our Board of Directors also may take into consideration prevailing as well as expected future economic conditions affecting our company's business and industry.

### ***Stock-Based Awards***

We strongly believe in using our common stock to tie executive rewards directly to our long-term success and increases in stockholder value. Grants of stock-based awards to our executive officers enable those executives to benefit from a significant position in our common stock. We have no ongoing policy for allocating among different types of stock-based awards and maintain the flexibility to grant each type of stock-based award. Among other factors, the amount and type of stock-based awards granted takes into account stock-based awards previously granted to an individual and the equity held by the individual. While we have the flexibility to grant each type of stock award, we

have traditionally used stock options due to our current stage of development, future expected growth profile and prevalence among industry competitors, among other factors.

Stock based compensation typically vests over multiple years to encourage executive retention and emphasize long-term performance and may also include specific performance metrics to be earned. Our Board of Directors grants stock-based awards at regularly scheduled Board of Directors meetings after reviewing allocations recommended by the Compensation Committee following advice from the Compensation Committee's compensation consultants, an analysis of peer companies, specific goals to be achieved, and a wide range of other factors. See "Executive Compensation — Fiscal Year 2016 Summary Compensation Table."

### ***Other Benefits***

Executive officers are eligible to participate in benefit programs designed for all of our full-time employees. These programs include medical insurance, a qualified retirement program allowed under Section 401(k) of the Internal Revenue Code, and life insurance coverage.

### **Policies for the Pricing and Timing of Stock-Based Grants**

Our Board of Directors sets the price of all stock-based awards at the closing price of our stock on the NYSE MKT on the date of grant. Our Board of Directors grants stock-based compensation at regularly scheduled meetings each year. In the case of new hires, our Board of Directors generally grants stock-based awards on start dates, which are determined by the date the employee reports for service.

### **Employment Agreements**

Each of Messrs. Finizio, Milligan, Cartwright, Krassan and Donegan is a party to an employment agreement with us, which provides for base salaries, stock options and annual short-term incentive compensation. The employment agreements for each of Messrs. Finizio, Milligan and Cartwright provide for benefits in the event of certain changes in control of our company. These arrangements have no effect on our compensation arrangements absent a change in control. See "Executive Compensation — Employment Agreements."

## Fiscal 2016 Compensation

### *Use of Market Data*

In determining the compensation of our executive officers, including our named executive officers, we consider compensation levels of companies that we deem to be similar to our company and competitive factors to enable us to attract executives from other companies and retain and motivate our executives. We periodically review compensation levels of a peer group of companies and consider broader market trends. We use peer group and other information as a point of reference, but do not benchmark or target our compensation levels against our peer group or other factors. In 2015, our Compensation Committee engaged Blaise Group to prepare a study of the executive officer compensation practices of a group of peer companies, which we refer to as the 2015 Peer Group. We developed the 2015 Peer Group using the following selection criteria:

Industry: Companies that compete in the biotech and pharmaceutical industries.

Phase of Development: Therapeutic products in either Phase II or Phase III development.

Market Capitalization: Companies with a market capitalization between \$418 million and \$2.24 billion at the time of selection.

Number of Employees: Employees from 50 to 500.

We selected the following 2015 Peer Group based on the above criteria:

Achillion Pharmaceuticals, Inc.	Epizyme, Inc.	Portola Pharmaceuticals, Inc.
Acorda Therapeutics, Inc.	ImmunoGen, Inc.	PTC Therapeutics, Inc.
Arena Pharmaceuticals, Inc.	Karyopharm Therapeutics Inc.	Raptor Pharmaceutical Corp.
ARIAD Pharmaceuticals, Inc.	Keryx Biopharmaceuticals, Inc.	Sarepta Therapeutics, Inc.
Cempra, Inc.	MacroGenics, Inc.	Sucampo Pharmaceuticals, Inc.
Chimerix, Inc.	Nektar Therapeutics	TESARO, Inc.
Depomed, Inc.	NewLink Genetics Corporation	

We primarily used the 2015 Peer Group when establishing our 2016 executive compensation program for our named executive officers.



During 2016, our Compensation Committee engaged Pay Governance to evaluate the 2015 Peer Group. Pay Governance suggested a number of changes to the 2015 Peer Group based on the selection criteria described above, but with an increased market capitalization range of between \$500 million and \$3 billion, which reflected our company's increased market capitalization. As a result, we eliminated nine of the peer companies from the 2015 Peer Group and added 11 companies, resulting in a new peer group of 22 companies, which we refer to as the 2016 Peer Group. Most of the companies eliminated from the 2015 Peer Group were removed because of a low market capitalization.

The 2016 Peer Group includes the following companies:

Achillion Pharmaceuticals, Inc.	Depomed, Inc.	Portola Pharmaceuticals, Inc.
Acorda Therapeutics, Inc.	Exelixis, Inc.	Raptor Pharmaceuticals Corp.
Agenus Inc.	FibroGen, Inc.	Sarepta Therapeutics, Inc.
Agios Pharmaceuticals, Inc.	Halozyme Therapeutics, Inc.	Spark Therapeutics, Inc.
AMAG Pharmaceuticals, Inc.	Lexicon Pharmaceuticals, Inc.	Supernus Pharmaceuticals, Inc.
Amarin Corporation plc	MacroGenics, Inc.	Tesaro, Inc.
Ariad Pharmaceuticals Inc.	Nektar Therapeutics	Theravance Biopharma, Inc.
Cempra, Inc.		

Pay data from the 2016 Peer Group was primarily used by the Compensation Committee and our Board of Directors when establishing our 2017 executive compensation program for our named executive officers, along with information from the Radford Global Life Sciences Compensation Survey in which we participated for the first time in 2016.

***Base Compensation***

Our named executive officers received base salary compensation for 2016 in accordance with their respective 2016 compensation plans as recommended by the Compensation Committee and approved by our Board of Directors. As is our practice, we set base salaries for our executive officers at the beginning of the year, increasing 2016 salaries as follows:

<b>Executive Officer</b>	<b>Annualized Fiscal 2015 Base Salary</b>	<b>Annualized Fiscal 2016 Base Salary</b>	<b>% Increase</b>	
Robert G. Finizio	\$ 550,000	\$ 600,000	9.1	%
John C.K. Milligan, IV	\$ 350,000	\$ 450,000	28.6	%
Daniel A. Cartwright	\$ 345,000	\$ 375,000	8.7	%
Mitchell L. Krassan	\$ 232,388	\$ 300,000	29.1	%
Michael Donegan	\$ 180,000	\$ 290,000	61.1	%

These increases were instituted as a result of our salaries generally being below market levels of the 2015 Peer Group and reflected the enhancement of our strategic position in the marketplace as our drug candidates approach commercialization, the strengthening of our capitalization and cash position throughout 2015 and into early 2016 and increased responsibilities for several of our named executive officers, particularly Messrs. Krassan and Donegan.

***Annual Performance-Based Incentive Plan***

We use annual performance-based incentive compensation to motivate our named executive officers to achieve our annual objectives as set forth in our annual operating plan, while making progress towards and supporting our longer-term strategic goals. In addition, the Compensation Committee and our Board of Directors establish individual performance objectives for each of our named executive officers. The payment of incentives is based upon the achievement of one or more corporate and individual performance objectives.

**Target Annual Incentive Opportunities**

The Compensation Committee and our Board of Directors determined the target annual incentive opportunities for each of our named executive officers for fiscal 2016 should be a percentage of each named executive officer's base salary. The target annual incentive opportunity established for each named executive officers for fiscal 2016 was as

follows:

<b>Executive Officer</b>	<b>Annualized Fiscal 2016 Base Salary</b>	<b>Target Annual Incentive Opportunity (as a percentage of base salary)</b>	<b>Annualized Target Annual Incentive Opportunity (as a dollar amount)</b>
Robert G. Finizio	\$ 600,000	100	% \$ 600,000
John C.K. Milligan, IV	\$ 450,000	70	% \$ 315,000
Daniel A. Cartwright	\$ 375,000	70	% \$ 262,500
Mitchell L. Krassan	\$ 300,000	50	% \$ 150,000
Michael Donegan	\$ 290,000	25	% \$ 72,500

In setting the target annual incentive opportunities for our named executive officers, the Compensation Committee and our Board of Directors exercised their judgment and considered several factors, including:

Our overall financial and operational results for the prior fiscal year;

The prior performance of each individual named executive officer;

The named executive officers' potential to contribute to our long-term strategic success;

The named executive officers' roles and responsibilities;

Each named executive officer's individual experience and skills;

Competitive market practices for annual incentives; and

For our named executive officers other than our CEO, the recommendations of our CEO.

Corporate Performance Measures

For fiscal 2016, the Compensation Committee and our Board of Directors selected several components to measure performance that best supported our annual operating plan and enhanced long-term value creation. As determined by the Compensation Committee and our Board of Directors, our named executive officers were eligible to receive annual incentive compensation based on specific corporate performance measures for fiscal 2016. Our Board of Directors set these target levels to be aggressive, yet achievable, with diligent effort during 2016.

The corporate performance measures for fiscal 2016 were as follows:

File an NDA with the FDA for TX-004HR, our applicator-free vaginal estradiol softgel drug candidate for the treatment of moderate to severe dyspareunia, a symptom of VVA in post-menopausal women with vaginal linings that do not receive enough estrogen;

Prepare our company for the potential launch of TX-004HR, if approved;

Prepare for manufacturing and scale-up for TX-004HR;

Complete and release data for the REPLENISH Trial, our phase 3 clinical trial of TX-001HR, our bio-identical hormone therapy combination of 17 $\beta$ - estradiol and progesterone in a single, oral softgel drug candidate, for the treatment of moderate to severe VMS due to menopause in post-menopausal women with an intact uterus;

Prepare for manufacturing and scale-up for TX-001HR;

Continue to inform and educate applicable constituencies regarding the potential market sizes for our drug candidates;  
and

Identify and explore business development opportunities for our drug candidates.

