UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2023

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission File Number: 001-00100

THERAPEUTICSMD, INC.
(Exact name of Registrant as specified in its Charter)

Nevada	**87-0233535**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
951 Yamato Road, Suite 220 Boca Raton, Florida	**33431**
(Address of principal executive offices)	**(Zip Code)**

561-961-1900
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading symbol	Name of each exchange on which registered
Common Stock, par value $0.001 per share	TXMD	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large Accelerated Filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of August 9, 2023, there were 10,575,240 shares of the registrant’s common stock, par value $0.001 per share, outstanding.

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Part I – Financial Information

Item 1. Financial statements

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Balance Sheets
(Unaudited – in thousands, except per share data)

	June 30, 2023 (Unaudited)	December 31, 2022
Assets:		
Current assets:		
Cash	$ 13,729	$ 38,067
Restricted cash	—	11,250
Royalty receivable, current portion	841	—
Prepaid and other current assets	5,043	6,034
Total current assets	19,613	55,351
Fixed assets, net	39	78
License rights and other intangible assets, net	6,767	6,943
Right of use assets	7,228	7,580
Royalty receivable, long term	19,788	20,253
Other non-current assets	254	253
Total assets	$ 53,689	$ 90,458
Liabilities and stockholders' equity:		
Current liabilities:		
Accounts payable	$ 1,508	$ 2,162
Accrued expenses and other current liabilities	11,484	18,846
Current liabilities of discontinued operations	1,372	25,831
Total current liabilities	14,364	46,839
Operating lease liabilities	6,939	7,369
Other non-current liabilities	1,189	1,107
Total liabilities	22,492	55,315
Commitments and contingencies (Note 7)		
Stockholders' equity (deficit):		
Common stock, par value $0.001; 32,000 and 12,000 shares authorized, 10,575 and 9,498 issued and outstanding as of June 30, 2023 and December 31, 2022, respectively	11	9
Additional paid-in capital	976,566	974,497
Accumulated deficit	(945,380)	(939,363)
Total stockholders' equity	31,197	35,143
Total liabilities and stockholders' equity	$ 53,689	$ 90,458

The accompanying notes are an integral part of these condensed consolidated financial statements.

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Operations
(Unaudited – in thousands, except per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue, net:				
License and service	$ 437	$ 348	$ 853	$ 1,043
Total revenue, net	437	348	853	1,043
Cost of revenue	—	348	—	1,043
Gross profit	437	—	853	—
Operating expenses:				
Selling, general and administrative	2,781	14,575	5,837	32,121
Depreciation & amortization	128	282	155	611
Total operating expenses	2,909	14,857	5,992	32,732
Loss from operations	(2,472)	(14,857)	(5,139)	(32,732)
Other (expense) income:				
Interest expense and other financing costs	(45)	—	(95)	—
Miscellaneous income (expense)	103	(16)	510	(16)
Total other income (loss), net	58	(16)	415	(16)
Loss from continuing operations before income taxes	(2,414)	(14,873)	(4,724)	(32,748)
Income (loss) from discontinued operations, net of income taxes	—	127,154	(1,293)	96,008
Net income (loss)	$ (2,414)	$ 112,281	$ (6,017)	$ 63,260
Income (loss) per common share, basic and diluted:				
Continuing operations	(0.24)	(1.70)	(0.47)	(3.77)
Discontinued operations, net	—	14.53	(0.13)	11.06
Net income (loss) per common share, basic and diluted	$ (0.24)	$ 12.83	$ (0.60)	$ 7.29
Weighted average common shares, basic	10,219	8,750	9,988	8,682
Weighted average common shares, diluted	10,219	8,750	9,988	8,682
Net income (loss)	$ (2,414)	$ 112,281	$ (6,017)	$ 63,260
Other comprehensive income	—	—	—	—
Comprehensive income (loss):	$ (2,414)	$ 112,281	$ (6,017)	$ 63,260

The accompanying notes are an integral part of these condensed consolidated financial statements.

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(Unaudited – in thousands)

	Common Stock		Additional Paid in Capital	Accumulated Deficit	Total
	Shares	Amount			
Balance, January 1, 2023	9,498	$ 9	$974,497	$ (939,363)	$ 35,143
Shares issued for vested restricted stock units and warrants	455	1	—	—	1
Share-based compensation	—	—	483	—	483
Net loss	—	—	—	(3,603)	(3,603)
Balance, March 31, 2023	9,953	$ 10	$974,980	$ (942,966)	$ 32,024
Shares issued for vested restricted stock units and warrants	309	—	—	—	—
Shares issued for sale of common stock related to private placement sale	313	1	1,149	—	1,150
Share-based compensation	—	—	437	—	437
Net loss	—	—	—	(2,414)	(2,414)
Balance, June 30, 2023	10,575	$ 11	$976,566	$ (945,380)	$ 31,197
Balance, January 1, 2022	8,598	$ 9	$957,730	$(1,051,360)	$ (93,621)
Shares issued for vested restricted stock units	71	—	—	—	—
Share-based compensation	—	—	2,062	—	2,062
Net loss	—	—	—	(49,021)	(49,021)
Balance, March 31, 2022	8,669	$ 9	$959,792	$(1,100,381)	$(140,580)
Shares issued for rounding up of fractional shares in connection with the reverse stock split	142	—	—	—	—
Shares issued for vested restricted stock units	44	—	—	—	—
Shares issued for sale of common stock related to employee stock purchase plan	5	—	14	—	14
Share-based compensation	—	—	2,219	—	2,219
Net income	—	—	—	112,281	112,281
Balance, June 30, 2022	8,860	$ 9	$962,025	$ (988,100)	$ (26,066)

The accompanying notes are an integral part of these condensed consolidated financial statements.

TherapeuticsMD, Inc. and Subsidiaries
Condensed Consolidated Statements of Cash Flows
(Unaudited – in thousands)

	Six Months Ended June 30,	
	2023	2022
Cash flows from operating activities:		
Net income (loss)	$ (6,017)	$ 63,260
Less: income (loss) from discontinued operations, net of tax	(1,293)	(96,008)
Net loss from continuing operations	(4,724)	(32,748)
Adjustments to reconcile net loss to net cash used in continuing operating activities:		
Depreciation and amortization	156	611
Write-off of patents and trademarks	59	—
Share-based compensation	921	4,295
Other	(78)	(15)
Changes in operating assets and liabilities:		
Other assets	464	—
Prepaid and other current assets	150	(9,012)
Accounts payable	(654)	(860)
Accrued expenses and other current liabilities	(7,362)	(739)
Other non-current liabilities	(1,025)	(125)
Total adjustments	(7,369)	(5,845)
Net cash used in continuing operating activities	(12,093)	(38,593)
Cash flows from investing activities:		
Payment of patent related costs	—	(267)
Purchase of fixed assets	—	(21)
Net cash used in continuing investing activities	—	(288)
Cash flows from financing activities:		
Proceeds from sale of common stock, net of costs	1,150	—
Repayments of debt	—	(125,000)
Net cash (used in) provided by continuing financing activities	1,150	(125,000)
Discontinued operations:		
Net cash provided by (used in) operating activities	(25,752)	124,875
Net cash provided by investing activities	—	187
Net cash provided by financing activities	1,107	—
Net cash provided by (used in) discontinued operations	(24,645)	125,062
Net decrease in cash	(35,588)	(38,819)
Cash and restricted cash – continuing operations, beginning of period	49,317	65,122
Cash and restricted cash – discontinued operations, beginning of period	—	—
Total cash and restricted cash, end of period	$ 13,729	$ 26,303
Supplemental disclosure of cash flow information:		
Interest paid	$ —	$ —
Supplemental disclosure of noncash financing activities:		
Paid in kind (“PIK”) debt financing fees with corresponding increase in debt	$ —	$ 15,780

The accompanying notes are an integral part of these condensed consolidated financial statements.

TherapeuticsMD, Inc. and Subsidiaries
Notes to the Condensed Consolidated Financial Statements
(Unaudited)

1. Business, basis of presentation, new accounting standards and summary of significant accounting policies

General

TherapeuticsMD, Inc. (the "Company"), a Nevada corporation, and its condensed consolidated subsidiaries are referred to collectively in this Quarterly Report on Form 10-Q ("10-Q Report") as "TherapeuticsMD," "we," "our" and "us." This 10-Q Report includes trademarks, trade names and service marks, such as TherapeuticsMD®, vitaMedMD®, BocaGreenMD®, vitaCare™, IMVEXXY®, and BIJUVA®, which are protected under applicable intellectual property laws and are the property of, or licensed by or to, us. Solely for convenience, trademarks, trade names and service marks referred to in this 10-Q Report may appear without the ®, ™ or ℠ symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, trade names and service marks. We do not intend our use or display of other parties' trademarks, trade names or service marks to imply, and such use or display should not be construed to imply a relationship with, or endorsement or sponsorship of us by, these other parties.

TherapeuticsMD was previously a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. On December 30, 2022 (the "Closing Date"), we completed a transaction (the "Mayne Transaction") with Mayne Pharma LLC, a Delaware limited liability company ("Mayne Pharma") and subsidiary of Mayne Pharma Group Limited, an Australian public company, in which we and our subsidiaries (i) granted Mayne Pharma an exclusive license to commercialize our IMVEXXY, BIJUVA and prescription prenatal vitamin products sold under the BocaGreenMD® and vitaMedMD® brands (collectively, the "Licensed Products") in the United States and its possessions and territories, (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA® (together with the Licensed Products, collectively, the "Products") in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma in connection therewith.

In a License Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Mayne License Agreement"), we granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Under the Mayne License Agreement, Mayne Pharma will pay us milestone payments of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80.0 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below. Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

Under the Transaction Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Transaction Agreement"), we sold to Mayne Pharma, at closing, certain assets for Mayne Pharma to commercialize the Products in the United States, including, with the Population Council's consent, our exclusive license from the Population Council to commercialize ANNOVERA (the "Transferred Assets").

The total consideration from Mayne Pharma to TherapeuticsMD for the purchase of the Transferred Assets and the grant of the licenses under the Mayne Transaction Agreement was (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the Transaction Agreement and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment (as defined below) and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended. The acquisition of net working capital was determined in accordance with the Transaction Agreement and included significant estimates which could change materially for a period of up to two years following the Closing Date.

