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

FORM 10-K

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

For the Fiscal Year Ended December 31, 2021

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 001-41063

JOURNEY MEDICAL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	**47-1879539**
(State or Other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
9237 E Via de Ventura Blvd., Suite 105	
Scottsdale, AZ	**85258**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: (781) 652-4500
Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.0001 per share	**DERM**	**NASDAQ Capital Market**

Securities registered pursuant to section 12(g) of the Act: None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes □ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes □ No ☒
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, 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes □ No ☒

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

As of June 30, 2021, the last business day of the registrant's most recently completed second fiscal quarter, the common stock of the registrant was not listed on any securities exchange or quoted on any automated quotation system. Accordingly, the aggregate market value of the registrant's common stock held by non-affiliates cannot be calculated as of such date. As of March 25, 2022, the aggregate market value of the registrant's common stock held by non-affiliates was approximately $31,947,000 million, based on the closing sale price of $4.56 as quoted by the Nasdaq Stock Market as of such date.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class of Common Stock	Outstanding Shares as of March 25, 2022
Class A Common Stock, $0.0001 par value	6,000,000
Common Stock, $0.0001 par value	11,316,344

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Proxy Statement for its 2022 Annual Meeting of Stockholders are incorporated by reference in Part III of this Annual Report on Form 10-K.

JOURNEY MEDICAL CORPORATION
ANNUAL REPORT ON FORM 10-K
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SPECIAL CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

Certain matters discussed in this report may constitute forward-looking statements for purposes of the Securities Act of 1933, as amended (the "Securities Act") and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from the future results, performance or achievements expressed or implied by such forward-looking statements. The words "anticipate," "believe," "estimate," "may," "expect," "will," "could," "project," "intend" and similar expressions are generally intended to identify forward-looking statements. Our actual results may differ materially from the results anticipated in these forward-looking statements due to a variety of factors, including, without limitation, those discussed under the captions "Risk Factors," and elsewhere in this report. All written or oral forward-looking statements attributable to us are expressly qualified in their entirety by these cautionary statements. Such forward-looking statements include, but are not limited to, statements about:

- our future financial performance, including our expectations regarding our revenue, cost and operating expenses, including changes in technology and development, selling and marketing and general and administrative expenses, gross profit, and our ability to achieve, and maintain, future profitability;
- our business plan and our ability to effectively manage our growth;
- economic and industry trends, projected growth, or trend analysis;
- political, economic, legal, social and health risks, including the COVID-19 pandemic and subsequent public health measures that may affect our business or the global economy and the actions we may take in response thereto;
- developments and projections relating to our competitors and industry;
- increases in costs and disruption of supply or shortage of raw materials;
- our and our licensors' ability to obtain, establish, maintain, protect and enforce intellectual property and proprietary protection for our products and technologies and to avoid claims of infringement, misappropriation or other violation of third-party intellectual property and proprietary rights;
- the outcome of any current or future litigation;
- our ability to hire and retain key management;
- our ability to obtain additional financing;
- our beliefs and objectives for future operations;
- our ability to maintain, protect, and enhance our intellectual property;
- our expectations concerning relationships with third parties, including strategic partners;
- the volatility of the trading price of our common stock;
- evolving regulations and the potential for unfavorable changes to, or failure by us to comply with, regulations; and
- our expectations regarding the period during which we qualify as an emerging growth company under the Jumpstart Our Business Act.

The forward-looking statements contained in this report reflect our views and assumptions as of the effective date of this report. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. Except as required by law, we assume no responsibility for updating any forward-looking statements.

We qualify all of our forward-looking statements by these cautionary statements. In addition, with respect to all of our forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

SUMMARY OF RISK FACTORS

Our business is subject to a number of risks which you should be aware of before making an investment decision. The risks described below are a summary of the principal risks associated with an investment in our common stock and are not the only risks we face. These risks are more fully described in the section titled "Risk Factors" of this report on Form 10-K and include the following:

Risks Related to Our Business, Industry and Existing Operating Revenue Stream

- Our products and product candidates are subject to time and cost intensive regulation and clinical testing. As a result, they may never be successfully developed or commercialized. Further, any approved product may be subject to post-marketing requirements, including studies or clinical trials, the results of which could cause such product to be withdrawn from the market.

- The majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income.

- We operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations.

- Our revenue is dependent mainly upon sales of our dermatology products and any setback relating to the sale of such products could impair our operating results.

- Our competitors may develop treatments for our products' target indications, which could limit our products' commercial opportunity and profitability.

- If our products do not achieve broad market acceptance, including by government and third-party payors, the revenues from any such product will likely be limited.

Risks Related to Our Reliance on Third Parties

- We rely on third parties for several aspects of our operations, which limits our control over product development, marketing, manufacturing, and sale processes and may hinder our ability to develop and commercialize our products in a cost-effective and timely manner.

Risks Related to Our Growth

- Our future growth may depend on our ability to identify, develop, and acquire or in-license products and integrate them into our operations, at which we may be unsuccessful.

- We may expend resources on unsuccessful product candidates or indications and may fail to capitalize on more profitable or successful product candidates or indications.

Risks Related to Development and Regulatory Approval of Our Product Candidates (DFD-29)

- The success of our business, including our ability to finance our company and generate additional revenue, may depend on the successful development and regulatory approval of the DFD-29 product candidate and any future product candidates that we may develop, in-license or acquire.

- Clinical drug development is very expensive, time consuming, and uncertain. Our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates, which could prevent or delay regulatory approval and commercialization.

- We expect to rely on third-party contract research organizations ("CROs") and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process for our product candidates. If these third parties do not meet our requirements, conduct the trials as required or otherwise provide services as anticipated, we may not be able to satisfy our contractual obligations or obtain regulatory approval for, or successfully commercialize, our current or any future product candidates when expected or at all.

Risks Pertaining to Intellectual Property, Generic Competition and Paragraph IV Litigation

- If we are unable to maintain sufficient patent protection for our technology and products, our competitors could develop and commercialize products similar or identical to ours.
- We may be required to expend substantial resources relating to litigation for infringement of third-party intellectual property rights or enforcing our or our licensors' patents.
- Any dispute with our licensors may affect our ability to develop or commercialize our product candidates.
- Generic drug companies may submit applications seeking approval to market generic versions of our products.
- In connection with these applications, generic drug companies may seek to challenge the validity and enforceability of our patents through litigation and/or with the United States Patent and Trademark Office ("USPTO"). Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings.
- As a result of the loss of any patent protection from such litigation or USPTO proceedings, or the "at-risk" launch by a generic competitor of our products, our products could be sold at significantly lower prices, and we could lose a significant portion of sales of that product in a short period of time, which could adversely affect our business, financial condition, operating results and prospects.
- The majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income.
- Accutane currently competes in the Isotretinoin market with five other AB rated products. Targadox currently faces AB rated generic competition. Exelderm may face AB rated generic competition in the future.

Risks Related to our Platform and Data

- Our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or our third parties' cybersecurity.

Risks Related to the COVID-19 Pandemic

- Major public health issues, and specifically the pandemic caused by the COVID-19 outbreak, could have an adverse effect on our product revenues and any future clinical trials.

Risks Related to Our Finances and Capital Requirements

- Due to the numerous risks and uncertainties associated with pharmaceutical product development, we may incur losses and may be unable to maintain profitability.
- If we are unable to raise capital as needed, we may be forced to delay, reduce, or eliminate our operations.

Risks Relating to Owning our Common Stock

- Our operating results have fluctuated in the past and we expect them to continue to do so. Any such fluctuation may cause our performance to fall below expectations, and our stock price may suffer.

Risks Related to our Relationship with Fortress Biotech, Inc.

- Fortress controls a voting majority of our common stock, which could be detrimental to our other shareholders. Further, Fortress' ownership qualifies us as a "controlled company" under the Nasdaq listing standards.

- Fortress' financial obligations and any potential risk of default may adversely affect the Company or constrain our ability to take certain actions.

PART I

Item 1. Business

OVERVIEW

We are a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes seven branded and three authorized generic prescription drugs for dermatological conditions that are actively marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life and physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our exclusive field sales organization.

On November 16, 2021, we completed an initial public offering ("IPO") of our common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

Prior to our IPO, our operations were primarily financed through a working capital note from Fortress Biotech, Inc. ("Fortress"), referred to herein as the "Fortress Note," cash generated by operations and cash raised in our private offering of our 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Stock"). In connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock. In addition, the Fortress Note was converted into 1,476,044 shares of Journey common stock at our IPO price of $10.00 per share.

We expect our expenses will increase substantially for the foreseeable future as we pursue business development opportunities, commercialize and market new products and incur additional costs associated with operating as a public company. To date, our business has not been materially impacted by COVID-19; however, depending on the extent of the ongoing pandemic, it is possible that our business, financial condition and results of operations could be materially and adversely affected by COVID-19 in the future.

Our cash and cash equivalents balance at December 31, 2021 was $49.1 million.

We are a majority-owned subsidiary of Fortress.

CORPORATE INFORMATION

Journey Medical Corporation was incorporated in Delaware in 2014. Our executive offices are located at 9237 E Via de Ventura Blvd. Suite 105, Scottsdale, AZ 85258. Our telephone number is 480-434-6670, and our e-mail address is info@jmcderm.com or ir@jmcderm.com.

We maintain a website with the address www.jmcderm.com. We make available free of charge through our Internet website our annual reports on Form 10-K, quarterly reports on Form 10-K and current reports on Form 8-K, and any amendments to these reports, as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Securities and Exchange Commission ("SEC"). We are not including the information on our website as a part of, nor incorporating it by reference into, this report. Additionally, the SEC maintains a website that contains annual, quarterly, and current reports, proxy statements, and other information that issuers (including us) file electronically with the SEC. The SEC's website address is http://www.sec.gov.

Overview of the Business, Relevant Disease States, Market, and Products

Journey Medical Corporation is a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes seven branded and three authorized generic prescription drugs for dermatological conditions that are actively marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life, and enabling physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our field sales organization. Since inception, we have made significant investments to build out our commercial product portfolios, which we believe, coupled with our experienced dermatology sales leadership team and our recently expanded field sales force, will position our business for growth.

As of December 31, 2021, our major actively marketed products, which have been approved by the U.S. Food and Drug Administration ("FDA") for sale in the United States, include:

- Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis), acquired and launched in May 2021;
- Accutane® (an oral isotretinoin drug for the treatment of severe recalcitrant nodular acne), licensed in July 2020 and launched in April 2021;
- Targadox® (an oral doxycycline drug for adjunctive therapy for severe acne), licensed in March 2015 and launched in October 2016;
- Ximino® (an oral minocycline drug for the treatment of moderate to severe acne), acquired and launched in August 2019; and
- Exelderm® Cream and Solution (a broad-spectrum antifungal intended for topical use), acquired and launched in October 2018.

Additionally, we sell three authorized generic products:

- doxycycline hyclate immediate release tablets, launched in May 2018;
- minocycline hydrocholoride extended release capsules, launched in April 2020; and
- sulconazole nitrate cream and solution, launched in January 2020.

Recent Subsequent Highlights ("VYNE Product Acquisition")

In January 2022, we acquired AMZEEQ (minocycline) topical foam, 4%, and ZILXI (minocycline) topical foam, 1.5%, two FDA-Approved Topical Minocycline Products and Molecule Stabilizing Technology (MST)™ from VYNE Therapeutics, Inc., which expands our product portfolio to seven actively marketed branded dermatology products.

These proprietary foam-based products optimize the topical delivery of minocycline, an active pharmaceutical ingredient that was previously available only in oral form. Approved by the FDA nearly 50 years ago, minocycline is a well-established molecule that has been prescribed, in oral formulation, over 30 million times in the past decade.

AMZEEQ (minocycline) topical foam, 4%, is the first and only topical formulation of minocycline to be approved by the FDA for the treatment of inflammatory lesions of non-nodular moderate to severe acne vulgaris in adults and children 9 years and older. According to the American Academy of Dermatology ("AAD"), acne is the most common skin condition in the United States, affecting up to 50 million Americans annually.

Approved by the FDA in May 2020, ZILXI (minocycline) topical foam, 1.5%, is the first and only topical minocycline treatment for inflammatory lesions due to rosacea in adults. Rosacea is a common skin disease that affects 16 million Americans, according to AAD. Market research shows that over 70% of patients with rosacea are seeking better alternatives to current treatments.

Upon completion of the VYNE Product Acquisition, Journey became substituted for VYNE as the plaintiff in U.S. patent litigation commenced by VYNE on August 9, 2021 in the U.S. District Court of Delaware (the "Padagis Patent Litigation") against Padagis Israel Pharmaceuticals Ltd. (F/K/A Perrigo Israel Pharmaceuticals Ltd.) ("Padagis") alleging infringement of certain patents covering Amzeeq® (the "Amzeeq® Patents"), which are included among the proprietary rights to Amzeeq® that were acquired pursuant to the Qbrexza APA. The Padagis Patent Litigation was initiated following the submission by Padagis, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application (the "ANDA"). The ANDA seeks approval to market a generic version of Amzeeq® prior to the expiration of the Amzeeq® Patents and alleges that the Amzeeq® Patents are invalid. Padagis is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on December 30, 2023. Journey is seeking, among other relief, an order that the effective date of any United States Food and Drug Administration approval of Padagis' ANDA be no earlier than the expiration of the patents listed in the Orange Book, the latest of which expires on September 8, 2037, and such further and other relief as the court may deem appropriate. Trial in the Padagis Patent Litigation is scheduled for July 10, 2023. Journey cannot make any predictions about the final outcome of this matter or the timing thereof.

2021 Highlights and Events

- On November 16, 2021, we completed an IPO of our common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

- In September 2021, we were the victim of a cybersecurity incident that affected our accounts payable function and led to approximately $9.5 million in wire transfers being misdirected to fraudulent accounts. The details of the incident and its origin are under investigation with the assistance of third-party cybersecurity experts working at the direction of legal counsel. The matter was reported to the Federal Bureau of Investigation and does not appear to have compromised any personally identifiable information or protected health information. Fortress, as our controlling stockholder and supporting partner in our back-office functions, provided us with $9.5 million to ensure our accounts payable operations continued to function smoothly. The $9.5 million of support was in the form of a related party note which the boards of both companies have agreed and converted into 1,476,044 shares of our common stock upon the consummation of our IPO at the IPO price. See "*Risk Factors — Risk s Related to our Platform and Data — Our business and operations would suffer in the event of computer system failures, cyber-attack s, or deficiencies in our or third parties' cybersecurity*."

- As of July 18, 2021, we privately offered and issued 750,680 shares of our Class A Preferred Stock at a price of $25.00 per share, for gross proceeds of $19.0 million (the "Class A Preferred Offering"). In connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock.

- In June 2021, we entered into an agreement with Dr. Reddy's Laboratories, Ltd. ("DRL") for the development of DFD-29, a modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea. We and DRL intend to conduct two Phase 3 clinical trials to assess the efficacy, safety and tolerability of DFD-29 as a treatment for rosacea for regulatory approval. In connection with the DFD-29 Agreement, we agreed to pay DRL additional consideration of $5.0 million in our common stock upon our IPO. In addition, in connection with the closing of our IPO, we issued 545,131 unregistered shares of common stock in the Company to DRL. The restrictions on the unregistered shares of common stock are governed by the terms set forth in the DFD-29 Agreement and applicable securities laws.

- In May 2021, we acquired Qbrexza from Dermira, Inc., a wholly owned subsidiary of Eli Lilly and Company ("Dermira").

- In March 2021, we launched Accutane® (isotretinoin) for the treatment of recalcitrant nodular acne.

- On March 31, 2021, we entered into an agreement with East West Bank ("EWB") to provide us with a $7.5 million working capital line of credit.

Other Subsequent Highlights

On January 12, 2022, we entered into a third amendment (the "Amendment") of our loan and security agreement with EWB, which increased the borrowing capacity of our revolving line of credit to $10.0 million, from $7.5 million, and added a term loan not to exceed $20.0 million. Both the revolving line of credit and the term loan mature on January 12, 2026. The term loan includes two tranches, the first of which is a $15.0 million term loan and the second of which is a $5.0 million term loan. On January 12, 2022, we borrowed $15.0 million against the first tranche of the term loan to facilitate the VYNE Product Acquisition. The term loan bears interest on its outstanding daily balance at a floating rate equal to 1.73% above the prime rate and is payable monthly, on the first calendar day each month. The term loans contain an interest only payment period through January 12, 2024, with an extension through July 12, 2024, if certain covenants are met, after which the outstanding balance of each term loan is payable in equal monthly installments of principal, plus all accrued interest, through the term loan maturity date. We may prepay all or any part of the term loan without penalty or premium, but may not re-borrow any amount, once repaid. Any outstanding borrowing against the revolving line of credit bears interest at a floating rate equal to 0.70% above the prime rate. The Amendment includes customary financial covenants such as collateral ratios and minimum liquidity provisions as well aa audit provisions.

On February 11, 2022 we announced that our exclusive licensing partner in Japan, Maruho Co., Ltd. ("Maruho"), received marketing and manufacturing approval for Rapifort® Wipes 2.5% (QBREXZA®), for the treatment of primary axillary hyperhidrosis, triggering a net $2.5 million milestone payment to us. The net payment reflects a milestone payment of $10 million to us from our exclusive licensing partner Maruho, offset by a $7.5 million payment to Dermira, pursuant to the terms of the Asset Purchase Agreement between us and Dermira. In conjunction with the terms of the licensing agreement with Maruho, the milestone payment was due from Maruho within 30 days of the approval. We acquired global rights to QBREXZA® from Dermira in 2021.

On March 17, 2022, we dosed the first patient in our Phase 3 clinical trial evaluating DFD-29 (Minocycline Modified Release Capsules 40 mg) for the Treatment of Rosacea. In addition, the published phase 2 clinical data showed that DFD-29 had approximately double the efficacy compared to Doxycycline capsules 40 mg on reducing total inflammatory lesions and IGA treatment success. The trial will encompass two multicenter, randomized, double-blind, parallel-group, active and placebo-controlled Phase 3 clinical trials will each enroll up to 320 adult patients with moderate to severe papulopustular rosacea ("PPR"). One trial is enrolling patients in the United States and the other is enrolling in the United States and Europe. The studies will be randomized in a 3:3:2 ratio to DFD-29 (Minocycline Hydrochloride Modified Release Capsules, 40 mg), Oracea® (Doxycycline capsules 40 mg) or placebo once daily for 16 weeks. The primary objective of the studies is to evaluate the safety, efficacy and tolerability of DFD-29 compared to placebo for the treatment of PPR. The secondary objective is to evaluate the safety, efficacy and tolerability of DFD-29 compared to Oracea® (Doxycycline capsules 40 mg).

Our Products and Relevant Disease States

Excessive Underarm Sweating and the Current Standard of Care

Excessive underarm sweating, commonly referred to as primary axillary hyperhidrosis ("PAH"), is a rare disorder characterized by excessive sweating in the armpits. The exact cause of PAH is not known, and the disorder affects males and females equally. When excessive sweating occurs as part of some other disorder, it is said to be secondary hyperhidrosis, which is a more commonly encountered condition than is primary hyperhidrosis. According to a 2016 article published in the Archives of Dermatological Research, there are about 10 million people who suffer from PAH in the United States. The symptoms of PAH typically begin during childhood or puberty and may often, although not always, persist throughout a person's life. Affected individuals may experience a heightened reaction to certain stimuli that can cause sweating such as anxiety, pain, exercise, tension, caffeine, and/or nicotine. The symptoms of this disorder develop due to overactivity of certain sweat glands, and incidences may be precipitated by social and/or physical stress. Some people with PAH experience relief from the symptoms during adulthood without treatment or obvious reason for the remission.

Pharmacological treatment options for PAH include topical, oral and iontophoretic treatments.

Qbrexza (glycopyrronium 2.4% cloth) for the Treatment of Primary Axillary Hyperhidrosis

Qbrexza® (glycopyrronium 2.4%), a topical, once-daily anticholinergic cloth that was approved by the FDA in June 2018 for the treatment of PAH in adult and pediatric patients nine years of age and older. PAH is a medical condition with no known cause that results in underarm sweating beyond what is needed for normal body temperature regulation. Anticholinergics are a class of pharmaceutical products that exert their effect by blocking the action of acetylcholine, a neurotransmitter that transmits signals within

the nervous system that are responsible for the activation of sweat glands. Qbrexza is applied directly to the skin and is designed to block underarm sweat production by inhibiting sweat gland activation. Qbrexza has Orange Book listed patents that extend through February of 2033.

The PAH market had approximately 430,000 prescriptions in 2021, according to Symphony Health, excluding over-the-counter ("OTC") clinical strength anti-perspirants

Acne and the Current Standard of Care

Acne, also known as acne vulgaris, is a common skin disorder characterized by a blockage of hair follicles, which are clogged with oil and dead skin cells. According to the AAD, acne is the most common skin condition in the US, affecting up to 50 million individuals annually.

Approximately 85% of people between the ages of 12 and 24 experience at least a minor form of acne. The disease is classified as mild, moderate or severe based on the severity of the disease progression, which is useful in identifying an appropriate treatment regimen. Mild acne is characterized by clogged hair follicles (known as comedones) that are either exposed to air (blackheads) or closed (whiteheads), with occasional inflammatory lesions which occur primarily on the face. Moderate acne is characterized by a higher presence of inflammatory lesions known as papules and pustules across the face and extending to the trunk. Severe acne is characterized by painful, deep lesions called nodules across the face, with extensive involvement of the trunk frequently.

Treatment options are based on the severity of disease, with certain drugs being reserved for more severe forms of the disease. Mild acne is addressed with dietary and lifestyle changes, along with OTC and prescription topical agents. Other therapies with varying degrees of success include dermabrasion and chemical peels, light therapy and hormonal therapy such as birth control pills or spironolactone. Moderate acne is treated with more aggressive therapy including topical and oral antibiotics such as tetracyclines, which are particularly effective due to their antibacterial and anti-inflammatory properties, and other topical agents including benzoyl peroxide and retinoids. Severe acne is treated with combination therapies, often including oral antibiotics. For resistant cases, physicians may use a potent drug known as isotretinoin (a vitamin A analog), which requires Risk Evaluation and Mitigation Strategy ("REMS") (safety) monitoring with regard to pregnancy. The current U.S. market size for treatment of acne is considerable and estimated at approximately $3 billion annually, according to the American Medical Association.

Accutane for the Treatment of Severe Recalitrant Nodular Acne

Accutane® (isotretinoin 20mg, 30mg, and 40mg capsules USP) is indicated for the treatment of severe recalcitrant nodular acne. Accutane is used to treat a type of severe recalcitrant nodular acne that has not been helped by other treatments, including antibiotics. Severe recalcitrant nodular acne occurs when many red, swollen, tender lumps form in the skin. Patients with severe nodular acne are at higher risk of scarring. Accutane belongs to a class of drugs that affects all four major pathogenic processes in acne: increased sebum production, irregular follicular desquamation, propionibacterium acnes proliferation and inflammation. Accutane has achieved a strong market position and is well known in the dermatology community.

The oral isotretinoin market had just under 2 million prescriptions in 2020, according to Symphony Health.

Targadox for the Treatment of Severe Acne

Targadox® (doxycycline hyclate immediate release 50mg tablets) is indicated as adjunctive therapy for severe acne, which is part of a class of oral antibiotics known as tetracyclines. The tetracycline class, which includes minocycline, doxycycline, sarecycline and tetracycline, is particularly effective in treatment for more severe forms of acne due to its antibacterial and anti-inflammatory properties. Targadox is the smallest doxycycline tablet and is considered easy to swallow, which is beneficial for the 40% of American adults with dysphagia, a condition in which patients experience difficulty swallowing pills. Targadox is gluten-free, lactose-free, animal byproduct-free, and GMO-free.

The oral doxycycline market had more than 21 million prescriptions in 2021, according to Symphony Health.

AMZEEQ for the Treatment of Moderate-to-Severe Acne

AMZEEQ (4% minocycline foam), formerly known as FMX101, was approved by the FDA in October 2019 and became available in pharmacies nationwide in January 2020. AMZEEQ is a once-daily novel topical antibiotic foam formulation of minocycline for the treatment of inflammatory lesions of non-nodular moderate-to-severe acne vulgaris in patients nine years of age and older. AMZEEQ utilizes proprietary MST™ technology and is the first topical minocycline to be approved by the FDA for any condition. We believe that the combination of a well-established antibiotic in a well-tolerated, easy to use foam makes AMZEEQ a very attractive treatment option for patients.

The topical acne market had 15 million prescriptions in 2021 according to Symphony Health, presenting significant unmet needs of patients and healthcare providers to be addressed. As the first topical minocycline to be approved by the FDA for any condition, we believe that AMZEEQ may provide a new treatment alternative for patients and healthcare providers who are unsatisfied with their current therapies. AMZEEQ has Orange Book listed patents that extend through September of 2037.

Ximino for the Treatment of Inflammatory Lesions of Non-Nodular Moderate to Severe Acne

Ximino® (minocycline hydrochloride extended-release 45mg, 90mg, and 135mg capsules) is indicated for the treatment of inflammatory non-nodular lesions (pimples and red bumps) associated with moderate to severe acne. Minocycline is part of a class of oral antibiotics known as tetracyclines. Ximino encloses a small, uniform amount of the active pharmaceutical ingredient in a patented polymer wrapper through a controlled dosing capsular technology, known as Capsular Minotab Technology®, and provides a steady, controlled release of minocycline. The polymer technology in Ximino capsules is partially resistant to dissolution, so the minocycline is released over time, in a controlled manner. Ximino has Orange Book listed patents that extend through April of 2027.

The oral minocycline market had more than 3 million prescriptions in 2021, according to Symphony Health.

Fungal Infections of the Skin and the Current Standard of Care

Fungal skin infections, collectively referred to as dermatomycoses, are common infections caused by ringworms (tinea) and include such conditions as athlete's foot, jock itch and ringworm of the body. Tinea pedis, commonly known as athlete's foot, is a form of ringworm that usually develops between the toes. Symptoms include peeling, cracking and scaly feet, blisters, and skin that is red, softened, itching, or burning. Tinea cruris, commonly known as jock itch, is a form of ringworm that affects the groin. Tinea corporis, commonly known as ringworm of the body, is a fungal infection that appears on the body in which the outer part of the sore might be raised while the skin in the middle appears normal. Fungal infections caused by ringworm cause skin rashes that present as itchy, red, raised and scaly rings. These infections are easily transmissible between people, pets or contaminated objects or surfaces but are usually not serious in nature.

Treatment options typically involve topical OTC and prescription antifungal medications. Where difficult to administer topically, oral options (such as for toenail fungus or oral thrush) or suppositories (such as for vaginal yeast infections) have proven to be more effective. OTC products typically include known antifungal ingredients such as clotrimazole, miconazole, terbinafine or ketoconazole. Prescription treatments are often reserved for more serious infection or for those in hard-to-treat areas. In conjunction with OTC or prescription medications, lifestyle adjustments, including daily washing of bedding and clothing during an infection, drying thoroughly after bathing, wearing loose clothing in affected areas and actively treating infected areas, can all contribute to disinfecting your surroundings and preventing a prolongation or recurrence of infection.

Exelderm for the Treatment of Fungal Skin Infections

Exelderm® (sulconazole nitrate 1%, cream and solution) is a broad-spectrum antifungal agent indicated for the treatment of ringworm-caused fungal infections including tinea pedis, tinea cruris, tinea corporis and tinea versicolor. The active pharmaceutical ingredient (sulconazole) acts by inhibiting fungal cell division and growth and has been shown to have broad activity against candida species, aspergillus species and dermatophytes. Exelderm cream or solution is administered externally only, whereby a small amount of cream or solution is gently massaged into the affected and surrounding areas and only requires a convenient once or twice daily application. However, when used to treat tinea pedis, for which Exelderm cream is also indicated, twice daily application is required.

The topical antifungal market had more than 9 million prescriptions in 2021, according to Symphony Health.

Pruritus (Itch) and the Current Standard of Care

Pruritus or itch is defined as an unpleasant sensation of the skin that provokes the urge to scratch. It is a characteristic feature of many skin diseases and an unusual sign of some systemic diseases. Pruritus may be localized or generalized and can occur as an acute or chronic condition. Itch can be caused by a number of conditions, including skin conditions such as dry skin, eczema, psoriasis, scabies, parasites, burns, scars, insect bites and hives. Depending on the cause of itchiness, skin may appear normal, red, rough or bumpy. Repeated scratching can cause raised thick areas of skin that might bleed or become infected.

Treatment for itch may include moisturizing daily, using gentle cleansers, and bathing with lukewarm water. Long-term relief requires identifying and treating the underlying cause of itchy skin. Common treatments are prescription medicated creams and lotions, moist dressings, and oral anti-itch medicines.

Anti-Itch Product for the Treatment of Pruritus

Our recently acquired anti-itch product is indicated to treat pruritis, scabies, and other skin itch conditions ("Anti-itch Product"). Our Anti-itch Product delivers prescription relief and is non-steroidal and antihistamine free. Topical steroids are effective against itch because they reduce inflammation that can cause itch. However, they are not recommended for long-term use. Antihistamines are also effective in treating some types of itch, but they too have drawbacks with continued use. We plan on launching our Anti-itch Product through our field sales force during the second quarter of 2022.

ZILXI for Papulopustular Rosacea

ZILXI (1.5% minocycline foam), was approved by the FDA in May 2020 and became available in pharmacies nationwide in October 2020. ZILXI is a once-daily novel antibiotic foam formulation of minocycline for the treatment of inflammatory lesions of rosacea in adults. Similar to AMZEEQ, ZILXI leverages MST™ technology and is the first minocycline product of any form to be approved by the FDA for use in rosacea. We believe the anti-inflammatory properties of minocycline delivered in our innovative foam technology make ZILXI a highly appealing treatment option for rosacea patients. ZILXI has Orange Book listed patents that extend through October of 2030.

The rosacea market had 3 million prescriptions in 2021 according to Symphony Health, and we believe that ZILXI provides a new treatment alternative for patients and healthcare providers who are unsatisfied with their current therapies.

Our Strategy

We are a highly focused, pharmaceutical company dedicated to developing and commercializing therapies for the treatment of dermatologic conditions that seeks to deliver value to patients, physicians and the healthcare system, as well as to our stakeholders. Our strategic priorities include continuing to augment and grow our product portfolio and organization in order to maximize the probabilities of sustainable long-term value creation. This will consist of both commercial execution on our existing product portfolio, including lifecycle management, as well as investing in additional growth strategies through product and company acquisitions, licensing, or developing new products.

For the year ended December 31, 2021, we generated net product revenue of $63.1 million, compared to $44.5 million for the year ended December 31, 2020.

An important part of our growth strategy is to identify new business development opportunities, including development stage and commercial drugs that we may acquire from other pharmaceutical companies. On June 29, 2021, we entered into an agreement with DRL to license and acquire global ownership rights, title, and interest to DFD-29, a modified release minocycline late-stage development product that is being evaluated to treat inflammatory lesions of rosacea. Additionally, we recently acquired two FDA-approved drugs. In May 2021, we acquired global ownership rights, title, and interest to Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis) from Dermira. In December 2020, we acquired an anti-itch product from Sun, which we plan to launch in the U.S. during the second quarter of 2022. We are in various stages of discussion for other opportunities, both commercial and development stage, that could drive additional growth in the business. Successful development and commercialization of any future in-licensed development stage or commercial drugs will require us to navigate the many laws and regulations of governmental authorities and regulatory agencies around the world, including the FDA, relating to the manufacture, development, approval and commercialization of investigational drugs. For development stage drugs, we may require financial resources significantly in excess of those received by

the Company upon completion of its IPO, and it may take many years for us to receive marketing approval, if ever, for any in-licensed or acquired product candidate.

Competitive Strengths

To successfully execute our strategy, we must continue to capitalize on our following core strengths:

- Commercial leadership of our management team with a track record of commercial execution. We have a highly skilled and customer-focused management team in critical leadership positions across our Company. Our senior management team has over 135 years of sales and marketing experience in the pharmaceutical industry and a proven track record of developing businesses and creating value. We have developed, launched, commercialized, and managed brands, generating over $3 billion in peak sales, collectively, at leading dermatology organizations. This experience includes improving business performance through organic revenue growth, maximizing operational efficiencies and through the identification, consummation and integration of licensing and acquisition opportunities. Our senior management team has extensive roots in the dermatology industry, with many of them having worked at and held senior positions with Medicis Pharmaceutical, Inc. leading up to the company's acquisition by Valeant Pharmaceuticals, Inc. (now Bausch Health Pharmaceuticals, Inc.) for $2.6 billion in 2012. Our strategic approach leverages our management team's experience with the capabilities of our field sales force to drive performance based on prescribing habits, brand preferences, promotional strategies and profit optimization while focusing on customer service excellence for our providers and their patients. Our execution to date has led to market-leading positions for three of our established brands, Targadox, Ximino, and Exelderm, in each of their respective markets.

- Performance and experience of our accomplished field sales force. Our seasoned field sales force includes 70 professionals with an average tenure of over 11 years of experience in dermatology sales. Each of these individuals have deep-rooted and longstanding customer relationships in their respective territories. We have strategically optimized our sales outreach to cover over 80% of dermatologists in the top 50 U.S. metropolitan statistical areas and over 70% of the overall dermatology prescribing market. We are able to leverage the experience of our field sales force to create a tailored and entrepreneurial compensation plan that incentivizes our field sales force and aligns their activities with our corporate performance and growth objectives. We intend to continue to build a team of committed, experienced employees and to engage with patients and members of the dermatology community. Additionally, we believe that consolidation in the medical dermatology industry has resulted in an enhanced opportunity for a medical dermatology-focused company to build relationships with these stakeholders and has made available a large and growing talent pool of experienced individuals who can make significant contributions to our Company.

- Unique and differentiated access and distribution model. We have a unique and differentiated access and distribution network of over 600 specialty pharmacies and wholesalers, where we directly sell our products, with limited distribution through traditional national wholesalers. This decentralized approach allows us to maximize our brand equity across our product portfolio through strategic relationships directly with pharmacies and allows us to provide exceptional customer service and access to patients and physicians.

- Active business development initiative. Business development plays a vital role in our growth strategy as we look to build scale. We consistently evaluate both strategic add-on deals that leverage our existing infrastructure, as well as more transformative assets that would require building out or restructuring our field sales force. We have extensive relationships in the industry that help us stay abreast of developments in our space and continually monitor new opportunities. We believe that we are an ideal partner for development stage companies with limited or no commercial capabilities, as well as established pharmaceutical companies looking to deprioritize their dermatology portfolio. We have ongoing discussions with an array of companies, including traditional large pharma, mid-size specialty pharma companies and smaller companies that focus on research and development, although we have not entered into any definitive agreements or arrangements.

- Focus on cost management and efficient capital allocation. We have operated in a cost-conscious and capital efficient manner since inception. In addition to our internal leadership and management team, we have access to over 30 Fortress employees who possess significant expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations and manufacturing. In November 2021, we entered into a shared services agreement with Fortress for them to continue to provide consulting services and for the continued use of their personnel. As part of our emphasis on cost effectiveness with our resources, we endeavor to structure licenses and product acquisitions for future product opportunities in a capital efficient manner that allows us to minimize indebtedness and compensate partner companies through future profits and commercial benchmarks.

Major Customers

We primarily sell our prescription products to specialty pharmacies, independent wholesalers, and distributors with limited sales through the traditional national wholesaler channels. Our wholesalers and distributors purchase products from us and, in turn, supply products to retail drug store chains, independent pharmacies and managed care organizations. Customers in the managed care market include health maintenance organizations, group purchasing organizations, nursing homes, clinics, pharmacy benefit management companies and mail order customers.

License & Collaboration Agreements and Acquisitions

We continue to seek to enhance our product line and develop a balanced portfolio of differentiated products through product acquisitions and in-licensing or acquiring rights to products and technologies from third parties. We intend to enter into strategic alliances and collaborative arrangements with third parties, which will give us rights to develop, manufacture, market and/or commercialize pharmaceutical products, the rights to which are primarily owned by these third parties. These alliances and arrangements can take many forms, including licensing arrangements, co-development and co-marketing agreements, co-promotion arrangements, research collaborations and joint ventures. Such alliances and arrangements will potentially enable us to share the risk of incurring all research and development expenses that do not lead to revenue-generating products. However, because profits from alliance products are shared with the counterparties to the collaborative arrangement, the gross margins on alliance products are generally lower, sometimes substantially so, than the gross margins that could be achieved had we not opted for a development partner.

Environmental Matters

Our operations are subject to substantial federal, state and local environmental laws and regulations concerning, among other matters, the generation, handling, storage, transportation, treatment and disposal of, and exposure to, hazardous substances. Violation of these laws and regulations, which may change, can lead to substantial fines and penalties. Many of our third-party operations require environmental permits and controls to prevent and limit pollution of the environment. We believe that the facilities of our third-party service providers are in substantial compliance with applicable environmental laws and regulations and we do not believe that future compliance will have a material adverse effect on our business, financial condition, results of operations or cash flows.

Employees and Human Capital Management

As of December 31, 2021, we had 90 employees and contractors. These employees and contractors include 70 in sales as well as 20 in marketing, general and administrative positions. We currently rely, and may continue to rely, on professional employer organizations and staffing organizations for the employment of our field sales force. Additionally, we have retained a number of expert advisors and consultants that help navigate us through different aspects of our business. We consider our relations with our employees to be good and have not experienced any work stoppages, slowdowns or other serious labor problems that have materially impeded our business operations.

Our human capital management objectives include, as applicable, identifying, recruiting, retaining, incentivizing, and integrating our new and existing employees. The principal purpose of our equity incentive plan is to attract, retain, and motivate selected employees, consultants, and directors through the granting of stock-based compensation awards and cash-based bonus awards.

Additionally, we have access to over 30 Fortress employees and consultants, who possess significant expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations and manufacturing.

Geographic Areas

All of our product revenues are generated from operations or otherwise earned within the U.S.

Seasonality of Business

Our business is affected by the standard annual insurance deductible resets, as well as the purchasing patterns and concentration of our customers; however, our business is not materially impacted by seasonality. There are no assurances that these historical trends will continue in the future.

Relationship with Fortress

General

We have a seven-year operating history. We are a majority owned subsidiary of Fortress. Fortress is a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates at its majority-owned and majority-controlled subsidiaries and joint ventures, and at entities founded by Fortress and in which it maintains significant minority ownership positions. Fortress has a talented and experienced business development team, comprised of scientists, doctors, and finance professionals, who identify, evaluate, and propose for our consideration promising products and product candidates.

Fortress Note

Since the Company's inception in October 2014, Fortress has funded the Company's operations through a working capital loan future advance promissory note (the "Fortress Note"). In connection with the closing of our IPO on November 16, 2021, the balance of the Fortress Note reflecting $14.8 million converted into 1,476,044 shares of Journey common stock.

Research & Development Opportunities

We recently entered into an agreement with DRL, in which we agreed to fund the Phase III studies for the DFD-29 development program and subsequently seek approval for a New Drug Application ("NDA") with the FDA. In addition, we are also required to pay for certain regulatory costs and expenses for services to be provided by DRL. Our near-term focus may also be to acquire and sponsor, co-sponsor and/or invest in additional clinical-stage or preclinical programs that have a strategic fit with our corporate strategy. We actively and routinely evaluate development-stage opportunities in the ordinary course of our business development activities.