Individual Performance Objectives

Consistent with our compensation philosophy of rewarding individual performance, our CEO also developed and recommended to the Compensation Committee and our Board of Directors a series of individual performance

objectives for our named executive officers, which he deemed to be integral to the achievement of our annual operating plan. These objectives were approved by the Compensation Committee and our Board of Directors. The Compensation Committee and our Board of Directors determined the individual performance goals that should be used to assess the performance of our CEO.

For purposes of the fiscal 2016 annual performance-based incentive compensation, the individual performance goals for each of our named executive officers were as follows:

Mr. Finizio

Provide the guidance and empower our company to complete and release top line data for the REPLENISH Trial of TX-001HR;

Submit to the FDA the NDA for TX-004HR;

Develop the launch plan for TX-004HR, if approved;

Continue to inform and educate applicable constituencies regarding the potential market sizes for our drug candidates;

Foster an environment of high integrity, ethics, and regulatory compliance; and

Identify and engage a commercial manufacturer for both TX-001HR and TX-004HR.

Mr. Milligan

Prepare the NDA and facilitate the company's development of a marketing, sales, distribution, and launch strategy for TX-004HR, if approved;

Identify and engage a commercial manufacturer for both TX-001HR and TX-004HR;

Exit the last patient and deliver top-line data for the REPLENISH Trial of TX-001HR;

Facilitate scale-up and manufacturing for TX-004HR; and

Facilitate the execution of the company's 2016 operations plan.

Mr. Cartwright

Build our business growth objectives with appropriate processes and controls;

Improve our balance sheet by raising additional funds;

Complete and release top line data for the REPLENISH Trial of TX-001HR;

Submit to the FDA the NDA for TX-004HR;

Develop the launch plan for TX-004HR, if approved;

Monitor and review our corporate and financial structure;

Set future financial strategy; and

Foster an environment of high integrity, ethics, and regulatory compliance.

Mr. Krassan

Provide leadership and direction as the company designs and build new systems for the launching of our drug candidates;

Engage third parties to develop independent analyses of the market size of our drug candidates;

Discover additional metrics and data sets that will allow the company to validate market size of our drug candidates; and

Provide guidance in evaluating and adjusting the launch assessment for TX-004HR, if approved.

Mr. Donegan

Provide leadership and direction with respect to, and plan and implement the installation of, a new general ledger and financial reporting system;

Support any additional Sarbanes-Oxley Act requirements;

Empower individuals to transition to new roles as the company expands;

Monitor and review our corporate and financial structure;

Set future financial strategy; and

Foster an environment of high integrity, ethics, and regulatory compliance.

After the end of the fiscal year, our CEO evaluated each named executive officer's progress towards the achievement of the executive's individual performance objectives. In the case of our CEO, the Compensation Committee and the Board of Directors evaluated his progress towards the achievement of his individual performance goals.

#### Fiscal 2016 Annual Incentive Decisions

The annual incentive compensation for each of our named executive officers were determined based on a subjective assessment by the Compensation Committee and the Board of Directors of success in achieving the corporate performance measures and the individual performance objectives, after considering the recommendations of our CEO for named executive officers other than himself.





Based on both our corporate performance for fiscal 2016, in which we met each of our corporate goals, and each named executive officer's individual performance during the year, the following annual incentive payments were made to our named executive officers for fiscal 2016:

Executive Officer	Annualized Fiscal 2016 Base Salary	Target Annual Incentive Opportunity (as a percentage of base salary)	Total Cash Incentive Payments for Fiscal 2016	Percentage of Target Annual Incentive Opportunity	
Robert G. Finizio	\$ 600,000	100	% \$ 600,000	100	%
John C.K. Milligan, IV	\$ 450,000	70	% \$ 315,000	100	%
Daniel A. Cartwright	\$ 375,000	70	% \$ 262,500	100	%
Mitchell L. Krassan	\$ 300,000	50	% \$ 150,000	100	%
Michael Donegan	\$ 290,000	25	% \$ 72,500	100	%

### *Stock-Based Awards*

During fiscal 2016, we elected not to make any stock-based incentive compensation grants to our named executive officers because the stock option grants we made during December 2015 to each of our named executive officers were intended to be a multi-year grants. See "Executive Compensation — Fiscal Year 2016 Grants of Plan-Based Awards" and "Executive Compensation — Outstanding Equity Awards at Fiscal Year-End 2016" tables for further information on equity awards granted to and held by each of our named executive officers.

The 2015 stock option grants were designed to provide long-term incentive compensation for more than one year and we decided, as a result, not to make any further stock option grants in fiscal 2016. This outcome was also reflective of past stock option grant practices in which the timing of grants was intermittent (i.e., grants were made every several years on an informal schedule).

In early 2017, with the initial commercialization of several of our drug candidates anticipated to begin, the Compensation Committee and Board of Directors decided to move toward a more formal approach to stock option grants, specifically providing for stock option grants to be made on an annual basis. The Compensation Committee and our Board of Directors believed moving to such a practice would better support our company's recruiting and retention needs for both executives and other employees in the context of the upcoming commercialization efforts. As a result, the following stock option grants were made on March 15, 2017 to our named executive officers, each of which vests in equal annual installments over a period of three years from the date of grant:

Executive Officer	Number of Stock Options Granted
Robert G. Finizio	445,000
John C.K. Milligan, IV	260,000
Daniel A. Cartwright	170,000
Mitchell L. Krassan	170,000
Michael Donegan	40,000

Our Compensation Committee chose to make these grants based on market data from the 2016 Peer Group for similar positions at similar companies.

Each officer forfeits the unvested portion, if any, of the stock options if the officer's service to our company is terminated for any reason, except as may otherwise be determined by our Board of Directors or as provided in an applicable employment agreement. For Messrs. Finizio, Milligan, and Cartwright, stock-based awards vest upon termination due to death or "disability," termination by our company without "cause," resignation by the officer for "good reason," and a "change in control" of our company (as such terms are defined in the employment agreements).

#### **Severance and Change in Control Benefits**

We have severance and change in control benefits for our executive officers that are documented in their respective employment agreements. We believe these benefits were necessary to attract our executives and the change in control benefits are in the best interests of our company and our stockholders because they help assure we will have the continued dedication and objectivity of our executive officers, notwithstanding the possibility or occurrence of a change in control. For further details, see "Executive Compensation — Potential Payments Upon Termination or Change in Control" below.

## **Tax and Accounting Considerations**

### ***Deductibility of Executive Compensation***

We take into account the tax effect of our compensation. Section 162(m) of the Internal Revenue Code currently limits the deductibility for federal income tax purposes of compensation in excess of \$1.0 million paid to each of any publicly held corporation's CEO and three other most highly compensated executive officers other than the Chief Financial Officer, who is not covered by Section 162(m). We may deduct certain types of compensation paid to any of these individuals only to the extent that such compensation during any fiscal year does not exceed \$1.0 million. Qualifying performance-based compensation is not subject to the deduction limits if certain requirements are met. We currently intend to structure the performance-based portion of the compensation of our executive officers in a manner that complies with Section 162(m), including such awards granted pursuant to the Amended and Restated 2012 Stock Incentive Plan, or the 2012 Plan.

### ***Taxation of "Parachute" Payments***

Sections 280G and 4999 of the Internal Revenue Code provide that executive officers and directors who hold significant equity interests and certain other service providers may be subject to significant additional taxes if they receive payments or benefits in connection with a change in control of a company that exceed certain prescribed limits, and the company (or a successor) may forfeit a deduction on the amounts subject to this additional tax. We did not provide any executive officer, including any named executive officer, with a "gross-up" or other reimbursement payment for any tax liability that he might owe as a result of the application of Sections 280G and 4999 during fiscal 2016, and we have not agreed and are not otherwise obligated to provide any executive officer with such a "gross-up" or other reimbursement.

### ***Accounting for Stock-Based Compensation***

We account for stock-based awards in accordance with the provisions of Financial Accounting Standards Board Accounting Standards Codification Topic 718 "Compensation - Stock Compensation," or ASC 718. In determining stock-based awards, the Compensation Committee considers the potential expense of these awards under ASC 718 and the impact on our earnings per share.

**EXECUTIVE COMPENSATION****Fiscal Year 2016 Summary Compensation Table**

The following table lists the compensation of our company's principal executive officer, principal financial officer, and each of our three other most highly compensated executive officers who were serving as executive officers on December 31, 2016, the end of our last completed fiscal year. We refer to these executive officers in this proxy statement as our named executive officers. The following information includes the dollar value of base salaries, bonus awards, the number of non-qualified options granted, non-equity incentive plan compensation, and certain other compensation, if any, whether paid or deferred.

Name and Principal Position	Year	Salary	Bonus	Option Awards <sup>(1)</sup>	Non-Equity Incentive Plan Compensation <sup>(2)</sup>	All Other Compensation	Total
Robert G. Finizio Chief Executive Officer	2016	\$600,000	\$50,000 <sup>(3)</sup>	\$—	\$600,000	\$13,347 <sup>(7)</sup>	\$1,263,347
	2015	\$550,000	\$—	\$4,565,253	\$962,500	\$15,155 <sup>(7)</sup>	\$6,092,908
	2014	\$550,000	\$—	\$—	\$—	\$64,962 <sup>(4)</sup>	\$614,962
John C.K. Milligan, IV President and Secretary	2016	\$450,000	\$—	\$—	\$315,000	\$19,079 <sup>(6)</sup>	\$784,079
	2015	\$350,000	\$—	\$2,402,764	\$367,500	\$20,404 <sup>(6)</sup>	\$3,140,668
	2014	\$350,000	\$—	\$139,099 <sup>(5)</sup>	\$—	\$65,001 <sup>(6)</sup>	\$554,100
Daniel A. Cartwright Chief Financial Officer and Treasurer	2016	\$375,000	\$—	\$—	\$262,500	\$14,066 <sup>(7)</sup>	\$651,566
	2015	\$345,000	\$—	\$1,561,797	\$362,250	\$14,792 <sup>(7)</sup>	\$2,283,839
	2014	\$345,000	\$—	\$—	\$—	\$12,379 <sup>(7)</sup>	\$357,379
Mitchell L. Krassan Executive Vice President and Chief Strategy Officer	2016	\$300,000	\$—	\$—	\$150,000	\$15,608 <sup>(8)</sup>	\$465,608
	2015	\$232,388	\$—	\$720,829	\$76,478	\$11,289 <sup>(8)</sup>	\$1,040,984
	2014	\$213,200	\$—	\$197,917	\$15,000	\$12,379 <sup>(8)</sup>	\$438,496
Michael Donegan Vice President - Finance	2016	\$290,000	\$—	\$—	\$72,500	\$12,176 <sup>(8)</sup>	\$374,676
	2015	\$180,000	\$—	\$480,553	\$36,000	\$10,218 <sup>(8)</sup>	\$706,771
	2014	\$150,000	\$—	\$161,210	\$20,000	\$10,364 <sup>(8)</sup>	\$341,574

The valuation methodology used to determine the fair value of the options granted during the year was the Black-Scholes-Merton option-pricing model, an acceptable model in accordance with ASC 718-10. The Black-Scholes-Merton model requires the use of a number of assumptions, including volatility of the stock price, the weighted average risk-free interest rate, and the weighted average expected life of the options. For further information, see "Note 9 — Stockholders' Equity" included in the financial statements included in our Annual Report on Form 10-K filed with the SEC for the fiscal year ended December 31, 2016.