On the Closing Date, TherapeuticsMD and Mayne Pharma entered into Amendment No. 1 to the Mayne License Agreement (the "Mayne License Agreement Amendment"). Pursuant to the Mayne License Agreement Amendment, Mayne Pharma agreed to pay us approximately $1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been payable pursuant to the Mayne License Agreement by an amount equal to $257 thousand per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to us. In addition, the parties agreed that Mayne Pharma will reduce one quarterly royalty payment (other than the first quarterly royalty payment) otherwise payable to TherapeuticsMD by $1.5 million in consideration of Mayne Pharma assuming our obligations under a long-term services agreement (see the section entitled "vitaCare divestiture" below for a discussion of the long-term services agreement), including our minimum payment obligations thereunder.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in our condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 of our condensed consolidated financial statements.

We also have license agreements with strategic partners to commercialize IMVEXXY and BIJUVA outside of the U.S.

- In July 2018, we entered into a license and supply agreement (the "Knight License Agreement") with Knight Therapeutics Inc. ("Knight") pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel.
- In June 2019, we entered into an exclusive license and supply agreement (the "Theramex License Agreement") with Theramex HQ UK Limited ("Theramex") to commercialize IMVEXXY and BIJUVA outside of the U.S., excluding Canada and Israel. In 2021, Theramex secured regulatory approval for BIJUVA in certain European countries and began commercialization efforts in those countries.

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 31, 2022. Severance obligations for all employees other than executive officers were paid in full in January 2023 and severance obligations for terminated executive officers are paid in accordance with their employment agreements and separation agreements as previously disclosed. As of December 31, 2022 and June 30, 2023, we employed one full-time employee primarily engaged in an executive position. We have also entered into consulting agreements with certain former members of our management team, including our Principal Financial Officer, who support our relationship with current partners and assist with certain financial, legal, and regulatory matters and the continued wind-down of our historical business operations.

vitaCare Divestiture

On April 14, 2022, we completed the divestiture of our former subsidiary vitaCare Prescription Services, Inc. ("vitaCare") with the sale of all of vitaCare's issued and outstanding capital stock (the "vitaCare Divestiture"). We received net proceeds of $142.6 million, after deducting transaction costs of $7.2 million, and we recognized a gain on sale of business of $143.4 million. Included in the net proceeds amount was $11.3 million of customary holdbacks as provided in the stock purchase agreement (the "Purchase Agreement") which we received in 2023. Additionally, the vitaCare Divestiture provides that we may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement, however we do not believe this earnout will be realized. We will record the contingent consideration at the settlement amount if and when the consideration is realized or realizable.

The Purchase Agreement contains customary representations and warranties, covenants, and indemnities of the parties thereto. The commitments under a long-term services agreement related to vitaCare were transferred to Mayne Pharma as part of the Mayne Transaction. In addition, under the Mayne License Agreement Amendment, Mayne Pharma will reduce one quarterly royalty payment (other than the first quarterly royalty payment) otherwise payable to us by $1.5 million in consideration of Mayne Pharma assuming our obligations under the long-term services agreement related to vitaCare.

The divestiture of vitaCare was determined to be a component of discontinued operations in December 2022, when we changed our business by becoming a royalty company and as a result vitaCare activities were reclassified to discontinued operations for the six months ended June 30, 2023 and 2022.

COVID-19

With multiple variant strains of the SARS-Cov-2 virus and the COVID-19 disease that it causes (collectively, "COVID-19") still circulating, we continue to be subject to risks and uncertainties in connection with the COVID-19 pandemic. The extent of the future impact of the COVID-19 pandemic on our business continues to be highly uncertain and difficult to predict.

As of the date of issuance of these condensed consolidated financial statements, the future extent to which the COVID-19 pandemic may continue to materially impact our financial condition, liquidity, or results of operations remains uncertain and difficult to predict. Even after the COVID-19 pandemic has subsided, we may continue to experience adverse impacts to our business as a result of any economic recession or depression that has occurred or may occur in the future.

Going concern

On December 4, 2022, we entered into agreements with Mayne Pharma pursuant to which we granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products (in the United States and its possessions and territories), (ii) assign to Mayne Pharma our exclusive license to commercialize ANNOVERA in the United States and its possessions and territories, and (iii) sell certain other assets to Mayne Pharma.

The total consideration from Mayne Pharma to TherapeuticsMD for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, we repaid all obligations under the Financing Agreement, dated as of April 24, 2019, as amended, with Sixth Street Specialty Lending, Inc., as administrative agent, the various lenders from time-to-time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors (the "Financing Agreement") and the Financing Agreement was terminated.

Following the transaction with Mayne Pharma, our primary source of revenue is from royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. We may need to raise additional capital to provide additional liquidity to fund our operations until we become cash flow positive. To address our capital needs, we may pursue various equity and debt financing and other alternatives. The equity financing alternatives may include the private placement of equity, equity-linked, or other similar instruments or obligations with one or more investors, lenders, or other institutional counterparties or an underwritten public equity or equity-linked securities offering. Our ability to sell equity securities may be limited by market conditions, including the market price of our common stock, and our available authorized shares.

To the extent that we raise additional capital through the sale of such securities, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of our existing stockholders. If we are not successful in obtaining additional financing, we could be forced to discontinue or curtail our business operations, sell assets at unfavorable prices, or merge, consolidate, or combine with a company with greater financial resources in a transaction that might be unfavorable to us.

On May 1, 2023, we entered into a Subscription Agreement (the "Subscription Agreement") with Rubric Capital Management LP ("Rubric"), pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of our common stock, par value $0.001 per share (our "Common Stock"), from time to time during the term of the Subscription Agreement in separate draw-downs at the election of the Company. On June 29, 2023, the Company issued and sold 312,525 shares of Common Stock at a price per share equal to $3.6797 pursuant to the Subscription Agreement. The Company received gross proceeds of $1.15 million from the draw down, before expenses. The Common Stock issued pursuant to the Subscription Agreement was sold and issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 5-06 of Regulation D promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

If Mayne Pharma's sales of IMVEXXY, BIJUVA, or ANNOVERA are delayed, if the net working capital settlement with Mayne Pharma under the Transaction Agreement is greater than estimated, if we are unsuccessful with future financings or if the continued impact of the COVID-19 pandemic on us or the third-parties we or our licensees rely on or the supply chains related to the third-party contract manufacturers are worse than we anticipate, our existing cash reserves may be insufficient to satisfy our liquidity requirements. The potential impact of these factors in conjunction with the uncertainty of the capital markets raises substantial doubt about our ability to continue as a going concern for the next twelve months from the issuance of these financial statements.

The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Basis of presentation

We prepared the condensed consolidated financial statements included in this 10-Q Report following the requirements of the United States ("U.S.") Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain notes or other financial information that are normally required by accounting principles generally accepted in the U.S. ("U.S. GAAP") for complete financial statements can be condensed or omitted. However, except as disclosed herein, there has been no material change in the information disclosed in the notes included in our 2022 Annual Report on Form 10-K (the "2022 10-K Report").

As part of the transformation as a result of the Mayne Transaction, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in the condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in the condensed consolidated balance sheet. Additional disclosures regarding discontinued operations are provided in Note 2 of the condensed consolidated financial statements.

Revenues, expenses, assets, liabilities, and equities can vary during each quarter of the year. Therefore, the results and trends in these interim financial statements may not be representative of those for the full year. In our opinion, all adjustments necessary for a fair statement of the financial statements, which are of a normal and recurring nature, have been made for the interim periods reported. The information included in this 10-Q Report should be read in conjunction with the condensed consolidated financial statements and accompanying notes included in our 2022 10-K Report. Certain amounts in the consolidated financial statements and accompanying notes may not add due to rounding, and all percentages have been calculated using unrounded amounts.

New accounting standards

Adoption of new accounting standards

New accounting standards or "ASUs" were assessed and determined to be either not applicable or did not have a material impact on our condensed consolidated financial statements or processes.

Common stock reverse stock split

On May 6, 2022, we completed a reverse stock split of our Common Stock. As a result, shares of our outstanding Common Stock were split at a ratio of 50-for-1 (the "Reverse Stock Split") with any fractional shares resulting from the Reserve Stock Split rounded up to the next whole share of Common Stock. The number of authorized shares of Common Stock was also correspondingly reduced from 600.0 million shares to 12.0 million shares to give effect to the Reverse Stock Split. Additionally, all rights to receive shares of Common Stock under outstanding warrants, options, restricted stock units ("RSUs") and performance stock units ("PSUs") were adjusted to give effect to the Reverse Stock Split. Furthermore, remaining shares of Common Stock available for future issuance under share-based payment award plans and our employee stock purchase plan were adjusted to give effect to the Reverse Stock Split. Pursuant to Section 78.209 of the Nevada Revised Statutes, the approval of our stockholders was not required for our Board of Directors to effectuate the Reverse Stock Split.

All historical numbers of shares of Common Stock and per share data have been adjusted to give effect to the Reverse Stock Split. Additionally, since the Common Stock par value was unchanged, historical amounts for Common Stock and additional paid-in capital have been adjusted to give effect to the Reverse Stock Split.

Increase of authorized shares

On June 26, 2023, at our combined 2022 and 2023 Annual Meeting, our stockholders approved an amendment to our Amended and Restated Articles of Incorporation to increase the number of authorized shares of Common Stock from 12 million shares to 32 million shares.

Estimates and assumptions

The preparation of our condensed consolidated financial statements in conformity to U.S. GAAP requires us to make certain estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. We evaluate our estimates and assumptions based on historical experience and on various other assumptions that are believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ, at times in material amounts, from these estimates under different assumptions or conditions.

Significant accounting policies

The significant accounting policies we use for quarterly financial reporting are disclosed in Note 1 of the accompanying notes to the consolidated financial statements included in our 2022 10-K report and in the section below.

2. Discontinued Operations

As discussed in Note 1, we changed our business in 2022 by licensing our products to receive royalties and future sales related milestone payments, after granting an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands in the United States and assigning our exclusive license to commercialize ANNOVERA to Mayne Pharma.

