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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2024.

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 001-33528

OPKO Health, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**75-2402409**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

4400 Biscayne Blvd.
Miami FL 33137

(Address of Principal Executive Offices) (Zip Code)

(305) 575-4100

(Registrant's Telephone Number, Including Area Code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value $0.01 per share	OPK	NASDAQ Global Select Market

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

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

Large accelerated filer	x	Accelerated filer	□
Non-accelerated filer	□	Smaller reporting company	□
		Emerging growth company	□

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

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

As of May 3, 2024, the registrant had 696,991,677 shares of Common Stock outstanding.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains "forward-looking statements," as that term is defined under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements include statements about our expectations, beliefs or intentions regarding our product development efforts, business, financial condition, results of operations, strategies or prospects, operating results, cash flows and/or financial condition. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described below and in "Item 1A-Risk Factors" of our Annual Report on Form 10-K for the year ended December 31, 2023, and described from time to time in our other filings with the Securities and Exchange Commission (the "SEC"). We do not undertake any obligation to update forward-looking statements, except to the extent required by applicable law. We intend that all forward-looking statements be subject to the safe-harbor provisions of the PSLRA. These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance.

Risks and uncertainties, the occurrence of which could adversely affect our business, include the following:

- we have had a history of losses and may not generate sustained positive cash flow sufficient to fund our operations and research and development programs;
- our need for, and ability to obtain, additional financing when needed on favorable terms, or at all;
- adverse results in material litigation matters or governmental inquiries;
- the risks inherent in developing, obtaining regulatory approvals for and commercializing new, commercially viable and competitive products and treatments;
- our research and development activities may not result in commercially viable products;
- that earlier clinical results of effectiveness and safety may not be reproducible or indicative of future results;
- that we may fail to successfully commercialize Somatrogon (hGH-CTP);
- that we may not generate or sustain profits or cash flow from our laboratory operations or substantial revenue from NGENLA (Somatrogon (hGH-CTP)), *Rayaldee* and our other pharmaceutical and diagnostic products;
- our ability to manage our growth and our expanded operations;
- that our acquisition of ModeX Therapeutics, Inc. will be successful and the products in the R&D pipeline will ultimately be commercialized;
- that currently available over-the-counter and prescription products, as well as products under development by others, may prove to be as or more effective than our products for the indications being studied;
- our ability and our distribution and marketing partners' ability to comply with regulatory requirements regarding the sales, marketing and manufacturing of our products and product candidates and the operation of our laboratories;
- the performance of our third-party distribution partners, licensees and manufacturers over which we have limited control;
- changes in regulation and policies in the U.S. and other countries, including increasing downward pressure on healthcare reimbursement;
- increased competition, including price competition;
- our success is dependent on the involvement and continued efforts of our Chairman and Chief Executive Officer;
- integration challenges for acquired businesses;

- changing relationships with payors, including the various state and multi-state programs, suppliers and strategic partners;
- efforts by third-party payors to reduce utilization and reimbursement for clinical testing services;
- our ability to maintain reimbursement coverage for our products and services, including *Rayaldee* and the *4Kscore* test;
- failure to timely or accurately bill and collect for our services;
- the information technology systems that we rely on may be subject to unauthorized tampering, cyberattack or other data security or privacy incidents that could impact our billing processes or disrupt our operations;
- failure to obtain and retain new clients and business partners, or a reduction in tests ordered or specimens submitted by existing clients;
- failure to establish, and perform to, appropriate quality standards to assure that the highest level of quality is observed in the performance of our testing services;
- failure to maintain the security of patient-related information;
- our ability to obtain and maintain intellectual property protection for our products;
- our ability to defend our intellectual property rights with respect to our products;
- our ability to operate our business without infringing the intellectual property rights of others;
- our ability to attract and retain key scientific and management personnel;
- the risk that the carrying value of certain assets may exceed the fair value of the assets causing us to impair goodwill or other intangible assets;
- our ability to comply with the terms of our 2022 Corporate Integrity Agreement with the U.S. Office of Inspector General of the Department of Health and Human Services;
- failure to obtain and maintain regulatory approval outside the U.S.;
- legal, economic, political, regulatory, currency exchange, and other risks associated with international operations; and
- disruptions to operations, including impact on employees, and business continuity, including physical damage or impaired access to company facilities, office of technology from the current conflict in Israel and the Gaza Strip

PART I. FINANCIAL INFORMATION

Unless the context otherwise requires, all references in this Quarterly Report on Form 10-Q to the "Company", "OPKO", "we", "our", "ours", and "us" refer to OPKO Health, Inc., a Delaware corporation, including our consolidated subsidiaries.

Item 1. Financial Statements

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

OPKO Health, Inc. and Subsidiaries
CONDENSED CONSOLIDATED BALANCE SHEET
(Unaudited)
(In thousands, except share and per share data)

	March 31, 2024	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	$ 75,639	$ 95,881
Accounts receivable, net	111,367	123,379
Inventory, net	59,366	65,697
Other current assets and prepaid expenses	24,652	24,519
Assets held for sale	120,279	—
Total current assets	391,303	309,476
Property, plant and equipment, net	64,165	75,429
Intangible assets, net	680,034	740,283
In-process research and development	195,000	195,000
Goodwill	530,615	598,260
Investments	40,990	16,082
Operating lease right-of-use assets	63,331	68,088
Other assets	8,578	9,080
Total assets	$ 1,974,016	$ 2,011,698
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	$ 71,157	$ 69,677
Accrued expenses	88,772	90,086
Current maturities of operating leases	11,742	12,996
Current portion of convertible notes	170	—
Current portion of lines of credit and notes payable	22,820	27,293
Liabilities associated with assets held for sale	9,677	—
Total current liabilities	204,338	200,052
Operating lease liabilities	50,931	54,140
Long term portion of convertible notes	323,108	214,325
Deferred tax liabilities	121,635	126,773
Other long-term liabilities, principally contract liabilities, contingent consideration and lines of credit	21,196	27,189
Total long-term liabilities	516,870	422,427
Total liabilities	721,208	622,479
Equity:		
Common Stock - $0.01 par value, 1,000,000,000 shares authorized; 726,791,854 and 781,936,885 shares issued at March 31, 2024 and December 31, 2023, respectively	7,269	7,820
Treasury Stock - 29,772,753, and 8,655,082 shares at March 31, 2024 and December 31, 2023, respectively	(1,791)	(1,791)
Additional paid-in capital	3,386,147	3,433,006
Accumulated other comprehensive loss	(45,195)	(38,030)
Accumulated deficit	(2,093,622)	(2,011,786)
Total shareholders' equity	1,252,808	1,389,219
Total liabilities and equity	$ 1,974,016	$ 2,011,698

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

OPKO Health, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands, except share and per share data)

	For the three months ended March 31,	
	2024	2023
Revenues:		
Revenue from services	$ 126,890	$ 132,368
Revenue from products	38,047	40,383
Revenue from transfer of intellectual property and other	8,749	64,826
Total revenues	173,686	237,577
Costs and expenses:		
Cost of service revenue	109,873	114,059
Cost of product revenue	21,744	24,255
Selling, general and administrative	70,167	75,642
Research and development	21,937	32,605
Contingent consideration	—	136
Amortization of intangible assets	21,437	21,474
Total costs and expenses	245,158	268,171
Operating loss	(71,472)	(30,594)
Other income and (expense), net:		
Interest income	813	1,030
Interest expense	(7,686)	(3,391)
Fair value changes of derivative instruments, net	(26,161)	(1,059)
Other income, net	21,323	17,017
Other income (expense), net	(11,711)	13,597
Loss before income taxes and investment losses	(83,183)	(16,997)
Income tax benefit (provision)	1,350	(1,233)
Net loss before investment losses	(81,833)	(18,230)
Loss from investments in investees	(3)	(37)
Net loss	$ (81,836)	$ (18,267)
Loss per share, basic and diluted:		
Loss per share	$ (0.12)	$ (0.02)
Weighted average common shares outstanding, basic and diluted	706,882,189	751,506,257

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

OPKO Health, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(Unaudited)
(In thousands)

	For the three months ended March 31,	
	2024	2023
Net loss	$ (81,836)	$ (18,267)
Other comprehensive income (loss), net of tax:		
Change in foreign currency translation and other comprehensive income (loss)	(7,166)	5,712
Comprehensive loss	$ (89,002)	$ (12,555)

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

CONSOLIDATED STATEMENTS OF EQUITY
(Unaudited)
(In thousands, except share data)
For the three months ended March 31, 2024

	Common Stock		Treasury		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Dollars	Shares	Dollars				
Balance at December 31, 2023	781,936,885	$ 7,820	(8,655,082)	$ (1,791)	$ 3,433,006	$ (38,030)	$ (2,011,786)	$ 1,389,219
Equity-based compensation expense	—	—	—	—	—	—	—	—
Exercise of common stock options and warrants	—	—	—	—	2,590	—	—	2,590
2025 convertible notes	—	—	(21,117,671)	—	—	—	—	—
Share Repurchase	(55,145,031)	(551)	—	—	(49,449)	—	—	(50,000)
Net loss	—	—	—	—	—	—	(81,836)	(81,836)
Other comprehensive loss	—	—	—	—	—	(7,165)	—	(7,165)
Balance at March 31, 2024	726,791,854	$ 7,269	(29,772,753)	$ (1,791)	$ 3,386,147	$ (45,195)	$ (2,093,622)	$ 1,252,808

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

CONSOLIDATED STATEMENTS OF EQUITY
(Unaudited)
(In thousands, except share data)
For the three months ended March 31, 2023

	Common Stock		Treasury		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Dollars	Shares	Dollars				
Balance at December 31, 2022	781,306,164	$ 7,813	(8,655,082)	$ (1,791)	$ 3,421,872	$ (43,323)	$ (1,822,923)	$ 1,561,648
Equity-based compensation expense	—	—	—	—	2,717	—	—	2,717
Net loss	—	—	—	—	—	—	(18,267)	(18,267)
Other comprehensive income	—	—	—	—	—	5,712	—	5,712
Balance at March 31, 2023	781,306,164	$ 7,813	(8,655,082)	$ (1,791)	$ 3,424,589	$ (37,611)	$ (1,841,190)	$ 1,551,810

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

OPKO Health, Inc. and Subsidiaries
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands)

	For the three months ended March 31,	
	2024	2023
Cash flows from operating activities:		
Net loss	$ (81,836)	$ (18,267)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	25,820	26,446
Non-cash interest	3,843	678
Amortization of deferred financing costs	519	296
Losses from investments in investees	3	37
Equity-based compensation – employees and non-employees	2,590	2,717
Realized loss (gain) on disposal of fixed assets and sales of equity securities	(47)	1,845
Change in fair value of equity securities and derivative instruments	1,251	(7,130)
Loss on conversion convertible senior notes	757	—
Change in fair value of contingent consideration	—	136
Deferred income tax (benefit) provision	(2,680)	102
Changes in assets and liabilities:		
Accounts receivable, net	9,518	7,364
Inventory, net	2,274	1,306
Other current assets and prepaid expenses	(552)	(58,902)
Other assets	7	772
Accounts payable	2,789	12,759
Foreign currency measurement	1,225	(2,355)
Contract liabilities	—	2
Accrued expenses and other liabilities	(1,047)	9,547
Net cash used in operating activities	(35,566)	(22,647)
Cash flows from investing activities:		
Investments in investees	—	(5,000)
Proceeds from the sale of property, plant and equipment	48	320
Capital expenditures	(4,443)	(3,037)
Net cash used in investing activities	(4,395)	(7,717)
Cash flows from financing activities:		
Issuance of 3.00% convertible senior notes, net (including related parties)	230,000	—
Debt issuance costs	(8,562)	—
Share repurchase	(50,000)	—
Borrowings on lines of credit	163,703	165,288
Repayments of lines of credit	(168,241)	(175,407)
Redemption of 2025 Notes and 2033 Senior Notes	(146,287)	(3,000)
Net cash provided by (used in) financing activities	20,613	(13,119)
Effect of exchange rate changes on cash and cash equivalents	(894)	1,122
Net decrease in cash and cash equivalents	(20,242)	(42,361)
Cash and cash equivalents at beginning of period	95,881	153,191
Cash and cash equivalents at end of period	$ 75,639	$ 110,830
SUPPLEMENTAL INFORMATION:		
Interest paid	$ 3,125	$ 3,830
Income taxes paid, net of refunds	$ 1,063	$ 477
Assets acquired by finance leases	$ —	$ 960

The accompanying unaudited Notes to Condensed Consolidated Financial Statements are an integral part of these statements.

OPKO Health, Inc. and Subsidiaries
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (unaudited)

NOTE 1 BUSINESS AND ORGANIZATION

OPKO Health, Inc., a Delaware corporation ("OPKO", the "Company", "we", "us", or "our") is a diversified healthcare company that seeks to establish industry leading positions in large and rapidly growing markets. Our pharmaceutical business features *Rayaldee*, a U.S. Food and Drug Administration ("FDA") approved treatment for secondary hyperparathyroidism ("SHPT") in adults with stage 3 or 4 chronic kidney disease ("CKD") and vitamin D insufficiency, and Somatrogon (hGH-CTP), a once-weekly human growth hormone injection. We have partnered with Pfizer Inc. ("Pfizer") for the development and commercialization of Somatrogon (hGH-CTP). Regulatory approvals for Somatrogon (hGH-CTP) for the treatment of growth hormone deficiency in children and adolescents have been secured in over 50 markets, including the United States, European Union ("EU") Member States, Japan, Canada, and Australia, where it is marketed under the brand name NGENLA®. Through our 2022 acquisition of ModeX Therapeutics, Inc. ("ModeX"), we have expanded our pharmaceutical pipeline with early-stage immune therapies targeting cancer and infectious diseases.

Our diagnostics business, BioReference Health, LLC ("BioReference"), is one of the nation's largest full-service laboratories, with a sales and marketing team focused on growth and new product integration, including the 4Kscore prostate cancer test. BioReference primarily serves customers in major metropolitan areas across the United States. We offer a comprehensive clinical diagnostics menu, including hematology, clinical chemistry, immunoassays, infectious disease testing, serology, hormone analyses, toxicology assays, Pap smears, anatomic pathology, and COVID-19 testing. Our laboratory services are marketed directly to physicians, geneticists, hospitals, clinics, correctional facilities, and other healthcare providers.

The Company maintains established, revenue-generating pharmaceutical platforms in Spain, Ireland, Chile, and Mexico, contributing to positive cash flow and facilitating market entry for our development pipeline. In addition to these platforms, we operate a global pharmaceutical development and commercial supply company, a global supply chain operation, and manufacture specialty active pharmaceutical ingredients (API) in Israel through our subsidiary, FineTech, which we expect will facilitate the development of our pipeline of molecules and compounds for our proprietary molecular diagnostic and therapeutic products.

Our management team possesses extensive industry experience in development, regulatory affairs, and commercialization. Their industry relationships support the identification and pursuit of commercial opportunities. Research and development activities are primarily conducted in facilities located in Weston, Massachusetts, Waterford, Ireland, Kiryat Gat, Israel, and Barcelona, Spain.

On March 27, 2024, we and Laboratory Corporation of America Holdings ("Labcorp") entered into a definitive agreement (the "Labcorp Asset Purchase Agreement"), pursuant to which Labcorp agreed to acquire select assets of BioReference (the "BioReference Transaction"). The purchase price for the Bio Reference Transaction is $237.5 million. The assets contemplated by the BioReference Transaction include BioReference's laboratory testing businesses focused on clinical diagnostics, reproductive health, and women's health across the United States, excluding New York and New Jersey operations. These assets include patient service centers, specific customer contracts, and operating assets. The Purchase Agreement contains customary representations, warranties, covenants and indemnification provisions for a transaction of this size and type, including, among other things, customary covenants relating to (i) the conduct of the Business between the signing of the Purchase Agreement and the closing of the Transaction and (ii) the efforts of the parties to cause the Transaction to be consummated, including obtaining certain consents and approvals. The consummation of the BioReference Transaction is subject to the satisfaction or waiver of customary closing conditions, including the expiration or termination of any required waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. The Company anticipates closing the BioReference Transaction in the second half of 2024.

As of March 31, 2024, the Labcorp Asset Purchase Agreement met the held-for-sale accounting criteria. Accordingly, the related assets and liabilities are classified as held for sale in our consolidated balance sheet. As of March 31, 2024, the select assets to be purchased in the BioReference Transaction are included in our diagnostics segment.

NOTE 2 FOREIGN EXCHANGE RATES

Foreign Currency Exchange Rates

Approximately 21.5% of our revenue for the three months ended March 31, 2024, was denominated in currencies other than the U.S. Dollar (USD). This compares to 18.5% for the same period in 2023. Our financial statements are reported in USD; therefore, fluctuations in exchange rates affect the translation of foreign-denominated revenue and expenses. During the first quarter of 2024 and the year ended December 31, 2023, our most significant currency exchange rate exposures were to the Euro and the Chilean Peso. Gross accumulated currency translation adjustments, recorded as a separate component of shareholders' equity, totaled $41.8 million and $34.6 million at March 31, 2024 and December 31, 2023, respectively.

We are subject to foreign currency transaction risk due to fluctuations in exchange rates between the time a transaction is initiated and settled. To mitigate this risk, we use foreign currency forward contracts. These contracts fix an exchange rate, allowing us to offset potential losses (or gains) caused by exchange rate changes at the settlement date. As of March 31, 2024, we held no open foreign exchange forward contracts related to inventory purchases on letters of credit. As of December 31, 2023, we held 52 open foreign exchange forward contracts related to inventory purchases on letters of credit. These contracts matured monthly through January 2024 with a total notional value of approximately $2.9 million.

NOTE 3 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of presentation. The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the U.S. ("GAAP") and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all information and notes required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of only normal recurring adjustments or adjustments otherwise disclosed herein) considered necessary to present fairly the Company's results of operations, financial position and cash flows have been made. The results of operations and cash flows for the three months ended March 31, 2024 are not necessarily indicative of the results of operations and cash flows that may be reported for the remainder of 2024 or any other future periods. The unaudited Condensed Consolidated Financial Statements should be read in conjunction with the audited Consolidated Financial Statements and the Notes to Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2023.

Principles of consolidation. The accompanying unaudited Condensed Consolidated Financial Statements include the accounts of OPKO Health, Inc. and our wholly-owned subsidiaries. All intercompany accounts and transactions are eliminated in consolidation.

Use of estimates. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ significantly from these estimates.

Cash and cash equivalents. Cash and cash equivalents include short-term, interest-bearing instruments with original maturities of 90 days or less at the date of purchase. We also consider all highly liquid investments with original maturities at the date of purchase of 90 days or less as cash equivalents. These investments include money markets, bank deposits, certificates of deposit and U.S. treasury securities.

Inventories. Inventories are valued at the lower of cost and net realizable value. Cost is determined by the first-in, first-out method. We consider such factors as the amount of inventory on hand, estimated time required to sell such inventories, remaining shelf-life, and current market conditions to determine whether inventories are stated at the lower of cost and net realizable value. Inventories at our diagnostics segment consist primarily of purchased laboratory supplies, which are used in our testing laboratories. Inventory obsolescence expense for the three months ended March 31, 2023, was $0.4 million and $1.4 million, respectively.

Goodwill and intangible assets. Goodwill represents the difference between the purchase price and the estimated fair value of the net assets acquired accounted for by the acquisition method of accounting. Refer to Note 5. Goodwill, in-process research and development ("IPR&D") and other intangible assets acquired in business combinations, licensing and other transactions was $1.4 billion and $1.5 billion at March 31, 2024 and December 31, 2023, respectively.

Assets acquired and liabilities assumed in business combinations, licensing and other transactions are generally recognized at the date of acquisition at their respective fair values. Any excess of the purchase price over the estimated fair values of the net assets acquired is recognized as goodwill. At acquisition, we generally determine the fair value of intangible assets, including IPR&D, using the "income method."

Subsequent to their acquisition, goodwill and indefinite lived intangible assets are tested at least annually as of October 1 for impairment, or when events or changes in circumstances indicate it is more likely than not that the carrying amount of such assets may not be recoverable.

Estimating the fair value of a reporting unit for goodwill impairment is highly sensitive to changes in projections and assumptions and changes in assumptions could potentially lead to impairment. We perform sensitivity analyses around our assumptions in order to assess the reasonableness of the assumptions and the results of our testing. Ultimately, potential changes in these assumptions may impact the estimated fair value of a reporting unit and result in an impairment if the fair value of such reporting unit is less than its carrying value. Goodwill was $530.6 million and $598.3 million, respectively, at March 31, 2024 and December 31, 2023.

Net intangible assets other than goodwill were $0.9 billion on each of March 31, 2024, and December 31, 2023, with IPR&D accounting for $195.0 million on each date. Considering the high risk nature of research and development and the industry's success rate of bringing developmental compounds to market, IPR&D impairment charges may occur in future periods. Estimating the fair value of IPR&D for potential impairment is highly sensitive to changes in projections and assumptions and changes in assumptions could potentially lead to impairment.

Upon regulatory approval, IPR&D assets are classified as finite-lived intangible assets. These assets are then amortized on a straight-line basis over their estimated useful lives. If a project is abandoned, the associated IPR&D costs are immediately expensed. We also regularly assess finite-lived intangible assets for impairment. This assessment involves comparing the carrying amount of an asset, which is its cost minus accumulated amortization, to its estimated future undiscounted cash flows. If the carrying amount exceeds the estimated future cash flows, an impairment charge is recognized to reflect the difference between the asset's carrying amount and its fair value.

While we believe our estimates and assumptions used in impairment testing (including for goodwill and IPR&D) are reasonable and reflect those used by market participants, there is a potential risk of material impairment charges. Based on the current financial performance of our diagnostics segment and our Ireland reporting unit (which includes Eirgen and *Rayaldee*), we could be subject to such charges if their future performance deviates from our current estimates and assumptions. For reference, the combined goodwill of these units totaled $300.2 million and $367.3 million at March 31, 2024 and December 31, 2023, respectively.

We amortize intangible assets with definite lives on a straight-line basis over their estimated useful lives, ranging from 3 to 20 years. We use the straight-line method of amortization as there is no reliably determinable pattern in which the economic benefits of our intangible assets are consumed or otherwise used up. Amortization expense was $21.4 million and $21.5 million for the three months ended March 31, 2024, and 2023, respectively.

Fair value measurements. The carrying amounts of our cash and cash equivalents, accounts receivable, accounts payable and short-term debt approximate their fair value due to the short-term maturities of these instruments. Investments that are considered equity securities as of March 31, 2024 and December 31, 2023 are predominately carried at fair value. Our debt under the Credit Agreement (as defined below) approximates fair value due to the variable rate of interest applicable to such debt.

In evaluating the fair value information, considerable judgment is required to interpret the market data used to develop the estimates. The use of different market assumptions and/or different valuation techniques may have a material effect on the estimated fair value amounts. Accordingly, the estimates of fair value presented herein may not be indicative of the amounts that could be realized in a current market exchange. Refer to Note 9.

Contingent consideration. Each period we revalue the contingent consideration obligations associated with certain prior acquisitions to their fair value and record increases in the fair value as contingent consideration expense and decreases in the fair value as a reduction in contingent consideration expense. Changes in contingent consideration result from changes in the assumptions regarding probabilities of successful achievement of related milestones, the estimated timing in which the milestones are achieved and the discount rate used to estimate the fair value of the liability. Contingent consideration may change significantly as our development programs progress, revenue estimates evolve and additional data is obtained, impacting our assumptions. The assumptions used in estimating fair value require significant judgment. The use of different assumptions and judgments could result in a materially different estimate of fair value which may have a material impact on our results from operations and financial position.

Derivative financial instruments. We record derivative financial instruments on our Condensed Consolidated Balance Sheet at their fair value and recognize the changes in the fair value in our Condensed Consolidated Statement of Operations when they occur, the only exception being derivatives that qualify as hedges. For the derivative instrument to qualify as a hedge, we are required to meet strict hedge effectiveness and contemporaneous documentation requirements at the initiation of the hedge and assess the hedge effectiveness on an ongoing basis over the life of the hedge. At March 31, 2024 and December 31, 2023, our foreign currency forward contracts held to economically hedge inventory purchases did not meet the documentation requirements to be designated as hedges. Accordingly, we recognized all changes in the fair values of our derivatives instruments, net, in our Condensed Consolidated Statement of Operations. Refer to Note 10. In addition, we have determined the value of the embedded derivative liability within the 2029 Convertible 144A Notes and recorded it at fair value. Refer to Note 7. The changes in the fair value of the embedded derivatives are recognized in the fair value changes of derivatives instruments, net. Refer to Note 9.

Property, plant and equipment. Property, plant and equipment are recorded at cost or fair value if acquired in a business combination. Depreciation is provided using the straight-line method over the estimated useful lives of the assets and includes amortization expense for assets capitalized under finance leases. The estimated useful lives by asset class are as follows: software - 3 years, machinery, medical and other equipment - 5-8 years, furniture and fixtures - 5-12 years, leasehold improvements - the lesser of their useful life or the lease term, buildings and improvements - 10-40 years, and automobiles - 3-5 years. Expenditures for repairs and maintenance are charged to expense as incurred. Assets held under finance leases are included within Property, plant and equipment, net in our Condensed Consolidated Balance Sheets and are amortized over the shorter of their useful lives or the expected term of their related leases. Depreciation expense was $4.4 million and $5.0 million for the three months ended March 31, 2024, and 2023, respectively.

Impairment of long-lived assets. Long-lived assets, such as property and equipment and assets held for sale, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, then an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset.

Income taxes. Income taxes are accounted for under the asset-and-liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the respective tax bases and for operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in operations in the period that includes the enactment date. We periodically evaluate the realizability of our net deferred tax assets. Our tax accruals are analyzed periodically and adjustments are made as events occur to warrant such adjustment. Valuation allowances on certain U.S. deferred tax assets and non-U.S. deferred tax assets are established, because realization of these tax benefits through future taxable income does not meet the more-likely-than-not threshold.

We operate in various countries and tax jurisdictions globally. For interim reporting purposes, we record income taxes based on the expected effective income tax rate, taking into consideration year to date and global forecasted tax results. For the three months ended March 31, 2024, the tax rate differed from the U.S. federal statutory rate of 21% primarily due to the valuation allowance against certain U.S. and non-U.S. deferred tax assets, the relative mix in earnings and losses in the U.S. versus foreign tax jurisdictions, and the impact of certain discrete tax events and operating results in tax jurisdictions which do not result in a tax benefit.

Included in Other long-term liabilities is an accrual of $9.9 million related to uncertain tax positions involving income recognition. In connection with an examination of foreign tax returns for the 2015 through 2021 tax years, a foreign taxing authority has issued an income tax assessment of approximately $246 million (including interest). We are appealing this assessment, as we believe, other than for uncertain tax positions for which we have reserved, the issues are without technical merit. We intend to exhaust all judicial remedies necessary to resolve the matter as necessary, which could be a lengthy process. There can be no assurance that this matter will be resolved in our favor, and an adverse outcome, or any future tax examinations involving similar assertions, could have a material adverse effect on our financial condition, results of operations and cash flows.

Revenue recognition. We recognize revenue when a customer obtains control of promised goods or services in accordance with Accounting Standards Codification Topic 606, *Revenue from Contracts with Customers* (“Topic 606”). The amount of revenue that is recorded reflects the consideration that we expect to receive in exchange for those goods or services. We apply the following five-step model in order to determine this amount: (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) we satisfy a performance obligation.