Product Licensing Agreements and Acquisitions

Amzeeq, Zilxi, FCD105 and the Molecule Stabilizing Technology Platform

On January 12, 2022, Journey Medical Corporation ("Journey" or the "Company") entered into an Asset Purchase Agreement (the "APA") with VYNE Therapeutics, Inc. ("VYNE") to acquire VYNE's Molecule Stabilizing Technology™ franchise (the "Acquisition") for an upfront payment of $20.0 million, with an additional $5.0 million payment due on the one-year anniversary of the closing of the Acquisition. The APA also provides for contingent net sales milestone payments: in the first calendar year in which annual sales reach each of $100 million, $200 million, $300 million, $400 million and $500 million, a one-time payment of $10 million, $20 million, $30 million, $40 million and $50 million, respectively, will be paid in that year only, per product, totaling up to $450.0 million. In addition, Journey will pay VYNE 10% of any upfront payment received by Journey from a licensee or sublicensee of the products in any territory outside of the United States, subject to exceptions for certain jurisdictions as detailed in the APA. There are no subsequent milestone payments or royalties beyond the aforementioned payments. The Acquisition included two FDA-approved products (AMZEEQ and ZILXI), and a development-stage dermatology program (FCD105), along with the Molecule Stabilizing Technology proprietary platform.

DFD-29 Agreement

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with DRL to obtain the global rights for the development and commercialization of DFD-29, a late-stage development modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea (the "DFD-29 Agreement"). We acquired global rights to DFD-29, including in the U.S. and Europe, except that DRL has retained certain rights to the program in select markets including Brazil, Russia, India and China. Pursuant to the DFD-29 Agreement, we agreed to pay an upfront payment of $10.0 million, comprised of a $2 million payment upon execution and $8 million which was paid on September 29, 2021, 90 days following execution, with additional contingent regulatory, commercial, and corporate-based milestone payments, totaling up to $163.0 million. Royalties ranging from ten percent to twenty percent are payable on net sales of the product. Royalties are payable in each country until the last to expire patent in such country expires. Royalties are subject to a 50% reduction in the event that a generic competitor launches in an applicable country where we market and sell the product. We are responsible for the prosecution and enforcement of patents licensed under the agreement. The agreement contains customary representations, warranties, and indemnities, and title transfers to us on the date of achievement of certain regulatory milestones set forth in the agreement, after which our licenses become our acquired assets. Each party may also terminate the DFD-29 Agreement for material breach by the other party or for certain bankruptcy or insolvency related events. Additionally, we

agreed to fund and oversee the Phase III clinical trials, approximating $24.0 million, based upon the most recent development plan and budget, which is subject to change.

The DFD-29 Agreement will remain in effect on a country-by-county basis until the expiration of the revenue percentage term in the relevant country, which period begins on the first commercial sale of a product in that country and ends upon the expiration or invalidation date of the last revenue generating patent in such country. The DFD-29 Agreement terminates in its entirety upon the expiry of the revenue percentage term in the last country covered under the DFD-29 Agreement. Either party may terminate the DFD-29 Agreement upon material breach, subject to the cure period applicable to the relevant breach.

Qbrexza Agreement

On March 31, 2021, we executed an asset purchase agreement for Qbrexza® (the "Qbrexza APA") with Dermira, pursuant to which we acquired global ownership to Qbrexza® (glycopyrronium), a prescription cloth towelette approved to treat primary axillary hyperhidrosis in people nine years of age and older. The transaction closed on May 14, 2021, and pursuant to the Qbrexza APA, we made an upfront $12.5 million cash payment to Dermira. Dermira is eligible to receive cash payments of up to $144 million in the aggregate upon the achievement of certain milestones. For the first two years, we are required to pay royalties on sales ranging from the mid-thirty to the mid-twenty percent and, thereafter royalties ranging from the lower teen digits to the upper teen digits are payable on net sales of Qbrexza products. Subject to certain reductions, royalties are payable for a period of eight years. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the Qbrexza APA for material breach by the other party or for certain bankruptcy or insolvency related events.

As part of the Qbrexza APA, we were assigned an exclusive license agreement with Rose University ("Rose U") pursuant to which we obtained a worldwide exclusive license within a field of use including hyperhidrosis to practice, enforce and otherwise exploit certain patent rights, know-how and data related to Qbrexza. The license agreement with Rose U included a sublicense of certain data and an assignment of certain regulatory filings which Rose U had obtained from Stiefel Laboratories ("Stiefel"). In connection with the license agreement, we assumed Rose U's obligations to Stiefel to use commercially reasonable efforts to develop and commercialize products using the licensed patent rights, know-how and data.

Pursuant to these agreements with Rose U and the related agreement with Stiefel with respect to Qbrexza, we are obligated to pay Rose U low-to-mid single-digit royalties on net product sales and low double-digit royalties on sublicense fees and certain milestone, royalty and other contingent payments received from sublicensees, to the extent such amounts are in excess of the milestone and royalty payments we are obligated to pay Rose U directly upon the events or sales triggering such payments.

We are permitted to grant sublicenses to the licensed rights and may assign the agreements upon our acquisition or that of our assets that relate to the license agreement. We may terminate the license agreement if Rose U experiences certain insolvency events or if Rose U commits a material breach of the license agreement, subject to applicable cure provisions. Rose U may terminate the license in certain circumstances if we experience certain insolvency events or if we commit a material breach of the license agreement or if we cause Rose U to be in material breach of its license agreement with Stiefel, subject in each case to applicable cure provisions. Subject to earlier termination, the license agreement remains in effect until 15 years following the first commercial sale of a licensed product have elapsed or, if later, the date that the last patent or patent application in the licensed patent rights has expired or been revoked, invalidated or abandoned. As of December 31, 2021, the last-to-expire issued patent relating to Qbrexza that we license under the license agreement with Rose U expires in 2029.

On February 11, 2022 we announced that our exclusive licensing partner in Japan, Maruho Co., Ltd. ("Maruho"), received marketing and manufacturing approval for Rapifort® Wipes 2.5% (QBREXZA®), for the treatment of primary axillary hyperhidrosis, triggering a net $2.5 million milestone payment to us. The net payment reflects a milestone payment of $10 million to us from our exclusive licensing partner in Maruho, offset by a $7.5 million payment to Dermira, pursuant to the terms of the Asset Purchase Agreement between us and Dermira. In conjunction with the terms of the licensing agreement with Maruho, the milestone payment was due from Maruho within 30 days of the approval. We acquired global rights to QBREXZA® from Dermira in 2021.

Accutane Agreement

On July 29, 2020, we entered into a license and supply agreement for Accutane® ("Accutane Agreement") with DRL. Pursuant to the Accutane Agreement, we agreed to pay $5.0 million, comprised of an upfront payment of $1.0 million paid upon execution, with additional milestone payments totaling $4.0 million. To date, we have paid $2.0 million of the additional milestone payments. Three additional milestone payments totaling $17.0 million are contingent upon the achievement of certain net sales milestones. Royalties in the low-double digits based on net sales, subject to specified reductions are also due.

The term of the Accutane Agreement is ten years and renewable upon mutual agreement. We are required to pay royalties during the term of the Accutane Agreement. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the Accutane Agreement for material breach by the other party or for certain bankruptcy or insolvency related events and we may terminate for upon 180 days written notice to the other party. We commenced sales of this product in April 2021.

Targadox Agreement

On March 10, 2015, we entered into a license and supply agreement (as amended) for Targadox® (the "Targadox Agreement") with PuraCap International LLC n/k/a Caribe Holdings, Inc. ("Caribe"). We made an upfront payment of $1.3 million. Further payments will be made based on a revenue sharing arrangement, no additional licensing or milestone payments are required. The term of the Targadox Agreement is ten years and automatically renews for three-year periods unless either party provides notice of its intent not to renew at least 180 days prior to the expiration of the applicable term. Under our revenue sharing arrangement, we are entitled to retain a majority of the net profits and pay Caribe portion of the net profits after deducting certain commercial, marketing and sales expenses during the term of the Targadox Agreement. The Targadox Agreement contains customary representations, warranties, and indemnities. Each party may also terminate the Targadox Agreement for material breach by the other party or for certain bankruptcy or insolvency related events. We commenced sales of this product in October 2016.

Ximino Agreement

On July 22, 2019, we entered into an asset purchase agreement for Ximino® (the "Ximino APA") with Sun Pharmaceutical Industries, Inc. ("Sun"). Pursuant to the Ximino APA, total consideration is $9.4 million, with an upfront payment of $2.4 million, payable within 60 days after execution on September 22, 2019.

The remaining $7.0 million will be made starting on the second anniversary and for the next four anniversaries of the Ximino APA thereafter. In addition, we are obligated to pay royalties in the mid-single digits based on net sales of Ximino, subject to specified reductions until the end of 2022. The Ximino APA contains customary representations, warranties, and indemnities. Each party may also terminate the Ximino APA for material breach by the other party or for certain bankruptcy or insolvency related events. No additional licensing or milestone payments are required. We commenced sales of this product in August 2019.

Exelderm Agreement

On August 31, 2018, we entered into an asset purchase agreement for Exelderm® (the "Exelderm APA") with Sun. Pursuant to the Exelderm APA, total consideration is $1.6 million, comprised of an upfront payment of $1.2 million payable within 60 days after execution on October 31, 2018. The remaining milestone payment was contingent upon net sales reaching a certain threshold, at which point a $0.4 million payment became due. This threshold was achieved in 2020 and paid in early 2021. We are obligated to pay royalties in the low-double digits based on net sales of Exelderm until the end of 2023, and no additional licensing or milestone payments are required. Each party may also terminate the Exelderm APA for material breach by the other party or for certain bankruptcy or insolvency related events. We commenced sales of this product in August 2018.

Anti-Itch Product Agreement

On December 18, 2020, we entered an asset purchase agreement for our Anti-itch Product (the "Anti itch APA") with Sun. Pursuant to the Anti-itch APA, total consideration is $4.0 million, comprised of an upfront payment of $2.0 million, payable upon execution. Through December 31, 2021, we have paid $3.0 million and have additional future payments of $1.0 million. The Anti-itch APA contains customary representations, warranties, and indemnities. Each party may terminate the Anti-itch APA for material breach by the other party. There are no subsequent milestone payments or royalties beyond the aforementioned payments. We intend to launch this product during the second quarter of 2022.

Research and Development

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with DRL to obtain the global rights for the development and commercialization of DFD-29, a late-stage development modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea. We acquired global rights to DFD-29, including in the U.S. and Europe, except that DRL has retained certain rights to the program in select markets, including Brazil, Russia, India and China. Through this collaboration, the parties will work together to complete the development of DFD-29, which includes conducting two Phase III studies to assess the efficacy, safety and tolerability of oral DFD-29 for the treatment of rosacea and the regulatory submission of an NDA under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act ("FDCA"). DRL will provide development support, including the monitoring of two Phase III clinical trials. The Phase III trials have not yet begun; however, the planned design Phase III trial is consistent with the Phase II study. Additionally, we plan to initiate the Phase III trials in the first quarter of 2022 with top-line data expected in the second half of 2022 and an anticipated NDA filing in the second half of 2023.

The Phase II study, conducted in Germany, was a multi-center, randomized, double-blinded, parallel group, controlled study that assessed the efficacy, safety and tolerability of oral DFD-29 (20mg and 40mg) extended release minocycline hydrochloride capsules for the treatment of inflammatory lesions of rosacea over 16 weeks. Initial patient enrollment in the Phase II study included 205 male and female subjects with papulopustular rosacea. 160 subjects completed the study. Each subject was allocated to one of the following treatment groups, and received one capsule once daily, in the morning, for 16 weeks: i) DFD-29 40 mg extended release capsules (with 47 subjects at completion); ii) DFD-29 20mg extended release capsules (with 38 subjects at completion); iii) Oraycea® (doxycycline) capsules (with 40 subjects at completion); and iv) placebo capsules (with 35 subjects at completion). The study showed that DFD-29 40mg had statistical significance to both placebo and the active control, Oraycea® (German equivalent of U.S. marketed Oracea®), on both co-primary endpoints - proportion of subjects with Investigator's Global Assessment ("IGA") treatment success (grade 0 or 1 with at least a two grade reduction from baseline at week 16 and total inflammatory lesion count reduction from baseline to week 16. More information on the DFD-29 Phase II study can be found at clinicaltrials.gov. Highly statistically significant difference in IGA success could be shown for DFD-29 40mg compared to placebo ($p < 0.0001$) as well as compared to Oraycea ($p= 0.0010$). Highly statistically significant treatment difference was also observed in the co-primary endpoint mean change in total inflammatory lesion count as well in both DFD-29 40mg compared to placebo ($p < 0.0001$) and DFD-29 40mg compared to Oraycea ($p = 0.0004$). All statistical tests used were two-sided, with $\alpha=0.05$ as level of significance. There were no related serious adverse events reported during the study for those subjects who were studied with DFD-29 40mg.

We rely on, and partner with, other companies to develop product candidates and third-party contract research organizations ("CROs") to conduct clinical trials on our behalf. For example, our agreement with DRL for the regulatory submission and approval for DFD-29 is heavily reliant on DRL's ability to conduct clinical manufacturing for clinical supply of product, attending FDA meetings, advising on the Phase III study design, assisting in identifying third-party CROs, and drafting and advising on the NDA and other regulatory submissions. Our reliance on third-party CROs may adversely affect our development timelines if the third-party CROs do not meet the requirements or satisfy the obligations required to obtain regulatory approval. Any significant delays caused by our collaboration partner or third-party CROs may have an adverse effect on our development timelines or otherwise may delay approval and commercialization of DFD-29.

Intellectual Property

General

We rely on a combination of contractual provisions, confidentiality policies and procedures and patent, trademark, copyright and trade secrecy laws to protect the proprietary aspects of our technology and business. Three of our marketed products, Accutane, Targadox, and Exelderm, do not have patent protection and/or otherwise not eligible for patent protection. As part of our development and acquisition strategy, we place a strong emphasis on the patent protection for potential products.

Four of our marketed products, Qbrexza Amzeeq, Zilxi, and Ximino, as well as DFD-29, currently have patent protection.

Qbrexza Patents

We own or have an exclusive license to 22 issued U.S. patents and 41 issued foreign patents, which include granted European patent rights that have been validated in selected European Patent Organization ("EPO") member states (Switzerland, Germany, Spain, France, Great Britain, Ireland, and Italy), Australia, Canada, Mexico, Israel, Japan, Hong Kong, Korea, and New Zealand, Singapore, and South Africa, and six pending U.S. patent applications, one pending Patent Cooperation Treaty application, and 16 pending foreign patent applications. Of these patents and patent applications:

There are 15 issued U.S. patents, 28 issued foreign patents (AU, CA, selected EP member states, Mexico, Japan, Hong Kong, Korea, New Zealand, Singapore, and South Africa), four pending U.S. patent applications and eight pending foreign applications (in Canada, the European Patent Office, Mexico, Japan, Hong Kong, and Korea) as well as one pending PCT application, all relating to Qbrexza. We own 11 of the issued U.S. patents, three of the pending U.S. patent applications, 18 of the issued foreign patents, and six of the pending foreign applications, and have exclusively licensed from Rose U worldwide rights to four of the issued U.S. patents, one pending U.S. patent application, ten issued foreign patents, and two pending foreign patent applications. The issued Qbrexza patents contain claims directed to individually packaged wipes for the treatment of hyperhidrosis where the wipes contain a composition comprising Qbrexza or other related compounds, and methods of alleviating hyperhidrosis using such compositions and contain claims directed to compositions comprising Qbrexza or other related compounds, individually packaged wipes comprising such compositions, absorbent pads comprising Qbrexza pharmaceutical compositions and methods of treating hyperhidrosis with topical administration of Qbrexza or other related compounds. The issued U.S. and foreign patents relating to Qbrexza will expire between 2028 and 2033 and the pending U.S. and foreign patent applications relating to Qbrexza, if issued, will expire between 2028 and 2034.

Amzeeq, Zilxi & the Molecular Stabilizing Technology Platform

We own 25 issued U.S. patents and 10 issued foreign patents, and 7 pending U.S. patent applications, 1 pending Patent Cooperation Treaty application, and 6 pending foreign patent applications. Of these patents and patent applications:

- There are 12 issued U.S. patents, 10 issued foreign patents (Australia, Canada, Israel, Mexico, South Africa), 3 pending U.S. patent applications and 5 pending foreign applications (India, Canada, EPO, Israel, Mexico) as well as 0 pending PCT applications, all relating to Amzeeq. The issued Amzeeq patents contain claims directed to compositions and use of the compositions (method claims). The issued U.S. and foreign patents relating to Amzeeq will expire between 2030 and 2037 and the pending U.S. and foreign patent applications relating to Amzeeq will expire between 2030 and 2037.

- There are 8 issued U.S. patents, 9 issued foreign patents (Australia, Canada, Israel, Mexico, South Africa), 2 pending U.S. patent applications and 4 pending foreign applications (India, EPO, Canada), all relating to Zilxi. The issued Zilxi patents contain claims directed to compositions and use of the compositions (method claims). The issued U.S. and foreign patents relating to Zilxi will expire between 2030 and 2037 and the pending U.S. and foreign patent applications relating to Zilxi will expire between 2030 and 2037.

- Other Patents related to MST but not products directly are 11 issued U.S. patents, 3 pending U.S. patent applications, and 2 pending foreign applications (Canada and Taiwan) as well as 1 pending PCT application. The issued U.S. patents will expire between 2028 and 2030 and the pending U.S. and foreign patent applications will expire between 2020 and 2040.

DFD-29 Patents

With regard to DFD-29, we have an exclusive license to one U.S. patent family including two issued U.S. patents, one allowed U.S. patent application, and one soon-to-be-filed U.S. continuation application, as well as eight foreign pending patent applications (one in each of Australia, Canada, Europe, Japan, Korea, Mexico, New Zealand, and South Africa) covering methods of treating an inflammatory skin condition by selecting and administering an oral composition comprising reduced dose of minocycline and the relevant pharmacokinetic parameters, and we intend to pursue composition-of-matter patents, where possible, and dosage and formulation patents, as well as method-of-use patents on novel indications for known compounds. The two issued U.S. patents will expire in 2039.

Ximino Patents

In addition, we have an exclusive license to patents related to Ximino, including six issued U.S. patents. These patents cover the Ximino, methods of treatment, and related dosage forms and strengths, and will expire between 2025 and 2027.

Additional Intellectual Property and Proprietary Right Protection

We also use other forms of protection, such as trademark, copyright, and trade secret protection, to protect our intellectual property, particularly where we do not believe patent protection is appropriate or obtainable. We aim to take advantage of all of the intellectual property rights that are available to us and believe that this comprehensive approach will provide us with proprietary positions for our product candidates, where available. Patents extend for varying periods according to the date of patent filing or grant and the legal term of patents in various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country.

Our goal is to obtain, maintain and enforce patent protection for our products, formulations, processes, methods and other proprietary technologies, to preserve our trade secrets, and to operate without infringing on the proprietary rights of other parties, both in the United States and in other countries. Our policy is to actively seek to obtain, where appropriate, the broadest intellectual property protection possible for any product candidates, proprietary information and proprietary technology through a combination of contractual arrangements and patents, both in the U.S. and elsewhere in the world.

Patents and other proprietary rights are crucial to the development of our business. We will be able to protect our proprietary technologies from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents, supported by regulatory exclusivity, or are effectively maintained as trade secrets.

Generally, patent applications in the U.S. are maintained in secrecy for a period of 18 months or more. The patent positions of biotechnology and pharmaceutical companies are highly uncertain and involve complex legal and factual questions. Therefore, we cannot predict the breadth of claims allowed in biotechnology and pharmaceutical patents, or their enforceability. To date, there has been no consistent policy regarding the breadth of claims allowed in biotechnology patents. Third parties or competitors may challenge or circumvent our patents or patent applications, if issued. If our competitors prepare and file patent applications in the U.S. that claim technology also claimed by us, we may have to participate in derivation proceedings declared by the USPTO to determine proper inventorship of a claimed of invention, which could result in substantial cost, even if the eventual outcome is favorable to us. Because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that before we commercialize any of our products, any related patent may expire or remain in existence for only a short period following commercialization, thus reducing any advantage of the patent. However, the life of a patent covering a product that has been subject to regulatory approval may be extended through the patent term restoration program, although any such extension could still be minimal.

If a patent is issued to a third party containing one or more preclusive or conflicting claims, and those claims are ultimately determined to be valid and enforceable, we may be required to obtain a license under such patent or to develop or obtain alternative technology, neither of which may be possible. In the event of litigation involving a third-party claim, an adverse outcome in the litigation could subject us to significant liabilities to such third party, require us to seek a license under the disputed rights of such third party, and/or require us to cease use of the technology. Moreover, our breach of an existing license or failure to obtain a license to technology required to commercialize our products may seriously harm our business. We also may need to commence litigation to enforce any patents issued to us or to determine the scope and validity of third-party proprietary rights. Litigation would involve substantial costs.

Other Intellectual Property Rights

We depend upon trademarks, trade secrets, and continuing technological advances to develop and maintain our competitive position. We also depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as that of our advisors, consultants and other contractors. This knowledge and experience we call "know-how." To help protect our proprietary know-how that is not patentable, and for inventions for which patents may be difficult to enforce, we rely on trade secret protection and confidentiality agreements to protect our interests. To this end, we require all employees, scientific advisors, consultants, collaborators and other contractors, upon commencement of a relationship with us, to enter into confidentiality agreements, which prohibit the disclosure of confidential information and, in the case of parties other than our research and development collaborators, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements are designed to protect our proprietary information and to grant us ownership of technologies that are developed in connection with their relationship with us. These agreements may not; however, provide protection for our trade secrets in the event of unauthorized disclosure of such information.

There can be no assurance that any of our patents, licenses or other intellectual property rights will afford us any protection from competition or that our confidentiality agreements will not be breached, that we will have adequate remedies for any breach, that others will not independently develop equivalent proprietary information or that other third parties will not otherwise gain access to our trade secrets and other intellectual property.

We may find it necessary to initiate litigation to enforce our patent rights, to protect our intellectual property or trade secrets or to determine the scope and validity of the proprietary rights of others. Litigation is costly and time-consuming and there can be no assurance that our litigation expenses will not be significant in the future or that we will prevail in any such litigation.

Competition

Pharmaceutical Industry

Our competitors include pharmaceutical companies and biotechnology companies, as well as universities and public and private research institutions. In addition, companies that are active in different but related fields represent substantial competition for us. Many of our competitors have significantly greater capital resources, larger research and development staffs and facilities and greater experience in drug development, regulation, manufacturing and marketing than we do. These organizations also compete with us to recruit qualified personnel, attract partners for joint ventures or other collaborations, and license technologies that are competitive with ours. To compete successfully in this industry, we must identify novel and unique drugs or methods of treatment and then complete the development of those drugs as treatments in advance of our competitors.

Dermatology Sector

The dermatology competitive landscape is highly fragmented, with a large number of midsize and smaller companies competing in both the prescription sector and the OTC sector. Our competitors are pursuing the development and/or acquisition of pharmaceuticals, medical devices and OTC products that target the same diseases and conditions that we are targeting in dermatology. Competitive factors vary by product line and geographic area in which our products are sold. The principal methods of competition for our products include quality, efficacy, market acceptance, price, and marketing and promotional efforts.

Branded products often must compete with therapeutically similar branded or generic products or with generic equivalents. Such competition frequently increases over time. For example, if competitors introduce new products, delivery systems or processes with therapeutic or cost advantages, our products could be subject to progressive price reductions and/or decreased volume of sales. To successfully compete for business, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care. Accordingly, we face pressure to continually seek out technological innovations and to market our products effectively.

Our major competitors, including Galderma Laboratories, Sol-Gel Technologies, Almirall, Verrica Pharmaceuticals, Cassiopea, MC2 Therapeutics, EPI Health, Sun Pharma, Leo Pharma, Arcutis Biotherapeutics, Mayne Pharma, and Ortho Dermatologics, among others, vary depending on therapeutic and product category, dosage strength and drug-delivery systems, among other factors.

Generic Competition

We face increased competition from manufacturers of generic pharmaceutical products, who may submit applications to the FDA seeking to market generic versions of our products. In connection with these applications, the generic drug companies may seek to challenge the validity and enforceability of our patents through litigation. When patents covering certain of our products (if applicable) expire or are successfully challenged through litigation or in USPTO proceedings, if a generic company launches a competing product "at risk," or when the regulatory or licensed exclusivity for our products (if applicable) expires or is otherwise lost, we may face generic competition as a result. Generic versions are generally significantly less expensive than branded versions, and, where available, may be required to be utilized before or in preference to the branded version under third-party reimbursement programs, or substituted by pharmacies. Accordingly, when a branded product loses its market exclusivity, it normally faces intense price competition from generic forms of the product. To successfully compete for business with managed care and pharmacy benefits management organizations, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care. Generic products generally face intense competition from other generic equivalents (including authorized generics) and therapeutically similar branded or generic products.

Supply and Manufacturing

We have limited experience in manufacturing products for clinical or commercial purposes, and we currently do not have any internal manufacturing capabilities. We currently rely upon multiple contract manufacturers to produce our products and clinical supply of product candidates and will continue to rely upon contract manufacturers for any current or future product candidates under current Good Manufacturing Practice ("cGMP") regulations for use in pre-clinical and clinical activities. Due to the risks associated with reliance on third-party manufacturing risk, as part of our current and future strategy of licensing, acquiring, or the future development of assets, we currently, and will continue to, secure manufacturing agreements with either a counterparty to a transaction, with one or more of our contract manufacturers or additional contract manufacturers. As with any supply program, obtaining raw materials of the correct quality cannot be guaranteed, and we cannot ensure that we will be successful. Our third-party manufacturers have a limited number of facilities in which our product candidates can be produced and may have limited experience in manufacturing our product candidates in quantities sufficient for commercialization. Our third-party manufacturers will have other clients and may have other priorities that could affect their ability to perform the work satisfactorily and/or on a timely basis. Both of these occurrences would be beyond our control. We expect to similarly rely on contract manufacturing relationships for any products that we may in-license or acquire in the future. However, there can be no assurance that we will be able to successfully contract with such manufacturers on terms acceptable to us, or at all.

Contract manufacturers are subject to ongoing periodic and unannounced inspections by the FDA, the Drug Enforcement Administration and corresponding state and European agencies to ensure strict compliance with cGMPs and other state and federal regulations. We do not have control over third-party manufacturers' compliance with these regulations and standards, other than through contractual obligations. If they are deemed out of compliance with cGMPs, product recalls could result, inventory could be destroyed, production could be stopped, and supplies could be delayed or otherwise disrupted.

If we need to change manufacturers during the clinical or development stage for product candidates or after commercialization for our approved products, the FDA and corresponding foreign regulatory agencies must approve these new manufacturers in advance, which will involve testing and additional inspections to ensure compliance with FDA regulations and standards and may require significant lead times and delay. Furthermore, switching manufacturers may be difficult because the number of potential manufacturers is limited. It may be difficult or impossible for us to find a replacement manufacturer quickly or on terms acceptable to us, or at all.

Government and Industry Regulations - Overview

FDA Regulations

Numerous governmental authorities, principally the FDA and corresponding state and foreign regulatory agencies, impose substantial regulations upon any potential clinical development and the manufacture and marketing of our products. Before marketing in the U.S., any drug that we may develop must undergo rigorous pre-clinical testing and clinical trials and an extensive regulatory approval process implemented by the FDA under the FDCA. The FDA regulates, among other things, the pre-clinical and clinical testing, safety, efficacy, approval, manufacturing, record keeping, lot traceability, individual serialization, adverse event reporting, packaging, labeling, storage, advertising, promotion, export, sale and distribution of biopharmaceutical products.

The regulatory review and approval process is lengthy, expensive and uncertain. In the event that we acquire or develop a clinical stage asset, we will be required to submit extensive pre-clinical and clinical data and supporting information to the FDA for each indication or use to establish a product candidate's safety and efficacy before we can secure FDA approval to market or sell a product in the U.S. The approval process may take many years, depending on the stage of development of a target asset, and requires the expenditure of substantial resources and may involve ongoing requirements for post-marketing studies or surveillance.

Clinical testing must meet requirements for institutional review board oversight, informed consent and good clinical practices, and must be conducted pursuant to an Investigational New Drug ("IND") Application unless exempted.

For purposes of NDA approval, clinical trials are typically conducted in the following sequential phases:

Phase 1:

➢The drug is administered to a small group of humans, either healthy volunteers or patients, to test for safety, dosage tolerance, absorption, metabolism, excretion and clinical pharmacology.

Phase 2:

➢Studies are conducted on a larger number of patients to assess the efficacy of the product, to ascertain dose tolerance and the optimal dose range, and to gather additional data relating to safety and potential adverse events.

Phase 3:

➢Studies establish safety and efficacy in an expanded patient population.

Phase 4:

➢The FDA may require Phase 4 post-marketing studies to find out more about the drug's long-term risks, benefits, and optimal use, or to test the drug in different populations.

The length of time necessary to complete clinical trials varies significantly and may be difficult to predict. Clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals. Additional factors that can cause delay or termination in future clinical trials, or that may increase the costs of these trials, include:

- slow patient enrollment due to the nature of the clinical trial plan, the proximity of patients to clinical sites, the eligibility criteria for participation in the study or other factors;
- inadequately trained or insufficient personnel at the study site to assist in overseeing and monitoring clinical trials or delays in approvals from a study site's review board;
- longer treatment time required to demonstrate efficacy or determine the appropriate product dose;
- insufficient supply of the drug candidates;
- adverse medical events or side effects in treated patients; and
- ineffectiveness of the drug candidates.

In addition, the FDA, equivalent foreign regulatory authority, or a data safety monitoring committee for a trial may place a clinical trial on hold or terminate it if it concludes that subjects are being exposed to an unacceptable health risk, or for futility. Any drug is likely to produce some toxicity or undesirable side effects in animals and in humans when administered at sufficiently high doses and/or for a sufficiently long period of time. Unacceptable toxicity or side effects may occur at any dose level at any time in the course of studies in animals designed to identify unacceptable effects of a drug candidate, known as toxicological studies, or clinical trials of drug candidates. The appearance of any unacceptable toxicity or side effect could cause us or regulatory authorities to interrupt, limit, delay or abort the development of any of our drug candidates and could ultimately prevent approval by the FDA or foreign regulatory authorities for any or all targeted indications.

Sponsors of drugs may apply for a special protocol assessment ("SPA") from the FDA. The SPA process is a procedure by which the FDA provides official evaluation and written guidance on the design and size of proposed protocols that are intended to form the basis for an NDA. However, final marketing approval depends on the results of efficacy, the adverse event profile and an evaluation of the benefit/risk of treatment demonstrated in the Phase 3 trial. The SPA agreement may only be changed through a written agreement between the sponsor and the FDA, or if the FDA becomes aware of a substantial scientific issue essential to product safety or efficacy.

Before receiving FDA approval to market a product, we must demonstrate that the product is safe and effective for its intended use by submitting to the FDA an NDA, Abbreviated NDA ("ANDA"), 510(K) or Biologics License Application ("BLA") containing the pre-clinical and clinical data that have been accumulated, together with chemistry and manufacturing and controls specifications and information, and proposed labeling, among other things. The FDA may refuse to accept an NDA, ANDA, 510(K) or BLA for filing if certain content criteria are not met and, even after accepting an NDA, ANDA, 510(K) or BLA, the FDA may often require additional information, including clinical data, before approval of marketing a product.

It is also becoming more common for the FDA to request a Risk Evaluation and Mitigation Strategy ("REMS"), as part of an NDA, ANDA, 510(K) or BLA. The REMS plan contains post-market obligations of the sponsor to train prescribing physicians, monitor off-label drug use, and conduct sufficient Phase 4 follow-up studies and registries to ensure the continued safe use of the drug.

As part of the approval process, the FDA must inspect and approve each manufacturing facility. Among the conditions of approval is the requirement that a manufacturer's quality control and manufacturing procedures conform to cGMP. Manufacturers must expend significant time, money and effort to ensure continued compliance, and the FDA conducts periodic inspections to certify compliance. It may be difficult for our manufacturers or us to comply with the applicable cGMPs, as interpreted by the FDA, and other FDA regulatory requirements. If we, or our contract manufacturers, fail to comply, then the FDA may not allow us to market products that have been affected by the failure.

If the FDA grants approval, the approval will be limited to those conditions and patient populations for which the product is safe and effective, as demonstrated through clinical studies. Further, a product may be marketed only in those dosage forms and for those indications approved in the NDA, ANDA, 510(K), or BLA. Certain changes to an approved BLA, including, with certain exceptions, any significant changes to labeling, require approval of a supplemental application before the drug may be marketed as changed. Any products that we manufacture or distribute pursuant to FDA approvals are subject to continuing monitoring and regulation by the FDA, including compliance with cGMP and the reporting of adverse experiences with the drugs. The nature of marketing claims that the FDA will permit us to make in the labeling and advertising of our products will generally be limited to those specified in FDA approved labeling, and the advertising of our products will be subject to comprehensive monitoring and regulation by the FDA. Drugs whose review was accelerated may carry additional restrictions on marketing activities, including the requirement that all promotional materials are pre-submitted to the FDA. Claims exceeding those contained in approved labeling will constitute a violation of the FDCA. Violations of the FDCA or regulatory requirements at any time during the product development process, approval process, or marketing and sale following approval may result in agency enforcement actions, including withdrawal of approval, recall, seizure of products, warning letters, injunctions, fines and/or civil or criminal penalties. Any agency enforcement action could have a material adverse effect on our business.

Pharmaceutical Coverage, Pricing and Reimbursement

Sales of any pharmaceutical product depend, in part, on the extent to which such product will be covered by third-party payors, such as federal, state, and foreign government healthcare programs, commercial insurance, and managed healthcare organizations, and the level of reimbursement for such product by third-party payors. Significant uncertainty exists as to the coverage and reimbursement status of any newly approved product. Decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a plan-by-plan basis. One third-party payor's decision to cover a particular product does not ensure that other payors will also provide coverage for the product. As a result, the coverage determination process can require manufacturers to provide scientific details, information on cost-effectiveness, and clinical support for the use of a product to each payor separately. This can be a time-consuming process, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance.

In addition, third-party payors are increasingly reducing reimbursements for pharmaceutical products and related services. The U.S. government and state legislatures have continued implementing cost-containment programs, including price controls, restrictions on coverage and reimbursement and requirements for substitution of generic products. Third-party payors are increasingly challenging the prices charged, examining the medical necessity and reviewing the cost effectiveness of pharmaceutical products, in addition to questioning their safety and efficacy. Adoption of price controls and cost-containment measures, and adoption of more restrictive

policies in jurisdictions with existing controls and measures, could further limit sales of any product. Decreases in third-party reimbursement for any product or a decision by a third-party payor not to cover a product could reduce physician usage and patient demand for the product.

At the state level, there are also new laws and ongoing ballot initiatives that create additional pressure on drug pricing and may affect how pharmaceutical products are covered and reimbursed. A number of states have adopted or are considering various pricing actions, such as those requiring pharmaceutical manufacturers to publicly report proprietary pricing information, limit price increases or to place a maximum price ceiling or cap on certain products. Existing and proposed state pricing laws have added complexity to the pricing of pharmaceutical drug products.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. For example, the European Union provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. Pharmaceutical products may face competition from lower-priced products in foreign countries that have placed price controls on pharmaceutical products and may also compete with imported foreign products. Furthermore, there is no assurance that a product will be considered medically reasonable and necessary for a specific indication, that it will be considered cost-effective by third-party payors, that an adequate level of reimbursement will be established even if coverage is available, or that the third-party payors' reimbursement policies will not adversely affect the ability for manufacturers to sell products profitably.

International Regulations

In addition to regulations in the United States, there are a variety of foreign regulations governing clinical trials and commercial sales and distribution of any product candidates. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval.

Failure to comply with applicable federal, state and foreign laws and regulations would likely have a material adverse effect on our business. In addition, federal, state and foreign laws and regulations regarding the manufacture and sale of new drugs are subject to future changes.

PHRMA Code and April 3, 2003 Department of Health and Human Services Office of Inspector General, OIG Compliance Program for Pharmaceutical Manufacturers

We have established and implemented a corporate compliance program designed to prevent, detect and correct violations of state and federal healthcare laws, including laws related to advertising and promotion of our products that are in compliance with the PHRMA Code and the Health and Human Services Office of Inspector General ("OIG") Compliance Program requirements for Pharmaceutical Manufacturers.

Healthcare Fraud, Waste and Abuse

We are subject to various federal, state and local laws targeting fraud and abuse in the healthcare industry, violations of which can lead to civil and criminal penalties, including fines, imprisonment and exclusion from participation in federal healthcare programs.

These laws are potentially applicable to us as both a manufacturer and a supplier of products reimbursed by federal healthcare programs, and they also apply to physicians and other potential purchasers of our products.

The federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b) prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Remuneration is not defined in the federal Anti-Kickback Statute and has been broadly interpreted to include anything of value, including for example, gifts, discounts, coupons, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests and providing anything at less than its fair market value. Under the federal Anti-Kickback Statute and the applicable criminal healthcare fraud statutes contained within 42 U.S.C. § 1320a-7b, a person or entity need not have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the government may

assert that a claim, including items or services resulting from a violation of 42 U.S.C. § 1320a-7b, constitutes a false or fraudulent claim for purposes of the civil False Claims Act (discussed below) or the civil monetary penalties statute, which imposes fines against any person who is determined to have presented or caused to be presented claims to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. The federal Anti-Kickback Statute and implementing regulations provide for certain exceptions for "safe harbors" for certain discounting, rebating or personal services arrangements, among other things. However, the lack of uniform court interpretation of the Anti-Kickback Statute, coupled with novel enforcement theories by government authorities, make compliance with the law difficult. Violations of the federal Anti-Kickback Statute can result in significant criminal fines, exclusion from participation in Medicare and Medicaid and follow-on civil litigation, among other things, for both entities and individuals.

In October 2019, the OIG issued a proposed rule to, among other things, add new safe harbors for certain value-based arrangements. Although the value-based proposals would not include pharmaceutical manufacturers among the entities that could permissibly enter into such contracting arrangements, the general trend toward outcomes and value-based contracts in the healthcare industry may continue. It is possible that payors, among other customers, could push manufacturers for novel contracting approaches, including those that would incorporate value-based principles, and these efforts could affect our business.

The civil False Claims Act and similar state laws impose liability on any person or entity who, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act and similar state laws allow a private individual to bring civil actions on behalf of the federal or state government and to share in any monetary recovery. The Federal Physician Payments Sunshine Act and similar state laws impose reporting requirements for various types of payments to physicians and teaching hospitals. Failure to comply with reporting requirements under these laws could subject manufacturers and others to substantial civil money penalties.

Other Healthcare Laws and Compliance Requirements

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration), other divisions of the United States Department of Health and Human Services, the United States Department of Justice and individual United States Attorney offices within the Department of Justice, and state and local governments.

Drug Quality and Security Act ("DQSA")

DQSA was enacted by Congress on November 27, 2013. Title II of DQSA, the Drug Supply Chain Security Act ("DSCSA"), outlines steps to build an electronic, interoperable system to identify and trace certain prescription drugs as they are distributed in the United States. This is intended to enhance the FDA's ability to help protect consumers from exposure to drugs that may be counterfeit, stolen, contaminated, or otherwise harmful. The system is also intended to improve detection and removal of potentially dangerous drugs from the drug supply chain to protect U.S. consumers.