Amounts in this column for fiscal 2016 and 2015 represent the amounts earned and payable under our 2016 and 2015 annual performance-based incentive plan, which were earned and payable in fiscal 2016 and 2015 but were not paid until after the end of fiscal 2016 and 2015, respectively. In addition, for Messrs. Finizio, Milligan, and Cartwright, amounts in this column for fiscal 2015 include cash incentive payments in the amounts of \$412,500, \$122,500, and \$120,750, respectively, that were paid in fiscal 2015 following the completion of our underwritten public offering of common stock in February 2015 as a result of such officers' determination not to accept any cash incentive payments for fiscal 2014 unless and until the company was able to complete an additional corporate financing transaction. For a description of our 2016 performance-based incentive plan and amounts earned thereunder, see "Compensation Discussion and Analysis — Fiscal 2016 Compensation — Annual Performance-Based Incentive Plan."

(2) Includes an additional discretionary payment of \$50,000 related to completion of certain milestones related to our clinical trials.

(3) Consists of (i) health insurance premiums paid on Mr. Finizio's behalf and (ii) annual cash retainer fees earned by Mr. Finizio for his services on our Board of Directors in the amount of \$50,000 for 2014. Mr. Finizio did not receive fees for his services on our Board of Directors for 2015 and 2016.

(4) Includes \$139,099 in stock options for 2014 granted to Mr. Milligan in connection with his service on our Board of Directors. Mr. Milligan did not receive stock options in connection with his service on our Board of Directors for 2015 and 2016.

(5) Consists of health insurance premiums paid on Mr. Milligan's behalf and a \$5,100 car allowance for 2016, 2015 and 2014, and annual cash retainer fees earned by Mr. Milligan for his services on our Board of Directors in the amount of \$50,000 for 2014. Mr. Milligan did not receive fees for his services on our Board of Directors for 2015 and 2016.

(6) Consists of health insurance premiums paid on the named executive officer's behalf.

(7) Consists of benefit premiums paid on the named executive officer's behalf and company match to 401(k) plan.

**Fiscal Year 2016 Grants of Plan-Based Awards**

The following table sets forth certain information with respect to grants of plan-based awards to the named executive officers for the fiscal year ended December 31, 2016.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards <sup>(1)</sup>		
		Threshold (\$)	Target (\$)	Maximum (\$)
Robert G. Finizio	—	—	\$ 600,000	—
	—	—	—	—
John C.K. Milligan, IV	—	—	\$ 315,000	—
	—	—	—	—
Daniel A. Cartwright	—	—	\$ 262,500	—
	—	—	—	—
Mitchell L. Krassan	—	—	\$ 150,000	—
	—	—	—	—
Michael Donegan	—	—	\$ 72,500	—
	—	—	—	—

Our fiscal 2016 annual performance-based incentive plan had no threshold or maximums. The amounts reflect the applicable target incentive cash compensation opportunity for our named executive officers under our fiscal 2016 annual performance-based incentive plan. All such awards have been paid, and the actual amounts paid are set forth under the “Non-Equity Incentive Plan Compensation” in the Fiscal Year 2016 Summary Compensation Table above. Our fiscal 2016 annual performance-based incentive plan is discussed under “Compensation Discussion and Analysis — Fiscal 2016 Compensation — Annual Performance-Based Incentive Plan.”

**Outstanding Equity Awards at Fiscal Year-End 2016**

The following table sets forth information with respect to outstanding equity-based awards held by our named executive officers at December 31, 2016.

Name	Grant Date	Option Awards Number of Securities Underlying Unexercised Options		Option Exercise Price	Option Expiration Date
		Exercisable	Unexercisable		
Robert G. Finizio	01/01/2009 <sup>(1)</sup>	1,472,910	—	\$0.10	01/01/2019
	02/27/2012 <sup>(2)(15)</sup>	300,000	—	\$2.20	02/27/2022
	04/16/2012 <sup>(3)(15)</sup>	50,000	—	\$2.55	04/16/2022
	11/30/2012 <sup>(4)(15)</sup>	268,474 <sup>(5)</sup>	—	\$3.00	11/30/2022
	12/17/2015 <sup>(6)</sup>	950,000	—	\$8.92	12/17/2025
John C.K. Milligan, IV	01/01/2009 <sup>(1)</sup>	2,032,255	—	\$0.10	01/01/2019
	02/27/2012 <sup>(2)</sup>	300,000	—	\$2.20	02/27/2022
	04/16/2012 <sup>(3)</sup>	75,000	—	\$2.55	04/16/2022
	11/30/2012 <sup>(4)(16)</sup>	800,000	—	\$3.00	11/30/2022
	05/02/2013 <sup>(7)</sup>	50,000	—	\$2.80	05/02/2023
	01/06/2014 <sup>(8)</sup>	45,000	—	\$5.05	01/06/2024
	12/17/2015 <sup>(6)</sup>	500,000	—	\$8.92	12/17/2025
Daniel A. Cartwright	10/21/2011 <sup>(9)</sup>	260,000	—	\$0.38	10/21/2021
	11/30/2012 <sup>(4)</sup>	700,000	—	\$3.00	11/30/2022
	12/17/2015 <sup>(6)</sup>	325,000	—	\$8.92	12/17/2025
Mitchell L. Krassan	05/01/2010 <sup>(10)</sup>	105,703	—	\$0.19	05/01/2020
	09/01/2010 <sup>(11)</sup>	683,955	—	\$0.20	09/01/2020
	11/21/2014 <sup>(12)</sup>	37,500	37,500	\$4.01	11/21/2024
	12/17/2015 <sup>(6)</sup>	150,000	—	\$8.92	12/17/2025
Michael Donegan	06/21/2013 <sup>(13)</sup>	75,000	—	\$2.98	06/21/2023
	07/09/2014 <sup>(14)</sup>	25,000	25,000	\$5.01	07/09/2024
	12/17/2015 <sup>(6)</sup>	100,000	—	\$8.92	12/17/2025

Name	Grant Date	Warrants Number of Securities Underlying Unexercised Warrants		Warrant Exercise Price	Warrant Expiration Date
		Exercisable	Unexercisable		
Robert G. Finizio	03/06/2011 <sup>(17)</sup>	179,000	—	\$0.24	03/06/2021
John C.K. Milligan, IV	03/06/2011 <sup>(17)</sup>	179,000	—	\$0.24	03/06/2021
Daniel A. Cartwright	10/21/2011 <sup>(18)</sup>	600,000	—	\$0.38	10/20/2021

- (1) The stock options granted on January 1, 2009 vested monthly on the first day of each month over three years.
  - (2) The stock options granted on February 27, 2012 vested in full on February 27, 2013.
  - (3) The stock options granted on April 16, 2012 vested in full on December 31, 2012.
  - (4) The stock options granted on November 30, 2012 vested annually on November 30 of each year over three years.
- Mr. Finizio was initially granted stock options to purchase 900,000 of our common stock; however, on May 8, (5) 2013, Mr. Finizio agreed to relinquish his right to receive 600,000 shares of our common stock underlying these stock options.
- (6) The stock options granted on December 17, 2015 vested monthly over 12 months beginning on January 21, 2016.
  - (7) The stock options granted on May 2, 2013 vested in full on December 31, 2013.
  - (8) The stock options granted on January 6, 2014 vested in full on December 31, 2014.
  - (9) The stock options granted on October 21, 2011 vested annually over four years on the anniversary of the grant date.



- (10) The stock options granted on May 1, 2010 vested in full on May 1, 2011.
- (11) The stock options granted on September 1, 2010 vested monthly over three years on the first day of each month following the first month after the date of grant.
- (12) The stock options granted on November 21, 2014 will vest annually over four years on the anniversary of the grant date.
- (13) The stock options granted on June 21, 2013 vested annually over three years on the anniversary of the grant date.
- (14) The stock options granted on July 9, 2014 will vest annually over four years on the anniversary of the grant date.
- (15) This award has been transferred to the Robert G. Finizio GRAT No. 2 dated May 4, 2015.
- (16) 500,000 options have been transferred to the John C.K. Milligan IV GRAT No. 2 dated April 28, 2015.
- (17) The warrants granted on March 6, 2011 vested quarterly starting on June 30, 2011 over eight quarters.
- (18) The warrant granted on October 21, 2011 vested monthly over 44 months beginning on November 21, 2011.

### **Option Exercises and Stock Vested in Fiscal Year 2016**

During fiscal 2016, none of our named executive officers acquired shares upon the exercise of stock options or the vesting of stock awards.

### **Post-Employment Compensation**

#### *Pension Benefits*

We do not offer any defined benefit pension plans for any of our employees. We have a 401(k) plan in which employees may participate.

