

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

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 19, 2012

**THERAPEUTICSMD, INC.**

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation)

000-16731

(Commission File Number)

87-0233535

(IRS Employer Identification No.)

**951 Broken Sound Parkway NW, Suite 320, Boca Raton, FL 33487**

(Address of principal executive offices and Zip Code)

**(561) 961-1911**

(Registrant's telephone number, including area code)

**N/A**

(Former Name and Address of Registrant)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a -12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d -2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e -4(c))

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## **SECTION 1 – REGISTRANT'S BUSINESS AND OPERATIONS**

### **Item 1.01 Entry into a Material Definitive Agreement**

Information called for by this item is contained in Item 2.03 below, which item is incorporated herein by reference.

## **SECTION 2 – FINANCIAL INFORMATION**

### **Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

On June 19, 2012, TherapeuticsMD, Inc. (the "Company") sold and issued Secured Promissory Notes (the "Notes") to Steven Johnson ("Johnson") and Plato & Associates, LLC ("Plato") in the principal base amount of \$2,347,128.06 and \$2,344,719.26 respectively (the "Principal Base Amount(s)") pursuant to the terms of that certain Note Purchase Agreement (the "Note Purchase Agreement") of even date therewith. As consideration for the Notes, Johnson and Plato surrendered a portion of a promissory note previously issued by the Company in the aggregate amount of \$1,347,128.06 and \$1,344,719.26, respectively (which sums included principle and interest through June 19, 2012) (collectively known as the "Prior Notes"). As a result of the foregoing the Company received an aggregate of \$2,000,000 of new funding from Johnson and Plato.

The Principal Base Amount of each Note, plus any and all additional advances made to the Company thereafter (the "Aggregated Principal Amount"), together with accrued interest at the annual rate of six percent (6%), is due in one lump sum payment on February 24, 2014 (the "Maturity Date").

As security for the Company's obligations under the Note Purchase Agreement and the Notes, the Company entered into a Security Agreement of even date therewith and pledged all of its assets, tangible and intangible, as further described therein.

As an inducement for the Purchasers to lend an aggregate of \$2,000,000 in additional funds to the Company as outlined therein on Schedule I to the Note Purchase Agreement, the Purchasers, and/or assigns, will receive five-year Common Stock Purchase Warrants ("Warrant") to purchase an aggregate of 7,000,000 Shares, which Warrants will contain a cashless exercise provision. Each of Johnson and Plato will receive one Warrant for the purchase of 3,000,000 shares of the Company's Common Stock at an exercise price of \$2.00 per share and one Warrant for the purchase of 500,000 shares at an exercise price of \$3.00 per share. The Warrants shall not be exercisable for the first ninety days from issuance.

The foregoing description of the Note Purchase Agreement, the Notes, the Security Agreement, and the Warrants is qualified, in its entirety, by reference to each agreement, copies of which are attached as exhibits to this Current Report on Form 8-K and are incorporated by reference in response to this Item 2.03.

## **SECTION 3 – SECURITIES AND TRADING MARKETS**

### **Item 3.02 Unregistered Sales of Equity Securities**

As previously reported on the Company's Form 10-K for year ended December 31, 2011 filed with the Securities and Exchange Commission (the "Commission") on March 27, 2012, the Company sold two Senior Secured Promissory Notes (the "Secured Notes") in the amount of \$500,000 each and also entered into a Security Agreement under which the Company pledged all of its assets to secure the obligation. The Secured Notes accrued interest at the rate of six percent (6%) per annum, were due on the one (1) year anniversary thereof, and were convertible into shares of the Company's Common Stock at the option of the Company. On June 19, 2012, the Company and the noteholders agreed to convert the Secured Notes, and according to the terms thereof, the principal and interest through June 19, 2012 of \$1,054,647.54 was converted at \$0.38 per share into an aggregate of 2,775,415 shares of the Company's Common Stock. The shares were issued in reliance upon an exemption from the registration provisions of the Securities Act of 1933 due to Section 4(1) of the Act and Rule 144.

On June 19, 2012, Common Stock Purchase Warrants ("Warrants") for the purchase of an aggregate of 8,145,486 shares of the Company's Common Stock (245,486 at an exercise price of \$0.407357 per share and 7,900,000 at an exercise price of \$0.38 per share) were exercised. The purchase price was paid through the surrender of debt in the aggregate of \$3,102,000. The shares were issued in reliance upon an exemption from the registration provisions of the Securities Act of 1933 due to Section 4(1) of the Act and Rule 144.

As described above in Item 2.03 (incorporated herein by reference), on June 19, 2012, the Company issued and sold Notes in the aggregate principal amount of \$4,691,847.32 and Warrants to purchase up to an aggregate of 7,000,000 shares of the Company's Common Stock. In connection with the sale of the Notes and Warrants, the Company relied upon the exemption from registration provided by Regulation D under the Securities Act of 1933, as amended.

## **Section 9 – Financial Statements and Exhibits**

### **ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(d) Exhibits:

Exh. No.	Date	Document
10.0	June 19, 2012	<a href="#">Note Purchase Agreement</a> *
10.1	June 19, 2012	<a href="#">Secured Promissory Note, form of</a> *
10.2	June 19, 2012	<a href="#">Security Agreement</a> *
10.3	June 19, 2012	<a href="#">Common Stock Purchase Warrant, form of</a> *

\* Filed herewith.

## 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 hereunto duly authorized.

Date: June 21, 2012

**THERAPEUTICSMD, INC.**

By: /s/ Robert G. Finizio  
Robert G. Finizio, Chief Executive Officer

**THERAPEUTICSMD, INC.**  
**NOTE PURCHASE AGREEMENT**

This Note Purchase Agreement (this "Agreement") is made by and among TherapeuticsMD, Inc., a Nevada corporation (the "Company"), and each of Plato & Associates, Inc., a Missouri limited liability company and Steven Johnson, a resident of Texas (collectively known as the "Purchasers" or individually as each "Purchaser").

1. THE NOTES AND WARRANTS.

1.1 *Authorization of the Notes and Warrants.* The Company has authorized the sale and issuance of secured promissory notes (the "Notes") in the aggregate amount of \$4,691,847.32 and cashless common stock purchase warrants (the "Warrants") to purchase an aggregate of 7,000,000 shares of the Company's Common Stock (the "Shares"). The Notes shall be substantially in the form attached hereto as Exhibit A and the Warrants shall be substantially in the form attached hereto as Exhibit B.

1.2 *Purchase and Sale of the Notes and Warrants.*

(a) *Purchase and Sales of Notes and Warrants.*

(i) *Purchase of Notes.* Each Purchaser agrees to purchase, and the Company agrees to, severally and not jointly, sell and issue to each Purchaser, a Note in the principal amount set forth opposite each Purchaser's name on the signature page attached hereto. The Notes shall be due on February 24, 2014 (the "Maturity Date").

(ii) *Purchase Price.* The purchase price for the Notes and Warrants to be purchased by the Purchasers hereunder shall be set forth on Schedule I attached hereto (the "Purchase Price").