This plan represented a strategic shift having a major effect on our operations and financial results. Upon our conversion from a commercial pharmaceutical company to a licensing only company with the consummation of the Mayne Transaction, we classified all direct revenues, costs and expenses related to commercial operations, within income (loss) from discontinued operations, net of tax, in the condensed consolidated statements of operations for all periods presented. We have not allocated any amounts for shared general and administrative operating support expense to discontinued operations. As required by the terms of the Financing Agreement, proceeds from the Mayne Transaction and the VitaCare Divestiture were used to fully repay our outstanding debt borrowings, and as a result interest expense and amortization of deferred financing costs as well as expense for accretion of Series A Preferred Stock and loss on extinguishment of debt are included within income (loss) from discontinued operations, net of tax (as disclosed below).

Additionally, the related assets and liabilities have been reported as assets and liabilities of discontinued operations in our condensed consolidated balance sheets as of June 30, 3023 and December 31, 2022.

The total consideration from Mayne Pharma consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of $12.1 million for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

Our estimate of net working capital at closing was determined in accordance with the Transaction Agreement which establishes the process for the determination of final net working capital. The determination of net working capital includes significant estimates which could change materially for a period of up to two years following the Closing Date. On March 29, 2023, we received Mayne Pharma’s closing net working capital calculation which differed significantly from our estimate of closing net working capital. We believe that our estimate of net working capital is reasonable and intend to resolve this matter through the process outlined in the Transaction Agreement. Given the nature of the estimates involved, the outcome of this matter is uncertain at this point. As a result, we cannot reasonably estimate a range of loss, and accordingly, continue to contemplate any additional liability associated with Mayne Pharma’s calculation.

The following table presents results of discontinued operations (in thousands):

	Three months ended June, 30		Six Months Ended June 30,	
	2023	2022	2023	2022
Product revenue, net	$ —	$ 28,213	$ —	$ 46,851
Cost of goods sold	—	4,392	—	8,557
Gross profit	—	23,821	—	38,294
Operating expenses:				
Selling and marketing	—	23,679	—	42,574
General and administrative	—	2,535	335	5,050
Research and development	—	1,580	—	2,980
Depreciation & amortization	—	11	—	28
Total operating expenses	—	27,805	335	50,632
Operating profit (loss) from discontinued operations	—	(3,984)	(335)	(12,338)
Other income (expense), net	—	131,138	(958)	108,346
Total other income (expense), net	—	131,138	(958)	108,346
Net income (loss) from discontinued operations	$ —	$ 127,154	$ (1,293)	$ 96,008

The following table presents the carrying amounts of the classes of assets and liabilities of discontinued operations as of June 30, 2023 and December 31, 2022 (in thousands):

	June 30, 2023	December 31, 2022
Liabilities:		
Current liabilities:		
Accounts payable	$ 64	$ 12,243
Accrued expenses and other current liabilities	1,308	13,588
Total current liabilities	$ 1,372	$ 25,831

3. Prepaid and other current assets

Our prepaid and other current assets consisted of the following as of June 30, 2023 and December 31, 2022 (in thousands):

	June 30, 2023	December 31, 2022
Insurance	$ 1,065	$ 1,167
Rent receivable	197	—
Capitalized legal	2,334	2,334
Other	1,447	2,533
Prepaid and other current assets	$ 5,043	$ 6,034

4. Fixed assets

Our fixed assets, net consisted of the following as of June 30, 2023 and December 31, 2022 (in thousands):

	June 30, 2023	December 31, 2022
Furniture and fixtures	$ 931	$ 931
Computer and office equipment	1,168	1,168
Computer software	375	375
Leasehold improvements	49	49
Fixed assets	2,523	2,523
Less: accumulated depreciation and amortization	(2,484)	(2,445)
Fixed assets, net	$ 39	$ 78

We recorded, in continuing operations, depreciation expense of $0.0 million and $0.2 million for the three months ended June 30, 2023 and 2022, respectively, and depreciation expense of $0.0 million and $0.3 million for the six months ended June 30, 2023 and 2022, respectively.

5. Licensed rights and other intangible assets

The following provides information about our license rights and other intangible assets, net as of June 30, 2023 and December 31, 2022 (in thousands):

	June 30, 2023			December 31, 2022		
	Gross Carrying Amount	Accumulated Amortization	Net	Gross Carrying Amount	Accumulated Amortization	Net
Intangible assets subject to amortization:						
Hormone therapy drug patents	$ 6,224	$ 1,714	$4,510	$6,225	$ 1,598	$4,627
Hormone therapy drug patents applied and pending approval	1,936	—	1,936	1,995	—	1,995
Intangible assets subject to amortization	8,160	1,714	6,446	8,220	1,598	6,622
Intangible assets not subject to amortization:						
Trademarks/trade name rights	321	—	321	321	—	321
License rights and other intangible assets, net	$ 8,481	$ 1,714	$6,767	$8,541	$ 1,598	$6,943

We recorded, in continuing operations, amortization expense related to patents of $0.1 million and $0.1 million for the three months ended June 30, 2023 and 2022 respectively, and amortization expense related to patents of $0.1 million and $0.3 million for the six months ended June 30, 2023 and 2022 respectively.

Our intangible assets subject to amortization are expected to be amortized as follows (in thousands):

Year ending December 31,	
2023	$ 227
2024	439
2025	438
2026	438
2027	438
Thereafter	2,530
Total	$ 4,510

6. Accrued expenses and other current liabilities

Other accrued expenses and other current liabilities consisted of the following (in thousands):

	June 30, 2023	December 31, 2022
Payroll and related costs	$ 2,849	$ 8,748
Accrued contract termination costs	—	4,700
Research and development expenses	—	978
Professional fees	276	415
Operating lease liabilities	1,448	1,390
Prepaid royalty	—	1,011
Other accrued expenses and current liabilities	6,911	1,604
Accrued expenses and other current liabilities	$ 11,484	$ 18,846

7. Commitments and contingencies

Mayne Pharma Agreement

Mayne Pharma paid us approximately $12.1 million at closing on December 30, 2022, for the acquisition of net working capital, as determined in accordance with the Transaction Agreement, and such payment is subject to certain adjustments for a period of up to two years following the Closing Date.

Pursuant to the Mayne License Agreement Amendment, Mayne Pharma also paid us approximately $1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been payable pursuant to the Mayne License Agreement by an amount equal to $257,250 per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to us. In addition, Mayne Pharma will reduce one quarterly royalty payment (other than the first quarterly royalty payment) otherwise payable to us by $1.5 million in consideration of Mayne Pharma assuming our obligations under a long-term services agreement, including our minimum payment obligations thereunder. We recognized $0.4 million and $0.9 million in royalty revenues from Mayne Pharma during the three and six months ended June 30, 2023, respectively.

Population Council License Agreement

Under the terms of our license agreement with the Population Council, Inc. (the “Population Council License Agreement”), we paid the Population Council a milestone payment of $20.0 million in 2018, which was within 30 days following the approval by the FDA of the New Drug Application (“NDA”) for ANNOVERA, and $20.0 million in 2019 following the first commercial batch release of ANNOVERA. The aggregate $40.0 million of milestone payments were recorded as license rights. The Population Council was also eligible to receive future payments upon the achievement of certain commercial sales milestones of ANNOVERA. On December 30, 2022, we assigned the ANNOVERA license to Mayne Pharma. Our rights and obligations under the Population Council License Agreement have been transferred to Mayne Pharma and may revert back to us upon the occurrence of certain events.

Legal proceedings

In February 2020, we received a Paragraph IV certification notice letter (the “IMVEXXY Notice Letter”) regarding an Abbreviated New Drug Application (“ANDA”) submitted to the FDA by Teva Pharmaceuticals USA, Inc. (“Teva”). The ANDA seeks approval from the FDA to commercially manufacture, use, or sell a generic version of the 4 mcg and 10 mcg doses of IMVEXXY. In the IMVEXXY Notice Letter, Teva alleges that TherapeuticsMD patents listed in the FDA’s Orange Book that claim compositions and methods of IMVEXXY (the “IMVEXXY Patents”) are invalid, unenforceable, and/or will not be infringed by Teva’s commercial manufacture, use, or sale of its proposed generic drug product. The IMVEXXY Patents identified in the IMVEXXY Notice Letter expire in 2032 or 2033. In April 2020, we filed a complaint for patent infringement against Teva in the United States District Court for the District of New Jersey arising from Teva’s ANDA filing with the FDA. We are seeking, among other relief, an order that the effective date of any FDA approval of Teva’s ANDA would be a date no earlier than the expiration of the IMVEXXY Patents and equitable relief enjoining Teva from infringing the IMVEXXY Patents. Teva has filed its answer and counterclaim to the complaint, alleging that the IMVEXXY Patents are invalid and not infringed. In July 2021, following a proposal by Teva, the District Court entered an order temporarily staying all proceedings in the IMVEXXY litigation, which order was filed under seal. In September 2021, the District Court made available a public version of the order following the parties’ agreement to a consent motion to redact

information Teva contended was confidential. The order provides that the statutory stay that prevents the FDA from granting final approval of the ANDA for 30 months from the date of the IMVEXXY Notice Letter will be extended for the number of days that the stay of the IMVEXXY litigation is in place. The length of the stay of the IMVEXXY litigation is dependent on further action by Teva. We have incurred and recorded legal costs amounting to $2.3 million in prepaid expenses and other current assets as of June 30, 2023, for the IMVEXXY Paragraph IV legal proceeding since we believe that we will successfully prevail in this legal proceeding. Upon the successful conclusion of the legal proceeding, the related capitalized legal costs will be reclassified to patents, in license rights and other intangible assets, net, in the accompanying condensed consolidated balance sheets, and such costs will be amortized over the remaining useful life of the patents. If we are unsuccessful in this legal proceeding, then the related capitalized legal costs for this legal preceding and any unamortized IMVEXXY patent costs that were previously capitalized will be immediately expensed in the period in which we become aware of an unsuccessful legal proceeding.