### *Other Compensation*

All of our executive officers are eligible to participate in our employee benefit plans, including medical, dental, life insurance, and tax-qualified Section 401(k) retirement savings plans. These plans are available to all employees and do not discriminate in favor of executive officers. It is generally our policy to not extend significant perquisites to executives that are not broadly available to our other employees. In designing these elements, we seek to provide an overall level of benefits that is competitive with that offered by similarly situated companies in the markets in which we operate based upon our general understanding of industry practice. These benefits are not considered in determining the compensation of our executive officers.

### **Employment Agreements**

Robert G. Finizio has an employment agreement that commenced November 8, 2012; the agreement initially provided for a three-year term and now automatically renews for additional one-year terms each year on the anniversary of execution unless notice of non-renewal is given by either our company or Mr. Finizio at least 90 days prior to such anniversary. The agreement originally provided for: (i) a time-based ten-year stock option, or the Time-Based Option, granted and issued on November 30, 2012, or the Date of Grant, to purchase 900,000 shares of our common stock with the exercise price equal to \$3.00, with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a performance-based ten-year stock option, or the Performance-Based Option, in an amount to be determined, (iii) a base salary of not less than \$355,100 per year, and (iv) an annual short-term incentive compensation of up to 35% of the base salary, at the discretion of our Board of Directors. Mr. Finizio will receive employee benefits, vacation, and other perquisites as may be determined from time to time. Conditions of termination call for (i) termination immediately upon death, (ii) termination upon a disability in which Mr. Finizio is unable to perform his duties for more than 180 total calendar days during any 12-month period, (iii) voluntary termination by Mr. Finizio upon a 14 calendar day prior notice, (iv) involuntary termination by our company without cause with 60-day notice (or 90-day notice when termination is due to the non-extension of the employment term by our company), (v) termination for cause, and (vi) termination for good reason wherein Mr. Finizio will have 90 days from the date of notice to terminate his employment.

John C.K. Milligan, IV has an employment agreement that commenced November 8, 2012; the agreement initially provided for a three-year term and now automatically renews for additional one-year terms each year on the anniversary of execution unless notice of non-renewal is given by either our company or Mr. Milligan at least 90 days prior to such anniversary. The agreement originally provided for: (i) a Time-Based Option granted and issued on the Date of Grant to purchase 800,000 shares of our common stock with the exercise price equal to \$3.00, with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a Performance-Based Option in an amount to be determined, (iii) a base salary of not less than \$288,100 per year, and (iv) an annual short-term incentive compensation of up to 30% of the base salary, at the discretion of our Board of Directors. Mr. Milligan will receive employee benefits, vacation, and other perquisites as may be determined from time to time. Conditions of termination call for (i) termination immediately upon death, (ii) termination upon a disability in which Mr. Milligan is unable to perform his duties for more than 180 total calendar days during any 12-month period, (iii) voluntary termination by Mr. Milligan upon a 14 calendar day prior notice, (iv) involuntary termination by our company without cause with 60-day notice or (90-day notice when termination is due to the non-extension of the employment term by our company), (v) termination for cause, and (vi) termination for good reason wherein Mr. Milligan shall have 90 days from the date of notice to terminate his employment. The employment agreement contains standard provisions for confidentiality and noncompetition.

Daniel A. Cartwright has an employment agreement that commenced November 8, 2012; the agreement initially provided for a three-year term and now automatically renews for additional one-year terms each year on the anniversary of execution unless notice of non-renewal is given by either our company or Mr. Cartwright at least 90 days prior to such anniversary. The agreement originally provided for: (i) a Time-Based Option granted and issued on the Date of Grant to purchase 700,000 shares of our common stock with the exercise price equal to \$3.00, with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a Performance-Based Option in an amount to be determined, (iii) a base salary of not less than \$257,100 per year, and (iv) an annual short-term incentive compensation of up to 30% of the base salary, at the discretion of our Board of Directors. Mr. Cartwright will receive employee benefits, vacation, and other perquisites as may be determined from time to time. Conditions of termination call for (i) termination immediately upon death, (ii) termination upon a disability in which Mr. Cartwright is unable to perform his duties for more than 180 total calendar days during any 12-month period, (iii) voluntary termination by Mr. Cartwright upon a 14 calendar day prior notice, (iv) involuntary termination by our company without cause with 60-day notice or (90-day notice when termination is due to the non-extension of the employment term by our company), (v) termination for cause, and (vi) termination for good reason wherein Mr. Cartwright will have 90 days from the date of notice to terminate his employment. The employment agreement contains standard provisions for confidentiality and noncompetition.

Mitchell Krassan has a one year employment agreement that commenced on December 17, 2015, subject to automatic renewals of one year terms, which calls for (i) a time-based one-year stock option granted to purchase 150,000 shares of our common stock, which was issued on December 21, 2015 with the exercise price equal to \$8.92, with the underlying shares vesting monthly in one-twelfth increments beginning on the one month anniversary of the date of the grant, (ii) a base salary of not less than \$300,000 per year, and (iii) an annual short-term incentive compensation target of 50% of the base salary, at the discretion of our Board of Directors. Mr. Krassan will receive employee benefits, vacation, and other perquisites as may be determined from time to time. Conditions of termination call for (i) termination immediately upon death, (ii) termination upon a disability in which Mr. Krassan is unable to perform his duties for six consecutive months, (iii) termination immediately by Mr. Krassan upon written notice, (iv) termination immediately by our company without cause, (v) termination for cause upon ten days' written notice, and (vi)

termination by Mr. Krassan for good reason upon 30 days' written notice within 90 days of the event constituting good reason. The employment agreement contains standard provisions for confidentiality and noncompetition.

Michael Donegan has a one year employment agreement that commenced on December 17, 2015, subject to automatic renewals of one year terms, which calls for (i) a time-based one-year stock option to purchase 100,000 shares of our common stock, which was issued on December 21, 2015 with the exercise price equal to \$8.92, with the underlying shares vesting monthly in one-twelfth increments beginning on the one month anniversary of the date of the grant, (ii) a base salary of not less than \$290,000 per year, and (iii) an annual short-term incentive compensation target of 25% of the base salary, at the discretion of our Board of Directors. Mr. Donegan will receive employee benefits, vacation, and other perquisites as may be determined from time to time. Conditions of termination call for (i) termination immediately upon death, (ii) termination upon a disability in which Mr. Donegan is unable to perform his duties for six consecutive months, (iii) termination immediately by Mr. Donegan upon written notice, (iv) termination immediately by our company without cause, (v) termination for cause upon ten days' written notice, and (vi) termination by Mr. Donegan for good reason upon 30 days' written notice within 90 days of the event constituting good reason. The employment agreement contains standard provisions for confidentiality and noncompetition.

## **Potential Payments Upon Termination or Change in Control**

We have employment agreements with certain of our executive officers as described above. The arrangements reflected in these employment agreements are designed to encourage the officers' full attention and dedication to our company currently and, in the event of any proposed change of control, provide these officers with individual financial security. The employment agreements provide for specified payments and benefits only upon a qualifying termination of employment as described below.

### *Termination by Us Without Good Cause or by Executive with Good Reason - No Change in Control*

Pursuant to the employment agreements for each of Messrs. Finizio, Milligan, and Cartwright, in the event of termination of the executive's employment without "cause" or resignation by the executive for "good reason" (as each term is defined in the employment agreements), the executive would be entitled to (i) the sum of his base salary, payable on a biweekly basis ratably over 52 weeks, and target annual incentive compensation for the fiscal year in which such termination of employment occurs, (ii) a continuation of welfare benefits for a period of one year after such termination, and (iii) amounts accrued but unpaid at the time of termination. Additionally, all outstanding equity awards that vest solely on the passage of time held by such executives would immediately vest in full for each of Messrs. Finizio, Milligan, and Cartwright. If a change in control is consummated on or prior to the first anniversary of the effective date of termination, then, prior to such consummation, the company will be required to deliver to the executive the number of shares of company common stock the executive forfeited upon termination pursuant to unvested performance-based restricted stock awards and all other equity awards held by the executive will accelerate in full.

Pursuant to the employment agreements for each of Messrs. Donegan and Krassan, in the event of termination of the executive's employment without "good cause" or resignation by the executive for "good reason" (as each term is defined in the employment agreements), the executive would be entitled to (i) the sum of his base salary payable over a 12-month period, (ii) any target annual incentive compensation for the fiscal year in which such termination of employment occurs, (iii) a continuation of welfare benefits for a period of one year after such termination, and (iv) payment of accrued but unused paid time off. Additionally, all unvested equity compensation granted after the date of the employment agreement and held by the executive in his capacity as an employee would immediately vest as of the effective date of termination.

### *Termination or Resignation in Connection with a Change in Control*

In the event of termination of the executive's employment without "cause" or resignation by the executive for "good reason" (as each term is defined in the employment agreements), following the date of the announcement of a

transaction that leads to a change in control and up to 12 months following the date of the change in control, in addition to those payments and benefits provided to salaried employees generally, including amounts accrued but unpaid at the time of termination:

Messrs. Finizio and Milligan would be entitled to (i) the sum of their respective base salary and target annual incentive compensation for the fiscal year in which such termination of employment occurs, (ii) a continuation of welfare benefits for a period of one year after such termination, and (iii) all other rights and benefits the executive is vested in, pursuant to other plans and programs of our company, and

Mr. Cartwright would be entitled to (i) an amount equal to 150% of his base salary and target annual incentive compensation for the fiscal year in which such termination of employment occurs, payable in a lump sum, (ii) a continuation of welfare benefits for a period of 18 months after such termination, and (iii) all other rights and benefits the executive is vested in, pursuant to other plans and programs of our company.

Additionally, all outstanding long-term incentive awards and warrants would immediately vest in full for each of Messrs. Finizio, Milligan, and Cartwright.

*Termination by Reason of Death or Disability*

For Messrs. Finizio, Milligan, and Cartwright, in the event of termination of the executive's employment by reason of his death or "disability" (as such term is defined in the employment agreements), in addition to those payments and benefits provided to salaried employees generally, including amounts accrued but unpaid at the time of termination, each of the executives would be entitled to (i) pro-rated target annual incentive compensation for the fiscal year in which such termination of employment occurs, payable in a lump sum, (ii) immediate vesting of all outstanding equity awards that vest solely on the passage of time, and (iii) all other rights and benefits the executive is vested in, pursuant to other plans and programs of our company.

