

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

FORM 10-K

(Mark One)

- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the fiscal year ended December 31, 2018
- 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 001-36193

**Trevena, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)  
**955 Chesterbrook Blvd., Suite 110, Chesterbrook, PA**  
(Address of Principal Executive Offices)

**26-1469215**  
(I.R.S. Employer  
Identification No.)  
**19087**  
(Zip Code)

Registrant's telephone number, including area code: **(610) 354-8840**

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

| Title of each class                       | Name of each exchange on which registered |
|---|---|
| Common Stock, par value \$0.001 per share | NASDAQ Global Select 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Emerging growth company

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

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

The aggregate market value of the voting stock held by non-affiliates of the registrant, as of June 30, 2018, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$99.0 million. Such aggregate market value was computed by reference to the closing price of the Common Stock as reported on the NASDAQ Global Select Market on June 30, 2018. For purposes of making this calculation only, the registrant has defined affiliates as including only directors and executive officers and stockholders holding greater than 10% of the voting stock of the registrant as of June 30, 2018.

The number of shares of the registrant's Common Stock outstanding as of March 11, 2019 was 92,353,638.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement for its 2019 annual meeting of stockholders to be filed pursuant to Regulation 14A with the Securities and Exchange Commission not later than 120 days after the registrant's fiscal year ended December 31, 2018 are incorporated by reference into Part III of this Form 10-K.

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### Cautionary Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K (this “Annual Report”) contains forward-looking statements that involve substantial risks and uncertainties. The forward-looking statements are contained principally in the sections entitled “Business,” “Risk Factors,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” but also are contained elsewhere in this Annual Report. In some cases, you can identify forward-looking statements by the words “may,” “might,” “will,” “could,” “would,” “should,” “expect,” “intend,” “plan,” “objective,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “potential,” “continue,” and “ongoing,” or the negative of these terms, or other comparable terminology intended to identify statements about the future. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this Annual Report, we caution you that these statements are based on a combination of facts and factors currently known by us and our expectations of the future, about which we cannot be certain. Forward-looking statements include statements about:

- any ongoing or planned clinical trials and preclinical studies for our product candidates;
- the extent of future clinical trials potentially required by the FDA for our product candidates;
- our ability to fund future operating expenses and capital expenditures with our current cash resources or to secure additional funding in the future;
- the timing and likelihood of obtaining and maintaining regulatory approvals for our product candidates;
- our plans to develop and potentially commercialize our product candidates;
- the clinical utility and potential market acceptance of our product candidates, particularly in light of existing and future competition;
- our sales, marketing and manufacturing capabilities and strategies;
- our intellectual property position;
- ongoing litigation; and
- our ability to identify or acquire additional product candidates with significant commercial potential that are consistent with our commercial objectives.

You should refer to the “Risk Factors” section of this Annual Report for a discussion of important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this Annual Report will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

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## PART I

### ITEM 1. BUSINESS

#### Overview

Trevena, Inc. is a biopharmaceutical company focused on the development and commercialization of innovative treatment options that target and treat diseases affecting the central nervous system, or CNS. Unless the context otherwise requires, we use the terms “Trevena,” “company,” “we,” “us,” and “our” to refer to Trevena, Inc.

Using our proprietary product platform, we have identified and are developing the following product candidates:

- **Oliceridine injection:** We are developing oliceridine, a G protein biased mu-opioid receptor, or MOR, ligand, for the management of moderate-to-severe acute pain in hospitals or other controlled clinical settings where intravenous, or IV, administration of opioids is warranted. We have completed two pivotal Phase 3 efficacy studies (APOLLO 1 and APOLLO 2) of oliceridine in moderate-to-severe acute pain following bunionectomy and abdominoplasty, respectively. In both studies, all dose regimens achieved their primary endpoint of statistically greater analgesic efficacy than placebo, as measured by responder rate. We also have completed a Phase 3 open-label safety study (ATHENA) in which 768 patients were administered oliceridine to manage pain associated with a wide range of procedures and diagnoses. In late 2017, we submitted the oliceridine new drug application, or NDA, to the United States Food and Drug Administration, or FDA. On November 2, 2018, the FDA issued a complete response letter, or CRL, with respect to our NDA for oliceridine. In the CRL, the FDA requested additional clinical data on the QT interval and indicated that the submitted safety database was not of adequate size for the proposed labeling. The FDA also requested certain additional nonclinical data and validation reports. On January 28, 2019, we announced the receipt of the official Type A meeting minutes from the FDA regarding the CRL wherein the FDA agreed that our current safety database will support labeling at a maximum daily dose of 27 mg. The FDA also agreed that we can conduct a study in healthy volunteers to collect the requested QT interval data and that the study should include placebo- and positive-control arms. We have submitted a detailed protocol and analysis plan to the FDA and, following receipt of FDA feedback, anticipate initiating the study in the first half of 2019. To address remaining items in the CRL, the FDA indicated that we should include supporting nonclinical data related to the characterization of the 9662 metabolite and the remaining product validation reports when we resubmit the oliceridine NDA.
- **TRV250:** We are developing TRV250, a G protein biased delta-opioid receptor, or DOR, as a compound with a potential first-in-class, novel mechanism for the treatment of acute migraine. TRV250 also may have utility in a range of other CNS indications. Because TRV250 selectively targets the DOR, we believe it will not have the addiction liability of conventional opioids or have other mu-opioid related adverse effects like those seen with morphine or oxycodone. In June 2018, we announced the successful completion of our first-in-human Phase 1 study of TRV250. Data from this healthy volunteer study showed safety, tolerability, and pharmacokinetics supporting the advancement of TRV250 to Phase 2 proof of concept evaluation in patients.
- **TRV734:** We also have identified and have completed the initial Phase 1 studies for TRV734, a new chemical entity, or NCE, targeting the same novel mechanism of action at the MOR as oliceridine. TRV734 was designed to be orally available, and its mechanism of action suggests it may offer valuable benefits for two distinct areas of important unmet medical need: acute and chronic pain, and maintenance therapy for patients with opioid use disorder. We are collaborating with the National Institute on Drug Abuse, or NIDA, to further evaluate TRV734 for the management of opioid use disorder. We intend to continue to focus our efforts for TRV734 on securing a development and commercialization partner for this asset.

We also are evaluating a set of novel S1P modulators that may offer a new, non-opioid approach to managing chronic pain. In the fourth quarter of 2018, we identified a new product candidate, TRV045, a novel S1P modulator that

we believe may offer a new, non-opioid approach to managing chronic pain. We anticipate beginning investigational new drug, or IND, enabling work in 2019, and we will continue to evaluate the progression of this asset to an IND, either by ourselves or with a partner.

**Our Pipeline**

|                       | Molecular Target | Therapeutic Target            | Preclinical | Phase 1 | Phase 2 | Phase 3 | NDA |
|-----------------------|------------------|-------------------------------|-------------|---------|---------|---------|-----|
| Oliceridine injection | Mu-receptor      | Moderate to Severe Acute Pain | intravenous |         |         |         |     |
| TRV250                | Delta-receptor   | Migraine                      | oral/SC     |         |         |         |     |
| TRV734                | Mu-receptor      | Moderate to Severe Pain       | oral        |         |         |         |     |
| TRV045                | S1P              | CNS                           | oral        |         |         |         |     |

***Oliceridine Injection***

Oliceridine is a G protein biased MOR ligand in development for the management of moderate-to-severe acute pain in hospitals or other controlled clinical settings where IV opioid therapy is warranted. It is an NCE with a novel mechanism of action at the MOR that enables more selective targeting of newly discovered pathways with the potential for fewer side effects.

*Disease and treatment options*

The typical treatment paradigm in the United States for the management of moderate-to-severe acute pain is to initiate injectable (IV) pain medication in the preoperative or immediate postoperative period to provide rapid and effective pain relief. Conventional IV opioid analgesics, such as morphine, fentanyl, and hydromorphone, have been core components of pain management protocols in the immediate postoperative period. The clinical effectiveness of conventional opioid agonists is limited by severe dose dependent side effects such as respiratory depression, nausea, vomiting, and constipation, which can be exacerbated by accumulation of active metabolites and by reduced renal clearance in patients with impaired kidney function. Currently available IV opioid options offer either fast onset with short duration of action (e.g. IV fentanyl), or slower onset with longer duration (e.g. IV morphine). These pharmacokinetic and pharmacodynamic, or PK/PD, profiles create some practical challenges for healthcare providers in certain clinical practice situations.

Injectable non-opioid analgesics are often used together with IV opioids in so-called multimodal protocols for post-surgical pain management; however, these drugs, such as IV non-steroidal anti-inflammatory drugs, or NSAIDs, IV acetaminophen, or local anesthetics such as bupivacaine, have their own potential for cardiovascular, hepatic and gastrointestinal side effects. In addition, none of these non-opioid analgesic approaches offers great enough efficacy to manage severe acute pain as a monotherapy in many patients. We believe that there remains significant unmet need for a highly effective IV opioid analgesic agent with an improved safety, tolerability, and/or PK/PD profile.

*Clinical development*

We are developing oliceridine for the management of moderate-to-severe acute pain in hospitals or other controlled clinical settings where IV administration is warranted. In the future, we also may explore other formulations, such as transmucosal administration for breakthrough pain in additional, separate clinical trials.

Below is a summary of the clinical development work undertaken for oliceridine.

*ATHENA Phase 3 Open Label Safety Study*

We conducted a Phase 3, open label, multicenter study evaluating the safety and tolerability of oliceridine in patients with moderate-to-severe pain caused by surgery or medical conditions. The trial was designed to model real-world use, including the use of multi-modal analgesia. Patients were treated with oliceridine on an as-needed basis via IV bolus, patient-controlled analgesia, or PCA, or both, as determined by the investigator. The primary objective was to assess the safety and tolerability of oliceridine. Pain intensity was measured as a secondary endpoint.

In the ATHENA study, 768 patients were treated with oliceridine. The most common procedures were orthopedic, gynecologic, colorectal, and general surgeries. Patients at elevated risk of opioid-related adverse events were well represented; more than 30% of patients were 65 years or older, and approximately 50% of patients were obese, with body mass index (BMI) >30 kg/m<sup>2</sup>. Only 2% of patients discontinued for adverse events, and 4% of patients discontinued for lack of efficacy. The most common adverse events were nausea, constipation, and vomiting, with prevalence lower than in the APOLLO studies. Adverse event rates associated with oliceridine administered by PCA and as-needed bolus dosing were similar, supporting the potential use of oliceridine in both administration paradigms.

*APOLLO 1 and APOLLO 2 Phase 3 Studies*

We have conducted two pivotal efficacy trials evaluating oliceridine in patients with moderate-to-severe acute pain: the APOLLO 1 study, which evaluated pain for 48 hours following bunionectomy, and the APOLLO 2 study, which evaluated pain for 24 hours following abdominoplasty. In February 2017, we announced positive top line results from the APOLLO 1 and APOLLO 2 studies. In both studies, all dose regimens achieved the primary endpoint of statistically greater analgesic efficacy than placebo, as measured by responder rate.

The APOLLO 1 and APOLLO 2 studies were both Phase 3, multicenter, randomized, double-blind, placebo- and active-controlled studies of oliceridine. During the study period, a loading dose of placebo, morphine (4 mg), or oliceridine (1.5 mg) was administered first, and then patients used a PCA button to dose themselves as often as every 6 minutes with the same study drug: 1 mg morphine, or 0.1 mg, 0.35 mg, or 0.5 mg oliceridine. If PCA dosing was inadequate to control pain, patients could request supplemental study medication (2 mg morphine or 0.75 mg oliceridine, no more than once an hour). If the study medication regimen did not adequately manage pain, patients could opt for an NSAID rescue analgesic. Placebo loading, demand, and supplemental doses were volume-matched.

All endpoints were the same in both studies, except that dosing and pain assessment were for 48 hours in APOLLO 1 and 24 hours in APOLLO 2. Efficacy was measured by a responder analysis, which defined a responder as a patient who experienced at least a 30% reduction in their sum of pain intensity difference at the end of the treatment period without either early discontinuation (for lack of efficacy or safety/tolerability) or use of rescue medication. Non-inferior efficacy compared to morphine and superior efficacy compared to morphine were key secondary endpoints. Respiratory safety events were defined as clinically relevant worsening of respiratory status, including oxygen saturation, respiratory rate, or sedation. The product of the frequency and conditional duration of these events was reported as respiratory safety burden, a key secondary endpoint. Additional measures of respiratory safety included prevalence of oxygen saturation less than 90% and prevalence of supplemental oxygen use. Measures of gastrointestinal tolerability included use of rescue antiemetics, vomiting, and spontaneously reported nausea.

APOLLO 1 (bunionectomy)

- All three oliceridine regimens (0.1 mg, 0.35 mg, and 0.5 mg on-demand doses) achieved the primary endpoint with statistically superior responder rates compared to placebo at 48 hours ( $p < 0.0001$ , adjusted for multiplicity).
- The 0.35 mg and 0.5 mg oliceridine dose regimens demonstrated efficacy comparable to morphine at 48 hours based on responder rate (both doses  $p < 0.005$  for non-inferiority to morphine). Both doses were also comparable to morphine for rates of rescue analgesic use.

- Following the 1.5 mg initial loading dose, all oliceridine regimens demonstrated rapid onset with statistically significant efficacy within 5 minutes ( $p < 0.05$ ).
- Oliceridine exhibited a dose-related trend of improved respiratory safety burden in all three oliceridine dose regimens ( $p < 0.05$  for the 0.1 mg regimen vs. morphine). Consistent with this, in all dose regimens oliceridine showed dose-related trends of reduced respiratory safety events ( $P < 0.05$  for 0.1 mg and 0.35 mg regimens vs. morphine through the first 12 hours of dosing), prevalence of oxygen desaturation ( $O_2 < 90\%$ ) and lower prevalence of supplemental oxygen use ( $p < 0.05$  for the 0.1 mg regimen vs. morphine for both measures).
- Oliceridine exhibited less antiemetic use compared to morphine ( $p < 0.05$  for all oliceridine regimens vs. morphine). Consistent with this, oliceridine showed dose related trends of lower prevalence of nausea and vomiting in all three oliceridine regimens ( $p < 0.05$  for the 0.1 mg regimen vs. morphine).

#### APOLLO 2 (abdominoplasty)

- All three oliceridine dose regimens achieved the primary endpoint with statistically superior responder rates compared to placebo at 24 hours (adjusted  $p < 0.05$  for the 0.1 mg regimen; adjusted  $p < 0.001$  for the 0.35 mg and 0.5 mg regimens).
- The 0.35 mg and 0.5 mg oliceridine dose regimens demonstrated efficacy comparable to morphine at 24 hours based on responder rate ( $p < 0.05$  for non-inferiority of the 0.35 mg regimen vs. morphine). Both doses were also comparable to morphine for rates of rescue analgesic use.
- Following the 1.5 mg initial loading dose, all oliceridine regimens demonstrated rapid onset with statistically significant efficacy within 5 to 15 minutes ( $p < 0.05$ ).
- Oliceridine showed a dose-related trend of improved respiratory safety burden in all three oliceridine dose regimens ( $p < 0.05$  for the 0.1 mg regimen vs. morphine). Consistent with this, for all dose regimens oliceridine showed dose-related trends of reduced respiratory safety events, prevalence of oxygen desaturation ( $O_2 < 90\%$ ) and lower prevalence of supplemental oxygen use ( $p < 0.05$  for the 0.1 mg regimen vs. morphine for all measures).
- Oliceridine showed a dose-related trend of less antiemetic use than morphine for all three oliceridine regimens ( $p < 0.05$  for the 0.1 mg oliceridine regimen vs. morphine). Consistent with this, oliceridine showed dose-related trends of lower prevalence of nausea and vomiting ( $p < 0.05$  for the 0.1 mg regimen vs. morphine for both nausea and vomiting;  $p < 0.05$  for the 0.35 mg regimen vs. morphine for vomiting).

In both studies, oliceridine was generally well-tolerated. The most common drug-related adverse events were nausea, vomiting, headache, and dizziness.

#### *Phase 2b trial of oliceridine in acute postoperative pain following abdominoplasty*

The aim of our Phase 2b clinical trial was to evaluate the efficacy, safety and tolerability of oliceridine in the management of postoperative pain using morphine as a benchmark, utilizing on demand dosing to reflect standard clinical practice. This Phase 2b trial was a randomized, double blind, placebo and active controlled trial of oliceridine in which we enrolled 200 patients with moderate-to-severe acute postoperative pain after abdominoplasty surgery. Two regimens of oliceridine were tested: the first consisted of a 1.5 mg intravenous loading dose with 0.1 mg self-administered on demand doses as often as every six minutes using a PCA device; the second consisted of a 1.5 mg loading dose with 0.35 mg on demand doses as often as every six minutes using a PCA device. A commonly used morphine PCA regimen also was tested, consisting of a 4 mg loading dose with 1 mg on demand doses as often as every six minutes. Placebo was administered as a loading dose and on demand doses were volume matched to the active regimens. Rescue medication consisting of ibuprofen or oxycodone was used in all groups.

In August 2015, we reported top line results from this trial. Oliceridine demonstrated statistically significant pain reduction compared to placebo and comparable efficacy to morphine. Oliceridine provided rapid reduction in average pain scores, consistent with the previous Phase 2 trial where oliceridine showed more rapid onset of meaningful pain relief than morphine. Rescue analgesic use was similar for both oliceridine and morphine, and less than half the rate of rescue analgesic use for placebo. In this study, the oliceridine groups had a significantly lower prevalence (percentage of patients) of hypoventilation events (a measure of respiratory safety), nausea, and vomiting than the morphine group. The most frequently reported adverse events, associated with oliceridine were nausea, vomiting, hypoventilation and headache. Opioid related adverse events were generally less frequent in the oliceridine groups compared to morphine. No drug related serious adverse events were reported in the study.

*Phase 2a/b trial of oliceridine in acute postoperative pain following bunionectomy*

The aim of our Phase 2a/b clinical trial was to evaluate the efficacy and tolerability of oliceridine in the management of postoperative pain using morphine as a benchmark, using fixed dose and dose interval to characterize the performance of oliceridine. The trial was a multicenter, randomized, double blind, placebo and active controlled, multiple dose, adaptive trial in 333 women and men undergoing a primary unilateral first metatarsal bunionectomy surgery at four sites in the United States. Patients were randomized after surgery to receive oliceridine, morphine or placebo to manage their pain. Pain intensity was measured using validated numeric rating scales ranging from ten (most severe pain) to zero (no pain) at multiple time points up to 48 hours. Based on these scales, analgesic efficacy was assessed with a time weighted average change in pain score over 48 hours—a well-established measure of changes in the intensity of pain over time and an FDA recommended endpoint for pain studies.

In November 2014, we announced top line data from this trial. At doses of 2 mg and 3 mg of oliceridine administered every three hours, the trial achieved its primary endpoint of statistically greater pain reduction than placebo for 48 hours, which we believe demonstrated proof of concept for oliceridine. Over the 48-hour trial period, the 3 mg dose of oliceridine administered every three hours also showed statistically superior analgesic efficacy compared to the 4 mg dose of morphine administered every four hours. Additionally, in the first three hours of dosing, when pain was most severe, the 1 mg, 2 mg, and 3 mg doses of oliceridine demonstrated superior analgesic efficacy in the trial compared to placebo, and the 2 mg, and 3 mg doses of oliceridine demonstrated superior analgesic efficacy compared to the 4 mg dose of morphine.

There were no serious adverse events reported in the trial. Both the 2 mg and 3 mg doses of oliceridine showed overall tolerability over the 48-hour trial period similar to that of the 4 mg dose of morphine administered every four hours. The most frequently reported adverse events associated with oliceridine were dizziness, headache, somnolence, nausea, vomiting, flushing and itching. Adverse effects were generally dose related.

*Phase 1 clinical studies of oliceridine*

We also have completed a number of Phase 1 clinical studies of oliceridine. These included two single ascending dose studies of oliceridine given as a 60-minute continuous infusion or a 2-minute bolus infusion that showed dose related increases in plasma exposure and pupil constriction, a biomarker for CNS opioid activity across a range of doses that were generally well tolerated.

In 2013, we completed a Phase 1b proof of concept exploratory trial in healthy male subjects. The aims of this trial were to characterize the analgesic efficacy and safety and tolerability of a single dose of oliceridine as compared to a single 10 mg dose of morphine. We used a well-established evoked pain model, the cold pain test, to evaluate the analgesic effects of oliceridine by measuring the time to hand removal, or latency, from a temperature controlled cold water bath. At both the 3.0 mg and 4.5 mg doses, oliceridine showed superior efficacy as compared to a 10 mg morphine dose that was statistically significant with a p value of less than 0.05 at the ten- and thirty-minute time points after dosing. The durability of the analgesic effect was similar to morphine. In addition, the time to peak effect was more rapid than that for morphine. Overall, oliceridine was well tolerated in the trial. Subjects receiving oliceridine showed less severe nausea and less frequent vomiting at the 1.5 mg and 3.0 mg doses as compared to a 10 mg dose of morphine. Oliceridine also showed less respiratory depression compared to morphine over 4 hours.



In October 2014 we completed an adaptive, multiple ascending dose study of oliceridine in more than 50 healthy subjects. The safety, tolerability, pharmacokinetic and pharmacodynamics results of this study were consistent with the early Phase 1 studies described above. Recently, we also successfully completed an absorption, distribution, metabolism, and excretion study, with results consistent with the lack of known active oliceridine metabolites. We also completed a thorough QT study, a renal impairment study which showed no evidence of altered PK/accumulation in patients with renal failure compared to healthy patients, and a human abuse liability study which showed that oliceridine had similar abuse liability as IV morphine when administered at a comparably analgesic dose. In addition, we have completed a study in patients with underlying hepatic impairment, which showed that less frequent oliceridine dosing may be required in patients with severe hepatic impairment.

#### *Regulatory*

In late 2017, we submitted the NDA for oliceridine to the FDA and on November 2, 2018, the FDA issued a CRL related to the NDA. In the CRL, the FDA requested additional clinical data on the QT interval and indicated that the submitted safety database was not of adequate size for the proposed labeling at a maximum daily dose of 40 mg. The FDA also requested certain additional nonclinical data and validation reports. On January 28, 2019, we announced the receipt of the official Type A meeting minutes from the FDA regarding the CRL wherein the FDA agreed that the submitted safety database will support labeling at a maximum daily dose of 27 mg. The FDA also agreed that we can conduct a study in healthy volunteers to collect the requested QT interval data and that the study should include placebo- and positive-control arms. We have submitted a detailed protocol and statistical analysis plan to the FDA for the healthy volunteer study and, following receipt of FDA feedback, anticipate initiating the study in the first half of 2019. To address remaining items in the CRL, the FDA indicated that we should include supporting nonclinical data related to the characterization of the 9662 metabolite and the remaining product validation reports when we resubmit the oliceridine NDA.

In December 2015, the FDA granted Fast Track designation to oliceridine for the management of moderate to severe acute pain. The Fast Track program is designed to facilitate the development and review of drugs intended to treat serious conditions with unmet medical needs by providing sponsors with the opportunity for frequent interactions with the FDA.

In February 2016, based on the preliminary evidence from our Phase 2 clinical studies of oliceridine, the FDA granted Breakthrough Therapy designation to oliceridine for the management of moderate to severe acute pain. Breakthrough Therapy designation is granted by the FDA to new therapies intended to treat serious or life-threatening conditions and for which preliminary clinical evidence indicates that the drug may demonstrate substantial clinical improvement over available therapies. If granted, the FDA regularly reviews the Breakthrough Therapy designation for a product candidate to ensure that any additional clinical evidence continues to support this designation. In March 2019, based on its review of data from the Company's Phase 3 studies of oliceridine, the FDA informed Trevena that under the conditions studied, these data were not sufficient to support the continuation of the FDA's previously granted Breakthrough Therapy designation. The Company does not expect the absence of Breakthrough Therapy designation to impact the timing of the FDA's review of the oliceridine new drug application following resubmission.

#### *Commercialization*

According to 2017 IQVIA hospital charge detail data, approximately 45 million patients in the United States were treated with an IV opioid in the hospital setting. The majority of doses of IV opioids administered were in the inpatient setting where approximately 15 million patients were treated with multiple doses for an average of one to two days. Patients treated in the hospital outpatient or ambulatory surgical centers may also receive one or two doses of IV opioids for postsurgical or medical pain. The Centers for Disease Control and Prevention, or CDC, has estimated that approximately 100 million surgical and invasive diagnostic procedures occur annually in the United States. Accordingly, if approved, we believe that there is a large potential commercial opportunity for oliceridine in the management of both surgical and medical acute pain in hospital and ambulatory surgical centers.

If oliceridine ultimately receives regulatory approval, we plan to commercialize it in the United States, either on our own or with a commercial partner. Outside the United States, we expect to continue to seek collaborators to commercialize oliceridine to offset risk and preserve capital.

To commercialize oliceridine in the United States, we intend to utilize a hospital-focused specialty sales force targeting surgeons, anesthesiologists, hospitalists, and other healthcare providers with acute post-surgical or medical pain management responsibility. While we believe that the greatest opportunity for oliceridine will ultimately be in the hospital inpatient setting where acute pain is typically more severe, the onset and duration of analgesia seen with oliceridine may be well suited to hospital outpatient and ambulatory surgical centers. Hospital trend data also indicates that ambulatory surgical procedures now outnumber and are growing faster than inpatient surgeries in the United States. Because many surgeons and anesthesiologists manage both inpatient and outpatient cases, we believe that early physician experiences with oliceridine in ambulatory surgery may support subsequent use in the inpatient setting.

We estimate that approximately 50% of the 15 million IV opioid treated hospital inpatients may be at increased risk of opioid-related adverse events such as respiratory depression or post-operative nausea and vomiting. We believe that many of these patients are elderly and have comorbid conditions, driving inpatient surgical complexity and length of stay. Population and hospital trend data indicates that these patient groups will continue to grow and be an area of focus for inpatient care. Managing these patients and adverse events results in a significant cost burden to the hospital system. Given these changing dynamics in the hospital marketplace and the increased emphasis on clinical and economic outcomes, we expect our commercialization plans to include health economic information framing the budget impact of oliceridine through a potential reduction in the adverse events seen with conventional IV opioids in these patients.

According to 2017 data from Symphony Health Solutions, approximately 1,200 U.S. hospitals are responsible for 70% of the annual volume of conventional IV opioid drugs prescribed. We expect to identify a subset of these hospitals that utilize high volumes of IV opioids in pain management and have rapidly adopted new branded analgesic agents in the past as the initial account targets for oliceridine at launch. We will work to secure Pharmacy and Therapeutics Committee approval and subsequent utilization of oliceridine at these hospitals.

#### *Manufacturing*

We have completed process development of the active pharmaceutical ingredient, or API, and have manufactured multiple commercial scale batches using our proposed commercial process under current good manufacturing practices, or cGMP, conditions. We also have completed drug product process development and have manufactured multiple batches of drug product using the proposed commercial process under cGMP conditions.

For oliceridine, we have established commercial supply agreements for the manufacture of the API and finished (compounded, filled and packaged) drug product. Alcami Corporation, or Alcami, is contracted to supply 100% of our commercial API from its Germantown, WI manufacturing facility. We have existing commercial supply agreements with two separate companies for the supply of drug product. Alcami is contracted to supply commercial drug product from its facilities in Charleston, SC and Wilmington, NC and was included as part of our NDA submission. Pfizer CentreOne (formerly Hospira) is also contracted to supply commercial drug product from its facility in McPherson, KS, but was not included in our NDA submission. If approved, we anticipate that oliceridine will be classified as a Schedule II controlled substance. All third-party facilities throughout the supply chain have the appropriate licenses from the U.S. Drug Enforcement Administration, or DEA, for handling Schedule II controlled substances according to each of their respective contractual roles (manufacturing, testing, distribution, etc.).

#### *Competition*

If oliceridine is approved for IV management of moderate-to-severe acute pain, it will compete with generic IV opioid analgesics, such as morphine, hydromorphone and fentanyl. The analgesic effectiveness of these agents is limited by well-known adverse side effects, such as respiratory depression, nausea, vomiting, constipation, and post-operative ileus, which can be exacerbated by the way these molecules are metabolized or cleared. Oliceridine also may compete against, or be used in combination with, OFIRMEV® (IV acetaminophen), marketed by Mallinckrodt plc, EXPAREL® (liposomal bupivacaine), marketed by Pacira Pharmaceuticals, Inc., CALDOLOR® (IV ibuprofen), marketed by

Cumberland Pharmaceuticals, and DSUVIA™ (sublingual sufentanil) marketed by AcclRx. Together with generic versions of IV NSAIDs such as ketorolac, and generic versions of local anesthetics such as bupivacaine, these non-opioid analgesics are currently used in combination with opioids in the multimodal management of moderate-to-severe acute pain.

We also are aware of a number of products in mid- and late-stage clinical development that are aimed at improving the treatment of moderate-to-severe acute pain and may compete with oliceridine. AcclRx Pharmaceuticals, Inc. is developing ZALVISO™, a non-invasive PCA device containing sublingual sufentanil. Innocoll Holdings plc. and Heron Therapeutics Inc. have proprietary long acting reformulations of bupivacaine in development. Recro Pharma, Inc. is developing an IV version of the NSAID meloxicam. Cara Therapeutics Inc. is developing IV and oral dose forms of a peripherally restricted K opioid receptor agonist, which has been administered in combination with mu opioids in clinical trials. Avenue Therapeutics, Inc. is developing an IV version of generic opioid tramadol for moderate-to-severe acute pain.

#### *Intellectual property*

Our oliceridine patent portfolio is wholly owned by us. The portfolio includes four issued U.S. patents (U.S. Patent Nos. 8,835,488, 9,309,234, 9,642,842, and 9,849,119), which claim, among other things, oliceridine, compositions comprising oliceridine, and methods of using oliceridine. The issued patents are expected to expire no earlier than 2032, subject to any disclaimers or extensions, and any U.S. patent to issue in the future is also expected to expire no earlier than 2032, subject to any disclaimers or extensions. We also have issued patents in Australia, China, Eurasia, Europe, Hong Kong, Israel, Japan, and New Zealand, which claim among other things, oliceridine, compositions comprising oliceridine and methods of making or using oliceridine. The foreign portfolio also includes an application that has been allowed by the European Patent Office, which claim among other things, oliceridine, compositions comprising oliceridine and methods of using oliceridine. We have patent applications pending in the United States, Europe, Japan, Israel, South Korea, Brazil, Canada, and India. The issued patents and patents that could issue in the future from these allowed or pending applications outside the United States are expected to expire no earlier than 2032, subject to any disclaimers or extensions.

#### **TRV250**

TRV250 is a G protein biased ligand targeting the delta receptor, with potential to be a first-in-class, novel mechanism for the treatment of acute migraine. We have completed a first-in-human Phase 1 trial of TRV250, which showed safety, tolerability, and pharmacokinetics supporting the advancement of TRV250 to Phase 2 proof of concept evaluation in patients.

#### *Clinical development*

We believe our preclinical data support targeting the delta receptor for the treatment of CNS disorders. Prior approaches to modulate this receptor have been limited by a significant risk of seizure associated with this target. Preclinical studies in beta-arrestin knockout mice suggest that beta-arrestin plays a role in seizures. TRV250 is a potent delta receptor ligand that selectively activates G protein coupling without engaging beta arrestin, leading to strong efficacy in animal models of migraine and other CNS disorders with reduced seizure liability. In the future, we may decide to seek a collaborator for TRV250 with CNS development and commercialization expertise outside the United States.

The Phase 1 study was a two part, randomized, single-blind, placebo-controlled, single ascending dose study to evaluate the safety, tolerability, and pharmacokinetics of subcutaneous and oral TRV250 in healthy adults. Part A assessed single subcutaneous doses in 38 subjects. Four cohorts of nine or ten subjects were randomized to receive a single dose of up to 30mg TRV250 or placebo. Part B consisted of a single cohort of nine subjects administered either TRV250 as a single 6 mg oral dose (either as a capsule in the fed state or a capsule in the fasted state, n=7) or placebo (as a capsule in the fed or fasted state, n=2).

Key findings of the study included:

- Dose-related increases in plasma concentrations following subcutaneous administration of doses up to 30 mg, with rapid absorption in the first hour and duration of exposure appropriate for treating acute migraine;
- Subcutaneous doses at and above 9 mg achieved plasma concentrations that were active in preclinical models of migraine;
- Oral bioavailability similar to existing migraine medications, supporting continued development of TRV250 in oral and/or subcutaneous formulations;
- No observed drug-associated electroencephalography changes, consistent with preclinical studies in which TRV250 avoided the seizure liability associated with previous CNS-active delta receptor agonists; and
- No clinically significant changes in vital signs, laboratory values, or ECG parameters, and no severe or serious adverse events reported.

Based on the profile of TRV250, we believe it has the potential to be a first-in-class treatment option for treatment of migraine. According to Decision Resources, a healthcare consulting company, the acute migraine treatment market encompassed approximately 12 million drug-treated patients in 2017 in the United States, representing approximately \$1.5 billion of sales. We estimate that approximately 20% to 30% of these patients either do not respond to, or cannot tolerate, the market-leading triptan drug class, and an additional 30% would benefit from improved efficacy compared to these drugs.

#### *Competition*

Triptans, a generic family of 5HT<sub>1B</sub> agonists, are the current standard treatment for acute treatment of migraine in the United States, and account for 70% of sales for this indication. Other less commonly prescribed acute treatments include ergot alkaloids, and analgesics such as opioids and NSAIDs. Various branded reformulations of triptan molecules have been launched, and we are aware of others in development. In May 2016, Avanir Pharmaceuticals, Inc. launched a dry powder nasal delivery formulation of sumatriptan, called ONZETRA™ Xsail™. RedHill Biopharma, Ltd. and IntelGenx Corp. resubmitted the 505(b)(2) NDA for RIZAPORT®, an oral thin film rizatriptan formulation, to the FDA in November 2018. Eli Lilly acquired Lasmiditan, a selective 5HT<sub>1F</sub> agonist, from Colucid Pharmaceuticals, Inc., and filed an NDA for drug in November 2018. Allergan (atogepant and ubrogepant) and Biohaven (rimegepant) both have small molecule oral anti-calcitonin gene-related peptide, or CGRP, antagonists in Phase 3 testing for the acute treatment of migraine.

Patients suffering from frequent or chronic migraine headaches may also use preventative agents to decrease the frequency and severity of migraines. Botox® is the historical gold standard migraine prophylactic, but certain anticonvulsants, such as topiramate, and beta-blockers, such as propranolol, have also been used. However, a new class of anti-CGRP antibody products are being marketed for preventative treatment of migraine: In 2018, Amgen and Novartis launched Aimovig (erenumab), Eli Lilly and Company launched Emgality (galcanezumab), and Teva Pharmaceutical Industries Limited launched Ajovy (fremanezumab); Alder BioPharmaceuticals Inc. is completing Phase 3 trials with its anti-CGRP antibody eptinezumab. Allergan also has migraine prevention trials underway for atogepant, an oral small molecule GGRP antagonist.

#### *Intellectual property*

Our TRV250 patent portfolio is wholly owned by us and includes one non-provisional patent application in the United States directed to compounds that modulate the delta receptor, which has been allowed, claiming, among other things, TRV250, compositions comprising TRV250, and methods of using TRV250. A patent that issues from this application is expected to expire no earlier than 2036, subject to any disclaimers or extensions. We also have patent applications pending in Australia, Brazil, Canada, China, Europe, Israel, India, Japan, South Korea, and New Zealand. Any patents that may issue from these applications are expected to expire no earlier than 2036, subject to any disclaimers or extensions.

## **TRV734**

TRV734 is a small molecule G protein biased ligand of the MOR that we discovered and have developed through Phase I as a first-line, orally administered compound for the treatment of moderate-to-severe acute and chronic pain. Like oliceridine, TRV734 takes advantage of a well-established mechanism of pain relief by targeting the MOR, but does so with enhanced selectivity for the G protein signaling pathway, which in preclinical studies was linked to analgesia, as opposed to the beta-arrestin signaling pathway, which in preclinical studies was associated with side effects. Subject to successful preclinical and clinical development and regulatory approval, we believe TRV734 may have an improved efficacy and side effect profile as compared to current commonly prescribed oral analgesics, such as oxycodone. In addition, TRV734 may offer valuable benefits for another unmet medical need: the management of opioid dependence associated with opioid use disorder. In 2018, we announced that we are collaborating with NIDA to further evaluate TRV734 for this potential indication. We intend to continue to focus our efforts for TRV734 on securing a worldwide development and commercialization partner for this asset.

### *Preclinical studies*

TRV734 has shown a similar profile to oliceridine *in vitro* and *in vivo* studies. It is highly selective for the MOR where, like the most powerful opioid analgesics, it is a strong agonist of G protein coupling. TRV734 is distinct from those analgesics in its very weak recruitment of beta-arrestins to the MOR. In our preclinical studies, TRV734 showed analgesic effects in preclinical pain models similar to oxycodone and morphine. In the same studies, TRV734 caused less constipation compared to equivalently analgesic doses of oxycodone and morphine. TRV734 is active after oral administration in mice and rats, has high oral bioavailability and has been well tolerated in non-human primates. We have completed three Phase I trials of TRV734 in healthy volunteers, including a single ascending dose study, a multiple ascending dose study, and a pharmacokinetic study. In these studies, a total of 127 healthy volunteers were exposed to TRV734 at doses between 2 mg and 250 mg. We incorporated measures to assess the potential for analgesic efficacy and tolerability advantages in these studies. Based on these data and data for oliceridine, we believe that TRV734 may offer an improved efficacy profile as compared to current opioid therapies or equivalent efficacy with an improved gastrointestinal tolerability and respiratory safety profile.

### *Intellectual property*

Our TRV734 patent portfolio is wholly owned by us and includes one issued U.S. patent (U.S. Patent No. 9,044,469) claiming TRV734, other compounds and/or methods of making or using the same. This patent is expected to expire no earlier than 2032, subject to any disclaimers or extensions. We also have issued patents in Australia, China, Europe, Eurasia, Hong Kong, Israel, Japan, and New Zealand claiming TRV734, other compounds and/or methods of making or using the same. We also have patent applications pending in the United States, Europe, South Korea, Brazil, Canada, Israel, India, and Hong Kong. The issued patents and patents that could issue in the future from these allowed or pending applications outside the United States are expected to expire no earlier than 2032, subject to any disclaimers or extensions.

### **S1P Modulators (TRV045)**

In July 2017, we disclosed a new preclinical lead optimization program targeting S1P receptors. Our compounds are all new chemical entities, are expected to be non-addictive, and use a new mechanism of action that in preclinical models avoids the immune suppression associated with approved and investigational S1P receptor targeted drugs. These molecules have demonstrated activity in preclinical models of chemotherapy-induced peripheral neuropathy, neuropathic pain, and inflammatory pain. In the fourth quarter of 2018, we identified a new product candidate, TRV045, a novel S1P modulator that we believe may offer a new, non-opioid approach to managing chronic pain. We anticipate beginning IND-enabling work in 2019, and we will continue to evaluate the progression of this asset to an IND, either by ourselves or with a partner.

Our S1P patent portfolio is wholly owned by us and includes one PCT application directed to compounds that modulate the S1P receptor. National phase applications based on this PCT application, if filed, would be filed in December 2019 and January 2020. Patents that could issue in the future from the national phase applications would be

expected to expire no earlier than 2038, subject to any disclaimers or extensions. We are aware of a certain U.S. patent owned by a third party with claims that are broadly directed to a method of treating chemotherapy induced neuropathic pain with an S1P receptor agonist or an S1P receptor antagonist. Although we do not believe that this is a valid patent, this patent could be construed to cover our S1P compounds.

### **Intellectual Property**

We strive to protect the proprietary technologies that we believe are important to our business, including seeking and maintaining patent protection intended to cover the composition of matter of our product candidates, their methods of use, related technology and other inventions that are important to our business. We also rely on trade secrets and careful monitoring of our proprietary information to protect aspects of our business that are not amenable to, or that we do not consider appropriate for, patent protection.

Our success will depend significantly on our ability to obtain and maintain patent and other proprietary protection for commercially important technology, inventions and know how related to our business, defend and enforce our patents, maintain our licenses to use intellectual property owned by third parties, preserve the confidentiality of our trade secrets and operate without infringing valid and enforceable patents and other proprietary rights of third parties. We also rely on know-how, and continuing technological innovation to develop, strengthen and maintain our proprietary position in the field of modulating GCPRs with biased ligands.

One or more third parties may hold intellectual property, including patent rights, that is important or necessary to the development of our products. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our products, in which case we would be required to obtain a license from these third parties on commercially reasonable terms, or our business could be harmed, possibly materially. If we were not able to obtain a license, or were not able to obtain a license on commercially reasonable terms, our business could be harmed, possibly materially.

We plan to continue to expand our intellectual property estate by filing patent applications directed to dosage forms, methods of treatment for our product candidates. We anticipate seeking patent protection in the United States and internationally for compositions of matter covering the compounds, the chemistries and processes for manufacturing these compounds and the use of these compounds in a variety of therapies.

The patent positions of biopharmaceutical companies like us are generally uncertain and involve complex legal, scientific and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued, and the patent's scope can be modified after issuance. Consequently, we do not know whether any of our product candidates will be protectable or remain protected by enforceable patents. We cannot predict whether the patent applications we are currently pursuing will issue as patents in any particular jurisdiction or whether the claims of any issued patents will provide sufficient proprietary protection from competitors. Any patents that we hold may be challenged, circumvented or invalidated by third parties.

Because many patent applications in the United States and certain other jurisdictions are maintained in secrecy for 18 months, and since publication of discoveries in the scientific or patent literature often lags behind actual discoveries, we cannot be certain that we will be able to obtain patent protection for the inventions disclosed and/or claimed in our pending patent applications. Moreover, we may have to participate in interference proceedings declared by the United States Patent and Trademark Office or a foreign patent office to determine priority of invention or in post grant challenge proceedings, such as oppositions, *inter partes* review, post grant review or a derivation proceeding, that challenge our entitlement to an invention or the patentability of one or more claims in our patent applications or issued patents. Such proceedings could result in substantial cost, even if the eventual outcome is favorable to us.

The term of individual patents depends upon the legal term of the patents in the countries in which they are obtained. In most countries in which we file, the patent term is 20 years from the earliest date of filing a PCT application or a non-provisional patent application, subject to any disclaimers or extensions. The term of a patent in the United States can be adjusted and extended due to the failure of the United States Patent and Trademark Office following certain statutory and regulation deadlines for issuing a patent.

In the United States, the patent term of a patent that covers an FDA approved drug also may be eligible for patent term extension, which permits patent term restoration as compensation for a portion of the patent term lost during clinical development and the FDA regulatory review process. The Hatch Waxman Act permits a patent term extension of up to five years beyond the expiration of the patent. The length of the patent term extension is related to the length of time the drug is under clinical development and regulatory review. Patent term extension cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be extended. Similar provisions are available in Europe and other non-United States jurisdictions to extend the term of a patent that covers an approved drug. In the future, if and when our pharmaceutical products receive FDA approval, we expect to apply for patent term extensions on patents covering those products. Although, we intend to seek patent term extensions to any of our issued patents in any jurisdiction where these are available there is no guarantee that the applicable authorities, including the United States Patent and Trademark Office, will agree with our assessment of whether such extensions should be granted, and even if granted, the length of such extensions.

We also rely on trade secret protection for our confidential and proprietary information. Although we take steps to protect our proprietary information and trade secrets, including through contractual means with our employees and consultants, third parties may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets or disclose our technology. Thus, we may not be able to meaningfully protect our trade secrets. It is our policy to require our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to execute confidentiality agreements upon the commencement of employment or consulting relationships with us. These agreements provide that all confidential information concerning our business or financial affairs developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances. In the case of employees, the agreements provide that all inventions conceived by the individual, and which are related to our current or planned business or research and development or made during normal working hours, on our premises or using our equipment or proprietary information, are our exclusive property.

### **Manufacturing**

We do not own or operate any manufacturing facilities. We currently rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for preclinical and clinical testing, as well as for commercial manufacture if our product candidates receive marketing approval.

### **Commercialization**

We have not yet fully established sales, marketing or product distribution infrastructure. Subject to successfully completing product development and receiving marketing approvals, we expect to commence commercialization activities for our wholly owned products by insourcing or outsourcing a sales organization, initially in the hospital market, or by seeking a commercial partner in the United States. If we choose to insource or outsource a sales organization, we believe that it will be able to address the community of physicians who are the key specialists in treating the patient populations for which our product candidates are being developed. Outside the United States, we expect to enter into distribution and other commercial arrangements with third parties for any of our product candidates that obtain marketing approval. We also intend to license out commercial rights for products that require a substantial primary care presence. In parallel with building our commercial organization, we plan to develop educational initiatives with respect to approved products and relationships with thought leaders in relevant fields of medicine.