(iii) *Purchase of Warrants.* As an inducement for the Purchasers to lend additional funds to the Company as outlined herein on Schedule I, the Purchasers, and/or assigns, will receive Warrants to purchase an aggregate of 7,000,000 Shares. Each Purchaser will receive one Warrant for the purchase of 3,000,000 shares with an exercise price of \$2.00 per share and one Warrant for the purchase of 500,000 shares with an exercise price of \$3.00 per share. The Warrants shall terminate on the date that is five (5) years from the date of the issuance of the Notes; however, the Warrants may not be exercised until ninety (90) days after issuance.

(iv) *Security.* In order to induce each Purchaser to extend the credit evidenced by the Notes, the Company has agreed to enter into a Security Agreement of even date herewith and to grant Collateral Agent, for the benefit of itself and the Purchasers, the security interest in the Collateral described in the Security Agreement in the form attached hereto as Exhibit C.

(v) *Closing.* The purchase and sale of the Notes and Warrants shall take place at the offices of the Company at such time and place as the Company and the Purchasers shall mutually agree upon, orally or in writing.

(b) *Form of Payment.* At Closing, each Purchaser shall pay the respective Purchase Price to the Company by check payable to the Company or by wire transfer of immediately available funds (or any combination thereof), and the Company shall deliver to each Purchaser a Note in a principal amount equal to the respective Purchase Price, together with such Warrants issued per the Purchaser's instructions.

This Agreement, the Notes, the Warrants, Security Agreement and the other documents delivered in connection with this Agreement, are referred to hereinafter as the “Transaction Documents”).

2. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company hereby represents and warrants to the Purchasers as follows:

2.1 *Organization and Standing.* The Company is a Nevada corporation duly organized and validly existing under, and by virtue of, the laws of the State of Nevada and is in good standing under such laws.

2.2 *Power.* The Company has all requisite legal power and authority (i) to own and operate its properties and assets and to carry on its business, (ii) to execute and deliver the Transaction Documents, (iii) to sell and issue the Notes and Warrants and (iv) to carry out and perform the provisions of the Transaction Documents.

2.3 *Authorization.* All necessary action on the part of the Company, its officers, and directors necessary for the authorization, execution, and delivery of the Transaction Documents, the performance of all obligations of the Company hereunder and thereunder, and the authorization, issuance, sale and delivery of the Notes and Warrants have been taken or will be taken at or prior to the Closing. This Agreement constitutes, and each Note and Warrant, when executed and delivered by the Company, will constitute valid and binding obligations of the Company, enforceable in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3. REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS. Each Purchaser hereby represents and warrants to the Company, severally and not jointly, as of the applicable closing date, as follows:

3.1 *Binding Obligation.* All action on the part of the Purchaser for the authorization, execution, delivery and performance by the Purchaser of this Agreement has been taken, and this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors’ rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.2 *Accredited Investor.* The Purchaser is an accredited investor within the meaning of Rule 501 of Regulation D prescribed by the Securities and Exchange Commission pursuant to the Securities Act. If other than an individual, the Purchaser also represents the Purchaser has not been organized for the specific purpose of acquiring the Note(s).

3.3 *Investment Experience.* The Purchaser acknowledges that he is able to fend for himself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that he is capable of evaluating the merits and risks of the investment in the Underlying Securities.

3.4 *Investment Intent.* The Purchaser is acquiring the Note for investment for the Purchaser’s own account and not with a view to, or for resale in connection with, any distribution thereof. The Purchaser understands that the neither the Note or the Shares have been registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act that depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

3.5 *Rule 144.* The Purchaser acknowledges that the Note and Warrant(s), and upon exercise of the Warrant(s), the Shares, must be held until subsequently registered under the Securities Act or unless an exemption from such registration is available. The Purchaser is aware of the provisions of Rule 144 promulgated under the Securities Act which permits limited resale of securities purchased in a private placement subject to the satisfaction of certain conditions.

3.6 *Information.* The Purchaser believes he has received all the information he considers necessary or appropriate for deciding whether to purchase the Note and Warrant(s). The Purchaser further represents that such Purchaser has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the Note and Warrant(s) and the business, properties, prospects and financial condition of the Company.

#### 4. MISCELLANEOUS.

4.1 *Waivers and Amendments.* This Agreement and the obligations of the Company and the rights of the Purchasers under this Agreement, the Notes and Warrants may be amended, waived, discharged or terminated (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) with the written consent of the Company and the Purchasers.

4.2 *Governing Law; Venue.* This agreement shall be governed in all respects by the laws of the State of Nevada. Each of the parties hereto hereby consents to the exclusive jurisdiction of: (i) any state courts of the state of Florida and (ii) any federal court located in the state of Florida, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of, or in connection with, this agreement or any of the transactions contemplated hereby. Each party hereby expressly waives any and all rights to bring any suit, action or other proceeding in or before any court or tribunal other than those located in the state of Florida. In addition, each of the parties consent to the service of process by personal service or any manner in which notices may be delivered hereunder in accordance with this agreement.

4.3 *Notices.* All notices and other communications required or permitted under this Agreement shall be in writing and shall be delivered personally by hand or by courier, mailed by United States first-class mail, postage prepaid, sent by facsimile or sent by electronic mail directed (a) if to a Purchaser, at such Purchaser's address, facsimile number or electronic mail address set forth on Schedule A hereto, or at such other address, facsimile number or electronic mail address as such Purchaser may designate by ten (10) days' advance written notice to the Company or (b) if to the Company, to its address, facsimile number or electronic mail set forth on its signature page to this Agreement and directed to the attention of the Chief Executive Officer, or at such other address, facsimile number or electronic mail as the Company may designate by ten (10) days' advance written notice to the Purchasers. All such notices and other communications shall be effective or deemed given upon personal delivery, on the date of mailing, upon confirmation of facsimile transfer or upon delivery to electronic mail address set forth on Schedule A hereto opposite the recipient's name.

4.4 *Purchasers Acting Independently.* Each Purchaser enters into this Agreement independently of the other Purchaser and has negotiated separately with the Company. The Purchasers should not be treated as a single group.

4.5 *Entire Agreement.* This Agreement (including the schedules and exhibits attached hereto) and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof.

4.6 *Severability.* If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

4.7 *Successors and Assigns.* Except as otherwise expressly provided in this Agreement or the Notes, the provisions of this Agreement and the Notes shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

4.8 *Delays or Omissions.* No delay or omission to exercise any right, power, or remedy accruing to the Investor, upon any breach or default of the Company under this Agreement shall impair any such right, power, or remedy of the Investor nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. All remedies, either under this Agreement or by law or otherwise afforded to the Investors, shall be cumulative and not alternative.

4.9 *Titles and Subtitles.* The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

4.10 *Telecopy Execution and Delivery.* A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

4.11 *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

4.12 *Construction.* The language used in this Agreement and the Notes will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

4.13 *Other Interpretive Provisions.* References in this Agreement and each of the other Transaction Documents to any document, instrument or agreement (a) includes all exhibits, schedules and other attachments thereto, (b) includes all documents, instruments or agreements issued or executed in replacement thereof, and (c) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement or any other Transaction Document refer to this Agreement or such other Transaction Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Transaction Document, as the case may be. The words "include" and "including" and words of similar import when used in this Agreement or any other Transaction Document shall not be construed to be limiting or exclusive.