The tables below reflect the amount of compensation to certain of our named executive officers, assuming termination of such executive's employment without cause or for good reason or following a change in control of our company on December 31, 2016. Other than as set forth below, no amounts will be paid to our named executive officers in the event of termination.

**Robert G. Finizio**

Executive Benefits and Payments	Termination Without Good Cause or with Good Reason (Not in Connection with a Change in Control)	Termination Without Good Cause or with Good Reason Following a Change in Control	Termination by Reason of Death or Disability
Cash severance	\$1,213,347 <sup>(1)</sup>	\$1,213,347 <sup>(1)</sup>	\$600,000 <sup>(2)</sup>
Equity awards <sup>(3)</sup>			
Other			

**John C.K. Milligan, IV**

Executive Benefits and Payments	Termination Without Good Cause or with Good Reason (Not in Connection with a Change in Control)	Termination Without Good Cause or with Good Reason Following a Change in Control	Termination by Reason of Death or Disability
Cash severance	\$778,979 <sup>(1)</sup>	\$778,979 <sup>(1)</sup>	\$315,000 <sup>(2)</sup>
Equity awards <sup>(3)</sup>			
Other <sup>(4)</sup>	\$5,100	\$5,100	\$5,100

**Daniel A. Cartwright**

Executive Benefits and Payments	Termination Without Good Cause or Resignation	Termination Without Good Cause or Resignation	Termination by Reason of Death or Disability

	with Good Reason (Not in Connection with a Change in Control)	with Good Reason Following a Change in Control	
Cash severance	\$651,566 (1)	\$970,316 (1)	\$262,500 (2)
Equity awards <sup>(3)</sup>			
Other			

**Mitchell Krassan**

	Termination Without Good Cause or Resignation with Good Reason (Not in Connection with a Change in Control)	Termination Without Good Cause or Resignation with Good Reason Following a Change in Control	Termination by Reason of Death or Disability
Executive Benefits and Payments			
Cash severance	\$465,608 (1)	\$465,608 (1)	\$150,000 (2)
Equity awards <sup>(3)</sup>	\$66,000	\$66,000	
Other			

**Michael Donegan**

	Termination Without Good Cause or Resignation with Good Reason (Not in Connection with a Change in Control)	Termination Without Good Cause or Resignation with Good Reason Following a Change in Control	Termination by Reason of Death or Disability
Executive Benefits and Payments			
Cash severance	\$320,301 (1)	\$320,301 (1)	\$18,125 (2)
Equity awards <sup>(3)</sup>	\$19,000	\$19,000	



Other

Consists of payments due to executive for (i) base salary, (ii) target annual incentive compensation, and (iii) health (1) and welfare benefits. In the case of Mr. Cartwright following a change in control, consists of (i) 150% of base salary, (ii) 150% of target annual incentive compensation, and (iii) health and welfare benefits.

(2) Represents full annual incentive compensation that would be prorated based on termination date.

Represents the value of unvested equity awards that would become fully vested upon a termination without cause, (3) resignation for good reason, or in connection with a change in control. The value is calculated by multiplying the number of shares underlying each accelerated award by the difference between the per share closing price of the Common Stock on December 31, 2016 and the per share exercise price.

(4) Represents the amount payable for a car allowance.

## Nonqualified Deferred Compensation

We do not offer any deferred compensation plans for any of our named executive officers.

## Limitation of Directors' Liability; Indemnification of Directors, Officers, Employees, and Agents

Our amended and restated articles of incorporation and bylaws, each as amended, provide that we may indemnify to the full extent of our power to do so, all directors, officers, employees, and/or agents. The effect of this provision in the amended and restated articles of incorporation is to eliminate the rights of our company and our stockholders, either directly or through stockholders' derivative suits brought on behalf of our company, to recover monetary damages from a director for breach of the fiduciary duty of care as a director except in those instances described under Nevada law.

Insofar as indemnification by our company for liabilities arising under the Securities Act of 1933, as amended, or the Securities Act, may be permitted to officers and directors of our company pursuant to the foregoing provisions or otherwise, we are aware that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

## EQUITY COMPENSATION PLAN INFORMATION

As of December 31, 2016, the following table shows the number of securities to be issued upon exercise of outstanding options under equity compensation plans approved by our stockholders, which plans do not provide for the issuance of warrants or other rights.

Plan Category	Number of Securities to Be Issued Upon Exercise of Outstanding Options (a)	Weighted-Average Exercise Price of Outstanding Options (b)	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)
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Equity Compensation Plans Approved by Stockholders	21,767,854 <sup>(1)</sup>	\$3.56	9,002,128 <sup>(2)</sup>
Equity Compensation Plans Not Approved by Stockholders	—	—	—

(1) Represents 17,899,380 shares issuable under the 2009 Long Term Incentive Compensation Plan, as amended, or the 2009 Plan, and 3,868,474 shares issuable under the 2012 Plan.

(2) Represents 2,952,128 shares available for future issuance under the 2009 Plan and 6,050,000 shares available for future issuance under the 2012 Plan.

## **CERTAIN TRANSACTIONS AND RELATIONSHIPS**

### **Policy Relating to Related Party Transactions**

We have a policy that we will not enter into any material transaction in which a director or officer has a direct or indirect financial interest unless the transaction is determined by our Board of Directors to be fair to us or is approved by a majority of our disinterested directors or by our stockholders, as provided for under Nevada law. Generally, our Board of Directors as a whole determines whether a director or officer has a direct or indirect (*i.e.*, any) financial interest in a transaction deemed material based upon our Code of Conduct and Ethics and Nevada law. From time to time, our Audit Committee, in accordance with its charter, will also review potential conflict of interest transactions involving members of our Board of Directors and our executive officers. The policy with respect to such transactions is provided in our company's Code of Conduct and Ethics.

### **Related Party Transactions**

Other than compensation arrangements, we describe below transactions and series of similar transactions, since January 1, 2016, to which we were a party or will be a party, in which:

the amounts involved exceeded or will exceed \$120,000; and

any of our directors, executive officers, or holders of more than 5% of our voting securities, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest.

Compensation arrangements for our directors and named executive officers are described elsewhere in this proxy statement.

#### *Agreements with Catalent, Inc.*

J. Martin Carroll, a director of ours, has served as a director of Catalent, Inc. since July 2015. From time to time, we have entered into agreements with Catalent in the normal course of business. All such agreements have been reviewed by disinterested directors of our company or a committee consisting of disinterested directors of our company since

July 2015. During the year ended December 31, 2016, the amount billed to us by Catalent was approximately \$3,647,000 for manufacturing activities related to our clinical trials, scale-up, registration batches, stability and validation testing. As of December 31, 2016, we had an amount due to Catalent of approximately \$57,000.

## **COMPENSATION COMMITTEE REPORT**

Our Compensation Committee has reviewed and discussed with management the Compensation Discussion and Analysis section included in this proxy statement and, based on such review and discussions, the Compensation Committee recommended to our Board of Directors that the Compensation Discussion and Analysis section be included in this proxy statement.

April 25, 2017 Respectfully submitted,

Cooper C. Collins, Chairman  
J. Martin Carroll  
Tommy G. Thompson

**DIRECTOR COMPENSATION**

We compensate our non-employee directors with a combination of cash and equity. Each director receives an annual base cash retainer of \$50,000 for such service and an annual grant of stock options to purchase 25,000 shares of our common stock. In addition, the Chairman of the Board receives an additional \$25,000 annual cash retainer. We also reimburse our directors for reasonable expenses related to attendance at Board of Directors and committee meetings.

In addition, the chairperson of our Audit Committee receives an annual cash retainer of \$25,000 and the other members of the Audit Committee receive an annual retainer of \$10,000. The chairperson of our Compensation Committee receives an annual cash retainer of \$15,000 and the other members of the Compensation Committee receive an annual retainer of \$7,500. The chairperson of each of our other committees receives an annual cash retainer of \$10,000 and the other members receive an annual retainer of \$5,000. In addition, each director receives compensation of \$500 for each telephonic meeting and \$1,500 for each in person meeting.

The following table and accompanying footnotes detail compensation paid to our directors for services rendered for the year ended December 31, 2016. Messrs. Finizio's and Milligan's compensation is described above under "Executive Compensation."

Name	Fees Earned or Paid in Cash	<b>Option Awards</b> <sup>(1)(2)(3)</sup>	All Other Compensation	Total
Brian A. Bernick, M.D.	—	—	\$ 637,500	<sup>(4)</sup> \$637,500
J. Martin Carroll	\$74,250	\$ 89,503	—	\$163,753
Cooper C. Collins	\$83,500	\$ 89,503	—	\$173,003
Robert V. LaPenta, Jr.	\$88,000	\$ 89,503	—	\$177,503
Jules A. Musing	\$64,500	\$ 89,503	—	\$154,003
Nicholas Segal	\$68,250	\$ 89,503	—	\$157,753
Angus C. Russell	\$71,750	\$ 89,503	—	\$161,253
Tommy G. Thompson	\$114,250	\$ 89,503	—	\$203,753

(1) The valuation methodology used to determine the fair value of the options granted during the year was the Black-Scholes-Merton option-pricing model, an acceptable model in accordance with ASC 718. The Black-Scholes-Merton model requires the use of a number of assumptions including volatility of the stock price, the weighted average risk-free interest rate, and the weighted average expected life of the options. For further

information, see “Note 9 – Stockholders’ Equity” included in the financial statements included in our Annual Report on Form 10-K filed with the SEC for the fiscal year ended December 31, 2016.

- (2) Stock options depicted in the table above were granted to directors for serving on our Board of Directors on December 21, 2016 and will vest of December 21, 2017.

On December 31, 2016, each of the directors listed in the “Director Compensation” table had option awards outstanding to purchase the following number of shares of common stock: Dr. Bernick (2,082,910), Mr. Collins (395,000), Mr. LaPenta (395,000), Mr. Thompson (832,500), Mr. Segal (412,057), Mr. Musing (520,000), Mr. Russell (175,000), Mr. Carroll (175,000) and there were no forfeitures of stock options by any of such directors in fiscal 2016.