Beginning on December 30, 2022 and per the Mayne License Agreement, Mayne Pharma is responsible for all enforcement of our patents, including the litigation discussed above with respect to Teva.

From time to time, we are involved in other litigations and proceedings in the ordinary course of business. We are currently not involved in any other litigations and proceedings that we believe would have a material effect on our condensed consolidated financial condition, results of operations, or cash flows.

Off-balance sheet arrangements

As of June 30, 2023 and December 31, 2022 we had no off-balance sheet arrangements that have had or are reasonably likely to have current or future effects on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

Employment agreements

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 30, 2022. Severance obligations for all employees other than executive officers were paid in full in the first quarter of 2023. As of June 30, 2023, we employ one full-time employee primarily engaged in an executive position. We have engaged external consultants, including certain former members of our management team, who support our relationship with current partners and assist with certain financial, legal, and regulatory matters and the continued wind-down of our historical business operations. The separation of our former Interim Co-Chief Executive Officers, former Interim Chief Financial Officer and other executives from TherapeuticsMD was each a termination without “Good Cause,” as defined in their respective employment agreements. In the aggregate, as of June 30, 2023, we have accrued severance liabilities for executive termination obligations of $2.4 million.

8. Stockholders' equity (deficit)

Warrants

As of June 30, 2023, the following table summarizes the status of our outstanding and exercisable warrants and related transactions since December 31, 2022 (in thousands, except weighted average exercise price and weighted average remaining contractual life data):

	Warrants Outstanding and exercisable			
	Warrants	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)
As of January 1, 2023	536	$ 13.10	$ 2,427	9.3
Exercised	(435)	—	(634)	(4.5)
Expired	(2)	—	—	—
As of June 30, 2023	99	$ 66.61	$ 1,793	4.8

Share-based compensation payment plans

As of June 30, 2023, 269,207 shares of common stock were subject to outstanding awards under our share-based payment award plans and inducement grants (calculated using the base number of PSUs that may vest). As of June 30, 2023, 321,717 shares of common stock were available for future grants of share-based payment awards under the TherapeuticsMD, Inc. 2019 Stock Incentive Plan.

The following table summarizes the status of our outstanding and exercisable options and related transactions (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average exercise price and weighted average remaining contractual life data):

	Outstanding				Exercisable			
	Options Awards	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)	Options Awards	Weighted Average Exercise Price	Aggregate Intrinsic Value	Weighted Average Remaining Contractual Life (in Years)
As of January 1, 2023	172	$228.28	—	3.6	170	$229.43	—	3.6
Granted	—	—	—	—	—	—	—	—
Exercised	—	—	—	—	—	—	—	—
Cancelled/Forfeited	—	—	—	—	—	—	—	—
Expired	(90)	203.84	—	3.3	(90)	203.84	—	3.3
As of June 30, 2023	82	$255.03	—	3.5	80	$258.50	—	3.5

The following table summarizes the status of our RSUs and related transactions (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average grant date fair value):

	RSUs awards outstanding			RSUs awards vested and not settled		
	RSUs	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value	RSUs	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
As of January 1, 2023	246	$ 29.64	1,376	189	26.28	$ 1,059
Granted	120	5.12	185			
Vested and settled	(242)	22.02	(1,758)			
Cancelled/Forfeited	—	—	—			
As of June 30, 2023	124	$ 8.15	663	70	5.12	$ 288

The following table summarizes the status of our PSUs and related transactions for each for the following years (each adjusted to account for the Reverse Stock Split) since December 31, 2022 (in thousands, except weighed average grant date fair value):

	Outstanding			Vested and not settled		
	PSUs[1]	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value	PSUs	Weighted Average Grant Date Fair Value	Aggregate Intrinsic Value
As of January 1, 2023	100	$ 42.30	558	81	39.95	$ 450
Granted	—	—	—			
Vested and settled	(86)	40.89	(479)			
Cancelled/Forfeited	—	—	—			
As of June 30, 2023	14	$ 52.15	72	—	—	$ —

(1) The number of PSUs represents the base number of PSUs that may vest.

Share-based payment compensation cost

Share-based payment compensation expense for PSUs is based on 100% vesting which was a part of the termination benefits for all employees who were terminated in 2022. We recorded share-based payment award compensation costs related to previously issued options, RSU and PSUs, as well as shares of common stock issued under our ESPP totaling $0.4 million and $2.2 million for the three months ended June 30, 2023 and 2022 respectively, and $0.9 million and $4.3 million for the six months ended June 30, 2023 and 2022 respectively.

As of June 30, 2023, we had $0.5 million of unrecognized share-based payment award compensation cost related to unvested options, RSUs and PSUs as well as shares issuable under our ESPP, which may be adjusted for future changes in forfeitures and is included as additional paid-in capital in the accompanying condensed consolidated balance sheets. No tax benefit was realized due to a continued pattern of net losses.

The unrecognized compensation cost as of June 30, 2023 of $0.5 million is expected to be recognized as share-based payment award compensation over a weighted average period of 0.6 years.

9. Revenue

Pursuant to the Mayne License Agreement, the Company granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Pursuant to the Mayne License Agreement, Mayne Pharma will make one-time, milestone payments to the Company of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay to the Company royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay to the Company minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below. Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

10. Income taxes

We do not expect to pay any significant federal or state income taxes as a result of (i) the losses recorded during the six months ended June 30, 2023 and 2022, (ii) additional losses expected for the remainder of 2023 or losses recorded in 2022, or (iii) net operating losses carry forwards from prior years.

We recorded a full valuation allowance of the net operating losses for the six months ended June 30, 2023 and 2022. Accordingly, there were no provisions for income taxes for the six months ended June 30, 2023 and 2022. Additionally, as of June 30, 2023 and December 31, 2022, we maintain a full valuation allowance for all deferred tax assets.

11. Loss per common share

The following table sets forth the computation of basic and diluted loss per common share (each adjusted to account for the Reverse Stock Split) for the periods presented (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Numerator:				
Net income (loss) from continuing operations	$ (2,414)	$ (14,873)	$ (4,724)	$ (32,748)
Net income (loss) from discontinued operations	—	127,154	(1,293)	96,008
Net loss	$ (2,414)	$ 112,281	$ (6,017)	$ 63,260
Denominator:				
Weighted average common shares for basic loss per common share	10,219	8,750	9,988	8,682
Effect of dilutive securities	—	—	—	—
Weighted average common shares for diluted loss per common share	10,219	8,750	9,988	8,682
Income (loss) per common share, continuing operations				
Basic	$ (0.24)	$ (1.70)	$ (0.47)	$ (3.77)
Diluted	(0.24)	(1.70)	(0.47)	(3.77)
Income (loss) per common share, discontinued operations				
Basic	$ —	14.53	$ (0.13)	11.06
Diluted	—	$ 14.53	(0.13)	$ 11.06

Since we reported a net loss from continuing operations for the six months ended June 30, 2023 and 2022, our potentially dilutive securities are deemed to be anti-dilutive, accordingly, there was no effect of dilutive securities. Therefore, our basic and diluted loss per common share and our basic and diluted weighted average common shares are the same for the six months ended June 30, 2023 and 2022.

The following table sets forth the outstanding securities as of the periods presented which were not included in the calculation of diluted earnings per common share during the respective six months ended June 30, 2023 and 2022 (in thousands):

	Six Months Ended June 30,	
	2023	2022
Stock options	82	257
RSUs	124	—
PSUs	14	155
Warrants	99	101
	319	513

12. Related parties

On August 23, 2022, we appointed Mr. Justin Roberts as a director to fill a newly created vacancy on our Board of Directors. Mr. Roberts was elected to serve as a director at our combined 2022 and 2023 Annual Meeting held on June 26, 2023. Mr. Roberts will serve until our next Annual Meeting of Stockholders or until his successor is duly elected or appointed or his earlier death or resignation. As a director of our Company, Mr. Roberts is entitled to receive compensation in the same manner as our other non-employee directors, described in the section entitled “Director Compensation” in our Amendment No. 1 to Form 10-K for the fiscal year ended December 31, 2022, filed with the Securities and Exchange Commission on May 1, 2023, but he has elected not to receive any compensation for his service as a non-employee director at this time. Mr. Roberts currently serves as a Partner of Rubric. On July 29, 2022, September 30, 2022, October 28, 2022, and May 1, 2023, we entered into subscription agreements with Rubric. On December 30, 2022, in accordance with the terms of the Certificate of Designation, we redeemed all 29,000 outstanding shares of Series A Preferred Stock previously issued to affiliates of Rubric at a purchase price of $1,333 per share. also paid certain affiliates of Rubric approximately $3.0 million as a make-whole payment pursuant to the subscription agreements previously entered into between us and Rubric. On June 29, 2023, the Company issued and sold 312,525 shares of Common Stock to Rubric at a price per share equal to $3.6797 pursuant to the Subscription Agreement and received gross proceeds of $1.15 million, before expenses.

13. Business concentrations

TherapeuticsMD was previously a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause. In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. As part of the transformation that included the Mayne License Agreement, historical results of commercial operations for all periods prior to the Closing Date have been reflected as discontinued operations in our condensed consolidated financial statements. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2.

For the three and six months ended June 30, 2023, 100% of license revenue related to Mayne Pharma and Theramex.

As of June 30, 2023, we had a royalty receivable of $0.8 million relating to the short-term portion of receivable from Mayne Pharma and Theramex and $19.8 million relating to the long-term portion of royalty receivable which includes royalties recognized from the minimum annual royalty that Mayne Pharma is obligated to pay to us under the Mayne License Agreement.

Item 2. Management's discussion and analysis of financial condition and results of operations

The following discussion should be read in conjunction with our 2022 Annual Report on Form 10-K ("2022 10-K Report"), and the condensed consolidated financial statements and related notes in Item 1, Financial Statements, appearing elsewhere in this Quarterly Report on Form 10-Q ("10-Q Report"). The following discussion may contain forward-looking statements, and our actual results may differ materially from the results suggested by these forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A of our 2022 10-K Report under the heading "Risk Factors." We assume no obligation to revise or update any forward-looking statements for any reason, except as required by law.

Certain amounts in the following discussion may not add due to rounding, and all percentages have been calculated using unrounded amounts.