4.14 *Termination of Notes Upon Payment.* Upon payment in full of any Note outstanding issued pursuant to this Agreement, such Note shall automatically be terminated and the Company shall be forever released from any and all of its obligations and liabilities under each such Note.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year below.

**THERAPEUTICSMD, INC.**

DATED: **JUNE 19, 2012**

By: /s/ Robert Finizio \_\_\_\_\_  
Robert Finizio  
Chief Executive Officer

Address:  
TherapeuticsMD, Inc.  
951 Broken Sound Parkway NW, #320  
Boca Raton, FL 33487

**PURCHASERS:**

**PRINCIPAL AMOUNT OF NOTE: \$2,347,128.06**

**STEVEN JOHNSON**

**DATED: JUNE 19, 2012**

**By: /s/ Steven Johnson \_\_\_\_\_  
Steven Johnson, an individual**

ADDRESS:  
804 TREE HAVEN COURT  
HIGHLAND VILLAGE, TX 75077  
E-MAIL: WORKSTEVE@AOL.COM

**PRINCIPAL AMOUNT OF NOTE: \$2,344,719.26**

**PLATO & ASSOCIATES, LLC**

**DATED: JUNE 19, 2012**

**By: /s/ Robert J. Smuth \_\_\_\_\_  
Robert J. Smith, Sole Member**

ADDRESS:  
13652 FIDDLESTICKS BLVD.  
SUITE 202-324  
FT. MYERS, FL 33912  
E-MAIL: RJSMITH@USA.COM

**SCHEDULE I**

**PURCHASE PRICE FOR NOTES AND WARRANTS**

Steven Johnson

Purchase Price is \$2,347,128.06 paid as follows:

- (a) Cash in the amount of \$1,000,000
- (b) Exchange of principle of \$1,347,128.06 under a note dated February 24, 2012

Plato & Associates, LLC

Purchase Price is \$2,344,719.26 paid as follows:

- (a) Cash in the amount of \$1,000,000
- (b) Exchange of principle of \$1,344,719.26 under a note dated February 24, 2012

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. IT MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF A REGISTRATION STATEMENT IN EFFECT WITH RESPECT TO THE SECURITIES UNDER SUCH ACT AND/OR APPLICABLE STATE SECURITIES LAWS, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED OR UNLESS SOLD PURSUANT TO RULE 144 OF SUCH ACT.

**THERAPEUTICSMD, INC.  
SECURED PROMISSORY NOTE**

\$ \_\_\_\_\_

\_\_\_\_\_  
Boca Raton, FL

FOR VALUE RECEIVED, upon the terms and subject to the conditions set forth in this secured promissory note (the "Note"), THERAPEUTICSMD, INC., a Nevada corporation (the "Company"), absolutely and unconditionally promises to pay to \_\_\_\_\_ (the "Holder"), or registered assigns, the principal base amount of \_\_\_\_\_ ("Principal Base Amount"), plus any and all additional advances made to the Company as recorded on Exhibit 1 attached hereto ("Aggregated Principal Amount"), together with accrued interest as hereinafter provided on the outstanding Aggregated Principal Amount remaining unpaid from time to time. The Maturity Date is \_\_\_\_\_ on which the Aggregated Principal Amount, together with any accrued but unpaid interest and any other amounts payable hereunder, shall be due and payable. This Note is issued in connection with a certain Note Purchase Agreement and Security Agreement of even date herewith, between the Company and the Holder, all terms of which are incorporated herein by this reference and hereby made a part of this Note. Capitalized terms not defined herein shall have the meanings ascribed to them in the Note Purchase Agreement or Security Agreement.

The following is a statement of the rights of the Holder of this Note and the conditions to which this Note is subject, to which the Holder, by the acceptance of this Note, agrees:

1. *Interest.* Accrued interest on this Note shall be payable on the Maturity Date of this Note at an interest rate of six percent (6%) per annum.

2. *Repayment; Security.* Payment of the Aggregated Principal Amount of this Note (and any interest accrued thereon) shall be made in U.S. dollars in immediately available funds. This Note (including all principal amount outstanding and any unpaid accrued interest thereunder), may be prepaid at any time without penalty. The obligations of the Company under this Note are secured pursuant to a security interest on assets, tangible and intangible, of the Company granted by the Company to the Holder pursuant to a Security Agreement.

3. *Default; Remedies.*

3.1 *Default.* The Company shall be in default under this Note upon the happening of any condition or event set forth below (each, an “Event of Default”):

(a) the Company’s failure to pay (i) when due any principal or interest payment on the due date hereunder or (ii) any other payment required under the terms of this Note on the date due, and such default shall continue unremedied for a period of 15 days following receipt of written notice signed by the Holder of such failure to pay;

(b) the Company’s failure to observe or perform in any material respect any other covenant, obligation, condition or agreement contained in this Note and such failure shall continue for a period of 15 days following receipt of written notice signed by the Holder of such failure;

(c) the Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) take any action for the purpose of effecting any of the foregoing; or

(d) proceedings for the appointment of a receiver, trustee, liquidator or custodian of the Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to the Company or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within 30 days of commencement.

3.2 *Remedies.* Upon the occurrence or existence of any Event of Default (other than an Event of Default described in Sections 3.1(c) or 3.1(d)) and at any time thereafter during the continuance of such Event of Default, the Holder may, by written notice to the Company, declare the entire outstanding Aggregated Principal Amount of this Note, any accrued but unpaid interest and any other amounts payable under this Note to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Sections 3.1(c) or 3.1(d) immediately and without notice, all outstanding Obligations payable by the Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Investor may exercise any other right power or remedy granted to him by the Transaction Documents or otherwise permitted to him by law, either by suit in equity or by action at law, or both.

4. *Saturdays, Sundays, Holidays, etc.* If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday, a Sunday or a legal holiday, then such action may be taken or such right may be exercised on the next succeeding day that is not a Saturday, Sunday or legal holiday.

5. *Cumulative Rights.* No delay on the part of the Holder in the exercise of any power or right under this Note or under any other instrument executed pursuant to this Agreement shall operate as a waiver of any such power or right, nor shall a single or partial exercise of any power or right preclude other or further exercise of such power or right or the exercise of any other power or right.

6. *Miscellaneous.*

*6.1 Loss, Theft, Destruction or Mutilation of Note.* Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note and, in the case of loss, theft or destruction, and delivery of an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it connection with the Note (without the requirement of a bond) or, in the case of mutilation, on surrender and cancellation of this Note, the Company shall execute and deliver, in lieu of this Note, a new Note executed in the same manner as this Note, in the same principal amount as the unpaid principal amount of this Note and dated the date to which interest shall have been paid on this Note or, if no interest shall have yet been so paid, dated the date of this Note.

*6.2 Payment.* All payments under this Note shall be made in lawful tender of the United States.

*6.3 Waivers and Amendments.* This Note and the obligations of the Company and the rights of the Holder under this Note may be amended, waived, discharged or terminated (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) only with the written consent of the Company and the Holder.