Additionally, the DSCSA directs FDA to establish national licensure standards for wholesale distributors and third-party logistics providers, and requires these entities report licensure and other information to FDA annually. The implementation and enforcement of complete unit level traceability of verifiable return serialization, including aggregation throughout the whole supply chain, is not required until November 27, 2023.

We are subject to, and required to be in compliance with, the DQSA. Our Company remains in compliance with the requirements promogulated by the DSCSA and intends on remaining vigilant with regards to any potential modifications to the act. For purposes of our business, we are considered both manufacturers and re-packagers under the act. Currently, we are in compliance with the DSCSA as it relates to our business and operations.

DSCSA: Recent FDA Announcement Regarding Certain Wholesale Distributor and Dispenser Verification Requirements Under DSCSA.

On October 22, 2020, the FDA announced a final guidance regarding enforcement of the DSCSA requirements for wholesale distributor verification of saleable returned products and dispenser verification of the product identifier for suspect and illegitimate product.

- FDA does not intend to take action against wholesale distributors who do not, prior to November 27, 2023, verify a product identifier prior to further distributing returned product as required under the DSCSA. This provides wholesale distributors three additional years to comply with this requirement.

- FDA also does not intend to take action against dispensers who do not, prior to November 27, 2023, verify the product identifier for suspect or illegitimate product in the dispenser's possession or control. This provides dispensers three additional years to comply with this requirement.

Although the rule regarding wholesale distributor verification of saleable returned products does not directly apply to our Company, we will be required to assist our wholesale distributor customers by setting in place mechanics that would allow for traceability of returns in the supply chain. If we are not able to come into compliance of this rule, our wholesale distributor customers may not accept our returns on our behalf.

Item 1A. Risk Factors

The following information sets forth risk factors that could cause our actual results to differ materially from those contained in forward-looking statements we have made in this report and those we may make from time to time. You should carefully consider the risks described below, in addition to the other information contained in this report and our other public filings, before making an investment decision. Our business, financial condition or results of operations could be harmed by any of these risks. The risks and uncertainties described below are not the only ones we face. Additional risks not presently known to us or other factors not perceived by us to present significant risks to our business at this time also may impair our business operations. Additionally, many of these risks and uncertainties are currently elevated by and may or will continue to be elevated by the COVID-19 pandemic.

Risks Related to Our Business, Industry and Existing Operating Revenue Stream

Future revenue from sales of our dermatology products may be lower than expected or lower than in previous periods.

The vast majority of our operating income for the foreseeable future is expected to come from the sale of our dermatology products. Any setback that may occur with respect to such products could significantly impair our operating results and/or reduce our revenue and the value of our securities. Setbacks for such products could include, but are not limited to, issues related to: supply chain, shipping; distribution; demand; manufacturing; product safety; product quality; marketing; government regulation; pricing; reimbursement; licensing and approval; intellectual property rights; competition with existing or new products; product acceptance by physicians, other licensed medical professionals and patients; and higher than expected total rebates, returns or recalls.

Also, the majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or increased market share of existing competitor products, any of which could have a significant adverse effect on our operating income.

We face challenges as our products face generic competition and/or losses of exclusivity.

Our products do and may compete with well-established products, both branded and generic, with similar or the same indications. We face increased competition from manufacturers of generic pharmaceutical products, who may submit applications to FDA seeking to market generic versions of our products. In connection with these applications, the generic drug companies may seek to challenge the validity and enforceability of our patents through litigation. When patents covering certain of our products expire or are successfully challenged through litigation or in USPTO proceedings, if a generic company launches a competing product "at risk," or when the regulatory or licensed exclusivity for our products expires or is otherwise lost, we may face generic competition as a result.

The majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income Four of our marketed products, Qbrexza Amzeeq, Zilxi, and Ximino, as well as DFD-29, currently have patent protection.. Three of our marketed products, Accutane, Targadox, and Exelderm, do not have

patent protection or otherwise are not eligible for patent protection. Accutane currently competes in the Isotretinoin market with five other AB rated products. Targadox faces AB rated generic competition. Exelderm may face AB rated generic competition in the future.

Generic versions are generally significantly less expensive than branded versions, and, where available, may be required to be utilized before or in preference to the branded version under third-party reimbursement programs, or substituted by pharmacies. Accordingly, when a branded product loses its market exclusivity, it normally faces intense price competition from generic forms of the product. To successfully compete for business with managed care and pharmacy benefits management organizations, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care.

Any disruptions to the capabilities, composition, size or existence of our field sales force may have a significant adverse impact on our existing revenue stream. Further, our ability to effectively market and sell any future products that we may develop will depend our ability to establish and maintain sales and marketing capabilities or to enter into agreements with third parties to market, distribute and sell any such products.

Our field sales force has been and is expected to continue to be an important contributor to our commercial success. Any disruptions to our relationship with our field sales force or the professional employer organization that employs our field sales force, could materially adversely affect our product sales. We currently rely, and may continue to rely, on professional employer organizations and staffing organizations for the employment of our field sales force.

The establishment, development, and/or expansion of a field sales force, either by us or certain of our partners or vendors, or the establishment of a contract field sales force to market any products for which we may have or receive marketing approval is expensive and time-consuming and could delay any such product launch or compromise the successful commercialization of such products. If we are unable to establish and maintain sales and marketing capabilities or any other non-technical capabilities necessary to commercialize any products that may be successfully developed, we will need to contract with third parties to market and sell such products. We may not be able to establish or maintain arrangements with third parties on commercially reasonable terms, or at all.

Our current and potential future product candidates may not receive regulatory approval, or such approval may be delayed, which would have a material adverse effect on our business and financial condition. Further, even if a product receives regulatory approval, such product will remain subject to substantial regulatory scrutiny.

Our current and potential future product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States and abroad. Our failure to obtain marketing approval for any current or future product candidates will prevent us from commercializing the product candidates. Further, any products or future products candidates we license or acquire will be subject to ongoing requirements and review by such regulatory authorities.

We have limited experience in filing and supporting the applications necessary to gain marketing approvals and expect to rely on third parties to assist us in this process. To secure marketing approval, we will be required to establish a product candidate’s safety and efficacy by submitting extensive preclinical and clinical data and supporting information for each therapeutic indication. We will further be required to submit information about the product manufacturing and to undergo regulatory inspection of our third-party manufacturing facilities to ensure ongoing compliance with cGMP requirements.

Any of our current or future product candidates may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude us from obtaining marketing approval or prevent or limit commercial use. If our current or future product candidates receive(s) marketing approval, the accompanying label may limit the approved use of our drug in this way, which could limit sales of the product.

The marketing approval process, both in the United States and abroad, is time consuming and expensive. Approval may take many years, and if it is granted can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Our product candidates could be delayed in receiving, or fail to receive, regulatory approval for many reasons, including: the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials; the FDA or comparable foreign regulatory authorities may disagree with our development strategy; we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a drug candidate is safe and effective for its proposed indication or is suitable to identify appropriate patient populations; the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval; we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks.

Changes to marketing approval policies or the regulatory landscape during the development period may cause rejection of or delays in the approval of an application. Regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or decide that our data is insufficient for approval and require costly additional preclinical studies or clinical trials. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent marketing approval of a product candidate. Any marketing approval we ultimately obtain may be limited or subject to restrictions or post-approval commitments that render the approved product not commercially viable. If we experience delays in obtaining or fail to obtain or maintain any necessary approvals of any current or future product candidates, receive approval for fewer or more limited indications than we request or without including the labeling claims we desire, our future commercial prospects may be harmed and our ability to generate revenue may be materially impaired. Even if we do received approval, it may be contingent on the performance of costly post-marketing clinical trials to verify whether or not the drug provides the anticipated clinical benefit, in order to maintain the approval.

Regulatory approval for any approved product is limited by the FDA to those specific indications and conditions for which clinical safety and efficacy have been demonstrated.

Any regulatory approval is limited to those specific diseases and indications for which a product is deemed to be safe and effective. If the FDA or any regulatory authority limits the scope of our indication, or if we are unable to obtain FDA approval for any desired future indications for our products, our ability to effectively market and sell our products may be reduced and our business may be adversely affected. Further, we are only permitted to promote our products for those indications specifically approved by the FDA and we are restricted from making communications regarding uses not approved and described in the product's labeling. If our promotional activities fail to comply with these regulations or guidelines, we may be subject to advisory or enforcement action by these authorities. In addition, our failure to follow FDA requirements or guidelines relating to promotion and advertising may cause the FDA to suspend or withdraw an approved product from the market, require a recall or institute fines, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our business.

If any potential future product candidate is approved and our contract manufacturer fails to produce the product in the volumes that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the commercialization of this product candidate or be unable to meet market demand, and may lose potential revenues.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls, and the use of specialized processing equipment. Any termination or disruption of any current or future relationships relating to product development may materially harm our business and financial condition and frustrate any commercialization efforts for affected current or future product candidates.

Any current or future contract manufacturers we engage must comply with strictly enforced federal, state and foreign regulations, including cGMP requirements enforced by the FDA through its establishment inspection program. Despite the existence of contract manufacturing agreements and shared cGMP responsibilities, our contract manufacturers' may ignore these contractual provisions, or otherwise fail to meet the minimum standards set forth in the cGMP regulations, resulting in manufacturing non-compliance. This may go unnoticed or uncorrected despite our best efforts to regulatory audit or confirm the CMOs regulatory responsibilities. Any failure to comply with applicable regulations may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval, and would limit the availability of our product. Any manufacturing defect or error discovered after products have been produced and distributed could result in even more significant consequences, including costly recalls, re-stocking costs, damage to our reputation and potential for product liability claims.

If the CMOs upon which we rely to manufacture any current products, and any potential product candidates we may in-license or acquire, fail to deliver the required commercial quantities on a timely basis at commercially reasonable prices, we would likely be unable to meet demand for our products and we would lose potential revenues.

If serious adverse or unacceptable side effects are identified during the development of any current or future product candidates, we may need to abandon or limit our development of some of the other potential product candidates.

If any current or future product candidates are associated with undesirable side effects, toxicities, or other negative characteristics, we may need to abandon such products' development or limit development to more narrow uses or subpopulations. Such side effects may affect patient recruitment or the ability of enrolled patients to complete the trial and could result in potential product liability claims. Many compounds that show initial promise in early-stage testing are later found to cause side effects that prevent further development. If our clinical trials reveal severe or prevalent side effects, our trials could be suspended or terminated, we may be unable to recruit patients and enrolled patients may be unable to complete the trials, and the FDA or comparable foreign regulatory authorities could order issue a clinical hold, or order us to cease further development or deny approval of the product candidate. The FDA may also request additional data, which it has done with increased prevalence in recent years, which has resulted in substantial delays in new drug approvals. Undesirable side effects caused by any current or future product candidates could also result in the inclusion of unfavorable information in our product labeling, denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing and generating revenues from the sale of such product candidate.

If one or more of our current products or any future product candidate receives marketing approval and we or others later identify undesirable adverse events or side effects caused by this product, or we fail to comply with post-market regulatory requirements, a number of potentially significant negative consequences could result, including:

- regulatory authorities may require the addition of unfavorable labeling statements, specific warnings or a contraindication;
- regulatory authorities may suspend or withdraw their approval of the product, or require it to be removed from the market;
- we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product; or
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of any current or future product candidate or could substantially increase our commercialization costs and expenses, which could delay or prevent us from generating significant revenues.

All of our current and future products will remain subject to substantial regulatory scrutiny even after receiving regulatory approval.

Any products or current or future product candidates we may license or acquire will be subject to ongoing regulatory and compliance requirements and oversight by the FDA and other regulatory authorities. These requirements include labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information and reports, registration and listing requirements, cGMP requirements relating to manufacturing, quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and other licensed medical professionals and recordkeeping of the drug. The Food and Drug Administration Amendments Act of 2007 granted significant expanded authority to the FDA, much of which was aimed at improving the safety of drug products before and after approval. The FDA may also impose

requirements for costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of the product. The FDA closely regulates the post-approval marketing and promotion of drugs to ensure drugs are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off-label use and if we do not market our products for only their approved indications, we may be subject to enforcement action for off-label marketing. While physicians and other healthcare providers may choose to prescribe drugs for uses that are not described in the product's labeling and for uses that differ from those tested in clinical studies and approved by the regulatory authorities, our ability to promote the products is limited to those indications that are specifically approved by the FDA. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the U.S. generally do not regulate the practice of medicine, including the clinical behavior of physicians and other healthcare providers in their choice of treatments. Regulatory authorities do; however, restrict communications by pharmaceutical companies on the subject of off-label use.

Violations of the FDCA relating to the promotion of prescription drugs may lead to investigations alleging violations of federal and state health care fraud and abuse laws, as well as state consumer protection laws.

In addition, later discovery of previously unknown adverse events or other problems with our products, manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may yield various results, including:

- restrictions on such products, operations, manufacturers or manufacturing processes;
- restrictions on the labeling or marketing of a product;
- restrictions on product distribution or use;
- requirements to conduct post-marketing studies or clinical trials;
- warning letters;
- withdrawal of the products from the market;
- refusal to approve pending applications or supplements to approved applications that we submit;
- recall of products;
- fines, restitution or disgorgement of profits;
- suspension or withdrawal of marketing or regulatory approvals;
- suspension of any ongoing clinical trials;
- denial of permits to import or export our products;
- product seizure; or
- injunctions or the imposition of civil or criminal penalties.

The FDA's policies may change, and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our current or future product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained.

Our current and future relationships with customers and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors in the United States and elsewhere will play a primary role in the recommendation and prescription of any current products or current or future product candidates for which we obtain marketing approval. Our current and future arrangements with third-party payors for the sales of our products and sales to customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute ("AKS") and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute any current products or current or future product candidates for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by U.S. federal and state governments and by governments in foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include:

- AKS, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid. The OIG continues to make modifications to existing AKS safe harbors which may increase liability and risk as well as adversely impact sales relationships. On November 20, 2020, the OIG issued the final rule for Safe Harbors under the AKS. This new final rule creates additional safe harbors, including ones pertaining to patient incentives. The final rule also removed safe harbor protections for rebates and other reductions in price paid by manufacturers to plan sponsors under Medicare Part D, either directly or through pharmacy benefit managers acting under contract with plan sponsors, unless the reduction in price is required by law. The OIG is able to modify safe harbors as well as regulatory compliance requirements, which could impact our business adversely. If the removal of safe harbors for rebates takes effect, our ability to negotiate coverage and formulary placement for Part D plans may be affected. The majority of states also have statutes or regulations similar to these federal laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor;

- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act, which impose criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government;

- the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, and their respective implementing regulations, which impose obligations on covered healthcare providers, health plans, and healthcare clearinghouses, as well as their business associates that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;

- the federal Open Payments program, which requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services ("CMS"), information related to "payments or other transfers of value" made to physicians, which is defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals and applicable manufacturers and applicable group purchasing organizations to report annually to CMS ownership and investment interests held by the physicians and their immediate family members. Data collection began on August 1, 2013 with requirements for manufacturers to submit reports to CMS by March 31, 2014 and 90 days after the end of each subsequent calendar year. Disclosure of such information was made by CMS on a publicly available website beginning in September 2014;

- Increased OIG scrutiny on the sale of our products through specialty pharmacies by means of direct investigation or by issuance of unfavorable Opinion Letters which may curtail or hinder the sales of our products based on risk of enforcement upon our-selves or our buyers;

- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers;

- state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and

- state and foreign laws governing the privacy and security of health information in certain circum-stances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, which could have a material adverse effect on our business. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our business.

We have established and implemented a corporate compliance program designed to prevent, detect and correct violations of state and federal healthcare laws, including laws related to advertising and promotion of our products. Nonetheless, enforcement agencies or private plaintiffs may take the position that we are not in compliance with such requirements and, if such noncompliance is proven, the Company and, in some cases, individual employees, may be subject to significant liability, including the aforementioned administrative, civil and criminal sanctions.

We are subject to new legislation, regulatory proposals and managed care initiatives that may increase our costs of compliance and adversely affect our ability to market our products, obtain collaborators and raise capital.

In the United States and certain foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system. In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (the "PPACA" or collectively, the "ACA"), was signed into law, which substantially changed the way healthcare is financed by both governmental and private insurers in the United States. By way of example, the ACA: increased the minimum level of Medicaid rebates payable by manufacturers of brand name drugs from 15.1% to 23.1%; required collection of rebates for drugs paid by Medicaid managed care organizations; imposed a non-deductible annual fee on pharmaceutical manufacturers or importers who sell certain "branded prescription drugs" to specified federal government programs; implemented a new methodology under which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted, or injected; expanded the eligibility criteria for Medicaid programs; created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and established a Center for Medicare and Medicaid Innovation ("CMMI") at the CMS, to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

Since its enactment, there have been executive, judicial and Congressional challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. President Trump signed several Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of

certain taxes under the ACA have been enacted. For example, in 2017, Congress enacted the Tax Cuts and Jobs Act, which eliminated the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year, a process that is commonly referred to as the "individual mandate." In addition, the Further Consolidated Appropriations Act of 2020 permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, it also eliminated the health insurer tax. On December 14, 2018, the U.S. District Court for the Northern District of Texas ruled that the individual mandate is a critical and inseverable feature of the ACA, and therefore, because it was repealed as part of the Tax Act, the remaining provisions of the ACA are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the Fifth Circuit ruled that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the U.S. Supreme Court reversed the Fifth Circuit's ruling, holding that the challengers lacked standing to sue and otherwise abstaining from reaching the merits of the case. There may be other efforts to challenge, repeal, or replace the ACA. We are continuing to monitor any changes to the ACA that, in turn, may potentially impact our business in the future.

President Joseph R. Biden, Jr. signed an Executive Order on Strengthening Medicaid and the Affordable Care Act, stating his administration's intentions to reverse the actions of his predecessor and strengthen the ACA. As part of this Executive Order, the Department of Health and Human Services, United States Treasury, and the Department of Labor are directed to review all existing regulations, orders, guidance documents, policies, and agency actions to consider if they are consistent with ensuring coverage under the ACA and making high-quality healthcare affordable and accessible to Americans. We are unable to predict the likelihood of changes to the ACA or other healthcare laws which may negatively impact our profitability.

President Biden intends, as his predecessor did, to take action against drug prices which are considered "high." Such measures could be addressed in a legislative package later in 2021 or with the reauthorization of the Prescription Drug User Fee Act in 2022 as part of a package bill. Drug pricing continues to be a subject of debate at the executive and legislative levels of U.S. government and we expect to see legislation focusing on this in the coming year. The American Rescue Plan Act of 2021 signed into law by President Biden on March 14, 2021 includes a provision that will eliminate the statutory cap on rebates drug manufacturers pay to Medicaid beginning in January 2024. With the elimination of the rebate cap, manufacturers may be required to compensate states in an amount greater than what the state Medicaid programs pay for the drug.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, effective April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2030 with the exception of a temporary suspension implemented under various COVID-19 relief legislation from May 1, 2020 through December 31, 2021, unless additional congressional action is taken. Moreover, there has recently been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing, to review the relationship between pricing and manufacturer patient assistance programs, and to reform government program reimbursement methodologies for pharmaceutical products. The Prescription Drug Pricing Reduction Act, which was introduced in Congress in 2019, and again in 2020, proposed to, among other things, penalize pharmaceutical manufacturers for raising prices on drugs covered by Medicare Parts B and D faster than the rate of inflation, cap out-of-pocket expenses for Medicare Part D beneficiaries, and proposes several changes to how drugs are reimbursed in Medicare Part B. A similar drug pricing bill, the Elijah E. Cummings Lower Drug Costs Now Act proposes to enable direct price negotiations by the federal government for certain drugs (with the maximum price paid by Medicare capped based on an international index), requires manufacturers to offer these negotiated prices to other payors, and restricts manufacturers from raising prices on drugs covered by Medicare Parts B and D. This Act passed in the House of Representatives when it was introduced in 2019, and it has been introduced again in the 2021 term. We cannot predict whether any proposed legislation will become law and the effect of these possible changes on our business cannot be predicted at this time.

Further, CMS has significant regulatory authority to promulgate regulations and impose other compliance requirements that may increase our compliance costs and impact our ability to attain profitability and market our current products and any current or future product candidates. CMS sets coverage and reimbursement rates for Medicare and oversees the implementation of Medicaid at the state level. CMS could modify or impose coverage restrictions or modify reimbursement rates on any of our current products or any current or future product candidates in a manner that could adversely impact our business. For example, on January 8, 2021, CMS approved Tennessee's Medicaid section 1115 demonstration application, granting the state the unprecedented ability to implement a closed drug formulary without foregoing the state's entitlement to rebates under the Medicaid Drug Rebate Program. Implementation of a closed formulary could mean that our products could be excluded from coverage under Medicaid. It is unclear whether the Biden Administration will reverse or modify Tennessee's section 1115 demonstration approval.

Within CMS, CMMI, as established by the ACA, has broad authority to design, implement, and test new health care payment models that could potentially lower health care spending while maintaining quality or increase quality without increasing spending. CMMI has considered implementing models that could have a significant adverse effect on our business. For example, on November 27, 2020, CMMI finalized a mandatory Medicare Part B drug payment model that would have aligned payment for drugs with international reference prices, entitled the Most Favored Nation ("MFN") Model. The MFN Model was enjoined by a Federal court on December 28, 2020 for failure to comply with rulemaking procedural requirements. It is unclear whether the Biden Administration will propose and implement the same or a similar model in future rulemaking, and we cannot predict how future regulatory actions by CMMI or any other component of CMS may impact our business.

These and other healthcare reform measures that may be adopted in the future may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any current product or future product candidate. Any reduction in reimbursement from Medicare or other government healthcare programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our products. Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for drugs. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of any current or future product candidates, if any, may be. In addition, increased Congressional scrutiny of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing testing and other requirements.

Public concern regarding the safety of any of our current or future drug products could delay or limit our ability to obtain regulatory approval, result in the inclusion of unfavorable information in our labeling, or require us to incur additional costs.

In light of widely publicized events concerning the safety risk of certain drug products, the FDA, members of Congress, the Government Accountability Office, medical professionals and the general public have raised concerns about potential drug safety issues. These events have resulted in the withdrawal of drug products, revisions to drug labeling that further limit use of the drug products, and the establishment of risk management programs. The increased attention to drug safety issues may result in a more cautious approach by the FDA in its review of data from our clinical trials. Data from clinical trials may receive greater scrutiny, particularly with respect to safety, which may make the FDA or other regulatory authorities more likely to require additional preclinical studies or clinical trials. If the FDA requires us to conduct additional preclinical studies or clinical trials prior to approving any other potential future product candidate, our ability to obtain of such product candidate will be delayed. If the FDA requires us to provide additional clinical or preclinical data following the approval of any potential future product candidate, the indications for which such product candidate is approved may be limited or there may be specific warnings or limitations on dosing, and our efforts to commercialize potential future product candidate may be otherwise adversely impacted.

If we experience delays or difficulties in the enrollment of patients in any future clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.

We may not be able to initiate any future clinical trials for any current or future product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or similar regulatory authorities outside the United States. Some of our competitors may have ongoing clinical trials for product candidates that treat the same indications as our current or potential future product candidates, and patients who would otherwise be eligible for any future clinical trials may instead enroll in clinical trials of our competitors' product candidates. Patient enrollment is affected by other factors, including:

- the severity of the disease under investigation;
- the eligibility criteria for a study;
- the perceived risks and benefits of the product candidate under study;
- the efforts to facilitate timely enrollment in clinical trials;
- the patient referral practices of physicians;
- the ability to monitor patients adequately during and after treatment; and

- the proximity and availability of clinical trial sites for prospective patients.

Our inability to enroll a sufficient number of patients for any future clinical trials would result in significant delays and could require us to abandon any future clinical trials altogether. Enrollment delays in any future clinical trials may result in increased development costs for any current or future product candidates, which would cause the value of our company to decline and limit our ability to obtain additional financing.

We expect intense competition for our products and current or future product candidates, and new products may emerge that provide different or better therapeutic alternatives for our targeted indications.

We face, and will continue to face, competition in the development and marketing of products from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies, including specialty and other large pharmaceutical companies, and OTC companies and generic manufacturers. The dermatology competitive landscape is highly fragmented, with many mid-size and smaller companies competing in the prescription sector. Our competitors are pursuing the development and/or acquisition of pharmaceuticals, medical devices and OTC products targeting the same diseases, conditions, and indications as our products. There can be no assurance that our competitors' developments, including the development of other drug technologies and methods of preventing the incidence of disease, will not render our current products or current or future product candidates obsolete or noncompetitive.

If patents covering any of our currently marketed products expire or are successfully challenged, or when the regulatory or licensed exclusivity for our products expires or is otherwise lost, we will face increased competition from generic versions of our products. Generic versions are generally significantly less expensive than branded versions and third-party reimbursement programs may require or prefer that a generic version is used before the branded version. Accordingly, when a branded product loses market exclusivity, the product faces intense price competition from generic versions. To successfully compete for business with managed care and pharmacy benefits management organizations, we must demonstrate that our products offer medical and cost advantages when compared with other forms.

Competitive factors vary by product line and geographic area in which the products are sold. The principal methods of competition for our products include quality, efficacy, market acceptance, price, and marketing and promotional efforts. The commercial opportunity for our products and/or product future candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our in-licensed intellectual property. Many of our potential competitors have substantially greater capital resources, development resources, including personnel and technology, clinical trial and regulatory experience, expertise in the prosecution of intellectual property rights, and manufacturing, distribution, and sales and marketing than we do.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize any current or future product candidates. Our competitors may also develop drugs or products that are more effective, safe, useful and less costly than ours and may be more successful than us in manufacturing and marketing their drugs or products.

If our products do not achieve broad market acceptance, including by government and third-party payors, the revenues that we generate from sales will be limited.

The commercial success of our products or any current or future product candidates will depend upon their acceptance by the medical community and coverage and reimbursement for our products by third-party payors, including government payors. The degree of market acceptance of our products or any other potential product candidate we may develop, license or acquire will depend on a number of factors, including:

- the success of any potential clinic studies during the drug development process;
- limitations or warnings contained in the product's FDA-approved labeling;
- changes in the standard of care for the targeted indications for any current or future product candidates, which could reduce the marketing impact of any superiority claims that we could make following FDA approval;

- ability to be listed on formularies (lists of recommended or approved medicines and other products) and reimbursement lists by demonstrating the qualities and treatment benefits of our products within their approved indications; and

- potential advantages over, and availability of, alternative treatments.

Our ability to effectively promote and sell our products and any other current or future product candidates we may develop, license or acquire in the marketplace will also depend on pricing and cost effectiveness, including our ability to produce a product at a competitive price and achieve acceptance of the product onto formularies, as well as our ability to obtain sufficient third-party coverage or reimbursement. Since many insurance plans are members of group purchasing organizations, which leverage the purchasing power of a group of entities to obtain discounts based on the collective buying power of the group, our ability to attract customers in the marketplace will also depend on our ability to effectively promote any current or future product candidates to group purchasing organizations. We will also need to demonstrate acceptable evidence of safety and efficacy, as well as relative convenience and ease of administration. Market acceptance could be further limited depending on the prevalence and severity of any expected or unexpected adverse side effects associated with any current or future product candidates. If any current or future product candidates are approved but do not achieve an adequate level of acceptance by physicians, health care payors and patients, we may not generate sufficient revenue from these products, and we may not become or remain profitable. In addition, our efforts to educate the medical community and third-party payors on the benefits of any current or future product candidates may require significant resources and may never be successful.

Further, in both domestic and foreign markets, our any future product sales will depend in part upon the availability of coverage and reimbursement from third-party payors. Such third-party payors include government health programs such as Medicare, managed care providers, private health insurers and other organizations. We may need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to the satisfaction of target customers and their third-party payors. Such studies might require us to commit a significant amount of management time and financial and other resources. Our current or future products might not ultimately be considered cost-effective. Adequate third-party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development.

Risks Related to Our Reliance on Third Parties

If we are unable to maintain sales, marketing, and distribution capabilities, or to enter into agreements with third parties to market and sell current or future product candidates, we may not be successful in generating revenues from selling and commercializing any such product candidates.

In order to commercialize any current or future product candidates that have not yet received marketing approval, we may need to build additional marketing, sales, distribution, managerial and other non-technical capabilities or make arrangements with third parties to perform these services tailored to those products, and we may not be successful in doing so. In the event of successful development and regulatory approval of any potential new product candidate, we expect to build a targeted specialist field sales force to market or co-promote that specific product. There are risks involved with establishing our own sales, marketing and distribution capabilities. For example, recruiting and training a field sales force is expensive and time consuming and could delay any product launch. If the commercial launch of a future product candidate for which we recruit a field sales force and establish marketing capabilities is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

Factors that may inhibit our efforts to maintain our current products' marketing and sales organizations and/or commercialize any future products on our own include:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel;

- the inability of sales personnel to obtain access to physicians and other healthcare providers or persuade adequate numbers of physicians and other healthcare providers to prescribe any future products;

- the lack of complementary or other products to be offered by sales personnel, which may put us at a competitive disadvantage from the perspective of sales efficiency relative to companies with more extensive product lines; and

- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

We are dependent on third parties to supply raw materials used in our products, to manufacture our products, and to provide services for certain core aspects of our business. Any interruption or failure by these suppliers, distributors, and collaboration partners to meet their contractual obligations to us or obligations pursuant to applicable laws and regulations may materially adversely affect our business, financial condition, results of operations and cash flows.

We rely on third parties to supply raw materials, to manufacture, warehouse, and distribute our products, as well as to provide customer service support, medical affairs services, clinical studies, sales, and other technical and financial services. All third-party suppliers and contractors are subject to FDA requirements, as well as those of comparable regulatory authorities. Our business and financial viability are dependent on the continued supply of goods and services by these third parties, the regulatory compliance of these third parties and on the strength, validity and terms of our various contracts with these third parties. Any interruption or failure by our suppliers, distributors and collaboration partners to meet their obligations pursuant to various agreements with us on schedule or in accordance with our expectations, misappropriation of our proprietary information, including trade secrets and know-how, or any termination by these third parties of their arrangements with us, which, in each case, could be the result of one or many factors outside of our control, could delay or prevent the future development, future approval, manufacture or commercialization of our products, result in non-compliance with applicable laws and regulations, cause us to incur failure-to-supply penalties with our wholesale customers, disrupt our operations or cause reputational harm to our company, any or all of which could have a material adverse effect on our business, financial condition, results of operations and cash flows. We may also be unsuccessful in resolving any underlying issues with such suppliers, distributors and partners or replacing them within a reasonable time and on commercially reasonable terms.

We do not expect to have the resources or capacity to commercially manufacture any future approved product candidates ourselves. We will likely continue to be heavily dependent upon third-party manufacturers, over whose manufacturing practices and processes we will have oversight, but not direct control, which may adversely affect our ability to develop and commercialize products in a timely or cost-effective manner, if at all. If any of our third-party manufacturers should become unavailable to us for any reason, including as a result of capacity constraints, differing priorities, financial difficulties or insolvency, we would likely incur added costs and delays in identifying or qualifying replacements. We may be unable to establish agreements with such replacement manufacturers or to do so on terms acceptable to us, and our reputation, business, financial condition and results of operations could be negatively impacted.

The pharmaceutical manufacturing process requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls, and the use of specialized processing equipment. Further, the CMOs with which we contract must comply with strictly enforced federal, state, and foreign regulations, including the cGMP requirements enforced by the FDA. We will rely on our CMOs to comply with all such regulatory requirements, including cGMP requirements, and failure to do so may result in fines and civil penalties, suspension of production, suspension, delay, or withdrawal of product approval, product seizure or recall, and may limit the availability of our product. Any manufacturing defect or error discovered after products have been produced and distributed could result in costly recall procedures, re-stocking costs, damage to our reputation and potential for product liability claims. The FDA would likely hold us ultimately responsible for any product our CMO manufactures and regulatory enforcement for failure to meet FDA requirements would impact both the CMO and ourselves. The FDA considers the owners of drug products to be ultimately responsible for their products, even where a CMO or other third-party manufacturer fails to meet FDA requirements specific to manufacturing activities. Despite the fact that we have limited oversight, and no direct control over these manufacturing activities, any failure by a CMO to meet the requirements of the regulations would have an adverse impact on both the CMO and ourselves.

We also may rely on third-party manufacturers to purchase from third-party suppliers the materials necessary to produce our current or future product candidates for anticipated clinical trials. There are a small number of suppliers for certain capital equipment and raw materials that are used to manufacture those products. We do not have any control over the process or timing of the acquisition of these raw materials by our third-party manufacturers. Moreover, we currently do not have any agreements for the commercial production of these raw materials. Any significant delay in the supply of raw material components related to an ongoing clinical trial could considerably delay completion of our clinical trials, product testing and potential regulatory approval.

We rely, and expect to continue to rely, on third parties to conduct any future preclinical studies and clinical trials, and those third parties may not perform satisfactorily, including by failing to meet deadlines for the completion of such trials or to comply with applicable regulatory requirements.

We expect to rely on third-party contract and clinical research organizations, clinical data management organizations, and medical institutions and clinical investigators to conduct future preclinical studies and clinical trials. Any future agreements with these third parties might terminate for a variety of reasons, including a failure to perform by the third parties. If we need to enter into alternative arrangements, that could delay any future product development activities.

Our reliance on any third parties for research and development activities will reduce our own control over these activities but will not relieve us of our responsibilities. We will remain responsible for ensuring that each of any future preclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that any future preclinical studies are conducted in accordance with good laboratory practice ("GLP") as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("GCPs") for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators and trial sites. If we or any of our future clinical research organizations fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that any such regulatory authority, upon inspection of any future clinical trial, will determine that such clinical trial complies with cGMP regulations. In addition, any future clinical trials must be conducted with product produced under cGMP regulations and subject to an IND. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We also are required to register ongoing clinical trials and post the results of completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

The third parties with whom we may contract to help perform future preclinical studies or clinical trials may also have relationships with other entities, some of which may be our competitors. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our preclinical studies or clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for any current or future product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize such product candidates.

If any of our future relationships with these third-party contract research organizations or clinical research organizations terminate, we may not be able to enter into arrangements with alternative contract research organizations or clinical research organizations or to do so on commercially reasonable terms. Switching or adding additional contract research organizations or clinical research organizations involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new contract research organization or clinical research organization commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we will carefully manage any future relationships with contract research organizations or clinical research organizations, there can be no assurance that we will not encounter similar challenges or delays in the future.

We rely on clinical data and results obtained by third parties that could ultimately prove to be inaccurate or unreliable.

As part of our strategy to mitigate development risk, we intend on developing product candidates with validated mechanisms of action and assess potential clinical efficacy early in the development process. This strategy necessarily relies upon clinical data and other results obtained by third parties that may ultimately prove to be inaccurate or unreliable. If the third-party data and results we rely upon prove to be inaccurate, unreliable or not applicable to future product candidates, we could make inaccurate assumptions and conclusions about current or future product candidates and our research and development efforts could be compromised.

If successful products liability claims are brought against us, we may incur substantial liability, and may have to limit the commercialization of certain current or future products or product candidates.

The use of our products and any current or future product candidate we may license or acquire in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. For example, we may be used if any product or product candidate we develop or sell allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing, or sale. Product liability claims might be brought against us by consumers, health care providers or others who use, administer, or sell our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- termination of clinical trial sites or entire trial programs or withdrawal of clinical trial participants;
- regulatory investigations by governmental authorities related to regulatory issues or alleged non-compliances;
- litigation costs and potential monetary awards to patients or other claimants;

- harm to our reputation and/or decreased demand for our products and corresponding revenue loss;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize our current products or any current or future product candidates.

We have obtained or will obtain limited product liability insurance coverage for any and all current or future clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. Our current insurance coverage includes the sale of commercial products, but we may be unable to maintain or obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

We began marketing and promoting Accutane®, an isotretinoin product in the second quarter of 2021. Isotretinoin has a black box warning for use in pregnant women. Isotretinoin also has warnings for side effects related to psychiatric disorders and inflammatory bowel disease, among others. Historically, isotretinoin has been the subject of significant product liability claims, mainly related to irritable bowel disease. Currently, there is no significant isotretinoin product liability litigation. In 2014, the federal multi-district litigation ("MDL") court ruled that the warning label for isotretinoin was adequate and dismissed all remaining federal isotretinoin cases. The MDL dissolved in 2015, effectively ending federal isotretinoin lawsuits. Isotretinoin cases continued in New Jersey state court until 2017, when the trial court judge dismissed the remaining isotretinoin product liability cases. Accordingly, we have substantial defenses should a product liability claim arise related to isotretinoin. However, we cannot predict the ultimate outcome of any litigation and the Company may be required to pay significant amounts as a result of settlement or judgments should any new product liability claim be brought.

We are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our operations involve the use of hazardous and flammable materials, including chemicals and biological materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. Although we believe that the safety procedures for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war, telecommunication and electrical failures. Any system failure, accident or security breach that causes interruptions in our operations could result in a material disruption of our manufacturing, sales or drug development programs. For example, the loss of clinical trial data from completed clinical trials for product candidates that we may license or acquire could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we may incur liability and the further development of future product candidate may be delayed.

Risks Related to our Growth

A significant part of our future growth may depend on our ability to identify and acquire or in-license products, and if we do not successfully identify and acquire or in-license related product candidates or integrate them into our operations, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, product candidates, businesses or technologies that we believe are a strategic fit with our focus on the dermatological marketplace. Future in-licenses or acquisitions may entail numerous operational and financial risks, including:

- exposure to unknown liabilities;
- disruption of our business and diversion of our management's time and attention to develop acquired products or technologies;
- difficulty or inability to secure financing to fund development activities for such acquired or in-licensed technologies in the current economic environment;
- incurrence of substantial debt or dilutive issuances of securities to pay for acquisitions;
- higher than expected acquisition and integration costs;
- increased amortization expenses;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- impairment of relationships with key suppliers or customers of any acquired businesses due to changes in management and ownership; and
- inability to retain key employees of any acquired businesses.

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, current or future product candidates, businesses, and technologies and to integrate them into our current infrastructure. As a result, we focus on research programs and product candidates that we identify for specific indications, which may cause us to forego or delay pursuit of opportunities with other product candidates or for other indications that may have greater commercial potential. Further, we may devote resources to potential acquisitions or in-licensing opportunities that are ultimately not completed or of which we do not realize the anticipated benefits. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

Additionally, we may compete with larger pharmaceutical companies and other competitors for new collaborations and in-licensing opportunities. These competitors likely will have greater financial resources than we do and may have greater expertise in identifying and evaluating new opportunities.

Our growth is subject to economic and political conditions.

Our business is affected by global and local economic and political conditions as well as the state of the financial markets, inflation, recession, financial liquidity, currency volatility, growth, and policy initiatives. There can be no assurance that global economic conditions and financial markets will not worsen and that we will not experience any adverse effects that may be material to our consolidated cash flows, results of operations, financial position or our ability to access capital, such as the adverse effects resulting from a prolonged shutdown in government operations both in the United States and internationally. Political changes, including war or other conflicts, some of which may be disruptive, could interfere with our supply chain, our customers and all of our activities in a

particular location.