We apply the five-step model to contracts when it is probable that we will collect the consideration we are entitled to in exchange for the goods or services we transfer to the customer. At contract inception, once the contract is determined to be within the scope of Topic 606, we review the contract to determine which performance obligations we must deliver and which of these performance obligations are distinct. We recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when the performance obligation is satisfied or as it is satisfied. For a complete discussion of accounting for Revenues from services, Revenues from products and Revenue from transfer of intellectual property and other, refer to Note 13.

Concentration of credit risk and allowance for credit losses. Financial instruments that potentially subject us to concentrations of credit risk consist primarily of accounts receivable. Substantially all of our accounts receivable are with either companies in the healthcare industry or patients. However, credit risk is limited due to the number of our clients as well as their dispersion across many different geographic regions.

While we have receivables due from federal and state governmental agencies, such receivables are not a credit risk because federal and state governments fund the related healthcare programs. Payment is primarily dependent upon submitting appropriate documentation. On March 31, 2024 and December 31, 2023, receivable balances (net of explicit and implicit price concessions) from Medicare and Medicaid were 7.4% and 6.7%, respectively, of our consolidated Accounts receivable, net. The portion of our accounts receivable due from individual patients comprises the largest portion of credit risk. At March 31, 2024 and December 31, 2023, receivables due from patients represented approximately 2.2% and 2.0%, respectively, of our consolidated Accounts receivable, net.

We assess the collectability of accounts receivable balances by considering factors such as historical collection experience, customer credit worthiness, the age of accounts receivable balances, regulatory changes and current economic conditions and trends that may affect a customer's ability to pay. Actual results could differ from those estimates. The allowance for credit losses was $2.0 million on each of March 31, 2024, and December 31, 2023. The credit loss expense for the three months ended March 31, 2024 and 2023, was $128.6 thousand and $85.2 thousand, respectively.

As of March 31, 2024, accounts receivable included $0.8 million of revenue earned under the BARDA Contract (as defined in Note 14). As of December 31, 2023, accounts receivable included $0.6 million under this contract. Refer to Note 13, Government Contract Revenue for further information on government contracts and to Note 14, Strategic Alliances for further information on the BARDA Contract.

Equity-based compensation. We measure the cost of services received in exchange for an award of equity instruments based on the grant-date fair value of the award. That cost is recognized in the Condensed Consolidated Statement of Operations over the period during which an employee is required to provide service in exchange for the award. We record excess tax benefits realized from the exercise of stock options as cash flows from operations. For the three months ended March 31, 2024, and 2023, we recorded $2.6 million and $2.7 million, respectively, of equity-based compensation expense.

Research and development expenses. Research and development expenses include external and internal expenses. External expenses include clinical and nonclinical activities performed by contract research organizations, lab services, purchases of drug and diagnostic product materials and manufacturing development costs. Research and development employee-related expenses include salaries, benefits and equity-based compensation expense. Other internal research and development expenses are incurred to support overall research and development activities and include expenses related to general overhead and facilities. We expense these costs in the period in which they are incurred. We estimate our liabilities for research and development expenses in order to match the recognition of expenses to the period in which the actual services are received. As such, accrued liabilities related to third party research and development activities are recognized based upon our estimate of services received and degree of completion of the services in accordance with the specific third party contract.

Research and development expense includes costs for in-process research and development projects acquired in asset acquisitions which have not reached technological feasibility, and which have no alternative future use. For in-process research and development projects acquired in business combinations, the in-process research and development project is capitalized and evaluated for impairment until the development process has been completed. Once the development process has been completed the asset will be amortized over its remaining estimated useful life.

Segment reporting. Our chief operating decision-maker is Phillip Frost, M.D., our Chairman and Chief Executive Officer. Dr. Frost reviews our operating results and operating plans and makes resource allocation decisions on a Company-wide or aggregate basis. We manage our operations in two reportable segments, pharmaceutical and diagnostics. The pharmaceutical segment consists of our pharmaceutical operations in Chile, Mexico, Ireland, Israel and Spain, *Rayaldee* product sales and our pharmaceutical research and development. The diagnostics segment primarily consists of clinical laboratory operations through BioReference and our point-of-care operations. There are no significant inter-segment sales. We evaluate the performance of each segment based on operating profit or loss. There is no inter-segment allocation of interest expense or income taxes. Refer to Note 15.

Shipping and handling costs. We do not charge customers for shipping and handling costs. Shipping and handling costs are classified as Cost of revenues in the Condensed Consolidated Statement of Operations.

Foreign currency translation. The financial statements of certain of our foreign operations are measured using the local currency as the functional currency. The local currency assets and liabilities are generally translated at the rate of exchange to the U.S. dollar on the balance sheet date. The local currency revenues and expenses are translated at average rates of exchange to the U.S. dollar during the reporting periods. Foreign currency transaction gains (losses) have been reflected as a component of Other income (expense), net within the Condensed Consolidated Statement of Operations and foreign currency translation gains (losses) have been included as a component of the Condensed Consolidated Statement of Comprehensive Income (Loss). During the three months ended March 31, 2024 and 2023, we recorded foreign currency transaction gains and (losses) of ($2.7 million) and $1.0 million, respectively.

Variable interest entities. The consolidation of a variable interest entity ("VIE") is required when an enterprise has a controlling financial interest. A controlling financial interest in a VIE will have both of the following characteristics: (a) the power to direct the activities of a VIE that most significantly impact the VIE's economic performance and (b) the obligation to absorb losses of the VIE that could potentially be significant to the VIE. Refer to Note 6.

Investments. We have made strategic investments in development stage and emerging companies. We record these investments as equity method investments or as equity securities based on our percentage of ownership and whether we have significant influence over the operations of the investees. For investments classified under the equity method of accounting, we record our proportionate share of their losses in Losses from investments in investees in our Condensed Consolidated Statement of Operations. Refer to Note 6. For investments classified as equity securities, we record changes in their fair value as Other income (expense) in our Condensed Consolidated Statement of Operations based on their closing price per share at the end of each reporting period, unless the equity security does not have a readily determinable fair value. Refer to Note 6.

Accounting standards yet to be adopted.

In December 2023, the FASB issued ASU No. 2023-09, "Income Taxes (Topic 740): Improvements to Income Tax Disclosures" ("ASU 2023-09"), which modifies the rules on income tax disclosures to require entities to disclose (i) specific categories in the rate reconciliation, (ii) the income or loss from continuing operations before income tax expense or benefit (separated between domestic and foreign) and (iii) income tax expense or benefit from continuing operations (separated by federal, state and foreign). ASU 2023-09 also requires entities to disclose their income tax payments to international, federal, state, and local jurisdictions, among other changes. The guidance is effective for annual periods beginning after December 15, 2024. Early adoption is permitted for annual financial statements that have not yet been issued or made available for issuance. ASU 2023-09 should be applied on a prospective basis, but retrospective application is permitted. We are currently evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures.

In November 2023, the FASB issued ASU No 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures ("ASU 2023-07"). ASU 2023-07 enhances disclosures for significant segment expenses for all public entities required to report segment information in accordance with ASC 280. ASC 280 requires a public entity to report for each reportable segment a measure of segment profit or loss that its chief operating decision maker ("CODM") uses to assess segment performance and to make decisions about resource allocations. The amendments in ASU 2023-07 improve financial reporting by requiring all public entities to disclose incremental segment information on an annual and interim basis to enable investors to develop more useful financial analyses. Topic 280 requires that a public entity disclose certain information about its reportable segments, for example, a public entity is required to report a measure of segment profit or loss that the CODM uses to assess segment performance and make decisions about allocating resources. ASC 280 also requires other specified segment items and amounts, such as depreciation, amortization, and depletion expense, to be disclosed under certain circumstances. The ASU 2023-07 amendments do not change or remove those disclosure requirements. The amendments in ASU 2023-07 also do not change how a public entity identifies its operating segments, aggregates those operating segments, or applies the quantitative thresholds to determine its reportable segments. Upon adoption, a public entity must retrospectively apply ASU 2023-07 amendments to all prior periods presented in the financial statements. The amendments in ASU 2023-07 are effective for all public entities for fiscal years beginning after December 15, 2023 (e.g., for calendar-year-end public entities, annual periods beginning on January 1, 2024 — i.e., December 31, 2024, Form 10-K), and interim periods within fiscal years beginning after December 15, 2024 (e.g., for calendar-year-end public entities, interim periods beginning on January 1, 2025 — i.e., Form 10-Q for the first quarter of 2025). Early adoption is permitted. We are currently evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures.

Recently adopted accounting standards.

In 2021, the Organization for Economic Co-operation and Development ("OECD") established an inclusive framework on base erosion and profit shifting and agreed on a two-pillar solution ("Pillar Two") to global taxation, focusing on global profit allocation and a 15% global minimum effective tax rate. On December 15, 2022, the EU member states agreed to implement the OECD's global minimum tax rate of 15%. The OECD issued Pillar Two model rules and continues to release guidance on these rules. The inclusive framework calls for tax law changes by participating countries to take effect in 2024 and 2025. Various countries have enacted or have announced plans to enact new tax laws to implement the global minimum tax. We considered the applicable tax law changes on Pillar Two implementation in the relevant countries, and there is no material impact to our tax results for the period. We anticipate further legislative activity and administrative guidance in 2024, and will continue to evaluate the impacts of enacted legislation and pending legislation to enact Pillar Two Model Rules in the non-US tax jurisdictions we operate in.

NOTE 4 EARNINGS (LOSS) PER SHARE

Basic income (loss) per share is computed by dividing our net income (loss) by the weighted average number of shares of our Common Stock outstanding during the period. Shares of Common Stock outstanding under the share lending arrangement entered into in conjunction with the 2025 Notes (as defined in Note 7) are excluded from the calculation of basic and diluted earnings per share because the borrower of the shares is required under the share lending arrangement to refund any dividends paid on the shares lent. Refer to Note 7. For diluted earnings per share, the dilutive impact of stock options and warrants is determined by applying the "treasury stock" method. The dilutive impact of the 2029 Convertible Notes, 2033 Senior Notes, the 2023 Convertible Notes and the 2025 Notes (each, as defined and discussed in Note 7) has been considered using the "if converted" method. For periods in which their effect would have been antidilutive, no effect is given to Common Stock issuable under outstanding options or warrants or the potentially dilutive shares issuable pursuant to the 2029 Convertible Notes, 2033 Senior Notes, the 2023 Convertible Notes and the 2025 Notes in the dilutive computation.

A total of 296,587,793 and 82,441,440 potential shares of Common Stock were excluded from the calculation of diluted net loss per share for the three months ended March 31, 2024 and 2023, respectively, because their inclusion would have been antidilutive. A full presentation of diluted earnings per share has not been provided because the required adjustments to the numerator and denominator resulted in diluted earnings per share equivalent to basic earnings per share.

During the three months ended March 31, 2024, no options were exercised and no restricted stock units vested, resulting in the issuance of no shares of Common Stock.

During the three months ended March 31, 2023, no options were exercised and no restricted stock units vested, resulting in the issuance of no shares of Common Stock.

NOTE 5 COMPOSITION OF CERTAIN FINANCIAL STATEMENT CAPTIONS

(In thousands)	March 31, 2024	December 31, 2023
Accounts receivable, net:		
Accounts receivable	$ 113,360	$ 125,379
Less: allowance for credit losses	(1,993)	(2,000)
	$ 111,367	$ 123,379
Inventories, net:		
Consumable supplies	$ 19,346	$ 35,582
Finished products	34,008	25,864
Work in-process	3,286	1,731
Raw materials	8,246	8,981
Less: inventory reserve	(5,520)	(6,461)
	$ 59,366	$ 65,697
Other current assets and prepaid expenses:		
Taxes recoverable	$ 3,674	$ 4,211
Prepaid expenses	8,649	6,177
Prepaid insurance	1,538	3,848
Other receivables	4,165	2,610
Other	6,626	7,673
	$ 24,652	$ 24,519
Intangible assets, net:		
Customer relationships	$ 256,732	$ 315,799
Technologies	813,234	831,509
Trade names	49,739	49,758
Covenants not to compete	12,912	12,916
Licenses	6,259	6,205
Product registrations	6,331	6,790
Other	5,899	6,000
Less: accumulated amortization	(471,072)	(488,694)
	$ 680,034	$ 740,283
Accrued expenses:		
Employee benefits	$ 31,264	$ 28,952
Clinical trials	6,077	7,624
Commitments and contingencies	8,642	8,088
Gross to net provision	6,082	9,420
Inventory received but not invoiced	2,972	1,653
Finance leases short-term	1,783	2,827
Professional fees	2,571	3,470
Taxes payable	3,751	1,384
Royalties	1,705	1,544
Commissions	1,877	1,822
Other	22,048	23,302
	$ 88,772	$ 90,086
Other long-term liabilities:		
Mortgages and other debts payable	$ 4,036	$ 7,709
Finance leases long-term	4,987	7,274
Contract liabilities	7	7
Other	12,166	12,199
	$ 21,196	$ 27,189

Our intangible assets and goodwill relate principally to our completed acquisitions of OPKO Renal, OPKO Biologics, EirGen, BioReference and ModeX. We amortize intangible assets with definite lives on a straight-line basis over their estimated useful lives. The estimated useful lives by asset class are as follows: technologies - 7-17 years, customer relationships - 5-20 years, product registrations - 7-10 years, covenants not to compete - 5 years, trade names - 5-10 years, other 9-13 years. We do not anticipate capitalizing the cost of product registration renewals, rather we expect to expense these costs, as incurred. Our goodwill is not tax deductible for income tax purposes in any jurisdiction in which we operate.

Changes in value of the intangible assets and goodwill during the three months ended March 31, 2024 and 2023 were primarily due to foreign currency fluctuations between the Euro, and the Chilean Peso against the U.S. dollar.

The following table summarizes the changes in Goodwill by reporting unit during the three months ended March 31, 2024.

	2024				
(In thousands)	Gross goodwill at January 1	Cumulative impairment at January 1	Acquisitions, dispositions and other	Foreign exchange and other	Balance at March 31
Pharmaceuticals					
CURNA	$ 4,827	$ (4,827)	$ —	$ —	$ —
Rayaldee	84,273	—	—	(1,816)	82,457
FineTech	11,698	(11,698)	—	—	—
ModeX	80,260	—	—	—	80,260
OPKO Biologics	139,784	—	—	(0)	139,784
OPKO Chile	3,642	—	—	(374)	3,268
OPKO Health Europe	7,276	—	—	(161)	7,115
OPKO Mexico	100	(100)	—	—	—
Transition Therapeutics	3,421	(3,421)	—	—	—
Diagnostics					
BioReference	283,025	—	(65,294)	—	217,731
OPKO Diagnostics	17,977	(17,977)	—	—	—
	$ 636,283	$ (38,023)	$ (65,294)	$ (2,351)	$ 530,615

Acquisitions, disposition and other includes amounts related to the Labcorp Asset Purchase Agreement, which is included in assets held for sale at March 31, 2024.

NOTE 6 INVESTMENTS

Investments

The following table reflects the accounting method, carrying value and underlying equity in net assets of our unconsolidated investments as of March 31, 2024 and December 31, 2023:

(in thousands)	As of March 31, 2024		As of December 31, 2023	
Investment type	Investment Carrying Value	Underlying Equity in Net Assets	Investment Carrying Value	Underlying Equity in Net Assets
Equity method investments	$ (0)	$ 2,734	$ (0)	$ 2,942
Variable interest entity, equity method	793	157	796	420
Equity method investments - FV option	32,490		9,786	
Equity securities	183		116	
Equity securities with no readily determinable fair value	7,521		5,382	
Warrants and options	3		2	
Total carrying value of investments	$ 40,990		$ 16,082	

Equity method investments

Our equity method investments, other than in GeneDx Holdings, as described below, consist of investments in Pharmsynthez (ownership 9%), Cocrystal Pharma, Inc. ("COCP") (2%), Non-Invasive Monitoring Systems, Inc. ("NIMS") (1%), BioCardia, Inc. ("BioCardia") (1%), Xenetic Biosciences, Inc. ("Xenetic") (3%), and LeaderMed Health Group Limited ("LeaderMed") (47%). Neovasc, Inc., in which we owned a 0.5% interest, was acquired by Shockwave Medical, Inc. in April 2023. As a result, we received $363 thousand in merger consideration in exchange for our shares. The aggregate amount of assets, liabilities, and net losses of these equity method investees as of and for the three months ended March 31, 2024 were $80.4 million, $23.6 million, and $9.3 million, respectively. The aggregate amount of assets, liabilities, and net losses of our equity method investees as of and for the year ended December 31, 2023 were $85.5 million, $20.8 million, and $37.7 million, respectively. We have determined that we or our related parties have the ability to exercise significant influence over our equity method investments through our board representation or voting power. Accordingly, we account for our investment in these entities under the equity method and record our proportionate share of their losses in Loss from investments in investees in our Consolidated Statement of Operations. The aggregate value of our equity method investments based on the quoted market prices of their respective shares of common stock and the number of shares held by us as of March 31, 2024 and December 31, 2023 was $0.6 million and $0.7 million, respectively.

Equity method investments - Fair value option

On January 14, 2022, the Company entered into an Agreement and Plan of Merger and Reorganization (the "GeneDx Merger Agreement") with GeneDx Holdings Corp. (f/k/a Sema4 Holdings Corp.), a Delaware corporation ("GeneDx Holdings"), pursuant to which GeneDx Holdings acquired our former subsidiary, GeneDx LLC (formerly GeneDx, Inc. "GeneDx"), on April 28, 2022. As a result of this transaction, the Company holds an equity method investment in GeneDx Holdings, representing an approximate 13.7% ownership interest. Pursuant to the GeneDx Merger Agreement, the Company designated, and GeneDx Holdings nominated for election an individual to serve on the board of directors of GeneDx Holdings, and such nominee was elected by GeneDx Holdings stockholders to serve as a director until GeneDx Holdings 2024 annual meeting of stockholders. Therefore, we have determined that the Company or our related parties can exercise significant influence over the investee through our board representation or voting power. However, our influence is limited by the GeneDx Holdings Shareholder Agreement, pursuant to which we have agreed to vote our shares of GeneDx Holdings Common Stock in accordance with the recommendation of GeneDx Holdings' board of directors for so long as we continue to hold at least 5% of the outstanding shares of GeneDx Holdings common stock. Other than through our sole board seat, we are unable to influence GeneDx Holdings' policy-making process. We currently hold one of seven seats on the GeneDx Holdings board of directors, and our designee may continue to serve following the expiration of the lock-up period if re-elected by GeneDx Holdings stockholders.

We elected to account for our investment in GeneDx Holdings under the equity method fair value option and record gains and losses from changes in fair value in other income (expense), net in our Condensed Consolidated Statements of Operations. For the three months ended March 31, 2024 and 2023, we recognized $22.7 million and $8.3 million in net income related to the change in fair value of our GeneDx Holdings investment, respectively. As of March 31, 2024, the aggregate value of our GeneDx Holdings investment based on the quoted market price of the GeneDx Holdings Common Stock was $32.5 million.

Investments in equity securities

Our equity securities consist of investments in VBI Vaccines Inc. (0.19%), ChromaDex Corporation ("ChromaDex") (0.05%), and Eloxx Pharmaceuticals, Inc. ("Eloxx") (1%). Our equity securities without readily determinable fair value consists of CAMP4 Therapeutics Corporation ("CAMP4") (2%) and HealthSnap, Inc. (4%). We have determined that our ownership, along with that of our related parties, does not provide us with significant influence over the operations of these investments. Accordingly, we account for our investment in these entities as equity securities, and we record changes in the fair value of these investments in Other income (expense) each reporting period when they have readily determinable fair value. Equity securities without a readily determinable fair value are adjusted to fair value when there is an observable price change. Net gains and losses on our equity securities for the three months ended March 31, 2024 and 2023 were as follows:

	For the three months ended March 31,	
(in thousands)	2024	2023
Equity Securities:		
Net gains and losses recognized during the period on equity securities	$ 67	$ (105)
Unrealized net losses recognized during the period on equity securities still held at the reporting date	$ 67	$ (105)

Sales of investments

Gains (losses) included in earnings from sales of our investments are recorded in Other income (expense), net in our Condensed Consolidated Statement of Operations. The cost of securities sold is based on the specific identification method.

Warrants and options

In addition to our equity method investments and equity securities, we hold options to purchase 47 thousand additional shares of BioCardia, all of which were vested as of March 31, 2024 and December 31, 2023, and warrants to purchase 33 thousand and 0.7 million additional shares of COCP and InCellDx Inc., respectively. We recorded the changes in the fair value of the options and warrants in fair value changes of derivative instruments, net in our Condensed Consolidated Statement of Operations. We also recorded the fair value of the options and warrants in Investments, net in our Condensed Consolidated Balance Sheet. See further discussion of the Company's options and warrants in Note 9 and Note 10.

Investments in variable interest entities

We have determined that we hold variable interests in LeaderMed and Zebra Biologics, Inc. ("Zebra"). We made this determination as a result of our assessment that they do not have sufficient resources to carry out their principal activities without additional financial support.

In September 2021, we and LeaderMed, a pharmaceutical development company with operations based in Asia, formed a joint venture to develop, manufacture and commercialize two of OPKO's clinical stage, long-acting drug products in Greater China and eight other Asian territories. Under the terms of the agreements, we granted the joint venture exclusive rights to develop, manufacture and commercialize (a) OPK88003, an oxyntomodulin analog being developed for the treatment of obesity and diabetes, and (b) Factor VIIa-CTP, a novel long acting coagulation factor being developed to treat hemophilia, in exchange for 4,703 shares 47% ownership interest in the joint venture. In addition, we received an upfront payment of $1.0 million and will be reimbursed for clinical trial material and technical support we provide the joint venture.

In order to determine the primary beneficiary of the joint venture, we evaluated our investment and our related parties' investment, as well as our investment combined with the related parties' investment to identify if we had the power to direct the activities that most significantly impact the economic performance of the joint venture. Based on the capital structure, governing documents and overall business operations of the joint venture, we determined that, while a VIE, we do not have the power to direct the activities that most significantly impact the joint venture's economic performance and do not have an obligation to fund expected losses. We did determine that we can significantly influence control of the joint venture through our board representation and voting power. Therefore, we have the ability to exercise significant influence over the joint venture's operations and account for our investment in the joint venture under the equity method.

We own 1,260,000 shares of Zebra's Series A-2 Preferred Stock and 900,000 shares of Zebra restricted common stock (ownership 29%) at March 31, 2024 and December 31, 2023). Zebra is a privately held biotechnology company focused on the discovery and development of biosuperior antibody therapeutics and complex drugs. Dr. Richard Lerner, M.D., a former member of our Board of Directors, was a founder of Zebra. Dr. Frost serves as a member of Zebra's Board of Directors.

In order to determine the primary beneficiary of Zebra, we evaluated our investment and our related parties' investment, as well as our investment combined with the related parties' investment to identify if we had the power to direct the activities that most significantly impact the economic performance of Zebra. Based on the capital structure, governing documents and overall business operations of Zebra, we determined that, while a VIE, we do not have the power to direct the activities that most significantly impact Zebra's economic performance and have no obligation to fund expected losses. We determined, however, that we can significantly influence control of Zebra through our board representation and voting power. Therefore, we have the ability to exercise significant influence over Zebra's operations and account for our investment in Zebra under the equity method.

NOTE 7 DEBT

As of March 31, 2024 and December 31, 2023, our debt consisted of the following:

(In thousands)	March 31, 2024	December 31, 2023
2029 Convertible Notes	$ 323,058	$ —
2025 Convertible Notes	170	143,250
2033 Senior Notes	50	50
2023 Convertible Notes	—	71,025
JP Morgan Chase	11,668	12,671
Chilean and Spanish lines of credit	9,330	12,629
Current portion of notes payable	1,822	1,992
Long term portion of notes payable	4,036	7,727
Total	$ 350,134	$ 249,345
Balance sheet captions		
Current portion of convertible notes	$ 170	$ —
Long term portion of convertible notes	323,108	214,325
Current portion of lines of credit and notes payable	22,820	27,293
Long Term notes payable included in long-term liabilities	4,036	7,727
Total	$ 350,134	$ 249,345

In January 2024, we completed a private offering of $230.0 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2029 (the "2029 Convertible 144A Notes") in accordance with the terms of a note purchase agreement (the "144A Note Purchase Agreement") entered into by and between the Company and J.P. Morgan Securities LLC (the "Initial Purchaser"). The $230.0 million aggregate principal amount of 2029 Convertible 144A Notes includes $30.0 million aggregate principal amount of 2029 Convertible 144A Notes purchased on the closing date by the Initial Purchaser in accordance with its exercise in full of its overallotment option.

Net proceeds from the 2029 Convertible 144A Notes issuance totaled approximately $222.0 million after deducting fees and estimated offering expenses payable by us. We allocated approximately $50.0 million of these net proceeds to repurchase shares of our Common Stock. These repurchases were from purchasers of the 2029 Convertible 144A Notes in privately negotiated transactions effected with or through the Initial Purchaser or its affiliate. The purchase price per share of the Common Stock in these transactions equaled the closing sale price of $0.9067 per share of Common Stock on January 4, 2024.

Contemporaneously with the closing of the offering of the 2029 Convertible 144A Notes on January 9, 2024, we issued and sold approximately $71.1 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2029 (the "2029 Convertible Affiliate Notes" and, together with the 2029 Convertible 144A Notes, the "2029 Convertible Notes") pursuant to the terms of a note purchase agreement entered into on January 4, 2024 (the "Affiliate Note Purchase Agreement") by and among the Company and certain investors including, Frost Gamma Investments Trust, a trust controlled by Dr. Phillip Frost and Dr. Jane H. Hsiao (collectively, the "Affiliate Purchasers"). Pursuant to the Affiliate Note Purchase Agreement, we issued and sold the 2029 Convertible Affiliate Notes to the Affiliate Purchasers in exchange for the entirety of the $55.0 million aggregate principal amount of our outstanding 2023 Convertible Notes held by the Affiliate Purchasers, together with approximately $16.1 million of accrued but unpaid interest thereon.

On January 9th, 2024, we recorded the $125.6 million value of the embedded derivative liability within the 2029 Convertible Notes as a debt discount. To determine the fair value of this derivative, we employed the Binomial Lattice model. Key inputs and assumptions for this valuation included our common stock price, the derivative's exercise price, risk-free interest rate, volatility, annual coupon rate, and remaining contractual term. We are amortizing the debt discount as non-cash interest expense over the term of the Notes.

From the date the Notes were issued through March 31, 2024, we observed an increase in the market price of our Common Stock which resulted in a $26.25 million increase in the estimated fair value of our embedded derivatives recorded in Fair value changes of derivative instruments, net in our Condensed Consolidated Statements of Operations.

Holders may convert their 2029 Convertible Notes at their option prior to the close of business on the business day immediately preceding September 15, 2028 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2024 (and only during such calendar quarter), if the last reported sale price of our Common Stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five consecutive business day period after any ten consecutive trading day period (the “convertible note measurement period”) in which the trading price per $1,000 principal amount of notes for each trading day of the convertible note measurement period was less than 98% of the product of the last reported sale price of our Common Stock and the applicable conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events specified in the indenture governing the 2029 Convertible Notes. On or after September 15, 2028 until the close of business on the business day immediately preceding the maturity date, holders may convert their notes at any time, regardless of the foregoing conditions. Upon conversion of a note, we will pay or deliver, as the case may be, cash, shares of our Common Stock or a combination of cash and shares of our Common Stock, at our election.