*6.4 Severability.* If one or more provisions of this Note are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Note and the balance of this Note shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

*6.5 Successors and Assigns.* Subject to compliance with applicable federal and state securities laws, this Note and all rights under this Note are transferable in whole or in part by the Holder to any person or entity upon written notice to the Company. The transfer shall be recorded on the books of the Company upon the surrender of this Note, properly endorsed, to the Company at its principal offices, and the payment to the Company of all transfer taxes and other governmental charges imposed on such transfer. In the event of a partial transfer, the Company shall issue to the holders one or more appropriate new notes. Except as otherwise expressly provided in this Note, the provisions of this Note shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the Company and the Holder.

*6.6 Usury.* The Company does not intend to pay and the Holder does not agree or intend to contract for, charge, collect, take, reserve or receive (collectively referred to herein as “charge or collect” any amount in the nature of interest which would in any way or event cause the Holder to charge or collect more for this loan than the maximum the Holder would be permitted to charge or collect by law. Any such excess interest shall, instead of anything stated to the contrary, be applied first to reduce the principal balance of this Note, and when the principal has been paid in full, be refunded to the Company.

*6.7 Delays or Omissions.* No delay or omission to exercise any right, power, or remedy accruing to the Holder, upon any breach or default of the Company under this Note shall impair any such right, power, or remedy of the Holder nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of the Holder of any breach or default under this Note or any waiver on the part of the Holder of any provisions or conditions of this Note must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Note or by law or otherwise afforded to the Holder, shall be cumulative and not alternative.

*6.8 Titles and Subtitles.* The titles of the paragraphs and subparagraphs of this Note are for convenience of reference only and are not to be considered in construing this Note.

*6.9 Construction.* The language used in this Note will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

*6.10 Governing Law; Venue.* This note shall be governed in all respects by the laws of the state of Nevada. Each of the parties hereto hereby consents to the exclusive jurisdiction of: (i) any state courts of the state of Florida and (ii) any federal court located in the state of Florida, as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of, or in connection with, this agreement or any of the transactions contemplated hereby. Each party hereby expressly waives any and all rights to bring any suit, action or other proceeding in or before any court or tribunal other than those located in the state of Florida. In addition, each of the parties consent to the service of process by personal service or any manner in which notices may be delivered hereunder in accordance with this agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be executed by its officers thereunto duly authorized.

**THERAPEUTICSMD, INC.**

By: \_\_\_\_\_  
Robert F. Finizio  
Chief Executive Officer

**EXHIBIT 1**

**SCHEDULE OF ADVANCES UNDER SECURED PROMISSORY NOTE**

<b>DATE</b>	<b>ACTION</b>	<b>AMOUNT</b>	<b>OUTSTANDING PRINCIPAL BALANCE</b>	<b>MAKER'S INITIAL</b>

**THERAPEUTICSMD, INC.  
SECURITY AGREEMENT**

This Security Agreement (as amended, modified or otherwise supplemented from time to time, this "Agreement"), dated as of June 19, 2012, is executed by TherapeuticsMD, Inc., a Nevada corporation, and its subsidiary, vitaMedMD, LLC, a Delaware limited liability company (together with its successors and assigns, the "Debtor"), in favor of Joel C. Schneider of Sommer and Schneider, LLP as Collateral Agent (as herein defined) on behalf of the lenders set forth on Schedule I attached hereto (each, a "Secured Party" and collectively, the "Secured Parties").

**RECITALS**

A. The Debtor has issued secured promissory notes in an aggregate principal amount of up to \$2,000,000 in favor of the Secured Parties (as amended, modified or otherwise supplemented from time to time, each, a "Note" and collectively, the "Notes").

B. In order to induce each Secured Party to extend the credit evidenced by the Notes, the Debtor has agreed to enter into this Agreement and to grant Collateral Agent, for the benefit of itself and the Secured Parties, the security interest in the Collateral described below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth herein, the receipt and adequacy of which are hereby acknowledged, the Debtor hereby agrees with Collateral Agent and the Secured Parties as follows:

1. Definitions and Interpretation. When used in this Agreement, the following terms have the following respective meanings:

"Collateral" means all inventory, equipment, accounts, chattel paper, instruments, letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles; all insurance refunds relating to the foregoing property; all records and data and embedded software related to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned, or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property. The term "Collateral" shall not include any equipment or other property financed by a third party, provided that such third party's Liens are Liens of the type described in subsection (d) of the definition of Permitted Liens.

"Collateral Agent" has the meaning given to such term in Section 7(a) hereof.

"Lien" means, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, capital lease or other title retention agreement, or any agreement to provide any of the foregoing, and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction; *provided, however*, that Lien shall not be deemed to include any Permitted Liens (as defined herein).

“Obligations” means the Notes and all interest, fees, charges, expenses, attorneys’ fees and costs and accountants’ fees and costs chargeable to and payable by the Debtor hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

“Permitted Liens” means (a) Liens for taxes not yet due and payable or Liens for taxes being contested in good faith; (b) Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers’, warehousemen’s, materialmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings; (c) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security, and mechanic’s Liens, carrier’s Liens and other Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return of money bonds and other similar obligations, incurred in the ordinary course of business, whether pursuant to statutory requirements, common law or consensual arrangements; (d) Liens upon any equipment acquired or held by the Debtor to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, so long as such Lien extends only to the equipment financed, and any accessions, replacements, substitutions and proceeds (including insurance proceeds) thereof or thereto; (e) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default (as defined in the Notes) under the Notes; (f) Liens which constitute rights of setoff of a customary nature or banker’s liens, whether arising by law or by contract; (g) any Lien on personal property granted in a lease for real property; and (h) leases or subleases and licenses or sublicenses granted in the ordinary course of the Debtor’s business.

“Person” means and includes an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

“Secured Parties” has the meaning set forth in the Preamble of this Agreement.

“UCC” means the Uniform Commercial Code as in effect in the State of Nevada, State of Delaware and the State of Florida, from time to time.

Unless otherwise defined herein, all terms defined in the UCC have the respective meanings given to those terms in the UCC.

2. Grant of Security Interest. As security for the Obligations, the Debtor hereby pledges to Collateral Agent and grants to Collateral Agent a security interest in the Collateral.

3. Termination of Security Interest. Upon the satisfaction of the payment in full of all Obligations, the security interest granted herein shall terminate and all rights to the Collateral shall revert to the Debtor. Collateral Agent shall, upon such satisfaction, execute, acknowledge, and deliver to the Debtor (a) an instrument in writing releasing the security interest in the Collateral under this Agreement and (b) such other documents as shall be reasonably requested by the Debtor, to effect the termination and release of the security interest in the Collateral. Additionally, upon such satisfaction, the Collateral Agent shall reasonably cooperate with any efforts made by the Debtor to make of record or otherwise confirm such satisfaction including, but not limited to, the release and/or termination of this Agreement and any security interest in, to or under the Collateral.

4. Representations and Warranties of Debtor. The Debtor hereby represents and warrants to the Collateral Agent:

(a) The records of Debtor with respect to the Collateral are presently located at the address listed in Section 8 of this Agreement.