Our operating history may make it difficult to evaluate our business and prospects as it relates to clinical trials or regulatory approvals.

We were incorporated in October 2014 and have only been conducting commercial operations with respect to our products since 2015. We have not yet demonstrated an ability to successfully complete clinical trials or obtain regulatory approvals. Consequently, any predictions about our future performance may not be as accurate as they could be if we had a history of successfully developing and commercializing future pharmaceutical products.

In addition, we may encounter unforeseen expenses, difficulties, complications, delays, and other known and unknown factors. We will need to expand our capabilities to support any future commercial activities. We may not be successful in adding such capabilities.

We expect our financial condition and operating results to continue to fluctuate from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any past quarterly period as an indication of future operating performance.

We may not be able to manage our business effectively if we are unable to attract and retain key personnel.

We may not be able to attract or retain qualified management and commercial, scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology, pharmaceutical and other businesses. If we are not able to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy.

We may decide to sell assets, which could adversely affect our prospects and opportunities for growth.

We may from time to time consider selling certain assets if we determine that such assets are not critical to our strategy or we believe the opportunity to monetize the asset is attractive or for various other reasons, including for the reduction of indebtedness. Although our expectation is to engage in asset sales only if they advance or otherwise support our overall strategy, we may be forced to sell assets in response to liquidation or other claims described herein, and any such sale could reduce the size or scope of our business, our market share in particular markets or our opportunities with respect to certain markets, products or therapeutic categories. As a result, any such sale could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Risks Related to Development and Regulatory Approval of Our Product Candidates

Our business is dependent on the successful development and regulatory approval of our current and any future product candidates.

As of December 31, 2021, our major marketed products, which have been approved by the FDA for sale in the United States include Qbrexza®, Accutane®, Targadox®, Ximino®, and Exelderm® Cream and Solution. However, our business remains dependent on the successful development and regulatory approval of additional product candidates.

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with DRL to initiate a Phase III clinical development program for a collaborative product candidate, DFD-29, that is being evaluated for the treatment of inflammatory lesions of rosacea. The success of our business, including our ability to finance our company and generate additional revenue in the future, may depend on the successful development and regulatory approval of the DFD-29 product candidate and any future product candidates that we may develop, in-license or acquire.

The clinical success of our current and any future product candidates will depend on a number of factors, including the following:

- the ability to raise additional capital on acceptable terms, or at all;
- timely completion of our clinical trials, which may be significantly slower or cost more than we currently anticipate and will depend substantially upon the performance of third-party contractors as well as our ability to timely recruit and enroll patients

in our clinical trials, which may be delayed due to numerous factors, including the prevalence of other companies' clinical trials for their product candidates for the same or similar indications;

- whether we are required by the FDA or similar foreign regulatory agencies to conduct additional clinical trials or other studies beyond those planned to support the approval and commercialization of our current or any future product candidates;
- acceptance of our proposed indications and primary endpoint assessments relating to the proposed indications of our current or any future product candidates by the FDA and similar foreign regulatory authorities;
- our ability to demonstrate to the satisfaction of the FDA and similar foreign regulatory authorities the safety, efficacy and acceptable risk to benefit profile of our current or any future product candidates;
- the prevalence, duration and severity of potential side effects experienced with our current or any future product candidates;
- the timely receipt of necessary marketing approvals from the FDA and similar foreign regulatory authorities;
- achieving and maintaining, and, where applicable, ensuring that our third-party contractors achieve and maintain, compliance with our contractual obligations and with all regulatory requirements applicable to our current or any future product candidates;
- our ability to successfully obtain the substances and materials used in our current or any future product candidates from third parties and to have finished products manufactured by third parties in accordance with regulatory requirements and in sufficient quantities for preclinical and clinical testing;
- the ability of third parties with whom we contract to manufacture clinical trial supplies of our current or any future product candidates, remain in good standing with regulatory agencies and develop, validate and maintain commercially viable manufacturing processes that are compliant with cGMP; and
- a continued acceptable safety profile during clinical development of our current or any future product candidates.

If we do not achieve one or more of these factors, many of which are beyond our control, in a timely manner or at all, we could experience significant delays or an inability to successfully complete and obtain regulatory approvals of our current or any future product candidates.

Clinical drug development is very expensive, time-consuming and uncertain. Our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates, which could prevent or delay regulatory approval and commercialization.

Clinical drug development is very expensive, time-consuming and difficult to design and implement, and its outcome is inherently uncertain. Before obtaining regulatory approval for the commercial sale of a product candidate, we must demonstrate through clinical trials that a product candidate is both safe and effective for use in the target indication. Most product candidates that commence clinical trials are never approved by regulatory authorities for commercialization. The clinical trials for these product candidates may take significantly longer than expected to complete. In addition, we, any partner with which we currently or may in the future collaborate, the FDA, an institutional review board ("IRB") or other regulatory authorities, including state and local agencies and counterpart agencies in foreign countries, may suspend, delay, require modifications to or terminate our clinical trials at any time, for various reasons, including:

- discovery of serious or unexpected adverse events, toxicities, or side effects experienced by study participants or other safety issues;
- lack of effectiveness of any product candidate during clinical trials or the failure of a product candidate to meet specified endpoints;
- slower than expected rates of subject recruitment and patient enrollment in clinical trials resulting from numerous factors, including the prevalence of other companies' clinical trials for their product candidates for the same indication, such as atopic dermatitis;

- difficulty in retaining subjects who have initiated participation in a clinical trial but may withdraw at any time due to adverse side effects from the therapy, insufficient efficacy, fatigue with the clinical trial process or for any other reason;
- difficulty in obtaining IRB approval for studies to be conducted at each site;
- delays in manufacturing or obtaining, or inability to manufacture or obtain, sufficient quantities of materials for use in clinical trials;
- inadequacy of or changes in our manufacturing process or the product formulation or method of delivery;
- changes in applicable laws, regulations and regulatory policies;
- delays or failure in reaching agreement on acceptable terms in clinical trial contracts or protocols with prospective CROs, clinical trial sites and other third-party contractors;
- inability to add a sufficient number of clinical trial sites;
- uncertainty regarding proper dosing;
- failure of our CROs or other third-party contractors to comply with contractual and regulatory requirements or to perform their services in a timely or acceptable manner;
- failure by us, our employees, our CROs or their employees or any partner with which we may collaborate or their employees to comply with applicable FDA or other regulatory requirements relating to the con-duct of clinical trials or the handling, storage, security and recordkeeping for drug and biologic products;
- scheduling conflicts with participating clinicians and clinical institutions;
- failure to design appropriate clinical trial protocols;
- inability or unwillingness of medical investigators to follow our clinical protocols;
- difficulty in maintaining contact with subjects during or after treatment, which may result in incomplete data; or
- insufficient data to support regulatory approval.

We or any partner with which we may collaborate may suffer significant setbacks in our clinical trials similar to the experience of a number of other companies in the pharmaceutical and biotechnology industries, even after receiving promising results in earlier trials. In the event that we or our potential partners abandon or are delayed in the clinical development efforts related to our current or any future product candidates, we may not be able to execute on our business plan effectively and our business, financial condition, operating results and prospects would be harmed.

We expect to rely on third-party CROs and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process for our product candidates. If these third parties do not meet our requirements, conduct the trials as required or otherwise provide services as anticipated, we may not be able to satisfy our contractual obligations or obtain regulatory approval for, or successfully commercialize, our current or any future product candidates when expected or at all.

We expect to rely on third-party CROs and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process. We will also rely upon various medical institutions, clinical investigators and contract laboratories to conduct our trials in accordance with our clinical protocols and all applicable regulatory requirements, including the FDA's regulations and GCPs, which are meant to protect the rights, integrity, and confidentiality of study subjects and to define the roles of clinical trial sponsors, administrators and monitors, and state regulations governing the handling, storage, security and recordkeeping for drug and biologic products. These CROs and other third parties play a significant role in the conduct of our clinical

trials, the subsequent collection and analysis of data from the clinical trials, the preparation for and submission of our filings with the FDA and comparable foreign regulatory authorities and the successful commercialization of our product.

We rely heavily on third parties for the execution of our clinical trials and preclinical studies, and control only certain aspects of their activities. We and our CROs and other third-party contractors are required to comply with GCP and GLP requirements, which are regulations and guidelines enforced by the FDA and comparable foreign regulatory authorities for products in clinical development. Regulatory authorities enforce these GCP and GLP requirements through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of these third parties fail to comply with applicable GCP and GLP requirements, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or other regulatory authorities may not accept or data, or may require us to perform additional clinical trials before approving our or our partners' marketing applications. We cannot provide assurances that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials or preclinical studies complies with applicable GCP and GLP requirements. In addition, our clinical trials must generally be conducted with products manufactured and produced under cGMP regulations. Our failure to comply with these regulations and policies may require us to repeat clinical trials, which would delay the regulatory approval process.

If any of our CROs or clinical trial sites terminate their involvement in our clinical trials for any reason, we may not be able to enter into arrangements with alternative CROs or clinical trial sites in a timely manner, or do so on commercially reasonable terms or at all. In addition, if our relationship with clinical trial sites is terminated, we may experience the loss of follow-up information on patients enrolled in our ongoing clinical trial unless we are able to transfer the care of those patients to another qualified clinical trial site. In addition, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and could receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical trial site may be questioned by the FDA and comparable foreign regulatory authorities.

Additionally, the regulatory submission process for a product candidate is complex. We expect to rely on a third-party service provider for the preparation and submission of filings with the FDA and comparable foreign regulatory authorities for approval of our current and any future product candidates. If our relationship with such service provider is terminated prior to completion of our regulatory submission process, we may not be able to enter into an arrangement with an alternative service provider in a timely manner, or do so on commercially reasonable terms, and our submission may be substantially delayed.

We are currently dependent on DRL for the manufacture and clinical supply of DFD-29 drug product. Any interruption in our supply may cause serious delays in the timing of our clinical trials, increase our costs and adversely impact our financial results.

Pursuant to the terms of our agreement with DRL for the exclusive, worldwide rights to develop and commercialize DFD-29 for the evaluation of treatment, among other potential indications, inflammatory lesions of rosacea (the "DFD-29 Agreement"), DRL is responsible for the manufacture and supply to us of DFD-29 drug product and we are completely reliant upon DRL to provide us with adequate supply for our use. We may experience an interruption in supply if, among other reasons, we incorrectly forecast our supply requirements, DRL allocates supply to its own development programs, DRL incorrectly plans its manufacturing production or DRL is unable to manufacture DFD-29 drug product in a timely manner to match our development or commercial needs. Transferring technology to a new manufacturer will require additional processes, technologies and validation studies, which are costly, may take considerable amounts of time, may not be successful and require review and approval by the FDA and applicable foreign regulatory bodies. Such manufacturer must comply with cGMP requirements enforced by the FDA and applicable foreign regulatory bodies through facilities inspection programs and review of submitted technical information.

We may be unable to obtain regulatory approval for our current or any of our future product candidates under applicable regulatory requirements. The FDA and foreign regulatory bodies have substantial discretion in the approval process, including the ability to delay, limit or deny approval of product candidates. The delay, limitation or denial of any regulatory approval would adversely impact our business and our operating results.

We may never obtain regulatory approval to commercialize our current or any future product candidates. The research, testing, manufacturing, safety surveillance, efficacy, quality control, recordkeeping, labeling, packaging, storage, approval, sale, marketing, distribution, import, export and reporting of safety and other post-market information related to our current and any future product candidates are subject to extensive regulation by the FDA and other regulatory authorities in the United States and in foreign countries, and such regulations differ from country to country. We are not permitted to market any of our current or any future product candidates in the United States until we receive approval of an NDA, BLA or other applicable regulatory filing from the FDA. We are also not

permitted to market our product or our current or any future product candidates in any foreign countries until we receive the requisite approval from the applicable regulatory authorities of such countries.

To gain approval to market a new drug, the FDA and foreign regulatory authorities must receive preclinical, clinical and chemistry, manufacturing and controls data that adequately demonstrate the safety, purity, potency, efficacy and compliant manufacturing of the product for the intended indication applied for in an NDA, BLA or other applicable regulatory filing. The development and approval of new drug products and biologic products involves a long, expensive and uncertain process. A delay or failure can occur at any stage in the process. A number of companies in the pharmaceutical and biopharmaceutical industry have suffered significant setbacks in clinical trials, including in Phase 3 clinical development, even after promising results in earlier preclinical studies or clinical trials. These setbacks have been caused by, among other things, findings made while clinical trials were underway and safety or efficacy observations made in clinical trials, including previously unreported adverse events. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and the results of clinical trials by other parties may not be indicative of the results in trials we or our partners may conduct.

The FDA and foreign regulatory bodies have substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of product candidates for many reasons, including:

- the FDA or the applicable foreign regulatory body may disagree with the design, implementation, choice of dose, analysis plans or interpretation of the outcome of one or more clinical trials;
- the FDA or the applicable foreign regulatory body may not deem a product candidate safe and effective for its proposed indication, or may deem a product candidate's safety or other perceived risks to out-weigh its clinical or other benefits;
- the FDA or the applicable foreign regulatory body may not find the data from preclinical studies and clinical trials, including the number of subjects in the safety database, sufficient to support approval, or the results of clinical trials may not meet the level of statistical or clinical significance required by the FDA or the applicable foreign regulatory body for approval;
- the FDA or the applicable foreign regulatory body may disagree with our interpretation of data from pre-clinical studies or clinical trials performed by us or third parties, or with the interpretation of any partner with which we may collaborate;
- the data collected from clinical trials may not be sufficient to support the submission and approval of an NDA, BLA or other applicable regulatory filing;
- the FDA or the applicable foreign regulatory body may require additional preclinical studies or clinical trials;
- the FDA or the applicable foreign regulatory agency may identify deficiencies in the formulation, manufacturing, quality control, labeling or specifications of our current or any future product candidates;
- the FDA or the applicable foreign regulatory agency may require clinical trials in pediatric patients in order to establish pharmacokinetics or safety for this more drug-sensitive population;
- the FDA or the applicable foreign regulatory agency may grant approval contingent on the performance of costly additional post-approval clinical trials;
- the FDA or the applicable foreign regulatory agency may grant approval but impose substantial and costly post-approval requirements;
- the FDA or the applicable foreign regulatory agency may approve our current or any future product candidates for a more limited indication or a narrower patient population than we originally requested;
- the FDA or applicable foreign regulatory agency may not approve the labeling that we believe is necessary or desirable for the successful commercialization of our current or any future product candidates;

- the FDA or the applicable foreign regulatory body may not approve of the manufacturing processes, controls or facilities of third-party manufacturers or testing labs with which we contract; or

- the FDA or the applicable foreign regulatory body may change its approval policies or adopt new regulations in a manner rendering our clinical data or regulatory filings insufficient for approval.

Of the large number of drugs and biologics in development, only a small percentage successfully complete the FDA or other regulatory approval processes and are commercialized. Our current and any future product candidates may not be approved by the FDA or applicable foreign regulatory agencies even though they meet specified endpoints in our clinical trials. The FDA or applicable foreign regulatory agencies may ask us to conduct additional costly and time-consuming clinical trials in order to obtain marketing approval or approval to enter into an advanced phase of development, or may change the requirements for approval even after such agency has reviewed and commented on the design for the clinical trials. Any delay in obtaining, or inability to obtain, applicable regulatory approval for any of our product candidates would delay or prevent commercialization of our current and any future product candidates and would harm our business, financial condition, operating results and prospects.

We may conduct clinical trials for our current and any future product candidates, in whole or in part, outside of the United States and the FDA and applicable foreign regulatory authorities may not accept data from such trials, which would likely result in additional costs to us and delay our business plan.

We may in the future choose to conduct, one or more of our clinical trials outside the United States. Although the FDA or applicable foreign regulatory authority may accept data from clinical trials conducted outside the United States or the applicable jurisdiction, acceptance of such study data by the FDA or applicable foreign regulatory authority may be subject to certain conditions. Where data from foreign clinical trials are intended to serve as the basis for marketing approval in the United States, the FDA will not approve the application on the basis of foreign data alone unless those data are applicable to the U.S. population and U.S. medical practice; the studies were performed by clinical investigators of recognized competence; and the data are considered valid without the need for an on-site inspection by the FDA or, if the FDA considers such an inspection to be necessary, the FDA is able to validate the data through an on-site inspection or other appropriate means. Many foreign regulatory bodies have similar requirements. In addition, such foreign studies would be subject to the applicable local laws of the foreign jurisdictions where the studies are conducted. There can be no assurance the FDA or applicable foreign regulatory authority will accept data from trials conducted outside of the United States or the applicable jurisdiction. If the FDA or applicable foreign regulatory authority does not accept such data, it would likely result in the need for additional clinical trials, which would be costly and time-consuming and delay aspects of our business plan.

Risks Related to Intellectual Property, Generic Competition and Paragraph IV Litigation

If we are unable to obtain and maintain patent protection for our technology and products or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection in the United States and other countries with respect to our products or any current or future product candidates that we may license or acquire and our manufacturing methods, as well as successfully defending these patents and trade secrets against third-party challenges, which is expensive and time-consuming. A patent is the grant of a property right which allows its holder to exclude others from, among other things, selling the subject invention in, or importing such invention into, the jurisdiction that granted the patent. We have obtained, acquired or in-licensed a number of patents and patent applications covering key aspects of certain of our principal products. In the aggregate, our patents are of material importance to our business taken as a whole. We seek to protect our proprietary position by filing or obtaining licenses under patent applications in the United States and abroad related to our products and any other current or future product candidates. We will only be able to protect our technologies from unauthorized use by third parties to the extent that valid and enforceable patents cover them. Our success is predicated, in part, by our ability to maintain the integrity of our trade secrets.

It is possible that we or our licensors will fail to timely identify patentable aspects of our research and development output before it is too late to obtain patent protection, which may result in third parties using our proprietary information, impairing our abilities to compete in the market, to generate revenues, and to achieve profitability. Moreover, should we enter into other collaborations, we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance and enforcement of our patents. Therefore, such patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. The patent

prosecution process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. In addition, no consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the U.S. The patent situation outside the U.S. is even more uncertain. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States. For example, European patent law restricts the patentability of methods of treatment of the human body more than United States law does. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until eighteen (18) months after a first filing, if at all. Therefore, we cannot know with certainty whether we or our licensors were the first to make the inventions claimed in our owned or licensed patents or pending patent applications, or that we were the first to file for patent protection of such inventions. In the event that a third party has also filed a U.S. patent application relating to any current or future product candidates or a similar invention, we may have to participate in derivation proceedings declared by the USPTO to determine proper inventorship of a claimed invention. The costs of these proceedings could be substantial, and it is possible that our efforts would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. On September 16, 2011, the Leahy-Smith America Invents Act (the "Leahy-Smith Act"), was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include provisions that affect the way patent applications are prosecuted and may also affect patent litigation. The United States Patent Office recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first-inventor-to-file provisions, which became effective on March 16, 2013. Courts continue to consider the constitutionality of certain provisions of the Leahy-Smith Act, including the Supreme Court in a recent decision *affecting inter partes* review procedures. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

Moreover, we may be subject to a third-party pre-issuance submission of prior art to the USPTO, or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or other administrative proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, render unenforceable, or invalidate, our patent rights, allow third parties to commercialize our technology or products and compete directly with us, without payment to us. We may also be unable to manufacture or commercialize products without infringing third-party patent rights, under which a license might not be available. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop, or commercialize our current or future product candidates.

Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us, or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

The issuance of a patent does not foreclose challenges to its inventorship, scope, validity or enforceability. Therefore, our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such product candidates might expire before or shortly after such product candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Generic drug approvals and successful challenges against the validity of our patents may cause us to lose exclusivity of some of our products.

In the U.S., the Hatch-Waxman Act provides non-patent regulatory exclusivity for five years from the date of the first FDA approval of a new drug compound in an NDA. The FDA, with one exception, is prohibited during those five years from accepting for filing a generic, or ANDA that references the NDA. In reference to the foregoing exception, if a patent is indexed in the FDA Orange Book for the new drug compound, a generic may file an ANDA four years from the NDA approval date if it also files a Paragraph IV Certification with the FDA challenging the patent. Protection under the Hatch-Waxman Act will not prevent the filing or approval of another full NDA. However, the NDA applicant would be required to conduct its own pre-clinical and adequate and well-controlled clinical trials to independently demonstrate safety and effectiveness.

Generic drug companies may submit applications seeking approval to market generic versions of our products. In connection with these applications, generic drug companies may seek to challenge the validity and enforceability of our patents through litigation and/or with the USPTO. Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings), such as the Paragraph IV certification made by Perrigo pertaining to the patents covering Qbrexza. Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings. As a result of the loss of any patent protection from such litigation or USPTO proceedings, or the "at-risk" launch by a generic competitor of our products, our products could be sold at significantly lower prices, and we could lose a significant portion of sales of that product in a short period of time, which could adversely affect our business, financial condition, operating results and prospects.

Enforcing our proprietary rights is difficult and costly and we may be unable to ensure their protection.

The degree of future protection for our proprietary rights is uncertain, as legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- our licensors might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate our products or our current or future product candidates' technologies;
- it is possible that none of the pending patent applications licensed to us will result in issued patents;
- the issued patents covering our products or any current or future product candidates may not provide a basis for commercially viable active products, may not provide us with any competitive advantages, or may be challenged and defeated by third parties;
- we may not develop additional proprietary technologies that are patentable; or
- patent rights of others may have an adverse effect on our business.

Furthermore, competitors may infringe our issued patents or other intellectual property (collectively, our "IP"), which may require us to file infringement claims, which is expensive and time consuming, and the outcome uncertain. Any claims we assert against perceived infringers could provoke counterclaims alleging that our IP rights are invalid, unenforceable, or not infringed or that we have infringed upon misappropriated others' intellectual property. In response, a court may decide that a patent of ours is wholly or partially invalid or unenforceable, construe the patent's claims narrowly, or refuse to stop the accused party from using the technology at issue.

Additionally, some of our products do not have patent protection because they are not eligible or qualify for such protection. This creates greater risk of competition with generic drug manufacturers and may otherwise adversely affect our business or result of operations.

Further, we rely on trade secrets, including unpatented know-how, to maintain our competitive position. We enter into non-disclosure and confidentiality agreements to protect these trade secrets but cannot guarantee that counterparties will not breach the agreements and disclose our proprietary information, including trade secrets. Enforcing a claim that a party illegally disclosed or misappropriated trade secrets is costly, difficult, and time consuming, and we may be unable to obtain adequate remedy. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in any litigation would harm our business.

Our ability to develop, manufacture, market and sell our products or any current or future product candidates depends upon our ability to avoid infringing the proprietary rights of third parties. There are many U.S. and foreign issued patents and pending patent applications owned by third parties, in the dermatology field, which cover numerous compounds and formulations in our targeted markets. Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we and our licensors may not be successful in defending against intellectual property claims raised by third parties, which could have a material adverse effect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that our commercial activities relating to our products or current or future product candidates may infringe. There could also be existing patents of which we are not aware that our products or current or future product candidates may inadvertently infringe.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that we infringe on their products or technology, in addition to costly and time-consuming litigation, we could face a number of issues, including:

- diversion of management's attention from our core business;
- substantial damages for past infringement;
- injunctions prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it would not be required to do;
- requirements that we pay substantial royalties or grant cross licenses under our patents;
- redesigning our processes so they do not infringe, which may not be possible or could require substantial funds and time; and
- harm to our reputation and subsequent adverse effect on the valuation of our securities and revenue.

Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the valuation of our securities. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our ability to compete in the marketplace.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

We may need to license certain intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property rights, including patent rights, that are important or necessary to the development of our products or current or future product candidates. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our products or current or future product candidates, in which case we would be required to obtain a license from these third parties, if available, on commercially reasonable terms, or our business could be harmed, possibly materially.

If we fail to comply with our obligations in our intellectual property licenses and funding arrangements with third parties, or if we breach an agreement under which we license rights to any product or future product candidate, we could lose rights that are important to our business.

If we fail to comply with our obligations under current or future license and funding agreements, our counterparties may have the right to terminate these agreements, in which event we might not be able to develop, manufacture, or market any product or utilize any technology that is covered by these agreements or may face other penalties under the agreements. Such an occurrence could materially and adversely affect the value of a product candidate being developed under any such agreement or could restrict our drug discovery activities. Termination of these agreements or reduction or elimination of our rights under these agreements may result in our having to negotiate new or reinstated agreements with less favorable terms or cause us to lose our rights under these agreements, including our rights to important intellectual property or technology. Further, any uncured, material breach under our license agreement with any current or future licensor could result in our loss of rights to our products or current or future product candidates and may lead to a complete termination of any future product development efforts.

Risks Related to our Platform and Data

Our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or third parties' cybersecurity.

We are increasingly dependent upon information technology systems, infrastructure, and data to operate our business. In the ordinary course of business, we collect, store, and transmit confidential information, including, but not limited to, information related to our intellectual property and proprietary business information, personal information, and other confidential information. It is critical that we maintain such confidential information in a manner that preserves its confidentiality and integrity. Furthermore, we have outsourced elements of our operations to third party vendors, who each have access to our confidential information, which increases our disclosure risk.

We are in the process of implementing our internal security and business continuity measures and developing our information technology infrastructure. Our internal computer systems and those of current and future third parties on which we rely may fail and are vulnerable to damage from computer viruses and unauthorized access. Our information technology and other internal infrastructure systems, including corporate firewalls, servers, data center facilities, lab equipment, and connection to the internet, face the risk of breakdown or other damage or interruption from service interruptions, system malfunctions, natural disasters, terrorism, war, and telecommunication and electrical failures, as well as security breaches from inadvertent or intentional actions by our employees, contractors, consultants, business partners, and/or other third parties, or from cyber-attacks by malicious third parties (including the deployment of harmful malware, ransomware, denial-of-service attacks, social engineering and other means to affect service reliability and threaten the confidentiality, integrity and availability of information), each of which could compromise our system infrastructure or lead to the loss, destruction, alteration, disclosure, or dissemination of, or damage or unauthorized access to, our data or data that is processed or maintained on our behalf, or other assets.

If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations, and could result in financial, legal, business, and reputational harm to us. For example, in 2021, we were the victim of a cybersecurity incident that affected our accounts payable function and led to approximately $9.5 million in wire transfers being misdirected to fraudulent accounts. The details of the incident and its origin are under investigation with the assistance of third-party cybersecurity experts working at the direction of legal counsel. The matter was reported to the Federal Bureau of Investigation and does not appear to have compromised any personally identifiable information or protected health information. Fortress, as our controlling stockholder and supporting partner in our back-office functions, is providing us with $9.5 million to ensure our accounts payable operations continue to function smoothly. We may incur additional expenses and losses as a result of this cybersecurity incident, including related to investigation fees and remediation costs.

In addition, the loss or corruption of, or other damage to, clinical trial data from completed or future clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. Likewise, we rely on third parties for the manufacture of our drug candidates or any future drug candidates and to conduct clinical trials, and similar events relating to their systems and operations could also have a material adverse effect on our business and lead to regulatory agency actions. The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, foreign governments, and cyber terrorists, has generally increased as the number, intensity, and sophistication of attempted attacks and intrusions from around the world have increased. Sophisticated cyber attackers (including foreign adversaries engaged in industrial espionage) are skilled at adapting to existing security technology and developing new methods of gaining access to organizations' sensitive business data, which could result in the loss of proprietary information, including trade secrets. We may not be able to anticipate all types of security threats, and we may not be able to implement preventive measures effective against all such security threats. For example, third parties have in the past and may in the future illegally pirate our software and make that software publicly available on peer-to-peer file sharing networks or otherwise. The techniques used by cyber criminals change frequently, may not be recognized until launched, and can originate from a wide variety of sources, including outside groups such as external service providers, organized crime affiliates, terrorist organizations, or hostile foreign governments or agencies.

Any security breach or other event leading to the loss or damage to, or unauthorized access, use, alteration, disclosure, or dissemination of, personal information, including personal information regarding clinical trial subjects, contractors, directors, or employees, our intellectual property, proprietary business information, or other confidential or proprietary information, could directly harm our reputation, enable competitors to compete with us more effectively, compel us to comply with federal and/or state breach notification laws and foreign law equivalents, subject us to mandatory corrective action, or otherwise subject us to liability under laws and regulations that protect the privacy and security of personal information. Each of the foregoing could result in significant legal and financial exposure and reputational damage that could adversely affect our business. Notifications and follow-up actions related to a security incident could impact our reputation or cause us to incur substantial costs, including legal and remediation costs, in connection with these measures and otherwise in connection with any actual or suspected security breach. We expect to incur significant costs in an effort to detect and prevent security incidents and otherwise implement our internal security and business continuity measures, and actual, potential, or anticipated attacks may cause us to incur increasing costs, including costs to deploy additional personnel and protection technologies, train employees, and engage third-party experts and consultants. We may face increased costs and find it necessary or appropriate to expend substantial resources in the event of an actual or perceived security breach.

The costs related to significant security breaches or disruptions could be material and our insurance policies may not be adequate to compensate us for the potential losses arising from any such disruption in, or failure or security breach of, our systems or third-party systems where information important to our business operations or commercial development is stored or processed. In addition, such insurance may not be available to us in the future on economically reasonable terms, or at all. Further, our insurance may not cover all claims made against us and could have high deductibles in any event, and defending a suit, regardless of its merit, could be costly and divert management attention. Furthermore, if the information technology systems of our third-party vendors and other contractors and consultants become subject to disruptions or security breaches, we may have insufficient recourse against such third parties and we may have to expend significant resources to mitigate the impact of such an event, and to develop and implement protections to prevent future events of this nature from occurring.

Risks Related to the COVID-19 Pandemic

The COVID-19 pandemic may continue to impact our product revenues, future clinical trials, and as a result, our financial condition and results of operations and other aspects of our business.

In December 2019, a novel strain of coronavirus, which causes a disease referred to as COVID-19, was first detected in Wuhan, China and has since spread worldwide. On March 11, 2020, the World Health Organization declared that the rapidly spreading COVID-19 outbreak had evolved into a pandemic. In response to the pandemic, many governments around the world are implementing a variety of control measures to reduce the spread of COVID-19, including travel restrictions and bans, instructions to residents to practice social distancing, quarantine advisories, shelter-in-place orders and required closures of non-essential businesses.

The COVID-19 pandemic has and may continue to impact the global economy, disrupt global supply chains, and create significant volatility and disruption of financial markets.

To protect the health of our workforce, we asked our office-based employees to work remotely, have restricted domestic and international travel indefinitely, and restricted on-site staff to only those personnel and contractors who perform essential activities that must be conducted on-site. We intend to keep these precautionary measures in effect for the foreseeable future and may need to enact further measures to help minimize the risk of our employees being exposed to COVID-19. Although the impact of a remote working environment to our operations has been minimal, our continued reliance on remote work may negatively impact productivity, including our ability to generate revenues and product demand, prepare regulatory applications, and conduct data analysis, and may disrupt, delay, or otherwise adversely impact our business. In addition, continued remote working could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruption. COVID-19 may also compromise the ability of independent contractors who perform consulting services for us to deliver services or deliverables in a satisfactory or timely manner.

Some factors from the COVID-19 outbreak that may delay or otherwise adversely affect our product revenues, as well as adversely impact our business generally, include:

- the changes in buying patterns throughout our supply chain caused by lack of normal access by patients to the healthcare system and concern about the continued supply of medications, which may increase or decrease demand for our products;
- adverse effects on our manufacturing operations, supply chain and distribution systems, which may im-pact our ability to produce and distribute our products, as well as the ability of third parties to fulfill their obligations to us and could increase our expenses;
- the risk of shutdown in countries where we rely, or may rely, on CMOs to provide commercial manufacture of our products, clinical batch manufacturing of our product candidates, including DFD-29, or the procurement of active pharmaceutical ingredients or other manufacturing components for our products or product candidates, which may cause delays or shortages in our product supply and/or the timing of any our clinical trials;
- the risk that the COVID-19 pandemic may intensify other risks inherent in our business; and
- the possibility that third parties on which we rely for certain functions and services, including CMOs, suppliers, distributors, logistics providers, and external business partners, may be adversely impacted by restrictions resulting from COVID-19, which could cause us to experience delays or incur additional costs.

Risks Related to Our Finances and Capital Requirements

Although we have been cash flow positive since the end of 2017, we may incur losses in the foreseeable future and may not be able to regain or maintain profitability.

Even though we are a cash generating, commercial organization, we have a limited operating history. We have focused primarily on in-licensing, developing, commercializing and/or manufacturing and selling our products. Potential future losses, among other things, will have an adverse effect on our stockholders' equity and working capital. Because of the numerous risks and uncertainties associated with commercialization and/or developing pharmaceutical products, we are unable to predict the timing or amount of increased expenses or if we will be able to maintain profitability. Any future net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially if:

- our current or any future product candidates are approved for commercial sale, due to our ability to establish the necessary commercial infrastructure to launch this product candidate without substantial delays, including hiring sales and marketing personnel and contracting with third parties for warehousing, distribution, cash collection and related commercial activities;
- we are required by the FDA, or foreign regulatory authorities, to perform studies in addition to those currently expected;
- there are any delays in completing our clinical trials or the development of our current or any future product candidates;
- we execute other collaborative, licensing or similar arrangements and the timing of payments we may make or receive under these arrangements;
- there are variations in the level of expenses related to our future development programs;
- there are any product liability or intellectual property infringement lawsuits in which we may become involved;
- there are any regulatory developments affecting our products, current or future product candidates, or the product candidates of our competitors; and
- the level of underlying demand for our products and wholesalers' buying patterns.

Our ability to maintain profitability depends upon our ability to generate and sustain revenue. Our ability to generate and sustain revenue depends on a number of factors, including, but not limited to, our ability to:

- obtain and maintain regulatory approval for our products, or any other current or future product candidates that we may license or acquire;
- manufacture commercial quantities of our current products or current or future product candidates, if approved, at acceptable cost levels; and
- maintaining and/or expanding our commercial organization and the supporting infrastructure required to successfully market and sell our products or current or future product candidates, if approved.

Even if we do achieve sustainable profitability, we may not be able to increase profitability on a quarterly or annual basis. Our failure to remain profitable would depress our value and could impair our ability to raise capital, expand our business, maintain initiate any research and development efforts, diversify our product offerings or even continue our operations. A decline in our value could also cause you to lose all or part of your investment.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate any future product development programs or commercialization, manufacture and/or sales efforts.

Selling and developing products for dermatological use, conducting clinical trials, establishing outsourced manufacturing relationships and successfully manufacturing and marketing drugs that we may develop is expensive. We may need to raise additional capital to:

- fund our operations and continue our efforts to hire additional personnel;
- qualify and outsource the commercial-scale manufacturing of our products under cGMP; and
- in-license and develop additional product candidates.

Our future funding requirements will depend on many factors, including, but not limited to:

- the potential for delays in our efforts to seek regulatory approval for any current or future product candidates, and any costs associated with such delays;
- the costs of maintaining and/or establishing a commercial organization to sell, market and distribute our products and/or current or future product candidates;
- the rate of progress and costs of our efforts to prepare for the submission of NDA or BLA for any product candidates that we may in-license or acquire in the future, and the potential that we may need to conduct additional clinical trials to support applications for regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with any current or future product candidates, including any such costs we may be required to expend if licensors are unwilling or unable to do so;
- the cost and timing of securing sufficient supplies of our products and current or future product candidates from our contract manufacturers in preparation for commercialization, manufacture, and/or sale;
- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish;
- the potential that we may be required to file a lawsuit to defend our patent rights or regulatory exclusivities from challenges by companies seeking to market generic versions of intravenous synthetic opioid analgesic; and
- the success of sales efforts of our current products and/or the commercialization of any current or future product candidates.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies, but we currently have no commitments or agreements relating to any of these types of transactions.

We may need to finance future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements, as well as through interest income earned on cash and investment balances. We cannot be certain that additional funding will be available on acceptable terms, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate one or more of future development programs or our future commercialization efforts.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends.

If we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams, research programs or product candidates or grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate future product development or current or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

If we fail to raise the additional funds needed to complete the development of our current products or current or future product candidates, or the funds needed to complete the development of our current or future product candidates, we will be unable to execute our current business plan.

Risks Related to Owning our Common Stock

If we fail to maintain or implement effective internal controls, we may not be able to report financial results accurately or on a timely basis, or to detect fraud, which could have a material adverse effect on our business and the per share price of our common stock.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures, and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. We are also continuing to improve our internal control over financial reporting. We have expended, and anticipate that we will continue to expend, significant resources in order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls or our internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting could also adversely affect the results of management reports and independent registered public accounting firm audits of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures, and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the market price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on The Nasdaq Capital Market (“Nasdaq”).

We are not currently required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley Act, and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Given our recent IPO, we will be required to provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report on Form 10-K. Our independent registered public accounting firm is not required to audit the effectiveness of our internal control over financial reporting until after we are no longer an “emerging growth company” (“EGC”), as defined in the JOBS Act. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating.

Any failure to maintain effective disclosure controls and internal control over financial reporting could have a material and adverse effect on our business and operating results, and cause a decline in the market price of our common stock.

Our charter documents and Delaware law could discourage takeover attempts and other corporate governance changes.

Our Second Amended and Restated Certificate of Incorporation and bylaws contain provisions that could delay or prevent a change in control of our Company. These provisions could also make it difficult for stockholders to elect directors that are not nominated by the current members of our board of directors or take other corporate actions, including effecting changes in our management. These provisions include certain provisions that:

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- provide that, after a removal for cause, vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum;
- prohibit cumulative voting in the election of directors;
- require majority voting to amend our certificate of incorporation and bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- restrict the forum for certain litigation against us to Delaware or federal courts;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and
- bestow majority control of the stockholder vote to Fortress by virtue of their exclusive ownership of our Class A Common Stock.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a period of time without the approval of our board of directors. In addition, our credit facility includes, and other debt instruments we may enter into in the future may include, provisions entitling the lenders to demand immediate repayment of all borrowings upon the occurrence of certain change of control events relating to our company, which also could discourage, delay or prevent a business combination transaction.

Our Second Amended and Restated Certificate of Incorporation provides, subject to limited exceptions, that the Court of Chancery of the State of Delaware is the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a chosen judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our Second Amended and Restated Certificate of Incorporation requires to the fullest extent permitted by law, that derivative actions brought in our name, actions against directors, officers and employees for breach of fiduciary duty and other similar actions may be brought in the Court of Chancery in the State of Delaware or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our certificate of incorporation. In addition, our Second Amended and Restated Certificate of Incorporation provides that the federal district courts of the United States are the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act and the Exchange Act.

In March 2020, the Delaware Supreme Court issued a decision in Salzburg et al. v. Sciabacucchi, which found that an exclusive forum provision providing for claims under the Securities Act to be brought in federal court is facially valid under Delaware law. It is unclear whether this decision will be appealed, or what the final outcome of this case will be. We intend to enforce this provision, but we do not know whether courts in other jurisdictions will agree with this decision or enforce it.

This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our Second Amended and Restated Certificate of

Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

The requirements of being a public company may strain our resources, divert our management's attention and affect our ability to attract and retain qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, and are required to comply with the applicable requirements of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of Nasdaq, and other applicable securities rules and regulations. Compliance with these rules and regulations increases our legal and financial compliance costs, makes some activities more difficult, time-consuming or costly and increases demand on our systems and resources. Among other things, the Exchange Act requires that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal controls over financial reporting. Significant resources and management oversight is required to maintain and, if required, improve our disclosure controls and procedures and internal controls over financial reporting to meet this standard. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we hired additional employees to comply with these requirements, we may need to hire even more employees in the future, which will increase our costs and expenses.