The conversion rate is initially equal to 869.5652 shares of Common Stock per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $1.15 per share of Common Stock). The conversion rate for the 2029 Convertible Notes will be subject to adjustment upon the occurrence of certain events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date of the notes, in certain circumstances we will increase the conversion rate of the 2029 Convertible Notes for a holder who elects to convert its notes in connection with such a corporate event.

We may not redeem the notes prior to the maturity date, and no sinking fund is provided for the notes. If we undergo a fundamental change, holders may require us to purchase the notes in whole or in part for cash at a fundamental change purchase price equal to 100% of the principal amount of the notes to be purchased, *plus* accrued and unpaid interest, if any, to, but excluding, the fundamental change purchase date. The 2029 Convertible Notes are our senior unsecured obligations and rank senior in right of payment to any indebtedness that is expressly subordinated in right of payment to the notes, and equal in right of payment with all of our existing and future unsecured indebtedness that is not so subordinated. The notes are effectively subordinated to all of our existing and future secured indebtedness to the extent of the value of the assets securing such indebtedness and structurally subordinated to all existing and future liabilities (including trade payables) of our subsidiaries (including, without limitation, liabilities of our subsidiaries under the Credit Agreement).

The indenture governing the notes provides for customary events of default which include (subject in certain cases to customary grace and cure periods), among others, the following: nonpayment of principal or interest; breach of covenants or other agreements in the indenture; defaults in failure to pay certain other indebtedness; judgment defaults; and certain events of bankruptcy or insolvency. Generally, if an event of default occurs and is continuing under the indenture, the trustee thereunder or the holders of at least 25% in aggregate principal amount of the notes then outstanding may declare 100% of the principal of and accrued and unpaid interest, if any on all then-outstanding notes to be immediately due and payable. In certain circumstances, we may, for a period of time, elect to pay additional interest on the notes as the sole remedy to holders of the notes in the case of an event of default related to certain failures by us to comply with certain reporting covenants in the indenture.

The following table sets forth information related to the 2029 Convertible Notes which is included in our Condensed Consolidated Balance Sheet as of March 31, 2024:

(In thousands)	2029 convertible notes	Embedded conversion option	Discount	Debt Issuance costs	Total
Balance at December 31, 2023	$ —	$ —	$ —	$ —	$ —
Issuance of 3.75% 2029 Convertible Notes	301,054	125,620	(125,620)	(8,562)	292,492
Amortization of debt discount and debt issuance costs	—	—	3,815	501	4,316
Change in fair value of embedded derivative	—	26,250	—	—	26,250
Balance at March 31, 2024	$ 301,054	$ 151,870	$ (121,805)	$ (8,061)	$ 323,058

In February 2019, we issued $200.0 million aggregate principal amount of Convertible Senior Notes due 2025 (the “2025 Notes”) in an underwritten public offering. The 2025 Notes bear interest at a rate of 4.50% per year, payable semiannually in arrears on February 15 and August 15 of each year. The 2025 Notes mature on February 15, 2025, unless earlier repurchased, redeemed or converted.

In May 2021, we entered into the Exchange (as defined below) with certain holders of the 2025 Notes pursuant to which the holders exchanged $55.4 million in aggregate principal amount of the outstanding 2025 Notes for 19,051,270 shares of our Common Stock (the “Exchange”).

Contemporaneously with the closing of our offering of the 2029 Convertible Notes, we repurchased approximately $144.4 million aggregate principal amount of the 2025 Notes for cash, using $146.3 million of the net proceeds from our issuance and sale of the 2029 Convertible Notes, following which only $170 thousand aggregate principal amount of the 2025 Notes remained outstanding.

Holders may convert their 2025 Notes into shares of Common Stock at their option at any time prior to the close of business on the business day immediately preceding November 15, 2024 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ended March 31, 2019 (and only during such calendar quarter), if the last reported sale price of our Common Stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the “measurement period”) in which the trading price per $1,000 principal amount of 2025 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our Common Stock and the conversion rate on each such trading day; (3) if we call any or all of the 2025 Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events set forth in the indenture governing the 2025 Notes. On or after November 15, 2024, until the close of business on the business day immediately preceding the maturity date, holders of the 2025 Notes may convert their notes at any time, regardless of the foregoing conditions. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our Common Stock, or a combination of cash and shares of our Common Stock, at our election.

On January 22, 2024, we terminated our share lending agreement, dated February 4, 2019, with Jefferies Capital Services, LLC (“Share Borrower”). Through this agreement, we had lent the Share Borrower approximately 30 million shares of our common stock related to our 2019 issuance of the $200.0 million in 2025 Notes. With the termination of this agreement, all remaining borrowed shares of Common Stock have been returned to us and are now held as treasury shares.

In February 2018, we issued a series of 5% Convertible Promissory Notes (the "2023 Convertible Notes") in the aggregate principal amount of $55.0 million. The original maturity of the 2023 Convertible Notes was five years following the date of issuance. Each holder of a 2023 Convertible Note originally had the option, from time to time, to convert all or any portion of the outstanding principal balance of such 2023 Convertible Note, together with accrued and unpaid interest thereon, into shares of our Common Stock at a conversion price of $5.00 per share.

On February 10, 2023, we amended the 2023 Convertible Notes to extend the maturity to January 31, 2025 and reset the conversion price to the 10 day volume weighted average price immediately preceding the date of the amended note, plus a 25% conversion premium, or $1.66 per share. Interest under the 2023 Convertible Notes accrued from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance, until the principal and accrued and unpaid interest, are paid in full. Purchasers of the 2023 Convertible Notes included an affiliate of Dr. Phillip Frost, M.D., our Chairman and Chief Executive Officer, and Dr. Jane H. Hsiao, Ph.D., MBA, our Vice-Chairman and Chief Technical Officer.

In connection with the closing of the 2029 Convertible Notes offering, the Company issued approximately $71.1 million aggregate principal amount of its 2029 Convertible Affiliate Notes pursuant to a separate Affiliate Note Purchase Agreement. Following this exchange, no 2023 Convertible Notes remained outstanding. See above section on the 2029 Convertible Affiliate Agreement for further information.

In January 2013, we issued an aggregate of $175.0 million of our 3.0% Senior Notes due 2033 (the "2033 Senior Notes") in a private placement. The 2033 Senior Notes bear interest at the rate of 3.0% per year, payable semiannually on February 1 and August 1 of each year and mature on February 1, 2033, unless earlier repurchased, redeemed or converted. From 2013 to 2016, holders of the 2033 Senior Notes converted $143.2 million in aggregate principal amount into Common Stock, and, on February 1, 2019, approximately $28.8 million aggregate principal amount of 2033 Senior Notes were tendered by holders pursuant to such holders' option to require us to repurchase the 2033 Senior Notes. During the first quarter of 2023, we paid approximately $3.0 million to purchase 2033 Senior Notes in accordance with the indenture governing the 2033 Senior Notes, following which $50.6 thousand 2033 Senior Notes remained outstanding.

The terms of the 2033 Senior Notes, include, among others: (i) rights to convert the notes into shares of our Common Stock, including upon a fundamental change; and (ii) a coupon make-whole payment in the event of a conversion by the holders of the 2033 Senior Notes on or after February 1, 2017 but prior to February 1, 2019. We determined that these specific terms were embedded derivatives. Embedded derivatives are required to be separated from the host contract, the 2033 Senior Notes, and carried at fair value when: (a) the embedded derivative possesses economic characteristics that are not clearly and closely related to the economic characteristics of the host contract; and (b) a separate, stand-alone instrument with the same terms would qualify as a derivative instrument. We concluded that the embedded derivatives within the 2033 Senior Notes met these criteria and, as such, were valued separate and apart from the 2033 Senior Notes and recorded at fair value each reporting period.

In November 2015, BioReference and certain of its subsidiaries entered into a credit agreement with JPMorgan Chase Bank, N.A. ("CB"), as lender and administrative agent, as amended (the "Credit Agreement"). As amended, the Credit Agreement provides for a $75.0 million secured revolving credit facility and includes a $20.0 million sub-facility for swingline loans and a $20.0 million sub-facility for the issuance of letters of credit.

On June 29, 2023, the Company entered into an amendment to the Credit Agreement (the "Credit Agreement Amendment"), which, among other things, (i) replaced the London interbank offered rate (LIBOR) with the forward-looking term rate based on the secured overnight financing rate (the "SOFR Rate") as the interest rate benchmark, (ii) reduced the aggregate revolving commitment from $75,000,000 to $50,000,000, (iii) provided a revised commitment fee rate, and (iv) extended the maturity date from August 2024 to the earlier of August 2025, and 90 days prior to the maturity date of any indebtedness of the Company in an aggregate principal amount exceeding $7,500,000.

The Credit Agreement is guaranteed by all of BioReference's domestic subsidiaries and is also secured by substantially all assets of BioReference and its domestic subsidiaries, as well as a non-recourse pledge by us of our equity interest in BioReference. Availability under the Credit Agreement is based on a borrowing base composed of eligible accounts receivables of BioReference and certain of its subsidiaries, as specified therein. As of March 31, 2024, $10.7 million remained available for borrowing under the Credit Agreement. Principal under the Credit Agreement is due upon maturity on August 30, 2025.

At BioReference's option, borrowings under the Credit Agreement (other than swingline loans) bear interest at (i) the CB floating rate (defined as the higher of (x) the prime rate and (y) the SOFR Rate for an interest period of one month plus 2.50% and a benchmark spread adjustment of 0.10%) plus an applicable margin of 1.00%; or (ii) the SOFR Rate plus a benchmark spread adjustment of 0.10% and an applicable margin of 2.00%. Swingline loans will bear interest at the CB floating rate plus the applicable margin. The Credit Agreement also calls for other customary fees and charges, including an unused commitment fee of 0.400% if the average quarterly availability is 50% or more of the revolving commitment, or 0.275% if the average quarterly availability is less than or equal to 50% of the revolving commitments.

As of March 31, 2024 and December 31, 2023, $11.7 million and $12.7 million, respectively, was outstanding under the Credit Agreement.

The Credit Agreement contains customary covenants and restrictions, including, without limitation, covenants that require BioReference and its subsidiaries to maintain a minimum fixed charge coverage ratio if availability under the new credit facility falls below a specified amount and to comply with laws and restrictions on the ability of BioReference and its subsidiaries to incur additional indebtedness or to pay dividends and make certain other distributions to the Company, subject to certain exceptions as specified therein. Failure to comply with these covenants would constitute an event of default under the Credit Agreement, notwithstanding the ability of BioReference to meet its debt service obligations. The Credit Agreement also includes various customary remedies for the lenders following an event of default, including the acceleration of repayment of outstanding amounts under the Credit Agreement and execution upon the collateral securing obligations under the Credit Agreement. Substantially all the assets of BioReference and its subsidiaries are restricted from sale, transfer, lease, disposal or distributions to the Company, subject to certain exceptions. As of March 31, 2024, BioReference and its subsidiaries had net assets of approximately $456.0 million, which included goodwill of $217.7 million and intangible assets of $125.6 million.

In addition to the Credit Agreement, we had line of credit agreements with twelve other financial institutions as of March 31, 2024, and December 31, 2023, in the U.S., Chile and Spain. These lines of credit are used primarily as sources of working capital for inventory purchases.

The following table summarizes the amounts outstanding under the BioReference, Chilean and Spanish lines of credit:

(Dollars in thousands)			Balance Outstanding	
Lender	Interest rate on borrowings at March 31, 2024	Credit line capacity	March 31, 2024	December 31, 2023
JPMorgan Chase	9.50%	$ 50,000	$ 11,668	$ 12,671
Itau Bank	5.50%	1,900	901	1,264
Bank of Chile	6.60%	2,500	1,619	1,728
BICE Bank	5.50%	2,500	675	1,734
Scotiabank	5.00%	5,500	444	981
Santander Bank	5.50%	5,000	1,490	450
Security Bank	5.50%	1,400	531	—
Estado Bank	5.50%	4,000	1,480	3,303
BCI Bank	5.00%	2,500	1,172	1,626
Internacional Bank	5.50%	1,500	867	1,197
Consorcio Bank	5.00%	2,000	151	346
Banco De Sabadell	1.75%	540	—	—
Santander Bank	1.95%	540	—	—
Total		$ 79,880	$ 20,998	$ 25,300

At March 31, 2024 and December 31, 2023, the weighted average interest rate on our lines of credit was approximately 7.8% and 7.5%, respectively.

At March 31, 2024 and December 31, 2023, we had notes payable and other debt (excluding the 2033 Senior Notes, the 2023 Convertible Notes, the 2025 Notes, the Credit Agreement and amounts outstanding under lines of credit described above) as follows:

(In thousands)	March 31, 2024	December 31, 2023
Current portion of notes payable	$ 1,822	$ 1,993
Other long-term liabilities	4,036	7,727
Total	$ 5,858	$ 9,720

The notes and other debt mature at various dates ranging from 2024 through 2032, bearing variable interest rates from 0.7% up to 4.5%. The weighted average interest rate on the notes and other debt was 1.8% on March 31, 2024 and 2.9% on December 31, 2023. The notes are partially secured by our office space in Barcelona.

NOTE 8 ACCUMULATED OTHER COMPREHENSIVE LOSS

For the three months ended March 31, 2024, changes in Accumulated other comprehensive loss, net of tax, were as follows:

(In thousands)	Foreign currency translation
Balance at December 31, 2023	$ (38,030)
Other comprehensive loss	(7,166)
Balance at March 31, 2024	$ (45,196)

NOTE 9 FAIR VALUE MEASUREMENTS

We record fair values at an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement determined based on assumptions that market participants would use in pricing an asset or liability. We utilize a three-tier fair value hierarchy, which prioritizes the inputs used in measuring fair value. These tiers are: Level 1, defined as observable inputs such as quoted prices in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions.

As of March 31, 2024, we had equity securities and an equity method fair value option (refer to Note 6), forward foreign currency exchange contracts for inventory purchases (refer to Note 10). In addition, in connection with our investment and our consulting agreement with BioCardia, we record the related BioCardia options at fair value as well as warrants from COCP.

Our financial assets and liabilities measured at fair value on a recurring basis are as follows:

	Fair value measurements as of March 31, 2024			
(In thousands)	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Total
Assets:				
Money market funds	$ 25,607	$ —	$ —	$ 25,607
Equity securities	183	—	—	183
Equity Method - Fair value option	32,490	—	—	32,490
Common stock options	—	3	—	3
Total assets	$ 58,280	$ 3	$ —	$ 58,283
Liabilities:				
Embedded conversion option	—	—	151,870	151,870
Total liabilities	$ —	$ —	$ 151,870	$ 151,870

	Fair value measurements as of December 31, 2023			
(In thousands)	Quoted prices in active markets for identical assets (Level 1)	Significant other observable inputs (Level 2)	Significant unobservable inputs (Level 3)	Total
Assets:				
Money market funds	$ 32,404	$ —	$ —	$ 32,404
Equity securities	116	—	—	$ 116
Equity Method - fair value option	9,786	—	—	9,786
Common stock options/warrants	—	2	—	2
Total assets	$ 42,306	$ 2	$ —	$ 42,308
Liabilities:				
Forward contracts	—	29	—	29
Total liabilities	$ —	$ 29	$ —	$ 29

The carrying amount and estimated fair value of our 2029 Notes and 2025 Notes, as well as the applicable fair value hierarchy tiers, are contained in the table below. Additionally, the fair value of the 2029 Notes and 2025 Notes is determined using inputs other than quoted prices in active markets that are directly observable.

	March 31, 2024				
(In thousands)	Carrying Value	Total Fair Value	Level 1	Level 2	Level 3
2029 Notes	$ 323,058	$ 320,507	$ —	$ —	$ 320,507
2025 Notes	$ 170	$ 167	$ —	$ 167	$ —

There have been no transfers between Level 1 and Level 2 and no transfers to or from Level 3 of the fair value hierarchy.

The following table reconcile the beginning and ending balances of our Level 3 assets and liabilities as of March 31, 2024.

	March 31, 2024
(In thousands)	Embedded conversion option
Balance at December 31, 2023	$ —
Additions	125,620
Change in fair value:	
Included in results of operations	26,250
Balance at March 31, 2024	$ 151,870

NOTE 10 DERIVATIVE CONTRACTS

The following table summarizes the fair values and the presentation of our derivative financial instruments in the Condensed Consolidated Balance Sheets:

(In thousands)	Balance Sheet Component	March 31, 2024	December 31, 2023
Derivative financial instruments:			
Embedded conversion option	2029 Convertible Notes, net of discount and estimated fair value of embedded derivatives	$ 151,870	$ —
Common Stock options/warrants	Investments, net	$ 3	$ 2
Forward contracts	Unrealized losses on forward contracts are recorded in Accrued expenses.	$ —	$ (29)

We enter into foreign currency forward exchange contracts with respect to the risk of exposure to exchange rate differences arising from inventory purchases on letters of credit. Under these forward contracts, for any rate above or below the fixed rate, we receive or pay the difference between the spot rate and the fixed rate for the given amount at the settlement date.

To qualify the derivative instrument as a hedge, we are required to meet strict hedge effectiveness and contemporaneous documentation requirements at the initiation of the hedge and assess the hedge effectiveness on an ongoing basis over the life of the hedge. At March 31, 2024 and December 31, 2023, our derivative financial instruments did not meet the documentation requirements to be designated as hedges. Accordingly, we recognize the changes in fair value of derivative instruments, net in our Condensed Consolidated Statement of Operations. The following table summarizes the losses and gains recorded for the three months ended March 31, 2024 and 2023:

	Three months ended March 31,	
(In thousands)	2024	2023
Derivative gain (loss):		
Notes	$ (26,250)	$ —
Common Stock options/warrants	1	(2)
Forward contracts	88	(1,057)
Total	$ (26,161)	$ (1,059)

NOTE 11 RELATED PARTY TRANSACTIONS

In January 2024, in connection with the closing of the offering of the 2029 Convertible Notes, we issued and sold approximately $71.1 million aggregate principal amount of the 2029 Convertible Affiliate Notes to the Affiliate Purchasers, in exchange for $55.0 million aggregate principal amount of the 2023 Convertible Notes, together with approximately $16.1 million accrued but unpaid interest thereon, held by such Affiliate Purchasers. See Note 7 for additional information.

On October 12, 2023, the Company entered into an E-Commerce Distribution Agreement with NextPlat Corp (“NextPlat”), a global e-commerce provider, in which Dr. Frost owns more than a 20% interest. Under the terms of the agreement, NextPlat has agreed to launch an OPKO Health-branded online storefront on the Alibaba Group Holding Limited Tmall Global e-commerce platform in China, featuring an assortment of nutraceutical and veterinary products sold and distributed by OPKO Health Europe SLU, our wholly-owned subsidiary.

On May 4, 2023, the Company entered into an Assignment and Assumption Agreement (the "Assignment Agreement") with Ruen-Hui Biopharmaceuticals, Inc., a Taiwanese entity ("Ruen-Hui") in which Dr. Hsiao owns more than a 10% interest. Ruen-Hui assumed the Company's obligations under an exclusive license agreement with Academia Sinica in exchange for an upfront payment of $150,000, a number of potential milestone payments up to $1 million, commercial milestones ranging from low to double digit millions, and royalty payments. Ruen Hui is also responsible for any outstanding payment obligations under such license agreement, including patent maintenance costs, and any payments due to Academia Sinica.

On April 29, 2022, upon consummation of our sale of GeneDx, the Company entered into a Transition Services Agreement (the “Transition Services Agreement”) with GeneDx, pursuant to which the Company agreed to provide, at cost, certain customary support services in respect of GeneDx’s business through August 31, 2023, including human resources, information technology support, and finance and accounting. As of March 31, 2024, the Company had incurred aggregate expenses of $1.2 million for services rendered under the Transition Services Agreement. For the three months ended March 31, 2024, the company did not incur expenses for services rendered under the Transaction Services Agreement. As of March 31, 2024, the company does not have a receivable balance payable to the Company by GeneDx in accordance with the terms of the Transition Services Agreement.

The Company owns approximately 9% of Pharmsynthez and Pharmsynthez is the largest and controlling shareholder of Xenetic, in which the Company has a 3% ownership interest. Adam Logal, our Senior Vice President and Chief Financial Officer, is a director of Xenetic.

We hold investments in Zebra (ownership 29%), ChromaDex (0.05%), COCP (2%), NIMS (1%), Eloxx (1%), BioCardia (1%) and LeaderMed (47%). Neovasc, Inc., in which we owned a 0.5% interest, was acquired by Shockwave Medical, Inc. in April 2023, and during the third quarter of 2023, we received $363 thousand in merger consideration in exchange for our shares. These investments were considered related party transactions as a result of our executive management’s ownership interests and/or board representation in these entities. We also hold an investment in GeneDx Holdings (Nasdaq: WGS) representing an 13.7% ownership interest as a result of our sale of GeneDx, Inc. and subsequent participation in an underwritten offering by GeneDx Holdings. Richard Pfenniger who sits on our Board also sits on the GeneDx Board as a result of the acquisition. See further discussion of our investments in Note 6.

We lease office space from Frost Real Estate Holdings, LLC (“Frost Holdings”) in Miami, Florida, where our principal executive offices are located. Effective August 1, 2019, we entered into an amendment to our lease agreement with Frost Holdings. The lease, as amended, is for approximately 29,500 square feet of space. The lease provides for payments of approximately $89 thousand per month in the first year increasing annually to $101 thousand per month in the fifth year, plus applicable sales tax. The rent is inclusive of operating expenses, property taxes and parking.

Dr. Elias Zerhouni, our Vice Chairman and President, sits on the board of directors of Danaher Corporation (“Danaher”). Our subsidiary, BioReference, routinely procures products and services from several subsidiaries of Danaher, including Beckman Coulter, Integrated DNA Technologies Inc., and Leica Microsystems Inc., to which BioReference has paid $0.6 million, $1.0 million, and $0.1 million, respectively, during the three months ended March 31, 2024.

BioReference purchases and uses certain products acquired from InCellDx, a company in which we hold a 29% minority interest.

We reimburse Dr. Frost for Company-related use by Dr. Frost and our other executives of an airplane owned by a company that is beneficially owned by Dr. Frost. We reimburse Dr. Frost for out-of-pocket operating costs for the use of the airplane by Dr. Frost or Company executives for Company-related business. We do not reimburse Dr. Frost for personal use of the airplane by Dr. Frost or any other executive. For the three months ended March 31, 2024, and 2023, we reimbursed and accrued approximately no amount and $29.3 thousand, respectively, for Company-related travel by Dr. Frost and other OPKO executives.

NOTE 12 COMMITMENTS AND CONTINGENCIES

In February 2023, the Office of the Attorney General for the State of Texas ("TX OAG") informed BioReference that it believes that, from 2005 to the present, BioReference may have violated the Texas Medicaid Fraud Prevention Act with respect to claims it presented to Texas Medicaid for reimbursement. BioReference has not determined whether there is any merit to the TX OAG claims nor can it determine the extent of any potential liability. While management cannot predict the outcome of these matters at this time, the ultimate outcome could be material to our business, financial condition, results of operations, and cash flows.

On December 29, 2022, the Israel Tax Authority (the "ITA") issued an assessment against our subsidiary, OPKO Biologics in the amount of approximately $246 million (including interest) related to uncertain tax positions involving income recognition in connection with an examination of foreign tax returns for the 2014 through 2020 tax years. We recognize that local tax law is inherently complex and the local taxing authorities may not agree with certain tax positions taken. We are appealing this assessment, as we believe, other than for uncertain tax positions for which we have reserved, the issues are without technical merit. We intend to exhaust all judicial remedies necessary to resolve the matter, as necessary, which could be a lengthy process. There can be no assurance that this matter will be resolved in our favor, and an adverse outcome, or any future tax examinations involving similar assertions, could have a material effect on our financial condition, results of operations and cash flows.

The Company and BioReference entered into (i) a settlement agreement (the "Settlement Agreement"), effective July 14, 2022, with the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General of the Department of Health and Human Services ("OIG-HHS"), and the Defense Health Agency, acting on behalf of the TRICARE Program (collectively, the "United States"), the Commonwealth of Massachusetts , the State of Connecticut, and the relator identified therein ("Relator"), and (ii) a Corporate Integrity Agreement, effective July 14, 2022 (the "CIA"), with the OIG-HHS, to resolve the investigation and related civil action concerning alleged fee-for-service claims for payment to the Medicare Program, the Medicaid Program, and the TRICARE Program (collectively, the "Federal Health Care Programs").

Under the Settlement Agreement, the Company and BioReference admitted only to having made payments to certain physicians and physicians' groups for office space rentals for amounts that exceeded fair market value, and that it did not report or return any such overpayments to the Federal Health Care Programs (the "Covered Conduct"). The Covered Conduct had commenced prior to the Company's acquisition of BioReference in 2015. With the exception of the Covered Conduct, the Company and BioReference expressly deny the allegations of the Relator as set forth in her civil action. The Company has agreed to pay a total of $10,000,000 plus accrued interest from September 24, 2021 at a rate of 1.5% per annum (the "Settlement Amount"). The Settlement Amount consists of $9,853,958 payable to the United States, $141,041 payable to the Commonwealth and $5,001 payable to Connecticut, in each case plus interest and paid on July 18, 2022. Conditioned upon payment of the Settlement Amount, the United States, Massachusetts and Connecticut have agreed to release the Company and BioReference from any civil or administrative monetarily liability arising from the Covered Conduct. Upon payment of the Settlement Amount and the amount due under a separate agreement with the Relator, the Relator has agreed to release the Company and BioReference from any and all claims and potential claims. Further, in consideration of the obligations of the Company and BioReference in the Settlement Agreement and the CIA, the OIG-HHS has agreed to release and refrain from instituting any administrative action seeking to exclude the Company or BioReference from participating in Medicare, Medicaid or other Federal health care programs as a result of the Covered Conduct.

Under the CIA, which has a term of 5 years, BioReference is required to, among other things: (i) maintain a Compliance Officer, a Compliance Committee, board review and oversight of certain federal healthcare compliance matters, compliance programs, and disclosure programs; (ii) provide management certifications and compliance training and education; (iii) establish written compliance policies and procedures to meet federal health care program requirements; (iv) create procedures designed to ensure compliance with the Anti-Kickback Statute and/or Stark Law; (v) engage an independent review organization to conduct a thorough review of BioReference' s systems, policies, processes and procedures related to certain arrangements; (vi) implement a risk assessment and internal review process; (vii) establish a disclosure program for whistleblowers; and (viii) report or disclose certain events and physician payments. The Company's or BioReference's failure to comply with its obligations under the CIA could result in monetary penalties and the exclusion from participation in Federal Health Care Programs. The CIA does not apply to any of the Company's subsidiaries other than BioReference, and its scope is generally limited to "focus arrangements", which are those "arrangements" (as defined in the CIA) (i) between BioReference and any actual source or recipient of health care business or referrals and involves, directly or indirectly, the offer, payment, or provision of anything of value, or (ii) is between BioReference and any physician (or a physician's immediate family member). Most of these measures have already been implemented at BioReference. Following its acquisition of BioReference, the Company and BioReference implemented robust compliance measures that substantially align with those actions required under the CIA.