- (4) Consists of compensation received by Dr. Bernick for his services as an officer of our company.

## REPORT OF THE AUDIT COMMITTEE

The Board of Directors has appointed an Audit Committee consisting of independent directors. All of the members of the committee must be “independent” of our company and management, as independence is defined in applicable rules of the SEC and the NYSE MKT listing standards.

The purpose of the Audit Committee is to assist the oversight of our Board of Directors in the integrity of the financial statements of our company, our company’s compliance with legal and regulatory matters, the independent auditor’s qualifications and independence, and the performance of our company’s independent auditor and any internal audit function. The primary responsibilities of the committee include overseeing our company’s accounting and financial reporting process and audits of the financial statements of our company. Management has the primary responsibility for the financial statements and the reporting process, including the systems of internal controls. The independent auditor is responsible for auditing the financial statements and expressing an opinion on the conformity of those audited financial statements with generally accepted accounting principles. Our Board of Directors has amended and restated the charter of the Audit Committee to reflect, among other things, requirements of federal legislation, including the Sarbanes-Oxley Act of 2002, new rules adopted by the SEC, and rules of the NYSE MKT.

In fulfilling its oversight responsibilities, the committee reviewed and discussed the audited financial statements with management and the independent auditor. The committee discussed with the independent auditor the matters required to be discussed by the guidelines of the SEC, the Sarbanes-Oxley Act of 2002, Statement on Auditing Standards No. 61, as amended, and other applicable regulations. This included a discussion of the independent auditor’s judgments as to the quality, not just the acceptability, of our company’s accounting principles and such other matters as are required to be discussed with the committee under generally accepted auditing standards. In addition, the committee received from the independent auditor written disclosures and the letter required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence. The committee also discussed with the independent auditor the independent auditor’s independence from management and our company, including the matters covered by the written disclosures and letter provided by the independent auditor.

The committee discussed with our independent auditor the overall scope and plans for its audit. The committee meets with the independent auditor, with and without management present, to discuss the results of the independent auditor’s examinations, its evaluations of our company, the internal controls, and the overall quality of the financial reporting. The committee held four meetings in 2016.

Based on the reviews and discussions referred to above, the committee recommended to the Board of Directors, and the Board of Directors approved, that the audited financial statements be included in the Annual Report on Form 10-K for the fiscal year ended December 31, 2016 for filing with the SEC.



The report has been furnished by the Audit Committee of our Board of Directors.

April 25, 2017 Robert V. LaPenta, Jr., Chairman  
Cooper Collins  
Angus C. Russell  
Nicholas Segal

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## **SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Exchange Act requires our directors, officers, and persons who own more than 10% of a registered class of our equity securities to file reports of ownership and changes in ownership with the SEC. These regulations require the directors, officers, and persons who own more than 10% of a registered class of our equity securities to furnish us with copies of all Section 16(a) forms they file.

Based solely upon our review of the copies of such forms received by us during the fiscal year ended December 31, 2016, and written representations that no other reports were required, we believe that each person who, at any time during such fiscal year was a director, officer, or persons who own more than 10% of a registered class of our equity securities, complied with all Section 16(a) filing requirements during such fiscal year.

## **SECURITY OWNERSHIP OF PRINCIPAL STOCKHOLDERS, DIRECTORS, AND OFFICERS**

The following table sets forth information regarding the beneficial ownership of our common stock as of April 17, 2017, by the following:

each of our directors and executive officers;

all of our directors and executive officers as a group; and

each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock.

Beneficial ownership is determined according to the rules of the SEC and generally means that a person has beneficial ownership of a security if he, she, or it possesses sole or shared voting or investment power of that security, including options and warrants that are currently exercisable or exercisable within 60 days of April 17, 2017. Shares issuable pursuant to stock options, warrants, and convertible securities are deemed outstanding for computing the percentage of the person holding such options, warrants, or convertible securities but are not deemed outstanding for computing the percentage of any other person. Except as indicated by the footnotes below, we believe, based on the information furnished to us, that the persons named in the table below have sole voting and investment power with respect to all shares of common stock shown that they beneficially own, subject to community property laws where applicable. The information does not necessarily indicate beneficial ownership for any other purpose.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o TherapeuticsMD, Inc., 6800 Broken Sound Parkway NW, Third Floor, Boca Raton, Florida 33487.

Name of Beneficial Owners	Shares Beneficially Owned	
	Number	Percent <sup>(1)</sup>
<b>Executive Officers and Directors:</b>		
Robert G. Finizio <sup>(2)</sup>	23,863,943	11.52%
John C.K. Milligan, IV <sup>(3)</sup>	9,465,861	4.55%
Daniel A. Cartwright <sup>(4)</sup>	1,885,000	*
Mitchell L. Krassan <sup>(5)</sup>	977,158	*
Michael Donegan <sup>(6)</sup>	200,000	*
Brian Bernick, M.D. <sup>(7)</sup>	8,910,281	4.33%
Tommy G. Thompson <sup>(8)</sup>	1,481,556	*
J. Martin Carroll <sup>(9)</sup>	160,000	*
Cooper C. Collins <sup>(10)</sup>	406,000	*
Robert V. LaPenta, Jr. <sup>(11)</sup>	380,000	*
Jules A. Musing <sup>(12)</sup>	392,400	*
Angus C. Russell <sup>(13)</sup>	198,500	*
Nicholas Segal <sup>(14)</sup>	1,127,532	*
All executive officers and directors as a group (13 persons) <sup>(15)</sup>	49,448,231	23.92%
<b>5% Stockholders:</b>		
FMR LLC <sup>(16)</sup>	29,487,031	14.46%
T. Rowe Price Associates, Inc. <sup>(17)</sup>	23,663,196	11.60%
Bank of NY Mellon Corp. <sup>(18)</sup>	21,113,402	10.35%
JP Morgan Chase & Co. <sup>(19)</sup>	13,396,608	6.57%
Robert J. Smith <sup>(20)</sup>	11,306,770	5.51%
Franklin Resources, Inc. <sup>(21)</sup>	11,256,377	5.52%
BlackRock, Inc. <sup>(22)</sup>	10,923,000	5.36%

\*Represents less than 1% of the outstanding shares of our common stock.

(1) Applicable percentage of ownership is based on 203,927,142 shares of common stock outstanding as of April 17, 2017, as adjusted for each stockholder.

(2) Includes (i) 18,643,559 shares held by Mr. Finizio directly, (ii) 1,630,090 shares held indirectly by Mr. Finizio through a grantor-retained annuity trust, (iii) 369,910 shares held by Robert Finizio Revocable Trust, (iv) 3,041,384 shares issuable to Mr. Finizio upon the exercise of vested stock options and (v) 179,000 shares issuable to Mr. Finizio upon the exercise of a vested warrant.

(3) Represents (i) 2,690,396 shares held by John C.K. Milligan Revocable Trust U/A 08/10/2009, as amended 11/22/2011, or the Trust, (ii) 1,472,419 shares held by Goldman Sachs & Co f/b/o John Milligan IRA, (iii) 1,321,791 shares held indirectly by Mr. Milligan through a grantor-retained annuity trust, (iv) 3,802,255 shares issuable to Mr. Milligan upon the exercise of vested stock options and (v) 179,000 shares issuable to Mr. Milligan upon the exercise of a vested warrant. Mr. Milligan serves as the trustee and is the beneficiary of the Trust.

(4) Represents (i) 1,285,000 shares issuable to Mr. Cartwright upon the exercise of vested stock options and (ii) 600,000 shares issuable to Mr. Cartwright upon the exercise of a vested warrant.

(5) Represents 977,158 shares issuable to Mr. Krassan upon the exercise of vested stock options.

(6) Represents 200,000 shares issuable to Mr. Donegan upon the exercise of vested stock options.

(7) Represents (i) 6,557,371 shares held by BF Investment Enterprises, Ltd., or BF Investment, (ii) 267,000 shares held by Dr. Bernick and Beth Familant, as tenants by the entirety, (iii) 3,000 shares held by BF Management, LLC, or the GP, a general partner of BF Investment, (iv) 1,757,910 shares issuable to BF Investment upon the exercise of vested stock options and (v) 325,000 shares issuable to Dr. Bernick upon the exercise of vested stock options. Dr. Bernick serves as the Manager of the GP and holds (x) together with his wife as tenants by the entirety, a 70.6% membership interest in the GP, (y) together with his wife as tenants by the entirety, a 73% limited partner interest in BF Investment, and (z) in the aggregate, with his spouse in their individual capacities, a 3.272% limited partner interest in BF Investment. Accordingly, Dr. Bernick may be deemed to beneficially own the shares owned by BF Investment and the GP. Dr. Bernick disclaims beneficial ownership of any such shares in which he does not have a pecuniary interest.

(8) Represents (i) 669,500 shares held by Thompson Family Investments, LLC, an entity solely owned by Thompson Family Holdings, LLC, an entity solely owned by Mr. Thompson, of which 600,000 shares have been pledged to

secure obligations under a promissory note, (ii) 3,555 shares held by Mr. Thompson, (iii) 1,001 shares held indirectly by Thompson Family Holdings and (iv) 807,500 shares issuable to Mr. Thompson upon exercise of vested stock options.

(9) Includes (i) 10,000 shares held by Mr. Carroll directly and (ii) 150,000 shares issuable to Mr. Carroll upon the exercise of vested stock options.

(10) Includes (i) 36,000 shares held by Mr. Collins directly and (ii) 370,000 shares issuable to Mr. Collins upon the exercise of vested stock options.

(11) Includes (i) 5,000 shares held by Mr. LaPenta, Jr. directly, (ii) 5,000 shares held indirectly by trusts for Mr. LaPenta's minor children and (iii) 370,000 shares issuable to Mr. LaPenta, Jr. upon the exercise of vested stock options.

(12) Includes (i) 22,400 shares held directly by Mr. Musing and (ii) 370,000 shares issuable to Mr. Musing upon the exercise of vested stock options.

(13) Includes (i) 48,500 shares held by Mr. Russell directly and (ii) 150,000 shares issuable to Mr. Russell upon the exercise of vested stock options.