(b) The chief executive office and principal place of business of the Debtor is located at the address listed in Section 9 of this Agreement.

(c) The Debtor is a Nevada corporation and the exact legal name of Debtor is listed in the introductory paragraph of this Agreement.

(d) The Debtor's subsidiary is a Delaware limited liability company and its exact name is listed in the introductory paragraph of this Agreement.

(e) The Debtor and its subsidiary have good and marketable title to its assets, free and clear of all Liens.

5. Agreements of Debtor. From and after the date of this Security Agreement, and until all of the Obligations are paid in full, Debtor shall:

(a) Not sell, lease, transfer or otherwise dispose of Collateral or any interest therein, except as provided for in the Note Purchase Agreement and for sales of Inventory in the ordinary course of business.

(b) At the expense of the Debtor, take such actions and execute such financing statements and other documents as the Collateral Agent may from time to time request to maintain the perfected status of the Security Interest.

(c) Take any other action reasonably requested by the Collateral Agent to ensure the attachment, perfection of, and the ability of Collateral Agent to enforce the security interest in any and all of the Collateral including, without limitation executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC, to the extent, if any, that the Debtor's signature thereon is required therefor.

(d) Keep the Collateral consisting of tangible personal property insured against loss or damage to the Collateral under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(e) Provide at least 10 days prior written notice to Collateral Agent prior to changing its name or its place of business.

## 6. Default and Remedies.

(a) Default. The Debtor shall be deemed in default under this Agreement upon the occurrence and during the continuance of an Event of Default (as defined in the Notes).

(b) Remedies. Upon the occurrence and during the continuance of any such Event of Default, Collateral Agent shall have the rights of a secured creditor under the UCC, all rights granted by this Agreement and by law, including the right to (i) require the Debtor to assemble the Collateral and make it available to Collateral Agent and the Secured Parties at a place to be designated by Collateral Agent and the Secured Parties, (ii) take physical possession of inventory and other tangible Collateral, (iii) collect any and all money due or to become due and enforce in the Debtor's name all rights with respect to the Collateral; and (iv) settle, adjust or compromise any dispute with respect to any account. The Debtor hereby agrees that twenty (20) days' notice of any intended sale or disposition of any Collateral is reasonable.

(c) Application of Collateral Proceeds. The proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held by Collateral Agent at the time of, or received by Collateral Agent after, the occurrence of an Event of Default) shall be paid to and applied as follows:

(i) First, to the payment of reasonable costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and advances, including reasonable legal expenses and attorneys' fees, incurred or made hereunder by Collateral Agent;

(ii) Second, to the payment to each Secured Party of the amount then owing or unpaid on such Secured Party's Note, and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon such Note, then its Pro Rata Share of the amount remaining to be distributed (to be applied first to accrued interest and second to outstanding principal); and

(iii) Third, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

For purposes of this Agreement, the term "*Pro Rata Share*" shall mean, when calculating a Secured Party's portion of any distribution or amount, that distribution or amount (expressed as a percentage) equal to a fraction (i) the numerator of which is the original outstanding principal amount of such Secured Party's Note and (ii) the denominator of which is the original aggregate outstanding principal amount of all Notes. In the event that a Secured Party receives payments or distributions in excess of its Pro Rata Share, then such Secured Party shall hold in trust all such excess payments or distributions for the benefit of the other Secured Parties and shall pay such amounts held in trust to such other Secured Parties upon demand by such Secured Parties.

## 7. Collateral Agent.

(a) Appointment. The Secured Parties hereby appoint Joel C. Schneider of Sommer & Schneider, LLP as collateral agent for the Secured Parties under this Agreement (in such capacity, the "Collateral Agent") to serve from the date hereof until the termination of the Agreement.

(b) Powers and Duties of Collateral Agent, Indemnity by Secured Parties.

(i) Each Secured Party hereby irrevocably authorizes the Collateral Agent to take such action and to exercise such powers hereunder as provided herein or as requested in writing by the Holders in accordance with the terms hereof, together with such powers as are reasonably incidental thereto. Collateral Agent may execute any of its duties hereunder by or through agents or employees and shall be entitled to request and act in reliance upon the advise of counsel concerning all matters pertaining to its duties hereunder and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance therewith.

(ii) In the case of this Agreement and the transactions contemplated hereby, each of the Secured Parties agrees to pay to the Collateral Agent, on demand, its Pro Rata Share of all fees and all expenses incurred in connection with the operation and enforcement of this Agreement, the Notes or any related agreement to the extent that such fees or expenses have not been paid by the Debtor. In the case of this Agreement and each instrument and document relating to any of the Collateral, each of the Secured Parties hereby agrees to hold the Collateral Agent harmless, and to indemnify the Collateral Agent from and against any and all loss, damage, expense or liability which may be incurred by the Collateral Agent under this Agreement and the transactions contemplated hereby, unless such liability shall be caused by the willful misconduct or gross negligence of the Collateral Agent.

8. Power of Attorney. Upon the occurrence and during the continuance of an Event of Default, the Debtor does hereby constitute and appoint the Collateral Agent as Debtor's true and lawful attorney with full power of substitution for the Debtor in the Debtor's name, place and stead for the purposes of performing any obligation of the Debtor under this Security Agreement and taking any action and executing any instrument which the Collateral Agent may deem necessary or advisable to perform any obligation of the Debtor under this Security Agreement, which appointment is irrevocable and coupled with an interest, and shall not terminate until the Obligations are paid in full.

9. Miscellaneous.

(a) Notices. All notices and other communications required or permitted under this Agreement shall be in writing and shall be delivered personally by hand or by courier, mailed by United States first-class mail, postage prepaid, sent by facsimile or sent by electronic mail directed (a) if to the Collateral Agent, to its address, facsimile number or electronic mail address set forth below, or at such other address, facsimile number or electronic mail address as the Collateral Agent may designate by ten (10) days' advance written notice to the Debtor or (b) if to the Debtor, to its address, facsimile number or electronic mail set forth below, or at such other address, facsimile number or electronic mail as the Debtor may designate by ten (10) days' advance written notice to the Collateral Agent. All such notices and other communications shall be effective or deemed given upon personal delivery, on the date of mailing, upon confirmation of facsimile transfer or upon confirmation of electronic mail delivery.

**Collateral Agent:**

Joel C. Schneider, Esq.  
Sommer & Schneider, LLP  
595 Stewart Avenue, Suite 710  
Garden City, NY 11530  
Email: Schneiderjoel6@gmail.com

**the Debtor**

TherapeuticsMD, Inc. (and vitaMedMD, LLC)  
951 Broken Sound Parkway  
Suite 320  
Boca Raton, FL 33487  
Attention: Robert Finizio, CEO  
Email address: robert.finizio@therapeuticsmd.com

(b) Waivers and Amendments. This Agreement and the obligations of the Debtor and the rights of the Secured Parties under this Agreement may be amended, waived, discharged or terminated (either generally or in a particular instance, either retroactively or prospectively and either for a specified period of time or indefinitely) with the written consent of the Debtor and Secured Parties; *provided, however*, that no such amendment or waiver shall reduce the percentage of the principal amount of Notes that is required for consent to any amendment or waiver, without the consent of all of the holders of the then outstanding Notes. Any amendment, waiver discharge or termination effected in accordance with this Section 9(b) shall be binding upon each Secured Party and the Debtor.