### **Competition**

The biotechnology and pharmaceutical industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. While we believe that our technology, knowledge, experience and scientific resources provide us with competitive advantages, we face potential competition from many different sources, including major pharmaceutical, specialty pharmaceutical and biotechnology companies, academic institutions and governmental agencies and public and private research institutions. Any product candidates that we successfully develop and commercialize will compete with existing therapies and new therapies that may become available in the future. Products in development by other companies may provide efficacy, safety, convenience and other

benefits that are not provided by currently marketed therapies. As a result, they may provide significant competition for any of our product candidates for which we obtain marketing approval.

Some of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Mergers and acquisitions in the pharmaceutical, biotechnology and diagnostic industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller or early stage companies also may prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These competitors also compete with us in recruiting and retaining qualified scientific and management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

The key competitive factors affecting the success of all of our therapeutic product candidates, if approved, are likely to be their efficacy, safety, convenience, price, the level of generic competition and the availability of reimbursement from government and other third-party payors.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain FDA or other regulatory approval for their products more rapidly than we may obtain approval for ours, which could result in our competitors establishing a strong market position before we are able to enter the market. In addition, our ability to compete may be affected in many cases by insurers or other third-party payors seeking to encourage the use of generic products. Generic products that broadly address these indications are currently on the market for the indications that we are pursuing, and additional products are expected to become available on a generic basis over the coming years. If our product candidates achieve marketing approval, we expect that they will be priced at a significant premium over competitive generic products.

### **Government Regulation and Product Approval**

Government authorities in the United States, at the federal, state and local level, and in other countries extensively regulate, among other things, the research, development, testing, manufacture, packaging, storage, recordkeeping, labeling, advertising, promotion, distribution, marketing, import and export of pharmaceutical products such as those we are developing. The processes for obtaining regulatory approvals in the United States and in foreign countries, along with subsequent compliance with applicable statutes and regulations, require the expenditure of substantial time and financial resources.

#### ***FDA Regulation***

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, or FDCA, and its implementing regulations. The process of obtaining regulatory approvals and the subsequent compliance with applicable federal, state, local and foreign statutes and regulations requires the expenditure of substantial time and financial resources. Failure to comply with the applicable United States requirements at any time during the product development process, approval process or after approval, may subject an applicant to a variety of administrative or judicial sanctions, such as the FDA's refusal to approve pending NDAs, withdrawal of an approval, imposition of a clinical hold, issuance of warning or untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, refusals of government contracts, restitution, disgorgement or civil or criminal penalties.

The process required by the FDA before a drug may be marketed in the United States generally involves the following:

- completion of preclinical laboratory tests, animal studies and formulation studies in compliance with the FDA's good laboratory practice, or GLP, regulations;



- submission to the FDA of an IND, which must become effective before human clinical trials may begin;
- approval by an independent institutional review board, or IRB, covering each clinical site before each trial may be initiated;
- performance of human clinical trials, including adequate and well-controlled clinical trials, in accordance with good clinical practices, or GCP, to establish the safety and efficacy of the proposed drug product for each indication;
- submission of an NDA to the FDA;
- completion of an FDA advisory committee review, if applicable;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the product is produced to assess compliance with cGMP, and to assure that the facilities, methods and controls are adequate to preserve the drug's identity, strength, quality and purity, as well as satisfactory completion of an FDA inspection of selected clinical sites to determine GCP compliance;
- FDA review and approval of an NDA; and
- in certain cases, DEA review and scheduling activities prior to launch.

#### *Preclinical Studies*

Preclinical studies include laboratory evaluation of drug substance chemistry, toxicity and drug product formulation, as well as animal studies to assess potential safety and efficacy. An IND sponsor must submit the results of the preclinical tests, together with manufacturing information, analytical data and any available clinical data or literature, among other things, to the FDA as part of an IND. Manufacture of drug substance, drug product and the labeling and distribution of clinical supplies must all comply with cGMP standards. Some preclinical testing may continue even after the IND is submitted. An IND automatically becomes effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions related to the data submitted in the IND or the proposed clinical trials and places the trial on a clinical hold. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. As a result, submission of an IND may not result in the FDA allowing clinical trials to commence.

#### *Clinical Trials*

Clinical trials involve the administration of the investigational new drug to human subjects under the supervision of qualified investigators in accordance with GCP requirements, which include the requirement that all research subjects provide their informed consent in writing for their participation in any clinical trial. Clinical trials are conducted under protocols detailing, among other things, the objectives of the trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. A protocol for each clinical trial and any subsequent protocol amendments must be submitted to the FDA as part of the IND. In addition, an IRB covering each institution participating in the clinical trial must review and approve the plan for any clinical trial before it commences at that institution, and the IRB must continue to oversee the clinical trial while it is being conducted. Information about certain clinical trials must be submitted within specific timeframes to the National Institutes of Health, or NIH, for public dissemination on their ClinicalTrials.gov website.

Human clinical trials are typically conducted in three sequential phases, which may overlap or be combined. In Phase 1, the drug is initially introduced into healthy human subjects or patients with the target disease or condition and tested for safety, dosage tolerance, absorption, metabolism, distribution, excretion and, if possible, to gain an initial indication of its effectiveness. In Phase 2, the drug typically is administered to a limited patient population to identify possible adverse effects and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted

diseases and to determine dosage tolerance and optimal dosage. In Phase 3, the drug is administered to an expanded patient population, generally at geographically dispersed clinical trial sites, in well-controlled clinical trials to generate enough data to statistically evaluate the efficacy and safety of the product for approval, to establish the overall risk-benefit profile of the product and to provide adequate information for the labeling of the product.

Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and more frequently if serious adverse events occur. Phase 1, Phase 2 and Phase 3 clinical trials may not be completed successfully within any specified period, or at all. Furthermore, the FDA or the sponsor may suspend or terminate a clinical trial at any time on various grounds, including a finding that the research subjects are being exposed to an unacceptable health risk. Similarly, an IRB can suspend or terminate approval of a clinical trial at its institution if the clinical trial is not being conducted in accordance with the IRB's requirements or if the drug has been associated with unexpected serious harm to patients.

#### *Marketing Approval*

Assuming successful completion of the required clinical testing, the results of the preclinical and clinical studies, together with detailed information relating to the product's chemistry, manufacture, controls and proposed labeling, among other things, are submitted to the FDA as part of an NDA requesting approval to market the product for one or more indications. In most cases, the submission of an NDA is subject to a substantial application user fee. Under the Prescription Drug User Fee Act, or PDUFA, guidelines that are currently in effect, the FDA has agreed to certain performance goals regarding the timing of its review of a marketing application.

In addition, under the Pediatric Research Equity Act an NDA or supplement to an NDA must contain data that are adequate to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations, and to support dosing and administration for each pediatric subpopulation for which the product is safe and effective. The FDA may, on its own initiative or at the request of the applicant, grant deferrals for submission of some or all pediatric data until after approval of the product for use in adults, or full or partial waivers from the pediatric data requirements.

The FDA also may require a risk evaluation and mitigation strategy, or REMS, to mitigate any identified or suspected serious risks and ensure safe use of the drug. The REMS plan could include medication guides, physician communication plans, assessment plans and elements to assure safe use, such as restricted distribution methods, patient registries or other risk minimization tools. We expect that the mu-opioid agonist products may be subject to a REMS, since currently marketed opioid products are subject to this requirement.

The FDA conducts a preliminary review of all NDAs within the first 60 days after submission, before accepting them for filing, to determine whether they are sufficiently complete to permit substantive review. The FDA may request additional information rather than accept an NDA for filing. In this event, the application must be resubmitted with the additional information. The resubmitted application is also subject to review before the FDA accepts it for filing. Once the submission is accepted for filing, the FDA begins an in-depth substantive review. The FDA reviews an NDA to determine, among other things, whether the drug is safe and effective and whether the facility in which it is manufactured, processed, packaged or held meets standards designed to assure the product's continued safety, quality and purity.

The FDA typically refers a question regarding a novel drug to an external advisory committee. An advisory committee is a panel of independent experts, including clinicians and other scientific experts, that reviews, evaluates and provides a recommendation as to whether the application should be approved and under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Before approving an NDA, the FDA typically will inspect the facility or facilities where the product is manufactured, referred to as a Pre-Approval Inspection, or PAI. The FDA will not approve an application unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to

assure consistent production of the product within required specifications. Additionally, before approving an NDA, the FDA will typically inspect one or more clinical trial sites to assure compliance with GCPs.

The testing and approval process for an NDA requires substantial time, effort and financial resources, and each may take several years to complete. Data obtained from preclinical and clinical testing are not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The FDA may not grant approval of an NDA on a timely basis, or at all.

After evaluating the NDA and all related information, including the advisory committee recommendation, if any, and inspection reports regarding the manufacturing facilities and clinical trial sites, the FDA may issue an approval letter, or, in some cases, a complete response letter. A complete response letter generally contains a statement of specific conditions that must be met in order to secure final approval of the NDA and may require additional clinical or preclinical testing in order for the FDA to reconsider the application. Even with submission of this additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval. If and when those conditions have been met to the FDA's satisfaction, the FDA will typically issue an approval letter. The FDA reviews NDA resubmissions in two or six months depending on the type of information included. An approval letter authorizes commercial distribution and marketing of the drug with specific prescribing information for specific indications. For some products, an additional step of DEA review and scheduling is required.

Even if the FDA approves a product, it may limit the approved indications for use of the product, require that contraindications, warnings or precautions be included in the product labeling, including a boxed warning, require that post-approval studies, including Phase 4 clinical trials, be conducted to further assess a drug's safety after approval, require testing and surveillance programs to monitor the product after commercialization or impose other conditions, including distribution restrictions or other risk management mechanisms under a REMS which can materially affect the potential market and profitability of the product. The FDA may prevent or limit further marketing of a product based on the results of post-marketing studies or surveillance programs. After approval, some types of changes to the approved product, such as adding new indications, manufacturing changes and additional labeling claims, are subject to further testing requirements and FDA review and approval.

#### *Expedited Review and Approval*

The FDA has various programs, including Fast Track, Breakthrough Therapy designation, priority review, and accelerated approval, that are intended to expedite or simplify the process for reviewing drugs, and/or provide for the approval of a drug on the basis of a surrogate endpoint. Even if a drug qualifies for one or more of these programs, the FDA may later decide that the drug no longer meets the conditions for qualification or that the time period for FDA review or approval will be shortened. Generally, drugs that are eligible for these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs and those that offer meaningful benefits over existing treatments. For example, Fast Track is a process designed to facilitate the development and expedite the review of drugs to treat serious or life-threatening diseases or conditions and fill unmet medical needs. Priority review is designed to give drugs that offer major advances in treatment or provide a treatment where no adequate therapy exists an initial review within six months as compared to a standard review time of ten months.

Although Fast Track and priority review do not affect the standards for approval, the FDA will attempt to facilitate early and frequent meetings with a sponsor of a Fast Track designated drug and expedite review of the application for a drug designated for priority review. Accelerated approval, which is described in Subpart H of 21 Code of Federal Regulations, or 21 CFR Part 314, provides for an earlier approval for a new drug that is intended to treat a serious or life-threatening disease or condition and that fills an unmet medical need based on a surrogate endpoint. A surrogate endpoint is a clinical measurement or other biomarker used as an indirect or substitute measurement to predict a clinically meaningful outcome. As a condition of approval, the FDA may require that a sponsor of a product candidate receiving accelerated approval perform post-marketing clinical trials.

A Breakthrough Therapy designation is intended to expedite the development and FDA review of drugs for serious or life-threatening conditions or where preliminary clinical evidence indicates that the drug may demonstrate

substantial improvement on a clinically significant endpoint(s) over available therapies. A request for Breakthrough Therapy designation should be submitted concurrently with, or as an amendment to an IND.

*Post-Approval Requirements*

Drugs manufactured or distributed pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including, among other things, requirements relating to recordkeeping, periodic reporting, product sampling and distribution, advertising and promotion and reporting of adverse experiences with the product. After approval, most changes to the approved product, such as adding new indications or other labeling claims are subject to prior FDA review and approval. There also are continuing, annual program user fee requirements, as well as new application fees for supplemental applications with clinical data.

The FDA may impose a number of post-approval requirements as a condition of approval of an NDA. For example, the FDA may require post-marketing testing, including clinical trials in pediatric patients or other Phase 4 trials, and surveillance to further assess and monitor the product's safety and effectiveness after commercialization.

In addition, drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and state agencies, and are subject to periodic unannounced inspections by the FDA and these state agencies for compliance with cGMP requirements. Changes to the manufacturing process are strictly regulated and often require prior FDA approval before being implemented. FDA regulations also require investigation and correction of any deviations from cGMP and impose reporting and documentation requirements upon the sponsor and any third-party manufacturers that the sponsor may decide to use. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain cGMP compliance.

Once an approval is granted, the FDA may withdraw the approval if compliance with regulatory requirements and standards is not maintained or if problems occur after the product reaches the market.

Later discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, or with manufacturing processes, or failure to comply with regulatory requirements, may result in mandatory revisions to the approved labeling to add new safety information; imposition of post-marketing studies or clinical trials to assess new safety risks; or imposition of distribution or other restrictions under a REMS program. Other potential consequences include, among other things:

- restrictions on the marketing or manufacturing of the product, complete withdrawal of the product from the market or product recalls;
- fines, warning letters or holds on post-approval clinical trials;
- refusal of the FDA to approve pending NDAs or supplements to approved NDAs, or suspension or revocation of product license approvals;
- product seizure or detention, or refusal to permit the import or export of products; or
- injunctions or the imposition of civil or criminal penalties.

The FDA strictly regulates marketing, labeling, advertising and promotion of products that are placed on the market. Although physicians, in the practice of medicine, may prescribe approved drugs for unapproved indications, pharmaceutical companies generally are required to promote their drug products only for the approved indications and in accordance with the provisions of the approved label. However, companies may share truthful and not misleading information that is otherwise consistent with a product's approved labeling. The FDA and other agencies actively enforce the laws and regulations prohibiting the promotion of off-label uses, and a company that is found to have improperly promoted off-label uses may be subject to significant liability.

In addition, the distribution of prescription pharmaceutical products is subject to the Prescription Drug Marketing Act, or PDMA, which regulates the distribution of drugs and drug samples at the federal level, and sets minimum standards for the registration and regulation of drug distributors by the states. Both the PDMA and state laws limit the distribution of prescription pharmaceutical product samples and impose requirements to ensure accountability in distribution.

#### ***DEA Regulation***

Both oliceridine and TRV734, if approved, will be regulated as a “controlled substance” as defined in the Controlled Substances Act of 1970, or CSA, which establishes registration, security, recordkeeping, reporting, storage, distribution and other requirements administered by the DEA. The DEA is concerned with the control of handlers of controlled substances, and with the equipment and raw materials used in their manufacture and packaging, in order to prevent loss and diversion into illicit channels of commerce.

The DEA regulates controlled substances as Schedule I, II, III, IV or V substances. Schedule I substances by definition have no established medicinal use, and may not be marketed or sold in the United States. A pharmaceutical product may be listed as Schedule II, III, IV or V, with Schedule II substances considered to present the highest risk of abuse and Schedule V substances the lowest relative risk of abuse among such substances. Oliceridine and TRV734, if approved, are expected to be listed by the DEA as Schedule II controlled substances under the CSA. Consequently, their manufacture, shipment, storage, sale and use will be subject to a high degree of regulation.

Annual registration is required for any facility that manufactures, distributes, dispenses, imports, exports, or conducts research with any controlled substance. The registration is specific to the particular location, activity and controlled substance schedule. For example, separate registrations are needed for import and manufacturing, and each registration will specify which schedules of controlled substances are authorized.

The DEA typically inspects a facility to review its security measures prior to issuing a registration. Security requirements vary by controlled substance schedule, with the most stringent requirements applying to Schedule I and Schedule II substances. Required security measures include background checks on employees and physical control of inventory through measures such as cages, surveillance cameras and inventory reconciliations. Records must be maintained for the handling of all controlled substances, and periodic reports made to the DEA, for example distribution reports for Schedule I and II controlled substances, Schedule III substances that are narcotics, and other designated substances. Reports must also be made for thefts or losses of any controlled substance, and to obtain authorization to destroy any controlled substance. In addition, special authorization and notification requirements apply to imports and exports.

In addition, a DEA quota system controls and limits the availability and production of controlled substances in Schedule I or II. Distributions of any Schedule I or II controlled substance must also be accompanied by special order forms, with copies provided to the DEA. The DEA may adjust aggregate production quotas and individual production and procurement quotas from time to time during the year, although the DEA has substantial discretion in whether or not to make such adjustments. Our, or our contract manufacturers', quota of an active ingredient may not be sufficient to meet commercial demand or complete clinical trials. Any delay or refusal by the DEA in establishing our, or our contract manufacturers', quota for controlled substances could delay or stop our clinical trials or product launches.

To meet its responsibilities, the DEA conducts periodic inspections of registered establishments that handle controlled substances. Individual states also regulate controlled substances, and we and our contract manufacturers will be subject to state regulation with respect to the distribution of these products.

#### ***Federal and State Fraud and Abuse and Data Privacy and Security Laws and Regulations***

In addition to FDA restrictions on marketing of pharmaceutical products, federal and state fraud and abuse laws restrict business practices in the biopharmaceutical industry. These laws include anti-kickback and false claims laws and regulations, as well as transparency and data privacy and security laws and regulations.

The federal Anti-Kickback Statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of any item or service reimbursable under Medicare, Medicaid or other federal healthcare programs. The term “remuneration” has been broadly interpreted to include anything of value. The federal Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers, formulary managers, and others on the other hand. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly and require strict compliance to offer protection. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. Several courts have interpreted the statute’s intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated.

The reach of the federal Anti-Kickback Statute was also broadened by the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, or collectively PPACA, which, among other things, amended the intent requirement of the federal Anti-Kickback Statute such that a person or entity no longer needs to have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, PPACA provides that the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal False Claims Act or the civil monetary penalties statute, which imposes penalties against any person who is determined to have presented or caused to be presented a claim to a federal health 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. PPACA also created new federal requirements for reporting, by applicable manufacturers of covered drugs of payments and other transfers of value to, as well as ownership interests held by, physicians and teaching hospitals.

The federal criminal and civil false claims laws and civil monetary penalties laws, including the federal False Claims Act, prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim to the federal government. A claim includes “any request or demand” for money or property presented to the U.S. government. Several pharmaceutical and other healthcare companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of the companies’ marketing of products for unapproved, and thus non-reimbursable, uses.

The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created additional federal civil and criminal statutes that prohibit knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private third-party payors and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. Also, many states have similar fraud and abuse statutes or regulations that apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, including the final omnibus rule published on January 25, 2013, imposed specified requirements relating to the privacy, security and transmission of individually identifiable health information on “covered entities,” including certain healthcare providers, health plans, and healthcare clearinghouses. Among other things, HITECH makes HIPAA’s privacy and security standards directly applicable to “business associates,” defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney’s fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain

circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

Because of the breadth of these laws and the narrowness of available statutory exceptions and regulatory safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws. If our operations are found to be in violation of any of the federal or state laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including significant criminal, civil, and administrative penalties, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, integrity oversight and reporting obligations to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. To the extent that any of our products are sold in a foreign country, we may be subject to similar foreign laws and regulations, which may include, for instance, applicable post-marketing requirements, including safety surveillance, anti-fraud and abuse laws, implementation of corporate compliance programs and reporting of payments or transfers of value to healthcare professionals, and data privacy requirements such as the General Data Protection Regulation (EU) 2016/679.

### ***Coverage and Reimbursement***

The commercial success of our product candidates and our ability to commercialize any approved product candidates successfully will depend in part on the extent to which governmental payor programs at the federal and state levels, including Medicare and Medicaid, private health insurers and other third-party payors provide coverage for and establish adequate reimbursement levels for our product candidates. Government health administration authorities, private health insurers and other organizations generally decide which drugs they will pay for and establish reimbursement levels for healthcare. In particular, in the United States, private health insurers and other third-party payors often provide reimbursement for products and services based on the level at which the government provides reimbursement through the Medicare or Medicaid programs for such treatments. In the United States, the European Union and other potentially significant markets for our product candidates, government authorities and third-party payors are increasingly attempting to limit or regulate the price of medical products and services, particularly for new and innovative products and therapies, which often has resulted in average selling prices lower than they would otherwise be. Further, the increased emphasis on managed healthcare in the United States and on country and regional pricing and reimbursement controls in the European Union will put additional pressure on product pricing, reimbursement and usage, which may adversely affect our future product sales and results of operations. These pressures can arise from rules and practices of managed care groups, judicial decisions and governmental laws and regulations related to Medicare, Medicaid and healthcare reform, pharmaceutical coverage and reimbursement policies and pricing in general.

Third-party payors are increasingly imposing additional requirements and restrictions on coverage and limiting reimbursement levels for medical products. For example, in the United States, federal and state governments reimburse covered prescription drugs at varying rates generally below average wholesale price. These restrictions and limitations influence the purchase of healthcare services and products. Third-party payors may limit coverage to specific drug products on an approved list, or formulary, which might not include all of the FDA-approved drug products for a particular indication. Third-party payors are increasingly challenging the price and examining the medical necessity and cost-effectiveness of medical products and services, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the medical necessity and cost-effectiveness of our products, in addition to the costs required to obtain FDA approvals. Our product candidates may not be considered medically necessary or cost-effective. A payor's decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in drug development. In addition, for hospital products, a private health insurer or Medicare will typically reimburse a fixed fee for certain procedures, including in-patient surgeries. Pharmaceutical products such as oliceridine, if approved, that may be used in connection with the surgery generally will not be separately reimbursed and, therefore, a hospital would have to assess the cost of oliceridine, if approved, relative to its benefits. Current or future efforts to limit the level of reimbursement for in-patient hospital procedures could cause a hospital to decide not to use oliceridine, if approved by the FDA. Legislative proposals to reform healthcare or reduce costs under government insurance programs may result in lower reimbursement for our



products and product candidates or exclusion of our products and product candidates from coverage. The cost containment measures that healthcare payors and providers are instituting and any healthcare reform could significantly reduce our revenue from the sale of any approved product candidates. We cannot provide any assurances that we will be able to obtain and maintain third-party coverage or adequate reimbursement for our product candidates in whole or in part.

***Impact of Healthcare Reform on Coverage, Reimbursement and Pricing***

The United States and some foreign jurisdictions are considering enacting or have enacted a number of additional legislative and regulatory proposals to change the healthcare system in ways that could affect our ability to sell our products profitably. Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality and expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. For example, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or the MMA, imposed new requirements for the distribution and pricing of prescription drugs for Medicare beneficiaries. Under Part D, Medicare beneficiaries may enroll in prescription drug plans offered by private entities that provide coverage of outpatient prescription drugs. Part D plans include both standalone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans. Unlike Medicare Part A and B, Part D coverage is not standardized. Part D prescription drug plan sponsors are not required to pay for all covered Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. However, Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, though not necessarily all the drugs in each category or class. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Government payment for some of the costs of prescription drugs may increase demand for any products for which we receive marketing approval. However, any negotiated prices for our future products covered by a Part D prescription drug plan will likely be lower than the prices we might otherwise obtain. Moreover, while the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment that results from Medicare Part D may result in a similar reduction in payments from non-governmental payors.

The American Recovery and Reinvestment Act of 2009 provides funding for the federal government to compare the effectiveness of different treatments for the same illness. A plan for the research will be developed by the Department of Health and Human Services, or HHS, the Agency for Healthcare Research and Quality and the National Institutes of Health, and periodic reports on the status of the research and related expenditures will be made to Congress. Although the results of the comparative effectiveness studies are not intended to mandate coverage policies for public or private payors, it is not clear what effect, if any, the research will have on the sales of any product, if any such product or the condition that it is intended to treat is the subject of a study. It is also possible that comparative effectiveness research demonstrating benefits in a competitor's product could adversely affect the sales of our product candidates. If third-party payors do not consider our product candidates to be cost-effective compared to other available therapies, they may not cover our product candidates, once approved, as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

PPACA became law in March 2010 and substantially changes the way healthcare is financed by both governmental and private insurers. Among other cost containment measures, the PPACA established an annual, nondeductible fee on any entity that manufactures or imports specified branded prescription drugs and biologic agents; a new Medicare Part D coverage gap discount program; and a new formula that increased the rebates a manufacturer must pay under the Medicaid Drug Rebate Program. In the years since its enactment, there have been, and continue to be, significant developments in, and continued judicial, executive branch, and legislative activity around, attempts to repeal or repeal and replace the PPACA. On December 14, 2018, a Texas U.S. District Court Judge ruled that the PPACA is unconstitutional in its entirety because the "individual mandate," the tax-based shared responsibility payment on certain individuals who fail to maintain qualifying health coverage for all or part of a year, was repealed by Congress as part of the Tax Cuts and Jobs Act of 2017. While the Texas U.S. District Court Judge, as well as the current Presidential administration and the Centers for Medicare & Medicaid Services, or CMS, have stated that the ruling will have no immediate effect pending appeal of the decision, it is unclear how this decision, subsequent appeals, and other efforts to



repeal and replace the PPACA will impact the PPACA. In the future, there may continue to be additional proposals relating to the reform of the U.S. healthcare system, some of which could further limit the prices we are able to charge for our product candidates, once approved, or the amounts of reimbursement available for our product candidates once they are approved.

In addition, other legislative changes have been proposed and adopted since PPACA was enacted. In August 2011, the Budget Control Act of 2011, as amended, was signed into law. Among other things, this law created the Joint Select Committee on Deficit Reduction to propose spending reductions to Congress. The Joint Select Committee on Deficit Reduction did not achieve its targeted deficit reduction of at least \$1.2 trillion for the years 2013 through 2021, triggering the legislation's automatic reductions to several government programs. These reductions include aggregate reductions to Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013, and, due to subsequent legislative amendments, will remain in effect through 2027 unless additional Congressional action is taken. In January 2013, the American Taxpayer Relief Act of 2012 became law, which, among other things, further reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

Further, there has been heightened governmental scrutiny in the United States of pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, the Trump administration released a "Blueprint" to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products and reduce the out of pocket costs of drug products paid by consumers. For example, in September 2018, CMS announced that it will allow Medicare Advantage Plans the option to use step therapy for Part B drugs beginning January 1, 2019. On January 31, 2019, the HHS Office of Inspector General proposed modifications to the federal Anti-Kickback Statute discount safe harbor for the purpose of reducing the cost of drug products to consumers which, among other things, if finalized, will affect discounts paid by manufacturers to Medicare Part D plans, Medicaid managed care organizations and pharmacy benefit managers working with these organizations. While some of these and other proposed measures may require additional authorization to become effective, Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. These and other healthcare reform initiatives may result in additional reductions in Medicare and other healthcare funding. We cannot anticipate what impact these or other future healthcare reform initiatives will have on coverage and reimbursement of our products or our business more generally.

### ***Exclusivity and Approval of Competing Products***

#### ***Hatch-Waxman Patent Exclusivity***

In seeking approval for a drug through an NDA, applicants are required to list with the FDA each patent with claims that cover the applicant's product or a method of using the product. Upon approval of a drug, each of the patents listed in the application for the drug is then published in the FDA's Approved Drug Products with Therapeutic Equivalence Evaluations, commonly known as the Orange Book. Drugs listed in the Orange Book can, in turn, be cited by potential competitors in support of approval of an abbreviated new drug application, or ANDA, or 505(b)(2) NDA. Generally, an ANDA provides for marketing of a drug product that has the same active ingredients in the same strengths, dosage form and route of administration as the listed drug and has been shown to be bioequivalent through *in vitro* and/or *in vivo* testing or otherwise to the listed drug. ANDA applicants are not required to conduct or submit results of preclinical or clinical tests to prove the safety or effectiveness of their drug product, other than the requirement for bioequivalence testing. Drugs approved in this way are commonly referred to as "generic equivalents" to the listed drug, and can often be substituted by pharmacists under prescriptions written for the original listed drug. 505(b)(2) NDAs generally are submitted for changes to a previously approved drug product, such as a new dosage, dosage form, or indication.

The ANDA or 505(b)(2) NDA applicant is required to certify to the FDA concerning any patents listed for the approved product in the FDA's Orange Book, except for patents covering methods of use for which the ANDA applicant is not seeking approval. Specifically, the applicant must certify with respect to each patent that:

- the required patent information has not been filed;
- the listed patent has expired;
- the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or
- the listed patent is invalid, unenforceable or will not be infringed by the new product.

Generally, the ANDA or 505(b)(2) NDA cannot be approved until all listed patents have expired, except when the ANDA or 505(b)(2) NDA applicant challenges a patent of a listed drug. A certification that the proposed product will not infringe the already approved product's listed patents or that such patents are invalid or unenforceable is called a Paragraph IV certification. If the applicant does not challenge the listed patents or indicate that it is not seeking approval of a patented method of use, the ANDA or 505(b)(2) NDA application will not be approved until all the listed patents claiming the referenced product have expired.

If the ANDA or 505(b)(2) NDA applicant has provided a Paragraph IV certification to the FDA, the applicant must also send notice of the Paragraph IV certification to the NDA and patent holders once the application has been accepted for filing by the FDA. The NDA and patent holders may then initiate a patent infringement lawsuit in response to the notice of the Paragraph IV certification. The filing of a patent infringement lawsuit within 45 days after the receipt of notice of the Paragraph IV certification automatically prevents the FDA from approving the ANDA or 505(b)(2) NDA until the earlier of 30 months, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the ANDA applicant.

#### *Hatch-Waxman Non-Patent Exclusivity*

Market and data exclusivity provisions under the FDCA also can delay the submission or the approval of certain applications for competing products. The FDCA provides a five-year period of non-patent data exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the activity of the drug substance. During the exclusivity period, the FDA may not accept for review an ANDA or a 505(b)(2) NDA submitted by another company that contains the previously approved active moiety. However, an ANDA or 505(b)(2) NDA may be submitted after four years if it contains a certification of patent invalidity or noninfringement. The FDCA also provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA, or supplement to an existing NDA or 505(b)(2) NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant, are deemed by the FDA to be essential to the approval of the application or supplement. Three-year exclusivity may be awarded for changes to a previously approved drug product, such as new indications, dosages, strengths or dosage forms of an existing drug. This three-year exclusivity covers only the conditions of use associated with the new clinical investigations and, as a general matter, does not prohibit the FDA from approving ANDAs or 505(b)(2) NDAs for generic versions of the original, unmodified drug product. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA; however, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the preclinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness.

#### *Pediatric Exclusivity*

Pediatric exclusivity is another type of non-patent marketing exclusivity in the United States and, if granted, provides for the attachment of an additional six months of marketing protection to the term of any existing regulatory exclusivity, including the non-patent exclusivity periods described above. This six-month exclusivity may be granted if an NDA sponsor submits pediatric data that fairly respond to a written request from the FDA for such data. The data do

not need to show the product to be effective in the pediatric population studied; rather, if the clinical trial is deemed to fairly respond to the FDA's request, the additional protection is granted. If reports of requested pediatric studies are submitted to and accepted by the FDA within the statutory time limits, whatever statutory or regulatory periods of exclusivity or Orange Book listed patent protection cover the drug are extended by six months. This is not a patent term extension, but it effectively extends the regulatory period during which the FDA cannot approve an ANDA or 505(b)(2) application owing to regulatory exclusivity or listed patents. When any of our products is approved, we anticipate seeking pediatric exclusivity when it is appropriate.

#### *Foreign Regulation*

To market any product outside of the United States, we would need to comply with numerous and varying regulatory requirements of other countries regarding safety and efficacy and governing, among other things, clinical trials, marketing authorization, commercial sales and distribution of our products. For example, in the European Union, we must obtain authorization of a clinical trial application, or CTA, in each member state in which we intend to conduct a clinical trial. Whether or not we obtain FDA approval for a product, we would need to obtain the necessary approvals by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country and can involve additional product testing and additional administrative review periods. The time required to obtain approval in other countries might differ from and be longer than that required to obtain FDA approval. Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others.

#### **Employees**

As of December 31, 2018, we had 29 employees, all of whom are located in the United States. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We consider our relationship with our employees to be good.

#### **Corporate Information**

We were incorporated under the laws of the State of Delaware in November 2007. Our principal executive offices are located at 955 Chesterbrook Boulevard, Suite 110, Chesterbrook, PA 19087. Our telephone number is (610) 354-8840 and our internet address is [www.trevena.com](http://www.trevena.com).

#### **Available Information**

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other filings with the United States Securities and Exchange Commission, or the SEC, and all amendments to these filings, are available, free of charge, on our website at [www.trevena.com](http://www.trevena.com) as soon as reasonably practicable following our filing of any of these reports with the SEC. You can also obtain copies free of charge by contacting our Investor Relations department at our office address listed above. The SEC maintains an Internet site that contains reports, proxy, and information statements, and other information regarding issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). The information posted on or accessible through these websites are not incorporated into this filing.

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year (a) following the fifth anniversary of the completion of our initial public offering in February 2014, (b) in which we have total annual gross revenue of at least \$1.0 billion, or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeded \$700.0 million as of the prior June 30<sup>th</sup>, and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period. We refer to the Jumpstart Our Business Startups Act of 2012 in this Annual Report on Form 10-K as the "JOBS Act," and references to "emerging growth company" have the meaning associated with it in the JOBS Act.

**EXECUTIVE OFFICERS OF THE REGISTRANT**

| <b>Name</b>            | <b>Age</b> | <b>Position</b>                                  |
|------------------------|------------|--|
| Carrie L. Bourdow      | 56         | President, Chief Executive Officer and Director  |
| Mark A Demitrack, M.D. | 61         | Senior Vice President and Chief Medical Officer  |
| Robert T. Yoder        | 53         | Senior Vice President and Chief Business Officer |
| John P. Hamill         | 55         | Vice President, Finance                          |

**Carrie L. Bourdow**

Ms. Bourdow was appointed President, Chief Executive Officer, and member of our Board of Directors in October 2018. She joined our company as our Senior Vice President and Chief Commercial Officer in May 2015 and was appointed Executive Vice President and Chief Operating Officer in January 2018. From May 2013 to May 2015, she was Vice President of Marketing at Cubist Pharmaceuticals, Inc. Prior to joining Cubist in 2013, Ms. Bourdow served for more than 20 years at Merck & Co., Inc., where she held positions of increasing responsibility across several therapeutic areas including anti-infectives, acute heart failure, and pain. Ms. Bourdow has served as a director of Nabriva Therapeutics PLC since June 2017. Ms. Bourdow earned her B.A. from Hendrix College and her M.B.A. from Southern Illinois University.

**Mark A. Demitrack, M.D.**

Dr. Demitrack, a board-certified psychiatrist, joined our company as Senior Vice President and Chief Medical Officer in May 2018. From May 2017 to May 2018, he served as Vice President of Clinical Strategy at Roivant Sciences, Ltd. From July 2003 to May 2017, he served as Vice President and Chief Medical Officer of Neuronetics, Inc., where he led the clinical development of the NeuroStar TMS Therapy System. Prior to this, Dr. Demitrack was Assistant Vice President for Global Medical Affairs in Neuroscience at Wyeth Pharmaceuticals, Inc. where he was responsible for post-marketing clinical development of the Effexor XR brand. Dr. Demitrack also served as Medical Director of the New Antidepressant Team at Lilly Research Laboratories where he led the registration clinical development and the NDA submission program for the antidepressant, duloxetine (Cymbalta). Prior to his industry career, Dr. Demitrack was a faculty member of the Department of Psychiatry at the University of Michigan Medical School, where he directed the Michigan Eating Disorders Program and received federal grant funding in clinical research studying the neuroendocrine pathophysiology of eating disorders and the idiopathic conditions chronic fatigue syndrome and fibromyalgia. Dr. Demitrack received a B.A. in Physics from Columbia University, and his M.D. from the Robert Wood Johnson Medical School in New Jersey. He completed his psychiatry residency training at the University of California-San Francisco and completed a research fellowship in clinical neuroendocrinology at the National Institute of Mental Health. Dr. Demitrack is a Life Fellow of the American Psychiatric Association and a Member of the American College of Neuropsychopharmacology.

**Robert T. Yoder**

Mr. Yoder was appointed Senior Vice President and Chief Business Officer in December 2018. He joined Trevena as Vice President of Commercial Operations and Sales in June 2018. Prior to this, he served as Senior Vice President and Head of Global Commercial Operations, Alliance Management and IT at Orexigen Therapeutics, Inc., a biopharmaceutical company, from March 2015 through June 2018. While at Orexigen, Mr. Yoder built the commercial infrastructure with a focus on innovative, efficient, and effective business process and architecture. Additionally, he led external business development efforts that delivered 11 partnership deals spanning 67 countries. Prior to joining Orexigen, Mr. Yoder spent 28 years at Merck & Co., where he held various roles of increasing responsibility across global business operations and commercial functions. In several of these roles, he was responsible for oversight and execution of large-scale initiatives including integration following acquisitions and led a range of organizational design and corporate change initiatives. Mr. Yoder received his B.S. degree in biology from Dickinson College and earned an M.B.A. from Emory University.

## **John P. Hamill**

John P. Hamill has served as our Vice President, Finance since August 2018. From June 2018 until August 2018, Mr. Hamill served in a consulting role as our interim CFO. From June 2017 through April 2018, Mr. Hamill maintained a consulting practice offering CFO services to biopharmaceutical companies. From April 2016 through May 2017, Mr. Hamill was Chief Executive and Chief Financial Officer for NephroGenex, Inc. and was Chief Financial Officer from January 2014 through March 2016. NephroGenex filed for Chapter 11 bankruptcy protection on April, 30, 2016 while Mr. Hamill was NephroGenex' Chief Executive and Chief Financial Officer. NephroGenex emerged from bankruptcy on May 24, 2017, after confirmation of its plan of reorganization. From June 2013 until January 2014, Mr. Hamill served as Co-President and Chief Financial Officer of Savient Pharmaceuticals, Inc. and as Senior Vice President and Chief Financial Officer of Savient since September 2012. Savient filed for Chapter 11 bankruptcy protection on October 14, 2013, while Mr. Hamill was its Co-President and Chief Financial Officer and, shortly thereafter, Savient sold substantially all of its assets through a bankruptcy sale process. Mr. Hamill earned his B.S. with a dual major in Accounting/Business and Computer Science from DeSales University (formerly Allentown College of St. Francis de Sales). Mr. Hamill is a Certified Public Accountant and is a member of the Pennsylvania Institute of Certified Public Accountants and the American Institute of Certified Public Accountants.

## **ITEM 1A. RISK FACTORS**

*Our business is subject to numerous risks. You should carefully consider the following risks and all other information contained in this Annual Report on Form 10-K, as well as general economic and business risks, together with any other documents we file with the SEC. If any of the following events actually occur or risks actually materialize, it could have a material adverse effect on our business, operating results and financial condition and cause the trading price of our common stock to decline.*

### **Risks Related to Our Financial Position and Capital Needs**

*We have incurred significant losses since our inception. We expect to incur losses over the next several years and may never achieve or maintain profitability.*

Since inception, we have incurred significant operating losses. Our net loss was \$30.8 million, \$71.9 million, and \$103.0 million for the years ended December 31, 2018, 2017, and 2016, respectively. As of December 31, 2018, we had an accumulated deficit of \$388.3 million. To date, we have financed our operations primarily through private placements and public offerings of our equity securities and debt borrowings. We have devoted substantially all of our financial resources and efforts to research and development, including nonclinical studies and clinical trials. We still have not completed development of any of our product candidates. We expect to continue to incur significant expenses and operating losses over the next several years. Our net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase as we:

- conduct any additional clinical trials with oliceridine to generate data needed to satisfy the FDA's CRL and/or conduct clinical trials for TRV250 or our other product candidates;
- seek to identify additional product candidates;
- conduct clinical trials and seek regulatory approvals for any product candidates that successfully complete clinical trials;
- establish sales, marketing and distribution capabilities and scale up external manufacturing capabilities to commercialize oliceridine, if approved, and any other products that we choose not to license to a third party and for which we may obtain regulatory approval;
- maintain, expand, and protect our intellectual property portfolio;

- hire additional sales, marketing, medical, clinical and scientific personnel;
- defend the Company in the existing class action and stockholder derived litigation; and
- add operational, financial, and management information systems and personnel, including personnel to support our product development and planned future commercialization efforts.

To become and remain profitable, we must succeed in raising substantial additional funding for the Company and developing and eventually commercializing products that generate significant revenue. This will require us to be successful in a range of challenging activities, including completing nonclinical testing and clinical trials of our product candidates, identifying additional product candidates, potentially entering into collaboration and license agreements, obtaining regulatory approval for product candidates, and manufacturing, marketing, and selling any products for which we may obtain regulatory approval. We are only in the preliminary stages of some of these activities and have not begun others. We may never succeed in these activities and, even if we do, may never achieve profitability.

Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to accurately predict the timing or amount of increased expenses, whether we will have sufficient funding available to or when, or if, we will be able to achieve profitability. If we are required by the FDA or foreign regulatory authorities to perform studies in addition to those currently anticipated as part of the CRL, or if there are any delays in completing our clinical trials, making necessary regulatory filings, or the development of any of our product candidates, our expenses could increase. Absent substantial additional fundraising, the level and extent of our clinical and, if approved, commercial efforts may lead to a delay in our ability to achieve profitability.

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

***We will need substantial additional funding, which may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed, we could be forced to delay, reduce or eliminate our product development programs or commercialization efforts.***

Over the next several years, we expect to incur significant expenses in connection with our current operations and the servicing and repayment of our outstanding debt obligations. Accordingly, we will need to obtain substantial additional funding for these efforts and for the continued repayment of our outstanding term loans through the March 2020 maturity date; we would seek to obtain this funding through the sale of equity, the incurrence of debt, and/or other sources, including potential collaborations. Ultimately, we may be unable to raise additional funds or enter into such other arrangements when needed, on favorable terms, or at all. If we fail to raise additional capital or enter into such arrangements as, and when, needed, we could be forced to:

- significantly delay, scale back, or discontinue our operations, development programs, and/or any future commercialization efforts;
- relinquish, or license on unfavorable terms, our rights to technologies or product candidates that we otherwise would seek to develop or commercialize ourselves;
- seek collaborators for one or more of our product candidates at an earlier stage than otherwise would be desirable or on terms that are less favorable than might otherwise be available; or
- cease operations altogether.

We estimate that our existing cash and cash equivalents and marketable securities as of December 31, 2018, together with interest thereon, and after giving effect to the restructuring described herein, to be sufficient to fund our operating expenses and capital expenditure requirements into the third quarter of 2020. If we are unable to raise additional funds prior to this date, or we do not take steps to reduce our expenses, our lenders may conclude that there has been a material adverse change in our financial condition, or a material impairment in the value of the loan collateral or in the prospect of repayment of our obligations to the lenders. In this case, the lenders have the right to foreclose on the available collateral, including our cash and cash equivalents and marketable securities.

The extent of our future capital requirements will depend on many factors, including:

- the scope, progress, results and costs of nonclinical development, laboratory testing, and clinical trials for our product candidates, including oliceridine and TRV250;
- the number and development requirements of other product candidates that we pursue;
- the costs, timing, and outcome of regulatory review of any product candidates, both in the United States and in territories outside the United States;
- the costs and timing of future commercialization activities, including product manufacturing, marketing, sales, and distribution, for any of our product candidates for which we receive marketing approval;
- the revenue, if any, received from commercial sales of our product candidates for which we receive marketing approval;
- our ability to enter into collaborative agreements for the development and commercialization of our product candidates, including oliceridine;
- any product liability or other lawsuits related to our products or operations;
- the expenses needed to attract and retain skilled personnel; and
- the costs involved in preparing, filing, and prosecuting patent applications, maintaining and enforcing our intellectual property rights, and defending any intellectual property-related claims, both in the United States and in territories outside the United States.

Identifying potential product candidates and conducting nonclinical testing and clinical trials is a time-consuming, expensive and uncertain process that takes years to complete. Despite these efforts, we may never generate the necessary data or results required to obtain regulatory approval and achieve product sales. In addition, our product candidates, if approved, may not achieve commercial success or meet our expectations. Our commercial revenue, if any, will be derived from sales of products that we do not expect to be commercially available for the foreseeable future, if at all. Accordingly, we will need to continue to rely on additional financing to achieve our business objectives. Adequate additional financing may not be available to us on acceptable terms, or at all. In addition, we may seek additional capital due to favorable market conditions or strategic considerations, even if we believe we have sufficient funds for our current or future operating plans.

***Raising additional capital may cause dilution to our stockholders, restrict our operations, or require us to relinquish rights to our technologies or product candidates.***

Until such time, if ever, as we can generate substantial product revenue and positive cash flows from operations, we expect to finance our cash needs through a combination of equity offerings, debt financings, and license and development agreements in connection with any collaborations. We do not have any committed external source of funds. To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, either at the time of such capital raise or thereafter, and the terms of these securities

may include liquidation or other preferences that adversely affect your rights as a common stockholder. Preferred equity financing and additional debt 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, or that include covenants requiring us to meet certain obligations, such as minimum cash requirements or net revenue targets.