Forward-looking statements

This 10-Q Report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve substantial risks and uncertainties. For example, statements regarding our operations, financial position, debt position, liquidity, business strategy, and other plans and objectives for future operations, and assumptions and predictions about future cost reduction strategies, expenses and royalties are all forward-looking statements. These statements are generally accompanied by words such as "intend," "anticipate," "believe," "estimate," "potential(ly)," "continue," "forecast," "predict," "plan," "may," "will," "could," "would," "should," "expect," or the negative of such terms or other comparable terminology.

We have based these forward-looking statements on our current expectations and projections about future events. We believe that the assumptions and expectations reflected in such forward-looking statements are reasonable, based on information available to us on the date of this 10-Q Report, and we cannot assure you that these assumptions and expectations will prove to have been correct or that we will take any action that we may presently be planning. These forward-looking statements are inherently subject to known and unknown risks and uncertainties. Actual results or experience may differ materially from those expected or anticipated in the forward-looking statements. We do not undertake to update any forward-looking statements or to publicly announce the results of any revisions to any statements to reflect new information or future events or developments, except as required by law or by the rules and regulations of the SEC.

Forward-looking statements are not guarantees of future performance and are subject to risks and uncertainties, many of which are outside of our control. Factors that could cause or contribute to such differences include, but are not limited to, our liquidity requirements, supply chain issues, management transitions, risks related to our licensing agreements, market and general economic factors, and the other risks discussed in Part I, Item 1A of our 2022 10-K Report, as updated and supplemented by Part II, Item 1A of this 10-Q Report.

Our company

TherapeuticsMD was previously a women's healthcare company with a mission of creating and commercializing innovative products to support the lifespan of women from pregnancy prevention through menopause.

In December 2022, we changed our business to become a pharmaceutical royalty company, primarily collecting royalties from our licensees. We are no longer engaged in research and development or commercial operations. On December 30, 2022 (the "Closing Date"), we completed a transaction (the "Mayne Transaction") with Mayne Pharma LLC, a Delaware limited liability company ("Mayne Pharma") and subsidiary of Mayne Pharma Group Limited, an Australian public company, pursuant to which we (i) granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands (collectively, the "Licensed Products") in the United States and its possessions and territories, (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA (together with the Licensed Products, collectively, the "Products") in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma in connection therewith.

Pursuant to a License Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Mayne License Agreement"), we granted Mayne Pharma, on the Closing Date, (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories.

Pursuant to the Mayne License Agreement, Mayne Pharma will pay us one-time, milestone payments of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimum annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below (the "Minimum Annual Royalty"). Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

Pursuant to a Transaction Agreement, dated December 4, 2022, between TherapeuticsMD and Mayne Pharma (the "Transaction Agreement"), we sold to Mayne Pharma, at closing, certain assets for Mayne Pharma to commercialize the Products in the United States, including our exclusive license from the Population Council to commercialize ANNOVERA (the "Transferred Assets").

The total consideration from Mayne Pharma to us for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement was (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the Transaction Agreement and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment (as defined below) and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, TherapeuticsMD and Mayne Pharma entered into Amendment No. 1 to the Mayne License Agreement (the "Mayne License Agreement Amendment"). Pursuant to the Mayne License Agreement Amendment, Mayne Pharma agreed to pay us approximately $1.0 million in prepaid royalties on the Closing Date. The prepaid royalties will reduce the first four quarterly payments that would have otherwise been received pursuant to the Mayne License Agreement by an amount equal to $257,250 per quarterly royalty payment plus interest calculated at 19% per annum accruing from the Closing Date until the date such quarterly royalty payment is paid to TherapeuticsMD. In addition, the parties agreed that Mayne Pharma will reduce one quarterly royalty payment (other than the first quarterly royalty payment) otherwise payable to us by $1.5 million in consideration of Mayne Pharma assuming our obligations under a long-term services agreement, including our minimum payment obligations thereunder.

This action represented a shift in our business and therefore, the related assets and liabilities associated with commercial operations are classified as discontinued operations on our condensed consolidated balance sheets and the results of operations have been presented as discontinued operations within our condensed consolidated statements of operations for all periods presented. See Note 2 – Discontinued Operations to the condensed consolidated financial statements included in this Quarterly Report on Form 10-Q for further details.

We also have license agreements with strategic partners to commercialize IMVEXXY and BIJUVA outside of the U.S.

- In July 2018, we entered into a license and supply agreement (the "Knight License Agreement") with Knight Therapeutics Inc. ("Knight") pursuant to which we granted Knight an exclusive license to commercialize IMVEXXY and BIJUVA in Canada and Israel.
- In June 2019, we entered into an exclusive license and supply agreement (the "Theramex License Agreement") with Theramex HQ UK Limited ("Theramex") to commercialize IMVEXXY and BIJUVA outside of the U.S., excluding Canada and Israel. In 2021, Theramex secured regulatory approval for BIJUVA in certain European countries and began commercialization efforts in those countries.

In connection with our transformation into a pharmaceutical royalty company, the termination of our executive management team (except for Mr. Marlan Walker, our former General Counsel and current Chief Executive Officer) and all other employees was completed by December 31, 2022. Severance obligations for all employees other than executive officers were paid in full in the first quarter of 2023 and severance obligations for terminated executive officers will be paid in accordance with their employment agreements and separation agreements as previously disclosed. As of December 31, 2022 and June 30, 2023, we employed one full-time employee primarily engaged in an executive position. We have engaged external consultants, including certain former members of our management team, who support our relationship with current partners and assist with certain financial, legal and regulatory matters and the continued wind-down of our historical business operations.

vitaCare Divestiture

On April 14, 2022, we completed the divestiture of vitaCare Prescription Services, Inc. ("vitaCare") with the sale of all vitaCare's issued and outstanding capital stock (the "vitaCare Divestiture"). We received net proceeds of $142.6 million, net of transaction costs of $7.2 million, and we recognized a gain on sale of business of $143.4 million. Included in the net proceeds amount was $11.3 million of customary holdbacks as provided in the stock purchase agreement between us and GoodRx, Inc. (the "Purchase Agreement"), which was recorded as restricted cash in the condensed consolidated balance sheets until the cash was released to us. The restricted cash was held by an escrow agent and was released to us in March 2023. Additionally, we may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement, however we do not believe this earnout will be realized. We will record the contingent consideration at the settlement amount when the consideration is realized or realizable.

The Purchase Agreement contains customary representations and warranties, covenants, and indemnities of the parties thereto. Our commitments under a long-term services agreement related to vitaCare were transferred to Mayne Pharma as part of the Mayne Transaction. In addition, under the Mayne License Agreement Amendment, Mayne Pharma will reduce one quarterly royalty payment (other than the first quarterly royalty payment) otherwise payable to us by $1.5 million in consideration of Mayne Pharma assuming our obligations under the long-term services agreement related to vitaCare.

The pre-divesture operations of vitaCare were reclassified to discontinued operations in December 2022 when we transitioned to becoming a royalty company and licensed our products to Mayne Pharma.

COVID-19

With multiple variant strains of the SARS-Cov-2 virus and the COVID-19 disease that it causes (collectively, "COVID-19") still circulating, we continue to be subject to risks and uncertainties in connection with the COVID-19 pandemic. The extent of the future impact of the COVID-19 pandemic on our business continues to be highly uncertain and difficult to predict.

As of the date of the filing of this 10-Q Report, the future extent to which the COVID-19 pandemic may continue to materially impact our financial condition, liquidity, or results of operations remains uncertain and difficult to predict. Even after the COVID-19 pandemic has subsided, we may continue to experience adverse impacts to our business as a result of any economic recession or depression that has occurred or may occur in the future.

Going concern

On December 4, 2022, we entered into agreements with Mayne Pharma pursuant to which we (i) granted Mayne Pharma an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products (in the United States and its possessions and territories), (ii) assigned to Mayne Pharma our exclusive license to commercialize ANNOVERA in the United States and its possessions and territories, and (iii) sold certain other assets to Mayne Pharma.

The total consideration we received from Mayne Pharma for the purchase of the Transferred Assets and the grant of the licenses under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

On the Closing Date, we repaid all obligations under the Financing Agreement, dated as of April 24, 2019, as amended, with Sixth Street Specialty Lending, Inc., as administrative agent, the various lenders from time-to-time party thereto, and certain of our subsidiaries party thereto from time to time as guarantors (the "Financing Agreement") and the Financing Agreement was terminated.

Following the transaction with Mayne Pharma, we changed our business to become a royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. We may need to raise additional capital to provide additional liquidity to fund our operations until we become cash flow positive. To address our capital needs, we are pursuing various equity and debt financing and other alternatives. The equity financing alternatives may include the private placement of equity, equity-linked, or other similar instruments or obligations with one or more investors, lenders, or other institutional counterparties or an underwritten public equity or equity-linked securities offering.

Our ability to sell equity securities may be limited by market conditions, including the market price of our common stock and our available authorized shares.

To the extent that we raise additional capital through the sale of such securities, the ownership interests of our existing stockholders will be diluted, and the terms of these new securities may include liquidation or other preferences that adversely affect the rights of

our existing stockholders. If we are not successful in obtaining additional financing, we could be forced to discontinue or curtail our business operations, sell assets at unfavorable prices, or merge, consolidate, or combine with a company with greater financial resources in a transaction that might be unfavorable to us.

On May 1, 2023, we entered into a Subscription Agreement (the "Subscription Agreement") with Rubric Capital Management LP ("Rubric"), pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of our common stock, par value $0.001 per share (our "Common Stock"), from time to time during the term of the Subscription Agreement in separate draw-downs at the election of the Company. On June 29, 2023, we issued and sold 312,525 shares of Common Stock at a price per share equal to $3.6797 pursuant to the Subscription Agreement. We received gross proceeds of $1.15 million from the draw down, before expenses. The Common Stock issued pursuant to the Subscription Agreement was sold and issued without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on the exemptions provided by Section 4(a)(2) of the Securities Act as transactions not involving a public offering and Rule 5-06 of Regulation D promulgated under the Securities Act as sales to accredited investors, and in reliance on similar exemptions under applicable state laws.