(c) Governing Law. THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS BY THE LAWS OF THE STATE OF FLORIDA.

(d) Aggregation of Notes. All Notes held or acquired by a Secured Party and its affiliated entities shall be aggregated together for the purpose of determining the availability of any rights under this Agreement.

(e) Entire Agreement. This Agreement (including the schedule attached hereto) and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof

and thereof.

(f) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

(g) Successors and Assigns. Except as otherwise expressly provided in this Agreement, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.

(h) Delays or Omissions. No delay or omission to exercise any right, power, or remedy accruing to a Secured Party, upon any breach or default of the Debtor under this Agreement shall impair any such right, power, or remedy of the Secured Party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent, or approval of any kind or character on the part of the Holders of any breach or default under this Agreement or any waiver on the part of the Holders of any provisions or conditions of this Agreement must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to the Investors, shall be cumulative and not alternative.

(i) Titles and Subtitles. The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(j) Telecopy Execution and Delivery. A facsimile, telecopy or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes. At the request of any party hereto, all parties hereto agree to execute an original of this Agreement as well as any facsimile, telecopy or other reproduction hereof.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall be deemed to constitute one instrument.

(l) Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against any party.

(m) Expenses. The Debtor shall pay on demand all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Collateral Agent in connection with custody, preservation or sale of, or other realization on, any of the Collateral or the enforcement or attempt to enforce any of the Obligations which is not performed as and when required by this Agreement.

(n) Other Interpretive Provisions. References in this Agreement (a) include all schedules, and other attachments thereto, (b) include all documents, instruments or agreements issued or executed in replacement thereof, and (c) mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The words "include" and "including" and words of similar import when used in this Agreement shall not be construed to be limiting or exclusive.

*(Signature pages follow.)*

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

**DEBTOR:**

THERAPEUTICSMD, INC. and  
VITAMEDMD, LLC

By: /s/ Robert G. Finizio  
Robert G. Finizio  
Chief Executive Officer

AGREED:

**COLLATERAL AGENT:**

Sommer & Schneider, LLP

By: /s/ Joel C. Schneider  
Joel C. Schneider

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

**SECURED PARTY:**

PLATO & ASSOCIATES, LLC

By: /s/ Robert J. Smith  
Robert J. Smith  
Managing Member

STEVEN JOHNSON

/s/ Stephen Johnson  
Steven Johnson

**SCHEDULE I**

**LIST OF SECURED PARTIES**

<b>Name and Address</b>	<b>Principal Amount of Note</b>
STEVEN JOHNSON	\$2,347,128.06
PLATO & ASSOCIATES, LLC	\$2,344,719.26

NEITHER THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

## COMMON STOCK PURCHASE WARRANT

### THERAPEUTICSMD, INC.

Warrant Shares: \_\_\_\_\_ Initial Exercise Date: \_\_\_\_\_

This is to certify that, for the payment of \$100 and other good and valuable consideration received, \_\_\_\_\_ (the "Holder"), or its registered assigns, is entitled, at any time from the Issuance Date (as hereinafter defined) to the Expiration Date (as hereinafter defined), to purchase from THERAPEUTICSMD, INC., a Nevada corporation (the "Company"), \_\_\_\_\_ (\_\_\_\_\_) shares of the Company's Common Stock (as hereinafter defined and subject to adjustment as provided herein), in whole or in part, including fractional parts, at a purchase price per share equal to \$\_\_\_\_\_ subject to any adjustments made to such amount pursuant to Section 4 hereto) on the terms and conditions and pursuant to the provisions hereinafter set forth.

#### 1. DEFINITIONS

As used in this Warrant, the following terms have the respective meanings set forth below:

"Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company after the Closing Date, other than Warrant Stock.

"Book Value" shall mean, in respect of any share of Common Stock on any date herein specified, the consolidated book value of the Company as of the last day of any month immediately preceding such date, divided by the number of Fully Diluted Outstanding shares of Common Stock as determined in accordance with GAAP (assuming the payment of the exercise prices for such shares) by a firm of independent certified public accountants of recognized national standing selected by the Company and reasonably acceptable to the Holder.

"Business Day" shall mean any day that is not a Saturday or Sunday or a day on which banks are required or permitted to be closed in the State of New York.

“Commission” shall mean the Securities and Exchange Commission or any other federal agency then administering the Securities Act and other federal securities laws.

“Common Stock” shall mean (except where the context otherwise indicates) the Common Stock, par value \$0.001 per share, of the Company as constituted on the Closing Date, and any capital stock into which such Common Stock may thereafter be changed, and shall also include (i) capital stock of the Company of any other class (regardless of how denominated) issued to the holders of shares of Common Stock upon any reclassification thereof which is also not preferred as to dividends or assets over any other class of stock of the Company and which is not subject to redemption and (ii) shares of common stock of any successor or acquiring corporation received by or distributed to the holders of Common Stock of the Company in the circumstances contemplated by Section 4.3.

“Convertible Securities” shall mean evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable, with or without payment of additional consideration in cash or property, for shares of Common Stock, either immediately or upon the occurrence of a specified date or a specified event.

“Current Warrant Price” shall mean \$\_\_\_\_\_ subject to any adjustments to such amount made in accordance with Section 4 hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect from time to time.

“Exercise Period” shall mean the period during which this Warrant is exercisable pursuant to Section 2.1.

“Expiration Date” shall mean \_\_\_\_\_.

“Fully Diluted Outstanding” shall mean, when used with reference to Common Stock, at any date as of which the number of shares thereof is to be determined, all shares of Common Stock Outstanding at such date and all shares of Common Stock issuable in respect of this Warrant, outstanding on such date, and other options or warrants to purchase, or securities convertible into, including without limitation the shares of Common Stock outstanding on such date which would be deemed outstanding in accordance with GAAP for purposes of determining book value or net income per share.

“GAAP” shall mean generally accepted accounting principles in the United States of America as from time to time in effect.

“Holder” shall mean the Person in whose name the Warrant or Warrant Stock set forth herein is registered on the books of the Company maintained for such purpose.

“Market Price” per Common Share means the average of the closing bid prices of the Common Shares as reported on the National Association of Securities Dealers Automated Quotation System for the National Market, (“NASDAQ”) or, if such security is not listed or admitted to trading on the NASDAQ, on the principal national security exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the closing bid price of such security on the over-the-counter market on the day in question as reported by the National Association of Security Dealers, Inc., or a similar generally accepted reporting service, as the case may be, for the five (5) trading days immediately preceding the date of determination.

“Other Property” shall have the meaning set forth in Section 4.5.

“Outstanding” shall mean, when used with reference to Common Stock, at any date as of which the number of shares thereof is to be determined, all issued shares of Common Stock, except shares then owned or held by or for the account of the Company or any subsidiary thereof, and shall include all shares issuable in respect of outstanding scrip or any certificates representing fractional interests in shares of Common Stock.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, incorporated organization, association, corporation, institution, public benefit corporation, entity or government (whether federal, state, county, city, municipal or otherwise, including, without limitation, any instrumentality, division, agency, body or department thereof).