(14) Represents (i) 461,565 shares held directly by Mr. Segal, (ii) 387,057 shares issuable to Mr. Segal upon the exercise of vested stock options and (iii) Mr. Segal's pro rata portion (278,910 shares) of the shares held by Fourth Generation Private Equity Partners, or Fourth Generation. Mr. Segal does not have voting or dispositive power over the shares held by Fourth Generation. Richard Segal, in his official capacity, exercises sole voting and dispositive power over the shares held by Fourth Generation.

(15) This amount includes all shares directly and indirectly owned by all executive officers and directors and all shares issuable directly and indirectly upon the exercise of vested stock options and warrants held by our executive officers and directors.

(16) FMR LLC has sole voting power over 499,518 shares and sole dispositive power over 29,487,031 shares. The address of FMR LLC is 245 Summer Street, Boston, MA 02210. This information is based on Amendment No. 5 to Schedule 13G filed with the SEC on February 14, 2017.

(17) T. Rowe Price Associates, Inc. has sole voting power over 3,424,151 shares and sole dispositive power over 23,663,196 shares. T. Rowe Price Associates, Inc.'s address is 100 E. Pratt Street, Baltimore, Maryland 21202. This information is based on Amendment No. 2 to Schedule 13G filed with the SEC on February 7, 2017.

(18) Bank of New York Mellon Corporation has sole voting power over 20,445,016 shares and sole dispositive power over 21,113,402 shares. Bank of New York Mellon Corporation's address is 225 Liberty Street, New York, New York 10286. This information is based on Amendment No. 2 to Schedule 13G filed with the SEC on February 3,

2017.

JP Morgan Chase & Co. has sole voting power over 13,000,812 shares and sole dispositive power over (19) 13,396,608 shares. JP Morgan Chase & Co.'s address is 270 Park Ave., New York, NY 10017. This information is based on Schedule 13G filed with the SEC on January 25, 2017.

Represents (i) 500,000 shares held directly by Mr. Smith, (ii) 7,742,108 shares held by Plato and Associates, LLC, (iii) 694,662 shares held by Energy Capital, LLC, (iv) 1,120,000 shares held by Jo Cee, LLC, and (v) (20) 1,250,000 shares issuable to Plato and Associates, LLC upon the exercise of vested warrants. Mr. Smith has sole voting and dispositive power over all such shares. Mr. Smith's address is 13650 Fiddlesticks Boulevard, Suite 202-324, Ft. Myers, FL 33912. This information is based on Amendment No. 2 to Schedule 13D filed with the SEC on March 22, 2017 and subsequent exercise of warrants by the holder.

Franklin Resources, Inc. has sole voting power over 11,196,777 shares and sole dispositive power over (21) 11,196,777 shares. Franklin Resources, Inc.'s address is One Franklin Parkway, San Mateo, CA 94403. This information is based on Schedule 13G filed with the SEC on February 7, 2017.

BlackRock, Inc. has sole voting power over 10,602,281 shares and sole dispositive power over 10,923,000 shares. (22) BlackRock, Inc.'s address is 55 East 52nd Street, New York, NY 10055. This information is based Schedule 13G filed with the SEC on January 30, 2017.

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## **PROPOSAL TWO**

### **ADVISORY VOTE ON EXECUTIVE COMPENSATION (“SAY-ON-PAY”)**

#### **Background**

The Dodd-Frank Act enables our stockholders to vote to approve, on an advisory (non-binding) basis, the compensation of our named executive officers as disclosed in this proxy statement in accordance with the SEC’s rules.

#### **Summary**

We are asking our stockholders to provide advisory approval of the compensation of our named executive officers (which consist of our Chief Executive Officer, our Chief Financial Officer, and our three other most highly compensated executive officers during our last completed fiscal year), as such compensation is described in the Compensation Discussion and Analysis section, the tabular disclosure regarding such compensation, and the accompanying narrative disclosure set forth in this proxy statement, beginning on page 15. Our executive compensation program is designed to enable us to attract, motivate, and retain highly qualified executives. We maintain a pay for performance philosophy driven by the use of a pay mix that emphasizes variable and performance-based pay that is tied to corporate performance results and our stock price. We believe such a philosophy serves to support our company’s business strategy of developing and commercializing innovative new products targeted exclusively for women to the benefit of our company’s current stockholders and future customers. The following is a summary of some of the key points of our executive compensation program. We urge our stockholders to review the Compensation Discussion and Analysis section included in this proxy statement and the executive-related compensation tables for more information.

*Base Salaries.* We target base salaries at levels that enable us to attract, motivate, and retain highly qualified executives. Although we do not benchmark or target our compensation levels against our peer group, we do use peer group information as a point of reference when establishing out executive compensation. At the beginning of 2016, we increased overall base salaries for our named executive officers by approximately 27%, with individual increases ranging from approximately 9% to approximately 61%. These adjustments were primarily driven by the results of a pay study performed by the Compensation Committee’s outside consultants, Blaise Group, in late 2015 and also took into account the substantial progress we made during 2015 in meeting our drug development goals and objectives. On average, the base salaries for our named executive officers for fiscal 2016 were withing 4% of the median of those of

our compensation peer group. The base salaries for our named executive officers for fiscal 2016 as compared to our compensation peer group were as follows: Chief Executive Officer's base salary was at the market 50<sup>th</sup> percentile of our compensation group, our President and Secretary's base salary was between the market 50<sup>th</sup> and 75<sup>th</sup> percentiles of our compensation peer group, our Chief Financial Officer and Treasurer's base salary was between the market 25<sup>th</sup> and 50<sup>th</sup> percentiles of our compensation peer group, our Executive Vice President and Chief Strategy Officer's base salary was below the market 25<sup>th</sup> percentile of our compensation peer group and our Vice President - Finance's base salary was over the market 75<sup>th</sup> percentile of our compensation peer group.

*Annual Performance Based Incentive Compensation.* Annual incentive compensation reflects our pay-for-performance philosophy. Annual performance based incentive compensation is designed to reward individuals for performance based on certain aspects of our company's financial results as well as the achievement of personal and corporate objectives that contribute to our long-term success in building stockholder value. For fiscal 2016, we paid target annual incentive compensation to our named executive officers for their achievement of our target 2016 drug development and commercialization goals and objective noted above.

*Stock-Based Compensation.* We strongly believe in utilizing our common stock to tie executive rewards directly to our long-term success and increases in stockholder value. Grants of stock-based awards to our executive officers enable those executives to develop and maintain a meaningful ownership position in our common stock. Among other factors, the amount of stock-based awards granted takes into account stock-based awards previously granted to an individual. Grants of stock-based awards are intended to result in limited rewards if the price of our common stock does not appreciate, but may provide substantial rewards to executives as our stockholders in general benefit from stock price appreciation. Grants of stock-based awards also are intended to align compensation with the price performance of our common stock. Historically, our stock-based compensation has been through the grant of stock options. Stock based compensation typically vests over a period of multiple years to encourage executive retention and emphasize long-term performance and may also include specific performance metrics to be earned. We did not grant any stock options to our named executive officers during fiscal 2016 because we made a stock option grant in December 2015 that was intended to be a multi-year grant. We made a stock option grant in March 2017 that was sized to be an annual grant – we expect to standardize and follow an annual grant process in future years.



## Board Recommendation

Our Board of Directors believes that the information provided above and within the “Executive Compensation” section of this proxy statement demonstrates that our executive compensation program is designed appropriately and is working to ensure that management’s interests are aligned with our stockholders’ interests to support long-term value creation.

The following resolution is submitted for a stockholder vote at the annual meeting:

**RESOLVED**, that the stockholders of the Company approve, on an advisory basis, the compensation of the Company’s named executive officers for the fiscal year ended December 31, 2016, as disclosed in the Compensation Discussion and Analysis section, compensation tables, and narrative discussion set forth in this proxy statement.

## Vote Required

The say-on-pay vote is advisory, and therefore not binding on our company, our Compensation Committee, or our Board of Directors. Although non-binding, the vote will provide information to our Compensation Committee and our Board of Directors regarding investor sentiment about our executive compensation philosophy, policies, and practices, which our Compensation Committee and our Board of Directors will be able to consider when determining executive compensation for the years to come.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT STOCKHOLDERS VOTE “FOR” ADOPTION OF THE RESOLUTION APPROVING THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS FOR THE FISCAL YEAR ENDED DECEMBER 31, 2016, AS DESCRIBED IN THE COMPENSATION DISCUSSION AND ANALYSIS SECTION AND THE RELATED TABULAR AND NARRATIVE DISCLOSURE SET FORTH IN THIS PROXY STATEMENT.**

## **PROPOSAL THREE**

### **RATIFICATION OF APPOINTMENT OF INDEPENDENT AUDITOR**

On March 25, 2015, the Audit Committee of our Board of Directors unanimously voted to dismiss Rosenberg Rich Baker Berman & Company, or RRBB, as our independent registered public accounting firm, and to engage Grant Thornton as our independent registered public accounting firm for the 2015 fiscal year. We notified RRBB of its dismissal on March 26, 2015 and engaged Grant Thornton effective March 30, 2015.

RRBB's reports on our financial statements for each of the fiscal years ended December 31, 2014 and December 31, 2013 did not contain an adverse opinion or a disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope, or accounting principles. During our fiscal years ended December 31, 2014 and December 31, 2013, and through the date of dismissal, there were no disagreements (as described in Item 304(a)(1)(iv) of Regulation S-K and the related instructions) with RRBB on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which, if not resolved to the satisfaction of RRBB, would have caused RRBB to make reference to the subject matter of the disagreement in connection with its report.

During the fiscal years ended December 31, 2014 and December 31, 2013 and the subsequent period through the date of dismissal, there have been no reportable events within the meaning of Item 304(a)(1)(v) of Regulation S-K promulgated by the SEC.