We also expect that being a public company and these new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

Reduced reporting and disclosure requirements applicable to us as an EGC could make our common stock less attractive to investors.

We are an EGC and, for as long as we continue to be an EGC, we may continue to avail ourselves of exemptions from various reporting requirements applicable to other public companies. Consequently, we are not required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, and we are subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, the JOBS Act provides that an EGC can take advantage of an extended transition period for complying with new or revised accounting standards. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of the dates such pronouncements are effective for public companies. We could be an EGC for up to five years following the completion of our recent offering. We will cease to be an EGC upon the earliest of: (i) the end of the fiscal year following the fifth anniversary of the aforementioned offering, (ii) the first fiscal year after our annual gross revenue is $1.07 billion or more, (iii) the date on which we have, during the previous three-year period, issued more than $1.0 billion in nonconvertible debt securities or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded $700 million as of the end of the second quarter of that fiscal year. We cannot predict whether investors will find our common stock less attractive if we choose to rely on these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock, and the price of our common stock may be more volatile.

Our shares of common stock are subject to potential delisting if we do not continue to maintain the listing requirements of Nasdaq.

We list our shares of common stock on Nasdaq under the symbol "DERM." Nasdaq has rules for continued listing, including, without limitation, minimum market capitalization and other requirements. Failure to maintain our listing, or de-listing from Nasdaq, would make it more difficult for shareholders to sell our securities and more difficult to obtain accurate price quotations on our securities. This could have an adverse effect on the price of our common stock. Our ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing we may need in the future, may also be materially and adversely affected if our common stock is not traded on a national securities exchange.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gains.

We currently intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of

directors. In addition, the terms of our existing debt arrangements preclude us from paying dividends and our future debt agreements, if any, may contain similar restrictions. As a result, you may only receive a return on your investment in our common stock if the market price of our common stock increases.

The trading price of the shares of our common stock is likely to be volatile, and purchasers of our common stock could incur substantial losses.

The trading price of our common stock following our recent IPO may fluctuate substantially. Given our recent IPO, the market price of our common stock may be higher or lower than the price you pay in the IPO, depending on many factors, some of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to incur substantial losses, including all of your investment in our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- significant volatility in the market price and trading volume of companies in our industry;
- announcements of new solutions or technologies, commercial relationships, acquisitions, or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- changes in how customers perceive the benefits of our products and future offerings;
- the public's reaction to our press releases, other public announcements, and filings with the SEC;
- fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes or fluctuations in our results of operations or financial projections;
- changes in actual or future expectations of investors or securities analysts;
- litigation involving us, our industry, or both;
- governmental or regulatory actions or audits;
- regulatory developments applicable to our business, including those related to privacy in the United States or globally;
- general economic conditions and trends;
- major catastrophic events in our domestic and foreign markets; and
- departures of key employees.

Risks Related to our Relationship with Fortress Biotech, Inc.

Fortress controls a voting majority of our common stock, which could be detrimental to our other shareholders.

Pursuant to the terms of the Class A Common Stock held by Fortress, Fortress will be entitled to cast, for each share of Class A Common Stock held by Fortress, the number of votes that is equal to 1.1 times a fraction, the numerator of which is the number of shares of our outstanding common stock and the denominator of which is the number of shares of outstanding Class A Common Stock (the "Class A Common Stock Ratio"). Thus, Fortress will at all times have voting control of Journey. Further, for a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock, the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of Journey. This concentration of voting power may delay, prevent or deter a change in control of us even when such a change may be in the best interests of all stockholders, could deprive our stockholders of an opportunity to receive a premium for their shares of common stock as part of a sale of Journey or our assets, and might affect the prevailing market price of our common stock.

We are a "controlled company" within the meaning of Nasdaq listing standards and, as a result, qualify for exemptions from certain corporate governance requirements. Although we do not presently intend to take advantage of these exemptions, we may do so in the future.

We are a "controlled company" within the meaning of Nasdaq listing standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, a group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements of Nasdaq, including (i) the requirement that a majority of the Board of Directors consist of independent directors, (ii) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities and (iii) the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities. Although we do not presently intend to take advantage of these exemptions, we may do so in the future. Accordingly, our stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq. Investors may find our common stock less attractive as a result of our reliance on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

If the shared services agreement with Fortress is terminated, we may incur significant costs and risks.

In November 2021, we entered into a shared services agreement with Fortress for them to continue to provide consulting services and the use of their personnel. If we separate from Fortress and the shared services agreement is terminated, we may incur significant costs, which might exceed our estimates. Additionally, we may incur some negative effects from a termination of shared services with Fortress, as we will likely have substantially fewer resources than Fortress.

The termination of the shared services agreement with Fortress may be costly and time-consuming to the Company and may pose challenges, such as effecting the termination while carrying on operations and difficulty in retaining key officers and personnel, as well as difficulty separating corporate infrastructure, including insurance, accounting, legal, finance, tax, and human resources, each of which could have an adverse effect on our business, financial condition and results of operations.

We may have received better terms from unaffiliated third parties than the terms we receive in our arrangements with Fortress.

We have arrangements with Fortress in connection with management and administration services for the Company. While we believe the terms of these arrangements are reasonable, they might not reflect terms that would have resulted from arm's-length negotiations between unaffiliated third parties. The terms of the arrangement relate to, among other things, systems, insurance, accounting, legal, finance, tax and human resources. We might have received better terms from third parties because, among other things, third parties might have competed with each other to win our business.

The ownership by our executive officers and some of our directors of shares of equity securities of Fortress and/or rights to acquire equity securities of Fortress might create, or appear to create, conflicts of interest.

Because of their current or former positions with Fortress, some of our executive officers and directors own shares of Fortress common stock and/or options to purchase shares of Fortress common stock. Their individual holdings of common stock and/or options to purchase common stock of Fortress may be significant compared to their total assets. Ownership by our directors and officers, after our separation, of common stock and/or options to purchase common stock of Fortress might appear to create conflicts of interest when these directors and officers are faced with decisions that could have different implications for Fortress than for us.

Fortress' current or future financial obligations and arrangements, or an event of default thereon, may change the ownership dynamic of us by Fortress.

Any default or breach by Fortress under any current or future credit agreement or arrangements may have an adverse effect on our business. Fortress has pledged as collateral to certain of its creditors equity in the Company. If Fortress were to default on its obligations to any such creditor, that creditor, whose interests may not align with those of our other stakeholders, could acquire a controlling interest in the Company. In addition, Fortress' current credit agreement with Oaktree Capital (the "Oaktree Credit Agreement") contains certain affirmative and negative covenants and events of default that apply in different instances to Fortress itself, its private subsidiaries, its public subsidiaries, or combinations of the foregoing. Although we are not a party to the Oaktree Credit Agreement, because Fortress controls our stockholder vote, Fortress may not permit us to effect certain actions which we feel would be in the Company's best interests, but which Fortress cannot allow so as to remain in compliance with the Oaktree Credit Agreement.

General Risks

Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our business, operating results and financial condition.

We have experienced significant growth in a short period of time. To manage our growth effectively, we must continually evaluate and evolve our organization. We must also manage our employees, operations, finances and capital investments efficiently. Our efficiency, productivity and the quality of our products may be adversely impacted if we do not train our new personnel, particularly our sales and support personnel, quickly and effectively, or if we fail to appropriately coordinate across our organization. Additionally, our rapid growth may place a strain on our resources, infrastructure and ability to maintain the quality of our products. You should not consider our revenue growth and levels of profitability in recent periods as indicative of future performance. In future periods, our revenue or profitability could decline or grow more slowly than we expect. Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our operating results and financial condition.

If securities or industry analysts do not publish research or reports about our business, or publish inaccurate or unfavorable research reports about our business, our share price and trading volume could decline.

The trading market for our common stock will partially depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. If one or more of the analysts who cover us should downgrade our shares or change their opinion of our business prospects, our share price would likely decline. If one or more of these analysts ceases coverage of our company or fails to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the United States. If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.

U.S. generally accepted accounting principles ("GAAP"), are subject to interpretation by the Financial Accounting Standards Board ("FASB"), the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported results of operations and could affect the reporting of transactions already completed before the announcement of a change.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes appearing elsewhere in this report on Form 10-K. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as discussed in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Estimates*." The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. Significant estimates, judgments, and assumptions used in our financial statements include, but are not limited to, those related to revenue recognition, accounts receivable and related reserves, useful lives and realizability of long-lived assets, research and development costs, assumptions used in the valuation of warrants, accounting for stock-based compensation, and valuation allowances against deferred tax assets. These estimates are periodically reviewed for any changes in circumstances, facts, and experience. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

Global and national financial events may have an impact on our business and financial condition in ways that we currently cannot predict.

A credit crisis, turmoil in the global or U.S. financial system, recession or similar possible events in the future could negatively impact us. A financial crisis or recession may limit our ability to raise capital through credit and equity markets. The prices for the products and services that we intend to provide may be affected by a number of factors, and it is unknown how these factors may be impacted by a global or national financial event.

If our estimates or judgments relating to our critical accounting policies are erroneous or based on assumptions that change or prove to be incorrect, our operating results could fall below the expectations of securities analysts and investors, resulting in a decline in our stock price.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on our best judgment, historical experience, information derived from third parties and on various other assumptions that we believe to be reasonable under the circumstances, as discussed in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenue and expenses that are not readily apparent from other sources. Our operating results may be adversely affected if our judgments prove to be wrong, assumptions change or actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue recognition, stock-based compensation and income taxes.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

Our executive offices are located at 9237 E Via de Ventura Blvd. Suite 105, Scottsdale, AZ 85258. We believe that our existing facilities are adequate to meet our current requirements. We do not own any real property.

In June 2017, we extended our lease for 2,295 square feet of office space in Scottsdale, AZ by one year, at an average annual rent of approximately $55,000. We originally took occupancy of this space in November 2014.

In August 2018, we amended our lease and entered into a new two-year extension for 3,681 square feet of office space in a larger suite at the same location in Scottsdale, AZ at an annual rate of approximately $0.1 million. The term of this amended lease commenced on December 1, 2018 and expired on November 30, 2020.

In August 2020, we entered into a third amendment to our lease and agreed to a new 25-month extension of the same office space in Scottsdale, AZ at an average annual rent of $0.1 million. The term of this third lease amendment to the lease commenced on December 1, 2020, and will expire on December 31, 2022.

Item 3. Legal Proceedings

Qbrexza Patent Litigation

On March 31, 2021 we executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc., a subsidiary of Eli Lilly and Company ("Dermira"), and the transaction closed on May 14, 2021. Pursuant to the terms of the Qbrexza APA, we acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon closing of the Qbrexza purchase, we became substituted for Dermira as the plaintiff in, and are currently vigorously litigating, U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Perrigo Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza (the "Qbrexza Patents"), which are included among the proprietary rights to Qbrexza that were acquired pursuant to the Qbrexza APA. The Perrigo Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application ("ANDA"). The ANDA seeks approval to market a generic version of Qbrexza prior to the expiration of the Qbrexza Patents and alleges that the Qbrexza Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Perrigo Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

On March 4, 2022, we filed a complaint against Teva Pharmaceuticals, Inc., Teva Pharmaceuticals USA, Inc., and Teva Pharmaceuticals Industries Ltd. in the U.S. District Court of Delaware (the "Teva Patent Litigation") alleging infringement of certain patents covering Qbrexza (the "Qbrexza Patents"), which are included among the proprietary rights to Qbrexza that were acquired pursuant to the Qbrexza APA. The Teva Patent Litigation was initiated following the submission by Teva, in accordance with the procedures set out in the Hatch-Waxman Act, of an ANDA. The ANDA seeks approval to market a generic version of Qbrexza prior to the expiration of the Qbrexza Patents and alleges that the Qbrexza Patents are invalid. Teva is subject to a 30-month stay preventing it from selling a generic version. The stay should expire no earlier than August 8, 2024. Trial in the Teva Patent Litigation has not yet been scheduled. Journey cannot make any predictions about the final outcome of this matter or the timing thereof.

Amzeeq Patent Litigation

Upon completion of the Acquisition, we became substituted for VYNE as the plaintiff in U.S. patent litigation commenced by VYNE on August 9, 2021 in the U.S. District Court of Delaware (the "Padagis Patent Litigation") against Padagis Israel Pharmaceuticals Ltd. (F/K/A Perrigo Israel Pharmaceuticals Ltd.) ("Padagis") alleging infringement of certain patents covering Amzeeq® (the "Amzeeq® Patents"), which are included among the proprietary rights to Amzeeq® that were acquired pursuant to the APA. The Padagis Patent Litigation was initiated following the submission by Padagis, in accordance with the procedures set out in the Hatch-Waxman Act, of an ANDA. The ANDA seeks approval to market a generic version of Amzeeq® prior to the expiration of the Amzeeq® Patents and alleges that the Amzeeq® Patents are invalid. Padagis is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on December 30, 2023. Journey is seeking, among other relief, an order that the effective date of any United States Food and Drug Administration approval of Padagis' ANDA be no earlier than the expiration of the patents listed in the Orange Book, the latest of which expires on September 8, 2037, and such further and other relief as the court may deem appropriate. Trial in the Padagis Patent Litigation is scheduled for July 10, 2023. Journey cannot make any predictions about the final outcome of this matter or the timing thereof.

See *"Risk Factors - Risks Related to Intellectual Property, Generic Competition and Paragraph IV Litigation."*

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market information

Our common stock is listed on the NASDAQ Capital Market and trades under the symbol "DERM." We commenced trading on the NASDAQ Capital Market on November 12, 2021. Prior to November 12, 2021 there was no public market for our common stock.

Equity Compensation Plans

We do not maintain any deferred compensation, retirement, pension or profit-sharing plans. Our board of directors has adopted an incentive plan, allowing for the grant of equity and cash-based awards to our employees and directors.

Securities Authorized for Issuance under Equity Compensation Plans

The following table provides certain information as of December 31, 2021, with respect to all of our equity compensation plans in effect on that date:

Plan Category	Number of securities to be issued upon exercise of outstanding options (1)	Weighted-average exercise price of outstanding options	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column 1) (2)
Equity compensation plans approved by security holders	2,104,334	$ 0.79	1,020,661

(1) Reflects the number of shares of common stock to be issued upon exercise of outstanding options under our Journey Medical 2015 Stock Plan. This figure does not include 715,030 outstanding restricted stock units that were issued under the Journey Medical 2015 Stock Plan.

(2) Reflects 1,020,661 shares available for future issuance under the Journey Medical 2015 Stock Plan.

Subject to adjustment as provided in the 2015 Plan, the total aggregate number of shares of our common stock reserved and available for issuance pursuant to awards granted under the 2015 Plan is 4,642,857, of which 1,020,661 shares remain available for future issuance as of December 31, 2021.

Sales of Unregistered Securities

Since January 1, 2018, we have made the issuances of our unregistered securities described below. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed.

On March 31, 2021, we held the initial closing of a private placement offering (the "Private Placement") of our 8% Cumulative Convertible Class A Preferred Stock (the "Class A Preferred Stock"), pursuant to a private placement agreement with National Securities Corporation, currently owned by B. Riley Securities, as placement agent. In connection with the initial closing of the Private Placement, we issued 502,480 shares of our Class A Preferred Stock at a price of $25.00 per share, for gross proceeds of approximately $12,562,000.

On April 30, 2021, we issued and sold 28,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for gross proceeds of approximately $700,000.

On June 18, 2021, we issued and sold 43,800 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $1,080,000.

On July 15, 2021, we issued and sold 177,400 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $4,435,000.

On July 20, 2021, we issued and sold 8,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $200,000.

These issuances were made in reliance on an exemption from registration set forth in Section 4(a)(2) of the Securities Act, as transactions by an issuer not involving a public offering. The purchasers of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to offer or sell, in connection with any distribution of the securities.

Use of Proceeds from Sales of Registered Securities

On November 12, 2021, our registration statement on Form S-1 (File No. 333-260436) was declared effective by the SEC. Pursuant to such Registration Statement, we sold an aggregate of 3,520,000 shares of our common stock at a price of $10.00 per share for gross proceeds of $35.2 million and net proceeds of $30.6 million after deducting underwriter's discounts, commissions and expenses. We closed the offering on November 16, 2021. B.Riley Securities acted as sole book-running manager for the offering, and Roth Capital Partners acted as co-manager.

There has been no material change in the expected use of the net proceeds from our initial public offering ("IPO") as described in our final prospectus filed with the SEC on November 12, 2021 pursuant to Rule 424(b) under the Securities Act.

Holders

As of December 31, 2021, there were approximately 206 holders of record for our common stock and 1 holder of record for our Class A common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers and other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

Dividends

We have never paid cash dividends on any of our capital stock and currently intend to retain our future earnings, if any, to fund the development and growth of our business.

Securities Authorized for Issuance under Equity Compensation Plans

Subject to adjustment as provided in the 2015 Plan, the total aggregate number of shares of our common stock reserved and available for issuance pursuant to awards granted under the 2015 Plan is 4,642,857, of which 1,020,661 shares remain available for future issuance as of December 31, 2021.

Item 6. [RESERVED.]

Item 7. Management's Discussion and Analysis of the Results of Operations

Forward-Looking Statements

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our consolidated financial statements and the related notes included elsewhere in this Form 10-K. Our consolidated financial statements have been prepared in accordance with U.S. GAAP. The following discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (the "Exchange Act"), including, without limitation, statements regarding our expectations, beliefs, intentions or future strategies that are signified by the words "expect," "anticipate," "intend," "believe," "may," "plan," "seek" or similar language. All forward-looking statements included in this document are based on information available to us on the date hereof and we assume no obligation to update any such forward-looking statements. For such forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. Our business and financial performance are subject to

substantial risks and uncertainties. Actual results could differ materially from those projected in the forward-looking statements. In evaluating our business, you should carefully consider the information set forth under the heading "Risk Factors" herein and in our Annual Report on Form 10-K for the year ended December 31, 2020. As used below, the words "we," "us" and "our" may refer to Journey Medical Corporation.

Overview

We are a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes seven branded and three authorized generic prescription drugs for dermatological conditions that are actively marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life and physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our exclusive field sales organization.

On November 16, 2021, we completed an IPO of our common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

Prior to our IPO our operations were primarily financed through a working capital note from Fortress Biotech, Inc. ("Fortress"), referred to herein as the "Fortress Note," cash generated by operations and cash raised in our private offering of our 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Stock"). In connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock. In addition, the Fortress Note was converted into 1,476,044 shares of Journey common stock at our IPO price of $10.00 per share.

We expect our expenses will increase substantially for the foreseeable future as we pursue business development opportunities, commercialize, and market new products and incur additional costs associated with operating as a public company. To date, our business has not been materially impacted by COVID-19; however, depending on the extent of the ongoing pandemic, it is possible that our business, financial condition and results of operations could be materially and adversely affected by COVID-19 in the future.

Our cash and cash equivalents balance was $49.1million at December 31, 2021.

Recent Subsequent Highlights ("VYNE Product Acquisition")

In January 2022, we acquired AMZEEQ (minocycline) topical foam, 4%, and ZILXI (minocycline) topical foam, 1.5%, two FDA-Approved Topical Minocycline Products and Molecule Stabilizing Technology (MST)™ from VYNE Therapeutics, Inc., which expands our product portfolio to seven actively marketed branded dermatology products.

These proprietary foam-based products optimize the topical delivery of minocycline, an active pharmaceutical ingredient that was previously available only in oral form. Approved by FDA nearly 50 years ago, minocycline is a well-established molecule that has been prescribed, in oral formulation, over 30 million times in the past decade.

AMZEEQ (minocycline) topical foam, 4%, is the first and only topical formulation of minocycline to be approved by the FDA for the treatment of inflammatory lesions of non-nodular moderate to severe acne vulgaris in adults and children 9 years and older. According to the AAD, acne is the most common skin condition in the United States, affecting up to 50 million Americans annually.

Approved by the FDA in May 2020, ZILXI (minocycline) topical foam, 1.5%, is the first and only topical minocycline treatment for inflammatory lesions due to rosacea in adults. Rosacea is a common skin disease that affects 16 million Americans, according to AAD. Market research shows that over 70% of patients with rosacea are seeking better alternatives to current treatments.

2021 Highlights and Events

- On November 16, 2021, we completed an IPO of our common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

- In September 2021, we were the victim of a cybersecurity incident that affected our accounts payable function and led to approximately $9.5 million in wire transfers being misdirected to fraudulent accounts. The details of the incident and its origin are under investigation with the assistance of third-party cybersecurity experts working at the direction of legal counsel. The matter was reported to the Federal Bureau of Investigation and does not appear to have compromised any personally identifiable information or protected health information. Fortress, as our controlling stockholder and supporting partner in our back-office functions, provided us with $9.5 million to ensure our accounts payable operations continued to function smoothly. The $9.5 million of support was initially in the form of a related party note, which the boards of both companies have agreed and converted into 1,476,044 shares of our common stock upon the consummation of our IPO at the IPO price. See "*Risk Factors — Risk s Related to our Platform and Data — Our business and operations would suffer in the event of computer system failures, cyber-attacks, or deficiencies in our or third parties' cybersecurity*."

- As of July 18, 2021, we privately offered and issued 750,680 shares of our Class A Preferred Stock at a price of $25.00 per share, for gross proceeds of $19.0 million (the "Class A Preferred Offering"). In connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock.

- In June 2021, we entered into an agreement with DRL for the development of DFD-29, a modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea. We and DRL intend to conduct two Phase 3 clinical trials to assess the efficacy, safety and tolerability of DFD-29 as a treatment for rosacea for regulatory approval. In connection with the DFD-29 Agreement, we agreed to pay DRL additional consideration of $5.0 million in our common stock upon our IPO. In connection with the closing of our IPO on November 16, 2021, we issued 545,131 unregistered shares of common stock in the Company to DRL. The restrictions on the unregistered shares of common stock are governed by the terms set forth in the DFD-29 Agreement and applicable securities laws.

- In May 2021, we acquired Qbrexza from Dermira.

- In March 2021, we launched Accutane® (isotretinoin) for the treatment of recalcitrant nodular acne.

- On March 31, 2021, we entered into an agreement with East West Bank ("EWB") to provide us with a $7.5 million working capital line of credit.

Other Subsequent Highlights

On January 12, 2022, we entered into a third amendment (the "Amendment") of our loan and security agreement with EWB noted above, which increased the borrowing capacity of our revolving line of credit to $10.0 million, from $7.5 million, and added a term loan not to exceed $20.0 million. Both the revolving line of credit and the term loan mature on January 12, 2026. The term loan includes two tranches, the first of which is a $15.0 million term loan and the second of which is a $5.0 million term loan. On January 12, 2022, we borrowed $15.0 million against the first tranche of the term loan to facilitate the VYNE Product Acquisition. The term loan bears interest on its outstanding daily balance at a floating rate equal to 1.73% above the prime rate and is payable monthly, on the first calendar day each month. The term loans contain an interest only payment period through January 12, 2024, with an extension through July 12, 2024 if certain covenants are met, after which the outstanding balance of each term loan is payable in equal monthly installments of principal, plus all accrued interest, through the term loan maturity date. We may prepay all or any part of the term loan without penalty or premium, but may not re-borrow any amount, once repaid. Any outstanding borrowing against the revolving line of credit bears interest at a floating rate equal to 0.70% above the prime rate. The Amendment includes customary financial covenants such as collateral ratios and minimum liquidity provisions as well aa audit provisions.

On February 11, 2022, we announced that our exclusive out-licensing partner in Japan, received manufacturing and marketing approval in Japan for Rapifort® Wipes 2.5% (Japanese equivalent to U.S. FDA approved QBREXZA®) for the treatment of primary axillary hyperhidrosis, triggering a net $2.5 million milestone payment to us. The net payment reflects a milestone payment of $10.0 million to us from our exclusive licensing partner in Japan, Maruho Co., Ltd. ("Maruho"), offset by a $7.5 million payment to Dermira, Inc., pursuant to the terms of the Asset Purchase Agreement between us and Dermira. In conjunction with the terms list above both trsactions were completed in March of 2021. We acquired global rights to QBREXZA® from Dermira in 2021.

On March 17, 2022, we dosed the first patient in our Phase 3 clinical trial evaluating DFD-29 (Minocycline Modified Release Capsules 40 mg) for the Treatment of Rosacea. In addition, the published phase 2 clinical data showed that DFD-29 had approximately double the efficacy compared to Doxycycline capsules 40 mg on reducing total inflammatory lesions and IGA treatment success. The trial will encompass two multicenter, randomized, double-blind, parallel-group, active and placebo-controlled Phase 3 clinical trials will each enroll up to 320 adult patients with moderate to severe papulopustular rosacea ("PPR"). One trial is enrolling patients in the United States and the other is enrolling in the United States and Europe. The studies will be randomized in a 3:3:2 ratio to DFD-29 (Minocycline Hydrochloride Modified Release Capsules, 40 mg), Oracea® (Doxycycline capsules 40 mg) or placebo once daily for 16 weeks. The primary objective of the studies is to evaluate the safety, efficacy and tolerability of DFD-29 compared to placebo for the treatment of PPR. The secondary objective is to evaluate the safety, efficacy and tolerability of DFD-29 compared to Oracea® (Doxycycline capsules 40 mg).

Critical Accounting Polices and Uses of Estimates

Our consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported expenses incurred during the reporting periods. Our estimates are based on our historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources.

Actual results may differ from these estimates under different assumptions or conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance, as these policies relate to the more significant areas involving management's judgments and estimates.

While our significant accounting policies are described in the notes to our consolidated financial statements included elsewhere in this Report, we believe that the following critical accounting policies are most important to understanding and evaluating our reported financial results.

Revenue Recognition

Our gross product revenues are subject to a variety of deductions, which generally are estimated and recorded in the same period that the revenues are recognized. Such variable consideration represents chargebacks, coupons, discounts, other sales allowances, governmenatal rebate programs and sales returns. These deductions represent estimates of the related obligations and, as such, knowledge and judgment are required when estimating the impact of these revenue deductions on gross sales for a reporting period. Historically, adjustments to these estimates to reflect actual results or updated expectations have not been material to our overall business. Coupons , however, can have a significant impact on year-over-year individual product revenue growth trends. If any of our ratios, factors, assessments, experiences, or judgments are not indicative or accurate estimates of our future experience, our results could be materially affected. The potential of our estimates to vary differs by program, product, type of customer and geographic location. In addition, estimates associated with U.S. Medicare and Medicaid governmental rebate programs are at risk for material adjustment because of the extensive time delay.

Stock-based Compensation

We utilize stock-based compensation in the form of stock options, restricted stock units, or RSUs, and at times performance-based restricted stock units, or PSU's. We expense stock-based compensation to employees, non-employees and Directors over the requisite service period based on the estimated grant-date fair value of the awards and actual forfeitures. All stock-based compensation costs are recorded as a component of selling, general and administrative expense in the consolidated statements of operations.

Service based stock options and RSU's

Compensation expense for service-based stock options is charged against operations on a straight-line basis between the grant date for the option and the vesting period, which is generally four years. We estimate the fair value of all service-based stock option awards as of the grant date by applying the Black-Scholes option pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental, and sensitive in the determination of compensation cost, including expected volatility, risk-free interest rate, expected dividends and the expected term of the option. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment.

Prior to our IPO, which closed on November 16, 2021, the fair value of our common stock underlying stock options was an input to the Black-Scholes option pricing model. We engaged an independent third-party valuation firm to provide an estimate of the fair value of its common stock annually, utilizing input from management. The fair value of our common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of our common stock and the general and industry-specific economic outlook.

RSU's that are service based are amortized into compensation expense on a straight-line basis over the vesting period, which generally ranges from three to four years in duration. Compensation cost for service based RSU's is based on the grant date fair value of the award, which is the closing market price of our common stock on the grant date multiplied by the number of shares awarded.

RSU's that contain performance conditions

We recorded approximately $2.4 million of stock-based compensation expense in the fourth quarter of 2021, associated with performance-based RSU's granted to key employees that fully vested upon the closing of our IPO.

For the years ended December 31, 2021 and 2020, stock-based compensation expense was $2.5 million and $0.2 million, respectively. As of December 31, 2021, we expect to continue to grant options and other stock-based awards in the future, and to the extent that we do, our stock-based compensation expense recognized in future periods will likely increase.

Pre-IPO Common Stock Valuations

Prior to our IPO, given the absence of a public trading market of our common stock prior to the IPO, and in accordance with the American Institute of Certified Public Accountants Practice Guide, *Valuation of Privately Held Company Equity Securities Issued as Compensation*, or the Practice Aid, our board of directors exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our common stock prior to the IPO, including, but not limited to:

- relevant precedent transactions involving our capital stock;
- contemporaneous valuations performed by third-party specialists;
- rights, preferences, and privileges of our redeemable convertible preferred stock relative to those of our common stock;
- actual operating and financial performance;
- current business conditions and financial projections;
- likelihood of achieving a liquidity event, such as an initial public offering or a sale of our business;
- the lack of marketability of our common stock, and the illiquidity of stock-based awards involving securities in a private company;
- market multiples of comparable publicly-traded companies;
- stage of development;

- industry information such as market size and growth; and
- U.S. and global capital and macroeconomic conditions.

The Practice Aid identifies various available methods for allocating enterprise value across classes and series of capital stock to determine the estimated fair value of common stock at each valuation date. In accordance with the Practice Aid, we considered the following methods:

- *Option Pricing Method, or OPM.* Under the OPM, shares are valued by creating a series of call options with exercise prices based on the liquidation preferences and conversion terms of each equity class. The estimated fair values of the preferred and common stock are inferred by analyzing these options. This method is appropriate to use when the range of possible future outcomes is so difficult to predict that estimates would be highly speculative, and dissolution or liquidation is not imminent.
- *Probability-Weighted Expected Return Method, or PWERM.* The PWERM is a scenario-based analysis that estimates value per share based on the probability-weighted present value of expected future investment returns, considering each of the possible outcomes available to us, as well as the economic and control rights of each share class.

For valuations performed beginning in 2021, prior to the initial public offering, in accordance with the Practice Aid, we used a hybrid approach of the OPM and the PWERM methods to determine the estimated fair value of our common stock as a result of the increasing likelihood of the occurrence of certain discrete events, such as a potential initial public offering, improving market conditions and receptivity of the market to initial public offerings. The enterprise value determined under the OPM and PWERM methods was weighted according to our board of directors' estimate of the probability of the occurrence of a certain discrete event as of the valuation date. The resulting equity value for the common stock was then divided by the number of shares of common stock outstanding at the date of the valuation to derive a per share value on a non-marketable basis. In order to determine the fair value of our common stock on a marketable basis, we then applied a discount for lack of marketability which we derived based on inputs including a company-specific volatility rate, a term equal to the expected time to a future liquidity event and a risk-free rate equal to the yield on treasuries of similar duration.

Application of these approaches involves the use of estimates, judgment and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses, cash flows, discount rates, market multiples, the selection of comparable companies and the probability of future events. Changes in any or all of these estimates and assumptions, or the relationships between those assumptions, impact our valuations as of each valuation date and may have a material impact on the valuation of common stock. The assumptions underlying these valuations represent our management's best estimate, which involve inherent uncertainties and the application of management judgment. As a result, if factors or expected outcomes change and we use significantly different assumptions or estimates, our stock-based compensation expense could be materially different.

Following the closing of the initial public offering, the fair value of our common stock has been determined based on the quoted market price of our common stock.

Income Taxes

As of December 31, 2021, we were 58.39% owned by Fortress Biotech, Inc. ("Fortress") and were filing consolidated federal tax return and consolidated or combined state tax returns in multiple jurisdictions with Fortress for tax years prior to 2021. As we completed our initial public offering on November 12, 2021, we deconsolidated from Fortress consolidated group for federal income tax purpose. Our financial statements recognize the current and deferred income tax consequences that result from our activities during the current and preceding periods pursuant to the provisions of Accounting Standards Codification Topic 740, Income Taxes (ASC 740), as if we were a separate taxpayer rather than a member of the Fortress consolidated income tax return group. Fortress has agreed that we do not have to make payments to Fortress for our use of net operation losses ("NOLs") of Fortress (including other Fortress group members). Since Fortress does not require us to pay in any form for the utilization of the consolidated group's NOLs, the tax benefit we realize have been recorded as a capital contribution.

We record income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. We establish a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered our history of cumulative tax and book income/loss incurred since inception, and the other positive and

negative evidence, and has concluded that it is not more likely than not that we will realize the benefits of the net deferred tax assets as of December 31, 2021 and therefore a full valuation allowance on all of our deferred tax assets is required. We did not record any valuation allowance as of December 31, 2020.

For tax positions that are more likely than not of being sustained upon audit, we recognize the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, we do not recognize any portion of the benefit. As of December 31, 2021, we had no unrecognized tax benefits and do not anticipate any significant change to the unrecognized tax benefit balance. We classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded through December 31, 2021.

Recent Accounting Pronouncements

See Note 2 to our consolidated financial statements included elsewhere in this report on Form 10-K for information about recent accounting pronouncements, the timing of their adoption, if applicable, and our assessment, if any, of their potential impact on our financial condition and results of operations.

Smaller Reporting Company Status

We are a "smaller reporting company," meaning that the market value of our shares held by non-affiliates is less than $700 million and our annual revenue was less than $100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company if either (i) the market value of our shares held by non-affiliates is less than $250 million or (ii) our annual revenue was less than $100 million during the most recently completed fiscal year and the market value of our shares held by non-affiliates is less than $700 million. As a smaller reporting company, we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Report on Form 10-K, have reduced disclosure obligations regarding executive compensation, and smaller reporting companies are permitted to delay adoption of certain recent accounting pronouncements discussed in Note 2 to our consolidated financial statements in this report on Form 10-K.

Results of Operations

Comparison of the Years Ended December 31, 2021 and 2020

The following table summarizes our results of operations for the years ended December 31, 2021 and 2020:

($ in thousands, except per share data)	Year Ended December 31, 2021	2020	Change $	Change %
Product revenue, net	$ 63,134	$ 44,531	$ 18,603	42 %
Operating expenses				
Cost of goods sold - product revenue	32,084	14,594	17,490	120 %
Research and development	2,739	—	2,739	100 %
Research and development - licenses acquired	13,819	—	13,819	100 %
Selling, general and administrative	39,833	22,086	17,747	80 %
Wire transfer fraud loss	9,540	—	9,540	100 %
Total operating expenses	98,015	36,680	61,335	167 %
(Loss) income from operations	(34,881)	7,851	(42,732)	(544)%
Other expense				
Interest income	(2)	—	(2)	100 %
Interest expense	7,034	698	6,336	908 %
Change in fair value of derivative liability	447	—	447	100 %
Total other expense	7,479	698	6,781	971 %
Net (Loss) income before income taxes	(42,360)	7,153	(49,513)	(692)%
Income tax expense	1,634	1,870	(236)	(13)%
Net (loss) income	$ (43,994)	$ 5,283	$ (49,277)	(933)%

Revenues

The following table reflects our net product revenue by product:

($ in thousands)	Year Ended December 31, 2021	2020	Change $	Change %
Targadox®	$ 22,378	$ 30,708	$ (8,330)	(27)%
Ximino®	8,247	9,518	(1,271)	(13)%
Exelderm®	5,363	4,453	910	20 %
Accutane®	10,053	—	10,053	100 %
Qbrexa®	17,056	—	17,056	100 %
Other branded revenue	37	(148)	185	(125)%
Total product revenues, net	**$ 63,134**	**$ 44,531**	**$ 18,603**	**42 %**

Total net product revenues increased $18.6 million, or 42%, to $63.1 million for the year ended December 31, 2021, from $44.5 million for the year ended December 31, 2020. The increase is primarily due to incremental revenues from our newly launched products, Accutane, launched in the first quarter of 2021, and Qbrexza, launched during the second quarter of 2021. Offsetting the increase is a decrease in our legacy product, Ximino primarily driven by increased promotional emphasis from our salesforce to Accutane, and increased pressure from generic competition.

Gross-to-net sales accruals and the balance in the related allowance accounts for the years ended December 31, 2021, 2020 and 2019 were as follows:

($'s in thousands)	Chargebacks and Distributor Service Fees	Returns	Coupons	Managed Care Rebates	Gov't Rebates	Total
Balance at December 31, 2019	$ —	$ 4,516	$ 7,306	$ 1,985	$ —	$ 13,807
Current provision related to sales in the current period	—	1,294	100,168	(537)	—	100,925
Checks/Credits issued to third parties	—	(2,130)	(95,805)	(1,348)	—	(99,283)
Reclassifications between liability accounts	—	(1,100)	1,100	—	—	—
Balance at December 31, 2020	$ —	$ 2,580	$ 12,769	$ 100	$ —	$ 15,449
Current provision related to sales in the current period	1,610	3,564	140,871	9,025	690	155,760
Checks/Credits issued to third parties	—	(2,589)	(148,963)	(5,633)	—	(157,185)
Reclassifications between liability accounts	—	(315)	315	—	—	—
Balance at December 31, 2021	$ 1,610	$ 3,240	$ 4,992	$ 3,492	$ 690	$ 14,024

We have established provisions for chargebacks resulting from the launch of our new products noted above. Included in the reserve for chargebacks and distributor service fees are provisions for prompt pay discounts.

Provisions for sales returns increased by $0.7 million in 2021 compared to 2020 mainly due to incremental provisions resulting from our newly launched products, Accutane, launched in the first quarter of 2021, and Qbrexza, acquired during the second quarter of 2021.

The provision for coupons decreased by $7.8 million in 2021 compared to 2020 mainly due to the timing of payments in 2020.

Managed care and Government rebate provisions increased by $3.4 million for 2021 compared to 2020 due to by higher sales volumes and a greater portion of sales qualifying for managed care rebates.

Cost of Goods Sold

Cost of goods sold for increased $17.5 million, to $32.1 million for the year ended December 31, 2021, from $14.6 million for the year ended December 31, 2020. Cost of goods sold was 50.8% and 32.8% of net product revenues for the years ended December 31, 2021 and 2020, respectively. The increase primarily reflects the step-up to fair value charge of approximately $6.5 million for the Qbrexza inventory from the asset purchase in the second quarter of 2021 as well as the increase in royalty expense related to Qbrexza.

Research and Development

Research and Deelopment expense increased to $2.7 million for the year ended December 31, 2021, from zero for the year ended December 31, 2020. The increase is related to clinical trial expenses to develop our DFS-29 product. We expect these expenses to increase as patients are fully enrolled in the trials.

Research and Development – Licenses Acquired

Research and development - licenses acquired expenses are incremental from period-to-period and reflect current year expenses of $13.8 million for in-process R&D as a result of the upfront payment of $10.0 million and a $3.8 million non-cash contingent payment related to the *DFD-29 Agreement.*

Selling, General and Administrative Expenses ("SG&A")

Selling, general and administrative expenses increased $17.7 million to $39.8 million for the year ended December 31, 2021, from $22.1 million for the year ended December 31, 2020. The increase is primarily attributable to the expansion of our salesforce and marketing expense related to our expanded product portfolio. In addition, SG&A for the year ended December 31, 2021 includes incremental non-cash stock-based compensation expense of $2.4 million related to the vesting of restricted performance units in connection with the closing of our IPO on November 16, 2021. Finally, the company expanded its finance and accounting staff in the fourth quarter of 2021. Along with other supporting services related to being a public company.