“Restricted Common Stock” shall mean shares of Common Stock which are, or which upon their issuance on the exercise of this Warrant would be, evidenced by a certificate bearing the restrictive legend set forth in Section 9.1(a).

“Securities Act” shall mean the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

“Transfer” shall mean any disposition of any Warrant or Warrant Stock or of any interest in either thereof, which would constitute a sale thereof within the meaning of the Securities Act.

“Transfer Notice” shall have the meaning set forth in Section 9.2.

“Vesting Date” shall mean ninety (90) days after issuance.

“Warrant Issuance Date” shall mean the date on which the Warrants are issued to the Holder.

“Warrants” shall mean this Warrant and all warrants issued upon transfer, division or combination of, or in substitution for, any thereof. All Warrants shall at all times be identical as to terms and conditions and date, except as to the number of shares of Common Stock for which they may be exercised.

“Warrant Price” shall mean an amount equal to (i) the number of shares of Common Stock being purchased upon exercise of this Warrant pursuant to Section 2.1, multiplied by (ii) the Current Warrant Price as of the date of such exercise.

“Warrant Stock” shall mean the shares of Common Stock purchased by the holders of the Warrants upon the exercise thereof.

## **2. EXERCISE OF WARRANT**

2.1. Manner of Exercise. From and after the Vesting Date unless cancelled prior to such date and until 5:00 P.M., New York City time, on the Expiration Date, Holder may exercise this Warrant, on any Business Day, for all or any part of the number of shares of Common Stock purchasable hereunder.

In order to exercise this Warrant, in whole or in part, Holder shall deliver to the Company at the office or agency designated by the Company pursuant to Section 12, (i) a written notice of Holder's election to exercise this Warrant, which notice shall specify the number of shares of Common Stock to be purchased, (ii) payment by cash, check or bank draft payable to the Company of the Warrant Price in cash or by wire transfer or cashier's check drawn on a United States bank for all shares then being purchased and (iii) this Warrant. Such notice shall be substantially in the form of the subscription form appearing at the end of this Warrant as Exhibit 1, duly executed by Holder or its agent or attorney. Upon receipt of the items referred to in clauses (i), (ii) and (iii) above, the Company shall, as promptly as practicable, and in any event within five (5) Business Days thereafter, execute or cause to be executed and deliver or cause to be delivered to Holder a certificate or certificates representing the aggregate number of full shares of Common Stock issuable upon such exercise, together with cash in lieu of any fraction of a share, as hereinafter provided. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as Holder shall request in the notice and shall be registered in the name of Holder or, subject to Section 9, such other name as shall be designated in the notice. This Warrant shall be deemed to have been exercised and such certificate or certificates shall be deemed to have been issued, and Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date the Warrant has been exercised by payment to the Company of the Warrant Price. If this Warrant shall have been exercised in part, the Company shall, at the time of delivery of the certificate or certificates representing Warrant Stock, deliver to Holder a new Warrant evidencing the rights of Holder to purchase the unpurchased shares of Common Stock called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

The Holder shall be entitled to exercise the Warrant notwithstanding the commencement of any case under 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"). In the event the Company is a debtor under the Bankruptcy Code, the Company hereby waives to the fullest extent permitted any rights to relief it may have under 11 U.S.C. § 362 in respect of the Holder's exercise right. The Company hereby waives to the fullest extent permitted any rights to relief it may have under 11 U.S.C. § 362 in respect of the exercise of the Warrant. The Company agrees, without cost or expense to the Holder, to take or consent to any and all action necessary to effectuate relief under 11 U.S.C. § 362.

2.2 Cashless Provision. Holder may elect to exercise the Warrant through the method of cashless exercise as follows:

On the date of calculation of the cashless exercise, if the Market Price of one share of the Company's Common Stock is greater than the Exercise Price (as stated in the Holder's Warrant), in lieu of exercising the Warrant for cash, the holder may elect to receive shares equal to the value (as determined below) of the Warrant (or the portion thereof being exercised) by the surrender of the Warrant at the principle office of the Company together with a properly endorsed Notice of Exercise and notice of such election in which event the Company shall issue to the Holder a number of shares of Common Stock computed using the following formula:

$$X = \frac{Y(A-B)}{A}$$

X= the number of shares of Common Stock to be issued to the Holder

Y = the number of shares of Common Stock purchasable under the Warrant or, if only a portion of the Warrant is being exercised, the portion of the Warrant being canceled (at the date of such calculation)

A= the Market Price of one share of the Company Common Stock (at the date of such calculation)

B= Exercise Price (as adjusted to the date of such calculation).

2.3. Payment of Taxes and Charges. All shares of Common Stock issuable upon the exercise of this Warrant pursuant to the terms hereof shall be validly issued, fully paid and nonassessable, and without any preemptive rights. The Company shall pay all expenses in connection with, and all taxes and other governmental charges that may be imposed with respect to, the issue or delivery thereof.

2.4. Fractional Shares. The Company shall not be required to issue a fractional share of Common Stock upon exercise of any Warrant. As to any fraction of a share which Holder would otherwise be entitled to purchase upon such exercise, the Company shall pay a cash adjustment in respect of such final fraction in an amount equal to the same fraction of the Market Price per share of Common Stock on the relevant exercise date.

2.5. Continued Validity. A holder of shares of Common Stock issued upon the exercise of this Warrant, in whole or in part (other than a holder who acquires such shares after the same have been publicly sold pursuant to a Registration Statement under the Securities Act or sold pursuant to Rule 144 thereunder), shall continue to be entitled with respect to such shares to all rights to which it would have been entitled as Holder under Sections 9, 10 and 14 of this Warrant. The Company will, at the time of exercise of this Warrant, in whole or in part, upon the request of Holder, acknowledge in writing, in form reasonably satisfactory to Holder, its continuing obligation to afford Holder all such rights; provided, however, that if Holder shall fail to make any such request, such failure shall not affect the continuing obligation of the Company to afford to Holder all such rights.

### **3. TRANSFER, DIVISION AND COMBINATION**

3.1. Transfer. Subject to compliance with Section 9, transfer of this Warrant and all rights hereunder, in whole or in part, shall be registered on the books of the Company to be maintained for such purpose, upon surrender of this Warrant at the principal office of the Company referred to in Section 2.1 or the office or agency designated by the Company pursuant to Section 12, together with a written assignment of this Warrant substantially in the form of Exhibit 2 hereto duly executed by Holder or its agent or attorney. Upon such surrender, the Company shall, subject to Section 9, execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denomination specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. A Warrant, if properly assigned in compliance with Section 9, may be exercised by a new Holder for the purchase of shares of Common Stock without having a new Warrant issued.

3.2. Division and Combination. Subject to Section 9, this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office or agency of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by Holder or its agent or attorney. Subject to compliance with Section 3.1 and with Section 9, as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice.

3.3. Expenses. The Company shall prepare, issue and deliver at its own expense the new Warrant or Warrants under this Section 3.

3.4. Maintenance of Books. The Company agrees to maintain, at its aforesaid office or agency, books for the registration and the registration of transfer of the Warrants.