If Mayne Pharma's sales of IMVEXXY, BIJUVA, or ANNOVERA are delayed, if the net working capital settlement with Mayne Pharma under the Transaction Agreement is greater than estimated, if we are unsuccessful with future financings or if the continued impact of the COVID-19 pandemic on us or the third parties we rely on is worse than we anticipate, our existing cash reserves may be insufficient to satisfy our liquidity requirements. The potential impact of these factors in conjunction with the uncertainty of the capital markets raises substantial doubt about our ability to continue as a going concern for the next twelve months from the issuance of these financial statements.

The accompanying condensed consolidated financial statements do not include any adjustments that might be necessary if we are unable to continue as a going concern.

Portfolio of our licensed products

In December 2022, we changed our business to become a pharmaceutical royalty company, currently receiving royalties on products licensed to pharmaceutical organizations that possess commercial capabilities in the relevant territories. On December 30, 2022, we granted an exclusive license to commercialize IMVEXXY, BIJUVA, and prescription prenatal vitamin products sold under the BocaGreenMD and vitaMedMD brands and assigning our exclusive license to commercialize ANNOVERA to Mayne Pharma.

IMVEXXY (estradiol vaginal inserts), 4-µg and 10-µg

This pharmaceutical product is for the treatment of moderate-to-severe dyspareunia (vaginal pain associated with sexual activity), a symptom of vulvar and vaginal atrophy due to menopause. As part of the FDA's approval of IMVEXXY, we committed to conduct a post-approval observational study to evaluate the risk of endometrial cancer in post-menopausal women with a uterus who use a low-dose vaginal estrogen unopposed by a progestogen.

On December 30, 2022, we granted an exclusive license to commercialize IMVEXXY in the United States and its possessions and territories to Mayne Pharma. We also have entered into licensing agreements with third parties to market and sell IMVEXXY outside of the U.S. We entered into the Knight License Agreement, with Knight pursuant to which, we granted Knight an exclusive license to commercialize IMVEXXY in Canada and Israel. We entered into the Theramex License Agreement with Theramex HQ UK Limited ("Theramex") pursuant to which we granted Theramex an exclusive license to commercialize IMVEXXY for human use outside of the U.S., except for Canada and Israel. As of June 30, 2023, no IMVEXXY sales had been made through the Theramex and Knight licensing agreements.

The FDA has also asked the sponsors of other vaginal estrogen products to participate in the observational study. In connection with the observational study, we would have been required to provide progress reports to the FDA on an annual basis. The obligation to conduct this study was transferred to Mayne Pharma as part of the Mayne License Agreement.

BIJUVA (estradiol and progesterone) capsules, 1 mg/100 mg

This pharmaceutical product is the first and only FDA approved bioidentical hormone therapy combination of estradiol and progesterone in a single, oral capsule for the treatment of moderate-to-severe vasomotor symptoms (commonly known as hot flashes or flushes) due to menopause in women with a uterus.

On December 30, 2022, we granted an exclusive license to commercialize BIJUVA in the United States and its possessions and territories to Mayne Pharma. We also have entered into the Knight License Agreement with Knight pursuant to which we granted Knight an exclusive license to commercialize BIJUVA in Canada and Israel. We have entered into the Theramex License Agreement with Theramex pursuant to which we granted Theramex an exclusive license to commercialize BIJUVA for human use outside of the U.S., except for Canada and Israel.

ANNOVERA (segesterone acetate ("SA") and ethinyl estradiol ("EE") vaginal system)

On December 30, 2022, we assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma. This pharmaceutical product is a one-year ring-shaped contraceptive vaginal system ("CVS") and the first and only patient-controlled, procedure-free, reversible prescription contraceptive that can prevent pregnancy for up to a total of 13 cycles (one year). ANNOVERA is commercially sold in the U.S. pursuant to the terms of the Population Council License Agreement. As part of the approval of ANNOVERA, the FDA has required a post-approval observational study be performed to measure the risk of venous thromboembolism. We agreed to perform and pay the costs and expenses associated with this post-approval study, provided that if the costs and expenses associated with such post-approval study exceed $20.0 million, half of such excess will offset against royalties or other payments owed by us under the Population Council License Agreement. In August 2021, we filed a supplemental New Drug Application ("NDA") with the FDA to modify the testing specifications for ANNOVERA to allow increased consistency of supply of ANNOVERA. In May 2022, the FDA approved the supplemental NDA for ANNOVERA. Our obligations to perform the post-approval study have been transferred to Mayne Pharma as part of the Mayne License Agreement.

Prenatal vitamin products

On December 30, 2022, we granted an exclusive license to commercialize, in the United States and its possessions and territories, our prescription prenatal vitamin product lines under our vitaMedMD brand name and authorized generic formulations of some of our prescription prenatal vitamin products under our BocaGreenMD Prenatal name to Mayne Pharma.

Results of operations

Three months ended June 30, 2023 compared with three months ended June 30, 2022

In December 2022, we granted an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products and assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma, which resulted in a business shift that had a major effect on our operations and financial results.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in our condensed consolidated financial statements for all periods prior to the Closing Date. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 to the financial statements included in this Quarterly Report.

The discussion below, and the revenues and expenses discussed below, are based on and relate to our continuing operations.

	Three months ended June 30,	
	2023	2022
Revenue:		
License and service revenue	$ 437	$ 348
Cost of revenue	—	348
Gross profit	437	—
Operating expenses:		
Selling, general and administrative	2,781	14,575
Depreciation and amortization	128	282
Total operating expenses	2,909	14,857
Loss from operations	(2,472)	(14,857)
Other (expense) income:		
Interest expense and other financing costs	(45)	—
Miscellaneous income (expense)	103	(16)
Total other income, net	58	(16)
Loss from continuing operations before income taxes	(2,414)	(14,873)
Provision for income taxes	—	—
Net loss from continuing operations	(2,414)	(14,873)
Income from discontinued operations, net of income taxes	—	127,154
Net income (loss)	$ (2,414)	$ 112,281

Revenue. As part of our transformation and the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in the condensed consolidated financial statements for all periods presented.

License and service revenue. We recorded $0.4 million in license revenue for the second quarter of 2023, primarily from the Mayne License Agreement, compared to $0.3 million in sales to another licensee for the second quarter of 2022. This increase was a result of our transformation and transition from a manufacturing and commercialization business to a royalty-based business with revenue from the Mayne License Agreement.

Operating expenses. Total operating expenses for the second quarter of 2023 were $2.9 million, a decrease of $11.9 million, or 80.4%, compared to the second quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business with limited infrastructure.

Selling, general and administrative. Selling, general and administrative expenses were $2.8 million for the second quarter of 2023, a decrease of $11.8 million, or 80.9%, compared to the second quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Depreciation & amortization. Depreciation and amortization expense was $0.1 million for the second quarter of 2023, a decrease of $0.2 million, or 54.6%, compared to the second quarter of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Loss from operations. In the second quarter of 2023, we had a loss from operations of $2.4 million, as compared to a loss from operations of $14.9 million for the second quarter of 2022. This change was primarily due to the transition of our business from a manufacturing and commercialization business to a royalty-based business and the associated decrease in expenses.

Other income (expense), net. During the second quarter of 2023, we had other income of $0.1 million compared to other expense of $0.0 million in the second quarter of 2022. This change was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business. Other income of $0.1 million represents interest income for the present value of the minimum royalty receivables recorded compared to actual minimum royalties received.

Provision for income taxes. During the second quarter of 2023 and 2022, we recorded no provision for income taxes for continuing operations.

Net loss from continuing operations. For the second quarter of 2023, we had a net loss of $2.4 million, or $0.24 per basic and diluted common share, compared to a loss of $14.9 million, or $1.70 per basic and diluted common share, for the second quarter of 2022.

Discontinued Operations – Revenues from discontinued operations were $0.0 million for the second quarter of 2023, a decrease of $28.2 million as compared to the second quarter of 2022. Operating expenses from discontinued operations were $0.0 million in the second quarter of 2023, a decrease of $27.8 million, as compared to the second quarter of 2022. Net income (loss) from discontinued operations for the second quarter of 2023 was $0.0 million, a decrease of $127.2 million as compared to the second quarter of 2022.

For additional information, see Note 2 – Discontinued Operations, in the notes to the condensed consolidated financial statements appearing elsewhere in this Quarterly Report.

Results of operations

Six months ended June 30, 2023 compared with six months ended June 30, 2022

In December 2022, we granted an exclusive license to commercialize our IMVEXXY, BIJUVA, and prescription prenatal vitamin products and assigned our exclusive license to commercialize ANNOVERA to Mayne Pharma, which resulted in a business shift that had a major effect on our operations and financial results.

As part of the transformation that included the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in our condensed consolidated financial statements for all periods prior to the Closing Date. Assets and liabilities associated with the commercial business are classified as assets and liabilities of discontinued operations in our condensed consolidated balance sheets. Additional disclosures regarding discontinued operations are provided in Note 2 to the financial statements included in this Quarterly Report.

The discussion below, and the revenues and expenses discussed below, are based on and relate to our continuing operations.

	Six months ended June 30,	
	2023	2022
Revenue:		
License and service revenue	$ 853	$ 1,043
Cost of revenue	—	1,043
Gross profit	853	—
Operating expenses:		
Selling, general and administrative	5,837	32,121
Depreciation and amortization	155	611
Total operating expenses	5,992	32,732
Loss from operations	(5,139)	(32,732)
Other (expense) income:		
Interest expense and other financing costs	(95)	—
Miscellaneous income (expense)	510	(16)
Total other income (expense), net	415	(16)
Loss from continuing operations before income taxes	(4,724)	(32,748)
Provision for income taxes	—	—
Net loss from continuing operations	(4,724)	(32,748)
Income (loss) from discontinued operations, net of income taxes	(1,293)	96,008
Net income (loss)	$ (6,017)	$ 63,260

Revenue. As part of our transformation and the Mayne License Agreement, historical results of commercial operations have been reflected as discontinued operations in the condensed consolidated financial statements for all periods presented.