Wire Transfer Fraud Loss

In September 2021, wire fraud related costs totaled approximately $9.5 million. These costs were attributable to funds erroneously wired to fraudulent accounts as a result of a sophisticated business email compromise fraud scheme.

Interest Expense and Financing Fees

Interest expense and financing fees increased $6.3 million to $7.0 million for the year ended December 31, 2021, from $0.7 million for year ended December 31, 2020. The increase is primarily attributable to interest, fees and dividends payable related to our liability classified convertible preferred shares and interest expense related to our installment payment licensees. In addition, we recorded incremental interest expense for our preferred shares and debt fees due to the settlement and conversion to common stock as a result of the closing of our IPO on November 16, 2021.

Change in Fair Value of Derivative Liabilities

The change in fair value of derivative liabilities reflects the derivative mark-to-market accounting to mark to fair value the contingent payment liability to Dr. Reddy and liability classified warrants and the placement agent warrants as a result of the settlement and conversion of these warrant liabilities to our common stock. In connection with the our IPO we issued 111,567 shares of common stock for settlement of all of the placement agent warrants. In addition, we issued 545,131 unregistered shares of common stock to Dr. Reddy in settlement of the contingent payment. We have no derivative liabilities outstanding at December 31, 2021.

Income tax expense

Our effective tax rate for 2021 and 2020 was (3.86)% and 26.18%, respectively. The negative effective tax rate of 3.86% for the year ended December 31, 2021 was principally due to our full valuation allowance position. Our tax rate is affected by recurring items, such as the U.S. federal and state statutory tax rates and the relative amounts of income we earn in those jurisdictions. It is also affected by discrete items that may occur in any given year but are not consistent from year to year. The effective tax rate for the for year ended December 31, 2021 varied significantly from the effective tax rate from the prior year primarily due to unfavorable permanent book tax differences and our full valuation allowance position.

Liquidity and Capital Resources

At December 31, 2021, we had $49.1 million in cash and cash equivalents as compared to $8.2 million at December 31, 2020.

On November 16, 2021, we completed an IPO of our common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

Prior to our IPO, our operations were primarily financed through a working capital note from Fortress, referred to herein as the “Fortress Note,” cash generated by operations and cash raised in our private offering of our 8% Cumulative Convertible Class A Preferred Stock (“Class A Preferred Stock”). In connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the preferred stock. In addition, the Fortress Note was converted into 1,476,044 shares of Journey common stock at our IPO price of $10.00 per share. In addition, we have access to a working capital line of credit as discussed below. For the next twelve months from the issuance of these audited consolidated financial statements, we will be able to fund our operations through a combination of operating activities and the East West Bank Working Line of Credit.

We expect our expenses will increase substantially for the foreseeable future as we pursue business development opportunities, commercialize and market new products and incur additional costs associated with operating as a public company. To date, our business has not been materially impacted by COVID-19; however, depending on the extent of the ongoing pandemic, it is possible that our business, financial condition and results of operations could be materially and adversely affected by COVID-19 in the future.

We may require additional financing to pursue both development stage and commercial opportunities. In addition, we anticipate increased commercialization expenses related to the launch of new products, as well as increased costs related to development and regulatory approval of potential development stage product acquisitions, including DFD-29. As we continue to expand our product portfolio, we may need to fund possible future operating losses, and, if deemed appropriate, establish or secure through additional third-party manufacturing for our products, and expanded sales and marketing capabilities related to recent product acquisitions. We believe

that our current cash and cash equivalents is sufficient to fund operations for at least the next twelve months. Our failure to raise capital as and when needed would have a material adverse impact on our financial condition and our ability to pursue our business strategies.

Line of Credit

On March 31, 2021, we entered into a Loan and Security Agreement with East West Bank ("EWB Loan") for $7.5 million, that was amended to $10.0 million in January 2022 as part of a loan expansion, which also included a $20.0 million term loan totaling $30.0 million in borrowing capacity. In January 2022, we borrowed $20.0 million against the term loan portion of the amended EWB loan to facilitate the purchase of the VYNE products.

Class A Preferred Stock Offering

As of July 18, 2021, we completed five closings in connection with the Class A Preferred Offering ("Closings"). As a result of the Closings, we issued an aggregate of 758,680 Class A Preferred shares at a price of $25.00 per share, for gross proceeds of $19.0 million. Following the payment of placement agent fees of $1.9 million, and other expenses of $0.1 million, we received $17.0 million of net proceeds. As noted above, in connection with the closing of our IPO on November 16, 2021, we issued 2,231,346 shares of common stock resulting from the conversion of all of the preferred stock. Pursuant to its terms the Class A Preferred Stock automatically converted into our common stock at the IPO date at a discount of 15% to the per share qualified stock price.

Dividends on the Class A Preferred Stock of 8% annually are paid on a quarterly basis by Fortress in the form of shares of Fortress' common stock based upon a 7.5% discount to the average trading price over the 10-day period preceding the dividend payment date. Furthermore, Fortress is obligated to file one or more registration statements covering the issuance of shares that result from such dividends/exchange. As consideration for the foregoing issuances by Fortress of its securities, we will issue to Fortress additional shares of our common stock, debt securities, or a combination of the foregoing.

Although our Class A Preferred Stock is in the form of preferred stock, in substance this instrument was accounted for as a liability on our consolidated balance sheet as it converted into a variable number of shares at settlement related to the original amount invested and as such it did not contain a true conversion feature.

Cash Flows for the Years Ended December 31, 2021 and 2020

($ in thousands)	For the Years Ended December 31, 2021	2020	Change
Net cash (used in) provided by operating activities	$ (2,181)	$ 5,132	$ (7,313)
Net cash used in investing activities	(10,000)	(1,200)	(8,800)
Net cash provided by (used in) financing activities	53,016	(487)	53,503
Net change in cash and cash equivalents	$ 40,835	$ 3,445	$ 37,390

Operating Activities

Net cash used in operating activities increased to $2.2 million for the year ended December 31, 2021 from net cash provided by operating activities of $5.1 million for the year ended December 31, 2020. The decrease is primarily attributable to our net loss of $44.0 million, offset by increases in accounts payable, and expense for development-licenses acquired. The increases reflect costs related to the continued commercialization and expansion of our product portfolio, including the purchases of licenses and sales and marketing related costs as well as costs associated with being a new public company.

Investing Activities

Net cash used in investing activities was $10.0 million and $1.2 million for the years ended December 31, 2021 and 2020, respectively. The increase is related to the purchase of research and development licenses.

Financing Activities

Net cash provided by financing activities was $53.0 million for the year ended December 31, 2021. Net cash used in financing activities was $0.5 million for the year ended December 31, 2020. The increase is substantially related to $31.0 million in net proceeds received

from the closing of our IPO and $9.5 million and net proceeds of $17.0 million received from the Fortress Note, and net proceeds from the Class A Preferred Offering, respectively, offset by $5.3 million payment of our license note payable.

Off-Balance Sheet Arrangements

We did not have during the periods presented, nor do we currently have, any off-balance sheet arrangements, as defined in the rules and regulations of the SEC.

Item 7A. Quantitative and Qualitative Disclosures About Market Risks

We are a smaller reporting company as defined by Rule 12b-2 of the Exchange Act and are not required to provide the information otherwise required under this item.

Item 8. Financial Statements and Supplementary Data.

The information required by this Item is set forth in the financial statements and notes thereto beginning at page F-1 of this Annual Report on Form 10-K.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer (our principal executive officer and principal financial officer, respectively), evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2021. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in and Management's Report on Internal Control over Financial Reporting.

This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies. Further, for as long as we remain an emerging growth company as defined in the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the independent registered public accounting firm attestation requirement.

In September 2021, an employee email account was compromised by a third-party impersonator and payments intended for a vendor, approximating $9.5 million, were fraudulently re-directed into an individual bank account controlled by this third-party impersonator. The impersonator had taken a number of steps to deceive our employees and reduce the likelihood of detection. As a result of the foregoing, we identified a material weakness due to our internal controls having not been adequately designed to prevent or timely detect unauthorized cash disbursements.

In light of the above incident, our management took immediate action to remediate the material weakness, including enhancing and formalizing cash disbursement controls to prevent and timely detect unauthorized cash disbursements and significantly enhancing our

information technology infrastructure and security measures. However, given the identification of the material weakness during September 2021, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2021, our disclosure controls and procedures were not effective at the reasonable assurance level. As of the date of this filing we believe this material weakness has been remediated.

Limitations on the Effectiveness of Controls.

Our management, including our principal executive officer and principal financial officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all errors 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 and instances of fraud, if any, within our company have been detected.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this Item is incorporated herein by reference from our Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 14. Principal Accounting Fees and Services

The information required by this Item is incorporated by reference from our Proxy Statement for our 2022 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) Financial Statements.

The following financial statements are filed as part of this report:

(b) Exhibits.

Exhibit Number	Description
3.1	Third Amended and Restated Certificate of Incorporation of Journey Medical Corporation. *
3.2	Amended and Restated Bylaws of Journey Medical Corporation. *
4.1	Form of Common Stock Certificate, filed as Exhibit 4.1 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
4.2	Description of Securities of Journey Medical Corporation. *
10.1	Journey Medical Corporation 2015 Stock Plan, filed as Exhibit 10.1 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.2	Executive Employment Agreement with Claude Maraoui, dated September 22, 2014, filed as Exhibit 10.2 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.3	Executive Employment Agreement with Ernie De Paolantonio, filed as Exhibit 10.3 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.4	Non-Employee Director Compensation Plan, filed as Exhibit 10.2 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.5	Loan and Security Agreement, entered into by and between Journey Medical Corporation and East West Bank, dated March 31, 2021, filed as Exhibit 10.5 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
10.6	Asset Purchase Agreement for Qbrexza, entered into by and between Journey Medical Corporation and Dermira, Inc., a subsidiary of Eli Lilly and Company, dated as of March 31, 2021, filed as Exhibit 10.6 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.7	License and Supply Agreement for Accutane, entered into by and between Journey Medical Corporation and Dr. Reddy's Laboratories Ltd., dated as of July 29, 2020, filed as Exhibit 10.7 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.8	License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of March 10, 2015, filed as Exhibit 10.8 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.9	First Amendment to the License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of August 26, 2015, filed as Exhibit 10.9 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.10	Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of August 31, 2018, filed as Exhibit 10.10 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.11	Amendment 1 to the Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of September 5, 2018, filed as Exhibit 10.11 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.12	Asset Purchase Agreement for Ximino, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of July 22, 2019, filed as Exhibit 10.12 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.13	Asset Purchase Agreement for the Anti-itch Product, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of December 18, 2020, filed as Exhibit 10.13 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.14	License, Collaboration, and Assignment Agreement for DFD-29, entered into by and between Journey Medical Corporation and Dr. Reddy's Laboratories Ltd., dated as of June 29, 2021, filed as Exhibit 10.14 to Form S-1, filed on October 22, 2021 and incorporated herein by reference. **
10.15	Asset Purchase Agreement between Journey Medical Corporation and VYNE Therapeutics Inc., dated as of January 12, 2022, filed as Exhibit 10.1 to the Form 8-K filed on January 13, 2022 and incorporated herein by reference. **
10.16	Shared Services Agreement with Fortress Biotech Inc., dated as of November 12, 2021. *
10.17	Fortress Promissory Note, dated as of June 6, 2015, filed as Exhibit 10.16 to Form S-1, filed on October 22, 2021 and incorporated herein by reference.
21.1	List of Subsidiaries of Journey Medical Corporation. *
24.1	Power of Attorney (included on signature page). *
31.1	Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. *

31.2	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. *
32.1	Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
32.2	Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
101	The following financial information from the Company's Quarterly Report on Form 10-K for the period ended December 31, 2021, formatted in Extensible Business Reporting Language (XBRL): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statement of Stockholders' Equity, (iv) the Consolidated Statements of Cash Flows, and (v) Notes to the Consolidated Financial Statements.
104	Cover page from the Company's Annual Report on Form 10-K for the year ended December 31, 2021, formatted in Inline XBRL.

* Filed herewith.
** Certain portions of this exhibit have been omitted pursuant to Item 601(b)(10) of Regulation S-K.
# Management Compensation Arrangement.

Item 16. Form 10-K Summary

The Company has elected not to provide summary information.

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors

Journey Medical Corporation:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Journey Medical Corporation and subsidiary (the Company) as of December 31, 2021 and 2020, the related consolidated statements of operations, changes in stockholders' equity, and cash flows for each of the years then ended, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the years then ended, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2021.
Short Hills, New Jersey

March 28, 2022

JOURNEY MEDICAL CORPORATION
CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31, 2021	December 31, 2020
ASSETS		
Current assets		
Cash and cash equivalents	$ 49,081	$ 8,246
Accounts receivable, net of reserves	23,112	23,928
Inventory	9,862	1,404
Prepaid expenses and other current assets	2,438	1,664
Total current assets	84,493	35,242
Intangible assets, net	12,552	15,029
Operating lease right-of-use asset, net	89	175
Deferred tax assets	—	1,454
Other assets	150	6
Total assets	**$ 97,284**	**$ 51,906**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 22,812	$ 1,839
Accounts payable, related party	589	117
Accrued expenses	22,733	21,498
Accrued expenses, related party	52	—
Line of credit	812	—
Installment payments – licenses, short-term (net of debt discount of $490 and $778 as of December 31, 2021 and December 31, 2020, respectively)	4,510	4,522
Operating lease liabilities, short-term	98	85
Total current liabilities	51,606	28,061
Income tax payable	8	99
Note payable, related party	—	5,220
Installment payments – licenses, long-term (net of debt discount of $373 and $863 as of December 31, 2021 and December 31, 2020, respectively)	3,627	8,137
Operating lease liabilities, long-term	—	97
Total liabilities	**55,241**	**41,614**
Commitments and contingencies (Note 13)		
Stockholders' equity		
Common stock, $.0001 par value, 50,000,000 shares authorized, 11,316,344 and 3,151,333 shares issued and outstanding as of December 31, 2021 and December 31, 2020, respectively	1	—
Common stock - Class A, $.0001 par value, 50,000,000 shares authorized, 6,000,000 shares issued and outstanding as of December 31, 2021 and December 31, 2020	1	1
Additional paid-in capital	80,915	5,171
Retained earnings (Accumulated deficit)	(38,874)	5,120
Total stockholders' equity	42,043	10,292
Total liabilities and stockholders' equity	**$ 97,284**	**$ 51,906**

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

JOURNEY MEDICAL CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	Year Ended December 31,	
	2021	2020
Product revenue, net	$ 63,134	$ 44,531
Operating expenses		
Cost of goods sold – product revenue	32,084	14,594
Research and development	2,739	—
Research and development - licenses acquired	13,819	—
Selling, general and administrative	39,833	22,086
Wire transfer fraud loss	9,540	—
Total operating expenses	98,015	36,680
(Loss) income from operations	(34,881)	7,851
Other expense		
Interest income	(2)	—
Interest expense	7,034	698
Change in fair value of derivative liability	447	—
Total other expense	7,479	698
Net (loss) income before income taxes	**(42,360)**	**7,153**
Income tax expense	1,634	1,870
Net (loss) income	$ **(43,994)**	$ **5,283**
Net (loss) income per common share – basic	$ (4.32)	$ 0.58
Net (loss) income per common share – diluted	$ (4.32)	$ 0.49
Weighted average shares outstanding – basic	10,189,844	9,135,985
Weighted average shares outstanding – diluted	10,189,844	10,836,122

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

JOURNEY MEDICAL CORPORATION
CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share data)

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2019	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 2,914**	**$ (163)**	**$ 2,752**
Stock-based compensation	—	—	—	—	153	—	153
Exercise of stock options for cash	18,000	—	—	—	13	—	13
Contribution of capital – extinguishment of related party payable	—	—	—	—	2,091	—	2,091
Net income	—	—	—	—	—	5,283	5,283
Balance as of December 31, 2020	**3,151,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,171**	**$ 5,120**	**$ 10,292**
Stock-based compensation	—	—	—	—	2,466	—	2,466
Exercise of stock options for cash	10,000	—	—	—	7	—	7
Issuance of common stock related to equity plans	136,500	—	—	—	—	—	—
Issuance of common shares upon initial public offering, net of issuance costs of $1,921 million	3,520,000	1	—	—	30,614	—	30,615
Conversion of class A preferred stock settled note to common stock	2,231,346	—	—	—	21,812	—	21,812
Conversion of related party payables to common stock	1,610,467	—	—	—	16,105	—	16,105
Conversion of placement agent warrants to common stock	111,567	—	—	—	948	—	948
Conversion of contingent payment warrants to common stock	545,131	—	—	—	3,680	—	3,680
Contribution of capital – extinguishment of related party payable	—	—	—	—	112	—	112
Net loss	—	—	—	—	—	(43,994)	(43,994)
Balance as of December 31, 2021	**11,316,344**	**$ 1**	**6,000,000**	**$ 1**	**$ 80,915**	**$ (38,874)**	**$ 42,043**

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

JOURNEY MEDICAL CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,	
	2021	**2020**
Cash flows from operating activities		
Net (loss) income	$ (43,994)	$ 5,283
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expenses	—	5
Bad debt expense	48	49
Non-cash interest expense	781	698
Accretion of convertible preferred shares	2,845	—
Amortization of debt discount	2,572	—
Amortization of license fee	2,474	1,420
Amortization of operating lease right-of-use assets	86	91
Stock-based compensation	2,466	153
Deferred taxes provision (benefit)	1,566	(335)
Change in fair value of derivative liability	447	—
Research and development-licenses acquired, expense	13,819	—
Changes in operating assets and liabilities:		
Accounts receivable	768	(5,022)
Inventory	(8,458)	(547)
Prepaid expenses and other current assets	(774)	(1,009)
Other assets	(144)	—
Accounts payable	20,388	(204)
Accounts payable, related party	1,325	52
Accrued expenses	1,235	2,390
Accrued expenses, related party	544	—
Income tax payable	(91)	2,191
Lease liabilities	(84)	(83)
Net cash (used in) provided by operating activities	(2,181)	5,132
Cash flows from investing activities		
Purchase of research and development licenses	(10,000)	(1,200)
Net cash used in investing activities	(10,000)	(1,200)
Cash flows from financing activities		
Proceeds from the exercise of options	7	13
Proceeds from Fortress Note	9,540	—
Payment of license note payable	(5,300)	(500)
Proceeds from convertible preferred shares	18,967	—
Payment of debt issuance costs associated with convertible preferred shares	(1,996)	—
Proceeds from line of credit	7,000	—
Repayment of line of credit	(6,188)	—
Proceeds from issuance of common stock - initial public offering	32,536	—
Offering costs for the issuance of common stock - initial public offering	(1,550)	—
Net cash provided by (used in) financing activities	53,016	(487)
Net change in cash	40,835	3,445
Cash at the beginning of the period	8,246	4,801
Cash at the end of the period	**$ 49,081**	**$ 8,246**
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 158	$ 110
Supplemental disclosure of non-cash financing and investing activities:		
Unpaid debt offering cost	$ 214	$ —
Unpaid initial public offering cost	$ 371	$ —
Derivative warrant liability associated with convertible preferred shares	$ 362	$ —
Conversion of class A preferred stock settled note to common stock	$ 21,812	$ —
Conversion of related party payables to common stock	$ 16,105	$ —
Conversion of placement agent warrants to common stock	$ 948	$ —
Conversion of contingent payment warrants to common stock	$ 3,680	$ —
Extinguishment of related party payable relates to deferred tax assets	$ 43	$ 2,091
Unpaid intangible assets	$ —	$ 7,872

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

JOURNEY MEDICAL CORPORATION
Notes to Financial Statements

NOTE 1. ORGANIZATION AND PLAN OF BUSINESS OPERATIONS

Journey Medical Corporation (collectively "Journey" or the "Company") was formed on July 18, 2014. The Company is a commercial-stage pharmaceutical company that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. The Company's product portfolio at December31, 2021 includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. The Company acquires rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through their exclusive field sales organization.

As of December 31, 2021 and 2020, the Company is a majority-owned subsidiary of Fortress Biotech, Inc. ("Fortress" or "Parent").

Liquidity and Capital Resources

At December 31, 2021, the Company had $49.1 million in cash and cash equivalents as compared to $8.2 million at December 31, 2020.

On November 16, 2021, the Company completed an initial public offering (collectively the "Journey IPO" or "IPO") of its common stock, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs.

Prior the Company's IPO, the Company's operations were primarily financed through a working capital note from Fortress, referred to herein as the "Fortress Note," cash generated by operations and cash raised in the Company's private offering of 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Stock"). In connection with the closing of the Company's IPO on November 16, 2021, the Company issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock. In addition, the Fortress Note was converted into 1,610,467 shares of Journey common stock at the Journey IPO price of $10.00 per share. The Company also has access to a borrowing facility, which includes a working capital line of credit and a term loan. For the next twelve months from the issuance of these audited consolidated financial statements, the Company will be able to fund its operations through a combination of operating activities and the East West Bank borrowing facility. In January 2022 the Company borrowed $15 million against the term loan to facilitate the VYNE asset purchase. See Note 18, Subsequent Events, for further details.

The Company regularly evaluates market conditions, its liquidity profile, and various financing alternatives for opportunities to enhance its capital structure. The Company may seek to raise capital through debt or equity financings to expand its product portfolio. If such funding is not available or not available on terms acceptable to the Company, the Company's current plans for expansion of its product portfolio will be curtailed.

In addition to the foregoing, the Company experienced minimal impact on revenue levels and its liquidity due to the worldwide spread of COVID-19.

NOTE 2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The Company's consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). The Company's consolidated financial statements include the accounts of the Company and the accounts of the Company's wholly-owned subsidiary, JG Pharma, Inc. ("JG" or "JG Pharma"). All intercompany balances and transactions have been eliminated.

JOURNEY MEDICAL CORPORATION
Notes to Financial Statements

Emerging Growth Company

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB"), or other standard setting bodies and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's consolidated financial statements upon adoption. Under the Jumpstart Our Business Startups Act of 2012, as amended, the Company upon completion of its public offering meets the definition of an emerging growth company and elected the extended transition period for complying with new or revised accounting standards, which delays the adoption of these accounting standards until they would apply to private companies.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates made by management include provisions for product returns, coupons, rebates, chargebacks, discounts, allowances and distribution fees paid to certain wholesalers, inventory realization, useful lives of amortizable intangible assets, fair value of stock options and warrants, stock-based compensation, accrued expenses, provisions for income taxes and contingencies. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company's future results of operations will be affected.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one segment, which reflects products for the treatment of dermatological conditions.

Cash and Cash Equivalents

The Company considers highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents at December 31, 2021 and 2020 consisted entirely of cash and cash equivalents in institutions within the United States. Balances at certain institutions have exceeded Federal Deposit Insurance Corporation insured limits.

Accounts Receivable, Net

Accounts receivable consists of amounts due to the Company for product sales Accounts receivable are stated at amounts due from customers, net of an allowance for doubtful accounts. Accounts that are outstanding longer than the contractual payment terms are considered past due. The Company determines its allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due and the customer's current ability to pay its obligation to the Company. The Company writes off accounts receivable when they become uncollectible. The allowance for doubtful accounts was $0.1 million at both December 31, 2021 and 2020.

Inventories

Inventories comprise raw materials and finished goods, which are valued at the lower of cost and net realizable value, on a first-in, first-out basis. The Company evaluates the carrying value of inventories on a regular basis, taking into account anticipated future sales compared with quantities on hand, and the remaining shelf life of goods on hand. The acquired Qbrexza finished goods inventory initially incuded a fair value step-up of $6.5 million, which was fully expensed within cost of sales for the year ended December 31, 2021, as the inventory was sold to customers.

JOURNEY MEDICAL CORPORATION
Notes to Financial Statements

Property and Equipment

Computer equipment, furniture and fixtures and machinery and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful life of each asset. Leasehold improvements are amortized over the shorter of the estimated useful lives or the term of the respective leases.

Intangible Assets

Intangible assets are reported at cost, less accumulated amortization and impairments. Intangible assets with finite lives are amortized over their estimated useful lives, which represents the estimated life of the product. Amortization is calculated primarily using the straight-line method.

During the ordinary course of business, the Company has entered into certain licenses and asset purchase agreements. Potential milestone payments for achieving sales targets or regulatory development milestones are recorded when it is probable of achievement. Upon a milestone payment being achieved, the milestone payment will be capitalized and amortized over the remaining useful life for approved products and expensed for milestones prior to FDA approval. Royalty payments are recorded as cost of goods sold as sales are recognized.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including property and equipment, for impairment at least annually or whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Factors that the Company considers in deciding when to perform an impairment review include significant underperformance of the long-lived asset in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in the use of the assets. If an impairment review is performed to evaluate a long-lived asset for recoverability, the Company compares forecasts of undiscounted cash flows expected to result from the use and eventual disposition of the long-lived asset to its carrying value. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of an asset are less than its carrying amount. The impairment loss would be based on the excess of the carrying value of the impaired asset over its fair value, determined based on discounted cash flows. As of December 31, 2021 and 2020, there were no indicators of impairment.

Leases

Arrangements meeting the definition of a lease are classified as operating or financing leases and are recorded on the consolidated balance sheet as both a right-of-use asset and lease liability, calculated by discounting fixed lease payments over the lease term at the rate implicit in the lease or the Company's incremental borrowing rate. Lease liabilities are increased by interest and reduced by payments each period, and the right-of-use asset is amortized over the lease term. For operating leases, interest on the lease liability and the amortization of the right-of-use asset result in straight-line rent expense over the lease term. Variable lease expenses are recorded when incurred.

In calculating the right-of-use asset and lease liability, the Company elects to combine lease and non-lease components.

Fair Value Measurement

The Company follows accounting guidance on fair value measurements for financial assets and liabilities measured at fair value on a recurring basis. Under the accounting guidance, fair value is defined as an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability.

JOURNEY MEDICAL CORPORATION
Notes to Financial Statements

The accounting guidance requires fair value measurements be classified and disclosed in one of the following three categories:

Level 1: Quoted prices in active markets for identical assets or liabilities.

Level 2: Observable inputs other than Level 1 prices for similar assets or liabilities that are directly or indirectly observable in the marketplace.

Level 3: Unobservable inputs which are supported by little or no market activity and that are financial instruments whose values are determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant judgment or estimation.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Assets and liabilities measured at fair value are classified in their entirety based on the lowest level of input that is significant to the fair value measurement. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires management to make judgments and consider factors specific to the asset or liability.

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable, accrued expenses and other current liabilities.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist primarily of cash. Periodically, the Company may maintain deposits in financial institutions in excess of government insured limits. Management believes that the Company is not exposed to significant credit risk as the Company's deposits are held at financial institutions that management believes to be of high credit quality. The Company has not experienced any losses on these deposits.

The Company's accounts receivable primarily represent amounts due from drug wholesalers and specialty pharmacies in the United States. The Company performs periodic credit evaluations of customers and does not require collateral. An allowance for doubtful accounts is maintained for potential credit losses based on the aging of accounts receivable, historical bad debts experience, and the customer's current ability to pay its obligations to the Company. Accounts receivables balances are written off against the allowance when it is probable that the receivable will not be collected. See Note 15 for significant customers.

Revenue Recognition

The Company records revenue in accordance with the provisions of Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of this revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. The Company's revenues primarily result from contracts with customers, which are generally short-term and have a single performance obligation – the delivery of product. The Company's performance obligation to deliver products is satisfied at the point in time that the goods are received by the customer, which is when the customer obtains title to and has the risks and rewards of ownership of the products. The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for transferring promised goods to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both.

Many of the Company's products sold are subject to a variety of deductions. Revenues are recorded net of provisions for variable consideration, including chargebacks, coupons, discounts, other sales allowances, governmental rebate programs, price adjustments and returns. Accruals for these provisions are presented in the consolidated financial statements as reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). Amounts recorded for revenue deductions can result from a complex series of judgements about future events and uncertainties and can rely heavily on

estimates and assumptions. The following section briefly describes the nature of the Company's provisions for variable consideration and how such provisions are estimated.

Gross-to-Net Sales Accruals — The Company records gross-to-net sales accruals for government rebates, chargebacks, wholesaler distributor service fees, other rebates and administrative fees, sales returns and allowances and sales discounts.

Discounts and Other Sales Allowances — The Company provides prompt pay discounts and allowances to its wholesale customers. The Company provides for prompt pay discounts if payment is received within the payment term days which generally range from 30 to 98 days. These discounts and allowances are recorded at the time of sale based on the customer's contracted rate and recorded as a reduction of revenue and a reduction to accounts receivables.

Wholesaler fees — The Company pays administrative and other fees to certain wholesale customers consistent with pharmaceutical industry practices for sales order management, data, and distribution services. The Company records a provision for these fees based on contracted rates. Assumptions used to establish the provision include level of wholesaler inventories, contract sales volumes and average contract pricing. The Company regularly reviews the information related to these estimates and adjust the provision accordingly.

Product Returns — Consistent with industry practice, the Company offers customers a right to return any unused product. The customer's right of return commences six months prior to product expiration date and ends one year after product expiration date. The Company estimates the amount of its product sales that may be returned by its customers and accrues this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return reserves using available industry data and its own sales information, including its visibility and estimates into the inventory remaining in the distribution channel.

The Company bases its product returns allowance on estimated on-hand inventories in the sales channels, measured end-customer demand, actual returns history and other factors, such as the trend experience for lots where product is still being returned, as applicable. If the historical data the Company uses to calculate these estimates does not properly reflect future returns, then a change in the allowance would be made in the period in which such a determination is made and revenues in that period could be materially affected. Under this methodology, the Company tracks actual returns by individual production lots. Returns on closed lots, that is, lots no longer eligible for return credits, are analyzed to determine historical returns experience. Returns on open lots, that is, lots still eligible for return credits, are monitored and compared with historical return trend rates. Any changes from the historical trend rates are considered in determining the current sales return allowance.

Government Chargebacks — Chargebacks for fees and discounts to indirect qualified government healthcare providers represent the estimated obligations resulting from contractual commitments to sell products to qualified U.S. Department of Veterans Affairs hospitals and 340B entities at prices lower than the list prices charged to customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the statutory selling price to the qualified government entity. These allowances are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivables, net. The chargeback amount from the Company's direct customer is generally determined at the time of their resale to the qualified government healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of its direct customers' resale to the qualified government healthcare provider, and the Company generally issues credits for such amounts within a few weeks of its direct customer's notification to the Company of the resale. The allowance for chargebacks is based on expected sell-through levels by the Company's direct customers to indirect customers, as well as estimated wholesaler inventory levels.

Government Rebates — Government rebate accruals are based on estimated payments due to governmental agencies for purchases made by third parties under various governmental programs. U.S. Medicaid rebate accruals are generally based on historical payment data and estimates of future Medicaid beneficiary utilization applied to the Medicaid unit rebate formula established by the Center for Medicaid and Medicare Services. These accruals are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue. For Medicaid programs, the Company estimates the portion

of sales attributed to Medicaid patients and record a liability for the rebates to be paid to the respective state Medicaid programs. The Company's liability for these rebates consists of invoices received for: i) claims from prior quarters that have not been paid or for which an invoice has not yet been received ii) estimates of claims for the current quarter and iii) estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Wholesaler Chargeback Accruals — The Company sells a portion of its products indirectly through wholesaler distributors to contracted customers commonly referred to as "indirect customers." The Company enters into specific agreements with these indirect customers to establish pricing for its products, and in-turn, the indirect customers independently select a wholesaler from which to purchase the products. Because the price paid by the indirect customers is lower than the price paid by the wholesaler (wholesale acquisition cost, or "WAC"), the Company provides a credit, called a chargeback, to the wholesaler for the difference between the contractual price with the indirect customers and WAC. The Company's provision for chargebacks is based on expected sell-through levels by the Company's wholesale customers to the indirect customers and estimated wholesaler inventory levels as well as historical chargeback rates. The Company continually monitors its reserve for chargebacks and adjusts the reserve accordingly when expected chargebacks differ from actual experience.

Coupons — The Company offers coupons on products for qualified commercially-insured parties with prescription drug co-payments. Such product sales flow through both traditional wholesaler and specialty pharmacy channels. Approximately 85% of the Company's product revenues are sold through the specialty pharmacy channel, which has a shorter cycle from the Company's sales date to the fulfilment of the prescription by the specialty pharmacy customer, resulting in less inventory in this channel. Coupons are processed and redeemed at the time of prescription fulfilment by the pharmacy, and the Company is charged for the coupons redeemed monthly. The majority of coupon liability at the end of the period represents coupons that have been redeemed and for which the Company has been billed, and an accrual for expected redemptions for product in the distribution channel. This element of the liability requires the Company to estimate the distribution channel inventory at period end, the expected redemption rates, and the cost per coupon claim that the Company expects to receive associated with product that has been recognized as revenue but remains in the distribution channel at the end of each reporting period. The estimate of product remaining in the distribution channel is comprised of actual inventory at the wholesaler as well as an estimate of inventory at the specialty pharmacies, which the Company estimates based upon historical ordering patterns, which consist of reordering approximately every two weeks. The estimated redemption rate is based on historical redemptions as a percentage of units sold. The cost per coupon is based on the coupon rate.

Managed Care Rebates — The Company offers managed care rebates to certain providers. The Company calculates rebate payment amounts due under this program based on actual qualifying products and applies a contractual discount rate. The accrual is based on an estimate of claims that the Company expects to receive and inventory in the distribution channel. The accrual is recognized at the time of sale, resulting in a reduction of product revenue.

Research and Development Costs

Research and development costs are expensed as incurred. Advance payments for goods and services that will be used in future research and development activities are expensed when the activity has been performed or when the goods have been received rather than when the payment is made. Upfront and milestone payments due to third parties that perform research and development services on the Company's behalf will be expensed as services are rendered or when the milestone is achieved.

Research and development costs primarily consist of personnel related expenses and, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations.

In accordance with Accounting Standards Codification ("ASC") 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached commercial feasibility and has no alternative future use. Such licenses purchased by the Company require substantial completion of research and development, regulatory and marketing approval efforts in order to reach commercial feasibility and have no alternative future use. Accordingly, the

total purchase price for the licenses acquired during the period was reflected as research and development - licenses acquired on the Consolidated Statements of Operations for the years ended December 31, 2021.

Stock-based Compensation

The Company has a stock-based compensation plan in place and records the associated stock-based compensation expense over the requisite service period. The stock-based compensation plan and related compensation expense are discussed more fully in Note 14 to the Company's consolidated financial statements.

Compensation expense for service-based stock options is charged against operations on a straight-line basis between the grant date for the option and the vesting period, which is generally four years. The Company estimates the fair value of all service-based stock option awards as of the grant date by applying the Black-Scholes option pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental, and sensitive in the determination of compensation cost. Compensation cost is adjusted for actual forfeitures. Options granted have a term of 10 years from the grant date.

Restricted stock units ("RSU's") that are service based are recorded as deferred compensation and amortized into compensation expense on a straight-line basis over the vesting period, which ranges from three to four years in duration. Compensation cost for service based RSU's is based on the grant date fair value of the award, which is the closing market price of the Company's common stock on the grant date multiplied by the number of shares awarded.

The Company estimates the fair value of stock option grants using the Black-Scholes option pricing model, which requires the use of a number of assumptions, including the fair value of the common stock, expected volatility, risk-free interest rate, expected dividends and the expected term of the option. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. Forfeitures are recorded as they occur. All stock-based compensation costs are recorded in selling, general and administrative ("SG&A") expense in the Company's consolidated statements of operations.

Prior to the Company's IPO, which closed on November 16, 2021, the fair value of the Company's common stock underlying stock options was an input to the Black-Scholes option pricing model. The Company engaged an independent third-party valuation firm to provide an estimate of the fair value of its common stock annually, utilizing input from management. The fair value of the Company's common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

Contingencies

The Company records accruals for contingencies and legal proceedings expected to be incurred in connection with a loss contingency when it is probable that a liability has been incurred and the amount can be reasonably estimated.

If a loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material, would be disclosed.

Income Taxes

As of December 31, 2021, after the IPO the Company was 58.39% owned by Fortress Biotech, Inc. ("Fortress") and prior to the IPO was filing consolidated federal tax return and consolidated or combined state tax returns in multiple jurisdictions with Fortress. As the Company completed its initial public offering on November 12, 2021, the Company deconsolidated from Fortress consolidated group for federal income tax purpose. The Company's financial statements recognize the current and deferred income tax consequences that result from the Company's activities during the current and preceding periods pursuant to the provisions of Accounting Standards Codification Topic 740, Income Taxes (ASC 740), as if the Company were a separate taxpayer rather than a member of the Fortress

consolidated income tax return group. Fortress has agreed that JMC does not have to make payments to Fortress for JMC's use of net operation losses ("NOLs") of Fortress (including other Fortress group members) accordingly, for any NOLs, the tax benefit the Company realized was recorded as a capital contribution.

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of cumulative tax and book income/loss incurred since inception, and the other positive and negative evidence, and has concluded that it is not more likely than not that the Company will realize the benefits of the net deferred tax assets as of December 31, 2021 and therefore a full valuation allowance on all of its deferred tax assets is required. The Company did not record any valuation allowance as of December 31, 2020.

For tax positions that are more likely than not of being sustained upon audit, the Company recognizes the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, the Company does not recognize any portion of the benefit. As of December 31, 2021, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance. The Company would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded through December 31, 2021.

Net Loss (Income) Per Share

Basic net (loss) income per share of common stock is calculated by dividing net (loss) income by the weighted-average number of shares of common stock outstanding during the reporting period. Diluted earnings per share is calculated by dividing net income by the weighted-average number of shares of common stock outstanding during the reporting period after giving effect to dilutive potential common shares for stock options and restricted stock units, determined using the treasury stock method. See Note 17 below.

Comprehensive Income

The Company has no components of other comprehensive income, and therefore, comprehensive income equals net income.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued Accounting Standards Update ("ASU") No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in ASC 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. On January 1, 2021, the Company's adoption of this guidance did not have a material impact on its financial statements.

Recently Issued Accounting Pronouncements

In August 2020, the FASB issued ASU 2020-06 "*Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity's Own Equity (Subtopic 815 – 40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which simplifies accounting for convertible instruments by removing major separation models required under current GAAP. The ASU removes certain settlement conditions that are required for equity contracts to qualify for the derivative scope exception, and it also simplifies the diluted earnings per share calculation in certain areas. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted. The Company is currently evaluating the impact of this standard on its financial statements.

JOURNEY MEDICAL CORPORATION
Notes to Financial Statements

NOTE 3. INVENTORY

The Company's inventory consists of the following:

($in thousands)	December 31, 2021	December 31, 2020
Raw materials	$ 5,572	$ —
Work-in-process	—	—
Finished goods	4,290	1,404
Total inventories	$ 9,862	$ 1,404

The acquired Qbrexza inventory includes a fair value step-up of $6.5 million, which was fully expensed within cost of sales during the year ended December 31, 2021, as the inventory was sold to customers. For additional information on the Company's asset acquisition of Qbrexza, please refer to Note 4.