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 our product development or future commercialization efforts or grant rights to develop and market product candidates that we would otherwise prefer to develop and market ourselves.

***Our limited operating history may make it difficult for you to evaluate the success of our business to date and to assess our future viability.***

We commenced active operations in late 2007, and our activities to date have been limited to, among other things, organizing and staffing our company, business planning, raising capital, developing our product platform, identifying potential product candidates, undertaking nonclinical studies, and conducting clinical trials. With the exception of oliceridine, our product candidates are in early stages of development. We have not yet demonstrated our ability to obtain regulatory approvals, manufacture a product at commercial scale or arrange for a third party to do so on our behalf, or conduct sales, marketing, and distribution activities necessary for successful product commercialization. Consequently, any predictions you make about our future success or viability may not be as reliable as they could be if we had a longer and more established operating history.

In addition, as a young business, we may encounter unforeseen expenses, difficulties, complications, delays, and other known and unknown factors. We will need to significantly expand our capabilities to support future activities related to the approval, manufacture, and commercialization of our product candidates. We may be unsuccessful in adding such capabilities.

We expect our financial condition and operating results to continue to fluctuate significantly 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 or annual periods as indications of future operating performance.

***If we fail to satisfy all applicable Nasdaq continued listing requirements, including the \$1.00 minimum closing bid price requirement, our common stock may be delisted from Nasdaq, which could have an adverse impact on the liquidity and market price of our common stock.***

Our common stock is currently listed on the Nasdaq Global Select Market, or Nasdaq, which has qualitative and quantitative continued listing requirements, including corporate governance requirements, public float requirements and the \$1.00 minimum closing bid price requirement. On December 18, 2018, we received a letter from the Listing Qualifications Department of Nasdaq indicating that, for the 30 consecutive business days, the bid price for our common stock had closed below the minimum \$1.00 per share required for continued listing on Nasdaq under Nasdaq Listing Rule 5450(a)(1). While we regained compliance with this rule, in the future, if our common stock trades at closing bid prices below \$1.00 for 30 consecutive business days, or if we are unable to satisfy any of the other continued listing requirement, Nasdaq may take steps to delist our common stock. A delisting of our common stock could adversely affect the market liquidity of our common stock, decrease the market price of our common stock and adversely affect our ability to obtain financing for the continuation of our operations.



## **Risks Related to Regulatory Approval of Our Product Candidates**

***If we are not able to obtain, or if there are delays in obtaining, required regulatory approvals, we will not be able to timely commercialize, or to commercialize at all, our product candidates, and our ability to generate revenue will be materially impaired.***

Our 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 by the European Medicines Agency and similar regulatory authorities outside the United States. Failure to obtain marketing approval for our product candidates will prevent us from commercializing these product candidates and will significantly limit our ability to generate revenue in the future. To date, we have not received approvals to market any of our product candidates from regulatory authorities in any jurisdiction, and in the United States have received a CRL related to the NDA for oliceridine, and we may never be successful in obtaining any such approvals. In March 2019, based on its review of data from the Company's Phase 3 studies of oliceridine, the FDA informed us that under the conditions studied, these data were not sufficient to support the continuation of FDA's previously granted Breakthrough Therapy designation.

We have only limited experience in filing and supporting the applications necessary to gain marketing approvals, and we have relied and expect to continue to rely on third parties to assist us in this process. Securing marketing approval requires the submission of extensive nonclinical and clinical data and supporting information to regulatory authorities for each therapeutic indication to establish the product candidate's safety and efficacy. Securing marketing approval also requires the submission of information about the product manufacturing process to, and inspection of manufacturing facilities by, the regulatory authorities. Our 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 our obtaining marketing approval or prevent or limit commercial use. If any of our product candidates receives marketing approval, the accompanying label may limit the approved use of our drug in this way, which could limit sales of the product. The process of obtaining marketing approvals, both in the United States and abroad, is expensive, may take many years if approval is obtained at all, and can vary substantially based upon a variety of factors, including the type, complexity, and novelty of the product candidates involved. Changes in marketing approval policies during the development period, changes in or the enactment of additional statutes or regulations, or changes in regulatory review for each submitted product application, may cause delays in the approval or rejection of an application.

***Our MOR targeted product candidates, including oliceridine, may require Risk Evaluation and Mitigation Strategies, which could delay the approval of these product candidates and increase the cost, burden and liability associated with the commercialization of these product candidates.***

Risk Evaluation and Mitigation Strategy, or REMS, are imposed by the FDA to assure safe use of the product candidates, either as a condition of product candidate approval or on the basis of new safety information. Our MOR product candidates and our other product candidates may require a REMS. The REMS may include medication guides for patients, special communication plans to healthcare professionals or elements to assure safe use such as restricted distribution methods, patient registries and/or other risk minimization tools. We cannot predict the specific REMS that may be required as part of the FDA's approval of our product candidates. Any of these limitations on approval or marketing could restrict the commercial promotion, distribution, prescription, or dispensing of our product candidates, if approved. Depending on the extent of the REMS requirements, these requirements may significantly increase our costs to commercialize these product candidates and could negatively affect sales. Furthermore, risks of our product candidates that are not adequately addressed through proposed REMS for such product candidates also may prevent or delay their approval for commercialization.

***If approved by the FDA, our MOR targeted product candidates, including oliceridine, are likely to be classified as controlled substances, and the making, use, sale, importation, exportation and distribution of controlled substances are subject to regulation by state, federal and foreign law enforcement and other regulatory agencies.***

Our MOR targeted product candidates, including oliceridine, are likely to be classified as controlled substances, which are subject to state, federal and foreign laws and regulations regarding their manufacture, use, sale, importation, exportation and distribution. Controlled substances are regulated under the Federal Controlled Substances Act of 1970, or CSA, and regulations of the DEA.

The DEA regulates controlled substances as Schedule I, II, III, IV or V substances. Schedule I substances by definition have no established medicinal use and may not be marketed or sold in the United States. A pharmaceutical product may be listed as Schedule II, III, IV or V, with Schedule II substances considered to present the highest risk of abuse and Schedule V substances the lowest relative risk of abuse among such substances. If approved by the FDA, we expect oliceridine to be regulated by the DEA as a Schedule II controlled substance.

Various states also independently regulate controlled substances. Though state-controlled substances laws often mirror federal law, because the states are separate jurisdictions, they may separately schedule drugs as well. While some states automatically schedule a drug when the DEA does so, in other states there must be rulemaking or a legislative action. State scheduling may delay commercial sale of any controlled substance drug product for which we obtain federal regulatory approval and adverse scheduling could impair the commercial attractiveness of such product. We or our collaborators must also obtain separate state registrations in order to be able to obtain, handle and distribute controlled substances for clinical trials or commercial sale, and failure to meet applicable regulatory requirements could lead to enforcement and sanctions from the states in addition to those from the DEA or otherwise arising under federal law.

For any of our product candidates classified as controlled substances, we and our suppliers, manufacturers, contractors, customers and distributors are required to obtain and maintain applicable registrations from state, federal and foreign law enforcement and regulatory agencies and comply with state, federal and foreign laws and regulations regarding the manufacture, use, sale, importation, exportation and distribution of controlled substances. There is a risk that DEA regulations may limit the supply of the compounds used in clinical trials for our product candidates, and, in the future, the ability to produce and distribute our products in the volume needed to both meet commercial demand and build inventory to mitigate possible supply disruptions.

Regulations associated with controlled substances govern manufacturing, labeling, packaging, testing, dispensing, production and procurement quotas, recordkeeping, reporting, handling, shipment and disposal. These regulations increase the personnel needs and the expense associated with development and commercialization of product candidates including controlled substances. The DEA, and some states, conduct periodic inspections of registered establishments that handle controlled substances. Failure to obtain and maintain required registrations or comply with any applicable regulations could delay or preclude us from developing and commercializing our product candidates containing controlled substances and subject us to enforcement action. The DEA may seek civil penalties, refuse to renew necessary registrations or initiate proceedings to revoke those registrations. In some circumstances, violations could lead to criminal proceedings. Because of their restrictive nature, these regulations could limit commercialization of any of our product candidates that are classified as controlled substances.

***Failure to obtain marketing approval in international jurisdictions would prevent our product candidates from being marketed abroad.***

To market and sell our products in the European Union, Asia, and many other jurisdictions, we, our current collaborators in South Korea and China for oliceridine, or any future third-party collaborators must obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the United States generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the United States, it is required that the product be approved for reimbursement before the product can be approved for sale in that country. We or our

collaborators may not obtain approvals from regulatory authorities outside the United States on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the United States does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. However, the failure to obtain approval in one jurisdiction, including if we are unable to obtain approval of oliceridine in the United States, may compromise our ability to obtain approval elsewhere. We may not be able to file for marketing approvals and may not receive necessary approvals to commercialize our products in any market.

***Any product candidate for which we obtain marketing approval could be subject to post-marketing restrictions or withdrawal from the market and we may be subject to penalties if we fail to comply with regulatory requirements or if we experience unanticipated problems with our products, when and if any of them are approved.***

Any product candidate for which we obtain marketing approval, along with the manufacturing processes, post-approval clinical data, labeling, advertising, and promotional activities for such product, will be subject to ongoing requirements of and review by the FDA and other regulatory authorities. These requirements include submissions of safety and other post-marketing information and reports, registration, and listing requirements, current good manufacturing practice, or 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 recordkeeping. Even if marketing approval of a product candidate is granted, the approval may be subject to limitations on the indicated uses for which the product may be marketed or to the conditions of approval, including the requirement to implement a REMS. If any of our product candidates receives marketing approval, the accompanying label may limit the approved use of our drug, which could limit sales of the product.

The FDA also may 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. However, companies may share truthful and not misleading information that is otherwise consistent with a product's FDA 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. Violations of the Federal Food, Drug, and Cosmetic Act relating to the promotion of prescription drugs may lead to investigations alleging violations of federal and state healthcare 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:

- the need to generate additional clinical data and provide information to the FDA to sufficiently address the items identified in the CRL for oliceridine to allow for the future approval of oliceridine;
- restrictions on such products, 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 or revenue;
- suspension or withdrawal of marketing approvals;
- refusal to permit the import or export of 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 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.

#### **Risks Related to the Discovery and Development of Our Product Candidates**

***Our research and development efforts have been focused on discovering and developing novel drugs based on biased ligands, and the approach we are taking to discover and develop drugs is not proven and may never lead to marketable products.***

The development of drugs based on biased ligands is an emerging field, and the scientific discoveries that form the basis for our historical efforts to discover and develop product candidates are relatively new. The scientific evidence to support the feasibility of developing differentiated product candidates based on these discoveries is both preliminary and limited. We believe that we were the first company to conduct a clinical trial of a product candidate based on the concept of biased ligands. Therefore, we do not know if our approach will be successful or will ultimately lead to the approval of any current or future product candidate.

***We are early in our development efforts and have only one product candidate, oliceridine, for which we have submitted an NDA to the FDA. If we are unable to successfully complete development and commercialization of our product candidates, either on our own or with a partner, or experience significant delays in doing so, our business will be materially harmed.***

We are early in our development efforts and have only one product candidate, oliceridine, for which we have completed Phase 3 development, submitted an NDA to the FDA and have received a CRL. To this point, we have invested substantially all of our efforts and financial resources in the identification and development of biased ligands. Our ability to generate product revenue, which we do not expect will occur for the foreseeable future, if ever, will depend heavily on the successful development and eventual commercialization of our product candidates. The success of our product candidates will depend on several factors, including the following:

- successful completion of nonclinical studies and clinical trials;
- receipt of marketing approvals from applicable regulatory authorities;
- obtaining, maintaining, and protecting our intellectual property portfolio, including patents and trade secrets, and regulatory exclusivity for our product candidates;
- making arrangements with third-party manufacturers for, or establishing, commercial manufacturing capabilities;

- launching commercial sales of the products, if and when approved, whether alone or in collaboration with others;
- acceptance of our products, if and when approved, by patients, the medical community, and third-party payors;
- effectively competing with other therapies;
- obtaining and maintaining healthcare coverage of our products and adequate reimbursement; and
- maintaining a continued acceptable safety profile of our products following approval.

If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize our product candidates, which would materially harm our business.

***We may not be successful in our efforts to expand our pipeline of product candidates.***

One element of our strategy has been to expand our pipeline of therapeutics based on biased ligands and advance these product candidates through clinical development for the treatment of a variety of indications. Until recently, we maintained an active discovery research effort. In October 2017, we made the decision to halt our early stage research, although we continue to assess the future development of a series of novel SIP modulators. Without internal discovery research capabilities, we will need to expand our pipeline through other means, including, for example, by in-licensing product candidates for further development. We may not be able to identify, acquire, and develop product candidates that are safe and effective. Even if we are successful in continuing to expand our pipeline, the potential product candidates that we identify or in-license may not be suitable for clinical development, including as a result of being shown to have harmful side effects or other characteristics that indicate that they are unlikely to receive marketing approval and achieve market acceptance. If we do not successfully develop and commercialize product candidates, we will not be able to obtain product revenue in future periods, which would make it unlikely that we would ever achieve profitability.

***Nonclinical and clinical drug development involves a lengthy and expensive process, with an uncertain outcome. We may incur additional costs or experience delays in completing, or ultimately be unable to complete, the development and commercialization of our product candidates.***

Clinical testing is expensive, can take many years to complete, and has a high risk of failure. It is impossible to predict when or if any of our product candidates will prove effective or safe in humans or will receive regulatory approval. Before obtaining marketing approval from regulatory authorities for the sale of any product candidate, we must complete nonclinical studies and then conduct extensive clinical trials to demonstrate the safety and efficacy of our product candidates in humans. A failure of one or more clinical trials can occur at any stage of testing. The outcome of nonclinical testing and early clinical trials may not be predictive of the success of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. Moreover, nonclinical and clinical data often are susceptible to varying interpretations and analyses, and many companies that have believed their product candidates performed satisfactorily in nonclinical studies and clinical trials have nonetheless failed to obtain marketing approval of their products. We may experience numerous unforeseen events during, or as a result of, clinical trials, which could delay or prevent our ability to receive marketing approval or subsequently to commercialize our product candidates, including:

- regulators or institutional review boards may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at prospective trial sites;
- we may experience delays in reaching, or fail to reach, agreement on acceptable clinical trial contracts or clinical trial protocols with prospective trial sites;
- clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or abandon product development programs;

- the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate, or participants may drop out of these clinical trials at a higher rate than we anticipate;
- our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- we may have to suspend or terminate clinical trials of our product candidates for various reasons, including a finding that the participants are being exposed to unacceptable health risks;
- regulators or institutional review boards may require that we or our investigators suspend or terminate clinical research for various reasons, including noncompliance with regulatory requirements or a finding that the participants are being exposed to unacceptable health risks;
- the cost of clinical trials of our product candidates may be greater than we anticipate;
- the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- our product candidates may have undesirable side effects or other unexpected characteristics, causing us or our investigators, regulators or institutional review boards to suspend or terminate the trials.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, if we are unable to successfully complete clinical trials of our product candidates or other testing, if the results of these trials or tests are not positive or are only modestly positive or if there are safety concerns, we may:

- be delayed in obtaining marketing approval for our product candidates;
- not obtain marketing approval at all;
- obtain approval for indications or patient populations that are not as broad as intended or desired;
- obtain approval with labeling that includes significant use or distribution restrictions or safety warnings;
- be subject to additional post-marketing testing and/or reporting requirements; or
- have the product removed from the market after obtaining marketing approval.

Our product development costs also will increase if we experience delays in testing or in receiving marketing approvals. We do not know whether any of our nonclinical studies or clinical trials will begin as planned, will need to be restructured or will be completed on schedule, or at all. Significant nonclinical study or clinical trial delays also could shorten any periods during which we may have the exclusive right to commercialize our product candidates or allow our competitors to bring products to market before we do and impair our ability to successfully commercialize our product candidates, thereby harming our business and results of operations.

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

We may not be able to initiate or continue clinical trials for our 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 have ongoing clinical trials for product candidates that treat the same indications as our product candidates, and patients who would otherwise be eligible for our

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 the study in question;
- 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 our clinical trials would result in significant delays and could require us to abandon one or more clinical trials altogether. Enrollment delays in our clinical trials may result in increased development costs for our product candidates, which would cause the value of our company to decline and limit our ability to obtain additional financing.

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

If our product candidates are associated with adverse side effects in clinical trials or have characteristics that are unexpected, we may need to abandon their development or limit development to more narrow uses or subpopulations in which the side effects or other characteristics are less prevalent, less severe, or more acceptable from a risk-benefit perspective. In our industry, many compounds that initially showed promise in early stage testing have later been found to cause side effects that prevented further development of the compound or significantly limited its commercial opportunity.

Across the Phase 3 clinical development program for oliceridine, there were three suspected unexpected serious adverse reactions, or SUSARs, reported to the FDA: one each for instances of post-operative ileus and lethargy, and one patient who experienced hepato-renal failure. In addition, in the thorough QT study we conducted as part of the development of oliceridine, we observed no concentration-related effects of oliceridine on QT, but we did observe a small QT prolongation, crossing the threshold of regulatory concern, at the supratherapeutic dose. In our Phase 3 program, we included ECG monitoring to capture any potential delayed effects of oliceridine on the QT interval. While the data we collected in these studies did not show any oliceridine-specific effects on QT and there were not any clinical sequelae associated with a prolonged QT interval, the FDA indicated in the oliceridine CRL that they would like to see additional clinical data related to the QT interval. If we ultimately conduct an additional study to gather this data, we cannot assure you that the results of such study will not show any oliceridine-specific effects on the QT interval, that there will not be any clinical sequelae associated with any prolonged QT interval, or that the study itself and the results obtained will address the FDA's concerns sufficiently to allow for the future approval of oliceridine.

If our clinical trials reveal a high and unacceptable severity and prevalence of side effects, these trials could be suspended or terminated, and the FDA or comparable foreign regulatory authorities could order us to cease further development or deny approval of our product candidates for any or all targeted indications. Drug-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial and could result in potential product liability claims.

Additionally, if one or more of our product candidates receives marketing approval, and we or others later identify undesirable side effects caused by such products, a number of potentially significant negative consequences could result, including:

- regulatory authorities may require additional warnings on the label or even withdraw approvals of such product;
- we may be required to create a medication guide outlining the risks of such side effects for distribution to patients, if one is not required in connection with regulatory approval;
- we could be sued and held liable for harm caused to patients; and
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the particular product candidate, if approved.

Oliceridine and TRV734 are both biased ligands targeted at the MOR. Common adverse reactions for agonists of the MOR include respiratory depression, constipation, nausea, vomiting, and addiction. In rare cases, MOR agonists can cause respiratory arrest requiring immediate medical intervention. Since oliceridine and TRV734 also modulate the MOR, these adverse reactions and risks likely will apply to the use of oliceridine and TRV734. One healthy subject in the 0.25 mg dosing cohort of our Phase 1 clinical trial of oliceridine experienced a severe episode of vasovagal syncope during which he fainted and his pulse stopped. These were considered severe adverse events. It is possible that serious adverse vasovagal events could occur in other patients dosed with oliceridine. Agonists at the DOR have been associated with a risk of seizures. TRV250, our DOR product candidate, targets the same receptor as other programs that have been associated with seizures and, accordingly, it is possible that TRV250 will be associated with similar side effects. In such case, we likely would discontinue further development of TRV250 for the treatment of migraines.

***We may expend our limited resources to pursue a particular product candidate or indication and thereby fail to capitalize on other product candidates or indications that may be more profitable or for which there is a greater likelihood of success.***

Because we have limited financial and managerial resources, we focus on research programs and product candidates that we identify for specific indications. As a result, we may forego or delay pursuit of opportunities with other product candidates or for other indications that later prove to have fewer clinical or regulatory risks and/or greater commercial potential. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on current and 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.

#### **Risks Related to the Commercialization of Our Product Candidates**

***Even if any of our product candidates receives marketing approval, it may fail to achieve the degree of market acceptance by physicians, patients, third-party payors, and others in the medical community necessary for commercial success.***

If any of our product candidates receives marketing approval, it may nonetheless fail to gain sufficient market acceptance by physicians, patients, third-party payors, and others in the medical community. If our product candidates do not achieve an adequate level of acceptance, we may not generate significant product revenue and we may not attain



profitability. The degree of market acceptance of our product candidates, if approved for commercial sale, will depend on a number of factors, including:

- the efficacy, safety and potential advantages compared to alternative treatments;
- the timing of market introduction of the product candidate as well as competitive products;
- our ability to offer the product for sale profitably and at competitive prices;
- the convenience and ease of administration compared to alternative treatments;
- the willingness of the target patient population to try new therapies and of physicians to prescribe these therapies;
- the strength of sales, marketing, and distribution support;
- the availability of third-party payor coverage and adequate reimbursement;
- the prevalence and severity of any side effects;
- the clinical indications for which the product is approved; and
- any restrictions on the use of our products, both on their own and together with other medications.

***If we are unable to establish manufacturing, sales, marketing, and distribution capabilities or to enter into agreements with third parties to produce, market, sell, and distribute our product candidates, we may not be successful in commercializing our product candidates if and when they are approved.***

We currently have limited resources directed toward the manufacturing, marketing, sales, and distribution of pharmaceutical products and have limited experience and capabilities in this area. To commercialize any product candidates that receive marketing approval, we would need to build manufacturing, marketing, sales, distribution, managerial and other non-technical capabilities or make arrangements with third parties to perform these services, and we may not be successful in doing so. If we successfully develop and obtain regulatory approval for any of our product candidates, we expect to build or outsource a targeted specialist sales force to market or co-promote the product in the United States; we currently do not expect to build sales, manufacturing and distribution capabilities outside of the United States, although this expectation could change in the future. There are substantial risks involved with establishing sales, marketing, and distribution capabilities. For example, recruiting and training a sales force is expensive and time consuming and could delay any product launch. If the commercial launch of a product candidate is delayed or does not occur for any reason, we would have prematurely or unnecessarily incurred certain commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

There are a number of factors that may inhibit our efforts to commercialize our products on our own, including:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel or to outsource these tasks to a third party;
- the inability of sales personnel to obtain access to physicians or other relevant personnel or educate adequate numbers of physicians or others on the benefit of our product candidates;
- 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 a sales and marketing organization.

As an alternative to establishing our own sales force, we may choose to partner with third parties that have well-established direct sales forces to sell, market and distribute our products, particularly in markets outside of the United States. If we are unable to enter into collaborations with third parties for the commercialization of approved products, if any, on acceptable terms or at all, or if any such partner does not devote sufficient resources to the commercialization of our product or otherwise fails in commercialization efforts, we may not be able to successfully commercialize any of our product candidates that receive regulatory approval.

For oliceridine, we will need to partner with one or more third parties to sell, market and distribute this product, if approved, outside the United States. In April 2018 and May 2018, we entered into exclusive licensing agreements for the development and commercialization of oliceridine in South Korea and China, respectively. Such partnerships in South Korea and China may not be successful, and we may be unsuccessful in our efforts to secure additional partnerships outside the United States.

***We face substantial competition, which may result in others discovering, developing, or commercializing products before or more successfully than we do.***

The development and commercialization of new drug products is highly competitive. We face competition with respect to our current product candidates, and will face competition with respect to any product candidates that we may seek to develop or commercialize in the future, from major pharmaceutical companies, specialty pharmaceutical companies and biotechnology companies worldwide. In addition to existing therapeutic treatments for the indications we are targeting with our product candidates, if any of our product candidates achieves regulatory approval, we also face potential competition from other drug candidates in development by other companies. If approved, oliceridine also may compete against, or be used in combination with, OFIRMEV® (IV acetaminophen), marketed by Mallinckrodt plc, with EXPAREL® (liposomal bupivacaine), marketed by Pacira Pharmaceuticals, Inc., CALDOLOR® (IV ibuprofen), marketed by Cumberland Pharmaceuticals, and DSUVIA™ (sublingual sufentanil nanotabs), marketed by AcelRx. In addition to currently marketed IV analgesics, we are aware of a number of products in development that are aimed at improving the treatment of moderate-to-severe acute pain. AcelRx Pharmaceuticals, Inc. is developing ZALVISO™, a patient controlled analgesia device which dispenses sublingual sufentanil nanotabs. Innocoll Holdings plc, and Heron Therapeutics Inc. have proprietary long-acting reformulations of bupivacaine in development. Recro Pharma, Inc. is developing an IV version of the NSAID meloxicam. Cara Therapeutics Inc. is developing IV and oral dose forms of a peripherally restricted  $\kappa$ -opioid receptor agonist, which has been administered in combination with mu-opioids in clinical trials. Avenue Therapeutics, Inc. is developing an IV version of the generic opioid tramadol for moderate-to-severe acute pain. Some of these potential competitive compounds are being developed by large, well-financed, and experienced pharmaceutical and biotechnology companies, or have been partnered with such companies, which may give them development, regulatory and marketing advantages over us.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer or less severe side effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain FDA or other regulatory approval for their products more rapidly than we may obtain approval for ours, which could result in our competitors establishing a strong market position before we are able to enter the market. In addition, our ability to compete may be affected in many cases by insurers or other third-party payors seeking to encourage the use of generic products. Generic products are currently on the market for the indications that we are pursuing. If our product candidates achieve marketing approval, we expect that they will be priced at a significant premium over competing generic products.

Some of the companies against which we are competing or against which we may compete in the future have significantly greater financial resources and expertise than we do in research and development, manufacturing, nonclinical testing, conducting clinical trials, obtaining regulatory approvals, and selling and marketing approved products. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Smaller and other early stage companies also may prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These third parties compete with us in recruiting and retaining qualified scientific and management

personnel, establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

***Even if we or any future collaborators are able to commercialize any of our product candidates, the product candidates may become subject to unfavorable pricing regulations, third-party payor coverage and reimbursement policies, healthcare reform initiatives, or regulatory or political concerns.***

Both our and our collaborators' ability to commercialize any of our product candidates successfully will depend, in part, on the extent to which coverage and adequate reimbursement for these products and related treatments will be available from government payor programs at the federal and state level, including Medicare and Medicaid, private health insurers, managed care plans and other organizations. Government authorities and third-party payors, such as private health insurers and health maintenance organizations, decide which medications they will pay for and establish reimbursement levels. In addition, for hospital products, a private health insurer or Medicare will typically reimburse a fixed fee for certain procedures, including in-patient surgeries. Pharmaceutical products such as oliceridine, if approved, that may be used in connection with the surgery generally will not be separately reimbursed and, therefore, a hospital would have to assess the cost of oliceridine, if approved, relative to its benefits. Current or future efforts to limit the level of reimbursement for in-patient hospital procedures could cause a hospital to decide not to use oliceridine, if approved by the FDA. A primary trend in the U.S. healthcare industry and elsewhere is cost containment. Government authorities and third-party payors have attempted to control costs by limiting coverage and the amount of reimbursement for particular medications or procedures. Increasingly, third-party payors are requiring that drug companies provide them with predetermined discounts from list prices and are challenging the prices charged for medical products. Coverage and reimbursement may not be available for any drug that we or our collaborators commercialize and, even if these are available, the level of reimbursement for a product or procedure may not be satisfactory. Inadequate reimbursement levels may adversely affect the demand for, or the price of, any product candidate for which we or our collaborators obtain marketing approval. Obtaining and maintaining adequate reimbursement for our products may be difficult. We may be required to conduct expensive pharmacoeconomic studies to seek to justify coverage and reimbursement or the level of reimbursement relative to other therapies. If coverage and adequate reimbursement are not available or reimbursement is available only to limited levels, we or our collaborators may not be able to successfully commercialize any product candidates for which marketing approval is obtained.

There may be significant delays in obtaining coverage and reimbursement for newly approved drugs, and coverage may be more limited than the indications for which the drug is approved by the FDA or analogous regulatory authorities outside the United States. Moreover, eligibility for coverage and reimbursement does not imply that a drug will be paid for in all cases or at a rate that covers our costs, including research, development, manufacture, sale, and distribution expenses. Interim reimbursement levels for new drugs, if applicable, also may not be sufficient to cover our costs and may not be made permanent. Reimbursement rates may vary according to the use of the drug and the clinical setting in which it is used, may be based on reimbursement levels already set for lower cost drugs and may be incorporated into existing payments for other services. Net prices for drugs may be reduced by mandatory discounts or rebates required by government healthcare programs or private payors and by any future relaxation of laws that presently restrict imports of drugs from countries where they may be sold at lower prices than in the United States. Third-party payors often rely upon Medicare coverage policy and payment limitations in setting their own reimbursement policies. Our or our collaborators' inability to promptly obtain coverage and adequate reimbursement rates from both government-funded and private payors for any approved drugs that we develop could adversely affect our operating results, our ability to raise capital needed to commercialize drugs and our overall financial condition.

The regulations that govern marketing approvals, pricing, coverage and reimbursement for new drugs vary widely from country to country. Current and future legislation may significantly change the approval requirements in ways that could involve additional costs and cause delays in obtaining approvals. Some countries require approval of the sale price of a drug before it can be marketed. In many countries, the pricing review period begins after marketing or licensing approval is granted. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. As a result, we or our collaborators might obtain marketing approval for a drug in a particular country, but then be subject to price regulations that delay commercial launch of the drug, possibly for lengthy time periods, and negatively impact our ability to generate revenue from the sale

of the drug in that country. Adverse pricing limitations may hinder our ability to recoup our investment in one or more product candidates, even if our product candidates obtain marketing approval.

In addition to the above factors, the approval and commercialization of oliceridine may be negatively impacted by changing perceptions in the United States and elsewhere among regulators, legislators, and the general public concerning the approval, use, and abuse of prescription opioid products. In the future, the FDA and other regulatory and legislative bodies may enact regulations that seek to limit opioid prescribing and use. In response to these efforts and changing perceptions, physicians may determine to reduce the volume of opioid prescriptions they prescribe to patients. Any of these changes could negatively impact both the timing and likelihood of FDA approval of oliceridine, as well as the commercial opportunity, if approved.

There can be no assurance that our product candidates, if they are approved for sale in the United States or in other countries, will be considered medically reasonable and necessary for a specific indication, that they will be considered cost-effective by third-party payors, that coverage or an adequate level of reimbursement will be available, or that third-party payors' reimbursement policies will not adversely affect our ability to profitably sell our product candidates if they are approved for sale.

***Product liability lawsuits against us could cause us to incur substantial liabilities and limit commercialization of any products that we may develop.***

We face an inherent risk of product liability exposure related to the testing of our product candidates in human clinical trials and will face an even greater risk if we commercially sell any products that we may develop. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. If we cannot successfully defend ourselves against claims that our product candidates or products caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for any product candidates or products that we may develop;
- injury to our reputation and significant negative media attention;
- withdrawal of clinical trial participants;
- initiation of investigations by regulators;
- significant costs to defend the related litigation;
- product recalls, withdrawals or labeling, marketing or promotional restrictions;
- substantial monetary awards to trial participants or patients;
- loss of revenue;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize any products that we may develop.

We currently maintain product liability insurance coverage at levels that may be inadequate to cover all liabilities we may incur. We will likely need to increase our insurance coverage as we expand our clinical trials or if we commence commercialization of our product candidates. Insurance coverage is increasingly expensive, and in the future

may be difficult to obtain for products such as oliceridine. We may not be able to maintain insurance coverage at a reasonable cost or in an amount adequate to satisfy any liability that may arise.

#### **Risks Related to Our Dependence on Third Parties**

***Our current collaborators are, and any future relationships or collaborations we may enter into may be, important to us. If we are unable to maintain our relationship with any of these collaborations, or if our relationship with these collaborators is not successful, our business could be adversely affected.***

We have limited capabilities for product development, sales, marketing, and distribution. For our product candidates, we may in the future determine to collaborate with pharmaceutical and biotechnology companies for the development and potential commercialization of these candidates. For oliceridine, we entered into license agreements with partners in South Korea and China in 2018 whereby these parties will develop, seek regulatory approval for, and, if successful, commercialize oliceridine. We face significant competition in seeking appropriate collaborators. Our ability to reach a definitive agreement for collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration, and the proposed collaborator's evaluation of a number of factors. If we are unable to reach agreements with suitable collaborators on a timely basis, on acceptable terms, or at all, we may have to curtail the development of a product candidate, reduce or delay its development program or one or more of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to fund and undertake development or commercialization activities on our own, we may need to obtain additional expertise and additional capital, which may not be available to us on acceptable terms or at all. If we fail to enter into collaborations and do not have sufficient funds or expertise to undertake the necessary development and commercialization activities, we may not be able to further develop our product candidates or bring them to market or continue to develop our product platform and our business may be materially and adversely affected.

Any future collaborations we might enter into with third parties, may pose a number of risks, including the following:

- collaborators have significant discretion in determining the efforts and resources that they will apply to these collaborations;
- collaborators may not perform their obligations as expected;
- collaborators may elect not to continue development or commercialization programs or may not pursue commercialization of any product candidates that achieve regulatory approval based on clinical trial results, changes in the collaborators' strategic focus or available funding, or external factors, such as an acquisition, that divert resources or create competing priorities;
- collaborators may delay clinical trials, provide insufficient funding for a clinical trial program, stop a clinical trial or abandon a product candidate, repeat or conduct new clinical trials, or require a new formulation of a product candidate for clinical testing;
- collaborators could fail to make timely regulatory submissions for a product candidate;
- collaborators may not comply with all applicable regulatory requirements or may fail to report safety data in accordance with all applicable regulatory requirements;
- collaborators could independently develop, or develop with third parties, products that compete directly or indirectly with our products or product candidates if the collaborators believe that competitive products are more likely to be successfully developed or can be commercialized under terms that are more economically attractive than ours;

- product candidates discovered in collaboration with us may be viewed by our collaborators as competitive with their own product candidates or products, which may cause collaborators to limit or eliminate efforts and resources to the commercialization of our product candidates;
- a collaborator with marketing and distribution rights to one or more of our product candidates that achieve regulatory approval may not commit sufficient resources to the marketing and distribution of such product or products;
- disagreements with collaborators, including disagreements over proprietary rights, contract interpretation, or the preferred course of development, might cause delays or termination of the research, development or commercialization of product candidates, might lead to additional responsibilities for us with respect to product candidates, or might result in litigation or arbitration, any of which would be time-consuming and expensive;
- collaborators may not properly maintain or defend our intellectual property rights or may use our proprietary information in such a way as to invite litigation that could jeopardize or invalidate our intellectual property or proprietary information or expose us to potential litigation;
- collaborators may infringe the intellectual property rights of third parties, which may expose us to litigation and potential liability; and
- collaborations may be terminated at the convenience of the collaborator and, if terminated, we could be required to raise additional capital to pursue further development or commercialization of the applicable product candidates.

If any collaborations we might enter into in the future do not result in the successful development and commercialization of products or if one of our collaborators terminates its agreement with us, we may not receive any future research funding or milestone or royalty payments under the collaboration. If we do not receive the funding we expect under these agreements, our development of our product platform and product candidates could be delayed and we may need additional resources to develop our product candidates and our product platform. The risks relating to our product development, regulatory approval and commercialization described in this Annual Report also apply to the activities of our therapeutic program collaborators.

If a future collaborator of ours is involved in a business combination, the collaborator might deemphasize or terminate development or commercialization of any product candidate licensed to it by us. If one of our collaborators terminates its agreement with us, we may find it more difficult to attract new collaborators and our reputation in the business and financial communities could be adversely affected.

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

We rely on third parties, such as contract research organizations, clinical research organizations, clinical data management organizations, medical institutions, and clinical investigators to conduct our nonclinical studies and clinical trials for our product candidates. The 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 our product development activities.

Our reliance on these third parties for research and development activities will reduce our control over these activities but will not relieve us of our responsibilities. For example, we will remain responsible for ensuring that each of our nonclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that our nonclinical studies are conducted in accordance with good laboratory practice, or GLP, as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices, or 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 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 upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials complies with GCP regulations. In addition, our clinical trials must be conducted with product produced under cGMP regulations. 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 have contracted to help perform our nonclinical studies or clinical trials also may 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 nonclinical 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 our product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize our product candidates.

If any of our 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 that could compromise our ability to meet our desired development timelines. Although we seek to carefully manage our relationships with our contract research organizations and clinical research organizations, there can be no assurance that we will not encounter similar challenges or delays in the future.

***We contract with third parties for the manufacture of our product candidates for nonclinical and clinical testing and expect to continue to do so for commercialization. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or products or such quantities at an acceptable cost, which could delay, prevent or impair our development or commercialization efforts.***

We have no internal manufacturing capabilities and do not have any manufacturing facilities. We rely, and expect to continue to rely, on third parties for the manufacture of our product candidates for nonclinical and clinical testing, as well as for commercial manufacture, if any of our product candidates receive marketing approval. This reliance on third parties increases the risk that we will not have sufficient quantities of our product candidates or products or such quantities at an acceptable cost or quality, which could delay, prevent or impair our development or commercialization efforts.

We also expect to rely on third-party manufacturers or third-party collaborators for the manufacture of commercial supply of any product candidates for which our collaborators or we obtain marketing approval. We may be unable to establish any agreements with third-party manufacturers or to do so on acceptable terms. Even if we are able to establish agreements with third-party manufacturers, reliance on third-party manufacturers entails additional risks, including:

- reliance on the third party for regulatory compliance and quality assurance;
- the possible breach of the manufacturing agreement by the third party;
- manufacturing delays if our third-party manufacturers give greater priority to the supply of other products over our product candidates or otherwise do not satisfactorily perform according to the terms of the agreement between us;

- the possible misappropriation of our proprietary information, including our trade secrets and know-how; and
- the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us.

The facilities used by our contract manufacturers to manufacture our product candidates and, potentially in the future, our products must be approved by the FDA pursuant to inspections that will be conducted after we submit an NDA to the FDA. We do not control the manufacturing process of, and are completely dependent on, our contract manufacturers for compliance with current cGMP regulations for manufacture of our product candidates. Third-party manufacturers may not be able to comply with the cGMP regulations or similar regulatory requirements outside the United States. Our failure, or the failure of our third-party manufacturers, to comply with applicable regulations could result in sanctions being imposed on us, including clinical holds, fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product candidates or products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products.

Our product candidates and any products that we may commercialize likely will compete with other product candidates and products for access to manufacturing facilities. There are a limited number of manufacturers that operate under cGMP regulations and that might be capable of manufacturing for us. Any performance failure on the part of our existing or future manufacturers could delay clinical development or marketing approval. We do not currently have arrangements in place for redundant supply or a second source for bulk drug substance. If our current contract manufacturers cannot perform as agreed, we may be required to replace such manufacturers. We may incur added costs and delays in identifying and qualifying any replacement manufacturers.

The DEA restricts the importation of a controlled substance finished drug product when the same substance is commercially available in the United States, which could reduce the number of potential alternative manufacturers for our MOR targeted product candidates, including oliceridine. In addition, a DEA quota system controls and limits the availability and production of controlled substances and the DEA also has authority to grant or deny requests for quota of controlled substances, which will likely include the active ingredients in oliceridine. Supply disruptions could result from delays in obtaining DEA approvals for controlled substances or from the receipt of quota of controlled substances that are insufficient to meet future product demand. The quota system also may limit our ability to build inventory as a method for mitigating possible supply disruptions if oliceridine is approved for sale in the United States.

Our current and anticipated future dependence upon others for the manufacture of our product candidates or products may adversely affect our future profit margins and our ability to commercialize any products that receive marketing approval on a timely and competitive basis.

We also expect to rely on other third parties to store and distribute drug supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or marketing approval of our product candidates or commercialization of our products, producing additional losses and depriving us of potential product revenue.

***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 seek to develop product candidates with validated mechanisms of action and we utilize biomarkers to 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. Further, such clinical data and results may be based on products or product candidates that are significantly different from our product candidates. If the third party data and results we rely upon prove to be inaccurate, unreliable or not applicable to our product candidates, we could make inaccurate assumptions and conclusions about our product candidates and our research and development efforts could be compromised.



## Risks Related to Our Intellectual Property

***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 success depends in large part on our ability to obtain and maintain patent protection in the United States and other countries with respect to our product candidates. We seek to protect our proprietary position by filing patent applications in the United States and abroad related to our product candidates.

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. It is also possible that we will fail to identify patentable aspects of our research and development output before it is too late to obtain patent protection. Should we enter into collaborations with third parties, we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance and enforcement of our patents. Therefore, these patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business.

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, 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 18 months after a first filing, or in some cases at all. Therefore, we cannot know with certainty whether we 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. 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.

The Leahy-Smith America Invents Act, or the Leahy-Smith Act, 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 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 and Trademark Office continues to develop and implement 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 to file provisions, only became effective on March 16, 2013. 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 preissuance submission of prior art to the United States Patent and Trademark Office, or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or interference 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, or result in our inability to manufacture or commercialize products without infringing third-party patent rights. 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 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 freedom to operate 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.

***We may become involved in lawsuits to protect or enforce our patents or other intellectual property, which could be expensive, time consuming, and unsuccessful.***

Competitors may infringe our issued patents or other intellectual property. To counter infringement or unauthorized use, we may be required to file infringement claims, which can be expensive and time consuming. Any claims we assert against perceived infringers could provoke these parties to assert counterclaims against us alleging that we infringe their patents. In addition, in a patent infringement proceeding, a court may decide that a patent of ours is invalid or unenforceable, in whole or in part, construe the patent's claims narrowly or refuse to stop the other party from using the technology at issue on the grounds that our patents do not cover the technology in question. An adverse result in any litigation proceeding could put one or more of our patents at risk of being invalidated, rendered unenforceable, or interpreted narrowly.

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

***Third parties may initiate legal proceedings alleging that we are infringing their intellectual property rights, the outcome of which would be uncertain and could have a material adverse effect on the success of our business.***

Our commercial success depends upon our ability, and the ability of our collaborators, to develop, manufacture, market and sell our product candidates and use our proprietary technologies without infringing the proprietary rights of third parties. There is considerable intellectual property litigation in the biotechnology and pharmaceutical industries. We may become party to, or threatened with, future adversarial proceedings or litigation regarding intellectual property rights with respect to our products and technology, including interference or derivation proceedings before the United States Patent and Trademark Office. Third parties may assert infringement claims against us based on existing patents or patents that may be granted in the future.

If we are found to infringe a third party's intellectual property rights, we could be required to obtain a license from such third party to continue developing and marketing our products and technology. However, we may not be able to obtain any required license on commercially reasonable terms or at all. Even if we were able to obtain a license, it could be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. We could be forced, including by court order, to cease commercializing the infringing technology or product. In addition, we could be found liable for monetary damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could materially harm our business. Claims that we have

misappropriated the confidential information or trade secrets of third parties could have a similar negative impact on our business.

***If we fail to comply with our obligations in our intellectual property licenses and funding arrangements with third parties, we could lose rights that are important to our business.***

We are currently party to license agreements for technologies that we use in conducting our drug discovery activities. In the future, we may become party to licenses that are important for product development and commercialization. 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.

***We may be subject to claims by third parties asserting that our employees or we have misappropriated their intellectual property, or claiming ownership of what we regard as our own intellectual property.***

Many of our employees were previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although we try to ensure that our employees do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that these employees or we have used or disclosed intellectual property, including trade secrets or other proprietary information, of any such employee's former employer. Litigation may be necessary to defend against these claims.

In addition, while it is our policy to require our employees and contractors who may be involved in the development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact develops intellectual property that we regard as our own. Our and their assignment agreements may not be self-executing or may be breached, and we may be forced to bring claims against third parties, or defend claims they may bring against us, to determine the ownership of what we regard as our intellectual property.

If we fail in prosecuting or defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and be a distraction to management.

***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 price of our common stock. 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.

***If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.***

In addition to seeking patent protection for our product candidates, we rely on trade secrets, including unpatented know how, technology and other proprietary information, to maintain our competitive position. We limit disclosure of such trade secrets where possible, but we also seek to protect these trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who do have access to them, such as our employees, corporate collaborators, outside scientific collaborators, contract manufacturers, consultants, advisors, and other third parties. We also enter into confidentiality and invention or patent assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

**Risks Related to Legal Compliance Matters**

***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 product candidates for which we obtain marketing approval. Our current and future arrangements with healthcare providers, third-party payors, and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we conduct research, sell, market, and distribute any drugs 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:

- the federal Anti-Kickback Statute, 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;
- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act which can be enforced by individuals, on behalf of the government, through civil whistleblower or *qui tam* actions, prohibit individuals or entities from, among other things, 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, or HIPAA, which imposes, among other things, 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, or HITECH, and their respective implementing regulations, which impose, among other things, obligations on certain healthcare providers, health plans, and healthcare clearinghouses, known as covered entities, 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, or 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 physicians and their immediate family members; and
- 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, marketing expenditures, or drug pricing; state and local laws that require the registration of pharmaceutical sales and medical representatives; and state and foreign laws, such as the General Data Protection Regulation (EU) 2016/679, governing the privacy and security of health information in certain circumstances, 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, disgorgement, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, integrity oversight and reporting obligations to resolve allegations of non-compliance with these laws, 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 significant criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which also could materially affect our business.