On March 1, 2019, the Company received a Civil Investigative Demand ("CID") from the U.S. Department of Justice ("DOJ"), Washington, DC. The CID sets forth document requests and interrogatories in connection with allegations that the Company and certain of its affiliates violated the False Claims Act and/or the Anti-Kickback Statute. On January 13, 2022, the Federal Government notified the U.S.D.C., Middle District Florida, Jacksonville Division, that it is declining to intervene in the matter but retains the right, via the Attorney General, to consent to any proposed dismissal of the action by the Court. On February 9, 2022, the States of Florida, Georgia, and Commonwealth of Massachusetts notified the U.S.D.C., Middle District Florida, Jacksonville Division, that they are declining to intervene in the matter. Notwithstanding the above declinations, on February 17, 2022, the Company was served with the Relator's Summons and Complaint ("Complaint"), which had been previously sealed. The Complaint alleges violations of the False Claims Act, the California Fraud Preventions Act, the Florida False Claims Act, the Massachusetts False Claims Act, the Georgia False Medicaid Claims Act, and illegal kickbacks. A motion to dismiss the Complaint was filed on April 25, 2022 and the case was dismissed in March 2023. However, the Relator filed an amended complaint in April 2023. While management cannot predict the outcome of these matters at this time, the ultimate outcome could be material to our business, financial condition, results of operations, and cash flows.

From time to time, we may receive inquiries, document requests, CIDs or subpoenas from the Department of Justice, OCR, CMS, various payors and fiscal intermediaries, and other state and federal regulators regarding investigations, audits and reviews. In addition to the matters discussed in this note, we are currently responding to CIDs, subpoenas, payor audits, and document requests for various matters relating to our laboratory operations. Some pending or threatened proceedings against us may involve potentially substantial amounts as well as the possibility of civil, criminal, or administrative fines, penalties, or other sanctions, which could be material. Settlements of suits involving the types of issues that we routinely confront may require monetary payments as well as corporate integrity agreements. Additionally, qui tam or "whistleblower" actions initiated under the civil False Claims Act may be pending but placed under seal by the court to comply with the False Claims Act's requirements for filing such suits. Also, from time to time, we may detect issues of non-compliance with federal healthcare laws pertaining to claims submission and reimbursement practices and/or financial relationships with physicians, among other things. We may avail ourselves of various mechanisms to address these issues, including participation in voluntary disclosure protocols. Participating in voluntary disclosure protocols can have the potential for significant settlement obligations or even enforcement action. The Company generally has cooperated, and intends to continue to cooperate, with appropriate regulatory authorities as and when investigations, audits and inquiries arise.

We are a party to other litigation in the ordinary course of business. While we cannot predict the ultimate outcome of legal matters, we accrue a liability for legal contingencies when we believe that it is both probable that a liability has been incurred and that we can reasonably estimate the amount of the loss. It's reasonably possible the ultimate liability could exceed amounts currently estimated and we review established accruals and adjust them to reflect ongoing negotiations, settlements, rulings, advice of legal counsel and other relevant information. To the extent new information is obtained and our views on the probable outcomes of claims, suits, assessments, investigations or legal proceedings change, changes in our accrued liabilities would be recorded in the period in which such determination is made. Because of the high degree of judgment involved in establishing loss estimates, the ultimate outcome of such matters will differ from our estimates and such differences may be material to our business, financial condition, results of operations, and cash flows.

At March 31, 2024, we were committed to make future purchases for inventory and other items in 2024 that occur in the ordinary course of business under various purchase arrangements with fixed purchase provisions aggregating approximately $46.5 million

NOTE 13 REVENUE RECOGNITION

We generate revenues from services, products and intellectual property as follows:

Revenue from services

Revenue for laboratory services is recognized at the time test results are reported, which approximates when services are provided and the performance obligations are satisfied. Services are provided to patients covered by various third-party payor programs including various managed care organizations, as well as the Medicare and Medicaid programs. Billings for services are included in revenue net of allowances for contractual discounts, allowances for differences between the amounts billed and estimated program payment amounts, and implicit price concessions provided to uninsured patients which are all elements of variable consideration.

The following are descriptions of our payors for laboratory services:

Healthcare Insurers. Reimbursements from healthcare insurers are based on negotiated fee-for-service schedules. Revenues consist of amounts billed, net of contractual allowances for differences between amounts billed and the estimated consideration we expect to receive from such payors, which considers historical denial and collection experience and the terms of our contractual arrangements. Adjustments to the allowances, based on actual receipts from the third-party payors, are recorded upon settlement.

Government Payors. Reimbursements from government payors are based on fee-for-service schedules set by governmental authorities, including traditional Medicare and Medicaid. Revenues consist of amounts billed, net of contractual allowances for differences between amounts billed and the estimated consideration we expect to receive from such payors, which considers historical denial and collection experience and the terms of our contractual arrangements. Adjustments to the allowances, based on actual receipts from the government payors, are recorded upon settlement.

Client Payors. Client payors include physicians, hospitals, employers, and other institutions for which services are performed on a wholesale basis, and are billed and recognized as revenue based on negotiated fee schedules. Client payors also include cities, states and companies for which BioReference provides COVID-19 testing services.

Patients. Uninsured patients are billed based on established patient fee schedules or fees negotiated with physicians on behalf of their patients. Insured patients (including amounts for coinsurance and deductible responsibilities) are billed based on fees negotiated with healthcare insurers. Collection of billings from patients is subject to credit risk and ability of the patients to pay. Revenues consist of amounts billed net of discounts provided to uninsured patients in accordance with our policies and implicit price concessions. Implicit price concessions represent differences between amounts billed and the estimated consideration that we expect to receive from patients, which considers historical collection experience and other factors including current market conditions. Adjustments to the estimated allowances, based on actual receipts from the patients, are recorded upon settlement.

The complexities and ambiguities of billing, reimbursement regulations and claims processing, as well as considerations unique to Medicare and Medicaid programs, require us to estimate the potential for retroactive adjustments as an element of variable consideration in the recognition of revenue in the period the related services are rendered. Actual amounts are adjusted in the period those adjustments become known. For the three months ended March 31, 2024, we recorded $0.5 million of positive revenue adjustments due to changes in estimates of implicit price concessions for performance obligations satisfied in prior periods mainly due to the composition of client pay mix. For the three months ended March 31, 2023, we recorded $4.8 million of negative revenue adjustments due to changes in estimates of implicit price concessions for performance obligations satisfied in prior periods mainly due to the composition of patient pay mix.

Third-party payors, including government programs, may decide to deny payment or recoup payments for testing they contend were improperly billed or not medically necessary, against their coverage determinations, or for which they believe they have otherwise overpaid (including as a result of their own error), and we may be required to refund payments already received. Our revenues may be subject to retroactive adjustment as a result of these factors among others, including without limitation, differing interpretations of billing and coding guidance and changes by government agencies and payors in interpretations, requirements, and “conditions of participation” in various programs. We have processed requests for recoupment from third-party payors in the ordinary course of our business, and it is likely that we will continue to do so in the future. If a third-party payor denies payment for testing or recoups money from us in a later period, reimbursement for our testing could decline.

As an integral part of our billing compliance program, we periodically assess our billing and coding practices, respond to payor audits on a routine basis, and investigate reported failures or suspected failures to comply with federal and state healthcare reimbursement requirements, as well as overpayment claims which may arise from time to time without fault on the part of the Company. We may have an obligation to reimburse Medicare, Medicaid, and third-party payors for overpayments regardless of fault. We have periodically identified and reported overpayments, reimbursed payors for overpayments and taken appropriate corrective action.

Settlements with third-party payors for retroactive adjustments due to audits, reviews or investigations are also considered variable consideration and are included in the determination of the estimated transaction price for providing services. These settlements are estimated based on the terms of the payment agreement with the payor, correspondence from the payor and our historical settlement activity, including an assessment of the probability a significant reversal of cumulative revenue recognized will occur when the uncertainty is subsequently resolved. Estimated settlements are adjusted in future periods as adjustments become known (that is, new information becomes available), or as years are settled or are no longer subject to such audits, reviews, and investigations. As of March 31, 2024 and December 31, 2023, we had liabilities of approximately $4.7 million and $3.1 million, respectively, within Accrued expenses and Other long-term liabilities related to reimbursements for payor overpayments.

The composition of revenue from services by payor for the three months ended March 31, 2024 and 2023 was as follows:

	Three months ended March 31,	
(In thousands)	2024	2023
Healthcare insurers	$ 74,608	$ 80,602
Government payers	21,959	20,417
Client payers	25,687	27,168
Patients	4,636	4,181
Total	$ 126,890	$ 132,368

Revenue from products

We recognize revenue from product sales when a customer obtains control of promised goods or services. The amount of revenue recorded reflects the consideration that we expect to receive in exchange for those goods or services. Our estimates for sales returns and allowances are based upon the historical patterns of product returns and allowances taken, matched against the sales from which they originated, and our evaluation of specific factors that may increase or decrease the risk of product returns. Product revenues are recorded net of estimated rebates, chargebacks, discounts, co-pay assistance and other deductions (collectively, "Sales Deductions") as well as estimated product returns which are all elements of variable consideration. Allowances are recorded as a reduction of revenue at the time product revenues are recognized. The actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from our estimates, we will adjust these estimates, which would affect revenue from products in the period such variances become known.

Rayaldee is distributed in the U.S. principally through the retail pharmacy channel, which initiates with the largest wholesalers in the U.S. (collectively, "*Rayaldee* Customers"). In addition to distribution agreements with *Rayaldee* Customers, we have entered into arrangements with many healthcare providers and payors that provide for government-mandated or privately-negotiated rebates, chargebacks and discounts with respect to the purchase of *Rayaldee*.

We recognize revenue for shipments of *Rayaldee* at the time of delivery to customers after estimating Sales Deductions and product returns as elements of variable consideration utilizing historical information and market research projections. For the three months ended March 31, 2024, and 2023, we recognized $6.9 million and $6.6 million, respectively, in net product revenue from sales of *Rayaldee*.

The following table presents an analysis of *Rayaldee* product sales allowances and accruals for the three months ended March 31, 2024 and 2023:

(In thousands)	Chargebacks, discounts, rebates and fees	Governmental	Returns	Total
Balance at December 31, 2023	$ 2,578	$ 6,150	$ 2,192	$ 10,920
Provision related to current period sales	3,820	4,132	303	8,255
Credits or payments made	(3,904)	(5,807)	(280)	(9,991)
Balance at March 31, 2024	$ 2,494	$ 4,475	$ 2,215	$ 9,184
Total gross Rayaldee sales				$ 15,157
Provision for Rayaldee sales allowances and accruals as a percentage of gross Rayaldee sales				54%

(In thousands)	Chargebacks, discounts, rebates and fees	Governmental	Returns	Total
Balance at December 31, 2022	$ 1,532	$ 5,063	$ 1,683	$ 8,278
Provision related to current period sales	3,306	4,045	286	7,637
Credits or payments made	(3,264)	(3,968)	(293)	(7,525)
Balance at March 31, 2023	$ 1,574	$ 5,140	$ 1,676	$ 8,390
Total gross Rayaldee sales				$ 14,281
Provision for Rayaldee sales allowances and accruals as a percentage of gross Rayaldee sales				53%

Taxes collected from customers related to revenues from services and revenues from products are excluded from revenues.

Revenue from intellectual property and other

We recognize revenues from the transfer of intellectual property generated through license, development, collaboration and/or commercialization agreements. The terms of these agreements typically include payment to us for one or more of the following: non-refundable, up-front license fees; development and commercialization milestone payments; funding of research and/or development activities; and royalties on sales of licensed products. Revenue is recognized upon satisfaction of a performance obligation by transferring control of a good or service to the customer.

For research, development and/or commercialization agreements that result in revenues, we identify all material performance obligations, which may include a license to intellectual property and know-how, and research and development activities. In order to determine the transaction price, in addition to any upfront payment, we estimate the amount of variable consideration at the outset of the contract either utilizing the expected value or most likely amount method, depending on the facts and circumstances relative to the contract. We constrain (reduce) our estimates of variable consideration such that it is probable that a significant reversal of previously recognized revenue will not occur throughout the life of the contract. When determining if variable consideration should be constrained, we consider whether there are factors outside of our control that could result in a significant reversal of revenue. In making these assessments, we consider the likelihood and magnitude of a potential reversal of revenue. These estimates are re-assessed each reporting period as required.

Upfront License Fees: If a license to our intellectual property is determined to be functional intellectual property distinct from the other performance obligations identified in the arrangement, we recognize revenue from nonrefundable, upfront license fees based on the relative value prescribed to the license compared to the total value of the arrangement. The revenue is recognized when the license is transferred to the customer and the customer is able to use and benefit from the license. For licenses that are not distinct from other obligations identified in the arrangement, we utilize 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. If the combined performance obligation is satisfied over time, we apply an appropriate method of measuring progress for purposes of recognizing revenue from nonrefundable, upfront license fees. We evaluate the measure of progress each reporting period and, if necessary, adjust the measure of performance and related revenue recognition.

Development and Regulatory Milestone Payments: Depending on facts and circumstances, we may conclude that it is appropriate to include the milestone in the estimated transaction price or that it is appropriate to fully constrain the milestone. A milestone payment is included in the transaction price in the reporting period that we conclude that it is probable that recording revenue in the period will not result in a significant reversal in amounts recognized in future periods. We may record revenues from certain milestones in a reporting period before the milestone is achieved if we conclude that achievement of the milestone is probable and that recognition of revenue related to the milestone will not result in a significant reversal in amounts recognized in future periods. We record a corresponding contract asset when this conclusion is reached. Milestone payments that have been fully constrained are not included in the transaction price to date. These milestones remain fully constrained until we conclude that achievement of the milestone is probable and that recognition of revenue related to the milestone will not result in a significant reversal in amounts recognized in future periods. We re-evaluate the probability of achievement of such development milestones and any related constraint each reporting period. We adjust our estimate of the overall transaction price, including the amount of revenue recorded, if necessary.

Research and Development Activities: If we are entitled to reimbursement from our customers for specified research and development expenses, we account for them as separate performance obligations if distinct. We also determine whether the research and development funding would result in revenues or an offset to research and development expenses in accordance with provisions of gross or net revenue presentation. The corresponding revenues or offset to research and development expenses are recognized as the related performance obligations are satisfied.

BARDA Contract: Revenue from the BARDA Contract is generated under terms that are cost plus fee. We recognize revenue using the incurred costs output method to measure progress. Revenue will only be recognized when research and development services are performed to the extent of actual costs incurred.

Sales-based Milestone and Royalty Payments: Our customers may be required to pay us sales-based milestone payments or royalties on future sales of commercial products. We recognize revenues related to sales-based milestone and royalty payments upon the later to occur of (i) achievement of the customer's underlying sales or (ii) satisfaction of any performance obligation(s) related to these sales, in each case assuming the license to our intellectual property is deemed to be the predominant item to which the sales-based milestones and/or royalties relate.

Other Potential Products and Services: Arrangements may include an option for license rights, future supply of drug substance or drug product for either clinical development or commercial supply at the licensee's election. We assess if these options provide a material right to the licensee and if so, they are accounted for as separate performance obligations at the inception of the contract and revenue is recognized only if the option is exercised and products or services are subsequently delivered or when the rights expire. If the promise is based on market terms and not considered a material right, the option is accounted for if and when exercised. If we are entitled to additional payments when the licensee exercises these options, any additional payments are generally recorded in license or other revenues when the licensee obtains control of the goods, which is upon delivery.

For the three months ended March 31, 2024, revenue from the transfer of intellectual property and other was $8.7 million compared to $64.8 million in the same period for 2023. This decrease is primarily due to one-time milestone payments received in 2023, including a $50.0 million payment from Merck in 2023 for rights granted under the Merck Agreement (as defined and described in Note 14). Additionally, in 2023, a $7.0 million payment from VFMCRP was triggered by the German price approval for *Rayaldee* (as described in Note 14) and $2.5 million from Nicoya due to Nicoya's submission of the investigational new drug application to China's Center for Drug Evaluation pursuant to the Nicoya Agreement (as described in Note 14). In contrast, for the three months ended March 31, 2024, revenue from the transfer of intellectual property and other reflects $5.6 million in gross profit share and royalty payments for NGENLA (Somatrogon) and Pfizer's Genotropin® (Somatropin), compared with $3.1 million received in the same period for 2023. Furthermore, revenue for the three months ended March 31, 2024, includes $2.2 million from the BARDA Contract (as defined and described in Note 14).

NOTE 14 STRATEGIC ALLIANCES

Biomedical Advanced Research and Development Authority

On September 28, 2023, ModeX was awarded a contract (the "BARDA Contract") from the Biomedical Advanced Research and Development Authority ("BARDA"), part of the Administration for Strategic Preparedness and Response at the U.S. Department of Health and Human Services, to advance a platform and specific product candidates designed to address a range of public health threats in viral infectious diseases. The awarded funding will enable research, development and clinical evaluation of potent multispecific antibodies, based on ModeX's proprietary MSTAR technology. MSTAR is a flexible plug-and-play platform able to incorporate four to six independent antibody binding sites into a single molecule, dramatically expanding its therapeutic potential while enabling rapid responses to emerging infections and their viral variants, including COVID-19, influenza, and other pathogens.

The BARDA Contract is cost plus fixed fee, pursuant to which we will receive $59.0 million over a five-year period from September 2023 to February 2028 for the development, manufacturing, and execution of a Phase 1 clinical trial for a next-generation MSTAR multispecific antibody with broad neutralizing activity against known variants of SARS-CoV-2. We are eligible to receive up to an additional $109.6 million from BARDA upon achieving particular milestones to develop multispecific antibodies targeting other viral pathogens such as influenza. As part of the research program, gene-based delivery methods for the multispecific antibodies will be developed using mRNA or DNA vectors to leverage the body's natural protein production processes. BARDA will make periodic assessments of progress, and the continuation of the BARDA Contract is based on ModeX's performance thereunder, the timeliness and quality of deliverables, and certain other factors. The BARDA Contract contains a number of terms and conditions that are customary for government contracts of this nature, including provisions giving BARDA the right to terminate the BARDA Contract at any time in its sole discretion.

The Company evaluated the BARDA Contract under ASC, Topic 606, Revenue from Contracts with Customers, or ASC 606, and concluded that the BARDA Contract is in scope of ASC 606 as the U.S. government meets the definition of a customer. The scope of the BARDA Contract includes preclinical, clinical, and manufacturing and development activities that fall into the following areas: non-clinical efficacy studies, clinical activities; manufacturing activities; and all associated regulatory, quality assurance, management and administrative activities. The R&D effort for the development of these multispecific antibodies will progress in specific stages that cover the base performance segment, and option segments. ModeX will complete specific tasks required in each of the discrete work segments. The Company identified three potential material promises under the BARDA Contract: (i) development of tetravalent trispecific antibody for COVID-19; (ii) development of multispecific protein Ab for Influenza or other pathogen; and (iii) nucleic acid delivery of a mutltispecific influenza Ab or other pathogen.

The Company determined that the promise to develop a tetravalent trispecific antibody for COVID-19, is a separate performance obligation because it is distinct within the context of the contract, as the services have a standalone value and are separately identifiable from other promises within the contract.

The Company evaluated the material promises that contained option rights (ii) development of multispecific protein Ab for influenza or other pathogen and (iii) nucleic acid delivery of a mutltispecific influenza Ab or other pathogen and determined (ii) and (iii) were not offered at a discount that is incremental to the range of discounts typically given for these goods and services, and as such, do not represent material rights. Therefore, options for additional services in (ii) and (iii) were not considered performance obligations at the outset of the BARDA Contract.

The Company concluded that research and development services performed under the BARDA Contract would be recognized as revenue when research and development services are performed to the extent of actual costs incurred including a fixed fee and will be reimbursed by BARDA. Costs incurred represent work performed, which corresponds with, and thereby best depicts, the transfer of control of the research and development to BARDA. Types of contract costs include labor, material, and third-party services. As such, the related BARDA revenue is recognized as revenue from transfer of intellectual property and other within the Company's Consolidated Statements of Operations. For the three months ended March 31, 2024, we recorded $2.2 million in revenue under the BARDA Contract. As of March 31, 2024, the aggregate amount of transaction price allocated to remaining performance obligations, excluding unexercised contract options, was $55.6 million. We expect to recognize this amount as revenue through February 2028.

Merck

On March 8, 2023, ModeX, the Company (with respect to certain sections), and Merck Sharp & Dohme LLC ("Merck") entered into a License and Research Collaboration Agreement (the "Merck Agreement") pursuant to which ModeX granted to Merck a license to certain patent rights and know-how in connection with the development of ModeX's preclinical nanoparticle vaccine candidate targeting the Epstein-Barr Virus.

Under the terms of the Merck Agreement, ModeX granted to Merck an exclusive, sublicensable, royalty-bearing license to certain intellectual property to develop, manufacture, use and commercialize (i) a multivalent or monovalent vaccine assembled using our platform for Epstein-Barr Virus ("Vaccine"), and (ii) any pharmaceutical or biological preparation in final form containing a Vaccine for sale or for administration to human patients in a clinical trial for all uses ("Product"). We received an initial payment of $50.0 million and are eligible to receive up to an additional $872.5 million upon the achievement of certain commercial and development milestones under several indications. We are also eligible to receive tiered royalty payments ranging from high single digits to low double digits upon achievement of certain sales targets of the Product. Certain of the rights subject to the license provided by us under the Merck Agreement were obtained by us from Sanofi pursuant to that certain License Agreement entered into as of July 1, 2021 ("Sanofi In-License Agreement") between us and Sanofi, a French corporation ("Sanofi"), and a portion of the upfront payment, milestones and royalties received by us under the Merck Agreement may be payable to Sanofi under the terms of the Sanofi In-License Agreement. As a result of such obligations under the Sanofi In-License Agreement, we paid $12.5 million to Sanofi during the second quarter of 2023.

As part of their strategic collaboration, ModeX and Merck have put in place a research plan to manage research and other development activities related to the development of a Vaccine or Product including a joint steering committee to facilitate the research program. As part of the research plan, they will use a third-party contract development and manufacturing organization to carry out such activities unless otherwise agreed. Development costs incurred by ModeX in furtherance of these development activities will be reimbursed by Merck. To date, we have spent $18.8 million of development costs related to the Epstein -Barr Virus, for which Merck will provide reimbursement.

The Merck Agreement will remain in effect until one or more Products receive marketing authorization, and, thereafter, until the expiration of all royalty obligations unless earlier terminated as permitted under the Merck Agreement. In addition to termination rights for material breach and bankruptcy, Merck is permitted to terminate the Agreement in its entirety without cause after a specified notice period. If Merck terminates the Merck Agreement for convenience or by us for Merck's uncured material breach, we may elect to receive a reversion license such that we can continue its work with Vaccines and Products which have not been terminated due to a material safety issue.

LeaderMed

On September 14, 2021, we and LeaderMed announced the formation of a joint venture to develop, manufacture and commercialize two of OPKO's clinical stage, long-acting drug products in Greater China and eight other Asian territories.

Under the terms of the agreements, we have granted the joint venture exclusive rights to develop, manufacture and commercialize (a) OPK88003, an oxyntomodulin analog being developed for the treatment of obesity and diabetes, and (b) Factor VIIa-CTP, a novel long-acting coagulation factor being developed to treat hemophilia, in exchange for a 47% ownership interest in the joint venture. In addition, during 2021 we received an upfront payment of $1 million and will be reimbursed for clinical trial material and technical support we provide the joint venture.

LeaderMed is responsible for funding the joint venture's operations, development and commercialization efforts and, together with its syndicate partners, initially invested $11 million in exchange for a 53% ownership interest. We retain full rights to oxyntomodulin and Factor VIIa-CTP in all other geographies.

CAMP4 Therapeutics

On July 6, 2021, we entered into an exclusive license agreement (the "CAMP4 Agreement") with CAMP4, pursuant to which we granted to CAMP4 an exclusive license to develop, manufacture, commercialize or improve therapeutics utilizing the AntagoNAT technology, an oligonucleotide platform developed under OPKO CURNA, which includes the molecule for the treatment of Dravet syndrome, together with any derivative or modification thereof (the "Licensed Compound") and any pharmaceutical product that comprises or contains the Licensed Compound, alone or in combination with one or more other active ingredients ("Licensed Product"), worldwide. The CAMP4 Agreement grant covers human pharmaceutical, prophylactic, and therapeutic and certain diagnostic uses.

We received an initial upfront payment of $1.5 million and 3,373,008 shares of CAMP4's Series A Prime Preferred Stock ("Preferred Stock"), which equates to approximately 9% of the outstanding shares of CAMP4, and we are eligible to receive up to $3.5 million in development milestone payments for Dravet syndrome products, and $4 million for non-Dravet syndrome products, as well as sales milestones of up to $90 million for Dravet syndrome products and up to $90 million for non-Dravet syndrome products. We may also receive double digit royalty payments on the net sales of royalty bearing products, subject to adjustment. In addition, upon achievement of certain development milestones, we will be eligible to receive equity consideration of up to 5,782,299 shares of Preferred Stock in connection with Dravet syndrome products and up to 1,082,248 shares of Preferred Stock in connection with non-Dravet syndrome products. In connection with our acquisition of CURNA, we agreed to pay future consideration to the sellers upon the achievement of certain events. As a result of our execution of the CAMP4 Agreement, we will have to pay a percentage of any payments received under the CAMP4 Agreement to the former CURNA stockholders.

Unless earlier terminated, the CAMP4 Agreement will remain in effect on a Licensed Product-by-Licensed Product and country by-country basis until such time as the royalty term expires for a Licensed Product in a country, and expires in its entirety upon the expiration of the royalty term for the last Licensed Product in the last country. CAMP4's royalty obligations expire on the later of (i) the expiration, invalidation or abandonment date of the last patent right in connection with the royalty bearing product, or (ii) ten (10) years after a royalty bearing product's first commercial sale in a country. In addition to termination rights for material breach and bankruptcy, CAMP4 is permitted to terminate the CAMP4 Agreement after a specified notice period. CAMP4 has informed the Company that the FDA has placed the Dravet clinical trials on hold as CAMP4 is pursuing strategies to potentially advance to clinical trials.

NICOYA Macau Limited

On June 18, 2021, EirGen, our wholly owned subsidiary, and NICOYA Macau Limited ("Nicoya"), a Macau corporation and an affiliate of NICOYA Therapeutics, entered into a Development and License Agreement (the "Nicoya Agreement") granting Nicoya the exclusive rights for the development and commercialization of extended release calcifediol (the "Nicoya Product") in Greater China, which includes mainland China, Hong Kong, Macau, and Taiwan (collectively, the "Nicoya Territory"). Extended release calcifediol is marketed in the U.S. by OPKO under the tradename *Rayaldee*. The license grant to Nicoya covers the therapeutic and preventative use of the Nicoya Product for SHPT in non-dialysis and hemodialysis chronic kidney disease patients (the "Nicoya Field").

EirGen received an initial upfront payment of $5 million and was eligible to receive an additional $5 million tied to the first anniversary of the effective date of the Nicoya Agreement, as amended, of which EirGen has received $2.5 million plus accrued interest for the delayed payment. Furthermore, EirGen received the additional $2.5 million upon Nicoya's submission of an investigational new drug (IND) application to the Center for Drug Evaluation of China in March 2023. EirGen is also eligible to receive up to an additional aggregate amount of $115 million upon the achievement of certain development, regulatory and sales-based milestones by Nicoya for the Nicoya Product in the Nicoya Territory. EirGen is eligible to receive tiered, double digit royalty payments at rates in the low double digits on net product sales within the Nicoya Territory and in the Nicoya Field.