NOTE 4. INTANGIBLES

On March 31, 2021, the Company executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc., a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement, the Company acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon HSR acceptance, which was received on May 13, 2021, the Company paid the upfront fee of $12.5 million to Dermira. In addition, Dermira is eligible to receive up to $144 million in the aggregate upon the achievement of certain sales milestones. The royalty structure for the agreement is tiered with royalties for the first two years ranging from approximately 40% to 30%. Thereafter for a period of eight years royalties are approximately 12.0% to 19.0%. Royalty amounts are subject to 50% diminution in the event of loss of exclusivity due to the introduction of an authorized generic.

Upon closing of the Qbrexza® purchase, the Company became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza®. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application ("ANDA"). The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

The purchase price of $12.5 million included the asset, Qbrexza, as well as finished goods and raw material inventory. The Company also has the obligation to accept any product returns related to sales made by Dermira. The Company allocated the upfront payment to inventory since the fair value of the inventory and Qbrexza rights exceeded the purchase price. The future contingent milestone payments, if achieved, will be recorded to intangible asset and amortized over the seven-year life of the asset commencing on the closing date.

In December 18, 2020, the Company entered an Asset Purchase Agreement with a third party (the "Anti-itch Product Agreement") for a topical product that is indicated to treat scabies and skin itch conditions ("Anti-itch Product"). Pursuant to the terms and conditions of the Anti-itch Product Agreement, the Company agreed to pay $4.0 million, comprised of a non-refundable deposit of $0.2 million upon the execution of the term sheet, a cash upfront payment of $1.8 million on January 1, 2021 and additional future payments of $0.5 million on April 1, 2021, $0.5 million on July 1, 2021, and $1.0 million on January 1, 2022. There are no subsequent milestone payments or royalties beyond the aforementioned payments. Commercial launch of this product is expected in the first half of 2022.

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On July 29, 2020, the Company entered into a license and supply agreement for Accutane® ("Accutane Agreement") with DRL. Pursuant to the Accutane Agreement, the Company agreed to pay $5.0 million, comprised of an upfront payment of $1.0 million paid upon execution, with additional milestone payments totaling $4.0 million. Three additional milestone payments totaling $17.0 million are contingent upon the achievement of certain net sales milestones. Royalties in the low-double digits based on net sales, subject to specified reductions are also due.

The term of the agreement is ten years and renewable upon mutual agreement. The Company is required to pay royalties during the term of the agreement. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events and the Company may terminate for upon 180 days written notice to the other party.

The table below provides a summary of the Company's intangible assets at December 31, 2021 and 2020, respectively:

($in thousands)	Estimated Useful Lives (Years)	December 31, 2021	December 31, 2020
Ceracade®	3	$ 300	$ 300
Luxamend®	3	50	50
Targadox®	3	1,250	1,250
Ximino®	7	7,134	7,134
Exelderm®	3	1,600	1,600
Accutane	5	4,727	4,727
Anti-itch product [1]	3	3,942	3,945
Total intangible assets		19,003	19,006
Accumulated amortization		(6,451)	(3,977)
Net intangible assets		$ 12,552	$ 15,029

(1) As of December 31, 2021, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the year ended December 31, 2021. Commercial launch of this product is expected in the first half of 2022.

The Company's amortization expense for the year ended December 31, 2021 and 2020 was approximately $2.5 million and $1.4 million, respectively. Amortization expense is recorded as a component of cost of goods sold in the Company's consolidated statements of operations.

The table below provides a summary for the year ended December 31, 2021 and 2020, of the Company's recognized expense related to its product licenses, which was recorded in costs of goods sold on the consolidated statement of operations:

($'s in thousands)	Intangible Assets, Net
Balance at January 1, 2020	$ 7,377
Isotretinion agreement [1]	4,727
Anti-itch product license acquisition [2]	3,945
Exelderm milestone	400
Amortization expense	(1,420)
Balance at December 31, 2020	$ 15,029
Anti-itch product license acquisition adjustment	(3)
Amortization expense	(2,474)
Unvested balance at December 31, 2021	$ 12,552

(1) Includes an upfront payment of $1.0 million and one milestone payment of $0.5 million in 2020 as well as four payments totaling $3.5 million due at various points between 2021 through 2023. Such payments were discounted by $0.3 million due to the long-term nature of such payments. As of December 31, 2020, this asset has not yet been placed in service, therefore no amortization

expense was recognized on this asset for the year ended December 31, 2020. The Company placed the assets in service in the first quarter of 2021.

(2) Includes an upfront payment of $0.2 million, three payments totaling $2.8 million due in 2021 and $1.0 million due in 2022. Such payments were discounted by $0.1 million due to the long-term nature of such payments. As of December 31,2021 and 2020, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the year ended December 31, 2021 and 2020 respectively.

Future amortization of the Company's intangible assets is as follows:

($'s in thousands)	Ximino®	Accutane®	Total Amortization
December 31, 2022	$ 1,019	$ 946	$ 1,965
December 31, 2023	1,019	945	1,964
December 31, 2024	1,019	946	1,965
December 31, 2025	1,019	945	1,964
Thereafter	595	157	752
Subtotal	$ 4,671	$ 3,939	$ 8,610
Asset not yet placed in service	—	—	3,942
Total	**$ 4,671**	**$ 3,939**	**$ 12,552**

NOTE 5. LICENSES ACQUIRED

On June 29, 2021, the Company entered a license, collaboration, and assignment agreement (the "DFD-29 Agreement") to obtain the global rights for the development and commercialization of a late-stage development modified release oral minocycline for the treatment of rosacea ("DFD-29") with Dr. Reddy's Laboratories, Ltd ("DRL"). Pursuant to the terms and conditions of the DFD-29 Agreement, the Company agreed to pay $10.0 million, of which $2.0 million (the "First Installment") was paid upon execution and $8.0 million (the "Second Installment") is payable 90 days following June 29, 2021. Additional contingent regulatory and commercial milestone payments totaling up to $163.0 million are also payable. Royalties ranging from approximately 10% to approximately 15% are payable on net sales of the DFD-29 product.

In accordance with ASC 730-10-25-1, *Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future use. The licenses purchased by the Company require substantial completion of research and development, and regulatory and marketing approval efforts in order to reach technological feasibility. As such, the $10.0 million for the year ended December 31, 2021 for the purchase price of licenses acquired were classified as research and development-licenses acquired in the consolidated statement of operations.

Additionally, the Company is required to fund and oversee the Phase 3 clinical trials approximating $24.0 million, based upon the current development plan and budget. Either party may terminate the agreement prior to NDA approval in the event of bankruptcy or a material breach that remains uncured beyond the applicable cure period. Additionally, DRL may terminate the agreement if Company: i.) ceases development of the product for 6 consecutive months (except if such cessation is caused by DRL, applicable laws, or action/inaction of any third party beyond Company's control); ii.) files a patent challenge on any claim for a product patent or DRL background patent; or iii.) fails to initiate development of the product in the European Union ("EU") (such termination solely relates to the rights granted in EU) within 24 months after product regulatory approval or cause first commercial sale in at least one country in the EU within 72 months after product regulatory approval.

In connection with the closing of the Company's IPO on November 16, 2021, the Company issued 545,131 unregistered shares of Journey Medical Inc. common stock to DRL calculated using a 15-day volume weighted average price ("VWAP") of $9.1721 per share. The restrictions on the unregistered shares of common stock are governed by the terms set forth in the DFD-29 Agreement and applicable securities laws. See *"Contingent Payment Derivative"* in Note 6 for further details.

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NOTE 6: FAIR VALUE MEASUREMENTS

Placement Agent Warrants

Pursuant to the terms of the Company's Class A Preferred Stock offering (see Note 14), the Company will issue upon a Qualified Financing (an external financing of $25.0 million or greater) to the placement agent ("the Placement Agent Warrants") to purchase 5% of the shares of common stock into which the Class A Preferred Stock converts. This condition was met by the Company's IPO. The Placement Agent Warrants have a term of five years and are exercisable at a 15% discount to the Qualified Financing price. The Company valued the Placement Agent Warrants using a Monte Carlo simulation valuation methodology. A summary of the weighted average (in aggregate) significant unobservable inputs (Level 3 inputs) used in measuring Journey's warrant liability that are categorized within Level 3 of the fair value hierarchy before the conversion was as follows:

Risk-free interest rate	0.98 %
Expected dividend yield	—
Expected term in years	1.0
Expected volatility	50 %

In connection with the Company's IPO, the Company issued 111,567 shares of common stock in related to the conversion of all of the placement agent warrants.

Contingent Payment Derivative

In connection with the DFD-29 Agreement, the Company agreed to pay DRL additional consideration upon either an IPO of the Company's common stock or an acquisition of the Company, the agreement further specifies that only one payment can be made. The contingent payment associated with an IPO of the Company's common stock, is deemed to be achieved if upon the completion of an IPO the Company's market capitalization on a fully diluted basis is $150 million or greater at the close of business on the date of such IPO. The payment due for the achievement of the IPO criteria is a follows: (a) issue to DRL a number of shares of the Company's common stock equal to $5.0 million as calculated using a fifteen (15) day volume weighted average price ("VWAP") of the Company's closing price, measured fifteen (15) days following the IPO; or (b) make a cash payment to DRL equal to $5.0 million. As a result of the Company's IPO on November 16, 2021, calculated using a 15-day VWAP of $9.1721 per share, the Company issued 545,131 unregistered shares of Journey common stock to DRL. The restrictions on the unregistered shares of common stock are governed by the terms set forth in the DFD-29 Agreement and applicable securities laws.

The Company valued the contingent payment discussed above utilizing a Probability Weighted Expected Return Method (PWERM) model using a discount rate of 30% and expected term of 3 – 5 months.

Financial assets and liabilities measured at fair value on a recurring basis are summarized below:

	December 31, 2021			
($in thousands)	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets:				
Cash and cash equivalents	$ 49,081	$ —	$ —	$ 49,081
Total	$ 49,081	$ —	$ —	$ 49,081

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($in thousands)	December 31, 2020			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash and cash equivalents	$ 8,246	$ —	$ —	$ 8,246
Total	$ 8,246	$ —	$ —	$ 8,246

The table below provides a roll-forward of the changes in fair value of Level 3 financial instruments as of December 31, 2021:

($in thousands)	Warrant liabilities
Fair value at December 31, 2020	$ —
Additions:	
Contingent payment warrant	3,819
Placement agent warrant	362
Change in fair value of warrant liabilities:	
Contingent payment warrant	(139)
Placement agent warrant	586
Settlement of warrant liabilities in connection with IPO:	
Conversion of contingent payment warrants to common shares	(3,680)
Conversion of placement agent warrants to common shares	(948)
Fair value at December 31, 2021	$ —

During the year ended December 31, 2021, no transfers occurred between Level 1, Level 2, and Level 3 instruments.

NOTE 7. RELATED PARTY AGREEMENTS

Shared Services Agreement with Fortress

On November 12, 2021, the Company and Fortress entered into an arrangement to share the cost of certain legal, finance, regulatory, and research and development employees. Fortress's Executive Chairman and Chief Executive Officer is the Executive Chairman of the Company. Under the terms of the Agreement, the Company will reimburse Fortress for the salary and benefit costs associated with these employees based upon actual hours worked on Journey related projects following the completion of their IPO. To date, Fortress employees have provided services to the Company totaling approximately $0.5 million. Upon completion of the Company's IPO, the amount converted into 52,438 shares of Journey common stock at the IPO price of $10.00 per share.

In the normal course of business, the Company reimburses Fortress for various payroll related costs and selling, general and administrative costs. As of December 31, 2021 and 2020, the Company had a balance of approximately $0.6 million and $0.1 million, respectively, recorded as accounts payable and accrued expenses – related party on the consolidated balance sheets.

Fortress Note

Since the Company's inception in October 2014, Fortress has funded the Company's operations through the Fortress Note. The Fortress Note matures on or before December 31, 2024. At December 31, 2021 and 2020, the Company's outstanding balance under the Fortress Note was zero and $5.2 million, respectively. The Fortress Note is recorded on the consolidated balance sheets as Note payable, related party and is an interest-free note.

On September 30, 2021, Fortress increased the Journey promissory note by $9.5 million in response to a cyber incident that occurred at Journey and resulted in $9.5 million of fraudulent payments. The $9.5 million contribution was approved by the boards of directors of both the Fortress and Journey and will ensure that Journey's accounts payable function will continue to operate smoothly. This

contribution, along with $5.2 million already outstanding under the Fortress Note converted into 1,476,044 shares of the Company's common stock upon the closing of the Company's IPO at the IPO price of $10.00 per share.

Fortress Income Tax

As of December 31, 2021, after the IPO the Company is 58.39% owned by Fortress prior to the IPO and has been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. In connection with the filing of the consolidated tax return, the Company's tax liabilities for the year ended December 31, 2020 of $1.9 million was satisfied utilizing NOLs generated by Fortress. Extinguishment of these liabilities to Fortress was recorded as a contribution of capital.

Additionally, see Note 16 below for a discussion of income taxes.

NOTE 8. ACCRUED EXPENSES

Accrued expenses consisted of the following:

($'s in thousands)	December 31, 2021	December 31, 2020
Accrued expenses:		
Accrued emplyee compensation	$ 2,702	$ 2,041
Research and development - license fees	870	—
Accrued royalties payable	3,833	2,682
Accured coupons and rebates	10,603	12,869
Return reserve	3,240	2,580
Other	1,485	1,326
Total accrued expenses	**$ 22,733**	**$ 21,498**

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NOTE 9. INSTALLMENT PAYMENTS — LICENSES

The following tables show the details of the Company's installment payments – licenses for the periods presented:

	December 31, 2021			
($in thousands)	Ximino 1	Accutane 2	Anti-Itch Product 3	Total
Installment payments - licenses, short-term	$ 2,000	$ 2,000	$ 1,000	$ 5,000
Less: imputed interest	(425)	(65)	—	(490)
Sub-total installment payments - licenses, short-term	$ 1,575	$ 1,935	$ 1,000	$ 4,510
Installment payments - licenses, long-term	$ 3,000	$ 1,000	$ —	$ 4,000
Less: imputed interest	(350)	(23)	—	(373)
Sub-total installment payments - licenses, long-term	$ 2,650	$ 977	$ —	$ 3,627
Total installment payments - licenses	$ 4,225	$ 2,912	$ 1,000	$ 8,137

	December 31, 2020			
($in thousands)	Ximino 1	Accutane 2	Anti-Itch Product 3	Total
Installment payments - licenses, short-term	$ 2,000	$ 500	$ 2,800	$ 5,300
Less: imputed interest	(602)	(122)	(54)	(778)
Sub-total installment payments - licenses, short-term	$ 1,398	$ 378	$ 2,746	$ 4,522
Installment payments - licenses, long-term	$ 5,000	$ 3,000	$ 1,000	$ 9,000
Less: imputed interest	(775)	(88)	—	(863)
Sub-total installment payments - licenses, long-term	$ 4,225	$ 2,912	$ 1,000	$ 8,137
Total installment payments - licenses	$ 5,623	$ 3,290	$ 3,746	$ 12,659

Note 1: Imputed interest rate of 11.96% and maturity date of July 22, 2024.
Note 2: Imputed interest rate of 4.03% and maturity date of July 29, 2023.
Note 3: Imputed interest rate of 4.25% and maturity date of January 1, 2022.

NOTE 10. OPERATING LEASE OBLIGATIONS

The Company leases 3,681 square feet of office space in Scottsdale, Arizona. In August 2020, the Company amended its office lease and extended the lease term for an additional 25 months at an annual rate of approximately $0.1 million. The term of the amended lease commenced on December 1, 2020 and will expire on December 31, 2022.

The Company recorded rent expense as follows (dollars in thousands):

	For the Years Ended December 31,	
	2021	2020
Operating lease cost	$ 89	$ 94
Variable lease cost	4	6
Total lease cost	$ 93	$ 100

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The following table summarizes quantitative information about the Company's operating leases (dollars in thousands):

	For the Years Ended December 31,	
	2021	2020
Operating cash flows from operating leases	$ 91	$ 86
Right-of-use assets exchanged for new operating lease liabilities	—	182
Weighted-average remaining lease term – operating leases	1.0	1.5
Weighted-average discount rate – operating leases	4.0 %	5.0 %

As of December 31, 2021, future minimum lease payments under lease agreements associated with the Company's operations were as follows:

($in thousands)	Future Lease Liability
Year Ended December 31, 2022	$ 100
Total	100
Less: present value discount	(2)
Operating lease liabilities	$ 98

NOTE 11. LINE OF CREDIT

East West Bank Working Capital Line of Credit

On March 31, 2021, the Company entered into an agreement with East West Bank ("the EWB Agreement") in which EWB agreed to provide a $7.5 million working capital line of credit. The line of credit is secured by the Company's receivables and cash. Interest on the line is the greater of 4.25% or the prime rate plus 1%. The agreement matures in 36 months. The outstanding balance of the working capital line of credit was $812,000 at December 31, 2021. The EWB agreement was amended in January of 2022. See Note 18, Subsequent Events, for more detailed information on the amendment.

NOTE 12. INTEREST EXPENSE AND FINANCING FEES

Interest expense and financing fees for the periods consisted of the following:

	Year Ended December 31,					
	2021			2020		
($in thousands)	*Interest*	*Fees[1]*	Total	*Interest*	*Fees[1]*	Total
Convertible preferred shares	$ 2,845	$ 2,572	$ 5,417	$ —	$ —	$ —
Dividend payable	820	—	820	—	—	—
Installment payments - licenses 2	724	—	724	696	—	696
Anti-itch product installment payments	57	—	57	2	—	2
LOC fees	16		16	—	—	—
Total Interest Expense and Financing Fee	$ 4,462	$ 2,572	$ 7,034	$ 698	$ —	$ 698

Note 1: Amortization of fees in connection with debt raises.
Note 2: Imputed interest expense related to Ximino, Accutane and anti-itch cream acquisitions.

The conversion premium relates to the 15% discount at which the Class A Preferred Stock converts, see Note 14. In accordance with the measurement and recognition guidance of ASC 835-30 Imputation of Interest, the Company will accrete the convertible preferred share settled notes to the estimated settlement amount of $14.8 million.

JOURNEY MEDICAL CORPORATION
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NOTE 13. COMMITMENTS AND CONTINGENCIES

License Agreements

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of drug products and candidates. In addition, the Company shall pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. For additional information on future milestone payments and royalties, see Note 4.

NOTE 14. STOCKHOLDERS' EQUITY AND CLASS A PREFERRED STOCK

Common Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 50,000,000 shares of $0.0001 par value Common Stock of which 6,000,000 shares are designated and authorized as Class A Common Stock.

Voting Rights

Each holder of Common Stock is entitled to one vote per share of Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors. The Company's Certificate of Incorporation and bylaws do not provide for cumulative voting rights.

Each holder of Class A Common Stock is entitled to a number of votes that is equal to 1.1 times a fraction, the numerator of which is the sum of the shares of outstanding Common Stock, including the Class A Common Stock and the denominator of which is the number of outstanding shares of Class A Common Stock. Thus, the Class A Common Stock will at all times constitute a voting majority.

Dividends

The holders of the Company's outstanding shares of Common Stock and Class A Common Stock are entitled to receive dividends, if any, as may be declared from time to time by the Company's Board of Directors out of legally available funds.

Liquidation

In the event of the Company's liquidation, dissolution or winding up, holders of Common Stock and Class A Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of the Company's debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of Preferred Stock.

Rights and Preference

Holders of the Company's Common Stock and Class A Common Stock have no preemptive, conversion or subscription rights, and there is no redemption or sinking fund provisions applicable to either the Common Stock or the Class A Common Stock. The rights, preferences and privileges of the holders of Common Stock and Class A Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of the Company's Preferred Stock that are or may be issued.

On November 16, 2021, the Company completed an IPO of its common stock and issued 3,520,000 shares of its common stock at $10.00 per share, which resulted in net proceeds of approximately $30.6 million, after deducting underwriting discounts and other offering costs. In addition, as a result of the IPO, the Company issued shares of its Common stock based on the following:

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8% Cumulative Convertible Class A Preferred Offering

In March 2021, the Company commenced an offering of 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Offering") in an aggregate minimum amount of $12.5 million and an aggregate maximum amount of $30.0 million. The Class A Preferred Offering terminated on July 18, 2021. The Class A Preferred Stock automatically converts into the Company's Common Stock upon a sale of the Company or a financing in an amount of at least $25.0 million within a year of the closing date of the Class A Preferred Offering (extendable by another six months at the Company's option) at a discount of 15% to the per share qualified stock price. In the event that neither a sale of the Company nor a $25.0 million financing is completed, the Class A Preferred Stock will be exchanged for shares of Fortress common stock, at a 7.5% discount to the average Fortress common stock trading price over the 10-day period preceding such exchange.

The Company has completed five closings in connection with the Class A Preferred Offering ("Closings"). As a result of the Closings, the Company issued an aggregate of 758,680 Class A Preferred shares at a price of $25.00 per share, for gross proceeds of $19.0 million. Following the payment of placement agent fees of $1.9 million, and other expenses of $0.1 million, the Company received $17.0 million of net proceeds. In connection with the Company's IPO, the company issued 2,231,346 shares of common stock resulting from the conversion of all of the Class A Preferred Stock.

Stock Based Compensation

In 2015, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical 2015 Stock Plan (the "Plan") originally authorizing the Company to grant up to 3,000,000 shares of common stock, with subsequent authorizations totaling 1,642,857, to eligible employees, directors, and consultants in the form of restricted stock, stock options and other types of grants. The amount, terms, and exercisability provisions of grants are determined by the Board of Directors. As of December 31, 2021, 1,020,661 shares were available for issuance under the Plan.

Total compensation cost that has been charged against operations related to the above plan was $2.5 million, and $0.2 million for the years ended December 31, 2021 and 2020, respectively. The Company's stock compensation expense is recorded as a component of SG&A in the Company's consolidated statements of operations.

Stock Options

The Company grants stock options to employees, non-employees and Directors with exercise prices equal to the closing price of the underlying shares of the Company's common stock on the date that the options are granted. Options granted have a term of ten years from the grant date. Options granted generally vest over four-year period. Compensation cost for stock options is charged against operations on a straight-line basis between the grant date for the option and each vesting date. The Company estimates the fair value of stock options on the grant date by applying the Black-Scholes option pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental, and sensitive in the determination of compensation cost.

Prior to the Company's IPO, which closed on November 16, 2021, the fair value of the Company's common stock underlying stock options was an input to the Black-Scholes option pricing model. The fair value of the Company's common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

Historical information is the primary basis for the selection of the expected volatility of options granted. However, due to the Company's limited time as a public filer, the Company's volititily prior to the Company's IPO, was derived from guidline public companies. The risk-free interest rate is selected based upon yields of United States Treasury issues with a term equal to the expected life of the option being valued. The expected term of options granted is based on the Simplified Method under SAB 107 and the expected term for non-employees is the remaining contractual life.

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The weighted-average key assumptions used in determining the fair value of options granted for the years ended December 31, 2021 and 2020, are as follows:

	Number of Shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Outstanding options at December 31, 2019	2,294,000	$ 0.79	$ 5,916,970	6.73
Exercised	(18,000)	0.69	29,428	—
Forfeited	(134,000)	0.72	325,539	—
Outstanding options at December 31, 2020	2,142,000	$ 0.80	$ 7,934,320	5.72
Exercised	(10,000)	0.68	—	—
Forfeited	(27,666)	1.37	—	—
Outstanding options at December 31, 2021	2,104,334	$ 0.79	$ 9,661,393	4.68
Options vested and exercisable at December 31, 2021	1,990,916	$ 0.76	$ 9,207,917	4.53

For the years ended December 31, 2021 and 2020, the Company issued 10,000 shares and 18,000 shares, respectively, of the Company's common stock upon the exercise of outstanding stock options and received proceeds of $7,000 and $13,000, respectively. For the years ended December 31, 2021 and 2020, approximately $51,000 and $153,000, respectively, of stock option compensation cost has been charged against operations. As of December 31, 2021, there was $23,000 of unrecognized compensation cost related to unamortized stock option compensation, which is expected to be recognized over a remaining weighted-average period of approximately 0.9 years. The aggregate intrinsic value in the previous table reflects the total pretax intrinsic value (the difference between the Company's closing stock price on the last trading day of the period and the exercise price of the options, multiplied by the number of in-the-money stock options) that would have been received by the option holders had all option holders exercised their options on December 31, 2021. The intrinsic value of the Company's stock options changes based on the closing price of the Company's common stock.

Restricted Stock Units

The Company grants RSU's to its employees and Directors. Restricted stock and RSU's are charged against income on a straight-line basis over the vesting period, which ranges from one to four years in duration. Compensation cost for restricted stock and RSU's is based on the award's grant date fair value, which is the closing market price of the Company's common stock on the grant date, multiplied by the number of shares awarded.

The Company's non-vested RSU's, at December 31, 2021 and 2020, and changes during the year ended December 31, 2021, are presented below:

	Number of units	Weighted average exercise price
Unvested balance at December 31, 2019	—	$ —
Granted	845,524	3.37
Forfeited	(30,000)	3.37
Unvested balance at December 31, 2020	815,524	$ 3.37
Granted	143,006	7.13
Vested	(136,500)	3.37
Forfeited	(107,000)	3.37
Unvested balance at December 31, 2021	715,030	$ 4.12

As of December 31, 2021, the Company had unrecognized stock-based compensation expense related to all unvested restricted stock unit of $1.0 million, which is expected to be recognized over the remaining weighted-average vesting period of 1.8 years.

JOURNEY MEDICAL CORPORATION
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RSU's that contain performance conditions

The Company recorded approximately $2.4 million of stock-based compensation expense in the fourth quarter of 2021, associated with performance-based RSU's granted to key employees that fully vested upon the closing of the Company's IPO.

NOTE 15. REVENUES FROM CONTRACTS AND SIGNIFICANT CUSTOMERS

Disaggregation of Net Revenues

The Company has the following actively marketed products, Qbrexza®, Accutane®, Targadox®, Ximino®, Exelderm®, and Luxamend®. All of the Company's product revenues are recorded in the U.S.

Revenues by product are summarized as follows:

	December 31,	
($'s in thousands)	**2021**	**2020**
Targadox®	$ 22,378	$ 30,708
Ximino®	8,247	9,518
Exelderm®	5,363	4,453
Accutane®	10,053	—
Qbrexza®	17,056	—
Other branded revenue	37	(148)
Total product revenue, net	$ 63,134	$ 44,531

Significant Customers

As of December 31, 2021, two of the Company's customers accounted for more than 10% of its total accounts receivable balance at 16.3% and 12.9%. As of December 31, 2020, one of the Company's customers accounted for 12% of its total accounts receivable balance.

For the year ended December 31, 2021 and 2020, none of the Company's customers accounted for more than 10% of its total gross product revenue.

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NOTE 16. INCOME TAXES

The components of the income tax provision are as follows:

($'s in thousands)	Years Ended December 31, 2021	2020
Current:		
Federal	$ —	$ 1,669
State	67	536
Total current	67	2,205
Deferred:		
Federal	(7,829)	(234)
State	(1,474)	(101)
Total deferred	(9,303)	(335)
Valuation allowance	10,870	—
Total income tax expense	**$ 1,634**	**$ 1,870**

Deferred income taxes reflect the net tax effects of (a) temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes, and (b) operating losses and tax credit carryforwards.

The significant components of the Company's deferred tax assets consisted of the following:

($'s in thousands)	December 31, 2021	2020
Deferred tax assets:		
Net operating loss carryforwards	$ 3,113	$ 5
Amortization of license fees	4,760	1,086
Stock compensation	667	113
Lease liability	25	48
Reserve on sales return, discount and bad debt	3,573	765
Accruals and reserves	505	248
Tax credits	193	—
Business interest expense deduction limit	41	—
State taxes	12	—
Total deferred tax assets	12,889	2,265
Less: valuation allowance	(10,870)	—
Deferred tax assets, net	**$ 2,019**	**$ 2,265**
Deferred tax liability:		
Section 481(a) adjustment on reserve on sales return, discount and bad debt	(1,996)	(765)
Right-of-use asset	(23)	(46)
Deferred tax assets, net	**$ —**	**$ 1,454**

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A reconciliation of the statutory tax rates and the effective tax rates is as follows:

	Years Ended December 31,	
	2021	2020
Percentage of pre-tax income:		
U.S. federal statutory income tax rate	21 %	21 %
State taxes, net of federal benefit	4 %	6 %
Non-deductible items	(5)%	0 %
Provision to return	0 %	0 %
Change in state rate	0 %	(1)%
Change in valuation allowance	(26)%	0 %
Other	2 %	0 %
Effective income tax rate	(4)%	26 %

The Company has incurred NOLs in previous years. As of December 31, 2021, the Company had remaining federal NOLs of approximately $13.8 million and had remaining state NOLs of approximately $4.3 million, which will begin to expire in 2034. The Company also had federal research and development credit carryforward of $193 thousand as of December 31, 2021, which will begin to expire in 2040 if unused. The utilization of the Company's NOLs and tax credits may be subject to annual Internal Revenue Code Section 382 limitations (382 Limitations).

The Company is subject to U.S. federal and various state taxes. As of December 31, 2021, the earliest federal tax year open for the assessment of income taxes under the applicable statutes of limitations is its 2018 tax year. The expiration of the statute of limitations related to the various state income and franchise tax returns varies by state.

NOTE 17. NET (LOSS) INCOME PER COMMON SHARE

The Company accounts for and discloses net (loss) income per share using the treasury stock method. Net (loss) income per common share, or basic (loss) income per share, is computed by dividing net (loss) income by the weighted-average number of common shares outstanding. Net (loss) income per common share assuming dilutions, or diluted (loss) income per share, is computed by reflecting the potential dilution from the exercise of "in-the-money" stock options, and non-vested restricted stock units.

The Company's common stock equivalents, including unvested restricted stock and options have been excluded from the computation of diluted loss per share for the year ended December 31, 2021, as the effect of including such securities would be anti-dilutive. Therefore, the weighted average common stock outstanding used to calculate both basic and diluted income loss per share is the same for the year ended December 31, 2021.

The following is a reconciliation of the numerator and denominator of the diluted net income per share computations for the year ended December 31, 2020 (in thousands except for share and per share amounts):

	For the Year Ended December 31, 2020
Net income	$ 5,283
Weighted average shares outstanding - basic	9,135,985
Stock options	1,700,137
Weighted average shares outstanding - diluted	10,836,122
Per share data:	
Basic	$ 0.58
Diluted	$ 0.49

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NOTE 18. SUBSEQUENT EVENTS

VYNE Therapeutics Product Acquisition ("VYNE Product Acquisition")

On January 13, 2022 the Company entered into a definitive agreement with VYNE Therapeutics, Inc. ("VYNE") to acquire its Molecule Stabilizing Technology ("MST")™ franchise for an upfront payment of $20.0 million and an additional $5.0 million on the one (1)-year anniversary of the closing. The agreement also provides for contingent net sales milestone payments. The Company acquired AMZEEQ (minocycline) topical foam, 4%, and ZILXI (minocycline) topical foam, 1.5%, two FDA-Approved Topical Minocycline Products and Molecule Stabilizing Technology (MST)™.

Amendment to the East West Bank Working Capital Line of Credit

On January 12, 2022, the Company entered into a third amendment (the "Amendment") of its loan and security agreement with East West Bank, which increased the borrowing capacity of the Company's revolving line of credit to $10.0 million, from $7.5 million, and added a term loan not to exceed $20.0 million. Both the revolving line of credit and the term loan mature on January 12, 2026. The term loan includes two tranches, the first of which is a$15.0 million term loan and the second of which is a $5.0 million term loan. On January 12, 2022, the Company borrowed $15.0 million against the first tranche of the term loan to facilitate the VYNE Product Acquisition. The term loan bears interest on its outstanding daily balance at a floating rate equal to 1.73% above the prime rate and is payable monthly, on the first calendar day each month. The term loans contain an interest only payment period through January 12, 2024, with an extension through July 12, 2024 if certain covenants are met, after which the outstanding balance of each term loan is payable in equal monthly installments of principal, plus all accrued interest, through the term loan maturity date. The Company may prepay all or any part of the term loan without penalty or premium, but may not re-borrow any amount, once repaid. Any outstanding borrowing against the revolving line of credit bears interest at a floating rate equal to 0.70% above the prime rate. The Amendment includes customary financial covenants such as collateral ratios and minimum liquidity provisions as well as audit provisions.

Maruho Milestone Payment

On February 11, 2022 the Company announced that its exclusive out-licensing partner in Japan p, received manufacturing and marketing approval in Japan for Rapifort® Wipes 2.5% (Japanese equivalent to U.S. FDA approved QBREXZA®) for the treatment of primary axillary hyperhidrosis, triggering a net $2.5 million milestone payment to the Company. The net payment reflects a milestone payment of $10 million to the Company from the Company's exclusive licensing partner in Japan, Maruho Co., Ltd. ("Maruho"), offset by a $7.5 million payment to Dermira, Inc., pursuant to the terms of the Asset Purchase Agreement between the Company and Dermira Inc. In conjunction with the terms of the licensing agreement with Maruho, the milestone payment was paid to Maruho within 30 days of the approval. The Company acquired global rights to QBREXZA® from Dermira Inc. in 2021.

SIGNATURES

Pursuant to the requirements of Section 12 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.

Journey Medical Corporation
By: /s/ Claude Maraoui
Name: Claude Maraoui
Title: President, Chief Executive Officer, and Director
March 28, 2022

POWER OF ATTORNEY

We, the undersigned directors and/or executive officers of Journey Medical Corporation, hereby severally constitute and appoint Claude Maraoui, acting singly, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign this report and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing necessary or appropriate to be done in connection therewith, as fully for all intents and purposes as he or she might or could do in person, hereby approving, ratifying and confirming all that said attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Claude Maraoui Claude Maraoui	President, Chief Executive Officer and Director (Principal Executive Officer)	March 28, 2022
/s/ Lindsay A. Rosenwald, M.D. Lindsay A. Rosenwald, M.D.	Executive Chairman	March 28, 2022
/s/ Ernie De Paolantonio Ernie De Paolantonio	Chief Financial Officer (Principal Financial Officer)	March 28, 2022
/s/ Neil Herskowitz Neil Herskowitz	Director	March 28, 2022
/s/ Jeff Paley, M.D. Jeff Paley, M.D.	Director	March 28, 2022
/s/ Justin Smith Justin Smith	Director	March 28, 2022
/s/ Miranda Toledano Miranda Toledano	Director	March 28, 2022

Exhibit 3.1

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF JOURNEY MEDICAL CORPORATION

This Third Amended and Restated Certificate of Incorporation amends and restates the corporation's original certificate of incorporation under the name Coronado Dermatology, Inc. originally filed July 18, 2014, as amended by the certificate of amendment filed on September 24, 2014, and as amended and restated by the amended and restated certificates of incorporation filed on June 3, 2015 and February 8, 2021, and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law by the Corporation's directors and stockholders.

ARTICLE I

The name of the corporation is Journey Medical Corporation (the "***Corporation***").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 3500 South DuPont Highway, in the City of Dover, Kent County, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation law (the "***DGCL***"), and to possess and exercise all of the powers and privileges granted by such law and any other law of the State of Delaware.

ARTICLE IV

1. Stock. The Corporation is authorized to issue two classes of stock to be designated "Common Stock" and "Preferred Stock." The total number of shares of capital stock that the Corporation shall have authority to issue is fifty million (50,000,000) shares of Common Stock, with $0.0001 par value, of which 6,000,000 shares are designated as "Class A Common Stock" (the "***Class A Common Stock***"), and 1,200,000 of which shall be Preferred Stock, with $.0001 par value. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together as a single class on an as-if-converted basis). The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

2. Blank-Check Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the *"Board"*) is hereby expressly authorized to provide for the issue of all of any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such shares and as may be permitted by the DGCL. The Board is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

3. Rights. The powers, preferences and relative participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are as follows**:**

3.1 Dividends. The Corporation shall declare, pay and set aside dividends among the holders of the shares of Common Stock and the Class A Common Stock, pro rata based on the number of shares of Common Stock held by each such holder, treating for this purpose all such shares of Class A Common Stock as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such declaration, payment or setting aside of dividends.

3.2 Voting.

3.2.1 General.

(a) Subject to Subsection IV.3.2.1, the holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) [Reserved].

(c) Subject to Subsection IV.3.2.1, on any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outs Finding shares of Class A Common Stock shall be entitled to cast for each share of Class A Common stock held by such holder as of the record date for determining stockholders entitled to vote on such matter, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the suni of the shares of outstanding Common Stock and the denominator of which is number of shares of outstanding Class A Common Stock.

(d) Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Class A Common Stock shall vote together with the holders of Common Stock as a single class.

3.3 Election of Directors.

3.3.1 Notwithstanding any provision of the Bylaws of this Corporation, for a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock (the "***Class A Director Period***"), the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of the Corporation (the "***Class A Directors***").

3.3.2 The holders of record of the shares of Common Stock (including Class A Common Stock) and of any other class or series of voting stock, exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation, if any.

3.3.3 Any director may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class(es) of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection IV.3.2.

4. Conversion.

The holders of the Class A Common Stock shall have conversion rights as follows (the "***Conversion Rights***"):

4.1 Right to Convert Conversion Ratio. Each share of Class A Common Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into one (1) fully paid and nonassessable share of Common Stock (the "***Conversion Ratio***"), subject to adjustment as provided below.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Class A Common Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Class A Common Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Class A Common Stock to voluntarily convert shares of Class A Common Stock into shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock), such holder shall surrender the certificate or certificates for such shares of Class A Common Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Class A Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Class A Common Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "***Conversion Time***"), and the shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver to such holder of Class A Common Stock , or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable upon such conversion in accordance with the provisions hereof, a certificate for the number (if any) of the shares of Class A Common Stock represented by the surrendered certificate that were not converted into Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock), and cash as provided in Subsection IV.4.2 in lieu of any fraction of a share of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) otherwise issuable upon such conversion and payment of any declared but unpaid dividends on the shares of Class A Common Stock.

4.3.2 Reservation of Shares. The Corporation shall at all times when Class A Common Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Class A Common Stock, such number of its duly authorized shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) as shall from time to time be sufficient to effect the conversion of all outstanding Class A Common Stock; and if at any time the number of authorized but unissued shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) shall not be sufficient to effect the conversion of all then outstanding shares of the Class A Common Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation.

4.3.3 Effect of Conversion. All shares of Class A Common Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Class A Common Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Class A Common Stock accordingly.

4.3.4 Taxes and Liens. The Corporation shall pay any and all costs incurred by the Corporation to effect the conversion and shall pay any issue and other similar taxes that may be payable in respect of any issuance or delivery of any securities upon conversion of shares of Class A Common Stock pursuant to this Subsection IV.4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of securities in a name other than that in which the shares of Class A Common Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid. Upon conversion of each share of Class A Common Stock, the Corporation shall take all such actions as are necessary in order to ensure that the securities issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof (other than restrictions on transfer under applicable federal and state securities law and liens, charges and encumbrances arising through the holder thereof).

4.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the effective date of this Certificate of Incorporation (the "***Effective Date***") effect a subdivision of the outstanding Common Stock (or other capital stock or securities at the lime issuable upon conversion of the Class A Common Stock) (by any stock split, stock dividend, recapitalization or otherwise), the applicable Conversion Ratio in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock (or other capital stock or securities at the lime issuable upon conversion of the Class A Common Stock) issuable on conversion of each share of Class A Common Stock shall be increased in proportion to such increase in the aggregate number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) outstanding. If the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock, the applicable Conversion Ratio in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable on conversion of each share of Class A Common Stock shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) outstanding. Any adjustment under this Subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.5 [Reserved].