***Recently enacted and future legislation may increase the difficulty and cost for us to obtain marketing approval of and commercialize our product candidates and affect the prices we may obtain.***

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay marketing approval of our product candidates, restrict or regulate post-approval activities, and affect our ability to profitably sell any product candidates for which we obtain marketing approval.

Among policy makers and payors in the United States and elsewhere, there is significant interest in promoting changes in healthcare systems with the stated goals of containing healthcare costs, improving quality, and expanding access. In the United States, the pharmaceutical industry has been a particular focus of these efforts and has been significantly affected by major legislative initiatives. In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, or collectively,

the PPACA, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against fraud and abuse, add new transparency requirements for the healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms.

Among the provisions of the PPACA of importance to our potential product candidates are:

- an annual, nondeductible fee on any entity that manufactures or imports specified branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs;
- an increase in the statutory minimum rebates a manufacturer must pay under the Medicaid Drug Rebate Program to 23.1% and 13.0% of the average manufacturer price for branded and generic drugs, respectively;
- expansion of healthcare fraud and abuse laws, including the federal False Claims Act and the federal Anti-Kickback Statute, new government investigative powers and enhanced penalties for non-compliance;
- a new Medicare Part D coverage gap discount program, in which manufacturers must now agree to offer 70% point-of-sale discounts off negotiated prices of applicable brand drugs to eligible beneficiaries during their coverage gap period, as a condition for a manufacturer's outpatient drugs to be covered under Medicare Part D;
- extension of a manufacturer's Medicaid rebate liability to covered drugs dispensed to individuals who are enrolled in Medicaid managed care organizations;
- expansion of eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to additional individuals and by adding new mandatory eligibility categories for certain individuals with income at or below 133% of the federal poverty level, thereby potentially increasing a manufacturer's Medicaid rebate liability;
- expansion of the entities eligible for discounts under the Public Health Service pharmaceutical pricing program;
- the new requirements under the federal Open Payments program and its implementing regulations;
- a new requirement to annually report drug samples that manufacturers and distributors provide to physicians; and
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research.

Some of the provisions of the PPACA have yet to be implemented, and there have been judicial and Congressional challenges to certain aspects of the PPACA, as well as recent efforts by the Trump administration to repeal or replace certain aspects of the PPACA. Since January 2017, President Trump has signed two Executive Orders and other directives designed to delay the implementation of certain provisions of the PPACA or otherwise circumvent some of the requirements for health insurance mandated by the PPACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the PPACA. While Congress has not passed comprehensive repeal legislation, two bills affecting the implementation of certain taxes under the PPACA have been signed into law. The Tax Cuts and Jobs Act of 2017, or the Tax Act, included a provision which repealed, effective January 1, 2019, the tax-based shared responsibility payment imposed by the PPACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year that is commonly referred to as the "individual mandate." On January 22, 2018, President Trump signed a continuing resolution on appropriations for fiscal year 2018 that delayed the implementation of certain PPACA-mandated fees, including the so-called "Cadillac" tax on certain high cost employer-sponsored insurance plans, the annual fee imposed on certain health insurance providers based on market share, and the medical device excise tax on non-exempt medical devices. The Bipartisan Budget Act of 2018, or the BBA, among other things, amended the PPACA, effective January 1, 2019, to close the coverage gap in most Medicare drug plans, commonly

referred to as the “donut hole.” On December 14, 2018, a Texas U.S. District Court Judge ruled that the PPACA is unconstitutional in its entirety because the “individual mandate” was repealed by Congress as part of the Tax Act. While the Texas U.S. District Court Judge, as well as the Trump administration and CMS, have stated that the ruling will have no immediate effect pending appeal of the decision, it is unclear how this decision, subsequent appeals, and other efforts to repeal and replace the PPACA will impact the PPACA and our business.

In addition, other legislative changes have been proposed and adopted since the PPACA was enacted. These changes include aggregate reductions to Medicare payments to providers of 2% per fiscal year, which went into effect on April 1, 2013, and, due to subsequent legislative amendments to the statute, including the BBA, will remain in effect through 2027 unless additional Congressional action is taken. The American Taxpayer Relief Act of 2012, among other things, further reduced Medicare payments to several providers and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. These new laws may result in additional reductions in Medicare and other healthcare funding, which could have a material adverse effect on customers for our drugs, if approved, and, accordingly, our financial operations.

Further, there has been heightened governmental scrutiny in the United States of pharmaceutical pricing practices in light of the rising cost of prescription drugs and biologics. Such scrutiny has resulted in several recent Congressional inquiries and proposed and enacted federal and state legislation designed to, among other things, bring more transparency to product pricing, review the relationship between pricing and manufacturer patient programs, and reform government program reimbursement methodologies for products. At the federal level, the Trump administration’s budget proposal for fiscal year 2019 contained further drug price control measures that could be enacted during the 2019 budget process or in other future legislation, including, for example, measures to permit Medicare Part D plans to negotiate the price of certain drugs under Medicare Part B, to allow some states to negotiate drug prices under Medicaid, and to eliminate cost sharing for generic drugs for low-income patients. Moreover, the Trump administration released a “Blueprint” to lower drug prices and reduce out of pocket costs of drugs that contains additional proposals to increase drug manufacturer competition, increase the negotiating power of certain federal healthcare programs, incentivize manufacturers to lower the list price of their products, and reduce the out of pocket costs of drug products paid by consumers. The Department of Health and Human Services, or HHS, has already started the process of soliciting feedback on some of these measures and, at the same, is immediately implementing others under its existing authority. For example, in September 2018, CMS announced that it will allow Medicare Advantage plans the option to use step therapy for Part B drugs beginning January 1, 2019 and, in October 2018, CMS proposed a new rule that would require direct-to-consumer television advertisements of prescription drugs and biological products, for which payment is available through or under Medicare or Medicaid, to include in the advertisement the Wholesale Acquisition Cost, or list price, of that drug or biological product. On January 31, 2019, the HHS Office of Inspector General proposed modifications to the federal Anti-Kickback Statute discount safe harbor for the purpose of reducing the cost of drug products to consumers which, among other things, if finalized, will affect discounts paid by manufacturers to Medicare Part D plans, Medicaid managed care organizations and pharmacy benefit managers working with these organizations. While some of these and other proposed measures may require additional authorization to become effective, Congress and the Trump administration have each indicated that it will continue to seek new legislative and/or administrative measures to control drug costs. At the state level, legislatures have increasingly passed legislation and implemented regulations designed to control pharmaceutical and biological product pricing, including price or patient reimbursement constraints, discounts, restrictions on certain product access and marketing cost disclosure and transparency measures, and, in some cases, designed to encourage importation from other countries and bulk purchasing.

It is possible that healthcare reform measures that may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the reimbursement that we receive for any approved drug. 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 drugs.

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 our product candidates, if any, may be. In addition, increased scrutiny by the U.S. Congress 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.

***Governments outside the United States tend to impose strict price controls, which may adversely affect our revenue, if any.***

In some countries, particularly the countries of the European Union, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain coverage and reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially.

***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.***

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. 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. We also could incur significant costs associated with civil or criminal fines and penalties for failure to comply with such laws and regulations.

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.

**Risks Related to Employee Matters and Managing Our Growth**

***Our future success depends on our ability to retain key executives and to attract, retain and motivate qualified personnel.***

We are highly dependent on the development, clinical, business development, legal, financial, and commercial expertise of our executive officers. Although we have entered into employment agreements with these individuals, each of them may terminate their employment with us at any time. We do not maintain "key person" insurance for any of our executives or other employees.

Recruiting and retaining qualified management, scientific, clinical, manufacturing, sales and marketing, and other personnel also will be critical to our success. The loss of the services of our executive officers or other key employees or consultants could impede the achievement of our development and commercialization objectives and seriously harm our ability to successfully implement our business strategy. Furthermore, replacing executive officers and key employees or consultants may be difficult and may take an extended period of time because of the limited number of individuals in our industry with the breadth of skills and experience required to successfully develop, gain regulatory approval of and commercialize products. Competition to hire from this limited pool is intense, and we may be unable to hire, train, retain or motivate these key personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel.



We also experience competition for the hiring of scientific and clinical personnel from universities and research institutions. In addition, we rely on consultants and advisors, including scientific, clinical, and commercial advisors, to assist us in formulating our development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us. If we are unable to continue to attract and retain high quality personnel, our ability to pursue our growth strategy will be limited.

***In the future, we expect to expand our development, regulatory, manufacturing, sales, marketing, and distribution capabilities, and as a result, we may encounter difficulties in managing our growth, which could disrupt our operations.***

In the future, we expect to experience growth in the number of our employees and the scope of our operations, particularly in the areas of drug development, regulatory affairs, manufacturing, sales, marketing, and distribution. To manage our anticipated future growth, we must continue to implement and improve our managerial, operational and financial systems, expand our facilities and continue to recruit and train additional qualified personnel. Due to our limited financial resources and the limited experience of our management team in managing a company with such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our business plans or disrupt our operations.

***Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could expose us to liability and hurt our reputation.***

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with FDA regulations, provide accurate information to the FDA, report financial information or data accurately or disclose unauthorized activities to us. Employee misconduct also could involve the improper use or misrepresentation of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and financial results, including the imposition of significant civil, criminal and administrative penalties, including, without limitation, damages, fines, disgorgement, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, integrity oversight and reporting obligations to resolve allegations of non-compliance with these laws, and the curtailment or restructuring of our operations, which could have a material adverse effect on our business.

#### **Other Risks Related to our Business**

***In the future, we may conduct a substantial portion of the clinical trials for our product candidates outside of the United States and, if approved, we intend to seek to market our product candidates abroad through third-party collaborators. Accordingly, we will be subject to the risks of doing business outside of the United States.***

In the future, we may conduct a substantial portion of our clinical trials outside of the United States and, if approved, we intend to seek to market our product candidates outside of the United States. We are thus subject to risks associated with doing business outside of the United States. With respect to our product candidates, we may choose to partner with third parties that have direct sales forces and established distribution systems, in lieu of our own sales force and distribution systems, which would indirectly expose us to these risks. Our business and financial results in the future

could be adversely affected due to a variety of factors associated with conducting development and marketing of our product candidates, if approved, outside of the United States, including:

- efforts to develop an international sales, marketing and distribution organization may increase our expenses, divert our management's attention from the development of product candidates or cause us to forgo profitable licensing opportunities in these geographies;
- changes in a specific country's or region's political and cultural climate or economic condition;
- unexpected changes in foreign laws and regulatory requirements;
- difficulty of effective enforcement of contractual provisions in local jurisdictions;
- inadequate intellectual property protection in foreign countries;
- differing payor reimbursement regimes, governmental payors or patient self-pay systems and price controls;
- trade-protection measures, import or export licensing requirements such as Export Administration Regulations promulgated by the U.S. Department of Commerce and fines, penalties or suspension or revocation of export privileges;
- regulations under the U.S. Foreign Corrupt Practices Act and similar foreign anti-corruption laws;
- the effects of applicable foreign tax structures and potentially adverse tax consequences; and
- significant adverse changes in foreign currency exchange rates which could make the cost of our clinical trials, to the extent conducted outside of the United States, more expensive.

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

We utilize information technology systems and networks to process, transmit and store electronic information in connection with our business activities. As use of digital technologies has increased, cyber incidents, including deliberate attacks and attempts to gain unauthorized access to computer systems and networks, have increased in frequency and sophistication. These threats pose a risk to the security of our systems and networks and the confidentiality, availability and integrity of our data. There can be no assurance that we will be successful in preventing cyber-attacks or successfully mitigating their effects.

Despite our implementation of security measures, our internal computer systems and those of our contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war, and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption to our product candidate development programs. For example, the loss of clinical trial data from completed, ongoing or planned clinical trials 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 were to result in a loss of or damage to our data or applications, or inappropriate disclosure of personal, confidential or proprietary information, we could incur liability and the further development of any of our product candidates could be delayed or abandoned.

**Risks Related to Ownership of Our Common Stock**

***An active trading market for our common stock may not continue to develop or be sustained.***

Although our common stock is listed on the Nasdaq, we cannot assure you that an active, liquid trading market for our shares will continue to develop or be sustained. If an active market for our common stock does not continue to

develop or is not sustained, it may be difficult for you to sell shares quickly or without depressing the market price for the shares or to sell your shares at all.

***The trading price of the shares of our common stock has been and may continue to be volatile, and you may not be able to resell some or all of your shares at a desired price.***

Since our common stock commenced trading in January 2014, our stock price has been highly volatile, with closing stock prices ranging from a high of \$13.30 per share to a low of \$0.39 per share as of March 11, 2019.

The stock market in general and the market for biopharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. As a result of this volatility, investors in our stock may not be able to sell their common stock at or above the price paid for the shares. The market price for our common stock may be influenced by many factors, including:

- actual or anticipated variations in our operating results;
- changes in financial estimates by us or by any securities analysts who might cover our stock;
- the timing and results of our clinical trials for any of our product candidates;
- failure or discontinuation of any of our development programs;
- conditions or trends in our industry;
- changes in the structure of healthcare payment systems;
- stock market price and volume fluctuations of comparable companies and, in particular, those that operate in the biopharmaceutical industry;
- announcements by us or our competitors of significant acquisitions, strategic partnerships or divestitures;
- developments or disputes concerning patent applications, issued patents or other proprietary rights;
- announcements of investigations or regulatory scrutiny of our operations or lawsuits filed against us;
- capital commitments;
- investors' general perception of our company and our business;
- recruitment or departure of key personnel;
- announcements and expectations of additional financing efforts; and
- sales of our common stock, including sales by our directors and officers or specific stockholders.

***We are subject to securities class action and stockholder derivative litigation.***

As described in "Item 3. Legal Proceedings" of this Annual Report on Form 10-K, in October and November 2018, we and certain of our current and former directors and officers were sued in three purported class actions filed in the U.S. District Court for the Eastern District of Pennsylvania, or the EDPA. In each case, the plaintiffs allege that we and the officers made false and misleading statements in violation of federal securities laws regarding our business, operations, and prospects, including certain statements made relating to our End-of-Phase 2 meeting with the FDA. The

plaintiffs seek, among other remedies, unspecified damages, attorneys' fees and other costs. In January 2019, the three lawsuits were consolidated into one action. On March 6, 2019, the District Court held a hearing to appoint the lead plaintiff and lead counsel, and a consolidated amended complaint will be filed after such appointments are made. We believe that the lawsuits are without merit, and we intend to vigorously defend ourselves against the allegations.

In December 2018, a shareholder derivative action was filed against us and certain current and former officers and directors in the EDPA, and in February 2019, two additional, similar shareholder derivative actions were filed in the U.S. District Court for the District of Delaware. These cases, which involve similar facts as the consolidated securities lawsuits, assert claims against the individual defendants for, among other things, breach of fiduciary duty, waste of corporate assets, violations of the federal securities laws, and unjust enrichment, and they make a number of demands, including for monetary damages and other equitable and injunctive relief. Two of the derivative actions have been stayed in favor of the consolidated securities lawsuits, and we expect that the third derivative action will be stayed as well. Furthermore, such litigation could cause us to incur substantial costs and divert management's attention and resources from the operation of our business. These factors may materially and adversely affect the market price of our common stock.

***If equity research analysts do not continue to publish research or reports or publish unfavorable research or reports about us, our business or our industry, our stock price and trading volume could decline.***

The trading market for our common stock is influenced by the research and reports that equity research analysts publish about us and our business. As a relatively new public company, we have only limited research coverage by equity research analysts. Equity research analysts may elect not to initiate or continue to provide research coverage of our common stock, and such lack of research coverage may adversely affect the market price of our common stock. We have no control over the analysts or the content and opinions included in their reports. The price of our stock could decline if one or more equity research analysts downgrade our stock or issue other unfavorable commentary or research.

If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our stock could decrease, which in turn could cause our stock price or trading volume to decline.

***Sales of a substantial number of shares of our common stock could cause the market price of our common stock to drop significantly, even if our business is doing well.***

Sales of a substantial number of shares of our common stock in the public market could occur at any time. If our stockholders sell, or the market perceives that our stockholders intend to sell, substantial amounts of our common stock in the public market, the market price of our common stock could decline significantly.

In addition, we have filed registration statements on Form S-8 registering the issuance of shares of common stock subject to options or other equity awards issued or reserved for future issuance under our equity incentive plans. Shares registered under these registration statements on Form S-8 are available for sale in the public market subject to vesting arrangements and exercise of existing options, the grant of new options in the future, and the restrictions of Rule 144 in the case of our affiliates.

***The issuance of additional stock in connection with financings, acquisitions, investments, our stock incentive plans or otherwise will dilute all other stockholders.***

Our amended and restated certificate of incorporation authorizes us to issue up to 200,000,000 shares of common stock and up to 5,000,000 shares of preferred stock with such rights and preferences as may be determined by our board of directors. Subject to compliance with applicable rules and regulations, we may issue our shares of common stock or securities convertible into our common stock from time to time in connection with a financing, acquisition, investment, our stock incentive plans or otherwise. Any such issuance could result in substantial dilution to our existing stockholders and cause the trading price of our common stock to decline.

***Our ability to utilize our net operating loss carryforwards and certain other tax attributes may be limited.***

We have incurred substantial losses during our history. We do not anticipate generating revenue from sales of products for the foreseeable future, if ever, and we may never achieve profitability. To the extent that we continue to generate tax losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. Under Section 382 of the Internal Revenue Code of 1986, as amended, if a corporation undergoes an “ownership change,” which is generally defined as a greater than 50% change, by value, in its equity ownership over a three-year period, the corporation’s ability to use its pre-change net operating loss carryforwards and other pre-change tax attributes to offset its post-change income may be limited. We have not completed our analysis to determine what, if any, impact any prior ownership change has had on our ability to utilize our net operating loss carryforwards. In addition, we may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As of December 31, 2018, we had federal net operating loss carryforwards of approximately \$65.5 million that could be limited if we have experienced, or if in the future we experience, an ownership change.

***Provisions in our corporate charter documents and under Delaware law may prevent or frustrate attempts by our stockholders to change our management and hinder efforts to acquire a controlling interest in us, and the market price of our common stock may be lower as a result.***

There are provisions in our amended and restated certificate of incorporation and amended and restated bylaws that may make it difficult for a third party to acquire, or attempt to acquire, control of our company, even if a change in control was considered favorable by you and other stockholders. For example, our board of directors has the authority to issue up to 5,000,000 shares of preferred stock. The board of directors can fix the price, rights, preferences, privileges, and restrictions of the preferred stock without any further vote or action by our stockholders. The issuance of shares of preferred stock may delay or prevent a change in control transaction. As a result, the market price of our common stock and the voting and other rights of our stockholders may be adversely affected. An issuance of shares of preferred stock may result in the loss of voting control to other stockholders.

Our charter documents also contain other provisions that could have an anti-takeover effect, including:

- only one of our three classes of directors will be elected each year;
- stockholders are not entitled to remove directors other than by a 66 2/3% vote and only for cause;
- stockholders are not permitted to take actions by written consent;
- stockholders cannot call a special meeting of stockholders; and
- stockholders must give advance notice to nominate directors or submit proposals for consideration at stockholder meetings.

In addition, we are subject to the anti-takeover provisions of Section 203 of the Delaware General Corporation Law, which regulates corporate acquisitions by prohibiting Delaware corporations from engaging in specified business combinations with particular stockholders of those companies. These provisions could discourage potential acquisition proposals and could delay or prevent a change in control transaction. They could also have the effect of discouraging others from making tender offers for our common stock, including transactions that may be in your best interests. These provisions may also prevent changes in our management or limit the price that investors are willing to pay for our stock.

***We are an “emerging growth company” and as a result of the reduced disclosure and governance requirements applicable to emerging growth companies, our common stock may be less attractive to investors.***

We are an “emerging growth company” as defined in the JOBS Act, and we intend to take advantage of some of the exemptions from reporting requirements that are applicable to other public companies that are not emerging growth companies, including not being required to comply with the auditor attestation requirements of Section 404 of

the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley Act, 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. We cannot predict if investors will find our common stock less attractive because we will rely 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. We may take advantage of these reporting exemptions until we are no longer an emerging growth company. We will remain an emerging growth company until the earliest of (a) December 31, 2019, (b) the last day of the fiscal year in which we have total annual gross revenue of at least \$1.0 billion, (c) the last day of the fiscal year in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds \$700.0 million as of the prior June 30th, and (d) any date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

Under Section 107(b) of the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

***If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements on a timely basis could be impaired.***

We are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, and the rules and regulations of Nasdaq. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal controls over financial reporting. Effective internal controls over financial reporting are necessary for us to provide reliable financial reports and, together with adequate disclosure controls and procedures, are designed to prevent fraud. For our fiscal year ended December 31, 2018, we are obligated to perform system and process evaluation and testing of our internal controls over financial reporting to allow management to report on the effectiveness of our internal controls over financial reporting in our Form 10-K filing for that year, as required by Section 404(a) of the Sarbanes-Oxley Act. We will continue to incur substantial additional professional fees and internal costs to expand our accounting and finance functions and expend significant management efforts. We may discover weaknesses in our system of internal financial and accounting controls and procedures that could result in a material misstatement of our financial statements. Our internal control over financial reporting will not prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud will be detected.

If we are not able to comply with the requirements of Section 404(a) of the Sarbanes-Oxley Act in a timely manner, or if we are unable to implement or maintain proper and effective internal controls, we may not be able to produce timely and accurate financial statements. If that were to happen, the market price of our stock could decline and we could be subject to sanctions or investigations by the stock exchange on which our common stock is listed, the Securities and Exchange Commission, or SEC, or other regulatory authorities. In addition, any testing by us conducted in connection with Section 404(a) of the Sarbanes-Oxley Act, or the subsequent testing by our independent registered public accounting firm conducted in connection with Section 404(b) of the Sarbanes-Oxley Act once we no longer qualify as an "emerging growth company," may reveal deficiencies in our internal controls over financial reporting that are deemed to be material weaknesses; or may require prospective or retroactive changes to our financial statements or identify other areas for further attention or improvement.

We are required to disclose changes made in our internal control procedures on a quarterly basis and our management is required to assess the effectiveness of these controls annually. However, for as long as we are an "emerging growth company" under the JOBS Act, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404(b). If and when we cease to be an "emerging growth company," an assessment of the effectiveness of our internal controls by our

independent registered public accounting firm will be very expensive and could detect problems that our management's assessment might not.

***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 and you may never receive a return on your investment.***

You should not rely on an investment in our common stock to provide dividend income. We have not declared or paid cash dividends on our common stock to date and have no plans to pay cash dividends in the foreseeable future. We currently intend to retain our future earnings, if any, to fund the development and growth of our business. In addition, the terms of our term loan credit facility with Oxford Finance LLC and Pacific Western Bank prohibits us from paying cash dividends. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. Investors seeking cash dividends should not purchase our common stock.

***We incur costs and demands upon management as a result of being a public company.***

As a public company listed in the United States, we are incurring, and will continue to incur, significant legal, accounting and other costs, particularly after we cease to be an "emerging growth company." These costs could negatively affect our financial results. In addition, changing laws, regulations and standards relating to corporate governance and public disclosure, including regulations implemented by the SEC and stock exchanges, may increase legal and financial compliance costs and make some activities more time consuming. These laws, regulations and standards are subject to varying interpretations and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If, notwithstanding our efforts to comply with new laws, regulations and standards, we fail to comply, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

Failure to comply with these rules also might make it more difficult for us to obtain some types of insurance, including directors' and officers' liability insurance, and we might be forced to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. The impact of these events could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors, on committees of our board of directors or as members of senior management.

#### **ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

#### **ITEM 2. PROPERTIES**

Our principal office is located at 955 Chesterbrook Boulevard, Chesterbrook, Pennsylvania, where we currently lease approximately 8,231 square feet of developed office space on the first floor and 40,565 square feet of developed office space on the second floor. The lease term for this space extends through May 2028. On October 11, 2018, we entered into an agreement with The Vanguard Group, Inc., or Vanguard, whereby Vanguard agreed to sublease the 40,565 square feet of space on the second floor for an initial term of 37 months. Vanguard has an option to extend the sublease term for 3 years, and a second option to extend the sublease until November 30, 2027. The sublease provides for rent abatement for the first month of the term; thereafter, the rent payable to us by Vanguard under the sublease is (i) \$0.50 less during months 2 through 13 of the sublease and (ii) in month 14 and thereafter of the sublease, \$1.00 less than the base rent payable by us under our master lease with Chesterbrook Partners, L.P. Vanguard also is responsible for paying to us all tenant energy costs, annual operating costs, and annual tax costs attributable to the subleased space during the term of the sublease.

In October 2017, we terminated our lease related to vivarium space in Exton, Pennsylvania, under an agreement expiring on December 31, 2018. We incurred termination fees equivalent to three months' rent, totaling less than \$0.1 million, in relation to the early termination of this agreement. Additionally, in November 2017, we provided notice of

our intent to terminate our facility lease of approximately 16,714 square feet of office and laboratory space in King of Prussia, Pennsylvania, under an agreement that expires in September 2020. We paid the landlord a \$0.15 million termination fee on the date we exercised the termination option. This lease was deemed terminated on August 15, 2018.

### **ITEM 3. LEGAL PROCEEDINGS**

In October and November 2018, the Company and certain of its current and former officers were sued in three purported class actions filed in the U.S. District Court for the Eastern District of Pennsylvania, or the EDPA. In each case, the plaintiffs allege that the Company and the officers made false and misleading statements in violation of federal securities laws regarding the Company's business, operations, and prospects, including certain statements made relating to the Company's End-of-Phase 2 meeting with the FDA. The plaintiffs seek, among other remedies, unspecified damages, and attorneys' fees and other costs. In January 2019, the three lawsuits were consolidated into one action. On March 6, 2019, the District Court held a hearing to appoint the lead plaintiff and lead counsel, and a consolidated amended complaint will be filed after such appointments are made. The Company believes that the lawsuits are without merit, and it intends to vigorously defend itself against the allegations.

In December 2018, a shareholder derivative action was filed on behalf of the Company and against certain current and former officers and directors in the EDPA, and in February 2019, two additional, similar shareholder derivative actions were filed in the U.S. District Court for the District of Delaware. These cases, which involve similar facts as the consolidated securities lawsuits, assert claims against the individual defendants for, among other things, breach of fiduciary duty, waste of corporate assets, violations of the federal securities laws, and unjust enrichment, and they make a number of demands, including for monetary damages and other equitable and injunctive relief. Two of the derivative actions have been stayed in favor of the consolidated securities lawsuits, and the Company expects that the third derivative action will be stayed as well.

Except as described above, the Company is not involved in any legal proceeding that it expects to have a material effect on its business, financial condition, results of operations and cash flows.

### **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 and Holders**

Our common stock is traded on the Nasdaq Global Select Market under the symbol "TRVN." On March 11, 2019, there were 7 holders of record of our common stock.

#### **Dividends**

We have never declared or paid any dividends on our common stock. We anticipate that we will retain all of our future earnings, if any, for use in the operation and expansion of our business and do not anticipate paying cash dividends in the foreseeable future. In addition, our ability to pay dividends, other than dividends payable solely in capital stock, is currently prohibited by the terms of our term loan credit facility with Oxford Finance, LLC and Pacific Western Bank.

### **ITEM 6. SELECTED FINANCIAL DATA**

Not required.



## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and related notes appearing in this Annual Report. Some of the information contained in this discussion and analysis or set forth elsewhere in this Annual Report, including information with respect to our plans and strategy for our business and related financing, includes forward-looking statements that involve risks and uncertainties. As a result of many factors, including those factors set forth in the "Risk Factors" section of this Annual Report, our actual results could differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.*

### Overview

Using our proprietary product platform, we have identified and are developing the following product candidates:

- **Oliceridine injection:** We are developing oliceridine, a G protein biased mu-opioid receptor, or MOR, ligand, for the management of moderate-to-severe acute pain in hospitals or other controlled clinical settings where intravenous, or IV, administration is warranted. We have completed two pivotal Phase 3 efficacy studies (APOLLO 1 and APOLLO 2) of oliceridine in moderate-to-severe acute pain following bunionectomy and abdominoplasty, respectively. In both studies, all dose regimens achieved their primary endpoint of statistically greater analgesic efficacy than placebo, as measured by responder rate. We also have completed Phase 3 open-label safety study (ATHENA) in which 768 patients were administered oliceridine to manage pain associated with a wide range of procedures and diagnoses. In late 2017, we submitted the oliceridine new drug application, or NDA, to the United States Food and Drug Administration, or FDA. On November 2, 2018, the FDA issued a complete response letter, or CRL, with respect to our NDA for oliceridine. In the CRL, the FDA requested additional clinical data on the QT interval and indicated that the submitted safety database was not of adequate size for the proposed labeling. The FDA also requested certain additional nonclinical data and validation reports. On January 28, 2019, we announced the receipt of the official Type A meeting minutes from the FDA regarding the CRL wherein the FDA agreed that our current safety database will support labeling at a maximum daily dose of 27 mg. The FDA also agreed that we can conduct a study in healthy volunteers to collect the requested QT interval data and that the study should include placebo- and positive-control arms. We have submitted a detailed protocol and analysis plan to the FDA and, following receipt of FDA feedback, anticipate initiating the study in the first half of 2019. To address remaining items in the CRL, the FDA indicated that we should include supporting nonclinical data related to the characterization of the 9662 metabolite and the remaining product validation reports when we resubmit the oliceridine NDA.
- **TRV250:** We are developing TRV250, a G protein biased delta-opioid receptor, or DOR, ligand, as a compound with a potential first-in-class mechanism for the treatment of acute migraine. TRV250 also may have utility in a range of other central nervous system, or CNS, indications. Because TRV250 selectively targets the DOR, we believe it will not have the addiction liability of conventional opioids or other mu-opioid related adverse effects like those seen with morphine or oxycodone. In June 2018, we announced the successful completion of our first-in-human Phase 1 study of TRV250. Data from this healthy volunteer study showed safety, tolerability, and pharmacokinetics supporting the advancement of TRV250 to Phase 2 proof of concept evaluation in patients.
- **TRV734:** We also have identified and have completed the initial Phase 1 studies for TRV734, a new chemical entity, or NCE, targeting the same novel mechanism of action at the MOR as oliceridine. TRV734 was designed to be orally available, and its mechanism of action suggests it may offer valuable benefits for two distinct areas of important unmet medical need: acute and chronic pain, and maintenance therapy for patients with opioid use disorder. We are collaborating with the National Institute on Drug Abuse, or NIDA, to further evaluate TRV734 for the management of opioid use disorder. We intend to continue to focus our efforts for TRV734 on securing a development and commercialization partner for this asset.

We also are evaluating a set of novel S1P modulators that may offer a new, non-opioid approach to managing chronic pain. In the fourth quarter of 2018, we identified a new product candidate, TRV045, a novel S1P modulator that we believe may offer a new, non-opioid approach to managing chronic pain. We anticipate beginning investigational new drug, or IND, enabling work in 2019, and we will continue to evaluate the progression of this asset to an IND, either by ourselves or with a partner.

Since our incorporation in late 2007, our operations have included organizing and staffing our company, business planning, raising capital, and discovering and developing our product candidates. We have financed our operations primarily through private placements and public offerings of our equity securities and debt borrowings. As of December 31, 2018, we had an accumulated deficit of \$388.3 million. Our net loss was \$30.8 million, \$71.9 million and \$103.0 million for the years ended December 31, 2018, 2017 and 2016, respectively. Our ability to become and remain profitable depends on our ability to generate revenue or sales. We do not expect to generate significant revenue or sales unless and until we or a collaborator obtain marketing approval for and commercialize oliceridine, TRV250, or TRV734.

We expect to incur significant expenses and operating losses for the foreseeable future as we continue the development and clinical trials of, seek regulatory approval for, and prepare for commercialization of our product candidates and repay our outstanding loan obligations. To secure approval of oliceridine, we may be required to conduct additional clinical studies. The amount and timing of such studies are unknown. We will need to obtain substantial additional funding in connection with our continuing operations. We will seek to fund our operations through the sale of equity, debt financings or other sources, including potential collaborations. However, we may be unable to raise additional funds or enter into such other agreements when needed on favorable terms, or at all. If we fail to raise capital or enter into such other arrangements as, and when, needed, we may have to significantly delay, scale back or discontinue our operations, development programs, and/or any future commercialization efforts.

## **Recent Developments**

### ***Restructuring***

On November 8, 2018, upon the approval of our Board of Directors, we announced a restructuring of approximately one-third of our workforce, or 14 employees, as well as other cost saving initiatives intended to lower our annualized net operating cash burn. We completed the restructuring on December 31, 2018. We have determined that the total costs related to the restructuring were approximately \$1.4 million, all of which is expected to result in future cash outlays, primarily related to severance costs and benefit-related expenses. We recorded these charges in the fourth quarter of 2018.

### ***Sublease***

On October 11, 2018, we entered into an agreement with The Vanguard Group, Inc., or Vanguard, whereby Vanguard agreed to sublease 40,565 square feet of space currently rented by us in Chesterbrook, Pennsylvania, for an initial term of 37 months. Vanguard has an option to extend the sublease term for 3 years, and a second option to extend the sublease until November 30, 2027. The sublease provides for rent abatement for the first month of the term; thereafter, the rent payable to us by Vanguard under the sublease is (i) \$0.50 less during months 2 through 13 of the sublease and (ii) in month 14 of the sublease and thereafter, \$1.00 less than the base rent payable by us under our master lease with Chesterbrook Partners, L. P. Vanguard also is responsible for paying to us all tenant energy costs, annual operating costs, and annual tax costs attributable to the subleased space during the term of the sublease.

### ***Litigation***

In October and November 2018, we and certain of our current and former officers and directors were sued in three purported class actions filed in the U.S. District Court for the Eastern District of Pennsylvania, or the EDPA. In each case, the plaintiffs allege that we and the officers made false and misleading statements in violation of federal securities laws regarding our business, operations, and prospects, including certain statements made relating to our End-of-Phase 2 meeting with the FDA. The plaintiffs seek, among other remedies, unspecified damages, attorneys' fees and other costs. In January 2019, the three lawsuits were consolidated into one action. On March 6, 2019, the District Court

held a hearing to appoint the lead plaintiff and lead counsel, and a consolidated amended complaint will be filed after such appointments are made. We believe that the lawsuits are without merit, and we intend to vigorously defend ourselves against the allegations.

In December 2018, a shareholder derivative action was filed against us and certain current and former officers and directors in the EDPA, and in February 2019, two additional, similar shareholder derivative actions were filed in the U.S. District Court for the District of Delaware. These cases, which involve similar facts as the consolidated securities lawsuits, assert claims against the individual defendants for, among other things, breach of fiduciary duty, waste of corporate assets, violations of the federal securities laws, and unjust enrichment, and they make a number of demands, including for monetary damages and other equitable and injunctive relief. Two of the derivative actions have been stayed in favor of the consolidated securities lawsuits, and we expect that the third derivative action will be stayed as well.

### ***Equity Offering***

On January 29, 2019, we entered into securities purchase agreements with two institutional investors wherein we agreed to sell to the investors an aggregate of 10,000,000 shares of our common stock, at an offering price of \$1.00 per share, in a registered direct offering made pursuant to our existing registration statement on Form S-3. The net proceeds to us from the offering were approximately \$9.2 million, after deducting fees and the expenses of the placement agent. We intend to use the net proceeds from the offering primarily for the development of olliceridine and for general corporate purposes.

Pursuant to a letter agreement dated January 28, 2019, or the Engagement Letter, we engaged H.C. Wainwright & Co., LLC, or Wainwright, to act as our exclusive placement agent in connection with the issuance and sale of the shares. We paid Wainwright 7.0% of the aggregate gross proceeds in the offering and \$50,000 for certain expenses, and we issued warrants to purchase 500,000 shares of common stock to certain designees of Wainwright. These warrants have a term of five years, are immediately exercisable and have an exercise price of \$1.25 per share. The Engagement Letter also includes indemnification obligations of us and other provisions customary for transactions of this nature.

### **Senior Secured Tranched Term Loan Credit Facility**

In September 2014, we entered into a loan and security agreement with Oxford Finance LLC and Pacific Western Bank, or the lenders, pursuant to which they agreed to lend us up to \$35.0 million in a three-tranche series of term loans (Term Loans A, B, and C). Upon initially entering into the agreement, we borrowed \$2.0 million under Term Loan A. On April 13, 2015, we amended the agreement with the lenders to change the draw period for Term Loan B. On December 23, 2015, we further amended the agreement with the lenders to, among other things, change the draw period for Term Loan C, modify the interest only period, and modify the maturity date of the loan. In December 2015, we borrowed the Term Loan B tranche of \$16.5 million. Our ability to draw an additional \$16.5 million under Term Loan C was subject to the satisfaction of one or more specified triggers related to the results of our Phase 2b clinical trial of TRV027. Although those triggers were not attained, in December 2016, we and the lenders modified the terms and conditions under which we could exercise an option to draw \$10.0 million of Term Loan C. In March 2017, we borrowed the Term Loan C tranche of \$10.0 million.

Borrowings under Terms Loans A and B accrue interest at a fixed rate of 6.50% per annum. Borrowings under Term Loan C accrue interest at a fixed rate of 6.98% per annum. We were required to make payments of interest only on borrowings under the loan agreement on a monthly basis through and including January 1, 2018; as of January 1, 2018, payments of principal in equal monthly installments and accrued interest have been and will be due until the loan matures on March 1, 2020. As of December 31, 2018, there was \$15.8 million aggregate principal balance outstanding under the term loans. Upon the last payment date of the amounts borrowed under the agreement, we will be required to pay a final payment fee equal to 6.6% of the aggregate amounts borrowed. In addition, if we repay Term Loan A, Term Loan B, or Term Loan C prior to the applicable maturity date, we will pay the lenders a prepayment fee of 1.0% of each of Term Loans A and B, and 2.0% of Term Loan C, if the prepayment occurs on or between April 1, 2018 and March 31, 2019, and 1.0% of Term Loan C, if the prepayment occurs on or after April 1, 2019.

Our obligations are secured by a first priority security interest in substantially all of our assets, including our cash and cash equivalents and marketable securities, but excluding our intellectual property (together, the collateral). In addition, we have agreed not to pledge or otherwise encumber our intellectual property, with specified exceptions. Upon an event of default, the lenders have the right to foreclose upon the available collateral, including our existing cash and cash equivalents and marketable securities.

In connection with entering into the original agreement, we issued to the lenders and placement agent warrants to purchase an aggregate of 7,678 shares of our common stock, of which 5,728 shares remain outstanding as of December 31, 2018. These warrants are exercisable immediately and have an exercise price of \$5.8610 per share. The warrants may be exercised on a cashless basis and will terminate on the earlier of September 19, 2024 or the closing of a merger or consolidation transaction in which we are not the surviving entity. In connection with the draw of Term Loan B, we issued to the lenders and placement agent additional warrants to purchase an aggregate of 34,961 shares of our common stock. These warrants have substantially the same terms as those noted above, and have an exercise price of \$10.6190 per share and an expiration date of December 23, 2025. In connection with the draw of Term Loan C, we issued to the lenders and placement agent additional warrants to purchase an aggregate of 62,241 shares of our common stock. These warrants have substantially the same terms as those noted above, and have an exercise price of \$3.6150 per share and an expiration date of March 31, 2027. These detachable warrant instruments have qualified for equity classification and have been allocated upon the relative fair value of the base instrument and the warrants, according to the guidance of ASC 470-20-25-2.

### **Critical Accounting Policies and Significant Judgments and Estimates**

The preparation of our 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 our financial statements, as well as the reported revenues and expenses during the reported periods. We base our estimates on 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 apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

A summary of our significant accounting policies appears in the notes to our audited consolidated financial statements for the year ended December 31, 2018 included in this Annual Report on Form 10-K. However, we believe that the following accounting policies are important to understanding and evaluating our reported financial results, and we have accordingly included them in this discussion.

#### ***Research and Development***

In October 2017, we announced an updated strategy to focus our resources on the potential approval and commercialization of oliceridine in the United States. With this strategic repositioning, we halted our investment in early stage research. We have completed a first-in-human Phase 1 trial of TRV250, which showed safety, tolerability, and pharmacokinetics supporting the advancement of TRV250 to Phase 2 proof of concept evaluation in patients.

Research and development costs are charged to expense as incurred. Research and development costs include, but are not limited to, personnel expenses, clinical trial supplies, fees for clinical trial services, manufacturing costs, consulting costs, and allocated overhead, including rent, equipment, depreciation, and utilities.

Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as subject enrollment, clinical site activations or information provided to us by our vendors with respect to their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected in the financial statements as prepaid or accrued research and development expense, as the case may be.

As part of the process of preparing our financial statements, we are required to estimate our expenses resulting from our obligations under contracts with vendors, clinical research organizations and consultants, and under clinical site agreements in connection with conducting clinical trials. The financial terms of these contracts are subject to

negotiations, which vary from contract to contract and may result in payment flows that do not match the periods over which materials or services are provided under such contracts. Our objective is to reflect the appropriate trial expenses in our financial statements by matching those expenses with the period in which services are performed and efforts are expended. We may account for these expenses according to the progress of the trial as measured by subject progression and the timing of various aspects of the trial. We determine accrual estimates through financial models taking into account discussion with applicable personnel and outside service providers as to the progress or state of consummation of trials, or the services completed. During the course of a clinical trial, we adjust our clinical expense recognition if actual results differ from estimates. We make estimates of our accrued expenses as of each balance sheet date based on the facts and circumstances known to us at that time. Our clinical trial accruals are dependent upon the timely and accurate reporting of contract research organizations and other third-party vendors. Although we do not expect our estimates to be materially different from amounts actually incurred, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in us reporting amounts that are too high or too low for any particular period. For the years ended December 31, 2018, 2017, and 2016, there were no material adjustments to our prior period estimates of accrued expenses for clinical trials.

### ***Stock-Based Compensation***

At December 31, 2018, we had two stock-based compensation plans, which are more fully described in Note 7. We have applied the fair value recognition provisions of Financial Accounting Standards Board Accounting Standards Codification Topic 718, *Compensation — Stock Compensation*, or ASC 718, to account for stock-based compensation for employees. We recognize compensation costs related to stock options granted to employees based on the estimated fair value of the awards on the date of grant.

We have equity incentive plans under which various types of equity-based awards including, but not limited to, incentive stock options, non-qualified stock options, and restricted stock awards, may be granted to employees, non-employee directors, and non-employee consultants. We also have an inducement plan under which various types of equity-based awards, including non-qualified stock options and restricted stock awards, may be granted to new employees.

For stock options granted to employees and directors, we recognize compensation expense for all stock-based awards based on the estimated grant-date fair values. For restricted stock awards to employees, the fair value is based on the closing price of our common stock on the date of grant. The value of the portion of the award that is ultimately expected to vest is recognized as expense ratably over the requisite service period. The fair value of stock options is determined using the Black-Scholes option pricing model. We utilize a dividend yield of zero based on the fact that we have never paid cash dividends and have no current intention of paying cash dividends. As of fiscal year ended December 31, 2016, we adopted the forfeiture rate methodology change in accordance with ASU 2016-09 to record forfeitures as they occur.

Stock-based compensation expense related to restricted stock units granted to employees is recognized based on the grant-date fair value of each award and recorded as expense over the vesting period using the straight-line method. Forfeitures are recorded as they occur.

See Note 7 for a discussion of the assumptions we used in determining the grant date fair value of options granted under the Black-Scholes option pricing model, as well as a summary of the stock option activity under our stock-based compensation plan for all years presented.

### **Recent Accounting Pronouncements**

See Note 2, *Summary of Significant Accounting Policies*, to the consolidated financial statements included in Part II of this Annual Report on Form 10-K for information on recent accounting pronouncements.