Nicoya will, at its sole cost and expense, be responsible for performing all development activities necessary to obtain all regulatory approvals for the Nicoya Product in the Nicoya Territory and for all commercial activities pertaining to the Nicoya Product in the Nicoya Territory.

Unless earlier terminated, the Nicoya Agreement will remain in effect until such time as all royalty payment terms and extended payment terms have expired, and Nicoya shall have no further payment obligations to EirGen under the terms of the Nicoya Agreement. Nicoya's royalty obligations expire on the later of (i) expiration of the last to expire valid patent claim covering the Nicoya Product sold in the Nicoya Territory, (ii) expiration of all regulatory and data exclusivity applicable to the Nicoya Product in the Nicoya Territory, and (iii) on a product-by-product basis, ten (10) years after such Nicoya Product's first commercial sale in the Nicoya Territory. In addition to termination rights for material breach and bankruptcy, Nicoya is permitted to terminate the Nicoya Agreement after a specified notice period.

VFMCRP

In May 2016, EirGen and Vifor Fresenius Medical Care Renal Pharma Ltd. ("VFMCRP ") entered into a Development and License Agreement (the "VFMCRP Agreement") for the development and commercialization of *Rayaldee* (the "Product") worldwide, except for (i) the United States and Canada, (ii) any country in Central America or South America (including Mexico), (iii) Russia, (iv) China, (v) South Korea, (vi) Ukraine, (vii) Belorussia, (viii) Azerbaijan, (ix) Kazakhstan, (x) Taiwan (xi) the Middle East, and (xii) all countries of Africa (the "VFMCRP Territory"), as amended. The license to VFMCRP potentially covers all therapeutic and prophylactic uses of the Product in human patients (the "VFMCRP Field"), provided that initially the license is for the use of the Product for the treatment or prevention of SHPT related to patients with CKD and vitamin D insufficiency/deficiency (the "VFMCRP Initial Indication").

In January 2023, the German Association of Statutory Health Insurance funds (GKV-SV) granted price approval for *Rayaldee*. This triggered a milestone payment of $7.0 million. In 2022, we recognized a separate milestone payment of $3.0 million in revenue from the transfer of intellectual property and other for the first sale of *Rayaldee* in Europe.

Effective May 23, 2021, we entered into an amendment to the VFMCRP Agreement pursuant to which the parties thereto agreed to include Japan as part of the VFMCRP Territory.

Effective May 5, 2020, we entered into an amendment to the VFMCRP Agreement pursuant to which the parties agreed to exclude Mexico, South Korea, the Middle East and all of the countries of Africa from the VFMCRP Territory. In addition, the parties agreed to certain amendments to the milestone structure and to reduce minimum royalties payable. As revised, the Company has received a $3 million payment triggered by the first marketing approval of *Rayaldee* in Europe, $7.0 million payment triggered by the Germany price approval by the local sick fund association, and is eligible to receive up to an additional $15 million in regulatory milestones and $200 million in milestone payments tied to launch, pricing and sales of *Rayaldee*, and tiered, double-digit royalties.

We plan to share responsibility with VFMCRP for the conduct of trials specified within an agreed-upon development plan, with each company leading certain activities within the plan. EirGen will lead the manufacturing activities within and outside the VFMCRP Territory and the commercialization activities outside the VFMCRP Territory and outside the VFMCRP Field in the VFMCRP Territory and VFMCRP will lead the commercialization activities in the VFMCRP Territory and the VFMCRP Field. For the initial development plan, the companies have agreed to certain cost sharing arrangements. VFMCRP will be responsible for all other development costs that VFMCRP considers necessary to develop the Product for the use of the Product for the VFMCRP Initial Indication in the VFMCRP Territory in the VFMCRP Field except as otherwise provided in the VFMCRP Agreement. The first of the clinical studies provided for in the development activities commenced in September 2018.

In connection with the VFMCRP Agreement, the parties entered into a letter agreement pursuant to which EirGen granted to VFMCRP an exclusive option (the "Option") to acquire an exclusive license under certain EirGen patents and technology to use, import, offer for sale, sell, distribute and commercialize the Product in the U.S. solely for the treatment of SHPT in dialysis patients with CKD and vitamin D insufficiency (the "Dialysis Indication"). Upon exercise of the Option, VFMCRP has agreed to reimburse EirGen for all of the development costs incurred by EirGen with respect to the Product for the Dialysis Indication in the U.S. VFMCRP would also pay EirGen up to an additional aggregate amount of $555 million of sales-based milestones upon the achievement of certain milestones and would be obligated to pay royalties at percentage rates that range from the mid-teens to the mid-twenties on sales of the Product in the U.S. for the Dialysis Indication. To date, VFMCRP has not exercised the Option.

Payments received for regulatory milestones and sales milestones are non-refundable. The regulatory milestones are payable if and when VFMCRP obtains approval from certain regulatory authorities and will be recognized as revenue in the period in which the associated milestone is achieved, assuming all other revenue recognition criteria are met. We account for the sales milestones as royalties and sales milestones payments will be recognized as revenue in the period in which the associated milestone is achieved or sales occur, assuming all other revenue recognition criteria are met.

Pfizer Inc.

In December 2014, we entered into an exclusive worldwide agreement with Pfizer for the development and commercialization of our long-acting Somatrogon (hGH-CTP) for the treatment of growth hormone deficiency ("GHD") in adults and children, as well as for the treatment of growth failure in children born small for gestational age (the "Pfizer Transaction"). In May 2020, we entered into an amended and restated development and commercialization license with Pfizer, effective January 1, 2020 (the "Restated Pfizer Agreement"), pursuant to which the parties agreed, among other things, to share all costs for Manufacturing Activities, as defined in the Restated Pfizer Agreement, for developing a licensed product for the three indications included in the Restated Pfizer Agreement.

In June 2023, the FDA approved NGENLA (Somatrogon (hGH-CTP)) a once-weekly injection to treat pediatric growth hormone deficiency in the United States. In early 2022, the European Commission and Ministry of Health, Labour and Welfare in Japan approved NGENLA (Somatrogon). We have also received pricing approvals in Germany and Japan. NGENLA (Somatrogon (hGH-CTP)) is approved for the treatment of pediatric GHD in more than 50 markets, including Canada, Australia, Japan, and EU Member States. With the achievement of these milestones, in 2023 we recorded revenue of $90 million, and in 2022 we recorded $85.0 million, in each case under the Restated Pfizer Agreement.

On October 21, 2019, we and Pfizer announced that the global phase 3 trial evaluating Somatrogon dosed once-weekly in prepubertal children with GHD met its primary endpoint of non-inferiority to daily Genotropin® (somatropin) for injection, as measured by annual height velocity at 12 months.

Under the terms of the Restated Pfizer Agreement we received non-refundable and non-creditable upfront payments of $295.0 million and are eligible to receive up to an additional $275.0 million upon the achievement of certain regulatory milestones. Pfizer received the exclusive license to commercialize Somatrogon worldwide. In addition, we are eligible to receive regional, tiered gross profit sharing for both Somatrogon and Pfizer's Genotropin® (somatropin) in all global markets, with the U.S. region commencing gross profit sharing in August 2023.

The Restated Pfizer Agreement will remain in effect until the last sale of the licensed product, unless earlier terminated in accordance with its terms. In addition to termination rights for material breach and bankruptcy, Pfizer is permitted to terminate the Restated Pfizer Agreement in its entirety, or with respect to one or more world regions, without cause after a specified notice period. If the Restated Pfizer Agreement is terminated by us for Pfizer's uncured material breach, or by Pfizer without cause, provision has been made for transition of product and product responsibilities to us for the terminated regions, as well as continued supply of product by Pfizer or transfer of supply to us in order to support the terminated regions.

We recognized the non-refundable $295.0 million upfront payments as revenue as the research and development services were completed. As of March 31, 2024 and December 31, 2023, we had no contract liabilities related to the Pfizer Transaction.

The Restated Pfizer Agreement includes milestone payments of $275.0 million upon the achievement of certain milestones. The milestones range from $20.0 million to $90.0 million each and are based on achievement of regulatory approval in the U.S. and regulatory approval and price approval in other major markets. The milestone payments will be recognized as revenue in the period in which the associated milestone is achieved, assuming all other revenue recognition criteria are met. To date, $175.0 million of revenue has been recognized related to the achievement of the milestones.

Other

We have completed strategic deals with numerous institutions and commercial partners. In connection with these agreements, upon the achievement of certain milestones we are obligated to make certain payments and have royalty obligations upon sales of products developed under the license agreements. At this time, we are unable to estimate the timing and amounts of payments as the obligations are based on future development of the licensed products.

NOTE 15 SEGMENTS

We manage our operations in two reportable segments, pharmaceutical and diagnostics. The pharmaceutical segment consists of our pharmaceutical operations in Chile, Mexico, Ireland, Israel and Spain, *Rayaldee* product sales and our pharmaceutical research and development. The diagnostics segment primarily consists of our clinical and genomics laboratory operations through BioReference and our point-of-care operations. There are no significant inter-segment sales. We evaluate the performance of each segment based on operating profit or loss. There is no inter-segment allocation of interest expense and income taxes.

Information regarding our operations and assets for our operating segments and the unallocated corporate operations as well as geographic information are as follows:

(In thousands)	For the three months ended March 31, 2024	2023
Revenue from services:		
Pharmaceutical	$ —	$ —
Diagnostics	126,890	132,368
Corporate	—	—
	$ 126,890	$ 132,368
Revenue from products:		
Pharmaceutical	$ 38,047	$ 40,383
Diagnostics	—	—
Corporate	—	—
	$ 38,047	$ 40,383
Revenue from transfer of intellectual property and other:		
Pharmaceutical	$ 8,749	$ 64,826
Diagnostics	—	—
Corporate	—	—
	$ 8,749	$ 64,826
Operating income (loss):		
Pharmaceutical	$ (27,677)	$ 18,955
Diagnostics	(34,404)	(40,007)
Corporate	(9,391)	(9,542)
	$ (71,472)	$ (30,594)
Depreciation and amortization:		
Pharmaceutical	$ 17,952	$ 17,760
Diagnostics	7,868	8,686
Corporate	—	—
	$ 25,820	$ 26,446
Loss from investment in investees:		
Pharmaceutical	$ (3)	$ (37)
Diagnostics	—	—
Corporate	—	—
	$ (3)	$ (37)
Revenues:		
United States	$ 136,043	$ 189,085
Ireland	9,222	15,846
Chile	14,889	15,541
Spain	5,659	6,110
Israel	160	4,594
Mexico	7,083	5,826
Other	630	575
	$ 173,686	$ 237,577

(In thousands)	March 31, 2024	December 31, 2023
Assets:		
Pharmaceutical	$ 1,293,735	$ 1,331,764
Diagnostics	618,003	630,753
Corporate	62,278	49,181
	$ 1,974,016	$ 2,011,698
Goodwill:		
Pharmaceutical	$ 312,884	$ 315,235
Diagnostics	217,731	283,025
	$ 530,615	$ 598,260

No customer represented more than 10% of our total consolidated revenue for the three months ended March 31, 2024 and 2023. As of March 31, 2024 and December 31, 2023, no customer represented more than 10% of our accounts receivable balance.

NOTE 16 LEASES

We have operating leases for office space, laboratory operations, research and development facilities, manufacturing locations, warehouses and certain equipment. We determine if a contract contains a lease at inception or modification of a contract. Our leases generally do not provide an implicit interest rate, and we therefore use our incremental borrowing rate as the discount rate when measuring operating lease liabilities. The incremental borrowing rate represents an estimate of the interest rate we would incur at lease commencement to borrow an amount equal to the lease payments on a collateralized basis over the term of the lease within a particular currency environment. We used the incremental borrowing rates as of January 1, 2019 for operating leases that commenced prior to that date. Many of our leases contain rental escalation, renewal options and/or termination options that are factored into our determination of lease payments as appropriate. Variable lease payment amounts that cannot be determined at the commencement of the lease are not included in the right-to-use assets or liabilities.

We elected the use of permitted practical expedients of not recording leases on our Condensed Consolidated Balance Sheet when the leases have terms of 12 months or less, and we elected not to separate nonlease components from lease components and instead account for each separate lease component and the nonlease components associated with that lease component as a single lease component.

On January 2, 2023, ModeX entered into a 10-year office lease agreement that commenced in October 2023. ModeX was previously located in Natick, Massachusetts and relocated to Weston, Massachusetts, upon lease commencement. The new location is approximately 33,056 square feet of office space. ModeX has two options to extend the lease term for an additional five years per extension, which would commence upon the expiration of the term in October 2033. Straight-line monthly expense for the lease is $243.5 thousand.

The following table presents the lease balances within the Condensed Consolidated Balance Sheet as of March 31, 2024 and December 31, 2023:

(in thousands)	Classification on the Balance Sheet	March 31, 2024	December 31, 2023
Assets			
Operating lease assets	Operating lease right-of-use assets	$ 63,331	$ 68,088
Finance lease assets	Property, plant and equipment, net	6,770	10,101
Liabilities			
Current			
Operating lease liabilities	Current maturities of operating leases	11,742	12,996
Accrued expenses	Current maturities of finance leases	1,783	2,827
Long-term			
Operating lease liabilities	Operating lease liabilities	50,931	54,140
Other long-term liabilities	Finance lease liabilities	$ 4,987	$ 7,274
Weighted average remaining lease term			
Operating leases (in years)		7.2	7.1
Finance leases (in years)		7.6	6.2
Weighted average discount rate			
Operating leases		5.4%	5.4%
Finance leases		2.3%	3.8%

The following table reconciles the undiscounted future minimum lease payments (displayed by year and in the aggregate) under noncancelable operating leases with terms of more than one year to the total operating lease liabilities recognized on our Condensed Consolidated Balance Sheet as of March 31, 2024:

(in thousands)	Operating	Finance
April 1, 2024 through December 31, 2024	$ 9,353	$ 1,630
2025	11,065	1,500
2026	10,228	1,206
2027	10,130	514
2028	9,957	194
Thereafter	25,763	1,880
Total undiscounted future minimum lease payments	76,496	6,924
Less: Difference between lease payments and discounted lease liabilities	13,823	154
Total lease liabilities	$ 62,673	$ 6,770

Expense under operating leases and finance leases was $4.4 million and $0.6 million, respectively, for the three months ended March 31, 2024, which includes $0.5 million of variable lease costs. Expense under operating leases and finance leases was $4.1 million and $0.7 million, respectively, for the three months ended March 31, 2023, which includes $0.7 million of variable lease costs. Operating lease costs and finance lease costs are included within Operating loss in the Condensed Consolidated Statement of Operations. Short-term lease costs were not material.

Supplemental cash flow information is as follows:

	For the three months ended March 31,	
(in thousands)	2024	2023
Operating cash out flows from operating leases	$ 4,332	$ 3,872
Operating cash out flows from finance leases	134	108
Financing cash out flows from finance leases	640	656
Total	$ 5,106	$ 4,636

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

OVERVIEW

You should read this discussion together with the unaudited Condensed Consolidated Financial Statements, related notes, and other financial information included elsewhere in this Quarterly Report on Form 10-Q together with our audited consolidated financial statements, related notes, and other information contained in our Annual Report on Form 10-K for the year ended December 31, 2023 (the "Form 10-K"). The following discussion contains assumptions, estimates and other forward-looking statements that involve a number of risks and uncertainties, including those discussed under "Risk Factors," in Part I, Item 1A of the Form 10-K and as described from time to time in our other filings with the Securities and Exchange Commission. These risks could cause our actual results to differ materially from those anticipated in these forward-looking statements.

We are a diversified healthcare company that seeks to establish industry leading positions in large and rapidly growing medical markets. Our pharmaceutical business features *Rayaldee*, a U.S. Food and Drug Administration ("FDA") approved treatment for secondary hyperparathyroidism ("SHPT") in adults with stage 3 or 4 chronic kidney disease ("CKD") and vitamin D insufficiency, and Somatrogon (hGH-CTP), a once-weekly human growth hormone injection. We have partnered with Pfizer Inc. ("Pfizer") for the development and commercialization of Somatrogon (hGH-CTP). Regulatory approvals for Somatrogon (hGH-CTP) for the treatment of growth hormone deficiency in children and adolescents have been secured in over 50 markets, including the United States, European Union ("EU") Member States, Japan, Canada, and Australia, where it is marketed under the brand name NGENLA®. Our 2022 acquisition of ModeX Therapeutics, Inc. ("ModeX") has expanded our pharmaceutical pipeline with early-stage immune therapies targeting cancer and infectious diseases.

Our diagnostics business, BioReference Health, LLC ("BioReference"), is one of the nation's largest full-service laboratories, with a sales and marketing team focused on growth and new product integration, including the *4Kscore* prostate cancer test. BioReference primarily serves customers in major metropolitan areas across the United States. We offer a comprehensive clinical diagnostics menu, including hematology, clinical chemistry, immunoassays, infectious disease testing, serology, hormone analyses, toxicology assays, Pap smears, anatomic pathology, and COVID-19 testing. Our laboratory services are marketed directly to physicians, geneticists, hospitals, clinics, correctional facilities, and other healthcare providers. On March 28, 2024 we entered into an agreement to sell select assets of BioReference to Laboratory Corporation of America Holdings ("Labcorp"), as described below.

The Company maintains established, revenue-generating pharmaceutical platforms in Spain, Ireland, Chile, and Mexico, contributing to positive cash flow and facilitating market entry for our development pipeline. In addition to these platforms, we operate a global pharmaceutical development and commercial supply company, a global supply chain operation, and manufacture specialty active pharmaceutical ingredients (API) in Israel through our subsidiary, FineTech, which we expect will facilitate the development of our pipeline of molecules and compounds for our proprietary molecular diagnostic and therapeutic products.

RECENT DEVELOPMENTS

Proposed Sale of Select BioReference Assets

On March 28, 2024, Labcorp entered into a definitive agreement with us (the "Labcorp Asset Purchase Agreement") to acquire select assets of BioReference (the "BioReference Transaction"). The assets contemplated by the BioReference Transaction include BioReference's laboratory testing businesses focused on clinical diagnostics, reproductive health, and women's health across the United States, excluding New York and New Jersey operations. These assets include patient service centers, specific customer contracts, and operating assets. The purchase price for the BioReference Transaction is $237.5 million. The BioReference Transaction remains subject to customary closing conditions, including applicable regulatory approvals. The Company anticipates closing the BioReference Transaction in the second half of 2024.

Offering of 3.75% Convertible Senior Notes due 2029

In January 2024, we completed a private offering of $230.0 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2029 (the "2029 Convertible 144A Notes") in accordance with the terms of a note purchase agreement (the "144A Note Purchase Agreement") entered into by and between the Company and J.P. Morgan Securities LLC (the "Initial Purchaser"). The $230.0 million aggregate principal amount of 2029 Convertible 144A Notes included $30.0 million aggregate principal amount of 2029 Convertible 144A Notes purchased on the Closing Date by the Initial Purchaser in accordance with its overallotment option.

Net proceeds from the 2029 Convertible 144A Notes issuance totaled approximately $222.0 million after deducting fees and estimated offering expenses payable by us. We allocated approximately $50.0 million of these net proceeds to repurchase shares of our Common Stock. These repurchases were from purchasers of the 2029 Convertible 144A Notes in privately negotiated transactions effected with or through the Initial Purchaser or its affiliate. The purchase price per share of the Common Stock in these transactions equaled the closing sale price of $0.9067 per share of Common Stock on January 4, 2024.

Contemporaneously with the closing of the offering of the 2029 Convertible Notes on January 9, 2024, we issued and sold approximately $71.1 million aggregate principal amount of our 3.75% Convertible Senior Notes due 2029 (the "2029 Convertible Affiliate Notes" and, together with the 2029 Convertible 144A Notes, the "2029 Convertible Notes") pursuant to the terms of a note purchase agreement entered into on January 4, 2024 (the "Affiliate Note Purchase Agreement") by and among the Company and certain investors including, Frost Gamma Investments Trust, a trust controlled by Phillip Frost, M.D., our Chairman and Chief Executive Officer, and Jane H. Hsiao, Ph.D., MBA, our Vice-Chairman and Chief Technical Officer (collectively, the "Affiliate Purchasers"). Pursuant to the Affiliate Note Purchase Agreement, we issued and sold the 2029 Convertible Affiliate Notes to the Affiliate Purchasers in exchange for the entirety of the $55.0 million aggregate principal amount of our outstanding 2023 Convertible Notes held by the affiliate Purchasers, together with approximately $16.1 million of accrued but unpaid interest thereon.

Furthermore, in connection with the closing of our offering of the 2029 Convertible Notes, we repurchased approximately $144.4 million aggregate principal amount of the 2025 Notes for cash, using $146.3 million of the net proceeds from our issuance and sale of the 2029 Convertible 144A Notes.

Termination of Share Lending Agreement

On January 22, 2024, we terminated our share lending agreement, dated February 4, 2019, with Jefferies Capital Services, LLC ("Share Borrower"). Through this agreement, we had lent the Share Borrower approximately 30 million shares of our common stock related to our 2019 issuance of the $200.0 million in 2025 Notes. We had since reduced the number of outstanding borrowed shares by approximately 8.313 million. With the termination of this agreement, all remaining shares have been returned to us and are now held as treasury shares.

RESULTS OF OPERATIONS

Foreign Currency Exchange Rates

Approximately 21.5% of our revenue for the three months ended March 31, 2024, was denominated in currencies other than the U.S. Dollar (USD). This compares to 18.5% for the same period in 2023. Our financial statements are reported in USD; therefore, fluctuations in exchange rates affect the translation of foreign-denominated revenue and expenses. During the first quarter of 2024 and the year ended December 31, 2023, our most significant currency exchange rate exposures were to the Euro and the Chilean Peso. Gross accumulated currency translation adjustments, recorded as a separate component of shareholders' equity, totaled $41.8 million and $34.6 million at March 31, 2024 and December 31, 2023, respectively.

We are subject to foreign currency transaction risk due to fluctuations in exchange rates between the time a transaction is initiated and settled. To mitigate this risk, we use foreign currency forward contracts. These contracts fix an exchange rate, allowing us to offset potential losses (or gains) caused by exchange rate changes at the settlement date. As of March 31, 2024, we held no open foreign exchange forward contracts related to inventory purchases on letters of credit. As of December 31, 2023, we held 52 open foreign exchange forward contracts related to inventory purchases on letters of credit. These contracts matured monthly through January 2024 with a total notional value of approximately $2.9 million.

FOR THE THREE MONTHS ENDED MARCH 31, 2024 AND 2023

Our consolidated loss from operations for the three months ended March 31, 2024 and 2023 was as follows:

	For the three months ended March 31,			
(In thousands)	2024	2023	Change	% Change
Revenues:				
Revenue from services	$ 126,890	$ 132,368	$ (5,478)	(4)%
Revenue from products	38,047	40,383	(2,336)	(6)%
Revenue from transfer of intellectual property and other	8,749	64,826	(56,077)	(87)%
Total revenues	173,686	237,577	(63,891)	(27)%
Costs and expenses:				
Cost of revenue	131,617	138,314	(6,697)	(5)%
Selling, general and administrative	70,167	75,642	(5,475)	(7)%
Research and development	21,937	32,605	(10,668)	(33)%
Contingent consideration	—	136	(136)	(100)%
Amortization of intangible assets	21,437	21,474	(37)	(0)%
Total costs and expenses	245,158	268,171	(23,013)	(9)%
Loss from operations	$ (71,472)	$ (30,594)	$ (40,878)	(134)%

Diagnostics

	For the three months ended March 31,			
(In thousands)	2024	2023	Change	% Change
Revenues				
Revenue from services	$ 126,890	$ 132,368	$ (5,478)	(4)%
Total revenues	126,890	132,368	(5,478)	(4)%
Costs and expenses:				
Cost of revenue	109,874	114,061	(4,187)	(4)%
Selling, general and administrative	45,761	52,576	(6,815)	(13)%
Research and development	665	689	(24)	(3)%
Amortization of intangible assets	4,994	5,049	(55)	(1)%
Total costs and expenses	161,294	172,375	(11,081)	(6)%
loss from operations	$ (34,404)	$ (40,007)	$ 5,603	14%

Revenue. Revenue from services for the three months ended March 31, 2024 decreased by approximately $5.5 million, a decrease of 4.1% compared to the three months ended March 31, 2023, primarily due to lower clinical test volume of $1.0 million and reduced test reimbursement of $4.4 million resulting from the mix of testing ordered.

Estimated collection amounts are subject to the complexities and ambiguities of billing, reimbursement regulations and claims processing, as well as considerations unique to Medicare and Medicaid programs, and require us to consider the potential for retroactive adjustments when estimating variable consideration in the recognition of revenue in the period the related services are rendered. For the three months ended March 31, 2024, we recorded $0.5 million of positive revenue adjustments due to changes in estimates of implicit price concessions for performance obligations satisfied in prior periods mainly due to the composition of client pay mix. For the three months ended March 31, 2023, we recorded $4.8 million of negative revenue adjustments due to changes in estimates of implicit price concessions for performance obligations satisfied in prior periods mainly due to the composition of patient pay mix.

The composition of revenue from services by payor for the three months ended March 31, 2024 and 2023 was as follows:

	Three months ended March 31,	
(In thousands)	2024	2023
Healthcare insurers	$ 74,608	$ 80,602
Government payers	21,959	20,417
Client payers	25,687	27,168
Patients	4,636	4,181
Total	$ 126,890	$ 132,368

Cost of revenue. Cost of revenue for the three months ended March 31, 2024 decreased $4.2 million, a decrease of 3.7% compared to the three months ended March 31, 2023. Cost of revenue decreased primarily due to a decrease in employee headcount, reflecting our continued cost-reduction initiatives implemented at BioReference, in addition to changes in the mix of testing ordered during the period.

Selling, general and administrative expenses. Selling, general and administrative expenses for the three months ended March 31, 2024 and 2023 were $45.8 million and $52.6 million, respectively, representing a decrease of 13.0% from the prior period. Selling, general and administrative expenses in our diagnostics segment decreased primarily due to continued cost-reduction initiatives implemented at BioReference as we strive to return to profitability.

Research and development expenses. The following table summarizes the components of our research and development expenses:

Research and Development Expenses	Three months ended March 31,	
	2024	2023
Research and development employee-related expenses	$ 336	$ 372
Other internal research and development expenses	329	317
Total research and development expenses	$ 665	$ 689

The decrease in research and development expenses for the three months ended March 31, 2024 was primarily due to a decrease in employee-related expenses as a result of the continued cost-reduction initiatives implemented at BioReference.

Amortization of intangible assets. Amortization of intangible assets was $5.0 million and $5.1 million, respectively, for the three months ended March 31, 2024 and 2023. Amortization expense reflects the amortization of acquired intangible assets with defined useful lives.