During the fiscal years ended December 31, 2014 and December 31, 2013 and the subsequent period to the date of its engagement, neither we nor anyone acting on our behalf has consulted with Grant Thornton regarding (i) the application of accounting principles to a specific transaction, either completed or proposed, or the type of audit opinion that might be rendered on our financial statements, and neither a written report or oral advice was provided to us that Grant Thornton concluded was an important factor considered by us in reaching a decision as to any accounting, auditing, or financial reporting issue; (ii) any matter that was the subject of a disagreement within the meaning of Item 304(a)(1)(iv) of Regulation S-K; or (iii) any reportable event within the meaning of Item 304(a)(1)(v) of Regulation S-K. We do not anticipate that representatives of RRBB will be present at the 2017 Annual Meeting of Stockholders.

We anticipate that representatives of Grant Thornton will be present at the 2017 Annual Meeting of Stockholders, will have the opportunity to make a statement if they desire, and will be available to respond to appropriate questions.

Our Audit Committee recommends that stockholders vote in favor of the ratification of the appointment of Grant Thornton to audit the consolidated financial statements of our company for the fiscal year ending December 31, 2017. In the event of a negative vote on such ratification, the Audit Committee will reconsider its selection.

Aggregate fees billed to our company for the fiscal year ended December 31, 2016 and 2015 by Grant Thornton, our independent registered public accounting firm, were as follows:

	2016	2015
Audit Fees	\$342,755	\$268,959
Audit-Related Fees	\$0	\$0
Tax Fees	\$96,261	\$108,525
All Other Fees	\$0	\$0

Audit fees consist of fees associated with the annual audit, including the audit of the effectiveness of internal control over financial reporting, the reviews of our quarterly reports, and other filings with the SEC. Tax fees included the preparation of our tax returns.

#### **Audit Committee Pre-Approval Policies and Procedures**

The charter of our Audit Committee provides that the duties and responsibilities of our Audit Committee include the pre-approval, or adopting procedures for pre-approval, of all audit, audit-related, tax, and other services permitted by law or applicable SEC regulations (including fee and cost ranges) to be performed by our independent auditor. Any pre-approved services that will involve fees or costs exceeding pre-approved levels will also require specific pre-approval by the Audit Committee. Unless otherwise specified by the Audit Committee in pre-approving a service, the pre-approval will be effective for the 12-month period following pre-approval. The Audit Committee will not approve any non-audit services prohibited by applicable SEC regulations or any services in connection with a transaction initially recommended by the independent auditor, the purpose of which may be tax avoidance and the tax treatment of which may not be supported by the Internal Revenue Code and related regulations.

To the extent deemed appropriate, the Audit Committee may delegate pre-approval authority to the Chairman of the Audit Committee or any one or more other members of the Audit Committee provided that any member of the Audit Committee who has exercised any such delegation must report any such pre-approval decision to the Audit Committee at its next scheduled meeting. The Audit Committee will not delegate to management the pre-approval of services to be performed by the independent auditor.

Our Audit Committee requires that our independent auditor, in conjunction with our Chief Financial Officer, be responsible for seeking pre-approval for providing services to us and that any request for pre-approval must inform the Audit Committee about each service to be provided and must provide detail as to the particular service to be provided.

All of the services provided by Grant Thornton described above were approved by our Audit Committee pursuant to our Audit Committee's pre-approval policies. All of the hours spent by Grant Thornton in auditing our financial statements for the fiscal year ended 2016 and 2015 were attributed to work performed by Grant Thornton's full-time, permanent employees.

#### **Ratification by Stockholders of the Appointment of Independent Auditor**

Ratification of the appointment of Grant Thornton to audit the consolidated financial statements of our company for the fiscal year ending December 31, 2016 will require the affirmative vote of a majority of the votes cast, assuming that a quorum is present at the meeting.

#### **DEADLINE FOR RECEIPT OF STOCKHOLDER PROPOSALS**

As more specifically provided in our bylaws, as amended, no business may be brought before an annual meeting of stockholders unless it is specified in the notice of the meeting or is otherwise properly brought before the meeting by or at the direction of our Board of Directors or by a stockholder entitled to vote who has delivered proper notice to us, together with the information required by our bylaws, as amended. Stockholder proposals that are intended to be presented by stockholders at the annual meeting of stockholders for the fiscal year ending December 31, 2017 must be received by us not less than 90 days (by March 18, 2018) and not more than 120 days (by February 16, 2018) before the anniversary of the prior year's annual meeting of stockholders, unless we change the date of our 2018 annual meeting by more than 30 days before or 60 days after such anniversary date, in which case, stockholder proposals must be received not earlier than 120 days prior to the annual meeting and not later than the later to occur of 90 days prior to the annual meeting and ten days following the date on which a public announcement of the date of the annual meeting is first made by us.

Stockholders interested in submitting a proposal for inclusion in our proxy materials for the 2018 annual meeting may do so by following the procedures set forth in Rule 14a-8 under the Exchange Act and our bylaws, as amended. To be eligible for inclusion in such proxy materials, stockholder proposals must be received not later than December 26, 2017.

Stockholder proposals should be addressed and delivered to our corporate secretary at the address of our executive offices set forth in this proxy statement.

## **HOUSEHOLDING OF PROXY MATERIALS**

The SEC has adopted rules that permit companies and intermediaries (*e.g.*, brokers) to satisfy the delivery requirements for annual reports, proxy statements, and Notices of Internet Availability of Proxy Materials with respect to two or more stockholders sharing the same address by delivering a single proxy statement addressed to those stockholders. This process, which is commonly referred to as “householding,” potentially means extra convenience for stockholders and cost savings for companies.

If you and other stockholders of record with whom you share an address currently receive multiple copies of our annual report, proxy statement, or Notice of Internet Availability of Proxy Materials and would like to participate in our householding program, please contact Broadridge by calling toll-free at 800-542-1061, or by writing to Broadridge Financial Solutions, Inc., Householding Department, 51 Mercedes Way, Edgewood, New York 11717. Alternatively, if you participate in householding and wish to revoke your consent and receive separate copies of our annual report, proxy statement, or Notice of Internet Availability of Proxy Materials, please contact Broadridge as described above. In addition, we will promptly deliver, upon the written or oral request to Broadridge at the address or telephone number above, a separate copy of our annual report, proxy statement, or Notice of Internet Availability of Proxy Materials to a stockholder at a shared address to which a single copy of the documents was delivered.

A number of brokerage firms have instituted householding. If you hold your shares in street name, please contact your bank, broker or other holder of record to request information about householding.

## **OTHER MATTERS**

We know of no other matters to be submitted at the meeting. If any other matters properly come before the meeting, it is the intention of the persons named in the enclosed proxy card to vote the shares they represent as our Board of Directors may recommend.

**VOTE BY INTERNET - [www.proxyvote.com](http://www.proxyvote.com)**

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 p.m. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

**ELECTRONIC DELIVERY OF FUTURE PROXY MATERIALS**

If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

***THERAPEUTICSMD,  
INC.  
6800 BROKEN SOUND  
PKWY NW, THIRD  
FLOOR  
BOCA RATON, FL 33487***

**VOTE BY PHONE - 1-800-690-6903**

Use any touch-tone telephone to transmit your voting instructions up until 11:59 p.m. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

**VOTE BY MAIL**

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS  
FOLLOWS:

E26905-P90685

KEEP THIS PORTION FOR YOUR  
RECORDS

**THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.** DETACH AND RETURN THIS PORTION ONLY

**THERAPEUTICSMD, INC.**                      **For All**   **Withhold All**   **For All Except**   To withhold authority to vote for any individual nominee(s), mark “For All Except” and write the number(s) of the nominee(s) on the line below.

**The Board of Directors recommends you vote FOR the following:**

1. Election of Directors

**Nominees:**

- 01) Tommy G. Thompson    06) Cooper C. Collins
- 02) Robert G. Finizio        07) Robert V. LaPenta, Jr.
- 03) John C.K. Milligan, IV   08) Jules A. Müsing
- 04) Brian Bernick            09) Angus C. Russell
- 05) J. Martin Carroll        10) Nicholas Segal

**The Board of Directors recommends you vote FOR the following proposals:**                      **For Against Abstain**

2. To approve, on a non-binding advisory basis, the compensation of our named executive officers for the fiscal year ended December 31, 2016 (say-on-pay);

To ratify the appointment of Grant Thornton LLP, an independent registered public accounting firm, as the independent auditor of our company for the fiscal year ending December 31, 2017;

and upon such other business as may properly come before the meeting or any adjournment thereof.

For address changes and/or comments, please check this box and write them on the back where indicated.

Please indicate if you plan to attend this meeting.

**Yes No**

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.



Signature [PLEASE SIGN  
WITHIN BOX]

Date

Signature (Joint  
Owners)

Date

V.1.1

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting:**

The Notice and Proxy Statement and Form 10-K are available at [www.proxyvote.com](http://www.proxyvote.com).

E26906-P90685

**THERAPEUTICSMD, INC.  
2017 Annual Meeting of  
Stockholders  
June 16, 2017, 8:00 a.m.  
This proxy is solicited by the Board  
of Directors**

The undersigned stockholder of THERAPEUTICSMD, INC., a Nevada corporation, hereby acknowledges receipt of the notice of annual meeting of stockholders and proxy statement and hereby appoints Robert G. Finizio and Daniel A. Cartwright and each of them, proxies and attorneys-in-fact, with full power to each of substitution, on behalf and in the name of the undersigned, to represent the undersigned at the 2017 Annual Meeting of Stockholders of THERAPEUTICSMD, INC., to be held on Friday, June 16, 2017, at 8:00 a.m., local time, at the Renaissance Boca Raton Hotel, 2000 NW 19th Street, Boca Raton, Florida 33431 and at any adjournment or adjournments thereof, and to vote all shares of common stock which the undersigned would be entitled to vote if then and there personally present on the matters set forth on the reverse side of this proxy card.

**This proxy, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors’**

**recommendations.**

**PLEASE MARK, SIGN, DATE,  
AND RETURN THIS PROXY  
CARD PROMPTLY IN THE  
ENCLOSED ENVELOPE.**

**Address Changes/Comments:**

(If you noted any Address  
Changes/Comments above, please  
mark corresponding box on the  
reverse side.)

**Continued and to be signed on  
reverse side**

V.1.1