**JOBS Act**

The Jumpstart Our Business Startups Act of 2012, or the JOBS Act, contains provisions that, among other things, reduce reporting requirements for an “emerging growth company.” As an emerging growth company, we have elected to not take advantage of the extended transition period afforded by the JOBS Act for the implementation of new or revised accounting standards and, as a result, will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

**Results of Operations**

(in thousands, except per share data)

**Comparison of Years Ended December 31, 2018 and 2017**

|  | <b>Year Ended December 31,</b> |                    | <b>Change</b>    |
|--|--------------------------------|--------------------|------------------|
|  | <b>2018</b>                    | <b>2017</b>        |                  |
| <b>Revenue:</b>                              |                                |                    |                  |
| License revenue                              | \$ 5,732                       | \$ —               | \$ 5,732         |
| Total revenue                                | 5,732                          | —                  | 5,732            |
| <b>Operating expenses:</b>                   |                                |                    |                  |
| General and administrative                   | 18,979                         | 19,639             | (660)            |
| Research and development                     | 15,824                         | 48,974             | (33,150)         |
| Restructuring                                | 1,427                          | 1,774              | (347)            |
| Total operating expenses                     | 36,230                         | 70,387             | (34,157)         |
| Loss from operations                         | (30,498)                       | (70,387)           | 39,889           |
| <b>Other income (expense):</b>               |                                |                    |                  |
| Sublease rental income                       | 139                            | —                  | 139              |
| Change in fair value of warrant liability    | 9                              | 65                 | (56)             |
| Net gain (loss) on asset disposals           | 107                            | (56)               | 163              |
| Miscellaneous income                         | 1,428                          | 614                | 814              |
| Interest income                              | 1,001                          | 679                | 322              |
| Interest expense                             | (2,231)                        | (2,780)            | 549              |
| Gain (loss) on foreign currency exchange     | 6                              | —                  | 6                |
| Total other income (expense)                 | 459                            | (1,478)            | 1,937            |
| Loss before income tax expense               | (30,039)                       | (71,865)           | 41,826           |
| Foreign income tax expense                   | (745)                          | —                  | (745)            |
| Net loss attributable to common stockholders | <u>\$ (30,784)</u>             | <u>\$ (71,865)</u> | <u>\$ 41,081</u> |

*Revenue*

The revenue recognized primarily relates to the upfront payments received at inception of the licensing agreements in South Korea and China that the Company entered into in 2018.

*General and administrative expense*

General and administrative expenses consist principally of salaries and related costs for personnel in our executive, finance, commercial, and other administrative areas, including expenses associated with stock-based compensation and travel. Other general and administrative expenses include professional fees for legal, market research, consulting, and accounting services.

General and administrative expenses decreased by \$0.7 million, or 3%, for the year ended December 31, 2018 compared to the same period in 2017, primarily as a result of decreases in bonus and stock-based compensation expenses and oliceridine market research expenditures, offset by higher employee separation payments in 2018 and increased rent and related expenses in 2018 following the relocation of our corporate headquarters to Chesterbrook, Pennsylvania in July 2017.

*Research and development expense*

Research and development expenses consist primarily of costs incurred for research and the development of our product candidates, including costs associated with the regulatory approval process. In addition, research and development expenses include salaries and related costs for our research and development personnel and stock-based compensation expense and travel expenses for such individuals.

Research and development costs are expensed as incurred and are tracked by discovery program and subsequently by product candidate once a product candidate has been selected for development. We record costs for some development activities, such as clinical trials, based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations or information provided to us by our vendors.

Research and development expenses decreased by \$33.2 million, or 68% in 2018 as compared to 2017. The following table summarizes our research and development expenses (in thousands):

|                                | Year Ended December 31, |                  |
|--------------------------------|-------------------------|------------------|
|                                | 2018                    | 2017             |
| Personnel-related costs        | \$ 7,075                | \$ 12,115        |
| Oliceridine                    | 6,116                   | 28,688           |
| TRV027                         | 33                      | 99               |
| TRV250                         | 1,577                   | 3,629            |
| Other research and development | 1,023                   | 4,443            |
|                                | <u>\$ 15,824</u>        | <u>\$ 48,974</u> |

The decrease in research and development expenses during the year ended December 31, 2018 was primarily driven by lower oliceridine expenditures following the completion of the oliceridine Phase 3 clinical program in 2017. In addition, personnel-related expenditures and other research and development expenses decreased in 2018 as a result of the October 2017 restructuring and reduction in force, which eliminated our early stage research program.

*Restructuring expense*

On November 8, 2018, upon the approval of the Board of Directors, we announced a workforce restructuring of approximately one-third of our workforce, or 14 employees, as well as other cost saving initiatives intended to lower our annualized net operating cash burn. We completed the restructuring on December 31, 2018. We have determined that the total costs related to the restructuring are approximately \$1.4 million, all of which is expected to result in future cash outlays, primarily related to severance costs and benefit-related expenses. We recorded these charges in the fourth quarter of 2018. As a result of such restructuring in 2018, restructuring expenses decreased by \$0.3 million, or 20%, for the year ended December 31, 2018 compared to the same period in 2017, when we announced a restructuring and reduction in force of 21 employees, primarily in the research and development area, as well as other cost saving initiatives, as further discussed below.

*Other income (expense)*

Other income increased by \$1.9 million, or 131%, during the year ended December 31, 2018 compared to the same period in 2017, primarily due to a decrease in interest expense associated with lower principal balances during the principal repayment term, income associated with business development activities, sublease income from Vanguard, an increase in interest income associated with higher interest rates and an increase in funds received from the sales of Pennsylvania research and development tax credits in 2018, as compared to 2017.

**Comparison of Years Ended December 31, 2017 and 2016**

|  | <b>Year Ended December 31,</b> |              | <b>Change</b> |
|--|--------------------------------|--------------|---------------|
|  | <b>2017</b>                    | <b>2016</b>  |               |
| <b>Revenue:</b>                              |                                |              |               |
| License revenue                              | \$ —                           | \$ 3,750     | \$ (3,750)    |
| Total revenue                                | —                              | 3,750        | (3,750)       |
| <b>Operating expenses:</b>                   |                                |              |               |
| General and administrative                   | 19,639                         | 16,077       | 3,562         |
| Research and development                     | 48,974                         | 89,956       | (40,982)      |
| Restructuring                                | 1,774                          | —            | 1,774         |
| Total operating expenses                     | 70,387                         | 106,033      | (35,646)      |
| Loss from operations                         | (70,387)                       | (102,283)    | 31,896        |
| <b>Other income (expense):</b>               |                                |              |               |
| Change in fair value of warrant liability    | 65                             | 78           | (13)          |
| Miscellaneous income                         | 614                            | 222          | 392           |
| Net (loss) gain on asset disposals           | (56)                           | (16)         | (40)          |
| Interest income                              | 679                            | 743          | (64)          |
| Interest expense                             | (2,780)                        | (1,738)      | (1,042)       |
| Total other expense                          | (1,478)                        | (711)        | (767)         |
| Net loss attributable to common stockholders | \$ (71,865)                    | \$ (102,994) | \$ 31,129     |

*Revenue*

We have historically derived revenue principally from research grants and collaboration arrangements. In March 2015, we signed a letter agreement with Allergan plc pursuant to which it paid us \$10.0 million to fund the expansion of our Phase 2b trial of TRV027 from 500 patients to 620 patients. The collaboration revenue was recorded on a straight-line basis over the remaining period of the trial and was fully recognized as of June 30, 2016.

*General and administrative expense*

General and administrative expenses increased by \$3.6 million, or 22%, for the year ended December 31, 2017 compared to the same period in 2016, primarily as a result of increased headcount and associated salary, bonus and stock compensation expenses, oliceridine market research expenditures, and increased facility expenditures associated with the relocation of our corporate headquarters to Chesterbrook, Pennsylvania, in July 2017.

*Research and development expense*

Research and development expenses decreased by \$41.0 million, or 46%, for the year ended December 31, 2017 compared to the same period in 2016. The following table summarizes our research and development expenses (in thousands):

|                                | <b>Year Ended December 31,</b> |                  |
|--------------------------------|--------------------------------|------------------|
|                                | <b>2017</b>                    | <b>2016</b>      |
| Personnel-related costs        | \$ 12,115                      | \$ 12,499        |
| Oliceridine                    | 28,688                         | 63,156           |
| TRV027                         | 99                             | 6,890            |
| TRV250                         | 3,629                          | 2,970            |
| Other research and development | 4,443                          | 4,441            |
|                                | <u>\$ 48,974</u>               | <u>\$ 89,956</u> |

The decrease in research and development expenses during the year ended December 31, 2017 was due to decreased expenditures upon completion of the oliceridine Phase 3 clinical program and the second quarter 2016 completion of a TRV027 Phase 2b clinical trial in AHF.



*Restructuring expense*

On October 11, 2017, upon the approval of our board of directors, we announced a restructuring and reduction in force of approximately 30% of our workforce, or 21 employees, as well as other cost saving initiatives. The Company incurred pre-tax restructuring charges of \$1.8 million during the year ended December 31, 2017, primarily related to severance and lease termination payments for our office and laboratory space in King of Prussia, Pennsylvania and vivarium space in Exton, Pennsylvania.

*Other income (expense)*

Other expense increased by \$0.8 million, or 108%, during the year ended December 31, 2017 compared to the same period in 2016, primarily due to additional interest expense related to our Term Loan C tranche of \$10.0 million that was drawn in December 2016.

**Liquidity and Capital Resources**

*(in thousands, except per share data)*

We incurred net losses of \$30.8 million, \$71.9 million, and \$103.0 million for the years ended December 31, 2018, 2017, and 2016, respectively. Net cash used in operating activities was \$25.2 million, \$71.3 million, and \$91.6 million for those same periods. At December 31, 2018, we had an accumulated deficit of \$388.3 million, working capital of \$44.6 million, cash and cash equivalents of \$32.9 million, and marketable securities of \$28.6 million.

**Cash Flows**

The following table summarizes our cash flows (in thousands):

|   | <b>Year Ended December 31,</b> |                   |                    |
|---|--------------------------------|-------------------|--------------------|
|   | <b>2018</b>                    | <b>2017</b>       | <b>2016</b>        |
| Net cash (used in) provided by:                                       |                                |                   |                    |
| Operating activities  | \$ (25,375)                    | \$ (71,255)       | \$ (91,554)        |
| Investing activities  | 21,000                         | 32,780            | 37,798             |
| Financing activities  | 20,600                         | 30,986            | 32,329             |
| Net increase (decrease) in cash, cash equivalents and restricted cash | <u>\$ 16,225</u>               | <u>\$ (7,489)</u> | <u>\$ (21,427)</u> |

*Net cash used in operating activities*

Net cash used in operating activities was \$25.4 million for the year ended December 31, 2018 and consisted primarily of a net loss of \$30.8 million. Cash outflows were partially offset by non-cash expenses for stock compensation of \$4.4 million and other non-cash adjustments.

Net cash used in operating activities was \$71.3 million for the year ended December 31, 2017 and consisted primarily of a net loss of \$71.9 million. Cash outflows were partially offset by non-cash expense for stock compensation of \$6.4 million, a decrease in accounts payable and accrued expenses of \$8.4 million primarily associated with the completion of the Phase 3 oliceridine clinical trials, and other non-cash adjustments.

Net cash used in operating activities was \$91.6 million for the year ended December 31, 2016 and consisted primarily of a net loss of \$103.0 million and net cash outflows from a decrease in deferred revenue of \$3.8 million. These cash outflows were partially offset by non-cash expense for stock compensation of \$5.9 million, an increase in accounts payable and accrued.

*Net cash provided by (used in) investing activities*

Net cash provided by investing activities was \$21.0 million for the year ended December 31, 2018. Investing activities consisted primarily of purchases and maturities of marketable securities.

Net cash provided by investing activities for the years ended December 31, 2017 and 2016 was \$32.8 million and \$37.8 million, respectively, and was primarily from the maturities of marketable securities. 2017 also included expenditures related to the July 2017 relocation of our corporate headquarters to Chesterbrook, Pennsylvania.

*Net cash provided by financing activities*

Net cash provided by financing activities was \$20.6 million for the year ended December 31, 2018, which was primarily due to net proceeds of \$33.2 million from the sale of common stock through our at-the-market, or ATM, sales facility, offset by principal repayments on our Term Loans of \$12.7 million.

Net cash provided by financing activities was \$31.0 million for the year ended December 31, 2017, which was primarily due to net proceeds of \$20.7 million from the sale of common stock through our ATM sales facilities, and net proceeds of \$9.9 million from the March 31, 2017 draw of Term Loan C.

Net cash provided by financing activities was \$32.3 million for the year ended December 31, 2016, which was primarily due to net proceeds of \$32.1 million from the sale of common stock in February and December 2016 pursuant to our ATM sales facility.

All periods presented also include proceeds from exercises of common stock options.

**Operating and Capital Expenditure Requirements**

We have not achieved profitability since our inception and we expect to continue to incur net losses and negative cash flows from operations for the foreseeable future. We expect our cash expenditures to continue to be significant in the near term as we seek to address the items in the oliceridine CRL, including conducting an additional clinical study, continue clinical development of TRV250, and began IND-enabling work for TRV045. Over the next twelve months, we anticipate that our total operating expenses will be comparable to the previous twelve months.

We believe that our cash and cash equivalents and marketable securities as of December 31, 2018, together with interest thereon, and the approximately \$9.2 million of net proceeds received in the first quarter of 2019 from our sale of common stock in a registered direct offering, to be sufficient to fund our operating expenses and capital expenditure requirements into the third quarter of 2020. Our anticipated operating expenses involve significant risks and uncertainties and are dependent on our current assessment of the extent and costs of activities required to address the comments in the oliceridine CRL. However, at this time, we have not yet received feedback from the FDA on the draft protocol and analysis plan we have submitted and we have not commenced the additional activities that we believe will be required for us to resubmit the oliceridine NDA. As such, our assessment of these costs and activities may change in the future. In the future, we anticipate that we will need to raise substantial additional financing to fund our operations. To meet these requirements, we may seek to sell equity or convertible securities in public or private transactions that may result in significant dilution to our stockholders, however, at this time we are not permitted to sell equity securities until April 1, 2019, as a result of our registered direct offering. In June 2018, we filed a \$175.0 million shelf registration statement that includes a \$50.0 million ATM sales facility, of which there was approximately \$36.4 million of available capacity as of December 31, 2018. We may offer and sell shares of our common stock under the existing registration statement or any registration statement we may file in the future. If we raise additional funds through the issuance of convertible securities, these securities could have rights senior to those of our common stock and could contain covenants that restrict our operations.

Ultimately, there can be no assurance that we will be able to obtain additional equity or debt financing on terms acceptable to us, if at all. Our future capital requirements will depend on many factors, including:

- the scope, progress, results and costs of researching and developing our product candidates, including oliceridine, or any future product candidates, both in the United States and in territories outside the United States;
- the number and development requirements of any other product candidates that we may pursue;

- our ability to enter into collaborative agreements for the development and/or commercialization of our product candidates, including for oliceridine;
- the costs, timing, and outcome of any regulatory review of oliceridine and any future product candidates, both in the United States and in territories outside the United States;
- the costs, timing, and extent of future commercialization activities, including product manufacturing, marketing, sales and distribution, for any of our product candidates for which we receive marketing approval;
- the revenue, if any, received from commercial sales of our product candidates for which we receive marketing approval;
- any product liability or other lawsuits, including the recently filed class action and stockholder derivative complaints, related to our products or our Company;
- the expenses needed to attract and retain skilled personnel; and
- the costs involved in preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending our intellectual property-related claims, both in the United States and in territories outside the United States.

Please see “Risk Factors” for additional risks associated with our substantial capital requirements.

### **Contractual Obligations and Commitments**

The following is a summary of our long-term contractual cash obligations as of December 31, 2018 (in thousands):

|                                 | <b>Payments Due By Period</b> |                             |                    |                    |                              |
|---------------------------------|-------------------------------|-----------------------------|--------------------|--------------------|------------------------------|
|                                 | <b>Total</b>                  | <b>Less than<br/>1 Year</b> | <b>1 – 3 years</b> | <b>3 – 5 years</b> | <b>More than<br/>5 years</b> |
| Operating lease obligations (1) | \$ 13,415                     | \$ 1,275                    | \$ 2,729           | \$ 2,826           | \$ 6,585                     |
| Loans payable                   | 15,833                        | 12,667                      | 3,166              | —                  | —                            |
| <b>Total</b>                    | <b>\$ 29,248</b>              | <b>\$ 13,942</b>            | <b>\$ 5,895</b>    | <b>\$ 2,826</b>    | <b>\$ 6,585</b>              |

- (1) Operating lease obligations reflect our obligation to make payments in connection with the leases for our office space in Chesterbrook, Pennsylvania. Future rent streams of \$1.1 million to be collected in less than one year and \$2.0 million to be collected between one and three years are not offset against operating lease obligations.

### **Other Commitments**

In the course of normal business operations, we have agreements with contract service providers to assist in the performance of our research and development and manufacturing activities. We can elect to discontinue the work under these agreements at any time. We also could enter into additional collaborative research, contract research, manufacturing and supplier agreements in the future, which may require upfront payments and even long-term commitments of cash.

We have no material non-cancelable purchase commitments with contract manufacturers or service providers as we have generally contracted on a cancelable basis. In December 2016 and October 2017, we entered into manufacturing agreements that are cancelable upon 24 months prior notice of cancellation.

**Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements, as defined by applicable SEC regulations.

**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not required.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### REPORT OF MANAGEMENT

#### Management's Report on Financial Statements

Our management is responsible for the preparation, integrity and fair presentation of information in our financial statements, including estimates and judgments. The financial statements presented in this Annual Report on Form 10-K have been prepared in accordance with accounting principles generally accepted in the United States of America. Our management believes the financial statements and other financial information included in this Annual Report on Form 10-K fairly present, in all material respects, our financial condition, results of operations and cash flows as of and for the periods presented in this Annual Report on Form 10-K. The financial statements have been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report, which is included herein.

#### Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements. Internal control over financial reporting is defined in Rule 13a-15(f) or 15d-15(f) promulgated under the Exchange Act as a process designed by, or under the supervision of, our principal executive and principal financial officers and effected by our board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect our transactions and dispositions of our assets;
- provide reasonable assurance that our transactions are recorded as necessary to permit preparation of our financial statements in accordance with accounting principles generally accepted in the United States of America, and that our receipts and expenditures are being made only in accordance with authorization of our management and our directors; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of our assets that could have a material effect on our financial statements.

Our management, including our Chief Executive Officer and Vice President, Finance, do not expect that our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be 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 within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people or by management override of the controls. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2018. In making this assessment, our management used the criteria based on the framework set forth by the Committee of Sponsoring Organizations of the Treadway Commission in "Internal Control—Integrated Framework" (COSO). Based on our assessments we believe that, as of December 31, 2018, our internal control over financial reporting is effective based on those criteria.

**Report of Independent Registered Public Accounting Firm**

To the Shareholders and the Board of Directors of Trevena, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying balance sheets of Trevena, Inc. (the “Company”) as of December 31, 2018 and 2017, the related statements of income and comprehensive loss, stockholders’ equity, and cash flows, for each of the three years in the period ended December 31, 2018, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2018, in conformity with US generally accepted accounting principles.

**Basis for Opinion**

These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s 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 financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the 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 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 financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company’s auditor since 2007.

Philadelphia, Pennsylvania

March 13, 2019

**TREVENA, INC.**

**Balance Sheets**

*(in thousands, except share and per share data)*

|   | 2018      | 2017      |
|---|-----------|-----------|
| <b>Assets</b>   |           |           |
| Current assets:   |           |           |
| Cash and cash equivalents   | \$ 32,892 | \$ 16,557 |
| Marketable securities   | 28,590    | 49,543    |
| Prepaid expenses and other current assets   | 607       | 1,393     |
| Total current assets  | 62,089    | 67,493    |
| Restricted cash   | 1,303     | 1,413     |
| Property and equipment, net   | 3,387     | 3,805     |
| Intangible asset, net   | —         | 11        |
| Total assets  | \$ 66,779 | \$ 72,722 |
| <b>Liabilities and stockholders' equity</b>   |           |           |
| Current liabilities:  |           |           |
| Accounts payable  | \$ 1,416  | \$ 1,424  |
| Accrued expenses and other current liabilities  | 3,305     | 4,303     |
| Current portion of loans payable, net   | 12,562    | 12,425    |
| Deferred rent   | 207       | 61        |
| Total current liabilities   | 17,490    | 18,213    |
| Loans payable, net  | 4,811     | 15,725    |
| Capital leases, net of current portion  | 20        | 31        |
| Deferred rent, net of current portion   | 2,931     | 3,006     |
| Warrant liability   | 1         | 10        |
| Other long-term liabilities   | —         | 1,104     |
| Total liabilities   | 25,253    | 38,089    |
| Commitments and contingencies (Note 6)  |           |           |
| Stockholders' equity:   |           |           |
| Common stock—\$0.001 par value; 200,000,000 and 100,000,000 shares authorized December 31, 2018 and December 31, 2017, respectively; 82,323,413 and 62,310,795 shares issued and outstanding at December 31, 2018 and December 31, 2017, respectively | 82        | 62        |
| Preferred stock—\$0.001 par value; 5,000,000 shares authorized, none issued or outstanding at December 31, 2018 and December 31, 2017   | —         | —         |
| Additional paid-in capital  | 429,727   | 392,103   |
| Accumulated deficit   | (388,274) | (357,490) |
| Accumulated other comprehensive loss  | (9)       | (42)      |
| Total stockholders' equity  | 41,526    | 34,633    |
| Total liabilities and stockholders' equity  | \$ 66,779 | \$ 72,722 |

See accompanying notes to financial statements.

**TREVENA, INC.**

**Statements of Operations and Comprehensive Loss**  
*(in thousands, except share and per share data)*

|   | Year Ended December 31, |                    |                     |
|---|-------------------------|--------------------|---------------------|
|   | 2018                    | 2017               | 2016                |
| <b>Revenue:</b>   |                         |                    |                     |
| License revenue   | \$ 5,732                | \$ —               | \$ 3,750            |
| Total revenue   | <u>5,732</u>            | <u>—</u>           | <u>3,750</u>        |
| <b>Operating expenses:</b>                                    |                         |                    |                     |
| General and administrative                                    | 18,979                  | 19,639             | 16,077              |
| Research and development                                      | 15,824                  | 48,974             | 89,956              |
| Restructuring charges   | 1,427                   | 1,774              | —                   |
| Total operating expenses                                      | <u>36,230</u>           | <u>70,387</u>      | <u>106,033</u>      |
| Loss from operations  | <u>(30,498)</u>         | <u>(70,387)</u>    | <u>(102,283)</u>    |
| <b>Other income (expense):</b>                                |                         |                    |                     |
| Sublease rental income  | 139                     | —                  | —                   |
| Change in fair value of warrant liability                     | 9                       | 65                 | 78                  |
| Net gain (loss) on asset disposals                            | 107                     | (56)               | (16)                |
| Miscellaneous income  | 1,428                   | 614                | 222                 |
| Interest income   | 1,001                   | 679                | 743                 |
| Interest expense  | (2,231)                 | (2,780)            | (1,738)             |
| Gain (loss) on foreign currency exchange                      | 6                       | —                  | —                   |
| Total other income (expense)                                  | <u>459</u>              | <u>(1,478)</u>     | <u>(711)</u>        |
| Loss before income tax expense                                | <u>(30,039)</u>         | <u>(71,865)</u>    | <u>(102,994)</u>    |
| Foreign income tax expense                                    | <u>(745)</u>            | <u>—</u>           | <u>—</u>            |
| Net loss attributable to common stockholders                  | <u>\$ (30,784)</u>      | <u>\$ (71,865)</u> | <u>\$ (102,994)</u> |
| <b>Other comprehensive gain (loss), net:</b>                  |                         |                    |                     |
| Unrealized gain (loss) on marketable securities               | 33                      | (44)               | 208                 |
| Other comprehensive gain (loss), net                          | 33                      | (44)               | 208                 |
| Comprehensive loss  | <u>\$ (30,751)</u>      | <u>\$ (71,909)</u> | <u>\$ (102,786)</u> |
| <b>Per share information:</b>                                 |                         |                    |                     |
| Net loss per share of common stock, basic and diluted         | <u>\$ (0.42)</u>        | <u>\$ (1.21)</u>   | <u>\$ (1.97)</u>    |
| Weighted average common shares outstanding, basic and diluted | <u>73,558,548</u>       | <u>59,436,649</u>  | <u>52,398,521</u>   |

See accompanying notes to financial statements.



**TREVENA, INC.**  
**Statements of Stockholders' Equity**  
**For the Period From January 1, 2016 to December 31, 2018**  
*(in thousands, except share data)*

|  | Stockholders' Equity   |                         |                                  |                        |   |                                  |
|--|------------------------|-------------------------|----------------------------------|------------------------|---|----------------------------------|
|  | Common Stock           |                         | Additional<br>Paid-in<br>Capital | Accumulated<br>Deficit | Accumulated<br>Other<br>Comprehensive<br>Income<br>(Loss) | Total<br>Stockholders'<br>Equity |
|  | Number<br>of<br>Shares | \$0.001<br>Par<br>Value |                                  |                        |   |                                  |
| Balance, January 1, 2016   | 50,802,603             | \$ 51                   | \$ 325,784                       | \$ (182,498)           | \$ (206)  | \$ 143,131                       |
| Stock-based compensation expense   | —                      | —                       | 5,903                            | —                      | —   | 5,903                            |
| Exercise of stock options  | 149,622                | —                       | 256                              | —                      | —   | 256                              |
| Net exercise of common stock warrant                                     | 698                    | —                       | —                                | —                      | —   | —                                |
| Issuance of common stock, net of issuance costs                          | 4,815,491              | 5                       | 32,072                           | —                      | —   | 32,077                           |
| Unrealized gain on marketable securities                                 | —                      | —                       | —                                | —                      | 208   | 208                              |
| Adjustment to accumulated deficit as a result of adoption of ASU 2016-09 | —                      | —                       | 133                              | (133)                  | —   | —                                |
| Net loss   | —                      | —                       | —                                | (102,994)              | —   | (102,994)                        |
| Balance, December 31, 2016   | 55,768,414             | \$ 56                   | \$ 364,148                       | \$ (285,625)           | \$ 2  | \$ 78,581                        |
| Stock-based compensation expense   | —                      | —                       | 6,387                            | —                      | —   | 6,387                            |
| Exercise of stock options  | 293,809                | —                       | 361                              | —                      | —   | 361                              |
| Issuance of common stock warrants  | —                      | —                       | 501                              | —                      | —   | 501                              |
| Issuance of common stock, net of issuance costs                          | 6,248,572              | 6                       | 20,706                           | —                      | —   | 20,712                           |
| Unrealized loss on marketable securities                                 | —                      | —                       | —                                | —                      | (44)  | (44)                             |
| Net loss   | —                      | —                       | —                                | (71,865)               | —   | (71,865)                         |
| Balance, December 31, 2017   | 62,310,795             | \$ 62                   | \$ 392,103                       | \$ (357,490)           | \$ (42)   | \$ 34,633                        |
| Stock-based compensation expense   | —                      | —                       | 4,367                            | —                      | —   | 4,367                            |
| Exercise of stock options  | 133,074                | —                       | 83                               | —                      | —   | 83                               |
| Issuance of common stock, net of issuance costs                          | 19,879,544             | 20                      | 33,174                           | —                      | —   | 33,194                           |
| Unrealized gain on marketable securities                                 | —                      | —                       | —                                | —                      | 33  | 33                               |
| Net loss   | —                      | —                       | —                                | (30,784)               | —   | (30,784)                         |
| Balance, December 31, 2018   | 82,323,413             | \$ 82                   | \$ 429,727                       | \$ (388,274)           | \$ (9)  | \$ 41,526                        |

See accompanying notes to financial statements.

**TREVENA, INC.**
**Statements of Cash Flows**  
*(in thousands)*

|  | <b>Year Ended December 31,</b> |             |              |
|--|--------------------------------|-------------|--------------|
|  | <b>2018</b>                    | <b>2017</b> | <b>2016</b>  |
| <b>Operating activities:</b>   |                                |             |              |
| Net loss   | \$ (30,784)                    | \$ (71,865) | \$ (102,994) |
| <b>Adjustments to reconcile net loss to net cash used in operating activities:</b> |                                |             |              |
| Depreciation and amortization  | 645                            | 490         | 246          |
| Stock-based compensation   | 4,367                          | 6,387       | 5,903        |
| Noncash interest expense on loans  | 786                            | 1,050       | 534          |
| Loss on disposal of assets   | 177                            | 70          | 17           |
| Revaluation of warrant liability   | (9)                            | (65)        | (78)         |
| Amortization (accretion) of bond premium (discount) on marketable securities       | (182)                          | 474         | 1,334        |
| <b>Changes in operating assets and liabilities:</b>                                |                                |             |              |
| Prepaid expenses and other assets  | 786                            | 612         | 104          |
| Accounts payable, accrued expenses and other liabilities                           | (1,161)                        | (8,408)     | 7,130        |
| Deferred revenue   | —                              | —           | (3,750)      |
| Net cash used in operating activities  | (25,375)                       | (71,255)    | (91,554)     |
| <b>Investing activities:</b>   |                                |             |              |
| Purchases of property and equipment  | (169)                          | (3,495)     | (605)        |
| Maturities of marketable securities  | 68,982                         | 99,018      | 115,824      |
| Purchases of marketable securities   | (47,813)                       | (62,743)    | (77,421)     |
| Net cash provided by investing activities  | 21,000                         | 32,780      | 37,798       |
| <b>Financing activities:</b>   |                                |             |              |
| Proceeds from exercise of common stock options                                     | 83                             | 361         | 256          |
| Proceeds from issuance of common stock, net  | 33,195                         | 20,712      | 32,077       |
| Capital lease payments   | (11)                           | (8)         | (4)          |
| Proceeds from loans payable, net   | —                              | 9,921       | —            |
| Repayments of loans payable, net   | (12,667)                       | —           | —            |
| Net cash provided by financing activities  | 20,600                         | 30,986      | 32,329       |
| Net increase (decrease) in cash, cash equivalents and restricted cash              | 16,225                         | (7,489)     | (21,427)     |
| Cash, cash equivalents and restricted cash—beginning of period                     | 17,970                         | 25,459      | 46,886       |
| Cash, cash equivalents and restricted cash—end of period                           | \$ 34,195                      | \$ 17,970   | \$ 25,459    |
| <b>Supplemental disclosure of cash flow information:</b>                           |                                |             |              |
| Cash paid for interest   | \$ 1,446                       | \$ 1,730    | \$ 1,204     |
| Capital lease additions  | \$ —                           | \$ 27       | \$ 18        |
| Fair value of common stock warrants issued   | \$ —                           | \$ 501      | \$ —         |

See accompanying notes to financial statements.

**TREVENA, INC.**

**Notes to Financial Statements**

**December 31, 2018**

**1. Organization and Description of the Business**

Trevena, Inc., or the Company, was incorporated in Delaware as Parallax Therapeutics, Inc. on November 9, 2007. The Company began operations in December 2007, and its name was changed to Trevena, Inc. on January 3, 2008. The Company is a biopharmaceutical company focused on the development and commercialization of innovative treatment options that target and treat diseases affecting the central nervous system, or CNS. The Company operates in one segment and has its principal office in Chesterbrook, Pennsylvania.

Since commencing operations in 2007, the Company has devoted substantially all of its financial resources and efforts to research and development, including preclinical studies and clinical trials. The Company has never been profitable and has not yet commenced commercial operations. On November 2, 2018, the U.S. Food and Drug Administration, or FDA, issued a complete response letter, or CRL, with respect to the Company's new drug application, or NDA, for oliceridine. In the CRL, the FDA requested additional clinical data on the QT interval and indicated that the submitted safety database was not of adequate size for the proposed labeling. The FDA also requested certain additional nonclinical data and validation reports. On January 28, 2019, the Company announced the receipt of the official Type A meeting minutes from the FDA regarding the CRL wherein it agreed that the current oliceridine safety database will support labeling at a maximum daily dose of 27 mg. The FDA also agreed that the Company can conduct a study in healthy volunteers to collect the requested QT interval data and that the study should include placebo- and positive-control arms. The Company has submitted a detailed protocol and analysis plan to the FDA and, following receipt of FDA feedback, anticipates initiating the study in the first half of 2019. To address remaining items in the CRL, the FDA indicated that the Company should include supporting nonclinical data related to the characterization of the 9662 metabolite and the remaining product validation reports when the Company resubmits the oliceridine NDA.

On November 8, 2018, the Company announced a restructuring of its workforce. See Note 10 for additional information.

Since the Company's inception, the Company has incurred losses and negative cash flows from operations. At December 31, 2018, the Company had an accumulated deficit of \$388.3 million. The Company's net loss was \$30.8 million, \$71.9 million and \$103.0 million for the years ended December 31, 2018, 2017 and 2016, respectively. The Company expects its cash and cash equivalents of \$32.9 million and marketable securities of \$28.6 million as of December 31, 2018, together with interest thereon, to be sufficient to fund its operating expenses and capital expenditure requirements into the third quarter of 2020.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The accompanying financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America, or U.S. GAAP. Any reference in these notes to applicable guidance is meant to refer to the authoritative United States generally accepted accounting principles as found in the Accounting Standards Codification, or ASC, and Accounting Standards Update, or ASU, of the Financial Accounting Standards Board, or FASB. The Company's functional currency is the U.S. dollar.

**Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumption that affect the amounts reported in the financial statements and accompanying notes. Management used significant estimates in the following areas, among others: stock-based compensation expense, the determination of the

fair value of stock-based awards, the fair value of liability-classified common stock warrants, the accounting for research and development costs, accrued expenses and the recoverability of the Company's net deferred tax assets and related valuation allowance. The financial data and other information disclosed in these notes are not necessarily indicative of the results to be expected for any future year or period. The Company bases its estimates on historical experience and also on assumptions that it believes are reasonable, however, actual results could significantly differ from those results.

#### **Cash and Cash Equivalents and Marketable Securities**

The Company considers all highly liquid investments that have maturities of three months or less when acquired to be cash equivalents. Cash equivalents are valued at cost, which approximates their fair market value. The Company maintains a portion of its cash and cash equivalent balances in money market mutual funds that may invest substantially all of their assets in U.S. government agency securities and U.S. Treasury securities.

The Company classifies its marketable securities as "available-for-sale", pursuant to ASC Topic 320, *Investments—Debt and Equity Securities*, or ASC 320, carries them at fair market value and classifies them as current assets on its balance sheets. Unrealized gains and losses on marketable securities are recorded as a separate component of accumulated other comprehensive income/(loss) included in stockholders' equity. As of December 31, 2018 and 2017, the Company had \$28.6 million and \$49.5 million, respectively, in available-for-sale investments, all classified as current assets. See Note 3 for additional information.

The fair value of the Company's investments is determined based on observable market quotes or valuation models using assessments of counterparty credit worthiness, credit default risk of underlying security and overall capital market liquidity. The Company reviews unrealized losses associated with available-for-sale securities to determine the classification as "temporary" or "other-than-temporary" impairment. A temporary impairment results in an unrealized loss being recorded in other comprehensive income (loss). If a decline in the fair value is considered other-than-temporary, based on available evidence, the unrealized loss is transferred from other comprehensive income (loss) to the statement of operations. The Company considers various factors in determining the classification, including the length of time and extent to which the fair value has been less than the Company's cost basis, the financial condition and near-term prospects of the issuer or investee, and the Company's ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. Realized gains (losses) are included in interest income (expense) in the statement of operations and comprehensive income (loss) on a specific identification basis.

#### **Restricted Cash**

The Company maintains \$1.3 million as collateral under a letter of credit for the Company's facility lease obligations in Chesterbrook, Pennsylvania. The Company has recorded this deposit and accumulated interest thereon as restricted cash on its balance sheet.

#### **Fair Value of Financial Instruments**

The carrying amount of the Company's financial instruments, which include cash and cash equivalents, marketable securities, restricted cash, accounts payable and accrued expenses approximate their fair values, given their short-term nature. The carrying amount of the Company's loans payable at December 31, 2018 and 2017 is the nominal value of the loan payable, net of debt discount and deferred charges. The nominal value approximates fair value because the interest rate is reflective of the rate the Company could obtain on debt with similar terms and conditions. Certain of the Company's common stock warrants are carried at fair value, as disclosed in Note 3.

The Company has evaluated the estimated fair value of financial instruments using available market information and management's estimates. The use of different market assumptions and/or estimation methodologies could have a significant effect on the estimated fair value amounts. See Note 3 for additional information.

### **Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentrations of credit risk are primarily cash, cash equivalents, marketable securities and restricted cash. The Company's investment policy includes guidelines on the quality of the institutions and financial instruments and defines allowable investments that the Company believes minimizes the exposure to concentration of credit risk. The Company has no off-balance sheet concentrations of credit risk such as foreign currency exchange contracts, option contracts or other hedging arrangements.

### **Property and Equipment**

Property and equipment consists of computer and laboratory equipment, software, office equipment, furniture, manufacturing equipment and leasehold improvements and is recorded at cost. Maintenance and repairs that do not improve or extend the lives of the respective assets are expensed to operations as incurred. Upon disposal, retirement or sale, the related cost and accumulated depreciation is removed from the accounts and any resulting gain or loss is included in the results of operations. Property and equipment are depreciated on a straight-line basis over their estimated useful lives. The Company uses a life of three years for computer equipment and five years for laboratory equipment, office equipment, furniture, manufacturing equipment and software. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful life of the asset.

The Company reviews long-lived assets when events or changes in circumstances indicate the carrying value of the assets may not be recoverable. Recoverability is measured by comparison of the book values of the assets to future net undiscounted cash flows that the assets are expected to generate. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the book value of the assets exceed their fair value, which is measured based on the projected discounted future net cash flows arising from the assets. No impairment losses have been recorded since inception.

### **Intangible Asset**

The intangible asset recorded in the Company's financial statements was associated with the acquisition of the domain name for the Company's website. Identifiable intangible assets are initially recorded at fair market value at the time of acquisition, utilizing a cost approach and the initial value is amortized over the expected useful life of the asset. The Company also capitalizes costs incurred to renew or extend the term of recognized intangible assets.

### **Common Stock Warrants**

Freestanding warrants that are related to the purchase of common stock are classified as liabilities and recorded at fair value regardless of the timing of the redemption feature or the redemption price or the likelihood of redemption. These warrants are subject to re-measurement at each balance sheet date and any change in fair value is recognized as a component of change in fair value of warrant liability in the statements of operations and comprehensive loss. The Company will continue to adjust the liability for changes in fair value until the earlier of the exercise or expiration of the warrants. The warrants are classified as Level 3 liabilities. The value of these warrants was immaterial as of December 31, 2018 and 2017.

In addition, in connection with entering into loan agreements, the Company has issued warrants to purchase shares of the Company's common stock. These detachable warrant instruments qualify for equity classification and have been allocated upon the relative fair value of the base instrument and the warrant. See Note 6 for additional information.

### **Segment Information**

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision maker, or decision-making group, in making decisions on how to allocate resources and assess performance. The Company's chief operating decision maker is the chief executive officer. The Company and the chief executive officer view the Company's operations and manage its business as one operating segment. All long-lived assets of the Company reside in the United States.

## Revenue

### *ASC 605 Revenue*

Prior to the adoption of FASB'S ASC 606, the Company recognized revenue under FASB'S ASC 605. Under ASC 605, the Company recognized collaboration revenue when persuasive evidence of an arrangement existed, delivery had occurred or services had been rendered, the price was fixed and determinable, and collectability was reasonably assured.

### *ASC 606 Revenue*

In accordance with FASB'S ASC 606, Revenue from Contracts with Customers, or ASC 606, the Company recognizes revenue when its customer obtains control of promised goods or services, in an amount that reflects the consideration which the entity expects to receive in exchange for those goods or services. To determine revenue recognition for arrangements that the Company determines are within the scope of ASC 606, it performs the following five steps:

- (i) identify the contract(s) with a customer;
- (ii) identify the performance obligations in the contract;
- (iii) determine the transaction price;
- (iv) allocate the transaction price to the performance obligations in the contract; and
- (v) recognize revenue when (or as) the entity satisfies a performance obligation.

The Company applies the five-step model to contracts when it determines that it is probable it will collect the consideration it is entitled to in exchange for the goods or services it transfers to the customer. At contract inception, once the contract is determined to be within the scope of ASC 606, the Company assesses the goods or services promised within each contract and determines those that are performance obligations, and assesses whether each promised good or service is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when (or as) the performance obligation is satisfied.

Amounts received prior to satisfying the revenue recognition criteria are recognized as deferred revenue in the Company's balance sheet. Amounts expected to be recognized as revenue within the twelve months following the balance sheet date are classified as Current portion of deferred revenue. Amounts not expected to be recognized as revenue within the twelve months following the balance sheet date are classified as Deferred revenue, net of current portion. As of December 31, 2018 and 2017, the Company did not have a deferred revenue balance.

### *License Revenues*

The Company's revenues have primarily been generated through licensing arrangements. The terms of these agreements typically include payment to the Company of one or more of the following: nonrefundable, up-front license fees; regulatory and commercial milestone payments; payments for manufacturing supply services; and royalties on net sales of licensed products.

In determining the appropriate amount of revenue to be recognized as it fulfills its obligations under each of its agreements, the Company performs the following steps:

- (i) identification of the promised goods or services in the contract;
- (ii) determination of whether the promised goods or services are performance obligations including whether they are distinct in the context of the contract;

- (iii) measurement of the transaction price, including the constraint on variable consideration;
- (iv) allocation of the transaction price to the performance obligations; and
- (v) recognition of revenue when (or as) the Company satisfies each performance obligation.

See Note 8 for additional details surrounding the Company's licensing arrangements.

The Company also assesses whether there is an option in a contract to acquire additional goods or services. An option gives rise to a performance obligation only if the option provides a material right to the customer that it would not receive without entering into that contract. Factors that the Company considers in evaluating whether an option represents a material right include, but are not limited to: (i) the overall objective of the arrangement, (ii) the benefit the collaborator might obtain from the arrangement without exercising the option, (iii) the cost to exercise the option (e.g. priced at a significant and incremental discount) and (iv) the likelihood that the option will be exercised. With respect to options determined to be performance obligations, the Company recognizes revenue when those future goods or services are transferred or when the options expire.

The Company's revenue arrangements may include the following:

*Up-front License Fees:* If a license is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenues from nonrefundable, up-front fees allocated to the license when the license is transferred to the licensee and the licensee is able to use and benefit from the license. For licenses that are bundled with other promises, the Company utilizes judgment to assess the nature of the combined performance obligation to determine whether the combined performance obligation is satisfied over time or at a point in time and, if over time, the appropriate method of measuring progress for purposes of recognizing revenue from non-refundable, up-front fees. The Company evaluates the measure of progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition.

*Milestone Payments:* At the inception of an agreement that includes regulatory or commercial milestone payments, the Company evaluates whether each milestone is considered probable of being achieved and estimates the amount to be included in the transaction price using the most likely amount method. If it is probable that a significant revenue reversal would not occur, the associated milestone value is included in the transaction price. Milestone payments that are not within the control of the Company or the licensee, such as regulatory approvals, are not considered probable of being achieved until those approvals are received. At each reporting period, the Company assesses the probability of achievement of each milestone under its current agreements.

*Research and Development Activities:* Under the Company's current collaboration and license arrangements, if the Company is entitled to reimbursement for costs for services provided by the Company, it expects such reimbursement would be an offset to research and development expenses.

*Royalties:* If the Company is entitled to receive sales-based royalties from its collaborator, including milestone payments based on the level of sales, and the license is deemed to be the predominant item to which the royalties relate, the Company recognizes revenue at the later of (i) when the related sales occur, provided the reported sales are reliably measurable, or (ii) when the performance obligation to which some or all of the royalty has been allocated has been satisfied (or partially satisfied).

*Manufacturing Supply and Research Services:* Arrangements that include a promise for future supply of drug substance or drug product for either clinical development or commercial supply at the licensee's discretion are generally considered as options. The Company assesses if these options provide a material right to the licensee and if so, they are accounted for as separate performance obligations.

The Company receives payments from its licensees based on schedules established in each contract. Upfront payments are recorded as deferred revenue upon receipt, and may require deferral of revenue recognition to a future period until the Company performs its obligations under these arrangements. Amounts are recorded as accounts

receivable when the Company's right to consideration is unconditional. The Company does not assess whether a contract has a significant financing component if the expectation at contract inception is such that the period between payment by the licensees and the transfer of the promised goods or services to the licensees will be one year or less.

### **Research and Development**

Research and development costs are charged to expense as incurred. Research and development costs include, but are not limited to, personnel expenses, clinical trial supplies, fees for clinical trial services, manufacturing costs, consulting costs, and allocated overhead, including rent, equipment, depreciation, and utilities.

Costs for certain development activities, such as clinical trials, are recognized based on an evaluation of the progress to completion of specific tasks using data such as subject enrollment, clinical site activations or information provided to the Company by its vendors with respect to their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the pattern of costs incurred, and are reflected in the financial statements as prepaid or accrued research and development expense, as the case may be.