Pharmaceuticals

	For the three months ended March 31,			
(In thousands)	2024	2023	Change	% Change
Revenues:				
Revenue from products	$ 38,047	$ 40,383	$ (2,336)	(6)%
Revenue from transfer of intellectual property and other	8,749	64,826	(56,077)	(87)%
Total revenues	46,796	105,209	(58,413)	(56)%
Costs and expenses:				
Cost of revenue	21,743	24,253	(2,510)	(10)%
Selling, general and administrative	15,040	13,562	1,478	11%
Research and development	21,247	31,878	(10,631)	(33)%
Contingent consideration	—	136	(136)	(100)%
Amortization of intangible assets	16,443	16,425	18	0%
Total costs and expenses	74,473	86,254	(11,781)	(14)%
Income (loss) from operations	$ (27,677)	$ 18,955	$ (46,632)	(246)%

Revenue from products. Revenue from products for three months ended March 31, 2024 decreased $2.3 million or 5.8%, compared to the three months ended March 31, 2023. This decline was primarily driven by decreasing sales from international operations, further impacted by foreign exchange fluctuations of approximately $1.5 million. Additionally, revenue from sales of *Rayaldee* for the three months ended March 31, 2024, was $6.9 million compared to the $6.6 million recorded in the same period in 2023.

Revenue from transfer of intellectual property and other. For the three months ended March 31, 2024, revenue from the transfer of intellectual property and other was $8.7 million compared to $64.8 million for the prior period. This decrease was primarily due to one-time milestone payments received in 2023, including a $50.0 million payment from Merck for rights granted under the Merck Agreement (as defined and described in Note 14 to our condensed consolidated financial statements contained in this Quarterly Report on Form 10-Q (our "Quarterly Financials")), a $7.0 million payment from VFMCRP triggered by the German price approval for *Rayaldee* (as described in Note 14 to our Quarterly Financials) and a $2.5 million payment from Nicoya due to Nicoya's submission of the investigational new drug application to China's Center for Drug Evaluation pursuant to the Nicoya Agreement (as described in Note 14 to our Quarterly Financials). For the three months ended March 31, 2024, revenue from the transfer of intellectual property and other reflects $5.6 million in gross profit share and royalty payments for NGENLA (Somatrogon) and Pfizer's Genotropin® (Somatropin), compared with $3.1 million received in the same period in 2023. Furthermore, revenue for the three months ended March 31, 2024 includes $2.2 million from the BARDA Contract (as defined and described in Note 14 to our Quarterly Financials).

Cost of revenue. Cost of revenue for the three months ended March 31, 2024 decreased $2.5 million, a decrease of 10.3% compared to the three months ended March 31, 2023 which was primarily driven by favorable foreign exchange fluctuations of $1.6 million and as a result of changes in product mix during the 2024 period.

Selling, general and administrative expenses. Selling, general and administrative expenses for the three months ended March 31, 2024 and 2023 were $15.0 million and $13.6 million, respectively, an increase of 10.9% from the prior year period. The increase in selling, general and administrative expenses was due to higher employee-related and professional expenses related to our international operations.

Research and development expenses. Research and development expenses for the three months ended March 31, 2024 and 2023 were $21.3 million and $31.9 million, respectively, a decrease of 33.3% from the prior year period. Research and development expenses include external and internal expenses, partially offset by third-party grants and funding arising from collaboration agreements. External expenses include clinical and non-clinical activities performed by contract research organizations, lab services, purchases of drug and diagnostic product materials and manufacturing development costs. We track external research and development expenses by individual program for phase 3 clinical trials for drug approval and premarket approval for diagnostics tests, if any. Internal expenses include employee-related expenses such as salaries, benefits and equity-based compensation expense. Other internal research and development expenses are incurred to support overall research and development activities and include expenses related to general overhead and facilities.

The following table summarizes the components of our research and development expenses:

Research and Development Expenses	Three months ended March 31,	
	2024	2023
External expenses:		
Manufacturing expense for biological products	$ 4,928	$ 2,973
Phase III studies	506	1,941
Post-marketing studies	143	129
Earlier-stage programs	9,527	18,150
Research and development employee-related expenses	8,713	7,808
Other internal research and development expenses	2,011	950
Third-party grants and funding from collaboration agreements	(4,581)	(73)
Total research and development expenses	$ 21,247	$ 31,878

Research and development expenses for the three months ended March 31, 2024, decreased primarily due to a one-time payment to Sanofi of $12.5 million pursuant to the Sanofi In-License Agreement, which was made in 2023. Costs related to Somatrogon (hGH-CTP) decreased following the closure of open-label extension studies in countries where it has received marketing authorization. This decrease was partially offset by increased BARDA spending of $2.1 million and higher employee related expenses during the 2024 period.

Contingent consideration. Contingent consideration for the three months ended March 31, 2024 and 2023 was $0.0 million and $0.1 million reversal of expense, respectively. Contingent consideration for the three months ended March 31, 2024 and 2023 was primarily attributable to changes in assumptions regarding the timing of achievement of future milestones for OPKO Renal, and potential amounts payable to former stockholders of OPKO Renal in connection therewith, pursuant to our acquisition agreement in March 2013.

Amortization of intangible assets. Amortization of intangible assets was $16.4 million and $16.4 million, respectively, for the three months ended March 31, 2024 and 2023. Amortization expense reflects the amortization of acquired intangible assets with defined useful lives. Our indefinite lived IPR&D assets will not be amortized until the underlying development programs are completed. Upon obtaining regulatory approval by the FDA, the IPR&D assets will be accounted for as a finite-lived intangible asset and amortized on a straight-line basis over its estimated useful life. The assets will be amortized on a straight-line basis over their estimated useful life of approximately 12 years.

Corporate

	For the three months ended March 31,			
(In thousands)	2024	2023	Change	% Change
Costs and expenses:				
Selling, general and administrative	$ 9,366	$ 9,504	$ (138)	(1)%
Research and development	25	38	(13)	34%
Total costs and expenses	9,391	9,542	(151)	(2)%
Loss from operations	$ (9,391)	$ (9,542)	$ 151	2%

Operating loss for our unallocated corporate operations for the three months ended March 31, 2024 and 2023 was $9.4 million and $9.5 million, respectively, and principally reflect general and administrative expenses incurred in connection with our corporate operations.

Other

Interest income. Interest income for the three months ended March 31, 2024 and 2023 was not significant as our cash investment strategy emphasizes the security of the principal invested and fulfillment of liquidity needs.

Interest expense. Interest expense increased to $7.7 million for the three months ended March 31, 2024, compared to $3.4 million in the same period of 2023. This increase was primarily driven by interest incurred on the 2029 Convertible Notes, the 2025 Notes, the 2023 Convertible Notes, the 2033 Senior Notes, and BioReference's outstanding debt under the Credit Agreement. Of the $7.7 million in interest expense, $4.3 million stemmed from the 2029 Convertible Notes, including interest incurred, amortization of deferred financing costs, and embedded derivatives.

Fair value changes of derivative instruments, net. Fair value changes of derivative instruments, net for the three months ended March 31, 2024 and 2023, was $26.2 million and $1.1 million of expense, respectively. Derivative expense was principally related to the change in fair value on the 2029 Convertible Notes and on foreign currency forward exchange contracts at OPKO Chile.

Other income (expense), net. Other income (expense), net for the three months ended March 31, 2024, resulted in $21.3 million of income, compared to $17.0 million of income for the 2023 period. Other income (expense), net for the three months ended March 31, 2024, and 2023, included $22.7 million and $8.3 million, respectively, of income as a result of an increase in the fair value of our investment in GeneDx Holdings (as defined in Note 6 in our Quarterly Financials). Furthermore, the three months ended March 31, 2023, reflected an $8.5 million of income due to GeneDx Holdings reaching specific revenue targets for the fiscal year ending December 31, 2022. Finally, a foreign currency loss of $2.7 million was recorded for the 2024 period, compared with a $1.0 million gain in the 2023 period.

Income tax (benefit) provision. Our income tax (benefit) provision for the three months ended March 31, 2024 and 2023 was ($1.4 million) benefit and $1.2 million provision, respectively. For the three months ended March 31, 2024 and 2023, the tax rate differed from the U.S. federal statutory rate of 21% primarily due to the relative mix in earnings and losses in the U.S. versus foreign tax jurisdictions, the impact of the payments under Merck Agreement, and operating results in tax jurisdictions which do not result in a tax benefit.

Loss from investments in investees. We have made investments in certain early stage companies that we perceive to have valuable proprietary technology and significant potential to create value for us as a shareholder or member. We account for these investments under the equity method of accounting, resulting in the recording of our proportionate share of their losses until our share of their loss exceeds our investment. Until the investees' technologies are commercialized, if ever, we anticipate they will report net losses. Loss from investments in investees was $3.0 thousand and $37.0 thousand for the three months ended March 31, 2024 and 2023, respectively.

LIQUIDITY AND CAPITAL RESOURCES

On March 31, 2024, we had cash and cash equivalents of approximately $75.6 million. Cash used in operations of $35.5 million for the three months ended March 31, 2024 principally reflected general and administrative expenses related to our corporate operations and research and development activities. Cash used in investing activities of $4.4 million for the three months ended March 31, 2024 primarily reflected capital expenditures. Cash provided by financing activities for the three months ended March 31, 2024 of $20.6 million primarily reflected net borrowings on our lines of credit, the issuance of our 2029 Convertible Notes, the redemption of the 2025 Convertible Notes, and repurchase of shares of our Common Stock. We have historically not generated sustained positive cash flow sufficient to offset our operating and other expenses, and our primary sources of cash have been from the public and private placement of equity, the issuance of the 2029 Convertible Notes, 2025 Convertible Notes and credit facilities available to us.

In March 2024, the Company and Labcorp entered into the Labcorp Asset Purchase Agreement, pursuant to which Labcorp agreed to acquire select assets of BioReference. The purchase price for the BioReference Transaction is $237.5 million, subject to adjustments. We anticipate closing the BioReference Transaction in the second half of 2024. As of March 31, 2024, the BioReference Transaction met the held-for-sale accounting criteria and the related assets and liabilities are classified as held for sale in our condensed consolidated balance sheet.

In January 2024, we completed a private offering of $230.0 million aggregate principal amount of our 2029 Convertible 144A Notes in accordance with the 144A Note Purchase Agreement. The $230.0 million aggregate principal amount of 2029 Convertible 144A Notes includes $30.0 million aggregate principal amount of 2029 Convertible 144A Notes purchased by the Initial Purchaser in accordance with its exercise in full of its overallotment option.

The Company received approximately $220.0 million of net proceeds from the issuance of the 2029 Convertible 144A Notes, after deducting fees and estimated offering expenses. The Company used approximately $50.0 million of the net proceeds to repurchase shares of our Common Stock from purchasers of the 2029 Convertible 144A Notes in privately negotiated transactions at a purchase price equal to the closing sale price per share of Common Stock on January 4, 2024, which was $0.9067. Contemporaneously with the pricing of the 2029 Convertible 144A Notes, the Company entered into separate, privately negotiated transactions with certain holders of the Company's outstanding 4.50% Convertible Senior Notes due 2025 to repurchase, on the closing date, approximately $144.4 million aggregate principal amount of such notes. The Company effected such repurchases for cash, using $146.3 million of the net proceeds from the offering of the 2029 Convertible 144A Notes, following which only $170 thousand aggregate principal amount of the 2025 Notes remain outstanding.

Additionally, the Company issued and sold approximately $71.1 million aggregate principal amount of 2029 Convertible Affiliate Notes to the Affiliate Purchasers pursuant to the Affiliate Note Purchase Agreement. Pursuant to the Affiliate Note Purchase Agreement, the Company issued and sold the 2029 Convertible Affiliate Notes to the Affiliate Purchasers in exchange for $55.0 million aggregate principal amount of 2023 Convertible Notes, held by the Affiliate Purchasers, together with approximately $16.1 million of accrued but unpaid interest thereon. Following such exchange, no 2023 Convertible Notes remained outstanding.

Holders may convert their 2029 Convertible Notes at their option prior to the close of business on the business day immediately preceding September 15, 2028 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2024 (and only during such calendar quarter), if the last reported sale price of our Common Stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price on each applicable trading day; (2) during the five consecutive business day period after any ten consecutive trading day period (the "convertible note measurement period") in which the trading price per $1,000 principal amount of notes for each trading day of the convertible note measurement period was less than 98% of the product of the last reported sale price of our Common Stock and the applicable conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events specified in the indenture governing the 2029 Convertible Notes. On or after September 15, 2028 until the close of business on the business day immediately preceding the maturity date, holders may convert their notes at any time, regardless of the foregoing conditions. Upon conversion of a note, we will pay or deliver, as the case may be, cash, shares of our Common Stock or a combination of cash and shares of our Common Stock, at our election.

The conversion rate is initially equal to 869.5652 shares of Common Stock per $1,000 principal amount of notes (equivalent to an initial conversion price of approximately $1.15 per share of Common Stock). The conversion rate for the 2029 Convertible Notes will be subject to adjustment upon the occurrence of certain events but will not be adjusted for any accrued and unpaid interest.

On September 28, 2023, ModeX was awarded a BARDA Contract by BARDA, part of the Administration for Strategic Preparedness and Response at the U.S. Department of Health and Human Services, to advance a platform and specific candidates designed to address a range of public health threats in viral infectious diseases. Pursuant to the BARDA Contract, we will receive $59.0 million over a five-year period through February 2028 for the development, manufacturing, and execution of a Phase 1 clinical trial for a next-generation MSTAR multispecific antibody with broad neutralizing activity against known variants of SARS-CoV-2. We are eligible to receive up to an additional $109.6 million from BARDA upon achieving particular milestones to develop multispecific antibodies targeting other viral pathogens such as influenza. As of March 31, 2024, the aggregate amount remaining to be funded by BARDA, subject to performance obligations and excluding unexercised contract options, was $55.6 million.

On March 8, 2023, ModeX, the Company (with respect to certain sections), and Merck entered into the Merck Agreement pursuant to which Merck obtained a license to certain patent rights and know-how in connection with the development of ModeX's preclinical nanoparticle vaccine candidate targeting the Epstein -Barr Virus.

ModeX and Merck have established a strategic collaboration with a detailed research plan to guide the development of such a vaccine or related product. This plan includes the creation of a joint steering committee and the potential use of third-party contract development and manufacturing organization carry out such activities unless otherwise agreed. Merck will reimburse ModeX for development costs incurred as part of this research plan. To date, we have incurred $10.8 million of development costs related to the Epstein -Barr Virus, for which Merck has provided reimbursement in full.

As of March 31, 2024, the total commitments under our amended and restated credit agreement, dated August 30, 2021 (as amended, the "Credit Agreement") with JPMorgan Chase Bank, N.A. ("CB") and our lines of credit with financial institutions in Chile and Spain were $40.6 million, of which $21.0 million was drawn as of March 31, 2024. On March 31, 2024, the weighted average interest rate on these lines of credit was approximately 7.8%. These lines of credit are short-term and are used primarily as a source of working capital. The highest aggregate principal balance at any time outstanding during the three months ended March 31, 2024 was $23.6 million. We intend to continue to draw under these lines of credit as needed. There is no assurance that these lines of credit or other funding sources will be available to us on acceptable terms, or at all, in the future.

The Credit Agreement provides for a $50.0 million secured revolving credit facility and includes a $20.0 million sub-facility for swingline loans and a $20.0 million sub-facility for the issuance of letters of credit. The Credit Agreement matures on August 30, 2025 and is guaranteed by all of BioReference's domestic subsidiaries, subject to certain exceptions. The Credit Agreement is also secured by substantially all assets of BioReference and its domestic subsidiaries, subject to certain exceptions, as well as a non-recourse pledge by us of our equity interest in BioReference. Availability under the Credit Agreement is based on a borrowing base composed of eligible accounts receivable of BioReference and certain of its subsidiaries, as specified therein. As of March 31, 2024, $10.7 million remained available for borrowing under the Credit Agreement.

In connection with our agreements with Merck, Pfizer, VFMCRP, Nicoya and CAMP4, we are eligible to receive various milestone payments and royalty considerations. Under the terms of the Merck Agreement, we received an initial payment of $50.0 million and are also eligible to receive up to an additional $872.5 million upon the achievement of certain commercial and development milestones under several indications. We are also eligible to receive tiered royalty payments ranging from high single digits to low double digits upon achievement of certain sales targets of the Product (as defined in the Merck Agreement). Under the terms of the Restated Pfizer Agreement, we have received or are eligible to receive up to an additional $275.0 million upon the achievement of certain regulatory milestones, including $90 million triggered by the FDA approval in the United States and $85 million due to the commencement of sales of NGENLA (Somatrogon) in Europe and Japan, which we received in 2022. In addition, we are eligible to receive regional, tiered gross profit sharing for both Somatrogon (hGH-CTP) and Pfizer's Genotropin®. Under the terms of the VFMCRP Agreement, we are entitled to receive up to an additional $15 million in regulatory milestones and $200 million in milestone payments tied to the launch, pricing and sales of *Rayaldee*, including a $7 million regulatory milestone payment we recorded in the first quarter of 2023 triggered by the German price approval for *Rayaldee* and $3 million regulatory milestone payment we recognized in 2022 following the first sale of *Rayaldee* in Europe. In addition, we are eligible to receive tiered, double-digit royalty payments. Under the terms of the Nicoya Agreement, we received an initial upfront payment of $5 million and are eligible to receive an aggregate of $5 million tied to the first anniversary of the effective date of the Nicoya Agreement, of which we have received $2.5 million. Furthermore, we received the additional $2.5 million upon Nicoya's submission of the investigational new drug application to the Center for Drug Evaluation of China in March 2023. We are also eligible to receive up to an additional aggregate amount of $115 million upon the achievement of certain development, regulatory and sales-based milestones by Nicoya for the Nicoya Product in the Nicoya Territory. We are also eligible to receive tiered, double digit royalty payments at rates in the low double digits on net product sales within the Nicoya Territory and in the Nicoya Field. Under the terms of the CAMP4 Agreement, we received an initial upfront payment of $1.5 million.

We believe that the cash and cash equivalents on hand at March 31, 2024 and the amounts available to be borrowed under our lines of credit are sufficient to meet our anticipated cash requirements for operations and debt service beyond the next 12 months. We based this estimate on assumptions that may prove to be wrong or are subject to change, and we may be required to use our available cash resources sooner than we currently expect. If we acquire additional assets or companies, accelerate our product development programs or initiate additional clinical trials, we will need additional funds. Our future cash requirements, and the timing of those requirements, will depend on a number of factors, including the approval and success of our products and products in development, particularly our long acting Somatrogon (hGH-CTP) for which we have received approval in over 50 markets, including the United States, Europe, Japan, Australia and Canada, the commercial success of *Rayaldee*, BioReference's financial performance, possible acquisitions and dispositions (including the BioReference Transaction), the continued progress of research and development of our product candidates, the timing and outcome of clinical trials and regulatory approvals, the costs involved in preparing, filing, prosecuting, maintaining, defending, and enforcing patent claims and other intellectual property rights, the status of competitive products, the availability of financing, our success in developing markets for our product candidates and results of government investigations, payor claims, and legal proceedings that may arise, including, without limitation class action and derivative litigation to which we are subject, and our ability to obtain insurance coverage for such claims. We have historically not generated sustained positive cash flow and if we are not able to secure additional funding when needed, we may have to delay, reduce the scope of, or eliminate one or more of our clinical trials or research and development programs or possible acquisitions or reduce our marketing or sales efforts or cease operations.

The following table provides information as of March 31, 2024, with respect to the amounts and timing of our known contractual obligation payments due by period.

Contractual obligations (In thousands)	Remaining nine months ending December 31, 2024	2025	2026	2027	2028	Thereafter	Total
Open purchase orders	$ 41,097	$ 4,959	$ 415	$ —	$ —	$ —	$ 46,471
Operating leases	9,107	35,690	16,301	1,575	—	—	62,673
Finance leases	1,522	1,453	1,206	514	194	1,881	6,770
2029, 2025 and 2023 Convertible Notes	—	170	—	—	—	323,108	323,278
Mortgages and other debts payable	313	306	298	291	284	3,146	4,638
Lines of credit	11	12	—	—	—	—	23
Interest commitments	8,644	11,578	11,445	11,438	11,431	915	55,451
Total	$ 60,694	$ 54,168	$ 29,665	$ 13,818	$ 11,909	$ 329,050	$ 499,304

The preceding table does not include information where the amounts of the obligations are not currently determinable, including the following:

- Contractual obligations in connection with clinical trials, which span over two years, and that depend on patient enrollment. The total amount of expenditures is dependent on the actual number of patients enrolled and as such, the contracts do not specify the maximum amount we may owe.
- Product license agreements effective during the lesser of 15 years or patent expiration whereby payments and amounts are determined by applying a royalty rate on uncapped future sales.
- Contingent consideration that includes payments upon achievement of certain milestones including meeting development milestones such as the completion of successful clinical trials, NDA approvals by the FDA and revenue milestones upon the achievement of certain revenue targets all of which are anticipated to be paid within the next seven years and are payable in either shares of our Common Stock or cash, at our option, and that may aggregate up to $125.0 million.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

There were no material changes to our critical accounting policies and estimates described in our Form 10-K that have had a material impact on our Quarterly Financial and related notes.

RECENT ACCOUNTING PRONOUNCEMENTS

Accounting standards yet to be adopted.

In December 2023, the FASB issued ASU No. 2023-09, “Income Taxes (Topic 740): Improvements to Income Tax Disclosures” (“ASU 2023-09”), which modifies the rules on income tax disclosures to require entities to disclose (i) specific categories in the rate reconciliation, (ii) the income or loss from continuing operations before income tax expense or benefit (separated between domestic and foreign) and (iii) income tax expense or benefit from continuing operations (separated by federal, state and foreign). ASU 2023-09 also requires entities to disclose their income tax payments to international, federal, state, and local jurisdictions, among other changes. The guidance is effective for annual periods beginning after December 15, 2024. Early adoption is permitted for annual financial statements that have not yet been issued or made available for issuance. ASU 2023-09 should be applied on a prospective basis, but retrospective application is permitted. We are currently evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures.

In November 2023, the FASB issued ASU No 2023-07, "Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures ("ASU 2023-07"). ASU 2023-07 enhances disclosures for significant segment expenses for all public entities required to report segment information in accordance with ASC 280. ASC 280 requires a public entity to report for each reportable segment a measure of segment profit or loss that its chief operating decision maker ("CODM") uses to assess segment performance and to make decisions about resource allocations. The amendments in ASU 2023-07 improve financial reporting by requiring all public entities to disclose incremental segment information on an annual and interim basis to enable investors to develop more useful financial analyses. Topic 280 requires that a public entity disclose certain information about its reportable segments, for example, a public entity is required to report a measure of segment profit or loss that the CODM uses to assess segment performance and make decisions about allocating resources. ASC 280 also requires other specified segment items and amounts, such as depreciation, amortization, and depletion expense, to be disclosed under certain circumstances. The ASU 2023-07 amendments do not change or remove those disclosure requirements. The amendments in ASU 2023-07 also do not change how a public entity identifies its operating segments, aggregates those operating segments, or applies the quantitative thresholds to determine its reportable segments. Upon adoption, a public entity must retrospectively apply ASU 2023-07 amendments to all prior periods presented in the financial statements. The amendments in ASU 2023-07 are effective for all public entities for fiscal years beginning after December 15, 2023 (e.g., for calendar-year-end public entities, annual periods beginning on January 1, 2024 — i.e., December 31, 2024, Form 10-K), and interim periods within fiscal years beginning after December 15, 2024 (e.g., for calendar-year-end public entities, interim periods beginning on January 1, 2025 — i.e., Form 10-Q for the first quarter of 2025). Early adoption is permitted. We are currently evaluating the potential impact of adopting this new guidance on our consolidated financial statements and related disclosures.

Recently adopted accounting standards.

In 2021, the Organization for Economic Co-operation and Development ("OECD") established an inclusive framework on base erosion and profit shifting and agreed on a two-pillar solution ("Pillar Two") to global taxation, focusing on global profit allocation and a 15% global minimum effective tax rate. On December 15, 2022, the EU member states agreed to implement the OECD's global minimum tax rate of 15%. The OECD issued Pillar Two model rules and continues to release guidance on these rules. The inclusive framework calls for tax law changes by participating countries to take effect in 2024 and 2025. Various countries have enacted or have announced plans to enact new tax laws to implement the global minimum tax. We considered the applicable tax law changes on Pillar Two implementation in the relevant countries, and there is no material impact to our tax results for the period. We anticipate further legislative activity and administrative guidance in 2024, and will continue to evaluate the impacts of enacted legislation and pending legislation to enact Pillar Two Model Rules in the non-US tax jurisdictions we operate in.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

In the normal course of doing business, we are exposed to the risks associated with foreign currency exchange rates and changes in interest rates.

Foreign Currency Exchange Rate Risk – We operate globally and, as such, we are subject to foreign exchange risk in our commercial operations as portions of our revenues are exposed to changes in foreign currency exchange rates, primarily those for the Chilean Peso, the Mexican Peso, and the Euro.

From time to time, we manage our exposure to fluctuations in foreign currency exchange rates by entering into offsetting positions through the use of foreign exchange forward contracts. Certain firmly committed transactions may be hedged with foreign exchange forward contracts. As exchange rates change, gains and losses on the exposed transactions are partially offset by gains and losses related to the hedging contracts. Both the exposed transactions and the hedging contracts are translated and fair valued, respectively, at current spot rates, with gains and losses included in earnings. We do not enter into foreign exchange or other derivative contracts for trading or speculative purposes.

Our derivative activities, which consist of foreign exchange forward contracts, are intended to economically hedge forecasted cash flows that are exposed to foreign currency risk. The foreign exchange forward contracts generally require us to exchange local currencies for foreign currencies based on pre-established exchange rates at the contracts' respective maturity dates. As exchange rates change, gains and losses on these contracts are generated based on the change in the exchange rates that are recognized in the Condensed Consolidated Statements of Operations and offset the impact of the change in exchange rates on the foreign currency cash flows that are hedged. If the counterparties to the exchange contracts do not fulfill their obligations to deliver the contracted currencies, our results could be negatively impacted due to effective unhedged currency related fluctuations. Our foreign exchange forward contracts primarily hedge exchange rates on the Chilean Peso to the U.S. dollar. If Chilean Pesos were to strengthen or weaken in relation to the U.S. dollar, our loss or gain on hedged foreign currency cash-flows would be offset by the derivative contracts, with a net effect of zero.

Approximately 21.5% of our revenue for the three months ended March 31, 2024, was denominated in currencies other than the U.S. Dollar (USD). This compares to 18.5% for the same period in 2023. Our financial statements are reported in USD; therefore, fluctuations in exchange rates affect the translation of foreign-denominated revenue and expenses. During the first quarter of 2024 and the year ended December 31, 2023, our most significant currency exchange rate exposures were to the Euro and the Chilean Peso. Gross accumulated currency translation adjustments, recorded as a separate component of shareholders' equity, totaled $41.8 million and 34.6 million at March 31, 2024 and December 31, 2023, respectively. For information on such open foreign exchange forward contracts for the three months ended March 31, 2024 and 2023 see "Management's Discussion and Analysis—Results of Operations— Foreign Currency Exchange Rates."

We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or "other than trading" instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price, or equity price risk.

Interest Rate Risk – Our exposure to interest rate risk relates to our cash and investments and to our borrowings. We generally maintain an investment portfolio of money market funds and marketable securities. The securities in our investment portfolio are not leveraged and are subject to minimal interest rate risk due to their very short-term nature. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a change in interest rates would have a significant negative impact on the value of our investment portfolio except for reduced income resulting from declining interest rates.