License and service revenue. We recorded $0.9 million in license revenue for the first six months of 2023, primarily from the Mayne License Agreement, and $1.0 million in sales to another licensee during the first six months of 2022. This decrease was due to a decrease in sales to licensees as a result of our transformation and transition from a manufacturing and commercialization business to a royalty-based business, partially offset by the license revenue recognized during the first quarter from the Mayne License Agreement.

Operating expenses. Total operating expenses for the first six months of 2023 were $6.0 million, a decrease of $26.7 million, or 81.7%, compared to the first six months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business with limited infrastructure.

Selling, general and administrative. Selling, general and administrative expenses were $5.8 million for the first six months of 2023, a decrease of $26.3 million, or 81.8%, compared to the first six months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Depreciation & amortization. Depreciation and amortization expenses were $0.2 million for the first six months of 2023, a decrease of $0.4 million, or 74.6%, compared to the first six months of 2022. This decrease was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business.

Loss from operations. For the first six months of 2023, we had a loss from operations of $5.1 million, as compared to a loss from operations of $32.7 million for the first six months of 2022. This change was primarily due to the transition of our business from a manufacturing and commercialization business to a royalty-based business and the associated decrease in expenses.

Other income (expense), net. During the first six months of 2023, we had other income of $0.4 million compared to other expense of $0.0 million in the first six months of 2022. This change was due to the transition of our business from a manufacturing and commercialization business to a royalty-based business. Other income of $0.1 million represents interest income for the present value of the minimum royalty receivables recorded compared to actual minimum royalties received and $0.3 million of a net working capital adjustment from the vitaCare Divestiture.

Provision for income taxes. During the first six months of 2023 and 2022, we recorded no provision for income taxes for continuing operations.

Net loss from continuing operations. For the first six months of 2023, we had a net loss of $4.7 million, or $0.47 per basic and diluted common share, compared to a loss of $32.7 million, or $3.77 per basic and diluted common share, for the first six months of 2022.

Discontinued Operations – Revenues from discontinued operations were $0.0 million for the first six months of 2023, a decrease of $46.9 million as compared to the first six months of 2022. Operating expenses from discontinued operations were $0.3 million for the first six months of 2023, a decrease of $50.3 million, as compared to the first six months of 2022. Net loss from discontinued operations for the first six months of 2023 was $1.3 million, a decrease of $97.3 million as compared to the first six months of 2022.

For additional information, see Note 2 – Discontinued Operations, in the notes to the condensed consolidated financial statements appearing elsewhere in this Quarterly Report.

Liquidity and capital resources

Our primary use of cash is to fund our continued operations. We have funded our operations primarily through public offerings of our common stock and private placements of equity and debt securities, the divestiture of our former subsidiary vitaCare, and the transactions with Mayne Pharma. As of June 30, 2023, we had cash totaling $13.7 million. We maintain cash at financial institutions that at times may exceed the Federal Deposit Insurance Corporation insured limits of $0.25 million per bank. We have never experienced any losses related to these funds.

vitaCare Divestiture

On April 14, 2022, we completed the vitaCare Divestiture. We may receive up to an additional $7.0 million in earn-out consideration, contingent upon vitaCare's financial performance through 2023 as determined in accordance with the terms of the Purchase Agreement, however we do not believe this earnout will be realized. We utilized $120.0 million of net proceeds from the vitaCare Divestiture to make a prepayment of the loans under the Financing Agreement.

Mayne Pharma License Agreement

On December 30, 2022, we granted Mayne Pharma (i) an exclusive, sublicensable, perpetual, irrevocable license to research, develop, register, manufacture, have manufactured, market, sell, use, and commercialize the Licensed Products in the United States and its possessions and territories and (ii) an exclusive, sublicensable, perpetual, irrevocable license to manufacture, have manufactured, import and have imported the Licensed Products outside the United States for commercialization in the United States and its possessions and territories. The total consideration from Mayne Pharma to us under the Mayne License Agreement consisted of (i) a cash payment of $140.0 million at closing, (ii) a cash payment of approximately $12.1 million at closing for the acquisition of net working capital as determined in accordance with the transaction agreement dated December 4, 2022, and subject to certain adjustments, (iii) a cash payment of approximately $1.0 million at closing for prepaid royalties in connection with the Mayne License Agreement Amendment and (iv) the right to receive the contingent consideration set forth in the Mayne License Agreement, as amended.

Pursuant to the Mayne License Agreement, Mayne Pharma will pay us one-time, milestone payments of each of (i) $5.0 million if aggregate net sales of all Products in the United States during a calendar year reach $100.0 million, (ii) $10.0 million if aggregate net sales of all Products in the United States during a calendar year reach $200.0 million and (iii) $15.0 million if aggregate net sales of all Products in the United States during a calendar year reach $300.0 million. Further, Mayne Pharma will pay us royalties on net sales of all Products in the United States at a royalty rate of 8.0% on the first $80 million in annual net sales and 7.5% on annual net sales above $80.0 million, subject to certain adjustments, for a period of 20 years following the Closing Date. The royalty rate will decrease to 2.0% on a Product-by-Product basis upon the earlier to occur of (i) the expiration or revocation of the last patent covering a Product and (ii) a generic version of a Product launching in the United States. Mayne Pharma will pay us minimal annual royalties of $3.0 million per year for 12 years, adjusted for inflation at an annual rate of 3%, subject to certain further adjustments, including as described below. Upon the expiry of the 20-year royalty term, the licenses granted to Mayne Pharma under the Mayne License Agreement will become a fully paid-up and royalty free license for the Licensed Products.

Subscription Agreement with Rubric Capital Management LP

On May 1, 2023, we entered into the Subscription Agreement with Rubric, pursuant to which we agreed to sell to Rubric, or one or more of its affiliates, up to an aggregate of 5,000,000 shares of Common Stock, from time to time during the term of the Subscription Agreement in separate draw downs at our election, at a purchase price of the five-day volume-weighted average price of our common stock at the time of the sale of such shares, at an aggregate purchase price of up to $5,000,000 (collectively, the "Private Placement").

The initial draw down occurred on June 29, 2023 consisting of a sale of 312,525 shares of Common Stock at a price per share equal to $3.6797. We received gross proceeds of $1.15 million from the drawdown, before expenses.

See "Going Concern" above for further discussion related to our ability to generate and obtain adequate amounts of cash to meet our liquidity needs and our plans for to satisfy our such needs in the short-term and in the long-term.

Cash flows

The following table reflects the major categories of cash flows for each of the periods (in thousands).

	Six Months Ended June 30,	
	2023	2022
Net cash (used in) operating activities	$(12,093)	$ (38,593)
Net cash (used in) investing activities	—	(288)
Net cash provided by (used in) financing activities	1,150	(125,000)
Net cash provided by (used in) discontinued operations	(24,645)	125,062
Net (decrease) in cash	$(35,588)	$ (38,819)

Operating Activities from continuing operations. For the first six months of 2023, net cash used in operating activities was $12.1 million, compared to net cash used in operating activities of $38.6 million for the first six months of 2022. This decrease of $26.5 million or 68.7%, was primarily due to a $28.0 million decrease in our net loss from continuing operations following our transition from a manufacturing and commercialization business to a royalty-based business, combined with a $2.3 million decrease in cash usage related to changes in operating assets and liabilities in 2023, partially offset by a $3.4 million decrease in share-based compensation as compared to 2022.

Investing Activities from continuing operations. Net cash used in investing activities for the first six months of 2023 was $0.0 million, compared to net cash used in investing activities of $0.3 million for the first six months of 2022. This change was due our transition from a manufacturing and commercialization business to a royalty-based business.

Financing Activities from continuing operations. For the first six months of 2023, net cash received from financing activities was $1.2 million, compared to net cash used by financing activities of $125.0 million for the first six months of 2022, reflecting the sale of common stock during the first six months of 2023 and the payments of outstanding long-term debt during the first six months of 2022.

Net cash used in discontinued operations. Net cash used in operating activities from discontinued operations for the first six months of 2023 was $25.8 million as compared to net cash provided by operating activities of $124.9 million for first six months of 2022. This increase relates primarily to expenses incurred and the payment of current liabilities associated with our transition from a manufacturing and commercialization business to a royalty-based business. Net cash provided by investing activities from discontinued operations was $0.0 million for the first six months of 2023, compared to net cash provided of $0.2 million for the first six months of 2022. This decrease was due to our transition from a manufacturing and commercialization business to a royalty-based business. Net cash provided by financing activities from discontinued operations was $1.1 million for the first six months of 2023, compared to net cash provided of $0.0 million for the first six months of 2022.

For additional details, see the condensed consolidated statements of cash flows in Item 1, Financial Statements, appearing elsewhere in this 10-Q Report.

Other liquidity measures

Receivable from Mayne. On December 30, 2022, Mayne Pharma acquired our accounts receivable balance of approximately $29.3 million which is subject to certain working capital adjustments. As of June 30, 2023, we had a royalty receivable of $0.8 million relating to the short-term portion of receivable from Mayne Pharma and $19.8 million relating to the long-term portion of royalty

receivable which includes royalties recognized from the Minimum Annual Royalty. See Note 1 Business, basis of presentation, new accounting standards and summary of significant accounting policies (Revenue Recognition) to the condensed consolidated financial statements included in this Quarterly Report.

Inventory. On December 30, 2022, Mayne Pharma acquired our inventory balance of approximately $6.6 million, which is subject to certain net working capital adjustments.

Contractual obligations, off-balance sheet arrangements and purchase commitments and employment agreements

Our contractual obligations and off-balance sheet arrangements are set forth below. For additional information on any of the following and other obligations and arrangements, see “Note 7. Commitments and Contingencies” to the condensed consolidated financial statements included in this 10-Q Report.

In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions, which, in our judgment, are normal and customary for companies in our industry sector. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or omitted by us. The maximum potential amount of future payments we could be required to make under these indemnification provisions is sometimes unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we had no liabilities recorded for these provisions as of June 30, 2023 and December 31, 2022.

In the normal course of business, we may be confronted with issues or events that may result in contingent liability. These generally relate to lawsuits, claims, environmental actions, or the actions of various regulatory agencies. We consult with counsel and other appropriate experts to assess the claim. If, in our opinion, we have incurred a probable loss as set forth by U.S. GAAP, an estimate is made of the loss and the appropriate accounting entries are reflected in our financial statements.