As part of the process of preparing its financial statements, the Company is required to estimate its expenses resulting from its obligations under contracts with vendors, clinical research organizations and consultants, and under clinical site agreements in connection with conducting clinical trials. The financial terms of these contracts are subject to negotiations, which vary from contract to contract and may result in payment flows that do not match the periods over which materials or services are provided under such contracts. The Company's objective is to reflect the appropriate trial expenses in its financial statements by matching those expenses with the period in which services are performed and efforts are expended. The Company may account for these expenses according to the progress of the trial as measured by subject progression and the timing of various aspects of the trial. The Company determines accrual estimates through financial models taking into account discussion with applicable personnel and outside service providers as to the progress or state of consummation of trials, or the services completed. During the course of a clinical trial, the Company adjusts its clinical expense recognition if actual results differ from its estimates. The Company makes estimates of its accrued expenses as of each balance sheet date based on the facts and circumstances known to it at that time. The Company's clinical trial accruals are dependent upon the timely and accurate reporting of contract research organizations and other third-party vendors. Although the Company does not expect its estimates to be materially different from amounts actually incurred, its understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in it reporting amounts that are too high or too low for any particular period. For the years ended December 31, 2018, 2017, and 2016, there were no material adjustments to the Company's prior period estimates of accrued expenses for clinical trials.

### **Stock-Based Compensation**

At December 31, 2018, the Company had two stock-based compensation plans, which are more fully described in Note 7. The Company has applied the fair value recognition provisions of Financial Accounting Standards Board Accounting Standards Codification Topic 718, *Compensation — Stock Compensation*, to account for stock-based compensation for employees. The Company recognizes compensation costs related to stock options granted to employees based on the estimated fair value of the awards on the date of grant.

The Company has equity incentive plans under which various types of equity-based awards including, but not limited to, incentive stock options, non-qualified stock options, and restricted stock awards, may be granted to employees, non-employee directors, and non-employee consultants. The Company also has an inducement plan under which various types of equity-based awards, including non-qualified stock options and restricted stock awards, may be granted to new employees.

For stock options granted to employees and directors, the Company recognizes compensation expense for all stock-based awards based on the estimated grant-date fair values. For restricted stock awards to employees, the fair value is based on the closing price of the Company's common stock on the date of grant. The value of the portion of the award that is ultimately expected to vest is recognized as expense ratably over the requisite service period. The fair value of stock options is determined using the Black-Scholes option pricing model. The Company utilizes a dividend yield of



zero based on the fact that the Company has never paid cash dividends and has no current intention of paying cash dividends. As of fiscal year ended December 31, 2016, the Company adopted the forfeiture rate methodology change in accordance with ASU 2016-09 to record forfeitures as they occur.

Stock-based compensation expense related to restricted stock units granted to employees is recognized based on the grant-date fair value of each award and recorded as expense over the vesting period using the straight-line method. Forfeitures are recorded as they occur.

See Note 7 for a discussion of the assumptions used by the Company in determining the grant date fair value of options granted under the Black-Scholes option pricing model, as well as a summary of the stock option activity under the Company's stock-based compensation plan for all years presented.

#### **Income Taxes**

Income taxes are recorded in accordance with ASC Topic 740, *Income Taxes*, or ASC 740, which provides for deferred taxes using an asset and liability approach. The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Deferred tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse. Valuation allowances are provided, if based upon the weight of available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

The Company accounts for uncertain tax positions in accordance with the provisions of ASC 740. When uncertain tax positions exist, the Company recognizes the tax benefit of tax positions to the extent that the benefit will more likely than not be realized. The determination as to whether the tax benefit will more likely than not be realized is based upon the technical merits of the tax position, as well as consideration of the available facts and circumstances. To date, the Company has not taken any uncertain tax position or recorded any reserves, interest or penalties.

On December 22, 2017, the U.S. government enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act, or the Tax Act. Additionally, the SEC staff issued SAB 118, which provides guidance on accounting for the effects of the Tax Act. See Note 13.

#### **Comprehensive Income (Loss)**

Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive income (loss) relates to unrealized investment gains or losses on the Company's marketable securities for all periods presented.

#### **Basic and Diluted Net Loss Per Share of Common Stock**

The Company's basic net loss per share is calculated by dividing the net loss by the weighted average number of shares of common stock outstanding for the period. The diluted net loss per common share is computed by giving effect to all potential dilutive common stock equivalents outstanding for the period. Because the impact of these items is anti-dilutive during periods of net loss, there was no difference between basic and diluted net loss per share of common stock for all periods presented.

#### **Recently Adopted Accounting Standards**

In December 2017, the SEC staff issued Staff Accounting Bulletin No. 118, or SAB 118, which provides guidance on accounting for the tax effects of the TCJA. SAB 118 was issued to address the application of GAAP in situations when a registrant does not have the necessary information available, prepared, or analyzed (including computations) in reasonable detail to complete the accounting for certain income tax effects of the Act and allows the Company to record provisional amounts during a measurement period not to extend beyond one year of the TCJA enactment date. The Company has completed its analysis of the impacts of the TCJA, including analyzing the effects of

any Internal Revenue Service (IRS) and U.S. Treasury guidance issued, and state tax law changes enacted, within the maximum one year measurement period resulting in no significant adjustments to the provisional amount previously recorded.

In May 2017, the FASB issued ASU 2017-09, *Stock Compensation - Scope of Modification Accounting* which amends the scope of modification accounting for share-based payment arrangements. The amendment provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting. The new standard is effective for fiscal years beginning after December 15, 2017. The adoption of this standard did not have an impact on the Company's consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230)*, to clarify how certain cash receipts and payments should be presented in the statement of cash flows. The standard is effective for annual periods beginning after December 15, 2017 and interim periods within that reporting period. The adoption of this standard did not have an impact on the Company's consolidated financial statements.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers*. ASU 2014-09 is a comprehensive new revenue recognition model requiring a company to recognize revenue to depict the transfer of goods or services to a customer in an amount reflecting the consideration it expects to receive in exchange for those goods or services. Additionally, in March 2016, the FASB issued ASU 2016-08, *Revenue from Contracts with Customers, Principal versus Agent Considerations*. ASU 2016-08 amends the principal versus agent guidance in ASU 2014-09 to clarify how an entity should identify the unit of accounting for the principal versus agent evaluation and how it should apply the control principal to certain types of arrangements. The effective date for both standards is January 1, 2018. The Company adopted these standards on January 1, 2018 and elected the modified retrospective transition method, meaning the cumulative effect of applying the new guidance, if any, was recognized at that date as an adjustment to the opening accumulated deficit balance. There was no impact to the Company's financial statements upon adoption, as the Company did not have any contracts with customers as of the adoption date.

#### **Recent Accounting Standards Not Yet Adopted**

In February 2018, the FASB issued ASU 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*, which provides the option to reclassify stranded tax effects within accumulated other comprehensive income to retained earnings. This option would be available in each period in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Act (or a portion thereof) is recorded. This is effective for the Company beginning after December 15, 2018, with early adoption permitted. These amendments should be applied in the period of adoption or retrospectively to each period in which the effect of the change in the U.S. federal corporate income tax rate in the Tax Act is recognized. The Company is evaluating the effect this standard will have on its financial statements and related disclosures. See Note 13.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*, which requires lessees to record most leases on their balance sheets and disclose key information about leasing arrangements in an effort to increase transparency and comparability among organizations. The standard is effective for annual periods beginning after December 15, 2018 and interim periods within that reporting period. The Company will adopt the standard on January 1, 2019 and is finalizing its evaluation of the effect this standard will have on its financial statements and related disclosures related to its existing operating leases. The Company will recognize a right of use asset and corresponding lease liability related to its operating leases as of the date of adoption. The Company will elect to apply the package of practical expedients which allows entities not to reassess whether contracts are or contain leases, lease classification, and whether initial direct costs qualify for capitalization. The Company will elect not to separate lease and non-lease components and will not apply the hindsight practical expedient. The adoption of this guidance will have a material effect on the Company's balance sheet and disclosures. The Company is also finalizing its process and internal controls required to comply with the new lease accounting and disclosure requirements set by the new standard on an ongoing basis.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework – Changes to the Disclosure Requirements for Fair Value Measurement*. The new guidance modifies the disclosure

requirements related to fair value measurements in Topic 820, *Fair Value Measurement*, including removing certain previous disclosure requirements, adding certain new disclosure requirements, and modifying certain other disclosure requirements. The ASU will be effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted. The Company is evaluating the effect this standard will have on its financial statements and related disclosures.

### 3. Fair Value of Financial Instruments

ASC Topic 820, *Fair Value Measurement*, or ASC 820, establishes a fair value hierarchy for instruments measured at fair value that distinguishes between assumptions based on market data (observable inputs) and the Company’s own assumptions (unobservable inputs). Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company’s assumptions about the inputs that market participants would use in pricing the asset or liability, and are developed based on the best information available in the circumstances.

ASC 820 identifies fair value as the exchange price, or 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. As a basis for considering market participant assumptions in fair value measurements, ASC 820 establishes a three-tier fair value hierarchy that distinguishes among the following:

Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access.

Level 2—Valuations based on quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and models for which all significant inputs are observable, either directly or indirectly.

Level 3—Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. A financial instrument’s level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

#### Cash, Cash Equivalents, Restricted Cash, and Marketable Securities

The following table presents the Company’s cash, cash equivalents, restricted cash, and marketable securities as of December 31, 2018 and 2017 (in thousands):

|                                   | December 31, 2018 |                  |                   |            |                           |                 |                       |
|-----------------------------------|-------------------|------------------|-------------------|------------|---------------------------|-----------------|-----------------------|
|                                   | Adjusted Cost     | Unrealized Gains | Unrealized Losses | Fair Value | Cash and Cash Equivalents | Restricted Cash | Marketable Securities |
| Cash                              | \$ 10,992         | \$ —             | \$ —              | \$ 10,992  | \$ 9,689                  | \$ 1,303        | \$ —                  |
| Level 1 (1):                      |                   |                  |                   |            |                           |                 |                       |
| Money market funds                | 23,203            | —                | —                 | 23,203     | 23,203                    | —               | —                     |
| U.S. treasury securities          | 18,938            | —                | (4)               | 18,934     | —                         | —               | 18,934                |
| Subtotal                          | 42,141            | —                | (4)               | 42,137     | 23,203                    | —               | 18,934                |
| Level 2 (2):                      |                   |                  |                   |            |                           |                 |                       |
| U.S. government agency securities | 9,661             | —                | (5)               | 9,656      | —                         | —               | 9,656                 |
| Total                             | \$ 62,794         | \$ —             | \$ (9)            | \$ 62,785  | \$ 32,892                 | \$ 1,303        | \$ 28,590             |

|                                   | December 31, 2017 |                  |                   |            |                           |                 |                       |
|-----------------------------------|-------------------|------------------|-------------------|------------|---------------------------|-----------------|-----------------------|
|                                   | Adjusted Cost     | Unrealized Gains | Unrealized Losses | Fair Value | Cash and Cash Equivalents | Restricted Cash | Marketable Securities |
| Cash                              | \$ 6,783          | \$ —             | \$ —              | \$ 6,783   | \$ 5,370                  | \$ 1,413        | \$ —                  |
| Level 1 (1):                      |                   |                  |                   |            |                           |                 |                       |
| Money market funds                | 11,187            | —                | —                 | 11,187     | 11,187                    | —               | —                     |
| U.S. treasury securities          | 1,991             | —                | —                 | 1,991      | —                         | —               | 1,991                 |
| Subtotal                          | 13,178            | —                | —                 | 13,178     | 11,187                    | —               | 1,991                 |
| Level 2 (2):                      |                   |                  |                   |            |                           |                 |                       |
| U.S. government agency securities | 47,594            | —                | (42)              | 47,552     | —                         | —               | 47,552                |
| Total                             | \$ 67,555         | \$ —             | \$ (42)           | \$ 67,513  | \$ 16,557                 | \$ 1,413        | \$ 49,543             |

- (1) The fair value of Level 1 securities is estimated based on quoted prices in active markets for identical assets or liabilities.
- (2) The fair value of Level 2 securities is estimated based on observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term on the assets or liabilities.

The Company classifies investments available to fund current operations as current assets on its balance sheets. As of December 31, 2018, the Company did not hold any investment securities exceeding a one-year maturity.

Unrealized gains and losses on marketable securities are recorded as a separate component of accumulated other comprehensive income (loss) included in stockholders' equity. Realized gains (losses) are included in interest income (expense) in the statement of operations and comprehensive income (loss) on a specific identification basis. The Company did not record any realized gains or losses during the years ended December 31, 2018 and 2017. To date, the Company has not recorded any impairment charges on marketable securities related to other-than-temporary declines in market value.

The Company recognizes transfers between levels of the fair value hierarchy as of the end of the reporting period. We do not hold material Level 3 securities, and therefore, there were no transfers in or out of Level 3 in the hierarchy during the years ended December 31, 2018 or 2017.

#### 4. Property and Equipment, net

Property and equipment consisted of the following (in thousands):

|  | Estimated Useful Life in Years | December 31, |          |
|--|--------------------------------|--------------|----------|
|  |                                | 2018         | 2017     |
| Computers and software                         | 3 - 5                          | \$ 752       | \$ 749   |
| Office equipment and furniture                 | 5                              | 832          | 872      |
| Manufacturing equipment                        | 5                              | 242          | 242      |
| Leasehold improvements                         | 5 - 10                         | 3,082        | 4,824    |
| Leased assets                                  | 5                              | 59           | 59       |
| Total property and equipment                   |                                | 4,967        | 6,746    |
| Less accumulated depreciation and amortization |                                | (1,580)      | (2,941)  |
| Property and equipment, net                    |                                | \$ 3,387     | \$ 3,805 |

Depreciation and amortization expense was \$0.6 million, \$0.5 million, and \$0.2 million for the years ended December 31, 2018, 2017 and 2016, respectively.

## 5. Accrued Expenses and Other Current Liabilities

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

|  | December 31,    |                 |
|--|-----------------|-----------------|
|  | 2018            | 2017            |
| Compensation and benefits                            | \$ 1,524        | \$ 2,489        |
| Restructuring (severance)                            | 1,419           | 1,077           |
| Pharmaceutical development expenses                  | 231             | 444             |
| Accrued interest                                     | 88              | 158             |
| Other accrued expenses and other current liabilities | 43              | 135             |
| Total accrued expenses and other current liabilities | <u>\$ 3,305</u> | <u>\$ 4,303</u> |

## 6. Loans Payable

In September 2014, the Company entered into a loan and security agreement with Oxford Finance LLC and Pacific Western Bank (formerly Square 1Bank) (together, the lenders), pursuant to which the lenders agreed to lend the Company up to \$35.0 million in a three-tranche series of term loans (Term Loans A, B, and C). Upon initially entering into the agreement, the Company borrowed \$2.0 million under Term Loan A. In April 2015, the Company amended the agreement with the lenders to change the draw period for Term Loan B. In December 2015, the Company further amended the agreement with the lenders to, among other things, change the draw period for Term Loan C, modify the interest only period, and modify the maturity date of the loan. In December 2015, the Company borrowed the Term Loan B tranche of \$16.5 million. The Company's ability to draw an additional \$16.5 million under Term Loan C was subject to the satisfaction of one or more specified triggers related to the results of the Company's Phase 2b clinical trial of TRV027, which were announced in May 2016. Although those triggers were not attained, in December 2016, the Company and the lenders modified the terms and conditions under which the Company could exercise an option to draw \$10.0 million of Term Loan C. In March 2017, the Company borrowed the Term Loan C tranche of \$10.0 million.

Borrowings under Term Loans A and B accrue interest at a fixed rate of 6.50% per annum. Borrowings under Term Loan C accrue interest at a fixed rate of 6.98% per annum. The Company was required to make payments of interest only on borrowings under the loan agreement on a monthly basis through and including January 1, 2018. Payments of principal in equal monthly installments and accrued interest began on January 1, 2018 and will continue to be due until the loan matures on March 1, 2020. As of December 31, 2018, there was \$15.8 million aggregate principal balance outstanding under the terms loans. Upon the last payment date of the amounts borrowed under the agreement, the Company will be required to pay a final payment fee equal to 6.6% of the aggregate amounts borrowed, which is recorded as interest expense over the term of the loans payable. In addition, if the Company repays Term Loan A, Term Loan B, or Term Loan C prior to the applicable maturity date, it will pay the lenders a prepayment fee of 1.0% of each of Term Loans A and B, and 2.0% of Term Loan C, if the prepayment occurs on or between April 1, 2018 and March 31, 2019, and 1.0% of Term Loan C, if the prepayment occurs on or after April 1, 2019.

The Company's obligations under the loan and security agreement are secured by a first priority security interest in substantially all of the assets of the Company, including the Company's cash, cash equivalents, and marketable securities but excluding the Company's intellectual property (together, the collateral). The Company has agreed not to pledge or otherwise encumber its intellectual property, other than through grants of certain permitted non-exclusive or exclusive licenses or other conveyances of its intellectual property.

The loan and security agreement includes affirmative and restrictive covenants, including: (a) financial reporting requirements; (b) limitations on the incurrence of indebtedness; (c) limitations on liens; (d) limitations on certain merger and acquisition transactions; (e) limitations on dispositions of certain assets; (f) limitations on fundamental corporate changes (including changes in control); (g) limitations on investments; (h) limitations on payments and distributions and (i) other covenants. The agreement also contains certain events of default, including for payment defaults, breaches of covenants, a material adverse change in the Company's business, operations or condition (financial or otherwise), a material impairment in the value of the collateral or in the prospect of repayment of the Company's obligations to the lender, certain levies, attachments and other restraints on the Company's business,

insolvency, defaults under other agreements and misrepresentations. Upon an event of default, the lenders have the right to foreclose upon the available collateral, including the Company’s existing cash and cash equivalents and marketable securities.

In connection with entering into the agreement, the Company issued to the lenders and the placement agent warrants to purchase an aggregate of 7,678 shares of Trevena common stock, of which 5,728 shares remain outstanding as of December 31, 2018. These detachable warrant instruments have qualified for equity classification and have been allocated upon the relative fair value of the base instrument and the warrants, according to the guidance of ASC 470-20-25-2. These warrants are exercisable immediately and have an exercise price of \$5.8610 per share. The warrants may be exercised on a cashless basis and will terminate on the earlier of September 19, 2024 or the closing of a merger or consolidation transaction in which the Company is not the surviving entity. In connection with the draw of Term Loan B, the Company issued to the lenders and the placement agent additional warrants to purchase an aggregate of 34,961 shares of Trevena common stock. These warrants have substantially the same terms as those noted above, have an exercise price of \$10.6190 per share and an expiration date of December 23, 2025. In connection with draw of Term Loan C, the Company issued to the lenders and placement agent additional warrants to purchase an aggregate of 62,241 shares of its common stock. These warrants have substantially the same terms as those noted above, and have an exercise price of \$3.6150 per share and an expiration date of March 31, 2027.

As of December 31, 2018, borrowings of \$15.8 million attributable to Term Loans A, B and C are outstanding. Interest expense of \$1.4 million, \$1.7 million and \$1.2 million was recorded during the years ended December 31, 2018, 2017 and 2016, respectively. The Company incurred lender and third-party costs of \$1.0 million, related to the issuance of its term loans. Per ASU 2015-03, *Interest-Imputation of Interest*, debt discount and debt issuance costs are to be presented as a contra-liability to the debt on the balance sheet. These costs will be amortized to interest expense over the life of the loans using the effective interest method. A total of \$0.2 million, \$0.3 million and \$0.1 million of debt discount and debt issuance costs were amortized to interest expense during the years ended December 31, 2018, 2017, and 2016, respectively.

The following table summarizes how the issuance of Term Loans A, B, and C are reflected on the balance sheet at December 31, 2018 and 2017 (in thousands):

|   | December 31,    |                  |
|---|-----------------|------------------|
|   | 2018            | 2017             |
| Gross proceeds                            | \$ 15,833       | \$ 28,500        |
| Debt discount and debt issuance costs (1) | 1,540           | (350)            |
| Carrying value                            | 17,373          | 28,150           |
| Current portion of loans payable, net     | 12,562          | 12,425           |
| Loans payable, net                        | <u>\$ 4,811</u> | <u>\$ 15,725</u> |

(1) The accretion of the final fee payment is presented as part of Debt discount and debt issuance costs, a component of loans payable, as of December 31, 2018 and as other long-term liabilities as of December 31, 2017.

Aggregate maturities of long-term debt as of December 31, 2018 are as follows (in thousands):

|  |      |                  |
|--|------|------------------|
|  | 2019 | \$ 12,667        |
|  | 2020 | 3,166            |
|  | 2021 | —                |
|  | 2022 | —                |
|  | 2023 | —                |
|  |      | <u>\$ 15,833</u> |
| Debt Discount and deferred financing costs |      | <u>(108)</u>     |
|  |      | <u>\$ 15,725</u> |

## 7. Stockholders' Equity

### Equity Offerings

Under its certificate of incorporation, the Company was authorized to issue up to 200,000,000 and 100,000,000 shares of common stock as of December 31, 2018 and December 31, 2017, respectively. The Company also was authorized to issue up to 5,000,000 shares of preferred stock as of each of December 31, 2018 and December 31, 2017. The Company is required, at all times, to reserve and keep available out of its authorized but unissued shares of common stock sufficient shares to effect the conversion of the shares of the preferred stock and all outstanding stock options and warrants.

On December 14, 2015, the Company entered into an at the market, or ATM, sales agreement, or the Prior ATM Agreement, with Cowen and Company, LLC, or Cowen, to offer and sell, from time to time at the Company's sole discretion, shares of its common stock, having an aggregate offering price of up to \$75.0 million through Cowen as its sales agent. Sales under the Prior ATM Agreement are deemed to be "at the market offerings," as defined in Rule 415 under the Securities Act of 1933, as amended, or the Securities Act. Under the Prior ATM Agreement, the Company was required to pay Cowen a commission of up to three percent of the gross sales proceeds and provided Cowen with customary indemnification rights. In 2018, the Company issued and sold 11.4 million shares of common stock under the Prior ATM Agreement at a weighted average price per share of \$1.80. The net offering proceeds to the Company in 2018 for sales under the Prior ATM Agreement were approximately \$20.0 million after deducting related expenses, including commissions. Sales of common stock under the Prior ATM Agreement terminated on June 29, 2018 when the Company's Registration Statement on Form S-3 (File No. 333-225685) was declared effective by the SEC. Accordingly, as of December 31, 2018, there was no remaining capacity available under this ATM facility.

In June 2018, the Company filed a \$175.0 million shelf registration statement that included an ATM sales facility to offer and sell, from time to time at the Company's sole discretion, shares of its common stock having an aggregate offering price of up to \$50.0 million. Sales of the shares are deemed to be "at the market offerings," as defined in Rule 415 under the Securities Act. During 2018, the Company sold approximately 8.5 million shares under this facility, at a weighted average share price of \$1.60, which yielded net proceeds to the Company of approximately \$13.2 million after deducting related expenses, including commissions. As of December 31, 2018, there was approximately \$36.4 million of available capacity under this ATM facility.

### Equity Incentive Plans

In 2008, the Company adopted the 2008 Equity Incentive Plan, as amended on February 29, 2008, January 7, 2010, July 8, 2010, December 10, 2010, June 23, 2011 and June 17, 2013, collectively, the 2008 Plan, that authorized the Company to grant restricted stock and stock options to eligible employees, directors and consultants to the Company.

In 2013, the Company adopted the 2013 Equity Incentive Plan, as amended on May 14, 2014, collectively, 2013 Plan. The 2013 Plan became effective upon the Company's entry into the underwriting agreement related to its IPO in January 2014 and, as of such date, no further grants were permitted under the 2008 Plan. The 2013 Plan provides for the grant of incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards and other forms of equity compensation (collectively, stock awards), all of which may be granted to employees, including officers, non-employee directors and consultants of the Company. Additionally, the 2013 Plan provides for the grant of cash and stock based performance awards. The 2013 Plan contains an "evergreen" provision, pursuant to which the number of shares of common stock available for issuance under the plan automatically increases on January 1 of each year beginning in 2015.

On December 15, 2016, the Company adopted the Trevena, Inc. Inducement Plan, or the Inducement Plan, effective January 1, 2017, pursuant to which the Company reserved 500,000 shares of the Company's common stock for issuance under the Inducement Plan. The Plan provides for nonstatutory stock options and restricted stock unit awards. The only persons eligible to receive grants of awards under the Inducement Plan are individuals who satisfy the standards for inducement grants under Nasdaq Marketplace Rule 5635(c)(4) and the related guidance under Nasdaq IM 5635-1, including individuals who were not previously an employee or director of the Company or are following a bona

vide period of non-employment, in each case as an inducement material to such individual's agreement to enter into employment with the Company.

Under all Plans, the amount, terms of grants and exercisability provisions are determined by the board of directors or its designee. The term of the options may be up to 10 years, and options are exercisable in cash or as otherwise determined by the board of directors or its designee. Vesting generally occurs over a period of not greater than four years. For performance-based stock awards, the Company recognizes expense when achievement of the performance factor is probable, over the requisite service period.

The estimated grant-date fair value of the Company's share-based awards is amortized ratably over the awards' service periods. Share-based compensation expense recognized was as follows (in thousands):

|                                | Year Ended December 31, |                 |                 |
|--------------------------------|-------------------------|-----------------|-----------------|
|                                | 2018                    | 2017            | 2016            |
| Research and development       | \$ 1,077                | \$ 1,954        | \$ 3,511        |
| General and administrative     | 3,290                   | 4,433           | 2,392           |
| Total stock-based compensation | <u>\$ 4,367</u>         | <u>\$ 6,387</u> | <u>\$ 5,903</u> |

**Stock Options**

A summary of stock option activity and related information through December 31, 2018 follows:

|   | Options Outstanding |                                 |  |
|---|---------------------|---------------------------------|--|
|   | Number of Shares    | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (in years) |
| Balance, December 31, 2016                      | 6,370,578           | \$ 6.10                         | 7.60   |
| Granted   | 4,187,344           | 3.96                            |  |
| Exercised                                       | (293,809)           | 1.23                            |  |
| Forfeitures                                     | (1,639,890)         | (6.18)                          |  |
| Balance, December 31, 2017                      | <u>8,624,223</u>    | \$ 5.22                         | 7.17   |
| Granted   | 4,065,375           | 1.70                            |  |
| Exercised                                       | (132,952)           | 0.63                            |  |
| Forfeited/Cancelled                             | (4,291,439)         | (4.38)                          |  |
| Balance, December 31, 2018                      | <u>8,265,207</u>    | \$ 3.99                         | 6.99   |
| Vested or expected to vest at December 31, 2018 | <u>8,265,207</u>    | \$ 3.99                         | 6.99   |
| Exercisable at December 31, 2018                | <u>3,748,149</u>    | \$ 5.08                         | 4.79   |

The intrinsic value of the options exercisable as of December 31, 2018 was immaterial, based on the Company's closing stock price of \$0.43 per share and a weighted average exercise price of \$5.08 per share.

The Company uses the Black-Scholes option-pricing model to estimate the fair value of stock options at the grant date. The Black-Scholes model requires the Company to make certain estimates and assumptions, including estimating the fair value of the Company's common stock, assumptions related to the expected price volatility of the Company's stock, the period during which the options will be outstanding, the rate of return on risk-free investments and the expected dividend yield for the Company's stock.



The per-share weighted-average grant date fair value of the options granted to employees and directors during the year ended December 31, 2018, 2017 and 2016 was estimated at \$1.13, \$2.68 and \$5.26 per share, respectively, on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions:

|                                     | Year Ended December 31, |        |        |
|-------------------------------------|-------------------------|--------|--------|
|                                     | 2018                    | 2017   | 2016   |
| Expected term of options (in years) | 5.8                     | 6.2    | 6.2    |
| Risk-free interest rate             | 2.8 %                   | 2.0 %  | 1.5 %  |
| Expected volatility                 | 71.7 %                  | 75.6 % | 68.6 % |
| Dividend yield                      | — %                     | — %    | — %    |

The weighted-average valuation assumptions were determined as follows:

- Risk-free interest rate: The Company based the risk-free interest rate on the interest rate payable on U.S. Treasury securities in effect at the time of grant for a period that is commensurate with the assumed expected option term.
- Expected term of options: Due to its lack of sufficient historical data, the Company estimates the expected life of its employee stock options using the “simplified” method, as prescribed in Staff Accounting Bulletin No. 107, whereby the expected life equals the arithmetic average of the vesting term and the original contractual term of the option.
- Expected stock price volatility: The Company estimated the expected volatility base on its actual historical volatility of the Company’s stock price. The Company calculated the historical volatility by using daily closing prices over a period of the expected term of the associated award. Prior to January 1, 2018, the Company estimated the expected volatility based on actual historical volatility of the stock price of similar companies with publicly-traded equity securities. The Company calculated the historical volatility of the selected companies by using daily closing prices over a period of the expected term of the associated award. The companies were selected based on their enterprise value, risk profiles, position within the industry and with historical share price information sufficient to meet the expected term of the associated award. A decrease in the selected volatility would have decreased the fair value of the underlying instrument. The impact of this change had an immaterial effect on the Company’s financial results for the year ended December 31, 2018.
- Expected annual dividend yield: The Company estimated the expected dividend yield based on consideration of its historical dividend experience and future dividend expectations. The Company has not historically declared or paid dividends to stockholders. Moreover, it does not intend to pay dividends in the future, but instead expects to retain any earnings to invest in the continued growth of the business. Accordingly, the Company assumed an expected dividend yield of 0.0%.
- Estimated forfeiture rate: In 2016, upon adoption of ASU 2016-09, the Company elected to record forfeitures upon occurrence, rather than utilizing an estimate.

The fair value of the Company’s common stock, prior to the IPO, was determined by its board of directors with assistance from its management. The board of directors and management considered numerous objective and subjective factors in the assessment of fair value, including the price for the Company’s preferred stock that was sold to investors and the rights, preferences and privileges of the preferred stock and common stock, the Company’s financial condition and results of operations during the relevant periods and the status of strategic initiatives. These estimates involved a significant level of judgment.

As of December 31, 2018, there was \$5.9 million of total unrecognized compensation expense related to unvested stock options that will be recognized over the weighted average remaining period of 2.13 years.

**Restricted Stock Units**

On December 6, 2018, the Company granted 1,255,000 restricted stock unit awards, or RSUs, to employees. The units vest subject to the satisfaction of service requirements as follows: 25% vest on June 1, 2019, 25% vest on December 1, 2019, and the remaining vest on December 6, 2021. The closing price of the Company's common stock on the date of the grant was \$0.64 per share, which is the fair market value per unit of the RSUs.

For the year ended December 31, 2018, the Company recorded less than \$0.1 million in stock-based compensation expense related to RSUs, which is reflected in the statement of operations. As of December 31, 2018, there were 1,255,000 RSUs outstanding.

As of December 31, 2018, there was \$0.8 million of total unrecognized compensation expense related to unvested restricted stock units that will be recognized over the weighted average remaining period of 1.93 years.

**Shares Available for Future Grant**

At December 31, 2018, the Company has the following shares available to be granted:

|                                | <b>2013 Plan</b> | <b>Inducement Plan</b> |
|--------------------------------|------------------|------------------------|
| Available at December 31, 2017 | 991,613          | 293,000                |
| Authorized                     | 2,492,431        | —                      |
| Granted                        | (4,998,375)      | (322,000)              |
| Forfeited/Cancelled            | 4,118,314        | 173,125                |
| Available at December 31, 2018 | <u>2,603,983</u> | <u>144,125</u>         |

**Shares Reserved for Future Issuance**

At December 31, 2018, the Company has reserved the following shares of common stock for issuance:

|   |                   |
|---|-------------------|
| Stock options outstanding under 2013 Plan                 | 7,909,332         |
| Restricted stock units outstanding under 2013 Plan        | 1,255,000         |
| Shares available for future grant under 2013 Plan         | 2,603,983         |
| Stock options outstanding under Inducement Plan           | 355,875           |
| Shares available for future grant under Inducement Plan   | 144,125           |
| Employee stock purchase plan                              | 225,806           |
| Warrants outstanding                                      | 123,091           |
| Total shares of common stock reserved for future issuance | <u>12,617,212</u> |

**8. Commitments and Contingencies****Licenses***License Agreement with Allergan plc*

On May 3, 2013, the Company entered into an agreement with Allergan plc (formerly Actavis plc and Forest Laboratories Holdings Limited) ("Allergan"), under which the Company granted to Allergan an exclusive option to license TRV027. Under the option agreement, the Company conducted, at its expense, a Phase 2b trial of TRV027 in acute heart failure. In March 2015, Allergan and the Company signed a letter agreement pursuant to which Allergan paid the Company \$10.0 million to fund the expansion of the Phase 2b trial of TRV027 from 500 patients to 620 patients. Collaboration revenue was recognized on a straight-line basis over the study period and was fully recognized as of June 30, 2016. In August 2016, Allergan notified the Company of its decision not to exercise its option, and the Company therefore has retained all rights to TRV027.

*License and Commercialization Agreement with Pharmbio Korea Inc.*

In April 2018, the Company entered into an exclusive license agreement with Pharmbio Korea Inc., or Pharmbio, for the development and commercialization of oliceridine for the management of moderate-to-severe acute pain in South Korea. Under the terms of the agreement, the Company received an upfront, non-refundable cash payment of \$3.0 million (less applicable withholding taxes of \$0.5 million) in June 2018, and will receive a cash commercial milestone of up to \$0.5 million if oliceridine is approved in South Korea and tiered royalties on product sales in South Korea ranging from high single digits to 20%, less applicable withholding taxes. As part of the agreement, Trevena also granted Pharmbio an option to manufacture oliceridine, on a non-exclusive basis, for the development and commercialization of the product in South Korea, subject to a separate arrangement to be entered into if Pharmbio exercises the option. The license agreement is terminable by Pharmbio for any reason upon 180 days written notice.

In accordance with the terms of the agreement, Pharmbio is solely responsible for all development and regulatory activities in South Korea. The parties have formed a Joint Development Committee with equal representation from the Company and Pharmbio to provide overall coordination and oversight of the development of oliceridine in South Korea. The parties also agreed to form a Joint Manufacturing and Commercialization Committee at least six months prior to the anticipated date of regulatory approval of oliceridine in South Korea to provide overall coordination and oversight of the manufacture and commercialization of oliceridine in South Korea.

See Note 9 for accounting analysis under ASC 606.

*License Agreement with Jiangsu Nhwa Pharmaceutical Co. Ltd.*

In April 2018, the Company also entered into an exclusive license agreement with Jiangsu Nhwa Pharmaceutical Co. Ltd., or Nhwa, for the development and commercialization of oliceridine for the management of moderate-to-severe acute pain in China. Under this agreement, the Company received an upfront, non-refundable cash payment of \$2.5 million (less applicable withholding taxes of \$0.3 million) in July 2018, and is eligible to receive cash milestone payments of \$3.0 million upon regulatory approval of oliceridine in each of the United States and China, up to an additional \$6.0 million of commercialization milestones based on product sales levels in China, and a ten percent royalty on all net product sales in China, less applicable withholding taxes. As part of the agreement, Trevena also granted Nhwa an option to manufacture oliceridine, on an exclusive basis in China, for the development and commercialization of the product in China. In the second quarter of 2018, Nhwa elected to exercise this manufacturing option and the Company and Nhwa expect to enter into a separate agreement. The license agreement is terminable by Nhwa for any reason upon 180 days written notice.

In accordance with the terms of the agreement, Nhwa is solely responsible for all development and regulatory activities in China. The parties have formed a Joint Development Committee with equal representation from the Company and Nhwa to provide overall coordination and oversight of the development of oliceridine in China. The parties also agreed to form a Joint Manufacturing and Commercialization Committee at least six months prior to the anticipated date of regulatory approval of oliceridine in China to provide overall coordination and oversight of the manufacture and commercialization of oliceridine in China.

See Note 9 for accounting analysis under ASC 606.

**Operating Leases**

*Lease Expense*

The Company leases office space in Pennsylvania. The Company's leases contain escalating rent clauses, which require higher rent payments in future years. The Company expenses rent on a straight-line basis over the term of the lease, including any rent-free periods.

The Company's principal office is located at 955 Chesterbrook Boulevard, Chesterbrook, Pennsylvania, where the Company currently leases approximately 8,231 square feet of developed office space on the first floor and 40,565

square feet of developed office space on the second floor. The lease term for this space extends through May 2028. On October 11, 2018, the Company entered into an agreement with The Vanguard Group, Inc., or Vanguard, whereby Vanguard agreed to sublease the 40,565 square feet of space on the second floor for an initial term of 37 months. Vanguard has an option to extend the sublease term for 3 years, and a second option to extend the sublease until November 30, 2027. The sublease provides for rent abatement for the first month of the term; thereafter, the rent payable to the Company by Vanguard under the sublease is (i) \$0.50 less during months 2 through 13 of the sublease and (ii) in month 14 and thereafter of the sublease, \$1.00 less than the base rent payable by the Company under its master lease with Chesterbrook Partners, L.P. Vanguard also is responsible for paying to the Company all tenant energy costs, annual operating costs, and annual tax costs attributable to the subleased space during the term of the sublease.

In October 2017, the Company terminated its lease related to vivarium space in Exton, Pennsylvania, under an agreement expiring on December 31, 2018. The Company incurred termination fees equivalent to three months' rent, totaling less than \$0.1 million, in relation to the early termination of this agreement. Additionally, in November 2017, the Company provided notice of its intent to terminate its facility lease of approximately 16,714 square feet of office and laboratory space in King of Prussia, Pennsylvania, under an agreement that expires in September 2020. The Company paid the landlord a \$0.15 million termination fee on the date the Company exercised the termination option. This lease was deemed terminated on August 15, 2018.

Rent expense under operating leases was \$1.5 million, \$1.3 million and \$0.6 million in 2018, 2017 and 2016, respectively.

Future minimum lease payments under noncancelable lease agreements as of December 31, 2018, are as follows (in thousands):

|                              | <b>Operating Lease</b> |
|------------------------------|------------------------|
| 2019                         | \$ 1,275               |
| 2020                         | 1,352                  |
| 2021                         | 1,376                  |
| 2022                         | 1,401                  |
| 2023 and beyond              | 8,011                  |
| Total minimum lease payments | <u>\$ 13,415</u>       |

The Company had deferred rent of \$3.1 million at December 31, 2018 and 2017 related to its facility leases.

#### ***Sublease Rental Income***

Per above, the Company entered into a sublease agreement with Vanguard on October 11, 2018. We recognize sublease income on a straight-line basis over the life of the sublease agreement. The following future minimum lease payments due to the Company from its sublease agreements at December 31, 2018, are as follows (in thousands):

|                              | <b>Sublease</b> |
|------------------------------|-----------------|
| 2019                         | \$ 1,075        |
| 2020                         | 1,078           |
| 2021                         | 944             |
| 2022                         | —               |
| 2023 and beyond              | —               |
| Total minimum lease payments | <u>\$ 3,097</u> |

Sublease rental income totaled \$0.1 million during the fiscal year ended December 31, 2018. There was no sublease income in 2017 or 2016. Assuming Vanguard extends the lease through both renewal terms, we will recognize an additional \$7.0 million in other income over the period of November 2021 through November 2027.

### **Legal Proceedings**

In October and November 2018, the Company and certain of its current and former officers were sued in three purported class actions filed in the U.S. District Court for the Eastern District of Pennsylvania, or the EDPA. In each case, the plaintiffs allege that the Company and the officers made false and misleading statements in violation of federal securities laws regarding the Company's business, operations, and prospects, including certain statements made relating to the Company's End-of-Phase 2 meeting with the FDA. The plaintiffs seek, among other remedies, unspecified damages, and attorneys' fees and other costs. In January 2019, the three lawsuits were consolidated into one action. On March 6, 2019, the District Court held a hearing to appoint the lead plaintiff and lead counsel, and a consolidated amended complaint will be filed after such appointments are made. The Company believes that the lawsuits are without merit, and it intends to vigorously defend itself against the allegations.

In December 2018, a shareholder derivative action was filed on behalf of the Company and against certain current and former officers and directors in the EDPA, and in February 2019, two additional, similar shareholder derivative actions were filed in the U.S. District Court for the District of Delaware. These cases, which involve similar facts as the consolidated securities lawsuits, assert claims against the individual defendants for, among other things, breach of fiduciary duty, waste of corporate assets, violations of the federal securities laws, and unjust enrichment, and they make a number of demands, including for monetary damages and other equitable and injunctive relief. Two of the derivative actions have been stayed in favor of the consolidated securities lawsuits, and the Company expects that the third derivative action will be stayed as well.

### **9. Revenue**

The Company accounts for revenue under FASB's ASC 606, Revenue from Contracts with Customers, or ASC 606, under which revenue is recognized when, or as, performance obligations under the terms of a contract are satisfied, which occurs when control of the promised products or services is transferred to customers.

#### *License Revenue recorded under ASC 606*

License revenue for the year ended December 31, 2018 represents revenue from contracts with customers in licensing arrangements accounted for in accordance with ASC 606, which the Company adopted in the first quarter of 2018, as more fully described in Note 2 and Note 8. For the year ended December 31, 2018, the Company recognized \$3.0 million related to its agreement with Pharmbio and \$2.7 million related to its agreement with Nhwa. There was no license revenue activity in 2017.

Revenue related to the Pharmbio agreement was recognized in the third quarter of 2018, when the Company satisfied its performance obligation in July 2018. Revenue related to the upfront payments received from Nhwa was recognized in the second quarter of 2018, once the related performance obligation was satisfied in June 2018. Both of these performance obligations were satisfied once the Company had transferred the license and know-how and each party could begin to benefit from the transfer. The Company determined that participation in the Joint Development Committees and Joint Manufacturing and Commercialization Committees were deemed immaterial in the context of the contract. The income tax expense resulting from these transactions represents foreign withholding taxes as a result of license revenue from the contracts. As the Company has incurred losses in recent years, no material U.S. federal, state, or foreign income taxes have been accrued.

#### *Collaboration Revenue recorded under ASC 605*

The Company entered into a letter agreement with Allergan in March 2015 under which the Company received a nonrefundable upfront fee of \$10.0 million. The terms of this agreement contained multiple deliverables which included (i) research and development activities and (ii) testing and analysis related to a Phase 2b trial of TRV027. Collaboration revenue is recognized only when the price is fixed or determinable, persuasive evidence of an arrangement exists, delivery has occurred or the services have been rendered and the Company has fulfilled its performance obligations under the contract. The Allergan collaboration revenue was recorded on a straight-line basis and was fully recognized as of June 30, 2016.

## 10. Restructuring Charges

On November 8, 2018, upon the approval of the Company's Board of Directors, the Company announced a restructuring of approximately one-third of the Company's workforce, or 14 employees, as well as other cost saving initiatives intended to lower the Company's annualized net operating cash burn. The Company completed the restructuring on December 31, 2018. The Company has determined that the total costs related to the restructuring are approximately \$1.4 million, all of which is expected to result in future cash outlays, primarily related to severance costs and benefit-related expenses. The Company recorded these charges in the fourth quarter of 2018.

On October 11, 2017, upon the approval of the Company's Board of Directors, the Company announced a restructuring and reduction in force of approximately 30% of the Company's workforce, or 21 employees. As part of this restructuring, the Company also halted its investment in early stage research. The Company incurred pre-tax restructuring charges of \$1.8 million during the year ended December 31, 2017, primarily related to severance and personnel related costs in addition to lease termination payments, as detailed below.

In October 2017, in connection with the Company's restructuring and reduction in force, the Company terminated its lease related to vivarium space in Exton, Pennsylvania, under an agreement expiring on December 31, 2018. The Company incurred termination fees equivalent to three months' rent, totaling less than \$0.1 million, in relation to the early termination of this agreement.

Additionally, in November 2017, the Company provided notice of its intent to terminate its facility lease of approximately 16,714 square feet of office and laboratory space in King of Prussia, Pennsylvania, under an agreement that expires in September 2020. The Company paid the landlord a \$0.15 million termination fee on the date the Company exercised the termination option. As a result, this lease was deemed terminated on August 15, 2018.