At March 31, 2024, we had cash and cash equivalents of $75.6 million. The weighted average interest rate related to our cash and cash equivalents for the three months ended March 31, 2024 was approximately 1.1%. As of March 31, 2024, the principal outstanding balances under the Credit Agreement with CB and our Chilean and Spanish lines of credit was $21.0 million in the aggregate at a weighted average interest rate of approximately 7.8%.

Our outstanding convertible senior notes have fixed rates of interest; therefore, we are not exposed to interest rate risk on those instruments.

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we may invest our excess cash in debt instruments of the U.S. Government and its agencies, bank obligations, repurchase agreements and high-quality corporate issuers, and money market funds that invest in such debt instruments, and, by policy, restrict our exposure to any single corporate issuer by imposing concentration limits. To minimize the exposure due to adverse shifts in interest rates, we maintain investments at an average maturity of generally less than three months.

Item 4. Controls and Procedures

Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, have evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Our disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in the 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. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Based on management's evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of March 31, 2024.

Changes to the Company's Internal Control Over Financial Reporting

There have been no changes to the Company's internal control over financial reporting that occurred during the quarter ended March 31, 2024 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are, from time to time, party to various legal proceedings arising out of our business. During the reporting period covered by this Quarterly Report on Form 10-Q, there have been no material changes to the description of legal proceedings set forth in our Annual Report on Form 10-K for the year ended December 31, 2023.

Item 1A. Risk Factors

There have been no material changes to our risk factors as previously disclosed in our Annual Report on Form 10-K for the year ended December 31 2023.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

In January 2024, we completed the offering of $230.0 million aggregate principal amount of the 2029 144A Notes in accordance with the terms of the 144A Note Purchase Agreement. We allocated approximately $50.0 million of these net proceeds to repurchase shares of our Common Stock. These repurchases were from purchasers of the 2029 Convertible 144A Notes in privately negotiated transactions effected with or through the Initial Purchaser or its affiliate. The purchase price per share of the Common Stock in these transactions equaled the closing sale price of $0.9067 per share of Common Stock on January 4, 2024. Other than the foregoing repurchases, which are set forth in the table below, we did not repurchase any other equity securities during the quarter ended March 31, 2024.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Dollar Value that May Yet be Purchased Under the Plans or Programs
January 1, 2024 to January 31, 2024 [(1)]	55,145,031	0.9067	—	—
February 1, 2024 to February 29, 2024	—	—	—	—
March 1, 2024 to March 31, 2024	—	—	—	—
Total	55,145,031	0.9067	—	—

(1) All repurchases were effected using proceeds from our issuance and sale of our 2029 144A Notes, as described above

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not Applicable.

Item 5. Other Information

During the quarter ended March 31, 2024, none of our officers or directors adopted or terminated any contract, instruction or written plan for the purchase or sale of securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act or any "non-Rule 10b5-1 trading arrangement", as defined in Item 408 of Regulation S-K.

Item 6. Exhibits

Exhibit 2.1*	Asset Purchase Agreement, dated as of March 27, 2024 by and among BioReference Health, LLC, OPKO Health, Inc. and Laboratory Corporation of America Holdings, filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on March 28, 2024, and incorporated herein by reference.
Exhibit 3.1+	Composite Amended and Restated Certificate of Incorporation of OPKO Health, Inc.
Exhibit 4.1	Indenture, dated January 9, 2024, by and between OPKO Health, Inc. and U.S. Bank Trust Company, National Association, as Trustee, filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 9, 2024, and incorporated herein by reference.
Exhibit 4.2	Form of 3.75% Convertible Senior Note due 2029, incorporated by reference to Exhibit A of the Indenture filed as Exhibit 4.1 to the Current Report on Form 8-K filed with the Securities and Exchange Commission on January 9, 2024.
Exhibit 10.1*	Purchase Agreement, dated January 4, 2024, by and between the Company and J.P. Morgan Securities LLC, as representative of the Initial Purchasers named therein, filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 9, 2024, and incorporated herein by reference.
Exhibit 10.2*	Convertible Note Purchase Agreement, dated as of January 4, 2024, by and among the Company and certain investors, including Frost Gamma Investments Trust and Jane H. Hsiao, Ph.D., MBA, filed as Exhibit 10.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on January 9, 2024, and incorporated herein by reference
Exhibit 31.1	Certification by Phillip Frost, Chief Executive Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2024.
Exhibit 31.2	Certification by Adam Logal, Chief Financial Officer, pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2024.
Exhibit 32.1	Certification by Phillip Frost, Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2024.
Exhibit 32.2	Certification by Adam Logal, Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 for the quarterly period ended March 31, 2024.
Exhibit 101.INS	Inline XBRL Instance Document
Exhibit 101.SCH	Inline XBRL Taxonomy Extension Schema Document
Exhibit 101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
Exhibit 101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
Exhibit 101.LAB	inline XBRL Taxonomy Extension Label Linkbase Document
Exhibit 101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
Exhibit 104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

+ Filed herewith.
* Pursuant to Item 601(a)(5) of Regulation S-K, schedules and similar attachments to this exhibit have been omitted because they do not contain information material to an investment or voting decision and such information is not otherwise disclosed in such exhibit. The Company will supplementally provide a copy of any omitted schedule or similar attachment to the U.S. Securities and Exchange Commission or its staff upon request.

SIGNATURES

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

Date: May 7, 2024

OPKO Health, Inc.

/s/ Adam Logal
Adam Logal
Senior Vice President and Chief Financial Officer

Exhibit 3.1

THIS COMPOSITE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF OPKO HEALTH, INC. (THE "CORPORATION") REFLECTS THE PROVISIONS OF THE CORPORATION'S CERTIFICATE OF INCORPORATION AND ALL AMENDMENTS THERETO FILED WITH THE DELAWARE SECRETARY OF STATE THEREAFTER ON OR PRIOR TO APRIL 1, 2024, BUT IS NOT AN AMENDMENT AND/OR RESTATEMENT THEREOF.

COMPOSITE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF OPKO HEALTH, INC.

ARTICLE I
NAME

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

ARTICLE II
REGISTERED OFFICE; REGISTERED AGENT

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, New Castle County, Wilmington, Delaware 19808. The name of the registered agent at such address is The Prentice-Hall Corporation Systems, Inc.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporate Law of the State of Delaware ("DGCL").

ARTICLE IV
AUTHORIZED CAPITAL

4.1. Total Authorized Capital. The total number of shares of capital stock which the Corporation shall have authority to issue is One Billion Two Hundred Sixty Million (1,260,000,000) shares, consisting of the following classes and numbers of shares thereof: One Billion Two Hundred Fifty Million (1,250,000,000) shares of common stock, par value $0.01 per share (the "Common Stock"), and Ten Million (10,000,000) shares of preferred stock, par value $0.01 per share (the "Preferred Stock"). The Common Stock and Preferred Stock shall have the rights, preferences and limitations set forth below.

4.2. Designation of Preferred Stock. The Preferred Stock may be divided into such number of series as the Corporation's Board of Directors (the "Board of Directors") may determine. The Board of Directors is authorized to determine and alter the rights, preferences, privileges and restrictions granted to and imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. Without limiting the generality of the foregoing, the authority of the Board of Directors with respect to such designation of a series of Preferred Stock shall include, but not be limited to, determination of the following:

4.2.1. the number of shares constituting such series and the distinctive designation of such series;

4.2.2. the dividend rights of the shares of such series, including whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of such series;

4.2.3. whether such series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;

4.2.4. whether such series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

4.2.5. whether or not the shares of such series shall be redeemable, and, if so, the term and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;

4.2.6. whether such series shall have a sinking fund for the redemption or purchase of shares of such series, and, if so, the terms and amount of such sinking fund;

4.2.7. the rights of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of such series; and

4.2.8. any other relative rights, preferences and limitations of such series.

Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payment of the Common Stock with respect to the same dividend period.

If upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the assets available for distribution to the holders of shares of all series of Preferred Stock shall be insufficient to pay such holders the full preferential amount to which they are entitled, then such assets shall be distributed ratably among the shares of all series of Preferred Stock in accordance with the respective preferential amounts (including unpaid cumulative dividends, if any) payable with respect thereto.

ARTICLE V
COMMON STOCK

5.1. General. All shares of Common Stock shall be identical in all respects and shall entitle the holder thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions. The rights, powers and privileges of the holders of the Common Stock are subject to and qualified by the rights of holders of the Preferred Stock.

5.2. Dividends; Stock Splits. Subject to (a) any preferential dividend rights of holders of any then outstanding shares of Preferred Stock, and (b) any other provisions of this Certificate of Incorporation, as it may be amended from time to time, the holders of Common Stock shall be entitled to receive, on a pro rata basis, such dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefore.

5.3. Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any class or series of stock having preference over the Common Stock as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation, ratably in proportion to the number of shares held by them.

5.4. Voting. At every meeting of the stockholders of the Corporation in connection with the election of directors and all other matters submitted to a vote of stockholders, each holder of Common Stock is entitled to one vote in person or by proxy for each share of Common Stock registered in the name of such holder on the transfer books of the Corporation. Except as otherwise required by law, the holders of Common Stock and Special Voting Stock shall vote together as a single class, subject to any right that may be conferred upon holders of Preferred Stock to vote together with holders of Common Stock on all matters submitted to a vote of stockholders of the Corporation.

5.5. No Cumulative Voting. The holders of shares of Common Stock shall not have cumulative voting rights.

ARTICLE VI
SERIES A PREFERRED STOCK

6.1. Designation. A total of Four Million (4,000,000) shares of the Preferred Stock shall be designated the "Series A Convertible Preferred Stock." As used herein, the term "Preferred Stock" used without reference to the Series A Convertible Preferred Stock shall mean the shares of Preferred Stock, without distinction as to series, except as otherwise expressly provided for herein. The rights, preferences, privileges and restrictions granted to and imposed upon the Series A Preferred are as follows:

6.2. Dividends.

6.2.1. The holders of record of the Series A Preferred, as of a date fixed by the Corporation's Board of Directors, shall be entitled to receive dividends in an amount equal to $.25 per share payable annually in arrears on or about January 15 in each year commencing January 15, 1996. If the dividend payment date is not a business day, then the dividend shall be payable on the next succeeding business day. Such dividends shall be cumulative and shall accrue on each share of Series A Preferred from the date of the filing of this Amendment to the Corporation's Certificate of Incorporation with the Secretary of State of the State of Delaware. Dividends payable for any partial dividend period shall be computed on the basis of a 360-day year or twelve 30-day months.

6.2.2. Dividends shall be payable to the extent lawfully permitted, at the option of the Board of Directors, either (i) wholly or partially in cash or (ii) in newly issued additional shares of Series A Preferred (the "Additional Shares") valued at $2.50 per share and in an aggregate face amount equal to the difference between the total amount of the dividend then payable and the amount, if any, of such dividend then being paid in cash, rounded to the next highest whole number.

6.2.3. No dividends or other distributions, other than dividends payable solely in shares of Common Stock of the Corporation or other capital stock of the corporation ranking junior as to dividends or rights upon dissolution or liquidation to the Series A Preferred (the "Junior Dividend Stock") shall be paid or set apart for payment on, and no purchase, redemption or other acquisition shall be made by the Corporation of, any shares of Common Stock or Junior Dividend Stock unless and until all accrued and unpaid dividends on the Series A Preferred shall have been paid or set apart for payment.

6.2.4. Any reference to "distribution" contained in this Section 6.2 shall not be deemed to include any stock dividend or distributions made in connection with any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary.

6.2.5. The amount of the dividends specified in Section 6.2.1 and the valuation of the Additional Shares specified in Section 6.2.2 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding instances of Additional Shares pursuant to Section 6.3.2.

6.3. Liquidation Preference.

6.3.1. In the event of a liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of record of the Series A Preferred shall be entitled to receive ratably in full, out of lawfully available assets of the Corporation, whether such assets are stated capital or surplus of any nature, an amount in cash par outstanding share of Series A Preferred equal to the sum of $2.50 and all dividends (whether or not declared) accrued and unpaid thereon as of the date of final distribution to such holders, without interest, before any payment shall be made or any assets distributed to the holders of common Stock ("Common Stockholders") or any other class or series of the Corporation's capital stock ranking junior as to liquidation rights to the Series A Preferred; provided, however, that such rights shall accrue to the holders of the Series A Preferred only in the event the Corporation's payments with respect to the liquidation preferences of any holders of capital stock of the Corporation ranking senior as to liquidation rights to the Series A Preferred (the "Senior Liquidation Stock") are fully met. If, upon any liquidation, dissolution and winding-up, the amount available for such payment to the holders of Series A Preferred shall not be sufficient to pay in full the amounts payable on the Series A Preferred, the holders of the Series A Preferred and any other class or series of the Corporation's capital stock which may hereafter be created having parity as to liquidation rights with the Series A preferred shall share in the distribution of the amount available in proportion to the respective preferential amounts to which each is entitled. None of a consolidation or merger of the Corporation with another corporation, a sale or transfer of all or part of the Corporation's assets for cash, securities or other property, or a reorganization of the Corporation shall be considered a liquidation, dissolution or winding-up of a Corporation.

6.3.2. The liquidation preference specified in subsection 6.3.1 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding issuances of Additional Shares pursuant to subsection 6.2.2.

6.4. Voting Rights. The holders of record of the Series A Preferred shall be entitled to notice of, and to vote on or consent to, all actions on which Common Stockholders are required or permitted to act upon, including, without limitation, the election of directors. On all matters requiring or permitting a vote or consent of the Corporation's Common Stockholders, each share of Series A Preferred shall be equivalent to one share of Common Stock and all shares of Series A Preferred shall vote together with the shares of Common Stock as a single class, except as otherwise provided by the Certificate of Incorporation or By laws of the Corporation or by law. So long as shares of Series A Preferred are outstanding, without the approval (by vote or written consent, as provided by law) of the holders of record of at least a majority of the then outstanding shares of Series A Preferred, voting separately as a class, the Corporation shall not:

6.4.1. alter or change the rights, preferences, privileges or restrictions of shares of Series A Preferred so as to affect them adversely; or

6.4.2. increase the authorized number of shares of Series A Preferred.

6.5. Conversion Rights.

6.5.1. Each share of Series A Preferred shall be convertible, at the option of the holder of record thereof, into fully paid and nonassessable shares of the Corporation's Common Stock. Shares of Series A Preferred shall be convertible into the number of shares of Common Stock determined by dividing (x) the number of shares of Series A Preferred (including additional shares) held by a holder by (y) a divisor equal to $2.50, subject to adjustment as provided in Section 6.5.5 (such divisor as so adjusted being, the "Conversion Price"). No payment or adjustment shall be made in respect of dividends on the Common Stock or the Series A Preferred upon conversion of shares of Series A Preferred.

6.5.2. In order to exercise the conversion rights set forth herein, a holder of record of shares of Series A Preferred shall surrender the certificate or certificates representing such shares, duly endorsed to the Corporation or in blank, at the principal office of the Corporation, or at such other office as the Corporation may designate, and shall give written notice to the Corporation, in form reasonably satisfactory to the Corporation, that states such holder elects to convert the Series A Preferred or a specified portion thereof and sets forth the name or names in which the certificate or certificates for shares of Common Stock are to be issued (the "Conversion Notice"); provided, however, nothing herein contained shall be deemed to permit any holder of Series A Preferred to designate another person to be the holder of Common Stock issuable upon conversion of the Series A Preferred if the issuance to such other person would violate federal or state securities laws or any agreement a holder of Series A Preferred has with the Corporation regarding restrictions on transferability of any securities of the Corporation held by such holder. As promptly as practicable after receipt of the Conversion Notice, surrender of the certificate or certificates representing the Series A Preferred, and payment by the holder of any applicable transfer or similar taxes, the Corporation shall issue and deliver (i) a certificate or certificates for the number of full shares of Common Stock issuable upon conversion, in the name or names and to the address or addresses specified in the Conversion Notice, subject to any such restrictions on transferability, and (ii) a check in payment for any fractional shares pursuant to Section 6.8. The Corporation shall cancel the certificate or certificates for Series A Preferred upon the surrender thereof and shall execute and deliver a new certificate for Series A Preferred, representing the balance, if any, of the number of shares evidenced by such certificate or certificates not so converted. Each Conversion Notice pursuant hereto shall constitute a contract between the holder of shares of Series A Preferred and the Corporation, whereby the holder of such shares shall be deemed to subscribe for the amount of Common Stock which he shall be entitled to receive upon such conversion and whereby the Corporation shall be deemed to agree that the surrender of the certificate or certificates therefore shall constitute full payment of such subscription for Common Stock to be issued upon such conversion.

6.5.3. A conversion shall be deemed to have been effected at the close of business on the date on which the Conversion Notice shall have been received by the Corporation and the certificate or certificates for Series A Preferred shall have been surrendered; whereupon the holder thereof shall cease to be a stockholder with respect thereto and all rights whatsoever with respect to such shares shall terminate (except the rights of the holder to receive shares of Common Stock and cash in respect of fractional shares), and the person or persons in whose name any certificate or certificates for Common Stock are issuable upon such conversion shall be deemed to have become the holder of record of the shares represented thereby on such date.

6.5.4. The Corporation shall not sell or issue shares of Common Stock, or rights, options, warrants or convertible securities containing the right to subscribe for or purchase shares of Common Stock, at a price per share of Common Stock (determined in the case of such rights, options, warrants or convertible securities, by dividing (x) the total amount received or receivable by the Corporation in consideration of the sale and issuance of such rights, options, warrants or convertible securities, plus the total consideration payable to the Corporation upon exercise or conversion thereof, by (y) the total number of shares of Common Stock covered by such rights, options, warrants or convertible securities) that is lower than the fair market value thereof as determined by the Board of Directors (the "Fair Value") immediately prior to such sale or issuance, unless the Board of Directors determines that such sale or issuance is in the best interest of the Corporation.

6.5.5. The Conversion Price shall be subject to adjustment from time to time as follows:

(a) In the event the Corporation (1) declares a dividend on the Common Stock in shares of its capital stock, (2) subdivides the outstanding shares of the Common Stock into a larger number of shares, (3) combines the outstanding shares of the Common Stock into a smaller number of shares, or (4) issues by reclassification of the Common Stock any shares of its capital stock (including any reclassification in connection with a consolidation or merger in which the Corporation is the continuing corporation), then the Conversion Price in effect on the record date for such dividend or on the effective date of such subdivision, combination or reclassification shall be proportionately adjusted so that the holder of any shares of Series A Preferred surrendered for conversion after such date shall be entitled to receive the kind and amount of shares which such holder would have owned or have been entitled to receive had such shares of Series A Preferred been converted immediately prior to such date. Such adjustment shall be made successively whenever any event listed above shall occur. If, as a result of an adjustment made pursuant to this Section 6.5.5(a) the holder of any shares of Series A Preferred thereafter surrendered for conversion shall become entitled to receive shares of two or more classes of capital stock or shares of Common Stock and other capital stock of the Corporation, the Board of Directors shall determine the allocation of the adjusted Conversion Price between shares of such classes of capital stock or shares of Common Stock and other capital stock.

(b) In the event the Corporation distributes to its Common Stockholders any of its assets (excluding cash dividends or distributions out of earnings subsequent to the date hereof) or debt securities or any rights, warrants or options to purchase securities of the Corporation, the Conversion Price shall be adjusted, effective at the opening of business on the date following the record date for the distribution, in accordance with the following formula:

$$c1 - c + M/M-F$$

where

c1 - the adjusted Conversion Price.
c - the Conversion Price in effect on the data immediately preceding the record date for the distribution.
M - the Fair Value per share of Common Stock on the record date for the distribution.
F - the Fair Value on the record date for the distribution of the portion of the assets, debt securities, rights, warrants or options no distributed applicable to one share of Common Stock.

(c) The Corporation shall have the right, at any time, voluntarily to decrease the Conversion Price then in effect by such amount and for such period or periods of time as the Board of Directors shall determine. In each such event the Corporation shall prepare and deliver to each holder of Series A Preferred a certificate of an executive officer to decrease the conversation Price in accordance with this Section 6.5.5(c) and the amount of such decrease, (2) the period during which such decreased Conversion Price shall be in effect, and (3) that such election is irrevocable during such period. No decrease in the Conversation Price pursuant to the provisions of this subsection shall be deemed to alter or adjust the conversation Price for the purposes of any other subsection of this Section 6.5.

(d) No adjustment in the Conversion Price shall be required unless such adjustment will require a change of any adjustment which, by reasons of this subsection will require a change of any adjustment which, by reasons of this subsection 6.5.5(d) is not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under Section 6.5 shall be made to the nearest cent or to the nearest 100th of a share, as the case may be.

(e) Whenever any adjustment is made in the Conversion Price, the Corporation shall, as soon as reasonably practicable thereafter, prepare a written statement, signed by an executive officer of the Corporation setting forth the adjusted Conversion Price, determined as provided herein, and, in reasonable detail, the facts requiring such adjustment. The Corporation shall mail such statement to all holders of record of outstanding shares of Series A Preferred.

(f) In case of any consolidation or merger of the Corporation in which the Corporation does not survive or any sale of all or substantially all of the Corporation's assets or a substantial reorganization of the Corporation (each, an "Election Event"), there shall be no adjustment of the Conversion Price, but any record holder of Series A preferred may elect, by following the procedures set forth in Section 6.5.2 during such period in the Board of Directors shall determine, to convert such holder's shares of Series A Preferred into the kind and amount of shares of stock and other securities and property which such holder would have been entitled to receive upon such Election Event if such holder had held the Common Stock issuable upon the conversion of such holder's shares of Series A Preferred immediately prior to such Election Event, provided, however, an exercise of conversion under this subsection 6.5.5(f) shall be ineffective in the event the Corporation shall exercise any of its conversion rights under Section 6.5.6.

6.5.6. In case of any Election Event, the Corporation may elect, by giving written notice to the holders of record of the Series A Preferred (the "Election Notice"), to convert all the outstanding Series A preferred into Common Stock effective immediately prior to the consummation of the Election Event, without any action on the part of the stockholders of the Series A Preferred. Upon any such election, each share of Series A Preferred shall be converted into a number of shares of Common Stock equal to the greater of (i) the number of shares of Common Preferred been converted into Common Stock at the Conversion Price in effect pursuant to subsection 6.5.1 immediately prior to the Election Event, or (ii) the number of shares of Common Stock determined by dividing (x) the liquidation preference a share of Series A Preferred would then have been entitled to receive pursuant to Section 6.3 upon a liquidation of the Corporation, by (y) the Fair Value of a share of Common Stock on the day preceding the effective date of the Election Event. Alternatively, upon the occurrence of an Election Event, the Board of Directors may elect to have the Series A Preferred converted into preferred stock of the surviving corporation of substantially equivalent value to such Series A Preferred ("Equivalent Preferred"), as the Board of Directors shall determine, taking into account the Fair Value, liquidation preference and other attributes of the Series A Preferred. Each holder of shares of Series A Preferred shall cease to be a holder of Series A Preferred for any purpose as of the date specified in the Election Notice, notwithstanding a certificate or certificates for Series A Preferred shall not have been surrendered for cancellation, and all rights whatsoever with respect to such shares shall terminate, except the rights of the holder to receive Common Stock or Equivalent Preferred upon compliance with the procedures specified in the Election Notice.

6.5.7. The Corporation shall at all times reserve and keep available out of authorized Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred, the full number of shares of Common Stock issuable upon conversion or all Series A preferred at any time outstanding.

6.6. Optional Redemption.

6.6.1. Shares of Series A Preferred shall be redeemable, at the Corporation's option, in whole or in part, at any time and from time to time in the event either (i) the Corporation completed an initial public offering of the Common Stock at a price to the public of at least $2.50 per share or (ii) after completing an initial public offering of the common Stock at a price to the public of less than $2.50 per share, the average closing bid price of the Common Stock is at least $3.75 per share for any 30 consecutive trading days ending within 15 days prior to the date on which the Corporation gives notice or redemption of shares of Series A Preferred (the "Redemption Notice"). The redemption price shall be $2.50 per share plus a sum equal to the accrued but unpaid dividends on the Series A Preferred (the "Redemption Price").

6.6.2. In the event that at any time less than all of the Series A Preferred outstanding is to be redeemed, the Board of Directors shall determine the shares to be redeemed by lot or pro rata or by any other means the Board of Directors deems equitable.

6.6.3. The Redemption Notice shall be given by the Corporation to the holders of record of the shares to be redeemed, at their respective addresses on the books of the Corporation, not less than 15 nor more than 75 days prior to the date fixed for redemption by the Board of Directors (the "Redemption Date"). Redemption Data may be fixed as of the date of, the completion of an initial public offering of Common Stock under clause (i) of Section 6.6.1. If less than all the shares of Series A Preferred owned by any holder are then to be redeemed, the Redemption Notice shall also specify the number of shares thereof which are to be redeemed and the numbers of the certificates representing such shares. If the Redemption Notice shall have been duly mailed and if, on or before the Redemption Date, all funds necessary for such redemption shall have been set aside by the Corporation in trust for the account of the holders of the Series A Preferred to be redeemed, so as to be available therefore, then, from and after the mailing of the Redemption Notice, notwithstanding that any certificate for shares of Series A Preferred so called for redemption shall not have been surrendered for cancellation, all rights in or with respect to such shares shall terminate except the right of the holder to (i) receive the Redemption Price, without interest, upon compliance with the procedures specified in the Redemption Notice, or (ii) convert such shares of Series A Preferred into Common Stock pursuant to Section 6.5, not later than the fourth business day preceding the Redemption Date.

6.6.4. The prices per share of Common Stock referred to in Section 6.6.1 shall be subject to proportional adjustment in accordance with changes in the outstanding shares of Common Stock resulting from any of the events listed in Section 6.5.5.

6.6.5. The Redemption Price specified in subsection 6.6.1 shall be subject to proportional adjustment in accordance with changes in the outstanding number of shares of Series A Preferred resulting from reclassifications or capital reorganizations (including reclassifications in connection with consolidations or mergers in which the Corporation is the continuing corporation), but excluding issuances of Additional Shares pursuant to subsection 6.2.2.

6.7. Status of Reacquired Shares. The shares of Series A Preferred which have been issued and reacquired in any manner by the Corporation shall have the status of authorized and unissued shares of Preferred Stock and may be reclassified and reissued as a part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

6.8. No Fractional Shares. The Corporation shall not be required to issue fractional shares of Common Stock upon any conversion of Series A Preferred but shall pay in lieu thereof, as soon as practicable after the date the Series A Preferred is surrendered for conversion in accordance with the provisions hereof, an amount in cash equal to the same fraction of the Fair Value of a full share of Common Stock.

6.9. Determination of the Board of Directors. Whenever this Certificate of Incorporation requires a determination to be made by the Board of Directors, such determination shall be conclusive and shall be set forth in a Board of Directors resolution.

6.10. Notices. Any notice required by these provisions to be given to the holders of Series A Preferred shall be deemed given on the second business day after mailing, first class mail postage prepaid, or on the day of delivery if sent by overnight courier, in each instance in an envelope addressed to each holder of record of Series A Preferred at such holder's address appearing on the books of the Corporation.

ARTICLE VII
SERIES C PREFERRED STOCK

7.1. Designation. A total of Five Hundred Thousand (500,000) shares of the Preferred Stock shall be designated the "Series C Convertible Preferred Stock." As used herein, the term "Preferred Stock" used without reference to the Series C Convertible Preferred Stock shall mean the shares of Preferred Stock, without distinction as to series, except as otherwise expressly provided for herein. All other capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in Section 7.10 hereof.