4.6 Adjustment for Merger or Reorganization, etc. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Class A Common Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsection IV.4.4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Class A Common Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of the applicable Class A Common Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in Subsection IV.4 with respect to the rights and interests thereafter of the holders of the Class A Common Stock, to the end that the provisions set forth in Subsection IV.4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Ratio) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Class A Common Stock.

4.7 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Ratio pursuant to Subsection IV.4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the applicable series of Class A Common Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the applicable shares of Class A Common Stock are convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Class A Common Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Conversion Ratio then in effect, and (ii) the number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Class A Common Stock.

4.8 Notice of Record Date. In the event, (a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or (b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, then the Corporation will send or cause to be sent to the holders of the Class A Common Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, liquidation, dissolution or winding up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Class A Common Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, liquidation, dissolution or winding up, and the amount per share and character of such exchange applicable to the Class A Common Stock and the Common Stock. Such notice shall be sent at least 15 days prior to the record date or effective date for the event specified in such notice.

5. Waiver. Any of the rights, powers and other terms of the Class A Common Stock set forth herein may be waived on behalf of all holders of Class A Common Stock by the affirmative written consent or vote of the holders of at least seventy-five percent (75%) of the shares of Class A Common Stock then outstanding.

6. Notices. Any notice required or permitted by the provisions of this Article IV to be given to a holder of shares of Class A Common Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the DGCL, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V

The number of directors of the Corporation shall be fixed from time to time as provided in the Bylaws.

ARTICLE VI

Unless and except that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the Bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VIII

To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no present or former director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

The Corporation will indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact such person is or was a director, officer or employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by the DGCL, and the Corporation may adopt Bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

ARTICLE X

Subject to the provisions of this Certificate of Incorporation, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the DGCL and the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

ARTICLE XI

The Corporation is to have perpetual existence.

ARTICLE XII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XIII

The Corporation elects not to be governed by Section 203 of the DGCL. To the fullest extent permitted by section 122(17) of the DGCL, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in any Excluded Opportunity, or in being offered an opportunity to receive notice of or participate in any Excluded Opportunity, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so and no such individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity ("***Person***") shall be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Person pursues or acquires such Excluded Opportunity, directs such Excluded Opportunity to another Person or fails to present such Excluded Opportunity, or information regarding such Excluded Opportunity, to the Corporation or its subsidiaries. An "***Excluded Opportunity***" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Class A Common Stock or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "***Covered Persons***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation. Any Person purchasing or otherwise acquiring any interest in any shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIII. Neither the alteration, amendment or repeal of this Article XIII nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article XIII shall eliminate or reduce the effect of this Article XIII in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article XIII, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

ARTICLE XIV

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or to the Corporation's stockholders; (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or its Bylaws (as either may be amended from time to time); or (iv) any action asserting a claim governed by the internal affairs doctrine. If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any of the Corporation's stockholders, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Furthermore, unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, and/or the Securities Exchange Act of 1934, as amended.

* * *

The undersigned hereby acknowledges that the foregoing Third Amended and Restated Certificate of Incorporation is his act and deed.

Dated: November 12, 2021

/s/ Claude Maraoui
Claude Maraoui
President

Exhibit 3.2

BYLAWS
OF
CORONADO DERMATOLOGY, INC.

I. CORPORATE OFFICES

1.1 Registered Office

The registered office of the corporation shall be in the City of Dover County of Kent, State of Delaware. The name of the registered agent of the corporation at such location is Incorporating Services, Ltd.

1.2 Other Offices

The board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

II. MEETINGS OF STOCKHOLDERS

2.1 Place of Meetings

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 of the General Corporation Law of Delaware.

If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures, as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders, be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

2.2 Annual Meeting

The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors, In the absence of such designation, the annual meeting of stockholders shall be held on the third Monday in April in each year at 1:00 p.m. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the

next succeeding full business day. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 Special Meeting

Special meetings of the stockholders may be called, at any time for any purpose or purposes, by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or these bylaws, or by such person or persons duly designated by the board of directors whose powers and authority, as expressly provided in a resolution of the board of directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

2.4 Notice of Stockholders' Meetings

(a) Except to the extent otherwise required by law, all notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date, and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation shall also be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation, Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to recognize such revocation shall not invalidate any meeting or other action.

(c) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within sixty (60) days of having been given written notice by the corporation of its intention to send the single notice permitted under this subsection 2.4(e), shall be deemed to have consented to receiving such single written notice.

(d) Sections 2.4(b) and (c) shall not apply to any notice given to stockholders under Sections 164 (notice of sale of shares of stockholder who failed to pay an installment or call on stock not fully paid), 296 (notice of disputed claims relating to insolvent corporations), 311 (notice of meeting of stockholders to revoke dissolution of corporation), 312 (notice of

meeting of stockholders of corporation whose certificate of incorporation has been renewed or revived) and 324 (notice when stock has been attached as required for sale upon execution process) of the General Corporation Law of Delaware.

2.5 Manner of Giving Notice; Affidavit of Notice

(a) Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(b) Notice given pursuant to this Section 2.5(b) shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary, an assistant secretary or the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 Quorum

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 Adjourned Meeting; Notice

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 Voting

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.9 Waiver of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver or any waiver by electronic transmission of notice unless so required by the certificate of incorporation or these bylaws.

2.10 Stockholder Action by Written Consent Without a Meeting

Unless otherwise provided in the certificate of incorporation, any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, proxyholder or other person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 2,10, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, proxyholder or other authorized person or persons, and (b) the date on which such stockholder, proxyholder or other authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall have been delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation’s

registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Prompt notice of the taking of the corporate action without a meeting by written consent shall be given to those stockholders who have not consented in writing. If the action that is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.11 Record Date for Stockholder Notice; Voting; Giving Consents

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date that shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the board of directors does not so fix a record date:

(a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed; and

(c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 Proxies

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

2.13 List of Stockholders Entitled to Vote

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 Stockholder Proposals

Effective upon the corporation's initial public offering of stock under the Securities Act of 1933, as amended, any stockholder wishing to bring any other business before a meeting of stockholders, including, but not limited to, the nomination of persons for election as directors, must provide notice to the corporation not more than ninety (90) and not less than fifty (50) days before the meeting in writing by registered mail, return receipt requested, of the business to be presented by the stockholders at the stockholders' meeting, Any such notice shall set forth the following as to each matter the stockholder proposes to bring before the meeting: (a) a brief description of the business desired to be brought before the meeting and the reasons for

conducting such business at the meeting and, if such business includes a proposal to amend the bylaws of the corporation, the language of the proposed amendment; (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business; (c) the class and number of shares of the corporation that are beneficially owned by such stockholder; (d) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; and (e) any material interest of the stockholder in such business. Notwithstanding the foregoing provisions of this Section 2.14, a stockholder shall also comply with all applicable requirements of all applicable laws, rules and regulations, including, but not limited to, the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, with respect to the matters set forth in this Section 2.14. In the absence of such notice to the corporation meeting the above requirements, a stockholder shall not be entitled to present any business at any meeting of stockholders.

III. DIRECTORS

3.1 Powers

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 Number of Directors

The number of directors constituting the board of directors shall be not more than nine (9) but not less than one (1), and may be fixed or changed, within this minimum and maximum, by the stockholders or the board of directors. The number of directors constituting the initial board of directors shall be fixed at one (1).

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors

Except as provided in Sections 3.4 and 3.18 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Each director shall be a natural person.

Elections of directors need not be by written ballot.

3.4 Resignation and Vacancies

Any director may resign at any time upon notice given in writing or electronic transmission to the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section 3.4 in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(a) vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

(b) whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%)of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 Place of Meetings; Meetings by Telephone

The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can

hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 First Meetings

The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

3.7 Regular Meetings

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.8 Special Meetings; Notice

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board of directors, the president, any vice president, the secretary or any director.

Notice of the time and place of special meetings shall be delivered either personally or by mail, telex, facsimile, telephone or electronic transmission to each director, addressed to each director at such director's address and/or phone number and/or electronic transmission address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telex, facsimile, telephone or electronic transmission, it shall be delivered by telephone or transmitted at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation. Notice may be delivered by any person entitled to call a special meeting or by an agent of such person.

3.9 Quorum

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as otherwise specifically provided by statute or by the certificate of incorporation, If a quorum is not present at any meeting of the board of directors, then the directors present thereat

may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 Waiver Of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice, Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or meeting of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.11 Adjourned Meeting; Notice

If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.12 Board Action by Written Consent Without a Meeting

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.13 Fees and Compensation of Directors

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.14 Removal of Directors

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, that, whenever the holders of any class or classes of stock, or series thereof, are entitled to elect one or more directors by the provisions of the certificate of incorporation, removal of any directors elected by such class or classes of stock, or series thereof, shall be by the holders of a majority of the shares of such class or classes of stock, or series of stock, then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

3.15 Chairman of the Board of Directors

The corporation may also have, at the discretion of the board of directors, a chairman of the board of directors. The chairman of the board of directors shall, if such a person is elected, preside at the meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the board of directors, or as may be prescribed by these bylaws.

IV. COMMITTEES

4.1 Committees of Directors

The board of directors may, by resolution passed by a majority of the whole board of directors, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaws of the corporation.

4.2 Committee Minutes

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 Meetings and Action of Committees

Meetings and actions of committees shall be governed by, and be held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.7 (regular meetings), Section 3.8 (special meetings and notice), Section 3,9 (quorum), Section 3.10 (waiver of notice), Section 3.11 (adjourned meeting and notice), and Section 3.12 (board action by written consent without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have

the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

V. OFFICERS

5.1 Officers

The officers of the corporation shall be a chief executive officer, a president, one or more vice presidents, a secretary and a treasurer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more assistant vice presidents, assistant secretaries, assistant treasurers and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 Election of Officers

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers

The board of directors may appoint, or empower the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 Removal and Resignation of Officers

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices

Any vacancy occurring in any office of the corporation shall be filled by the board of directors.

5.6 Chairman of the Board

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no chief executive officer, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws. The chairman of the board shall be chosen by the board of directors.

5.7 Chief Executive Officer

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, the chief executive officer of the corporation shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. The chief executive officer shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the board of directors at which he or she is present. The chief executive officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.8 President

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board or the chief executive officer, if there be such officers, the president shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. In the absence or nonexistence of the chief executive officer, he or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board and chief executive officer, at all meetings of the board of directors at which he or she is present. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws. The board of directors may provide in their discretion that the offices of president and chief executive officer may be held by the same person.

5.9 Vice Presidents

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them by the board of directors, these bylaws, the president or the chairman of the board.

5.10 Secretary

The secretary or an agent of the corporation shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.11 Treasurer

The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.12 Assistant Secretary

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.13 Representation of Shares of Other Corporations

The chairman of the board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the chief executive officer, president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.14 Authority and Duties of Officers

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders.

VI. INDEMNITY

6.1 Indemnification of Directors and Officers

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and Officers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a director or Officer of the corporation includes any person (a) who is or was a director or Officer of the corporation, (b) who is or was serving at the request of the corporation as a director, Officer manager, member, partner, trustee, or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was a director or Officer of a corporation that was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation. Such indemnification shall be a contract right and shall include the right to receive payment of any expenses incurred by the indemnitee in connection with any proceeding in advance of its final disposition, consistent with the provisions of applicable law as then in effect. The right of indemnification provided in this Section 6.1 shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Section 6.1 shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Section 6.1 and shall be applicable to proceedings commenced or continuing after the adoption of this Section 6.1, whether arising from acts or omissions occurring before or after such adoption. In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Section 6.1.

(a) Advancement of Expenses. All reasonable expenses incurred by or on behalf of the indemnitee in connection with any proceeding shall be advanced to the indemnitee

by the corporation within twenty (20) days after the receipt by the corporation of a statement or statements from the indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding, unless, prior to the expiration of such twenty-day period, the board of directors shall unanimously (except for the vote, if applicable, of the indemnitee) determine that the indemnitee has no reasonable likelihood of being entitled to indemnification pursuant to this Section 6.1. Such statement or statements shall reasonably evidence the expenses incurred by the indemnitee and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the indemnitee to repay the amounts advanced if it should ultimately be determined that the indemnitee is not entitled to be indemnified against such expenses pursuant to this Section 6.1.

(b) Procedure for Determination of Entitlement to Indemnification.

(i) To obtain indemnification under this Section 6.1, an indemnitee shall submit to the secretary of the corporation a written request, including such documentation and information as is reasonably available to the indemnitee and reasonably necessary to determine whether and to what extent the indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the indemnitee's entitlement to indemnification shall be made not later than sixty (60) days after receipt by the corporation of the written request for indemnification together with the Supporting Documentation. The secretary of the corporation shall, promptly upon receipt of such a request for indemnification, advise the board of directors in writing that the indemnitee has requested indemnification, whereupon the corporation shall provide such indemnification, including without limitation advancement of expenses, so long as the indemnitee is legally entitled thereto in accordance with applicable law.

(ii) The indemnitee's entitlement to indemnification under this Section 6.1 shall be determined in one of the following ways: (A) by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum of the board of directors; (B) by a committee of such Disinterested Directors, even though less than a quorum of the board of directors; (C) by a written opinion of Independent Counsel (as hereinafter defined) if (x) a Change of Control (as hereinafter defined) shall have occurred and the indemnitee so requests or (y) a quorum of the board of directors consisting of Disinterested Directors is not obtainable or, even if obtainable, a majority of such Disinterested Directors so directs; (D) by the stockholders of the corporation (but only if a majority of the Disinterested Directors, if they constitute a quorum of the board of directors, presents the issue of entitlement to indemnification to the stockholders for their determination); or (E) as provided in paragraph (c) below,

(iii) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to paragraph (b)(ii) above, a majority of the Disinterested Directors shall select the Independent Counsel, but only an Independent Counsel to which the indemnitee does not reasonably object; provided, however, that if a Change of Control shall have occurred, the indemnitee shall select such Independent Counsel, but only an Independent Counsel to which the board of directors does not reasonably object.

(iv) The only basis upon which a finding that indemnification may not be made is that such indemnification is prohibited by law.

(c) Presumptions and Effect of Certain Proceedings. Except as otherwise expressly provided in this Section 6.1, if a Change of Control shall have occurred, the indemnitee shall be presumed to be entitled to indemnification under this Section 6,1 upon submission of a request for Indemnification together with the Supporting Documentation in accordance with paragraph (b)(i), and thereafter the corporation shall have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under paragraph (b)(ii) above to determine entitlement to indemnification shall not have been appointed or shall not have made a determination within sixty (60) days after receipt by the corporation of the request therefor together with the Supporting Documentation, the indemnitee shall be deemed to be entitled to indemnification and the indemnitee shall be entitled to such indemnification unless (A) the indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. The termination of any proceeding described in this Section 6.1, or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, adversely affect the right of the indemnitee to indemnification or create a presumption that the indemnitee did not act in good faith and in a manner that the indemnitee reasonably believed to be in or not opposed to the best interests of the corporation or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe that the indemnitee's conduct was unlawful.

(d) Remedies of Indemnitee.

(i) In the event that a determination is made pursuant to paragraph (b)(ii) that the indemnitee is not entitled to indemnification under this Section 6.1: (A) the indemnitee shall be entitled to seek an adjudication of his or her entitlement to such indemnification either, at the indemnitee's sole option, in (x) an appropriate court of the State of Delaware or any other court of competent jurisdiction, or (y) an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association; (B) any such judicial proceeding or arbitration shall be *de novo* and the indemnitee shall not be prejudiced by reason of such adverse determination; and (C) in any such judicial proceeding or arbitration the corporation shall have the burden of proving that the indemnitee is not entitled to indemnification under this Section 6.1.

(ii) If a determination shall have been made or is deemed to have been made, pursuant to paragraph (b) (ii) or (iii), that the indemnitee is entitled to indemnification, the corporation shall be obligated to pay the amounts constituting such indemnification within five (5) days after such determination has been made or is deemed to have been made and shall be conclusively bound by such determination unless (A) the indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation, or (B) such indemnification is prohibited by law. In the event that: (X) advancement of expenses is not timely made pursuant to paragraph (a); or (Y) payment of indemnification is not made within five (5) days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to paragraph (b)(ii) or (iii), the indemnitee shall be entitled to seek judicial enforcement of the corporation's obligation to pay to the indemnitee such advancement of expenses or indemnification. Notwithstanding the foregoing, the corporation may bring an action, in an appropriate court in the State of Delaware or any other court of competent jurisdiction, contesting the right of the indemnitee to receive

indemnification hereunder due to the occurrence of an event described in subclause (A) or (B) of this clause (ii) (a "Disqualifying Event"); provided, however, that in any such action the corporation shall have the burden of proving the occurrence of such Disqualifying Event.

(iii) The corporation shall be precluded from asserting in any judicial proceedings or arbitration commenced pursuant to this paragraph (d) that the procedures and presumptions of this Section 6.1 are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the corporation is bound by all the provisions of this Section 6.1.

(iv) In the event that the indemnitee, pursuant to this paragraph (d), seeks a judicial adjudication of or an award in arbitration to enforce his or her rights under, or to recover damages for breach of, this Section 6.1, the indemnitee shall be entitled to recover from the corporation, and shall be indemnified by the corporation against, any expenses actually and reasonably incurred by the indemnitee if the indemnitee prevails in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that the indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by the indemnitee in connection with such judicial adjudication shall be prorated accordingly.

(e) Definitions. For purposes of this Section 6.1:

(i) "Change in Control" means a change in control of the corporation of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "Act"), whether or not the corporation is then subject to such reporting requirement; provided that, without limitation, such a change in control shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the corporation representing twenty-five percent (25%) or more of the combined voting power of the corporation's then outstanding securities without the prior approval of at least a majority of the members of the board of directors in office immediately prior to such acquisition; (ii) the corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the board of directors in office immediately prior to such transaction or event constitute less than a majority of the board of directors thereafter; or (iii) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the board of directors (including for this purpose any new director whose election or nomination for election by the corporation's stockholders was approved by a vote of at least a majority of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the board of directors;

(ii) "Disinterested Director" means a director of the corporation who is not a party to the proceeding in respect of which indemnification is sought by the indemnitee; and

(iii) "Independent Counsel" means a law firm or a member of a law firm that neither presently is, nor in the past five (5) years has been, retained to represent: (A) the

corporation or the indemnitee in any matter material to either such party or (B) any other party to the proceeding giving rise to a claim for indemnification under this Section 6.1. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing under such persons, relevant jurisdiction of practice, would have a conflict of interest in representing either the corporation or the indemnitee in an action to determine the indemnitee's rights under this Section 6.1.

(f) Invalidity; Severability; Interpretation. If any provision or provisions of this Section 6.1 shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid; illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable. Reference herein to laws, regulations or agencies shall be deemed to include all amendments thereof, substitutions therefor and successors thereto.

6.2 Indemnification of Others

The corporation shall have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its officers, employees and agents (other than directors) against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an officer, employee or agent of the corporation (other than a director) includes any person (a) who is or was an employee or agent of the corporation, (b) who is or was serving at the request of the corporation as a director, officer, manager, member, partner, trustee, employee or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation that was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 Insurance

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, manager, member, partner, trustee, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of the General Corporation Law of Delaware.

VII. RECORDS AND REPORTS

7.1 Maintenance and Inspection of Records

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder, In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the certificate of incorporation, these bylaws or the General Corporation Law of Delaware. When records are kept in such manner, a clearly legible paper from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

7.2 Inspection by Directors

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the court may deem just and proper.

7.3 Annual Statement to Stockholders

The board of directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

VIII. GENERAL MATTERS

8.1 Checks

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 Execution of Corporate Contracts and Instruments

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 Stock Certificates; Partly Paid Shares

The shares of the corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, and upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 Special Designation on Certificates

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in

Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 Lost Certificates

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 Construction; Definitions

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a corporation and a natural person.

8.7 Dividends

The directors of the corporation, subject to any rights or restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the General Corporation Law of Delaware. Dividends may be paid in cash, in property or in shares of the corporation’s capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve, Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation and meeting contingencies,

8.8 Fiscal Year

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9 Seal

The corporation may adopt a corporate seal which may be altered as desired, and may use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 Transfer of Stock

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction in its books.

8.11 Stock Transfer Agreements and Restrictions

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 Electronic Transmission

For purposes of these bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process,

IX. AMENDMENTS

The original or other bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

X. DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the corporation that the corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating, among other things, that the dissolution has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent in writing, either in person or by duly authorized attorney, to a dissolution, no meeting of directors or stockholders shall be necessary. The consent shall be filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such consent's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the Secretary of State shall have attached to it the affidavit of the secretary or some other officer of the corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there shall be attached to the consent a certification by the secretary or some other officer of the corporation setting forth the names and residences of the directors and officers of the corporation.

XI. CUSTODIAN

11.1 Appointment of a Custodian in Certain Cases

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation when:

(a) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

(b) the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(c) the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

11.2 Duties of Custodian

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets,

except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.

EXHIBIT 4.2

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

When used herein, the terms "we," "our," and "us," refer to Journey Medical Corporation.

DESCRIPTION OF CAPITAL STOCK

The following description summarizes the material terms of our capital stock. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of our capital stock, you should refer to our Third Amended and Restated Certificate of Incorporation and our Amended and Restated Bylaws, each as amended from time to time, and to the provisions of applicable Delaware law.

Common Stock

Our common stock is traded on the Nasdaq Capital Market under the symbol "DERM."

The authorized capital stock of Journey consists of 50,000,000 shares of common stock, with $0.0001 par value, 6,000,000 shares of which have been designated as Class A Common Stock, and 5,000,000 shares of Preferred Stock, par value $0.0001 per share. The shares of Preferred Stock are undesignated.

Class A Common Stock

The description of our Class A Common Stock in this item is for information purposes only. All of the Class A common stock has been issued to Fortress.

Class A Common Stock is identical to our common stock other than as to voting rights and the election of directors for a definite period (as described below). On any matter presented to our stockholders for their action or consideration at any meeting of our stockholders (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Class A Common Stock will be entitled to cast for each share of Class A Common Stock held by such holder as of the record date for determining stockholders entitled to vote on such matter, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the number of shares of outstanding common stock and the denominator of which is the number of shares of outstanding Class A Common Stock (the "Class A Common Stock Ratio"). Thus, the Class A Common Stock will at all times constitute a voting majority.

For a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock (the "Class A Director Period"), the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of Journey (the "Class A Directors"). Thus, the Class A Common Stock will be entitled to elect the majority of the board of directors during the Class A Director Period.

Finally, each share of Class A Common Stock is convertible, at the option of the holder, into one fully paid and nonassessable share of common stock (the "Conversion Ratio"), subject to certain adjustments.

Features of Our Common Stock and Class A Common Stock

Voting Rights. The holders of our common stock are entitled to one vote for each share of common stock held and the holders of our Class A Common Stock are entitled to the number of votes equal to the Class A Common Stock Ratio for each share of Class A Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors except as to the Class A Directors during the Class A Director Period. Our certificate of incorporation and bylaws do not provide for cumulative voting rights.

No Preemptive or Similar Rights. The holders of our common stock and Class A Common Stock have no preemptive or subscription rights, and there are no redemption or sinking fund provisions applicable thereto.

Additionally, the holders of our common stock (excluding the holders of Class A Common Stock) have no conversion rights.

Adjustment to Class A Common Stock Conversion Ratio. If Journey, at any time effects a subdivision or combination of the outstanding common stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) (by any stock split, stock dividend, recapitalization, reverse stock split or otherwise), the Conversion Ratio for the Class A Common Stock in effect immediately before that subdivision is proportionately decreased or increased, as applicable depending on whether there is a subdivision or combination, so that the number of shares of common stock issuable on conversion of each share of Class A Common Stock shall be increased or decreased, as applicable depending on whether there is a subdivision or combination, in proportion to such increase or decrease in the aggregate number of shares of common stock outstanding. Additionally, if any reorganization, recapitalization, reclassification, consolidation or merger involving the Company occurs in which the common stock (but not the Class A Common Stock) is converted into or exchanged for securities, cash or other property, then each share of Class A Common Stock becomes convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of common stock of the Company issuable upon conversion of one share of the Class A Common Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction.

Exhibit 10.16

SHARED SERVICES AGREEMENT

This SHARED SERVICES AGREEMENT (this "Agreement") is made and entered into by and between Fortress Biotech, Inc., a Delaware corporation ("FBIO") and Journey Medical Corporation, a Delaware corporation ("Journey") as of November 12, 2021 (the "Effective Date"). Each of FBIO and Journey may be referred to herein as a "Party," or collectively as the "Parties."

WHEREAS, the Parties wish to realize cost efficiencies made available through sharing certain aspects of their operations, including particularly shared employees and personnel, as well as other miscellaneous costs as may be agreed; and

WHEREAS, the Parties wish to allocate costs generated by the Parties' activities in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows:

SECTION 1. Effective Date; Termination. The term of this Agreement will commence on the Effective Date and will continue until terminated by either Party by providing fifteen (15) days' prior written notice to the other Party (or sooner upon the Parties' mutual written consent). In addition, either Party may terminate this Agreement upon seven (7) days' notice to the other Party based upon the other Party's material breach of this Agreement which is not cured within such notice period.

SECTION 2. Relationship of the Parties. The Parties agree to share the costs of certain services which they individually require for the operation of the respective companies. The arrangements made pursuant to this Agreement shall not be deemed to constitute a partnership, joint venture, or agency relationship between the Parties. All arrangements contemplated by this Agreement, including the specific arrangements set forth in Section 3, are subject to modification upon mutual agreement of the Parties so long as such arrangements, so modified, continue to be consistent with the principles set forth in this Section 2.

SECTION 3. Employee Sharing Arrangement. In furtherance of the general principles set forth in Section 2 above, the Parties have agreed to allocate the costs for employees and other personnel of FBIO who may be assigned to provide services to Journey (the "Assigned Employees"). The Assigned Employees will be identified and set forth on Schedule I hereto from time to time, together with a percentage reflecting the Parties' expectation of the amount of such Assigned Employee's business time that will be spent providing services for Journey (the "Applicable Percentage"). Following the conclusion of each month while this Agreement is in effect, Journey will pay to FBIO an amount reflecting the compensation and benefits paid by FBIO (calculated using monthly salary, or relevant prorated salary, plus FICA, plus benefits, less employee benefit contribution) to each Assigned Employee with respect to such period, multiplied by the Applicable Percentage for each such Assigned Employee; *provided*, *however*, on an annual basis a bonus recommendation shall be agreed upon by the Parties, which shall be split between FBIO and Journey based upon the Applicable Percentage with respect to such period. The Parties shall review the work being performed hereunder at least quarterly and will work in good faith to adjust the Applicable Percentage as may be necessary for any Assigned Employee. Notwithstanding the foregoing, Journey may cease its use of any Assigned Employee upon written notice to FBIO, subject only to payment for all services rendered by such Assigned Employee through the date of termination.

SECTION 4. Agreements Regarding Employees. The following provisions will apply with respect to the services provided to Journey by the Assigned Employees.

(a) The Assigned Employees will remain employees of FBIO, and FBIO will be responsible for payment of all employment-related compensation, including any wages, salary, overtime compensation, bonuses, or any other type of remuneration for employment. FBIO will also be responsible for withholding taxes as required by applicable federal, state, or local law, and for payment of applicable employment taxes and unemployment contributions. FBIO will provide workers compensation coverage as required by law for the Assigned Employees. FBIO will provide employee benefits for the Assigned Employees (including but not limited to health, life, and disability insurance, vacation and holiday pay, and retirement benefits) to the extent required by law and in accordance with its applicable policies.

(b) Journey will have the authority to supervise the Assigned Employees and direct and control the day-to-day activities of the Assigned Employees while providing services to Journey hereunder. Without limiting the foregoing, Journey will have the right to control the Assigned Employees' conduct as necessary to ensure safety and security and to prevent fraud, misconduct, conflict of interest, gross neglect of duty or other unprofessional or unethical conduct in connection with the services provided hereunder.

(c) Journey will use reasonable efforts to provide the Assigned Employees with safe working conditions, and will require the Assigned Employees to comply with reasonable safety rules and procedures applicable to Journey's own employees. Journey will cooperate with FBIO's workers' compensation carrier and liability insurance carrier with regard to any claims made with respect to the Assigned Employees.

(d) The Parties agree that all personnel services shall be performed: (i) in a prudent and efficient manner, (ii) in all material respects in accordance with all applicable laws, regulations, codes, permits and licenses; and (iii) in accordance with the standard business practices and procedures utilized by each Party in its own business.

SECTION 5. Confidentiality.

(a) Confidential Information. Each Party acknowledges and agrees that as a result of the performance of this Agreement, each Party may receive confidential and/or proprietary information of the other Party, or such other Party's representatives or clients, including, without limitation, data, reports, research, test results or methods, formulae, analyses, designs, drawings, computer software, specifications, proposals, plans, business plans, product information and developments, strategies, projections and forecasts, budgets, information of or relating to representatives of a Party, information regarding patents, copyrights, trademarks, service marks, trade secrets or other intellectual property rights (or the subject matter thereof) and other materials and information relating to the business of a Party or its representatives (all of the foregoing materials and information, collectively, "Confidential Information"). Confidential Information includes all forms in which information is preserved or delivered, including, without limitation, information received or communicated in written, electronic, or oral form. Notwithstanding anything to the contrary contained in this Agreement, Confidential Information shall not include (i) information in the public domain other than by reason of the improper disclosure thereof by a Party, (ii) information that was in the possession of a Party at the time of its disclosure to such Party, and (iii) information independently developed by a Party.

(b) Non-disclosure. Each Party acknowledges and agrees that the Confidential Information of the other Party is and shall be the sole and exclusive property of such other Party or such other Party's representatives. Each Party further agrees that it shall not directly or indirectly communicate or disclose to any person or entity any Confidential Information of the other Party or such other Party's representatives, or use any such Confidential Information for any purpose, in either case

without the prior written consent of such other Party; provided, however, that Confidential Information may be disclosed by either Party to the extent required by law, if the disclosing Party gives the other Party as much prior notice as is reasonably possible of any such disclosure. Each Party shall require its representatives who have access to any Confidential Information of the other Party or the other Party's representatives to comply with the provisions of this Section and each Party agrees that a breach of this Agreement (including this Section) by a Party's representatives shall constitute a breach by such Party.

SECTION 6. Ownership of Intellectual Property. FBIO acknowledges that Journey owns all rights, title and interests (including, without limitation, all intellectual property rights) in and to all: (a) documents, analysis, reports, information, data, graphics and other materials and work product created, written, developed or delivered by the Assigned Employees in the performance of the services for Journey hereunder, and (b) methods, processes and inventions first conceived by any of Assigned Employees in performance of the services for Journey hereunder (collectively, "**Inventions**"). All works of authorship arising out of the Assigned Employees' performance of the services for Journey hereunder shall be works made for hire as that term is defined under U.S. copyright laws, and Journey is the sole author and owner thereof. In addition, FBIO hereby assigns, agrees to assign, and upon creation of all Inventions automatically does assign to Journey, its successors and assigns, all rights, title and interests in and to the Inventions, including but not limited to: (i) patents, patent applications and patent rights throughout the world; (ii) rights associated with works of authorship throughout the world, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; and (iii) rights analogous to those set forth herein and any other proprietary rights relating to intangible property. With respect to works of authorship included in the Inventions, the foregoing assignment is undertaken in part as a contingency against the possibility that any Invention may not, by operation of law, be considered a work made for hire by FBIO for Journey. From time to time upon Journey's request, FBIO agrees to confirm such assignments by execution and delivery of such written instruments as Journey may request, without additional consideration. FBIO hereby irrevocably grants Journey power of attorney to execute and deliver any such documents on FBIO's behalf in its name and to do all other lawfully permitted acts to confirm, vest or transfer rights in the Inventions to Journey and to further the transfer, issuance, prosecution and maintenance of all intellectual property rights therein.
Notwithstanding the foregoing, this Agreement does not grant a Party any right to Inventions created solely by the other Party or its agents during the term of this Agreement, except as described above.

SECTION 7. Indemnification; Limitation of Liability; Disclaimer of Warranty.

(a) Indemnification. FBIO will indemnify and hold Journey, its directors, officers, employees and agents harmless from and against any and all claims, causes of action, suits, investigations, losses, penalties, liabilities, costs, damages and/or fees (including, without limitation, reasonable attorneys' fees) asserted against or incurred by any such persons or entities arising out of or relating to (1) FBIO's failure or alleged failure to comply with its obligations pursuant to this Agreement, and/or (2) any allegedly willful, intentional, reckless, or negligent acts of FBIO (and/or its agents). Because Journey is directing, controlling and supervising the Assigned Employees during their provision of services to Journey, Journey agrees to indemnify and hold FBIO, its directors, officers, employees and agents harmless from and against any and all claims, causes of action, suits, investigations, losses, penalties, liabilities, costs, damages and/or fees (including, without limitation, reasonable attorneys' fees) asserted against or incurred by any such persons or entities arising out of or related to (i) Journey's failure or alleged failure to comply with its obligations pursuant to this Agreement, (ii) any allegedly willful, intentional, reckless, or negligent acts of Journey (and/or its agents), and/or (iii) the Assigned Employees' performance of services for Journey.

(b) Limitation of Liability. Nothing in this Agreement shall be construed as allowing the recovery of incidental, consequential, punitive or other exemplary damages by either Party

for the breach of any obligation contained in this Agreement by the other Party, and the Parties hereby waive any claim for incidental, consequential, punitive or other exemplary damages against the other Party under this Agreement.

(c) Disclaimer of Warranty. FBIO is not delivering a product or supplying a specific service, and the Assigned Employees are providing services to Journey under the direction, control and supervision of Journey. As such, FBIO makes no representations or warranties, express or implied, with regard to the Assigned Employees or the services they perform, and all such representations and warranties are hereby expressly disclaimed.

SECTION 8. Survival. The expiration or termination of this Agreement shall not affect either Party's obligation to pay any fees accrued, or to reimburse any cost or expense incurred, prior to the effective date of expiration or termination, it being acknowledged and agreed that such covenant and obligation shall survive the expiration or termination of this Agreement. In addition and without limiting the foregoing, the provisions of Sections 5, 6, 7, 8, 10, 11, 12, 14, 16 and 17 hereof will survive the termination of this Agreement for any reason.

SECTION 9. Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, no Party shall be liable to any other Party for a failure to perform any obligation under this Agreement if such Party shall be prevented from such performance by reason of fires, strikes, labor unrest, embargoes, civil commotion, acts of civil or military authorities, acts of God, or other contingencies beyond the reasonable control of the Parties, including equipment failures, and all provisions herein requiring performance within a specified period shall be deemed to have been modified in order to extend the period in which such performance shall be required in order to accommodate the period of the pendency of such contingency which shall prevent such performance.

SECTION 10. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein and shall be enforced to the greatest extent permitted by law, except that if such invalidity, illegality or unenforceability should change the basic economic positions of the Parties, they shall negotiate in good faith such changes in other terms as shall be practicable in order to restore them to their prior positions.

SECTION 11. Notices. Any notice, payment, demand, or other communication required or permitted to be given by any provision of this Agreement shall be deemed to have been delivered and given for all purposes (i) when delivered personally to the Party, (ii) when received, if sent by registered or certified mail, return receipt requested, postage and charges prepaid, or (iii) when received, if sent by Federal Express or similar overnight national courier, in any case addressed as follows (or to such other address as a Party may designate by notice to the other):

To FBIO:

Fortress Biotech, Inc.
2 Gansevoort, 9th Floor
New York, NY 10014
Attention: General Counsel

To Journey:

Journey Medical Corporation
9237 E Via De Ventura Blvd. Suite 105
Scottsdale, AZ 85258
Attention: General Counsel

SECTION 12. Assignment; Binding Agreement. No Party may assign its rights and obligations, either in whole or in part, without the prior written consent of the other Party. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the Parties and their permitted successors and assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the Parties and their permitted successors and assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

SECTION 13. Authority. Each Party represents that it has the full power and authority to enter into and perform this Agreement.

SECTION 14. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior representations, negotiations, agreements, and understandings of the Parties, oral and written, with respect to the subject matter hereof, all of which are deemed to have been merged herein. This Agreement may be modified only by an agreement in writing executed by all of the Parties.

SECTION 15. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Agreement.

SECTION 16. Governing Law. This Agreement will be construed in accordance with the laws of the State of New York, without giving effect to the choice of law provisions of any jurisdiction.

SECTION 17. Other Definitional Provisions; Interpretation. The terms “hereof,” “herein” and “hereunder” and terms of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Section references contained in this Agreement are references to Sections in this Agreement, unless otherwise specified. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form. Each gender-specific term used in this Agreement has a comparable meaning whether used in a masculine, feminine or gender-neutral form. Whenever the term “including” is used in this Agreement (whether or not that term is followed by the phrase “but not limited to” or “without limitation” or words of similar effect) in connection with a listing of items within a particular classification, that listing shall be interpreted to be illustrative only and shall not be interpreted as a limitation on, or an exclusive listing of, the items within that classification. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have executed this Shared Services Agreement as of the date first written above.

FORTRESS BIOTECH, INC.		JOURNEY MEDICAL CORPORATION	
BY:	/s/ Lindsay A. Rosenwald, M.D.	BY:	/s/ Claude Maraoui
Name:	Lindsay A. Rosenwald, M.D.	Name:	Claude Maraoui
Title:	President & CEO	Title:	President & CEO

[Signature page to Shared Services Agreement]

EXHIBIT 21.1

JOURNEY MEDICAL CORPORATION

List of Subsidiaries

Subsidiaries of Journey Medical Corporation at December 31, 2021, with jurisdiction of incorporation or formation:

- JG Pharma Inc. (Delaware)

EXHIBIT 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Claude Maraoui certify that:

(1) I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Journey Medical Corporation. (the registrant);

(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(s) 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)) 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) [Paragraph omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

(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 the 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(s) 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 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.

Dated: March 28, 2022

By: /s/ Claude Maraoui
Claude Maraoui
President, Chief Executive Officer and Director
Principal Executive Officer

EXHIBIT 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Ernest De Paolantonio, certify that:

(1) I have reviewed this Annual Report on Form 10-K for the year ended December 31, 2021 of Journey Medical Corporation (the registrant);

(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(s) 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)) 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) [Paragraph omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

(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 the 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(s) 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.

Dated: March 28, 2022

By: /s/ Ernie De Paolantonio
Ernie De Paolantonio
Chief Financial Officer
Principal Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Journey Medical Corporation (the "Company") for the period ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Claude Maraoui, President and Chief Executive Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company as of, and for, the periods presented in the Report.

Dated: March 28, 2022

By: /s/ Claude Maraoui
Claude Maraoui
President, Chief Executive Officer and Director
Principal Executive Officer

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Journey Medical Corporation (the "Company") for the period ended December 31, 2021, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ernie De Paolantonio, Principal Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company, as of, and for, the periods presented in the Report.

Dated: March 28, 2022

By: /s/ Ernie De Paolantonio
Ernie De Paolantonio
Chief Financial Officer
Principal Financial Officer