The following table summarizes the restructuring balances at December 31, 2018 and 2017 (in thousands):

|                                     | Year Ended December 31, |          |
|-------------------------------------|-------------------------|----------|
|                                     | 2018                    | 2017     |
| Balance, January 1                  | \$ 1,077                | \$ —     |
| Current year restructuring costs    | 1,427                   | 1,774    |
| Payment of employee severance costs | (1,085)                 | (478)    |
| Lease termination costs             | —                       | (219)    |
| Balance, December 31                | \$ 1,419                | \$ 1,077 |

## 11. Net Loss Per Common Share

The following table sets forth the computation of basic and diluted net loss per share for the periods indicated (in thousands, except share and per share data):

|  | Year Ended December 31, |             |              |
|--|-------------------------|-------------|--------------|
|  | 2018                    | 2017        | 2016         |
| Basic and diluted net loss per common share calculation: |                         |             |              |
| Net loss   | \$ (30,784)             | \$ (71,865) | \$ (102,994) |
| Net loss attributable to common stockholders             | \$ (30,784)             | \$ (71,865) | \$ (102,994) |
| Weighted average common shares outstanding               | 73,558,548              | 59,436,649  | 52,398,521   |
| Net loss per share of common stock - basic and diluted   | \$ (0.42)               | \$ (1.21)   | \$ (1.97)    |

The following outstanding securities at December 31, 2018, 2017 and 2016 have been excluded from the computation of diluted weighted shares outstanding, as they would have been anti-dilutive:

|                                    | December 31,     |                  |                  |
|------------------------------------|------------------|------------------|------------------|
|                                    | 2018             | 2017             | 2016             |
| Options outstanding                | 8,265,207        | 8,624,223        | 6,370,578        |
| Restricted stock units outstanding | 1,255,000        | —                | —                |
| Warrants                           | 123,091          | 123,091          | 60,850           |
| Total                              | <u>9,643,298</u> | <u>8,747,314</u> | <u>6,431,428</u> |

## 12. Comprehensive Income (Loss)

The following table presents changes in the components of accumulated other comprehensive income or loss, net of tax (in thousands):

|   |                |
|---|----------------|
| Balance, January 1, 2017                      | \$ 2           |
| Net unrealized loss arising during the period | (44)           |
| Balance, December 31, 2017                    | <u>\$ (42)</u> |
| Net unrealized gain on marketable securities  | 33             |
| Balance, December 31, 2018                    | <u>\$ (9)</u>  |

There were no reclassifications out of accumulated other comprehensive income or loss as well as no tax effect for all periods presented.

## 13. Income Taxes

As the Company has historically incurred net operating losses, the Company has not recorded a provision for income taxes.

On December 22, 2017, the U.S. government enacted comprehensive tax legislation, the Tax Cuts and Jobs Act, or the Tax Act. The Tax Act makes broad and complex changes to the U.S. tax code, including, but not limited to, (1) reducing the U.S. federal corporate tax rate to 21 percent, (2) elimination of the corporate alternative minimum tax, or AMT, and changing how existing AMT credits can be realized; (3) a new limitation on deductible interest expense; (4) the repeal of the domestic production activity deduction; (5) creating the base erosion and anti-abuse tax, or BEAT, a new minimum tax; (6) limitation on the deductibility of certain executive compensation; (7) enhancing the option to claim accelerated depreciation deductions on qualified property and (8) limitations on net operating losses, or NOLs, generated after December 31, 2017, to 80 percent of taxable income.

The income tax provision for the years ended December 31, 2018 and 2017 are as follows (in thousands):

|                                      | December 31,  |             |
|--------------------------------------|---------------|-------------|
|                                      | 2018          | 2017        |
| Current:                             |               |             |
| Federal                              | \$ 745        | \$ —        |
| State                                | —             | —           |
| Total                                | <u>745</u>    | <u>—</u>    |
| Deferred                             |               |             |
| Federal                              | —             | —           |
| State                                | —             | —           |
| Total                                | <u>—</u>      | <u>—</u>    |
| Total income tax provision (benefit) | <u>\$ 745</u> | <u>\$ —</u> |

Deferred tax assets and liabilities reflect the net effects of net operating loss and tax credit carryovers and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The Company maintains a full valuation allowance against its net deferred tax assets because significant utilization of such amounts is not presently expected in the foreseeable future.

Significant components of the Company's net deferred tax assets as of December 31, 2018 are as follows (in thousands):

|  | December 31, |           |
|--|--------------|-----------|
|  | 2018         | 2017      |
| Deferred tax assets:   |              |           |
| Net operating loss carryforwards                               | \$ 18,942    | \$ 16,042 |
| Research and development credits                               | 13,086       | 12,239    |
| Research and development expenses capitalized for tax purposes | 88,485       | 83,707    |
| Deferred rent  | 321          | 365       |
| Depreciation   | 19           | 427       |
| Other temporary differences                                    | 4,823        | 3,203     |
| Total deferred tax assets                                      | 125,676      | 115,983   |
| Deferred tax liabilities:                                      |              |           |
| Prepaid expenses   | (64)         | (65)      |
| Total deferred tax liabilities                                 | (64)         | (65)      |
| Net deferred tax assets  | 125,612      | 115,918   |
| Less valuation allowance                                       | (125,612)    | (115,918) |
| Net deferred tax asset   | \$ —         | \$ —      |

A reconciliation of income tax expense computed at the statutory federal income tax rate to income taxes as reflected in the financial statements is as follows:

|  | December 31, |         |         |
|--|--------------|---------|---------|
|  | 2018         | 2017    | 2016    |
| Percent of pre-tax income:             |              |         |         |
| U.S. federal statutory income tax rate | 21.0 %       | 34.0 %  | 34.0 %  |
| Permanent Differences                  | (0.1)%       | 0.1 %   | — %     |
| State taxes, net of federal benefit    | 7.9 %        | 6.7 %   | 6.6 %   |
| Research and development credit        | 2.8 %        | 1.7 %   | 4.0 %   |
| Rate change due to tax reform          | — %          | (58.5)% | —       |
| Withholding Tax                        | (2.4)%       | — %     | — %     |
| Other                                  | — %          | 1.0 %   | — %     |
| Change in valuation allowance          | (31.6)%      | 15.0 %  | (44.6)% |
| Effective income tax rate              | (2.4)%       | — %     | — %     |

As of December 31, 2018, the Company had federal and state net operating loss carryforwards of \$65.5 million and \$65.6 million that begin to expire at various dates starting in 2028. As of December 31, 2018, the Company had federal research and development tax credit carryforwards of \$13.1 million that begin to expire at various dates starting in 2028. The Company's ability to utilize net operating loss carryforwards, or NOLs, or tax credit carryforwards may be subject to annual limitations under certain provisions of the Internal Revenue Code related to "changes in ownership."

The Company files income tax returns in the U.S. and the Commonwealth of Pennsylvania. Tax years for fiscal 2015 through 2017 are open and potentially subject to examination by the federal and state taxing authorities. The Company is currently not under examination by the Internal Revenue Service or any other jurisdictions for any tax years. To the extent the Company utilizes in the future any tax attribute NOL carryforwards from a tax period that may otherwise be closed to examination, the Internal Revenue Service, state tax authorities, or other governing parties may still adjust the NOL carryforwards upon their examination of the future period in which the attribute was utilized. There are no uncertain tax positions recorded for any federal or state items.



#### 14. Employee Benefit Plan

The Company sponsors a 401(k) defined contribution plan for its employees. Employee contributions are voluntary. The Company matches employee contributions in an amount equal to 100% of the first 3% of eligible compensation and 50% of the next 2% of eligible compensation, and such employer contributions are immediately vested. During 2018, 2017 and 2016, the Company provided matching contributions of \$0.4 million, \$0.4 million and \$0.4 million, respectively.

#### 15. Selected Quarterly Financial Data (Unaudited)

|  | First Quarter                                      | Second Quarter | Third Quarter | Fourth Quarter |
|--|--|----------------|---------------|----------------|
|  | (in thousands, except share and per share amounts) |                |               |                |
| <b>2018</b>  |  |                |               |                |
| Total revenue  | \$ —   | \$ 2,500       | \$ 3,000      | \$ 232         |
| Loss from operations                                   | \$ (9,693)   | \$ (8,595)     | \$ (4,258)    | \$ (7,951)     |
| Net loss   | \$ (9,021)   | \$ (9,304)     | \$ (4,483)    | \$ (7,976)     |
| Net loss per share of common, basic and diluted        | \$ (0.14)  | \$ (0.13)      | \$ (0.06)     | \$ (0.10)      |
| Weighted average shares outstanding, basic and diluted | 64,562,236   | 69,664,994     | 77,445,675    | 82,323,393     |
| <b>2017</b>  |  |                |               |                |
| Total revenue  | \$ —   | \$ —           | \$ —          | \$ —           |
| Loss from operations                                   | \$ (20,975)  | \$ (19,884)    | \$ (15,413)   | \$ (14,115)    |
| Net loss   | \$ (20,714)  | \$ (20,432)    | \$ (15,999)   | \$ (14,720)    |
| Net loss per share of common, basic and diluted        | \$ (0.36)  | \$ (0.35)      | \$ (0.27)     | \$ (0.24)      |
| Weighted average shares outstanding, basic and diluted | 56,894,672   | 58,381,868     | 60,113,327    | 62,290,002     |

The quarters presented above have been adjusted to reflect the adoption of ASU 2016-09 and related impact, that is deemed immaterial, of electing to recognize forfeitures of share-based payment awards as they occur rather than using an estimate.

#### 16. Subsequent Events

On January 29, 2019, the Company entered into securities purchase agreements with two institutional investors wherein the Company agreed to sell to the investors an aggregate of 10,000,000 shares of its common stock, at an offering price of \$1.00 per share, in a registered direct offering made pursuant to the Company's existing registration statement on Form S-3. The net proceeds to the Company from the offering were approximately \$9.2 million, after deducting after deducting fees and the expenses of the placement agent. The Company intends to use the net proceeds from the offering primarily for the development of oliceridine and for general corporate purposes.

Pursuant to a letter agreement dated January 28, 2019, the Company engaged H.C. Wainwright & Co., LLC, or Wainwright, to act as its exclusive placement agent in connection with the issuance and sale of the shares. The Company paid Wainwright 7.0% of the aggregate gross proceeds in the offering and \$50,000 for certain expenses, and it issued warrants to purchase 500,000 shares of common stock to certain designees of Wainwright. These warrants have a term of five years, are immediately exercisable and have an exercise price of \$1.25 per share. The letter agreement also includes indemnification obligations of the Company and other provisions customary for transactions of this nature.

**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**

An evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer, or CEO, and our Vice President, Finance (Principal Financial Officer and Accounting Officer), of the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Exchange Act as of December 31, 2018.

Based on that evaluation, our management, including our CEO and Vice President, Finance, concluded that as of December 31, 2018 our disclosure controls and procedures were effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission and that such information is accumulated and communicated to the Company's management, including our CEO and Vice President, Finance, as appropriate to allow timely decisions regarding required disclosure.

**Changes in Internal Control over Financial Reporting**

There have been no changes in our internal control over financial reporting during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Management's Report on Internal Control Over Financial Reporting and Attestation Report of the Registered Public Accounting Firm**

Management's Report on Internal Control Over Financial Reporting is included in Part II, Item 8 of this Annual Report on Form 10-K and incorporated into this Item 9A by reference.

**Attestation Report of the Registered Public Accounting Firm**

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm regarding internal control over financial reporting as required by Section 404(c) of the Sarbanes-Oxley Act. Because the Company qualifies as an emerging growth company under the JOBS Act, management's report was not subject to attestation by our registered public accounting firm.

**ITEM 9B. OTHER INFORMATION**

None.

## PART III

### ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

#### Directors

The information required by this Item 10 with respect to our Directors is incorporated herein by reference to the information contained under the caption “Item 1. Election of Directors” in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

#### Executive Officers

The information concerning our executive officers required by this Item 10 is provided under the caption “Executive Officers” in Part I, Item 1 of this Annual Report on Form 10-K.

#### Section 16(a) Beneficial Ownership Reporting Compliance

The information concerning Section 16(a) Beneficial Ownership Reporting Compliance by our directors and executive officers is incorporated by reference to the information contained under the caption “Section 16(a) Beneficial Ownership Reporting Compliance” in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

#### Code of Ethics

The information concerning our Code of Business Conduct and Ethics is incorporated by reference to the information contained under the caption “Code of Ethics” in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

#### Audit Committee

The information required by this Item 10 with respect to our Audit Committee is incorporated herein by reference to the information contained under the caption “Corporate Governance” in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

### ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is incorporated by reference to the information contained in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS****Securities Authorized for Issuance under Equity Compensation Plans**

The following table provides certain information with respect to all of our equity compensation plans in effect as of December 31, 2018:

| <b>Plan Category</b>                                   | <b>Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights</b> | <b>Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights</b> | <b>Number of Securities Remaining Available for Issuance Under Equity Compensation Plans (1)(2)(3)</b> |
|--|--|--|--|
| Equity compensation plans approved by stockholders     | 9,164,332  | \$ 4.08  | 2,603,983  |
| Equity compensation plans not approved by stockholders | 355,875  | 1.95   | 144,125  |
| <b>Total</b>   | <b>9,520,207</b>   | <b>\$ 4.00</b>   | <b>2,748,108</b>   |

- (1) Includes 225,806 shares of our common stock issuable under our 2013 Employee Stock Purchase Plan, or the 2013 ESPP. The number of shares of our common stock reserved for issuance under our 2013 ESPP will automatically increase on January 1 of each year, beginning on January 1, 2015 and continuing through and including January 1, 2023, by the number of shares equal to the least of (i) 225,806, (ii) the total number of shares of common stock issued under the 2013 ESPP during the immediately preceding calendar year, and (iii) such lower number of shares determined by our Board of Directors.
- (2) Includes 2,603,983 shares of our common stock available for issuance under our 2013 Equity Incentive Plan. On January 1, 2015 and annually thereafter through January 1, 2023, the number of authorized shares under our 2013 Equity Incentive Plan will automatically increase by a number of shares equal to the lesser of: (i) 4% of the number of our shares issued and outstanding prior to the preceding December 31; or (ii) an amount determined by our Board of Directors.

On December 15, 2016, our Board of Directors adopted the Trevena, Inc. Inducement Plan, or the Inducement Plan, which became effective on January 1, 2017, pursuant to which we reserved 500,000 shares of our common stock for issuance under the Inducement Plan. As of December 31, 2018, 144,125 shares remain eligible for issuance under the Inducement Plan.

**Other**

The other information required by Item 12 is incorporated by reference to the information contained in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by Item 13 is incorporated by reference to the information contained in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by Item 14 is incorporated by reference to the information contained in our definitive proxy statement related to the 2019 annual meeting of stockholders, to be filed within 120 days after the end of the year covered by this Annual Report on Form 10-K.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

**(a) DOCUMENTS FILED AS PART OF THIS REPORT**

The following is a list of our financial statements and supplementary data included in this Annual Report on Form 10-K under Item 8 of Part II hereof:

**1. FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA**

|   |    |
|---|----|
| <a href="#">Report of Independent Registered Public Accounting Firm.</a>  | 78 |
| <a href="#">Balance Sheets as of December 31, 2018 and 2017.</a>  | 79 |
| <a href="#">Statements of Operations and Comprehensive Loss for the years ended December 31, 2018, 2017 and 2016.</a> | 80 |
| <a href="#">Statements of Stockholders' Equity for the Period From January 1, 2016 to December 31, 2018.</a>          | 81 |
| <a href="#">Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016.</a>                        | 82 |
| <a href="#">Notes to Financial Statements for the years ended December 31, 2018, 2017, and 2016.</a>                  | 83 |

**(b) EXHIBITS**

The following is a list of exhibits filed as part of this Annual Report on Form 10-K. Where so indicated by footnote, exhibits that were previously filed are incorporated by reference. For exhibits incorporated by reference, the location of the exhibit in the previous filing is indicated.

| <b>Exhibit Number</b> | <b>Description</b>   |
|-----------------------|--|
| 3.1                   | Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to <a href="#">Exhibit 3.1 to the Registrant's Current Report on Form 8-K</a> , filed with the SEC on February 5, 2014).  |
| 3.2                   | Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to <a href="#">Exhibit 3.1 to Registrant's Current Report on Form 8-K</a> filed with the SEC on May 21, 2018).  |
| 3.3                   | Amended and Restated Bylaws of the Registrant (incorporated by reference to <a href="#">Exhibit 3.2 to the Registrant's Current Report on Form 8-K</a> , filed with the SEC on February 5, 2014).  |
| 4.1                   | Reference is made to Exhibits <a href="#">3.1</a> and <a href="#">3.3</a> .  |
| 4.2                   | Specimen stock certificate evidencing shares of Common Stock of the Registrant (incorporated by reference to <a href="#">Exhibit 4.2 to the Registrant's Registration Statement on Form S-1, as amended</a> (File No. 333-191643), originally filed with the SEC on October 9, 2013).  |
| 4.3                   | Form Warrant issued by Trevena, Inc. to Oxford Finance LLC, Pacific Western Bank and Three Point Capital, LLC (incorporated by reference to <a href="#">Exhibit 4.1 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on December 23, 2015).   |
| 4.4                   | Warrant to purchase shares of Series B preferred stock issued to Comerica Bank, dated December 9, 2011 (incorporated by reference to <a href="#">Exhibit 10.3 to the Registrant's Registration Statement on Form S-1</a> , as amended (File No. 333-191643), originally filed with the SEC on October 9, 2013).                              |
| 4.5                   | Form of Warrant issued by Trevena, Inc. to H.C. Wainwright & Co., LLC or its designees (incorporated by reference to <a href="#">Exhibit 4.1 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on February 1, 2019).   |
| 10.1                  | Amended and Restated Investor Rights Agreement, dated as of May 3, 2013, by and among the Registrant and certain of its stockholders (incorporated by reference to <a href="#">Exhibit 10.5 to the Registrant's Registration Statement on Form S-1</a> , as amended (File No. 333-191643), filed with the SEC on October 9, 2013).           |
| 10.2#                 | Agreement of Lease between Chesterbrook Partners, LP and Trevena, Inc. for 955 Chesterbrook Blvd., Suite 200, Wayne, PA, dated as of December 9, 2016 (incorporated by reference to <a href="#">Exhibit 10.12 to Registrant's Annual Report on Form 10-K</a> filed with the SEC on March 8, 2017).   |
| 10.3+                 | First Amendment dated June 12, 2017 to Agreement of Lease between Chesterbrook Partners, LP and Trevena, Inc. for 955 Chesterbrook Blvd., Suite 200, Chesterbrook, PA as of December 9, 2016 (incorporated by reference to <a href="#">Exhibit 10.1 to Registrant's Quarterly Report on Form 10-Q</a> filed with the SEC on August 3, 2017). |
| 10.4                  | Sublease Agreement dated as of October 11, 2018 by and between The Vanguard Group, Inc. and Trevena, Inc. (incorporated by reference to <a href="#">Exhibit 10.3 to Registrant's Quarterly Report on Form 10-Q</a> filed with the SEC on November 8, 2018).  |
| 10.5+                 | 2008 Equity Incentive Plan, as amended to date (incorporated by reference to <a href="#">Exhibit 10.9 to the Registrant's Registration Statement on Form S-1</a> , as amended (File No. 333 191643), filed with the SEC on October 9, 2013).   |
| 10.6+                 | Form of Stock Option Agreement under 2008 Equity Incentive Plan (incorporated by reference to <a href="#">Exhibit 10.10 to the Registrant's Registration Statement on Form S-1</a> , as amended (File No. 333-191643), filed with the SEC on October 9, 2013).   |
| 10.7+                 | 2013 Equity Incentive Plan (incorporated by reference to <a href="#">Exhibit 99.1 to the Registrant's Registration Statement on Form S-8</a> (File No. 333 195957), filed with the SEC on May 14, 2014).   |
| 10.8+                 | Form of Stock Option Grant Notice and Stock Option Agreement under 2013 Equity Incentive Plan (incorporated by reference to <a href="#">Exhibit 10.12 to the Registrant's Registration Statement on Form S-1</a> , as amended (File No. 333-191643), filed with the SEC on October 9, 2013).   |

- 10.9+ Form of Stock Option Grant Notice and Stock Option Agreement under 2013 Equity Incentive Plan (incorporated by reference to [Exhibit 10.5 to Registrant's Quarterly Report on Form 10-Q](#) filed with the SEC on May 7, 2015).
- 10.10+ Form of Restricted Stock Grant Notice and Restricted Stock Unit Award Agreement under 2013 Equity Incentive Plan (incorporated by reference to [Exhibit 10.13 to the Registrant's Registration Statement on Form S-1](#), as amended (File No. 333-191643), filed with the SEC on October 9, 2013).
- 10.11+ Trevena, Inc. Inducement Plan, effective January 1, 2017 (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on December 19, 2016).
- 10.12+ Form of Stock Option Grant Notice and Stock Option Agreement used in connection with the Trevena, Inc. Inducement Plan (incorporated by reference to [Exhibit 10.2 to Registrant's Current Report on Form 8-K](#), filed with the SEC on December 19, 2016).
- 10.13+ Form of Restricted Stock Unit Grant Notice and Restricted Stock Unit Award Agreement used in connection with Trevena, Inc. Inducement Plan (incorporated by reference to [Exhibit 10.3 to Registrant's Current Report on Form 8-K](#), filed with the SEC on December 19, 2016).
- 10.14+ Trevena, Inc. Incentive Compensation Plan, effective as of January 1, 2015 (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on January 5, 2015).
- 10.15+ Trevena, Inc. Non-Employee Director Compensation Policy, effective as of January 1, 2016 (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on December 11, 2015).
- 10.16+ Trevena, Inc. Non-Employee Director Compensation Policy, effective as of February 28, 2018 (incorporated by reference to [Exhibit 10.1 to the Registrant's Form 8-K](#) filed with the SEC on March 2, 2018).
- 10.17+ 2013 Employee Stock Purchase Plan (incorporated by reference to [Exhibit 10.15 to the Registrant's Registration Statement on Form S-1](#), as amended (File No. 333-191643), filed with the SEC on October 9, 2013).
- 10.18+ Form of Indemnity Agreement with executives and directors (incorporated by reference to [Exhibit 10.16 to the Registrant's Registration Statement on Form S-1](#), as amended (File No. 333-191643), filed with the SEC on October 9, 2013).
- 10.19+ Executive Employment Agreement dated as of October 1, 2018 by and between Trevena, Inc. and Carrie L. Bourdow (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on October 1, 2018).
- 10.20+ Executive Employment Agreement, dated as of February 1, 2018, by and between the Registrant and Carrie L. Bourdow (incorporated by reference to [Exhibit 10.2 to Registrant's Quarterly Report on Form 10-Q](#) filed with the SEC on May 3, 2018).
- 10.21+# [Executive Employment Agreement effective as of May 21, 2018 by and between Trevena, Inc. and Mark A. Demitrack](#)
- 10.22+# [Executive Employment Agreement effective as of December 6, 2018 by and between Trevena, Inc. and Robert T. Yoder](#)
- 10.23 Loan and Security Agreement, dated September 19, 2014, by and among Trevena, Inc., as borrower, Oxford Finance LLC, as collateral agent and lender, and Square 1 Bank, as lender (incorporated by reference to [Exhibit 10.1 to the Registrant's Current Report on Form 8-K](#), filed with the SEC on September 22, 2014).
- 10.24 First Amendment to Loan and Security Agreement, dated April 13, 2015, by and among Trevena, Inc., as borrower, Oxford Finance LLC, as collateral agent and lender, and Square 1 Bank, as lender (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on April 13, 2015).
- 10.25 Second Amendment to Loan and Security Agreement dated December 23, 2015, by and among Trevena, Inc., as borrower, Oxford Finance LLC, as collateral agent and lender, and Pacific Western Bank (as the successor to Square 1 Bank), as lender (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on December 23, 2015).
- 10.26 Third Amendment to Loan and Security Agreement dated December 30, 2016, by and between Trevena, Inc., as borrower, Oxford Finance LLC, as collateral agent and lender, and Pacific Western Bank (as successor to Square 1 Bank), as lender (incorporated by reference to [Exhibit 10.1 to Registrant's Current Report on Form 8-K](#), filed with the SEC on January 4, 2017).



|        |   |
|--------|---|
| 10.27  | Fourth Amendment and Consent to Loan and Security Agreement dated as of October 11, 2018 by and between Oxford Finance LLC, Pacific Western Bank, and Trevena, Inc. (incorporated by reference to <a href="#">Exhibit 10.2 to Registrant's Quarterly Report on Form 10-Q</a> , filed with the SEC on November 8, 2018).   |
| 10.28  | Common Stock Sales Agreement, dated June 15, 2018, by and between Trevena, Inc. and Cowen and Company, LLC (incorporated by reference to <a href="#">Exhibit 10.1 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on June 15, 2018).  |
| 10.29  | Common Stock Sales Agreement, dated December 14, 2015, by and between Trevena, Inc. and Cowen and Company, LLC (incorporated by reference to <a href="#">Exhibit 10.1 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on December 14, 2015).  |
| 10.30* | Master Commercial Supply Agreement dated October 20, 2017 by and between Alcam Corporation and Trevena, Inc. (incorporated by reference to Exhibit <a href="#">10.45 to Registrant's Annual Report on Form 10-K/A</a> filed with the SEC on June 14, 2018).   |
| 10.31* | Development and Supply Agreement by and between Pfizer, Inc. and Trevena, Inc. dated as of December 15, 2016 (incorporated by reference to <a href="#">Exhibit 10.46 to Registrant's Annual Report on Form 10-K/A</a> filed with the SEC on June 14, 2018).   |
| 10.32  | Engagement Letter, dated as of January 28, 2019, by and between Trevena, Inc. and H.C. Wainwright & Co., LLC (incorporated by reference to <a href="#">Exhibit 10.1 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on February 1, 2019).   |
| 10.33  | Form of Securities Purchase Agreement, dated as of January 29, 2019, by and among Trevena, Inc. and the Purchasers named therein (incorporated by reference to <a href="#">Exhibit 10.2 to Registrant's Current Report on Form 8-K</a> , filed with the SEC on February 1, 2019).   |
| 23.1#  | <a href="#">Consent of Independent Registered Public Accounting Firm.</a>   |
| 31.1#  | <a href="#">Certification of the Principal Executive Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.</a>  |
| 31.2#  | <a href="#">Certification of the Principal Financial Officer pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934.</a>  |
| 32.1#  | <a href="#">Certification of the Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>  |
| 32.2#  | <a href="#">Certification of the Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>  |
| 101#   | The following financial information from this Annual Report on Form 10-K for the periods ended December 31, 2018 and 2017, formatted in XBRL (eXtensible Business Reporting Language): (i) Balance Sheets as of December 31, 2018 and 2017, (ii) Statements of Operations and Comprehensive Loss for the years ended December 31, 2018, 2017 and 2016, (iii) Statement of Redeemable Convertible Preferred Stock and Stockholders' Equity as of December 31, 2018, 2017 and 2016, (iv) Statements of Cash Flows for the years ended December 31, 2018, 2017 and 2016 and (v) Notes to Financial Statements, tagged as blocks of text. |

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# Filed herewith.

+ Indicates management contract or compensatory plan.

\* Portions of this exhibit, indicated by asterisks, have been omitted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment that has been granted by the Securities and Exchange Commission.



**TREVENA, INC.**

**EXECUTIVE EMPLOYMENT AGREEMENT**

This Agreement is entered into as of April 26, 2018 by and between Trevena, Inc. (the “**Company**”), a Delaware corporation, and Mark A. Demitrack (“**Executive**”) and will become effective as of May 21, 2018 (the “**Effective Date**”).

WHEREAS, the Company desires to employ Executive to provide personal services to the Company, and Executive wishes to continue to be employed by the Company and provide personal services to the Company in return for certain compensation and benefits.

Accordingly, in consideration of the mutual promises and covenants contained herein, the parties agree to the following:

1. Duties and Scope of Employment.

(a) Positions and Duties. Effective as of the Effective Date, Executive will serve as Senior Vice President & Chief Medical Officer of the Company. Executive will render such business and professional services in the performance of Executive’s duties, consistent with Executive’s position within the Company, as will reasonably be assigned to Executive by the Company’s Chief Executive Officer, to whom Executive will report. The period of Executive’s employment under this Agreement is referred to herein as the “**Employment Term.**”

(b) Obligations. During the Employment Term, Executive will perform Executive’s duties faithfully and to the best of Executive’s ability. For the duration of the Employment Term, Executive agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Company’s Board of Directors (the “**Board**”) or the Compensation Committee of the Board (the “**Compensation Committee**”). Nothing in this Agreement or elsewhere shall prevent Executive from managing his personal investment and affairs, or from engaging in charitable and community affairs, so long as such activities do not either individually or in the aggregate interfere with the performance of his duties for the Company.

2. At-Will Employment. The parties agree that Executive’s employment with the Company is “at-will” employment and may be terminated at any time with or without cause or notice. Executive’s at-will employment status may not be changed except by way of written agreement signed by Executive and an authorized officer of the Company.

3. Compensation.

(a) Base Salary. During the Employment Term, the Company will pay Executive an initial annualized salary of \$365,000 as compensation for services (the “**Base Salary**”). The Base Salary shall be paid in equal installments in accordance with the Company’s normal payroll practices and subject to required withholding and deductions. The Base Salary will be subject to review and adjustments will be made based upon the Company’s normal performance review practices.

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(b) Bonus. Subject to the terms and conditions set forth in the Trevena, Inc. Incentive Compensation Plan (the “**ICP**”), Executive may be eligible to receive an annual bonus in a target amount of 40% of the Base Salary, subject to, among other things, the achievement of corporate and individual performance objectives, which shall be established and assessed by the Company (the “**Target Bonus**”). For 2018, such objectives will be established within the first thirty (30) days after the Effective Date. For each subsequent calendar year, these objectives generally will be established within 90 days after the start of such calendar year. The Company reserves the right to modify the terms of the ICP, the Target Bonus and other components of bonus compensation and criteria from year to year.

(c) Equity Award. Upon approval by the Board of Directors (the “**Board**”) or the Compensation Committee of the Board (the “**Compensation Committee**”), Employee will be granted a nonstatutory stock option to purchase 200,000 shares of Common Stock, \$0.001 par value per share, of the Company (the “Common Stock”), which option is granted under the Trevena, Inc. Inducement Plan (the “**Plan**”) pursuant to the inducement grant exception under Nasdaq Rule 5635(c)(4) and not pursuant to the Company’s 2013 Equity Incentive Plan, as amended or any other equity incentive plan of the Company, as an inducement that is material to Employee’s employment with the Company (the “**Inducement Grant**”). The Inducement Grant shall have a ten-year term, an exercise price equal to the closing price of the Common Stock on the NASDAQ Global Select Market on the date of such grant and shall vest as to 6.25% of the shares subject to such option on each quarterly (i.e., every three months) anniversary of the date of grant of the option. The Inducement Grant shall be subject to such other terms as are customary for the Company’s options under the Plan and the previously approved form of stock option agreement under the Plan. Employee will be eligible to receive awards of stock options, restricted stock, or any other equity award based on Employee’s performance as determined by the Board or Compensation Committee from time to time. The Board or the Compensation Committee will determine in its discretion whether and when Employee will be granted any such equity awards.

4. Company Policies and Employee Benefits. During the Employment Term, Executive will be eligible to participate in the employee benefit plans currently and hereafter maintained by the Company of general applicability to other senior executives of the Company, including, without limitation, any such group medical, dental, vision, disability, life insurance, and flexible-spending account plans. All matters of eligibility for coverage and benefits under any benefit plan shall be determined in accordance with the provisions of such plan. The Company reserves the right to cancel or change the benefit plans and programs it offers to its employees at any time.

5. Vacation. While employed pursuant to this Agreement, Executive shall be eligible to take vacation subject to the Company’s vacation policy.

6. Expenses. The Company will reimburse Executive for reasonable travel, entertainment or other expenses incurred by Executive in the furtherance of or in connection with the performance of Executive’s duties hereunder, in accordance with the Company’s expense reimbursement policy.

7. Termination of Employment. The provisions of this Section 7 govern the amount of compensation or benefit, if any, to be provided to Executive upon termination of employment and do not affect the right of either party to terminate the employment relationship at any time for any reason.

(a) Termination for other than Cause, Death or Disability. If at any time following the Effective Date (x) the Company terminates Executive's employment with the Company other than for Cause (as defined below), death or disability, or (y) Executive terminates his employment under this Agreement for Good Reason, then, subject to Section 8, Executive will be entitled to receive, less applicable withholdings and deductions:

(i) an amount equal to twelve (12) months of Executive's annualized Base Salary in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(ii) (A) a pro-rata bonus for the calendar year of termination, determined by multiplying Executive's Target Bonus for such year (assuming employment for the entire year) by a fraction whose numerator is the number of days that Executive was employed during such year and whose denominator is the total number of days in such year, payable within 60 days following the date of Executive's termination of employment; and

(B) to the extent not already paid, a cash incentive award under the Company's Incentive Compensation Plan or any similar incentive plan (the "ICP") related to the fiscal year immediately preceding the year of termination in an amount as determined by the Company's Board or the Compensation Committee of the Board, as the case may be, in its sole judgment and discretion;

(iii) if Executive timely elects continued coverage under COBRA for Executive and Executive's covered dependents under the Company's group health plans following such termination of employment, the Company will pay the COBRA premiums necessary to continue Executive's health insurance coverage in effect for Executive and Executive's eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), until the earliest of (A) twelve (12) months from the effective date of such termination, (B) the expiration of Executive's eligibility for the continuation coverage under COBRA, or (C) the date when Executive becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the termination date through the earliest of (A) through (C), the "COBRA Payment Period"). Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company will instead pay Executive on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premiums for that month, subject to applicable tax withholdings (such amount, the "Special Severance Payment"), for the remainder of the COBRA Payment Period;

and

(iv) accelerated vesting as to that number of unvested shares subject to any outstanding equity awards held by Executive at the time of termination that would have otherwise vested if Executive had remained a Company employee for nine (9) months following the termination date.

(b) Termination in Connection With or Following a Change of Control. In the event that either (x) the Company terminates Executive's employment with the Company other than for Cause, death or disability (A) within the thirty (30) day period prior to a Change of Control, or (B) within the period between the Company's execution of a letter of intent for a proposed Change of Control which proposed Change of Control is later consummated (a "**Designated Change of Control**") and the consummation of such Designated Change of Control, or (C) within the twelve (12) month period after a Change of Control, or (y) Executive resigns for Good Reason within twelve (12) months after a Change of Control, then, in addition to the payments set forth in Section 7(a) above, and subject to Section 8 below, Executive shall also be entitled to, less applicable withholdings and deductions:

(i) an amount equal to fifteen (15) months of Executive's annualized Base Salary in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(ii) (A) a pro-rata bonus for the calendar year of termination, determined by multiplying Executive's Target Bonus for such year (assuming employment for the entire year) by a fraction whose numerator is the number of days that Executive was employed during such year and whose denominator is the total number of days in such year, payable within 60 days following the date of Executive's termination of employment; and

(B) to the extent not already paid, a cash incentive award under the ICP related to the fiscal year immediately preceding the year of termination in an amount as determined by the Company's Board or the Compensation Committee of the Board, as the case may be, in its sole judgment and discretion;

(iii) an amount equal to fifteen (15) months of Executive's annual Target Bonus in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(iv) if Executive timely elects continued coverage under COBRA for Executive and Executive's covered dependents under the Company's group health plans following such termination of employment, the Company will pay the COBRA premiums necessary to continue Executive's health insurance coverage in effect for Executive and Executive's eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), until the earliest of (A) fifteen (15) months from the effective date of such termination, (B) the expiration of Executive's eligibility for the continuation coverage under COBRA, or (C) the date when Executive becomes eligible for substantially equivalent health insurance

coverage in connection with new employment or self-employment (such period from the termination date through the earliest of (A) through (C), the “COBRA Payment Period”). Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company will instead pay Executive on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premiums for that month, subject to applicable tax withholdings (such amount, the “Special Severance Payment”), for the remainder of the COBRA Payment Period;

and

(v) immediate and full accelerated vesting of all unvested shares subject to any outstanding equity awards held by Executive at the time of termination; *provided, however*, that such acceleration shall not be interpreted to extend the post-termination exercise period of any stock option held by Executive at the time of termination, unless otherwise approved by the Board.

(c) Termination for Cause, Death or Disability; Voluntary Termination. If Executive’s employment with the Company terminates voluntarily by Executive (other than for Good Reason as set forth in the preceding subsection (b)), for Cause by the Company or due to Executive’s death or disability, then (i) all vesting will terminate immediately with respect to Executive’s outstanding equity awards, (ii) all payments of compensation by the Company to Executive hereunder will terminate immediately (except as to amounts already earned).

(d) Termination by Mutual Consent. If at any time during the course of this Agreement the parties by mutual consent decide to terminate this Agreement, they shall do so by separate agreement setting forth the terms and condition of such termination.

#### 8. Conditions to Receipt of Benefits under Section 7.

(a) Release of Claims. The receipt of any payment or benefit pursuant to Section 7 will be subject to Executive signing and not revoking a release and waiver of all claims in the form attached hereto as Exhibit A (or in such other form as may be specified by the Company in order to comply with then-existing legal requirements to effect a valid release of claims) (the “**Release and Waiver**”) within the applicable time period set forth therein, but in no event later than forty-five days following termination of employment. No payment or benefit pursuant to Section 7 will be paid or provided until the Release and Waiver becomes effective.

(b) Other Conditions. The receipt of any payment or benefits pursuant to Section 7 will be subject to Executive not violating the Employee Proprietary Information, Inventions and Non-Solicitation Agreement attached hereto as Exhibit B (the “PIIA”), returning all Company property, and complying with the Release and Waiver; provided, however, that Company must provide written notice to Executive of the condition under this Section 8(b) that could prevent the disbursement of any

payment or benefits under Section 7 within thirty (30) days of the initial existence of such condition and such condition must not have been remedied by Executive within thirty (30) days of such written notice. Executive understands and agrees that payment or benefits received pursuant to Section 7 are in lieu of and not in addition to any severance or similar benefits that may be provided to other employees of the Company pursuant to a Company policy or plan.

(c) Section 409A. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under Section 7 above that constitute “deferred compensation ” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the regulations and other guidance thereunder and any state law of similar effect (collectively “*Section 409A*”) shall not commence in connection with Executive’s termination of employment unless and until Executive has also incurred a “separation from service” (as such term is defined in Treasury Regulation Section 1.409A-1(h) (“*Separation From Service*”), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A. Pay pursuant to Section 7 above, to the extent of payments made from the date of termination of Executive’s employment through March 15 of the calendar year following such termination, are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations and thus payable pursuant to the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations; to the extent such payments are made following said March 15, they are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations made upon an involuntary termination of service and payable pursuant to Section 1.409A-1(b)(9) (iii) of the Treasury Regulations, to the maximum extent permitted by said provision, with any excess amount being regarded as subject to the distribution requirements of Section 409A(a)(2)(A) of the Internal Revenue Code, including, without limitation, the requirement of Section 409A(a)(2)(B)(i) of the Code that, if Executive is a “specified employee” within the meaning of the aforesaid Section of the Code at the time of such termination from employment, payments be delayed until the earlier of six months after termination of employment or Executive’s death (such applicable date, the “*Specified Employee Initial Payment Date*”). Notwithstanding any other payment schedule set forth in herein, none of the payments under Section 7 will be paid or otherwise delivered prior to the effective date of the Release and Waiver. Except to the extent that payments may be delayed until the Specified Employee Initial Payment Date pursuant to the preceding sentence, on the first regular payroll pay day following the effective date of the Release and Waiver, the Company will pay Executive the payments Executive would otherwise have received under Section 7 on or prior to such date but for the delay in payment related to the effectiveness of the Release and Waiver, with the balance of the payments being paid as originally scheduled. Notwithstanding anything to the contrary set forth herein, if any of the payments or benefits set forth in Section 7 constitute “deferred compensation” within the meaning of Section 409A of the Code and the period during which Executive may review, execute and revoke the Release and Waiver begins in one taxable year and ends in a second taxable year, such payments and benefits shall commence or be made in the second taxable year.

(d) Cooperation with the Company After Termination of Employment. Following termination of the Executive’s employment for any reason, upon request by the Company, Executive will fully cooperate with the Company (at the Company’s reasonable expense) in all matters reasonably relating to the winding up of pending work including, but not limited to, any litigation in which the Company is involved, and the orderly transfer of any such pending work to such other employees as may be designated by the Company.



9. Definitions.

(a) Cause. For purposes of this Agreement, “**Cause**” is defined as (i) an act of dishonesty by Executive in connection with Executive’s responsibilities as an employee, (ii) Executive’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude, (iii) Executive’s gross misconduct, (iv) Executive’s unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Executive owes an obligation of nondisclosure as a result of Executive’s relationship with the Company, or (v) Executive’s willful breach of any obligations under any written agreement or covenant with the Company.

(b) Change of Control. For purposes of this Agreement, “**Change of Control**” of the Company is defined as:

(i) any “person” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company’s then outstanding voting securities; *provided, however*; that sales of equity or debt securities to investors primarily for capital raising purposes shall in no event be deemed a Change of Control; or

(ii) a change in the composition of the Board occurring within a two-year period, as a result of which less than a majority of the directors are Incumbent Directors. “**Incumbent Directors**” will mean directors who either (A) are directors of the Company as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); *provided, however*; that no change in the composition of the Board in connection with the sale of equity or debt securities to investors primarily for capital raising purposes shall be deemed a Change of Control; or

(iii) the date of the consummation of a merger or consolidation of the Company with any other corporation that has been approved by the stockholders of the Company, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or the stockholders of the Company approve a plan of complete liquidation of the Company; or

(iv) the date of the consummation of the sale or disposition by the Company of all or substantially all the Company’s assets.

(c) Good Reason. For purposes of this Agreement, a resignation for “Good Reason” is defined as the resignation by Executive within thirty (30) days following the end of the Cure Period (defined below), if any of the following events occur without Executive’s express written consent: (i) the Company reduces the amount of the Base Salary, other than pursuant to a reduction

that also is applied to substantially all other executives of the Company, (ii) the Company fails to pay the Base Salary or other benefits required to be provided by the Company hereunder, (iii) the Company materially reduces Executive's core functions, duties or responsibilities in a manner that constitutes a demotion, or (iv) any change of Executive's principal office location to a location more than thirty (30) miles from the Company's office at 955 Chesterbrook Boulevard, Suite 200, Chesterbrook, PA; provided, however, that Executive must provide written notice to the Company of the condition that could constitute "Good Reason" within thirty (30) days of the initial existence of such condition and such condition must not have been remedied by the Company within thirty (30) days of such written notice (the "Cure Period").

10. No Conflict with Existing Obligations. Executive represents that his performance of all the terms of this Agreement and, as an executive officer of the Company, do not and will not breach any agreement or obligation of any kind made prior to Executive's employment by the Company, including agreements or obligations Executive may have with prior employers or entities for which Executive has provided services. Executive has not entered into, and Executive agrees that Executive will not enter into, any agreement or obligation, either written or oral, in conflict herewith.

11. Parachute Payments.

(a) If any payment or benefit Executive would receive pursuant to a Change of Control from the Company or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall be reduced to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Executive's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless Executive elects in writing a different order (*provided, however*, that such election shall be subject to Company approval if made on or after the date on which the event that triggers the Payment occurs): reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Executive's stock awards unless Executive elects in writing a different order for cancellation.

(b) The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group affecting the Change of Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

(c) The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Executive within fifteen (15) calendar days after the date on which Executive's right to a Payment is triggered (if requested at that time by the Company or Executive) or such other time as requested by the Company or Executive. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and Executive with an opinion reasonably acceptable to Executive that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Executive.

12. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Executive upon Executive's death and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "**successor**" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance or other disposition of Executive's right to compensation or other benefits will be null and void.

13. Notices. All notices, requests, demands and other communications called for hereunder will be in writing and will be deemed given (i) on the date of delivery if delivered personally, (ii) one (1) day after being sent by a nationally recognized commercial overnight service, specifying next day delivery, with written verification of receipt, or (iii) four (4) days after being mailed by registered or certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:

955 Chesterbrook Blvd, Suite 200, Chesterbrook, PA 19087  
Attn: General Counsel

If to Executive:

at the last residential address known by the Company.

14. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without said provision.

15. Arbitration.

(a) Arbitration. In consideration of Executive's employment with the Company, the Company and Executive agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder or benefit plan of the Company in their capacity as such or otherwise) arising out of, relating to, or resulting from Executive's employment with the Company or the termination of Executive's employment with the

Company, including any breach of this Agreement, but not including those arising out of, relating to, or resulting from the PIAA, will be subject to binding arbitration. Disputes which Executive agrees to arbitrate, and thereby agrees to waive any right to a trial by jury, include any statutory claims under state or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Worker Adjustment and Retraining Notification Act, the Family and Medical Leave Act, discrimination or wrongful termination and any statutory claims. Executive further understands that this Agreement to arbitrate also applies to any disputes that the Company may have with Executive.

(b) Procedure. Executive agrees that any arbitration will be administered by the American Arbitration Association (“AAA”) and that the neutral arbitrator will be selected in a manner consistent with its National Rules for the Resolution of Employment Disputes (the “Rules”). Executive agrees that the arbitrator will administer and conduct any arbitration in a manner consistent with the Rules.

(c) Remedy. Except as provided by this Agreement and by the Rules, including any provisional relief offered therein, arbitration will be the sole, exclusive and final remedy for any dispute between Executive and the Company. Accordingly, except as provided for by the Rules and this Agreement, neither Executive nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Executive understands that this Agreement does not prohibit Executive from pursuing an administrative claim with a local, state or federal administrative body such as the Equal Employment Opportunity Commission or the workers’ compensation board. This Agreement does, however, preclude Executive from pursuing court action regarding any such claim.