7.2. Dividends.

7.2.1. Accrual and Payment of Dividends. The holders of shares of Series C Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Company, out of the assets of the Company legally available therefor, prior and in preference to any declaration or payment of any dividend on the Common Stock or any other class or series of capital stock of the Company ranking junior to the Series C Convertible Preferred Stock with respect to the payment of dividends, and subject to the rights to dividends of any class or series of Preferred Stock ranking senior or on parity with the Series C Convertible Preferred Stock with respect to dividends, cumulative cash dividends at the rate per share equal to two percent (2%) per annum of the Original Series C Purchase Price (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) of each share of Series C Convertible Preferred Stock then outstanding. Such dividends shall accrue from day to day, whether or not earned or declared until paid. Such dividends shall be cumulative so that if such dividends in respect of any dividend period shall not have been paid or declared and set apart for all shares of Series C Convertible Preferred Stock at the time outstanding, the deficiency shall be fully paid on or declared and set apart for such shares before the Company makes any distribution to the holders of the Common Stock or any other class or series of capital stock of the Company ranking junior to the Series C Convertible Preferred Stock with respect to the payment of dividends.

7.2.2. Other Dividends. Whenever the Company declares a dividend on its Common Stock, the holders of the Series C Convertible Preferred Stock shall be entitled to receive dividends in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

7.3. Liquidation Rights.

7.3.1. Treatment at Liquidation, Dissolution or Winding Up. In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or in the event of its insolvency, distributions to the stockholders of the Company shall be made in the following manner:

(a) First, before any distribution or payment is made to any holders of Common Stock or any other class or series of capital stock of the Company, the holders of Series C Convertible Preferred Stock shall be entitled to be paid first out of the assets of the Company available for distribution to holders of the Company's capital stock of all classes and series, whether such assets are capital, surplus or earnings (collectively, "Available Assets"), an amount per share equal to the Series C Preferential Amount.

(b) After payment of the Series C Preferential Amount to all holders of the Series C Convertible Preferred Stock and payment of any other preference amounts to the holders of any other class or series of Preferred Stock entitled to a liquidation preference, the entire remaining Available Assets, if any, shall be distributed among the holders of Common Stock, Series C Convertible Preferred Stock and any other class or series of Preferred Stock entitled to participate with the Common Stock in a liquidating distribution, pro rata in proportion to the shares of Common Stock then held by them and the shares of Common Stock which they then have the right to acquire upon conversion of such shares of Preferred Stock held by them (such participation amount per share to be received by the holders of the Series C Convertible Preferred Stock, together with the Series C Preferential Amount, the "Series C Liquidation Amount").

(c) Written notice of any liquidation, dissolution or winding up of the Company, stating the payment date, the amount of the Series C Preferential Amount, the amount of the Series C Liquidation Amount and the place where said Series C Liquidation Amount shall be payable, shall be given to the holders of record of Series C Convertible Preferred Stock not less than 5 days prior to the consummation of such liquidation, dissolution or winding up, in accordance with the provisions of Section 7.7.

7.3.2. Treatment of Reorganization, Consolidation, Merger or Sale of Assets. Any Change of Control Event, shall be deemed, for the purposes of this Section 7.3.2, to be a liquidation, dissolution and winding up of the Company, in which event the Series C Liquidation Amount to which each such holder is entitled shall be calculated based upon the fair market value (as reasonably determined in good faith by the Board of Directors of the Company) of whatever property (including any securities) is to be received by the Company or its stockholders in respect of such Change of Control Event.

7.3.3. Distributions Other than Cash. Whenever the distribution provided for in this Section 7.3 shall be payable in whole or in part in property other than cash, the value of any property distributed shall be the fair market value of such property as reasonably determined in good faith by the Board of Directors of the Company. All distributions of property other than cash made hereunder shall be made, to the maximum extent possible, pro rata with respect to each series and class of Preferred Stock and Common Stock in accordance with the liquidation amounts payable with respect to each such series and class.

7.4. Voting Power.

7.4.1. General. Except as otherwise expressly provided elsewhere in the Certificate of Incorporation (as in existence on the date hereof or as amended with the requisite approval of the holders of Series C Convertible Preferred Stock) or as otherwise required by law, (a) each holder of Series C Convertible Preferred Stock shall be entitled to vote on all matters submitted to a vote of the stockholders of the Company and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series C Convertible Preferred Stock could be converted, pursuant to the provisions of Section 7.5 hereof, at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited, and (b) the holders of shares of Preferred Stock and Common Stock shall vote together (or tender written consents in lieu of a vote) as a single class on all matters submitted to the stockholders of the Company.

7.4.2. Majority Holders. Whenever in this Article VII, the vote, approval or written consent of the Majority Holders (or the holders of any other specified percentage of the shares of Series C Convertible Preferred Stock) is required, such vote shall be taken, any approval shall be given or any written consent shall be tendered by the holders of the Series C Convertible Preferred Stock voting, approving or consenting together as a single class, with each share of Series C Convertible Preferred Stock being entitled to one vote in each instance.

7.4.3. Restriction and Limitation on Company Action. As long as any of the Series C Convertible Preferred Stock is outstanding, the holders of Series C Convertible Preferred Stock shall vote as a separate voting group on, and the affirmative vote of the Majority Holders shall be required to authorize, any action by the Company which would:

(a) In any manner authorize, create, amend or issue any class or series of capital stock of the Company ranking, either as to payment of dividends, distribution of assets upon liquidation or otherwise, or redemption, prior to or on parity with the Series C Convertible Preferred Stock.

(b) Increase the authorized number of shares of Series C Convertible Preferred Stock or issue additional shares of Series C Convertible Preferred Stock.

(c) In any manner adversely alter or change the designations or the powers, preferences or rights or qualifications, limitations or restrictions of the Series C Convertible Preferred Stock (including, without limitation, liquidation preference provisions).

(d) Reclassify the Common Stock, or any other class or series of capital stock of the Company junior to the Series C Convertible Preferred Stock into capital stock of the Company of any class or series ranking, either as to payment of dividends, distribution of assets upon liquidation or otherwise, or redemption, prior to or on a parity with the Series C Convertible Preferred Stock.

7.5. Conversion Rights. The holders of the Series C Convertible Preferred Stock shall have the following rights with respect to the conversion of such shares into shares of Common Stock:

7.5.1. Voluntary Conversion.

(a) Subject to and in compliance with the provisions of this Section 7.5, each and any outstanding share of the Series C Convertible Preferred Stock (together with all accrued but unpaid dividends thereon) shall be convertible, at the option of the holder thereof, at any time and from time to time, into such number of fully-paid and non-assessable shares of Common Stock as is determined pursuant to Section 7.5.3 below.

(b) To exercise this conversion right, a holder of Series C Convertible Preferred Stock shall surrender the certificate or certificates representing the shares being converted at the principal office of the Company, together with written notice to the Company that such holder elects to convert such shares (the "Conversion Notice"); provided, however, that in the event such certificate or certificates have been lost, stolen or destroyed, then the holder electing to effect such a conversion shall so certify to the Company in its Conversion Notice, and shall further execute an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. The Conversion Notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock issuable upon such conversion shall be issued. The certificate or certificates for shares of Series C Convertible Preferred Stock surrendered for conversion shall be accompanied by proper assignment thereof to the Company or in blank. As promptly as practicable after the Series C Conversion Date, the Company shall issue and deliver to the holder of the shares of Series C Convertible Preferred Stock being converted, or on its written order, at the expense of the Company: (i) a certificate or certificates, as such holder may request, representing the number of whole shares of Common Stock issuable upon the conversion of such shares of Series C Convertible Preferred Stock in accordance with the provisions of this Section 7.5, (ii) if some but not all of the shares of Series C Convertible Preferred Stock represented by a certificate surrendered by such holder are converted, a new certificate or certificates representing the number of shares of Series C Convertible Preferred Stock which were not converted, and (iii) if necessary pursuant to the provisions of Section 7.5.4, cash in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such conversion shall be deemed to have been effected immediately prior to the close of business on the Series C Conversion Date, and at such time the rights of the holder as holder of the converted shares of Series C Convertible Preferred Stock shall cease and the person(s) in whose name(s) any certificate(s) for shares of Common Stock shall be issuable upon such conversion (subject to compliance with the applicable federal and state securities laws) shall be deemed to have become the holder(s) of record of the shares of Common Stock represented thereby.

7.5.2. Automatic Conversion.

(a) Immediately upon the earlier to occur of (i) the consummation of the Company's first Qualified Offering (ii) the satisfaction of the Price Condition or (iii) the approval, set forth in a written notice to the Company, of the holders of at least sixty percent (60%) of the outstanding shares of Series C Convertible Preferred Stock of an election to convert all outstanding shares of Series C Convertible Preferred Stock to Common Stock (as the case may be, the "Conversion Event"), all outstanding shares of Series C Convertible Preferred Stock (together with any accrued but unpaid dividends thereon) shall be converted automatically into the number of fully-paid, non-assessable shares of Common Stock as is determined pursuant to Section 7.5.3 below as of the date of the Conversion Event, without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company.

(b) Promptly upon the occurrence of the Conversion Event, the Company shall deliver written notice thereof to the holders of the Series C Convertible Preferred Stock in accordance with the provisions of Section 7.6.2, and such holders shall surrender the certificates representing such shares at the principal office of the Company, which certificates shall be accompanied by proper assignment thereof to the Company or in blank. As promptly as practicable after the Series C Conversion Date, the Company shall issue and deliver to each holder of shares of Series C Convertible Preferred Stock so converted, at the expense of the Company: (i) a certificate representing the number of whole shares of Common Stock issuable upon the conversion of such shares of Series C Convertible Preferred Stock in accordance with the provisions of this Section 7.5, and (ii) if necessary pursuant to the provisions of Section 7.5.4, cash in respect of any fraction of a share of Common Stock otherwise issuable upon such conversion; provided, however, that the Company shall not be obligated to issue and deliver the foregoing unless certificates evidencing the shares of Series C Convertible Preferred Stock so converted are either delivered to the Company or the holder thereof certifies to the Company that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Notwithstanding the failure by any holder of the Series C Convertible Preferred Stock to deliver the certificates representing such holder's shares as required by this Section 7.5.2(b), such conversion shall be deemed to have been effected immediately prior to the close of business on the Series C Conversion Date, and at such time the rights of each holder as holder of the Series C Convertible Preferred Stock shall cease and such holder shall be deemed to have become the holder of record of the shares of Common Stock issuable upon the conversion of such holder's shares of Series C Convertible Preferred Stock.

7.5.3. Series C Conversion Rate. The number of shares of Common Stock that a holder of Series C Convertible Preferred Stock shall be entitled to receive upon conversion pursuant to this Section 7.5 shall be the product obtained by multiplying (a) the number of shares of Series C Convertible Preferred Stock being converted by such holder at any time, by (b) the quotient obtained by dividing (i) the Original Series C Purchase Price (subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) by (ii) the Series C Conversion Value then in effect.

7.5.4. Cash in Lieu of Fractional Shares. No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon the conversion of shares of Series C Convertible Preferred Stock. Instead of any fractional shares of Common Stock which would otherwise be issuable upon conversion of Series C Convertible Preferred Stock, the Company shall pay to the holder of the shares of Series C Convertible Preferred Stock which were converted a cash adjustment in respect of such fractional shares in an amount equal

to the same fraction of the market price per share of the Common Stock at the close of business on the Series C Conversion Date. The determination as to whether or not any fractional shares are issuable shall be based upon the aggregate number of shares or fractional shares of Series C Convertible Preferred Stock being converted at any one time by any holder thereof, not upon each share or fractional share of Series C Convertible Preferred Stock being converted.

7.5.5. Reservation of Common Stock. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Series C Convertible Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series C Convertible Preferred Stock (including any shares of Series C Convertible Preferred Stock issuable upon the exercise, conversion or exchange of any options, warrants, purchase rights or convertible securities), and, if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series C Convertible Preferred Stock (including any shares of Series C Convertible Preferred Stock issuable upon the exercise, conversion or exchange of any options, warrants, purchase rights or convertible securities), the Company shall take all commercially reasonable actions as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

7.5.6. Issue Taxes. The Company shall pay all issue taxes (other than any taxes measured by the income of any person other than the Company), if any, incurred in respect of the issuance of shares of Common Stock upon a conversion of shares of Series C Convertible Preferred Stock. If a holder of shares surrendered for conversion specifies that the shares of Common Stock to be issued upon conversion are to be issued in a name or names other than the name or names in which such surrendered shares stand (which shall be subject to compliance with the applicable provisions of federal and state securities laws), the Company shall not be required to pay any transfer or other taxes incurred by reason of the issuance of such shares of Common Stock to the name of another, and if the appropriate transfer taxes shall not have been paid to the Company or the transfer agent for the Series C Convertible Preferred Stock at the time of surrender of the shares involved, the shares of Common Stock issued upon conversion thereof may be registered in the name or names in which the surrendered shares were registered without any liability to the Company, despite the instructions to the contrary.

7.6. Notices.

7.6.1. Notices of Record Date. In the event of (a) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividends or other distribution, or any right to subscribe for, purchase or otherwise acquire any Equity Securities or other property; (b) any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company, or any sale or disposition of all or substantially all of the assets of the Company to any other person or persons; or (c) any voluntary or involuntary dissolution, liquidation, winding up or bankruptcy of the Company (each, a "Record Event"), then and in each such Record Event the Company shall give each holder of Series C Convertible Preferred Stock a notice specifying (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right and a description of such dividend, distribution or right; (ii) the date on which any such reorganization, reclassification, recapitalization, sale, disposition, merger, consolidation, dissolution, liquidation, winding up or bankruptcy is expected to become effective; and (iii) the time, if any, that is to be fixed as to when the holders of record of Common Stock or other Equity Securities shall be entitled to exchange their shares of Common Stock or other Equity Securities for cash, securities or other property deliverable upon such reorganization, reclassification, recapitalization, sale, disposition, merger, consolidation, dissolution, liquidation, winding up or bankruptcy. In each such Record Event, the notice required by this Section 7.6.1 shall be delivered at least 10 days prior to the date specified in such notice.

7.7. Notices in General. Whenever a notice is required to be given to a holder of shares of Series C Convertible Preferred Stock pursuant to this Article VII (including, without limitation, any notice required by Section 7.6.1 above), such notice shall be delivered in person, sent by nationally recognized overnight delivery service specifying next day delivery, mailed by certified or registered mail, postage prepaid and return receipt requested, or sent by telecopier, telex, facsimile or similar transmission, to such holder's address of record as shown on the books of the Company.

7.8. Cancellation of Series C Convertible Preferred Stock. Any shares of Series C Convertible Preferred Stock that are acquired by the Company by reason of redemption, repurchase or otherwise or are converted shall be cancelled and returned to the status of authorized but unissued shares of undesignated Preferred Stock and all rights to receive dividends thereon shall cease to accrue.

7.9. Preemptive Rights.

7.9.1. Pro Rata Share. Solely during the period commencing on the Original Series C Issuance Date and terminating on the eighteen month anniversary thereof (the "Preemptive Period"), each holder of Series C Convertible Preferred Stock is hereby expressly granted a preemptive right to purchase up to such holder's pro rata share of all Equity Securities that the Company may from time to time propose to sell, issue or exchange, other than the Excluded Securities. The pro rata share of each holder of Series C Convertible Preferred Stock is equal to the ratio of (a) the number of Equity Securities then held by such holder to (b) the total amount of Equity Securities then issued (determined on an Fully-Diluted Basis).

7.9.2. Notice and Purchase Right. If the Company proposes, agrees or obligates itself to issue, sell or exchange any Equity Securities, other than the Excluded Securities, during the Preemptive Period, it will give each holder of Series C Convertible Preferred Stock written notice of its intention, describing the Equity Securities, the price and the other terms and conditions, if any, upon which the Company proposes, agrees or obligates itself to issue, sell or exchange the same. Each holder of Series C Convertible Preferred Stock will have 10 business days from the giving of such notice to agree to purchase its pro rata share of the Equity Securities for the price and upon the terms and subject to the conditions specified in the notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased.

7.9.3. Company Right to Sell. If any holder of Series C Convertible Preferred Stock shall fail to exercise in full the foregoing preemptive right, the Company will have 90 days thereafter to sell the Equity Securities that were not purchased by such holder of Series C Convertible Preferred Stock pursuant hereto, at a price and upon terms and conditions no more favorable to the purchasers thereof than specified in the Company's notice to the holder of Series C Convertible Preferred Stock pursuant to Section 8.2.

7.10. Definitions and Constructions. As used in this Article VII, the following terms shall have the following respective meanings:

7.10.1. "Affiliates" shall mean any person directly or indirectly controlled by, controlling or under common control with another person, where the term "control," for purposes of this definition, means the power to direct the management of the person in question.

7.10.2. "Certificate of Incorporation" shall mean this Amended and Restated Certificate of Incorporation, as amended from time to time.

7.10.3. "Change of Control Event" shall mean (a) a consolidation or merger of the Company with or into any person that results in the holders of the voting securities of the Company immediately following the issuance of the Series C Convertible Preferred Stock on the Original Series C Issuance Date (together with their respective Affiliates) holding or having the right to direct the voting of fifty percent (50%) or less of the total outstanding voting securities of the Company or such other surviving entity immediately following such Change of Control Event, (b) a sale or other disposition, in one transaction or a series of related transactions, of all or substantially all of the assets of the Company, or (c) the sale or issuance, in one transaction or a series of related transactions, by the Company or any of its stockholders of any Equity Securities to any person such that, following the consummation of such transaction(s), such person (together with its Affiliates) would own or have the right to acquire greater than fifty percent (50%) of the outstanding shares of Common Stock (calculated on a Fully-Diluted Basis). However, a bona fide arms-length equity financing for cash in which the Company issues securities to investors to provide additional capital to the Company for its operations shall not be considered a Change of Control Event no matter the level of ownership interest of such investors after such financing.

7.10.4. "Equity Securities" shall mean (a) any Common Stock or other capital stock of the Company, (b) any security convertible, with or without consideration, into any Common Stock or other capital stock of the Company (including any option, warrant or other right to subscribe for or purchase such a security), (c) any security carrying any option, warrant or other right to subscribe for or purchase any Common Stock or other capital stock of the Company, or (d) any such option, warrant or other right.

7.10.5. "Excluded Securities" shall mean (a) Equity Securities that are issued to employees, officers, directors or consultants of the Company or any subsidiary thereof which are outstanding as of the first Original Series C Issuance Date or which may be approved by the Company's board of directors or pursuant to any incentive plan (including any incentive compensation or stock option plan) which is approved by the board of directors of the Company; (b) Equity Securities issued in connection with any stock split, stock dividend or recapitalization by the Company which is approved by the board of directors of the Company; (c) Equity Securities issued upon conversion of Equity Securities; (d) Equity Securities issued pursuant to any equipment leasing arrangement or a bona fide debt financing which is approved by the board of directors of the Company; (e) Equity Securities issued pursuant to a merger or consolidation of the Company or any of its subsidiaries with or into another person or other acquisition by the Company or any of its subsidiaries of all or part of the assets, business or capital stock of another person, which transaction is approved by the board of directors of the Company; (f) the issuance of Equity Securities in transactions with third parties unrelated to the Company, upon reasonable commercial terms and relating to the manufacture, supply or distribution of products to or by the Company, technology licensing, research and development and other transactions that are for a purpose other than raising capital which transaction is approved by the board of directors of the Company, or (g) Equity Securities that are issued in connection with any registered public offering of the Company.

7.10.6. "Fully-Diluted Basis" shall include, when used to refer to the number of shares of Common Stock then outstanding, (i) all shares of Common Stock that are issued and outstanding at such time, (ii) all shares of Common Stock that are issuable upon the conversion, exercise or exchange of all other Equity Securities that are issued and outstanding at such time and that are, directly or indirectly, convertible into or exercisable or exchangeable for shares of Common Stock, regardless of whether such Equity Securities are then convertible, exercisable or exchangeable, plus (iii) all Equity Securities that have been reserved by the Company for issuance under any incentive compensation or stock option plan of the Company which are authorized but not yet issued.

7.10.7. "Majority Holders" shall mean the holders of a majority of the outstanding shares of the Series C Convertible Preferred Stock.

7.10.8. "Original Series C Issuance Date" shall mean with respect to each share of Series C Convertible Preferred Stock, the date upon which such share was originally issued by the Company.

7.10.9. “Original Series C Purchase Price” shall mean $77.00.

7.10.10. “Parent Per Share Stock Valuation” shall mean $0.4984.

7.10.11. “Person” shall mean any individual, partnership, limited liability company, corporation, business trust, trust, unincorporated association, joint venture or other entity of whatever nature.

7.10.12. “Price Condition” shall be satisfied if the price at which one share of the Company’s Common Stock trades on the American Stock Exchange, the New York Stock Exchange or the NASDAQ National Market, whichever is applicable, as published in the Eastern Edition of The Wall Street Journal, for ten (10) consecutive trading days equals or exceeds 7.69 times the Parent Per Share Stock Valuation (subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event).

7.10.13. “Qualified Offering” shall mean a sale by the Company of Equity Securities, in any six-month period, in which (i) the aggregate proceeds to the Company equal or exceed $30,000,000, net of underwriting discounts, offering expenses and commissions, and (ii) the price per share of such Common Stock, net of underwriting discounts, offering expenses and commissions, equals or exceeds 3.85 times the Parent Per Share Stock Valuation (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event.

7.10.14. “Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

7.10.15. “Series C Conversion Date” shall mean, as the case may be, (a) with respect to any shares of Series C Convertible Preferred Stock voluntarily converted into Common Stock pursuant to Section 7.5.1, the date on which the Company receives a Conversion Notice relating to such shares, together with the certificate or certificates representing such shares, or (b) with respect to all shares of Series C Convertible Preferred Stock automatically converted into Common Stock pursuant to Section 7.5.2, the date of the Conversion Event.

7.10.16. “Series C Conversion Value” shall initially equal the Original Series C Purchase Price divided by one hundred (100), but shall be subject to adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event.

7.10.17. “Series C Preferential Amount” shall mean, as of any given date, the Original Series C Purchase Price (subject to equitable adjustment in the event of any stock split, stock dividend, combination, recapitalization, reorganization, reclassification or other similar event) plus any accrued but unpaid dividends on each such share of Series C Convertible Preferred Stock as of such date.

7.11. Construction. Whenever the context requires, the gender of any word used in this Article VIII includes the masculine, feminine or neuter, and the number of any word includes the singular or plural. Unless the context otherwise requires, all references to sections refer to sections of this Article VIII, and all references to schedules are to schedules attached hereto, each of which is made a part hereof for all purposes.

ARTICLE VIII
BOARD OF DIRECTORS

8.1. Management. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or this Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

8.2. Number of Directors. The number of directors which shall constitute the Board of Directors shall be fixed from time to time by resolution adopted by the affirmative vote a majority of the total number of directors then in office.

8.3. Newly-Created Directorships and Vacancies. Newly created directorships resulting from any increase in the number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or any other cause may be filled, so long as there is at least one remaining director, only by the Board of Directors, provided that a quorum is then in office and present, or by a majority of the directors then in office, if less than a quorum is then in office, or by the sole remaining director. Directors elected to fill a newly created directorship or other vacancies shall hold office until such director’s successor has been duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

8.4. Removal of Directors. Any director or the entire board of directors may be removed from the office by the affirmative vote of the holders of least a majority of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

8.5. Written Ballot Not Required. Elections of directors need not be by written ballot unless the Amended and Restated Bylaws of the Corporation shall otherwise provide.

ARTICLE IX
EXCULPATION AND INDEMNIFICATION

9.1. Exculpation. To the fullest extent permitted by the DGCL, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability (a) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL, or (d) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended after the filing of the Certificate of Incorporation of which this Section 9.1 is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this Section 9.1 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

9.2. Indemnification. The Corporation shall indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. The Corporation may indemnify, in the manner and to the fullest extent permitted by the DGCL, any person (or the estate of any person) who is or was a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the Corporation and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. To the fullest extent permitted by the DGCL, the indemnification provided herein shall include expenses (including, without limitation, attorneys' fees), judgments, fines and amounts paid in settlement and, in the manner provided by the DGCL, any such expenses may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the Corporation to indemnify any other person for any such expenses to the fullest extent permitted by the DGCL. Expenses incurred by any such director, officer, employee or agent in defending any such action, suit or proceeding may be advanced by the Corporation prior to the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified as authorized by the DGCL and this Article IX.

9.3. Insurance. The Corporation may, to the fullest extent permitted by the DGCL, purchase and maintain insurance on behalf of any director, officer, employee or agent against any liability which may be asserted against such person.

9.4. Non-Exclusivity. The indemnification provided herein shall not be deemed exclusive of any other rights to which any person seeking indemnification from the Corporation may be entitled under the Corporation's Bylaws, any agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

ARTICLE X
INSOLVENCY, RECEIVERS AND TRUSTEES

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the DGCL order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE XI
CONSIDERATION FOR SHARES; ASSESSABILITY

The Corporation is authorized to sell and issue, from time to time, all or any portion of the capital stock of the Corporation which may have been authorized but not issued, to such persons and for such lawful consideration (not less than the par value thereof), and upon such terms and in such manner as it may determine. Any and all shares so issued, the full consideration for which shall have been paid or delivered, shall be fully paid and non-assessable, and the holders thereof shall not be liable to the Corporation or its creditors for any further payment thereon.

ARTICLE XII
RIGHT TO AMEND

12.1.1. General. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

12.2. Amendment of Specified Provisions. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of the capital stock required by law or this Certificate of Incorporation, the affirmative vote of the holders of at least two-thirds (66 2/3%) of the voting power of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Article IX hereof or this Article XII, or any provisions thereof or hereof, or to adopt any provision inconsistent with Article IX hereof or this Article XII, unless such alteration, amendment, repeal or adoption shall be approved by a majority of the directors then in office.

THE UNDERSIGNED, being the Chief Executive Officer of the Corporation, for purpose of amended and restating the Corporation's Certificate of Incorporation pursuant to the DGCL, has executed this certificate this 8th day of June 2007.

OPKO Health, Inc.
By: /s/ Phillip Frost, M.D.
Name: Phillip Frost, M.D.
Title: Chief Executive Officer

CERTIFICATIONS

I, Phillip Frost, certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of OPKO Health, 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: May 7, 2024

/s/ Phillip Frost, M.D.
Phillip Frost, M.D.
Chief Executive Officer

CERTIFICATIONS

I, Adam Logal, certify that:

(1) I have reviewed this Quarterly Report on Form 10-Q of OPKO Health, 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

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

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

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

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

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

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

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

Date: May 7, 2024

/s/ Adam Logal
Adam Logal
Senior Vice President and Chief Financial Officer

Exhibit 32.1

Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant Section 906 of the Sarbanes-Oxley Act of 2002, I, Phillip Frost, Chief Executive Officer of OPKO Health, Inc. (the "Company"), hereby certify that:

The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2024 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 7, 2024

/s/ Phillip Frost, M.D.
Phillip Frost, M.D.
Chief Executive Officer

Exhibit 32.2

Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant Section 906 of the Sarbanes-Oxley Act of 2002, I, Adam Logal, Chief Financial Officer of OPKO Health, Inc. (the "Company"), hereby certify that:

The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2024 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 7, 2024

/s/ Adam Logal
Adam Logal
Senior Vice President and Chief Financial Officer