Critical accounting policies and estimates

Management’s discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements included elsewhere in this 10-Q Report, which has been prepared in accordance with U.S. GAAP. We make estimates and assumptions that affect the reported amounts on our condensed consolidated financial statements and accompanying notes as of the date of the condensed consolidated financial statements. The critical accounting policies and estimates used are disclosed in Item 7 –Critical accounting policies and estimates in our 2022 10-K Report.

Item 3. Quantitative and qualitative disclosures about market risk

As a “smaller reporting company,” as defined by Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and pursuant to Instruction 6 to Item 201(e) of Regulation S-K, we are not required to provide this information.

Item 4. Controls and procedures

Management’s evaluation of disclosure controls and procedures

Disclosure Controls and Procedures

Disclosure controls and procedures are designed to ensure that information required to be disclosed in the reports filed or submitted under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), is recorded, processed, summarized and reported, within the time period specified in the SEC’s rules and forms and is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, in order to allow timely decisions regarding required disclosure.

Evaluation of Disclosure Controls and Procedures

Our Chief Executive Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this 10-Q Report. Based on that evaluation, our Chief Executive Officer concluded that our disclosure controls and procedures as of the end of the period covered by this 10-Q Report were effective in providing reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our Chief Executive Officer does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, misstatements, errors, and instances of fraud, if any, within our company have been or will be prevented or detected. Further, internal controls may become inadequate as a result of changes in conditions, or through the deterioration of the degree of compliance with policies or procedures.

Changes in internal controls over financial reporting

In connection with our transformation into a pharmaceutical royalty company, we terminated our executive management team and all other employees. As of June 30, 2023, we employed one full-time employee primarily engaged in an executive position. We have engaged external consultants, including certain former members of our management team, who support our relationship with current partners and assist with certain financial, legal and regulatory matters and the continued wind-down of our historical commercial business operations. As a result of these changes, we have updated our risk assessment and design of internal controls over financial reporting that align with reduced transaction volume and reliance on external consultants to manage the day-to-day operations of the Company. The Company is and will continue to evaluate changes to processes, information technology systems and other components of internal controls over financial reporting as part of its ongoing business transformation activities, and as a result, controls may be periodically changed. The Company believes, however, that it will be able to maintain sufficient controls over its financial reporting throughout this transformation process.

Part II – Other Information

Item 1. Legal proceedings

From time to time, we are involved in litigation and proceedings in the ordinary course of our business. Other than the legal proceedings disclosed in Note 7, Commitments and contingencies in Part I, Item 1, Financial Statements, appearing elsewhere in this 10-Q Report, we are not involved in any legal proceeding that we believe would have a material effect on our business or financial condition.

Item 1A. Risk factors

Our business, financial condition and operating results can be affected by a number of factors, whether currently known or unknown, including but not limited to those described in Part I, Item 1A of the 2022 10-K Report under the heading “Risk Factors,” any one or more of which could, directly or indirectly, cause our actual financial condition and operating results to vary materially from past, or from anticipated future, financial condition and operating results. Any of these factors, in whole or in part, could materially and adversely affect our business, financial condition, operating results and stock price. There have been no material changes to our risk factors since the 2022 10-K Report.

Item 2. Unregistered sales of equity securities and use of proceeds

Recent Sales of Unregistered Securities

During the period covered by this 10-Q Report, we did not issue any unregistered equity securities other than pursuant to transactions previously disclosed in our Current Reports on Form 8-K.

Purchase of Equity Securities

We did not purchase any of our registered equity securities during the period covered by this 10-Q Report.

Item 3. Defaults upon senior securities

None.

Item 4. Mine safety disclosures

None.

Item 5. Other information

None.

Item 6. Exhibits

Exhibit No.	Description
3.1†	Composite Amended and Restated Articles of Incorporation, as amended.
3.2(1)	Fourth Amendment to Bylaws of the Company, dated June 29, 2023.
10.1(2)	Subscription Agreement, dated May 1, 2023, between TherapeuticsMD, Inc. and Rubric Capital Management LP.
31.1†	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
31.2†	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a)
32.1††	Section 1350 Certification of Chief Executive Officer
32.2††	Section 1350 Certification of Principal Financial Officer
101†	Inline XBRL Document Set for the condensed consolidated financial statements and accompanying notes in Part I, Item 1, “Financial Statements” of this Quarterly Report on Form 10-Q
104†	Inline XBRL for the cover page of this Quarterly Report on Form 10-Q, included in the Exhibit 101 Inline XBRL Document Set

† Filed herewith.
†† Furnished herewith.
(1) Filed as Exhibit 3.1 to the Company’s Current Report on Form 8-K, filed with the Commission on July 6, 2023 and incorporated herein by reference (SEC File No. 001-00100).
(2) Filed as Appendix B to the Company’s Definitive Proxy Statement on Schedule 14A, filed with the Commission on May 17, 2023 and incorporated herein by reference (SEC File No. 001-00100).

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 14, 2023

TherapeuticsMD, Inc.

/s/ Marlan D. Walker
Marlan D. Walker
Chief Executive Officer
(Principal Executive Officer)

/s/ Michael C. Donegan
Michael C. Donegan
Principal Financial and Accounting Officer

THIS COMPOSITE AMENDED AND RESTATED ARTICLES OF INCORPORATION, AS AMENDED, OF THERAPEUTICSMD, INC. (THE "CORPORATION") REFLECTS THE PROVISIONS OF THE CORPORATION'S ARTICLES OF INCORPORATION, AS AMENDED AND RESTATED ON AUGUST 3, 2011, AND ALL AMENDMENTS THERETO FILED WITH THE SECRETARY OF STATE OF THE STATE OF NEVADA THEREAFTER ON OR PRIOR TO JUNE 27, 2023, BUT IS NOT AN AMENDMENT AND/OR RESTATEMENT THEREOF.

COMPOSITE AMENDED AND RESTATED ARTICLES OF INCORPORATION, AS AMENDED, OF THERAPEUTICSMD, INC. A NEVADA CORPORATION

ARTICLE I
CORPORATE NAME

The name of the corporation is TherapeuticsMD, Inc. (the "Corporation").

ARTICLE II
REGISTERED AGENT

The registered agent for the Corporation in the State of Nevada is Paracorp Incorporated, 318 N. Carson Street, Suite 208, Carson City, Nevada 87901.

ARTICLE III
DURATION AND PURPOSE

The duration of the Corporation shall be perpetual. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the NRS.

ARTICLE IV
CAPITAL STOCK

The total number of shares of all classes of capital stock that the Corporation has the authority to issue is Forty Two Million (42,000,000) shares, of which Thirty Two Million (32,000,000) shares will be designated common stock, $0.001 par value per share ("Common Stock") and Ten Million (10,000,000) shares will be designated preferred stock, $0.001 par value per share ("Preferred Stock").

The Ten Million (10,000,000) shares of Preferred Stock may be designated from time to time in one or more series upon authorization of the Corporation's board of directors. The Corporation's board of directors, without further approval of the Corporation's shareholder, will be authorized to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, preferences, privileges and restrictions applicable to each series of Preferred Stock so designated.

ARTICLE V
NUMBER OF DIRECTORS

The business of the Corporation shall be managed by or under the direction of the Corporation's Board of Directors. The Corporation must maintain at least one director at all times and initially sets the number of directors at four members. The number of individuals comprising the Corporation's Board of Directors shall be fixed upon resolution of the Board of Directors and may be increased or decreased from time to time in the manner provided in the Corporation's Bylaws.

ARTICLE VI
BYLAWS

In furtherance and not in limitation of the powers conferred upon the Board of Directors of the Corporation by the NRS, the Board of Directors shall have the power to alter, amend, change, add to and repeal, from time to time, the Bylaws of the Corporation, subject to the rights of the Corporation's shareholders entitled to vote with respect thereto to alter, amend, change, add to and repeal the Bylaws adopted by the Board of Directors of the Corporation.

ARTICLE VII
LIMITATION ON LIABILITY OF DIRECTORS AND OFFICERS

No director or officer of the Corporation shall be personally liable to the Corporation or any of its shareholders for damages for breach of fiduciary duty as a director or officer involving any act or omission of any act by such director or officer, provided, however, that the foregoing provision shall not eliminate or limit the liability of a director or officer (i) for acts or omissions which involve intentional misconduct, fraud, or a known violation of the law, or (ii) the payment of dividends in violation of Section 78.300 of the NRS. Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitations on the personal liability of a director or officer of the Corporation for acts or omissions prior to such repeal or modification.

ARTICLE IX
INDEMNIFICATION

The Corporation shall, to the fullest extent permitted by the provisions of 78.502 of the NRS, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under the Corporation's Bylaws, agreement, vote of shareholders, or disinterested directors, or otherwise, both as to action in his official capacity whole holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such person.

Exhibit 31.1

Certification of Chief Executive Officer

I, Marlan D. Walker, certify that:

(1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

/s/ Marlan D Walker

Marlan D. Walker
Principal Executive Officer

Exhibit 31.2

Certification of Principal Financial Officer

I, Michael C. Donegan, certify that:

(1) I have reviewed this quarterly report on Form 10-Q of TherapeuticsMD, Inc.;

(2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

(3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

(4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

(5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2023

/s/ Michael C. Donegan

Michael C. Donegan
Principal Financial Officer

Exhibit 32.1

Section 1350 Certification of Chief Executive Officer

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Marlan D. Walker, Chief Executive Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: August 14, 2023

/s/ Marlan D. Walker
Marlan D. Walker
Principal Executive Officer

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).

Exhibit 32.2

Section 1350 Certification of Principal Financial Officer

In connection with the quarterly report of TherapeuticsMD, Inc. (the "Company") on Form 10-Q for the quarterly period ended June 30, 2023 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael C. Donegan, Principal Financial Officer of the Company, certify, to my best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: August 14, 2023

/s/ Michael C. Donegan
Michael C. Donegan
Principal Financial Officer

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 906 of the Sarbanes-Oxley Act of 2002 and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).