(e) Voluntary Nature of Agreement. Executive acknowledges and agrees that Executive is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. Executive further acknowledges and agrees that Executive has carefully read this Agreement and that Executive has asked any questions needed for Executive to understand the terms, consequences and binding effect of this Agreement and fully understands it, including that Executive *is waiving Executive’s right to a jury trial*. Finally, Executive agrees that Executive has been provided an opportunity to seek the advice of an attorney of Executive’s choice before signing this Agreement.

16. Integration. This Agreement, together with the PIAA and the other documents referred to in this Agreement, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. This Agreement may be modified only by agreement of the parties by a written instrument executed by the parties that is designated as an amendment to this Agreement.

17. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

18. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

19. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania.

20. Acknowledgment. Executive acknowledges that he has had the opportunity to discuss this matter with and obtain advice from Executive's private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by their duly authorized officers, as of the day and year first above written.

COMPANY:

TREVENA, INC.

/s/ John M. Limongelli

John M. Limongelli

Senior Vice President, General Counsel & Chief Administrative Officer

EXECUTIVE:

/s/ Mark A. Demitrack

Mark A. Demitrack

## Release and Waiver

**TO BE SIGNED ON OR FOLLOWING THE SEPARATION DATE ONLY**

In consideration of the payments and other benefits set forth in the Employment Agreement of (\_\_\_\_\_), to which this form is attached, I, (\_\_\_\_\_), hereby furnish **Trevena, Inc.** (the "**Company**"), with the following release and waiver of claims ("**Release and Waiver**").

In exchange for the consideration provided to me by the Employment Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "**Released Parties**") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to or on the date that I sign this Agreement (collectively, the "**Released Claims**"). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with the Company, or the termination of that employment; (b) all claims related to my compensation or benefits from the Company including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, misclassification, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (the "**ADEA**"), any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance, including, but not limited to, the State of Pennsylvania or any subdivision thereof; and any public policy, contract, tort, or common law. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

In granting the release herein, which includes claims that may be unknown to me at present, I acknowledge that I expressly waive and relinquish any and all rights and benefits under any applicable law or statute providing, in substance, that a general release does not extend to claims which a party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her would have materially affected the terms of such release.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I should consult with an attorney prior to executing this Release and Waiver; and (c) I have twenty-one (21) days from the date of termination

of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired without my having previously revoked this Release and Waiver.

I acknowledge my continuing obligations under my Employee Proprietary Information, Inventions and Non-Solicitation Agreement (the "*PIIA*"). Pursuant to the PIIA I understand that among other things, I must not use or disclose any confidential or proprietary information of the Company and I must immediately return all Company property and documents (including all embodiments of proprietary information) and all copies thereof in my possession or control. I understand and agree that my right to the severance benefits I am receiving in exchange for my agreement to the terms of this Release and Waiver is contingent upon my continued compliance with my PIIA.

This Release and Waiver constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated herein. This Release and Waiver may only be modified by a writing signed by both me and a duly authorized officer of the Company.

Date: \_\_\_\_\_

Name





**TREVENA, INC.**

**EMPLOYEE EMPLOYMENT AGREEMENT**

This Agreement is entered as of May 14, 2018 by and between Trevena, Inc. (the “**Company**”), a Delaware corporation, and Robert Yoder.

WHEREAS, the Company desires to employ Employee to provide personal services to the Company, and Employee wishes to be employed by the Company and provide personal services to the Company in return for certain compensation and benefits.

Accordingly, in consideration of the mutual promises and covenants contained herein, the parties agree to the following:

1. Duties and Scope of Employment.

(a) Positions and Duties. Effective as of June 4, 2018, Employee will serve as Vice President, Sales and Commercial Operations of the Company. Employee will render such business and professional services in the performance of Employee’s duties, consistent with Employee’s position within the Company, as will reasonably be assigned to Employee by the Company’s Executive Vice President and Chief Operating Officer, to whom Employee will report. The period of Employee’s employment under this Agreement is referred to herein as the “**Employment Term.**”

(b) Obligations. During the Employment Term, Employee will perform Employee’s duties faithfully and to the best of Employee’s ability and will devote Employee’s full business efforts and time to the Company. For the duration of the Employment Term, Employee agrees not to actively engage in any other employment, occupation or consulting activity for any direct or indirect remuneration without the prior approval of the Company’s Chief Executive Officer. Nothing in this Agreement or elsewhere shall prevent Employee from managing his personal investment and affairs, or from engaging in charitable and community affairs, so long as such activities do not either individually or in the aggregate interfere with the performance of his duties for the Company.

2. At-Will Employment. The parties agree that Employee’s employment with the Company will be “at-will” employment and may be terminated at any time with or without cause or notice. Employee’s at-will employment status may not be changed except by way of written agreement signed by Employee and an authorized officer of the Company.

3. Compensation.

(a) Base Salary. During the Employment Term, the Company will pay Employee an initial annualized salary of \$310,000 as compensation for services. The Base Salary shall be paid in equal installments in accordance with the Company’s normal payroll practices and subject to required withholding and deductions. The Base Salary will be subject to review and adjustments will be made based upon the Company’s normal performance review practices.

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(b) Bonus. Subject to the terms and conditions set forth in the Trevena, Inc. Incentive Compensation Plan (the "Plan"), Employee may be eligible to receive an annual bonus in a target amount of 30% of the Base Salary, subject to, among other things, the achievement of corporate and individual performance objectives that will be established and assessed by the Company (the "**Target Bonus**"). For 2018, such individual objectives will be established within the first thirty (30) days after the Effective Date. For each subsequent calendar year, these individual objectives generally will be established within 90 days after the start of such calendar year. For 2018, Employee shall be eligible for the full year bonus target based on the company performance factor, subject to the terms and conditions of the Plan. The Company reserves the right to modify the terms of the Plan, the Target Bonus and other components of bonus compensation and criteria from year to year.

(i) Equity Award. Upon the approval of the Company's Board of Directors or its designee, you will be granted an option to purchase 47,500 shares of the Company's Common Stock (as adjusted for stock splits, combinations, recapitalizations and the like after the date of this letter) at a strike price and with vesting terms to be determined by the Company's Board of Directors. The stock option will be subject to the terms and conditions applicable to options granted under the Company's 2013 Equity Incentive Plan, as amended, and the applicable option grant agreement. At the time of annual performance reviews, you may be considered for additional equity awards. The purchase and sale of Trevena common stock (including the exercise and sale of Company stock options) will be subject to the Company's Insider Trading and Window Period Policy.

Company Policies and Employee Benefits. During the Employment Term, Employee will be eligible to participate in the employee benefit plans currently and hereafter maintained by the Company of general applicability to other senior employees of the Company, including, without limitation, any such group medical, dental, vision, disability, life insurance, and flexible-spending account plans. All matters of eligibility for coverage and benefits under any benefit plan shall be determined in accordance with the provisions of such plan. The Company reserves the right to cancel or change the benefit plans and programs it offers to its employees at any time.

4. Vacation. While employed pursuant to this Agreement, Employee shall be eligible to take vacation subject to the Company's vacation policy.

5. Expenses. The Company will reimburse Employee for reasonable travel, entertainment or other expenses incurred by Employee in the furtherance of or in connection with the performance of Employee's duties hereunder, in accordance with the Company's expense reimbursement policy.

6. Termination of Employment. The provisions of this Section 7 govern the amount of compensation or benefit, if any, to be provided to Employee upon termination of employment and do not affect the right of either party to terminate the employment relationship at any time for any reason.

(a) Termination for other than Cause, Death or Disability. If at any time (x) the Company terminates Employee's employment with the Company other than for Cause (as defined below), death or disability, or (y) Employee terminates his employment under this Agreement for

Good Reason, then, subject to Section 8, Employee will be entitled to receive, less applicable withholdings and deductions:

(i) an amount equal to six (6) months of his annualized Base Salary in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(ii) (A) a pro-rata bonus for the calendar year of termination, determined by multiplying Employee's Target Bonus for such year (assuming employment for the entire year) by a fraction whose numerator is the number of days that Employee was employed during such year and whose denominator is the total number of days in such year, payable within 60 days following the date of Employee's termination of employment;

the (B) to the extent not already paid, a cash incentive award under Company's Incentive Compensation Plan or any similar incentive plan (the "ICP") related to the fiscal year immediately preceding the year of termination in an amount as determined by the Board or the Compensation Committee, as the case may be, in its sole judgment and discretion;

(iii) if Employee timely elects continued coverage under COBRA for Employee and Employee's covered dependents under the Company's group health plans following such termination of employment, the Company will pay the COBRA premiums necessary to continue Employee's health insurance coverage in effect for Employee and Employee's eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), until the earliest of (A) six (6) months from the effective date of such termination, (B) the expiration of Employee's eligibility for the continuation coverage under COBRA, or (C) the date when Employee becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the termination date through the earliest of (A) through (C), the "**COBRA Payment Period**"). Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company will instead pay Employee on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premiums for that month, subject to applicable tax withholdings (such amount, the "**Special Severance Payment**"), for the remainder of the COBRA Payment Period;

and

(iv) accelerated vesting as to that number of unvested shares subject to any outstanding equity awards held by Employee at the time of termination that would have otherwise vested if Employee had remained a Company employee for six (6) months following the termination date.

(b) Termination In Connection With or Following a Change of Control. In the event that either (x) the Company terminates Employee's employment with the Company other than for Cause, death or disability (A) within the thirty (30) day period prior to a Change of Control, or (B) within the period between the Company's execution of a letter of intent for a proposed Change of Control which proposed Change of Control is later consummated (a "**Designated Change of Control**") and the consummation of such Designated Change of Control, or (C) within the twelve (12) month period after a Change of Control, or (y) Employee resigns for Good Reason within twelve (12) months after a Change of Control, then, in addition to the payments set forth in Section 7(a) above, and subject to Section 8 below, Employee shall also be entitled to, less applicable withholdings and deductions:

(i) an amount equal to nine (9) months of Employee's annualized Base Salary in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(ii) (A) a pro-rata bonus for the calendar year of termination, determined by multiplying Employee's Target Bonus for such year (assuming employment for the entire year) by a fraction whose numerator is the number of days that Employee was employed during such year and whose denominator is the total number of days in such year, payable within 60 days following the date of Employee's termination of employment;

(B) to the extent not already paid, a cash incentive award under the ICP related to the fiscal year immediately preceding the year of termination in an amount as determined by the Board or the Compensation Committee, as the case may be, in its sole judgment and discretion;

(iii) an amount equal to 75% of Employee's Target Bonus in effect at the time of termination, payable in equal installments on the Company's regularly scheduled payroll dates beginning with the first payroll date following the effective date of the Release and Waiver;

(iv) if Employee timely elects continued coverage under COBRA for Employee and Employee's covered dependents under the Company's group health plans following such termination of employment, the Company will pay the COBRA premiums necessary to continue Employee's health insurance coverage in effect for Employee and Employee's eligible dependents on the termination date, as and when due to the insurance carrier or COBRA administrator (as applicable), until the earliest of (A) nine (9) months from the effective date of such termination, (B) the expiration of

Employee's eligibility for the continuation coverage under COBRA, or (C) the date when Employee becomes eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period from the termination date through the earliest of (A) through (C), the "**COBRA Payment Period**"). Notwithstanding the foregoing, if at any time the Company determines, in its sole discretion, that the payment of the COBRA premiums would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act), then in lieu of providing the COBRA premiums, the Company will instead pay Employee on the last day of each remaining month of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA premiums for that month, subject to applicable tax withholdings (such amount, the "**Special Severance**

**Payment**"), for the remainder of the COBRA Payment Period; and

(v) immediate and full accelerated vesting of all unvested shares subject to any outstanding equity awards held by Employee at the time of termination; *provided, however*, that such acceleration shall not be interpreted to extend the post-termination exercise period of any stock option held by Employee at the time of termination, unless otherwise approved by the Board.

(c) Termination for Cause, Death or Disability: Voluntary Termination. If Employee's employment with the Company terminates voluntarily by Employee (other than for Good Reason as set forth in the preceding subsection (b)), for Cause by the Company or due to Employee's death or disability, then (i) all vesting will terminate immediately with respect to Employee's outstanding equity awards, (ii) all payments of compensation by the Company to Employee hereunder will terminate immediately (except as to amounts already earned).

(d) Termination by Mutual Consent. If at any time during the course of this Agreement the parties by mutual consent decide to terminate this Agreement, they shall do so by separate agreement setting forth the terms and condition of such termination.

7. Conditions to Receipt of Benefits under Section 7.

(a) Release of Claims. The receipt of any payment or benefit pursuant to Section 7 will be subject to Employee signing and not revoking a release and waiver of all claims in the form attached hereto as **Exhibit A** (or in such other form as may be specified by the Company in order to comply with then-existing legal requirements to effect a valid release of claims) (the "**Release and Waiver**") within the applicable time period set forth therein, but in no event later than forty-five days following termination of employment. No payment or benefit pursuant to Section 7 will be paid or provided until the Release and Waiver becomes effective.

(b) Other Conditions. The receipt of any payment or benefits pursuant to Section 7 will be subject to Employee not violating the PIIA (as defined below), returning all Company property, and complying with the Release and Waiver; provided, however, that Company must provide written notice to Employee of the condition under this Section 8(b) that could prevent the disbursement of any payment or benefits under Section (7) within thirty (30) days of the initial existence of such condition and such condition must not have been remedied by Employee within thirty (30) days of such written notice. Employee understands and agrees that payment or benefits received pursuant to Section 7 are in lieu of and not in addition to any severance or similar benefits that may be provided to other employees of the Company pursuant to a Company policy or plan.

(c) Section 409A. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under Section 7 above that constitute “deferred compensation” within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the “**Code**”) and the regulations and other guidance thereunder and any state law of similar effect (collectively “**Section 409A**”) shall not commence in connection with Employee’s termination of employment unless and until Employee has also incurred a “separation from service” (as such term is defined in Treasury Regulation Section 1.409A-1(h) (“**Separation From Service**”), unless the Company reasonably determines that such amounts may be provided to Employee without causing Employee to incur the additional 20% tax under Section 409A. Pay pursuant to Section 7 above, to the extent of payments made from the date of termination of Employee’s employment through March 15 of the calendar year following such termination, are intended to constitute separate payments for purposes of Section

1.409A-2(b)(2) of the Treasury Regulations and thus payable pursuant to the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations; to the extent such payments are made following said March 15, they are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations made upon an involuntary termination of service and payable pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations, to the maximum extent permitted by said provision, with any excess amount being regarded as subject to the distribution requirements of Section 409A(a)(2)(A) of the Internal Revenue Code, including, without limitation, the requirement of Section 409A(a)(2)(B)(i) of the Code that, if Employee is a “specified employee” within the meaning of the aforesaid Section of the Code at the time of such termination from employment, payments be delayed until the earlier of six months after termination of employment or Employee’s death (such applicable date, the “**Specified Employee Initial Payment Date**”). Notwithstanding any other payment schedule set forth in herein, none of the payments under Section 7 will be paid or otherwise delivered prior to the effective date of the Release and Waiver. Except to the extent that payments may be delayed until the Specified Employee Initial Payment Date pursuant to the preceding sentence, on the first regular payroll pay day following the effective date of the Release and Waiver, the Company will pay Employee the payments Employee would otherwise have received under Section 7 on or prior to such date but for the delay in payment related to the effectiveness of the Release and Waiver, with the balance of the payments being paid as originally scheduled. Notwithstanding anything to the contrary set forth herein, if any of the payments or benefits set forth in Section 7 constitute “deferred compensation” within the meaning of Section 409A of the Code and the period during which Employee may review, execute and revoke the Release and Waiver

begins in one taxable year and ends in a second taxable year, such payments and benefits shall commence or be made in the second taxable year.

(d) Cooperation With the Company After Termination of Employment. Following termination of the Employee's employment for any reason, upon request by the Company, Employee will fully cooperate with the Company (at the Company's reasonable expense) in all matters reasonably relating to the winding up of pending work including, but not limited to, any litigation in which the Company is involved, and the orderly transfer of any such pending work to such other employees as may be designated by the Company.

8. Definitions.

(a) Cause. For purposes of this Agreement, "**Cause**" is defined as (i) an act of dishonesty by Employee in connection with Employee's responsibilities as an employee, (ii) Employee's conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude, (iii) Employee's gross misconduct, (iv) Employee's unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Employee owes an obligation of nondisclosure as a result of Employee's relationship with the Company, or (v) Employee's willful breach of any obligations under any written agreement or covenant with the Company.

(b) Change of Control. For purposes of this Agreement, "**Change of Control**" of the Company is defined as:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company representing 50% or more of the total voting power represented by the Company's then outstanding voting securities; *provided, however*; that sales of equity or debt securities to investors primarily for capital raising purposes shall in no event be deemed a Change of Control; or

(ii) a change in the composition of the Board occurring within a two-year period, as a result of which less than a majority of the directors are Incumbent Directors. "**Incumbent Directors**" will mean directors who either (A) are directors of the Company as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); *provided, however*; that no change in the composition of the Board in connection with the sale of equity or debt securities to investors primarily for capital raising purposes shall be deemed a Change of Control; or

(iii) the date of the consummation of a merger or consolidation of the Company with any other corporation that has been approved by the stockholders of the



Company, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation or the stockholders of the Company approve a plan of complete liquidation of the Company; or

(iv) the date of the consummation of the sale or disposition by the Company of all or substantially all the Company's assets.

(c) Good Reason. For purposes of this Agreement, a resignation for "**Good Reason**" is defined as the resignation by Employee within thirty (30) days following the end of the Cure Period (defined below), if any of the following events occur without Employee's express written consent following a Change of Control: (i) the Company reduces the amount of the Base Salary, other than pursuant to a reduction that also is applied to substantially all other employees of the Company, (ii) the Company fails to pay the Base Salary or other benefits required to be provided by the Company hereunder, (iii) the Company materially reduces Employee's core functions, duties or responsibilities in a manner that constitutes a demotion, or (iv) any change of Employee's principal office location to a location more than thirty (30) miles from the Company's office at 1018 West 8th Avenue, King of Prussia, PA; provided, however, that Employee must provide written notice to the Company of the condition that could constitute "Good Reason" within thirty (30) days of the initial existence of such condition and such condition must not have been remedied by the Company within thirty (30) days of such written notice (the "**Cure Period**").

9. Confidential Information. Employee agrees to enter into the Company's standard Employee Proprietary Information, Inventions and Non-Solicitation Agreement (the "**PIIA**"), in substantially the form attached hereto as **EXHIBIT B**, upon commencing employment hereunder.

10. No Conflict with Existing Obligations. Employee represents that his performance of all the terms of this Agreement and, as an Employee officer of the Company, do not and will not breach any agreement or obligation of any kind made prior to Employee's employment by the Company, including agreements or obligations Employee may have with prior employers or entities for which Employee has provided services. Employee has not entered into, and Employee agrees that Employee will not enter into, any agreement or obligation, either written or oral, in conflict herewith.

11. Parachute Payments.

(a) If any payment or benefit Employee would receive pursuant to a Change of Control from the Company or otherwise ("**Payment**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the "**Code**"), and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "**Excise Tax**"), then such Payment shall be reduced to the Reduced Amount. The "**Reduced Amount**" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment

being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in Employee's receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless Employee elects in writing a different order (*provided, however*, that such election shall be subject to Company approval if made on or after the date on which the event that triggers the Payment occurs): reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Employee's stock awards unless Employee elects in writing a different order for cancellation.

(b) The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change of Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group affecting the Change of Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder. (c) The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Company and Employee within fifteen (15) calendar days after the date on which Employee's right to a Payment is triggered (if requested at that time by the Company or Employee) or such other time as requested by the Company or Employee. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, it shall furnish the Company and Employee with an opinion reasonably acceptable to Employee that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Company and Employee.

12. Assignment. This Agreement will be binding upon and inure to the benefit of (a) the heirs, executors and legal representatives of Employee upon Employee's death and (b) any successor of the Company. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "**successor**" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company. None of the rights of Employee to receive any form of compensation payable pursuant to this Agreement may be assigned or transferred except by will or the laws of descent and distribution. Any other attempted assignment, transfer, conveyance or other disposition of Employee's right to compensation or other benefits will be null and void.

13. Notices. All notices, requests, demands and other communications called for hereunder will be in writing and will be deemed given (i) on the date of delivery if delivered personally, (ii) one (1) day after being sent by a nationally recognized commercial overnight service, specifying next day delivery, with written verification of receipt, or (iii) four (4) days after being mailed by registered or

certified mail, return receipt requested, prepaid and addressed to the parties or their successors at the following addresses, or at such other addresses as the parties may later designate in writing:

If to the Company:

955 Chesterbrook Boulevard, Suite 200, Chesterbrook, PA 19087 Attention:

General Counsel If to Employee:

at the last residential address known by the Company.

14. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement will continue in full force and effect without said provision.

15. Arbitration.

(a) Arbitration. In consideration of Employee's employment with the Company, the Company and Employee agree that any and all controversies, claims, or disputes with anyone (including the Company and any employee, officer, director, shareholder or benefit plan of the Company in their capacity as such or otherwise) arising out of, relating to, or resulting from Employee's employment with the Company or the termination of Employee's employment with the Company, including any breach of this Agreement, but not including those arising out of, relating to, or resulting from the PIAA, will be subject to binding arbitration. Disputes which Employee agrees to arbitrate, and thereby agrees to waive any right to a trial by jury, include any statutory claims under state or federal law, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act, the Worker Adjustment and Retraining Notification Act, the Family and Medical Leave Act, discrimination or wrongful termination and any statutory claims. Employee further understands that this Agreement to arbitrate also applies to any disputes that the Company may have with Employee.

(b) Procedure. Employee agrees that any arbitration will be administered by the American Arbitration Association ("AAA") and that the neutral arbitrator will be selected in a manner consistent with its National Rules for the Resolution of Employment Disputes ("the Rules"). Employee agrees that the arbitrator will administer and conduct any arbitration in a manner consistent with the Rules.

(c) Remedy. Except as provided by this Agreement and by the Rules, including any provisional relief offered therein, arbitration will be the sole, exclusive and final remedy for any dispute between Employee and the Company. Accordingly, except as provided for by the Rules and this Agreement, neither Employee nor the Company will be permitted to pursue court action regarding claims that are subject to arbitration.

(d) Administrative Relief. Employee understands that this Agreement does not prohibit Employee from pursuing an administrative claim with a local, state or federal administrative body such as the Equal Employment Opportunity Commission or the workers' compensation board.

This Agreement does, however, preclude Employee from pursuing court action regarding any such claim.

(e) Voluntary Nature of Agreement. Employee acknowledges and agrees that Employee is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else. Employee further acknowledges and agrees that Employee has carefully read this Agreement and that Employee has asked any questions needed for Employee to understand the terms, consequences and binding effect of this Agreement and fully understands it, including that Employee *is waiving Employee's right to a jury trial*. Finally, Employee agrees that Employee has been provided an opportunity to seek the advice of an attorney of Employee's choice before signing this Agreement.

16. Integration. This Agreement, together with the PIIA and the other documents referred to in this Agreement, represents the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior or contemporaneous agreements whether written or oral. This Agreement may be modified only by agreement of the parties by a written instrument executed by the parties that is designated as an amendment to this Agreement.

17. Waiver of Breach. The waiver of a breach of any term or provision of this Agreement, which must be in writing, will not operate as or be construed to be a waiver of any other previous or subsequent breach of this Agreement.

18. Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

19. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania.

20. Acknowledgment. Employee acknowledges that he has had the opportunity to discuss this matter with and obtain advice from Employee's private attorney, has had sufficient time to, and has carefully read and fully understands all the provisions of this Agreement, and is knowingly and voluntarily entering into this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, and each counterpart will have the same force and effect as an original and will constitute an effective, binding agreement on the part of each of the undersigned.

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by their duly authorized officers, as of the day and year first above written.

COMPANY:

TREVENA, INC.

By:

Vice President, HR

5/14/2018

Date:

Vice President, HR

Title:

EMPLOYEE:









5/15/2018

Date:

Robert Yoder

**EXHIBIT A**

**Form of Release and Waiver**

**TO BE SIGNED ON OR FOLLOWING THE SEPARATION DATE ONLY**

In consideration of the payments and other benefits set forth in the Employment Agreement of [\_\_\_\_], to which this form is attached, I, [\_\_\_\_], hereby furnish **TREVENA, INC.** (the "**Company**"), with the following release and waiver of claims ("**Release and Waiver**").

In exchange for the consideration provided to me by the Employment Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "**Released Parties**") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to or on the date that I sign this Agreement (collectively, the "**Released Claims**"). The Released Claims include, but are not limited to: (a) all claims arising out of or in any way related to my employment with the Company, or the termination of that employment; (b) all claims related to my compensation or benefits from the Company including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, misclassification, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) (the "**ADEA**"), any other federal, state or local civil or human rights law or any other local, state or federal law, regulation or ordinance, including, but not limited to, the State of Pennsylvania or any subdivision thereof; and any public policy, contract, tort, or common law. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

In granting the release herein, which includes claims that may be unknown to me at present, I acknowledge that I expressly waive and relinquish any and all rights and benefits under any applicable law or statute providing, in substance, that a general release does not extend to claims which a party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her would have materially affected the terms of such release.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an employee of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection

Act, that: (a) the release and waiver granted herein does not relate to claims under the ADEA which may arise after this Release and Waiver is executed; (b) I should consult with an attorney prior to executing this Release and Waiver; and (c) I have twenty-one (21) days from the date of termination of my employment with the Company in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the seven (7) day revocation period has expired without my having previously revoked this Release and Waiver.

I acknowledge my continuing obligations under my Employee Proprietary Information, Inventions and Non-Solicitation Agreement (the "**PIIA**"). Pursuant to the PIIA I understand that among other things, I must not use or disclose any confidential or proprietary information of the Company and I must immediately return all Company property and documents (including all embodiments of proprietary information) and all copies thereof in my possession or control. I understand and agree that my right to the severance benefits I am receiving in exchange for my agreement to the terms of this Release and Waiver is contingent upon my continued compliance with my PIIA.

This Release and Waiver constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated herein. This Release and Waiver may only be modified by a writing signed by both me and a duly authorized officer of the Company.

Date: \_\_\_\_\_ By:

-

**EXHIBIT B**

**PIIA**

## TREVENA, INC.

### EMPLOYEE PROPRIETARY INFORMATION, INVENTIONS AND NON-SOLICITATION AGREEMENT

In consideration of my employment or continued employment by **TREVENA, INC.**, a Delaware corporation, its subsidiaries, parents, affiliates, successors and assigns (together, the “*Company*”) and the compensation now and hereafter paid to me, I hereby enter into this Employee Proprietary Information, Inventions and Non-Solicitation Agreement (the

“*Agreement*”) and agree as follows:

#### 1. NONDISCLOSURE.

##### 1.1 Recognition of Company’s Rights; Nondisclosure.

I understand and acknowledge that my employment by the Company creates a relationship of confidence and trust with respect to the Company’s Proprietary Information (defined below) and that the Company has a protectable interest therein. At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose, use, lecture upon or publish any of the Company’s Proprietary Information, except as such disclosure, use or publication may be required in connection with my work for the Company, or unless an officer of the Company expressly authorizes such in writing. I will obtain the Company’s written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to my work at the Company and/or incorporates any Proprietary Information. I hereby assign to the Company any rights I may have or acquire in such Proprietary Information and recognize that all Proprietary Information shall be the sole property of the Company and its assigns. I will take all reasonable precautions to prevent the inadvertent or accidental disclosure of Proprietary Information.

**1.2 Proprietary Information.** The term “*Proprietary Information*” shall mean any and all confidential and/or proprietary knowledge, data or information of the Company, its affiliates, parents and subsidiaries, whether having existed, now existing, or to be developed during my employment. By way of illustration but not limitation, “*Proprietary Information*” includes (a) trade secrets, inventions, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques, samples, compounds, extracts, media, vectors, cell lines, procedures and formulations for producing any such samples, compounds, extracts, media, vectors or cell lines, and any other proprietary technology and all Proprietary Rights therein (hereinafter collectively referred to as “*Inventions*”); (b) information regarding research, development, products and services, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, margins, discounts, credit terms, pricing and billing policies, quoting procedures, methods of obtaining business, forecasts, future plans and potential strategies, financial projections and business strategies, operational plans, financing and capital-raising plans, activities and agreements, internal services and operational manuals, methods of conducting Company business, suppliers and supplier information and purchasing; (c) information regarding customers and potential customers of the Company, including customer lists, names, representatives, their needs or desires with respect to the types of products or services offered by the Company, proposals, bids, contracts and their contents and parties, the type and quantity of products and services provided or sought to be provided to customers and potential customers of the Company and other non-public information relating to customers and potential customers; (d) information regarding any of the Company’s business partners and their services, including names; representatives, proposals, bids, contracts and their contents and parties, the type and quantity of products and services received by the Company, and other non-public information relating to business partners; (e) information regarding personnel, employee lists, compensation, and employee skills; and (f) any other non-public information which a competitor of the Company could use to the competitive disadvantage of the Company. Notwithstanding the foregoing, it is understood that, at all such times, I am free to use information which is generally known in the trade or industry through no breach of this agreement or other act or omission by me, and I am free to discuss the terms and conditions of my employment with others to the extent permitted by law.

**1.3 Third Party Information.** I understand, in addition, that the Company has received and in the future will receive from third parties their confidential and/or proprietary knowledge, data, or information (“*Third Party Information*”). During my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to anyone (other than Company personnel who need to know such information in connection with their work for the Company) or use, except in connection with my work for the Company, Third Party Information unless expressly authorized by an officer of the Company in writing.

relevant to the contested restriction, provided, however, that this sentence shall not apply to trade secrets protected without temporal limitation under applicable law.

**1.5 No Improper Use of Information of Prior Employers and Others.** During my employment by the Company I will not improperly use or disclose any confidential information or trade secrets, if any, of any former employer or any other person to whom I have an obligation of confidentiality, and I will not bring onto the premises of the Company any unpublished documents or any property belonging to any former employer or any other person to whom I have an obligation of confidentiality unless consented to in writing by that former employer or person.

#### 2. ASSIGNMENT OF INVENTIONS.

**2.1 Proprietary Rights.** The term “*Proprietary Rights*” shall mean all trade secrets, patents, copyrights, trade marks, mask works and other intellectual property rights throughout the world.

**2.2 Prior Inventions.** Inventions, if any, patented or unpatented, which I made prior to the commencement of my employment with the Company are excluded from the scope of this Agreement. To preclude any possible uncertainty, I have set forth on **EXHIBIT A** (Previous Inventions) attached hereto a complete list of all Inventions that I have, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of my employment with the Company, that I consider to be my property or the property of third parties, and that I wish to have excluded from the scope of this Agreement (collectively referred to as “*Prior Inventions*”). If disclosure of any such Prior Invention would cause me to violate any prior confidentiality agreement, I understand that I am not to list such Prior Inventions in **EXHIBIT A** but am only to disclose a cursory name for each such invention, a listing of the party(ies) to whom it belongs and the fact that full disclosure as to such inventions has not been made for that reason. A space is provided on **EXHIBIT A** for such purpose. If no such disclosure is attached, I represent that there are no Prior Inventions. If, in the course of my employment with the Company, I incorporate a Prior Invention into a Company product, process or machine, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, fully-paid, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to make, have made, modify, make derivative works of, publicly perform, publicly perform, use, sell, import, and exercise any and all present and future rights in such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, Prior Inventions in any Company Inventions without the Company’s prior written consent.

**2.3 Assignment of Inventions.** Subject to Subsections 2.4 and 2.6, I hereby assign and agree to assign in the future (when any such Inventions or Proprietary Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to the Company all my right, title and interest in and to any and all Inventions (and all Proprietary Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my employment with the Company. Inventions assigned to the Company, or to a third party as directed by the Company pursuant to this Section 2, are hereinafter referred to as “*Company Inventions*.”

**2.4 Unassigned or Nonassignable Inventions.** I recognize that this Agreement will not be deemed to require assignment of any Invention that I developed entirely on my own time without using the Company’s equipment, supplies, facilities, trade secrets, or Proprietary Information, except for those Inventions that either (i) relate to the Company’s actual or anticipated business, research or development, or (ii) result from or are connected with work performed by me for the Company. In addition, this Agreement does not apply to any Invention which qualifies fully for protection from assignment to the Company under any specifically applicable state law, regulation, rule, or public policy (“*Specific Inventions Law*”).

#### 2.5 Obligation to Keep Company

**1.4 Term of Nondisclosure Restrictions.** I understand that Proprietary Information and Third Party Information is never to be used or disclosed by me, as provided in this Section 1. If, however, a court decides that this Section 1 or any of its provisions is unenforceable for lack of reasonable temporal limitation and the Agreement or its restriction(s) cannot otherwise be enforced, I agree and the Company agrees that the two (2) year period after the date my employment ends shall be the temporal limitation

**Informed.** During the period of my employment and for six (6) months after termination of my employment with the Company, I will promptly disclose to the Company fully and in writing all Inventions authored, conceived or reduced to practice by me, either alone or jointly with others. In addition, I will promptly disclose to the Company all patent applications filed by me or on my behalf within a year after termination of employment. At the time of each such disclosure, I will advise the Company in writing of any Inventions that I believe fully qualify for protection under the provisions of a Specific Inventions Law; and I will at that time provide to the Company in writing all evidence necessary to substantiate that belief. The Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to the Company pursuant to this Agreement relating to Inventions that qualify fully for protection under a Specific Inventions Law. I will preserve the confidentiality of any Invention that does not fully qualify for protection under a Specific Inventions Law.

**2.6 Government or Third Party.** I also agree to assign all my right, title and interest in and to any particular Company Invention to a third party, including

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**2.7 Works for Hire.** I acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of my employment and which are protectable by copyright are “works made for hire,” pursuant to United States Copyright Act (17 U.S.C., Section 101).

**2.8 Enforcement of Proprietary Rights.** I will assist the Company in every proper way to obtain, and from time to time enforce, United States and foreign Proprietary Rights relating to Company Inventions in any and all countries. To that end I will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as the Company may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such Proprietary Rights and the assignment thereof. In addition, I will execute, verify and deliver assignments of such Proprietary Rights to the Company or its designee. My obligation to assist the Company with respect to Proprietary Rights relating to such Company Inventions in any and all countries shall continue beyond the termination of my employment, but the Company shall compensate me at a reasonable rate after my termination for the time actually spent by me at the Company’s request on such assistance.

In the event the Company is unable for any reason, after reasonable effort, to secure my signature on any document needed in connection with the actions specified in the preceding paragraph, I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act for and in my behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of the preceding paragraph with the same legal force and effect as if executed by me. I hereby waive and quitclaim to the Company any and all claims, of any nature whatsoever, which I now or may hereafter have for infringement of any Proprietary Rights assigned hereunder to the Company.

**3. RECORDS.** I agree to keep and maintain adequate and current records (in the form of notes, sketches, drawings and in any other form that may be required by the Company) of all Proprietary Information developed by me and all Inventions made by me during the period of my employment at the Company, which records shall be available to and remain the sole property of the Company at all times.

**4. DUTY OF LOYALTY DURING EMPLOYMENT.** I agree that during the period of my employment by the Company I will not, without the Company’s express written consent, directly or indirectly engage in any employment or business activity which is directly or indirectly competitive with, or would otherwise conflict with, my employment by the Company.

**5. NO SOLICITATION OF EMPLOYEES, CONSULTANTS, CONTRACTORS, OR CUSTOMERS OR POTENTIAL CUSTOMERS.** I agree that during the period of my employment and for the twelve (12) month period after the date my employment ends for any reason, including but not limited to voluntary termination by me or involuntary termination by the Company, I will not, as an officer, director, employee, consultant, owner, partner, or in any other capacity, either directly or through others, except on behalf of the Company:

**5.1** solicit, induce, encourage, or participate in soliciting, inducing, or encouraging any employee of the Company to terminate his or her relationship with the Company;

**5.2** hire, employ, or engage in business with or attempt to hire, employ, or engage in business with any person employed by the Company or who has left the employment of the Company within the preceding three (3) months or discuss any potential employment or business association with such person, even if I did not initiate the discussion or seek out the contact; or

**5.3** solicit, induce or attempt to induce any Customer or Potential Customer (as defined below), or any consultant or independent contractor with whom I had direct or indirect contact or whose identity I learned as a result of my employment with the Company, to terminate, diminish, or materially alter in a manner harmful to the Company its relationship with the Company.

The parties agree that for purposes of this Agreement, a “*Customer or Potential Customer*” is any person or entity who or which, at any time during the one (1) year prior to the date my employment with the Company ends, (i) contracted for, was billed for, or received from the Company any product, service or process with which I worked directly or indirectly during my employment by the Company or about which I acquired Proprietary Information; or (ii) was in contact with me or in contact with any other employee, owner, or agent of the Company, of which contact I was or should have been aware, concerning any product, service or process with which I worked directly or indirectly during my employment with the Company or about which I acquired Proprietary Information; or (iii) was solicited by the Company in an effort in which I was involved or of which I was or should have been aware.

agree that I am entering into this Agreement freely and with knowledge of its contents with the intent to be bound by the Agreement and the restrictions contained in it.

**6.2** In the event that a court finds this Agreement, or any of its restrictions, to be ambiguous, unenforceable, or invalid, I and the Company agree that the court shall read the Agreement as a whole and interpret the restriction(s) at issue to be enforceable and valid to the maximum extent allowed by law.

**7. NO CONFLICTING AGREEMENT OR OBLIGATION.** I represent that my performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict herewith.

**8. RETURN OF COMPANY PROPERTY.** When I leave the employment of the Company, I will deliver to the Company any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Company Inventions, Third Party Information or Proprietary Information of the Company. I further agree that any property situated on the Company’s premises and owned by the Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. Prior to leaving, I will cooperate with the Company in completing and signing the Company’s termination statement if requested to do so by the Company.

**9. LEGAL AND EQUITABLE REMEDIES.**

**9.1** I agree that it may be impossible to assess the damages caused by my violation of this Agreement or any of its terms. I agree that any threatened or actual violation of this Agreement or any of its terms will constitute immediate and irreparable injury to the Company and the Company shall have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that the Company may have for a breach or threatened breach of this Agreement.

**9.2** I agree that if the Company is successful in whole or in part in any legal or equitable action against me under this Agreement, the Company shall be entitled to payment of all costs, including reasonable attorney’s fees, from me.

**9.3** In the event the Company enforces this Agreement through a court order, I agree that the restrictions of Section 5 shall remain in effect for a period of twelve (12) months from the effective date of the Order enforcing the Agreement.

**10. NOTICES.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or if sent by certified or registered mail, three (3) days after the date of mailing.

**11. PUBLICATION OF THIS AGREEMENT TO SUBSEQUENT EMPLOYERS OR BUSINESS ASSOCIATES OF EMPLOYEE.**

**11.1** If I am offered employment or the opportunity to enter into any business venture as owner, partner, consultant or other capacity while the restrictions described in Section 5 of this Agreement are in effect I agree to inform my potential employer, partner, co-owner and/or others involved in managing the business with which I have an opportunity to be associated of my obligations under this Agreement and also agree to provide such person or persons with a copy of this Agreement.

**11.2** I agree to inform the Company of all employment and business ventures which I enter into while the restrictions described in Section 5 of this Agreement are in effect and I also authorize the Company to provide copies of this Agreement to my employer, partner, co-owner and/or others involved in managing the business with which I am employed or associated and to make such persons aware of my obligations under this Agreement.

**12. GENERAL PROVISIONS.**

**6. REASONABLENESS OF RESTRICTIONS.**

**6.1** I agree that I have read this entire Agreement and understand it. I agree that this Agreement does not prevent me from earning a living or pursuing my career. I agree that the restrictions contained in this Agreement are reasonable, proper, and necessitated by the Company's legitimate business interests. I represent and

**12.1 Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the Commonwealth of Pennsylvania as such laws are applied to agreements entered into and to be performed entirely within Pennsylvania between Pennsylvania residents. I hereby expressly consent to the personal jurisdiction and venue of the state and federal courts located in Pennsylvania for any lawsuit filed there against me by the Company arising from or related to this Agreement.

**12.2 Severability.** In case any one or more of the provisions, subsections, or sentences contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical

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scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

**12.3 Successors and Assigns.** This Agreement is for my benefit and the benefit of the Company, its successors, assigns, parent corporations, subsidiaries, affiliates, and purchasers, and will be binding upon my heirs, executors, administrators and other legal representatives.

**12.4 Survival.** The provisions of this Agreement shall survive the termination of my employment, regardless of the reason, and the assignment of this Agreement by the Company to any successor in interest or other assignee.

**12.5 Employment At-Will.** I agree and understand that nothing in this Agreement shall change my at-will employment status or confer any right with respect to continuation of employment by the Company, nor shall it interfere in any way with my right or the Company's right to terminate my employment at any time, with or without cause or advance notice.

**12.6 Waiver.** No waiver by the Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by the Company of any right under this Agreement shall be construed as a waiver of any other right. The Company shall not be required to give notice to enforce strict adherence to all terms of this Agreement.

**12.7 Advice of Counsel. I ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, I HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND I HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.**

**12.8 Entire Agreement.** The obligations pursuant to Sections 1 and 2 (except Subsection 2.7) of this Agreement shall apply to any time during which I was previously engaged, or am in the future engaged, by the Company as a consultant if no other agreement governs nondisclosure and assignment of inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

This Agreement shall be effective as of the first day of my employment with the Company

**I HAVE READ THIS AGREEMENT CAREFULLY AND UNDERSTAND ITS TERMS. I HAVE COMPLETELY FILLED OUT EXHIBIT A TO THIS AGREEMENT.**

5/15/2018

Signature:

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Robert Yoder

Printed Name: \_

**ACCEPTED AND AGREED TO:**



**TREVENA, INC.**

By: \_

Title: \_  
CAO

SVP, General Counsel &

Address: \_955 Chesterbrook Blvd, Suite  
\_ 200

\_Chesterbrook, PA  
19087\_

- -

Dated: \_\_\_\_\_ 5/15/2018

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**EXHIBIT A**  
**PREVIOUS INVENTIONS**

**TO:** Trevena, Inc.  
Robert Yoder  
**FROM:** -  
**DATE:** \_5/15/2018

**SUBJECT: Previous Inventions**

1. Except as listed in Section 2 below, the following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Trevena, Inc. (the "**Company**") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by the Company:

<sup>x</sup> No inventions or improvements.

See below:

none to report

N/A

N/A

-  
-  
-

Additional sheets attached.

2. Due to a prior confidentiality agreement, I cannot complete the disclosure under Section 1 above with respect to inventions or improvements generally listed below, the proprietary rights and duty of confidentiality with respect to which I owe to the following party(ies):

| Relationship | Invention or Improvement Party(ies) |
|--------------|-------------------------------------|
|--------------|-------------------------------------|

|        |     |
|--------|-----|
| 1. N/A | N/A |
|--------|-----|

|    |   |
|----|---|
| 3. | - |
|----|---|

Additional sheets attached.

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A-1.

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-00000) pertaining to the 2013 Equity Incentive Plan of Trevena, Inc. of our report dated March 13, 2019, with respect to the financial statements of Trevena, Inc., included in its Annual Report (Form 10-K) for the year ended December 31, 2018, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

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Philadelphia, Pennsylvania  
March 13, 2019

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**Certification of Principal Executive Officer of Trevena, Inc.  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Carrie L. Bourdow, certify that:

1. I have reviewed this Annual Report on Form 10-K of Trevena, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2019

\_\_\_\_\_  
/s/ CARRIE L. BOURDOW  
Carrie L. Bourdow  
President and Chief Executive Officer  
(Principal Executive Officer)

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**Certification of Principal Financial Officer of Trevena, Inc.  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, John P. Hamill, certify that:

1. I have reviewed this Annual Report on Form 10-K of Trevena, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2019

\_\_\_\_\_  
/s/ JOHN P. HAMILL  
John P. Hamill  
*Vice President, Finance*  
*(Principal Financial Officer)*

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**Certification Of  
Principal Executive Officer  
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 of Trevena, Inc. (the "Company") on Form 10-K for the year ended December 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Carrie L. Bourdow, President and Chief Executive Officer of the Company, 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 of the Company at the end of the period covered by the Report and results of operations of the Company for the period covered by the Report.

Date: March 13, 2019

/s/ CARRIE L. BOURDOW  
\_\_\_\_\_  
Carrie L. Bourdow  
*President and Chief Executive Officer*  
*(Principal Executive Officer)*

This certification accompanies the Report and shall not be deemed "filed" by the Company with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

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**Certification Of  
Principal Financial Officer  
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 of Trevena, Inc. (the "Company") on Form 10-K for the year ended December 31, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John P. Hamill, Vice President, Finance, 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 of the Company at the end of the period covered by the Report and results of operations of the Company for the period covered by the Report.

Date: March 13, 2019

\_\_\_\_\_  
/s/ JOHN P. HAMILL  
John P. Hamill  
*Vice President, Finance*  
*(Principal Financial Officer)*

This certification accompanies the Report and shall not be deemed "filed" by the Company with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

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