#### 4. ADJUSTMENTS

The number of shares of Common Stock for which this Warrant is exercisable, or the price at which such shares may be purchased upon exercise of this Warrant, shall be subject to adjustment from time to time as set forth in this Section 4. The Company shall give Holder notice of any event described below which requires an adjustment pursuant to this Section 4 at the time of such event.

4.1. Stock Dividends, Subdivisions and Combinations. If at any time the Company shall:

(a) take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend payable in, or other distribution of, Additional Shares of Common Stock,

(b) subdivide its outstanding shares of Common Stock into a larger number of shares of Common Stock, or

(c) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock,

then (i) the number of shares of Common Stock for which this Warrant is exercisable immediately after the occurrence of any such event shall be adjusted to equal the number of shares of Common Stock which a record holder of the same number of shares of Common Stock for which this Warrant is exercisable immediately prior to the occurrence of such event would own or be entitled to receive after the happening of such event, and (ii) the Current Warrant Price shall be adjusted to equal (A) the Current Warrant Price multiplied by the number of shares of Common Stock for which this Warrant is exercisable immediately prior to the adjustment divided by (B) the number of shares for which this Warrant is exercisable immediately after such adjustment.

4.2. Other Provisions Applicable to Adjustments under this Section. The following provisions shall be applicable to the making of adjustments of the number of shares of Common Stock for which this Warrant is exercisable and the Current Warrant Price provided for in this Section 4:

(a) When Adjustments to Be Made. The adjustments required by this Section 4 shall be made whenever and as often as any specified event requiring an adjustment shall occur. For the purpose of any adjustment, any specified event shall be deemed to have occurred at the close of business on the date of its occurrence.

(b) Fractional Interests. In computing adjustments under this Section 4, fractional interests in Common Stock shall be taken into account to the nearest 1/10th of a share.

(c) When Adjustment Not Required. If the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or distribution or subscription or purchase rights and shall, thereafter and before the distribution to stockholders thereof, legally abandon its plan to pay or deliver such dividend, distribution, subscription or purchase rights, then thereafter no adjustment shall be required by reason of the taking of such record and any such adjustment previously made in respect thereof shall be rescinded and annulled.

(d) Challenge to Good Faith Determination. Whenever the Board of Directors of the Company shall be required to make a determination in good faith of the fair value of any item under this Section 4, such determination may be challenged in good faith by the Holder, and any dispute shall be resolved by an investment banking firm of recognized national standing selected by the Holder and reasonably acceptable to the Company.

(e) Proceeding Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 4, the Company shall take any action which may be necessary, including obtaining regulatory approvals or exemptions, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock which the Holder is entitled to receive upon exercise hereof.

4.3. Reorganization, Reclassification, Merger, Consolidation or Disposition of Assets. In case the Company shall reorganize its capital, reclassify its capital stock, consolidate or merge with or into another corporation (where the Company is not the surviving corporation or where there is a change in or distribution with respect to the Common Stock of the Company), or sell, transfer or otherwise dispose of all or substantially all its property, assets or business to another corporation and, pursuant to the terms of such reorganization, reclassification, merger, consolidation or disposition of assets, shares of common stock of the successor or acquiring corporation, or any cash, shares of stock or other securities or property of any nature whatsoever (including warrants or other subscription or purchase rights) in addition to or in lieu of common stock of the successor or acquiring corporation (“Other Property”), are to be received by or distributed to the holders of Common Stock of the Company, then Holder shall have the right thereafter to receive, upon exercise of the Warrant, the number of shares of common stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and Other Property receivable upon or as a result of such reorganization, reclassification, merger, consolidation or disposition of assets by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such event. In case of any such reorganization, reclassification, merger, consolidation or disposition of assets, the successor or acquiring corporation (if other than the Company) shall expressly assume the due and punctual observance and performance of each and every covenant and condition of this Warrant to be performed and observed by the Company and all the obligations and liabilities hereunder, subject to such modifications as may be deemed appropriate, subject to the Holder’s consent, in order to provide for adjustments of shares of Common Stock for which this Warrant is exercisable which shall be as nearly equivalent as practicable to the adjustments provided for in this Section 4. For purposes of this Section 4.3, “common stock of the successor or acquiring corporation” shall include stock of such corporation of any class which is not preferred as to dividends or assets over any other class of stock of such corporation and which is not subject to redemption and shall also include any evidences of indebtedness, shares of stock or other securities which are convertible into or exchangeable for any such stock, either immediately or upon the arrival of a specified date or the happening of a specified event and any warrants or other rights to subscribe for or purchase any such stock. The foregoing provisions of this Section 4.3 shall similarly apply to successive reorganizations, reclassifications, mergers, consolidations or disposition of assets.

4.4. Other Action Affecting Common Stock. In case at any time or from time to time the Company shall take any action in respect of its Common Stock, other than any action taken in the ordinary course of the Company’s business or any action described in this Section 4, which would have a material adverse effect upon the rights of the Holder, the number of shares of Common Stock and/or the purchase price thereof shall be adjusted in such manner as may be equitable in the circumstances, as determined in good faith by an investment bank selected by Holder.

4.5. Certain Limitations. Notwithstanding anything herein to the contrary, the Company agrees not to enter into any transaction which, by reason of any adjustment hereunder, would cause the Current Warrant Price to be less than the par value per share of Common Stock.

4.6. No Voting Rights. This Warrant shall not entitle its Holder to any voting rights or other rights as a shareholder of the Company.

## 5. NOTICES TO HOLDER

5.1. Notice of Adjustments. Whenever the number of shares of Common Stock for which this Warrant is exercisable, or whenever the price at which a share of such Common Stock may be purchased upon exercise of the Warrants, shall be adjusted pursuant to Section 4, the Company shall forthwith prepare a certificate to be executed by an executive officer of the Company setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment was calculated, specifying the number of shares of Common Stock for which this Warrant is exercisable and describing the number and kind of any other shares of stock or Other Property for which this Warrant is exercisable, and any change in the purchase price or prices thereof, after giving effect to such adjustment or change. The Company shall promptly cause a signed copy of such certificate to be delivered to the Holder in accordance with Section 14.2. The Company shall keep at its office or agency designated pursuant to Section 12 copies of all such certificates and cause the same to be available for inspection at said office during normal business hours by the Holder, its representatives, or any prospective purchaser of a Warrant designated by the Holder.

5.2. Notice of Corporate Action. If at any time

(a) the Company shall take a record of the holders of its Common Stock for the purpose of entitling them to receive a dividend or other distribution (whether in cash, or any right to subscribe for or purchase any evidences of its indebtedness, any shares of stock of any class or any other securities or property of any nature whatsoever, or to receive any warrants or other rights (including, without limitation, rights to subscribe for or purchase any evidences of its indebtedness, any shares of its stock or any other securities or property of any nature whatsoever), or

(b) there shall be any capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company or any consolidation or merger of the Company with, or any sale, transfer or other disposition of all or substantially all the property, assets or business of the Company to, another corporation, or

(c) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in any one or more of such cases, the Company shall give to Holder (i) at least thirty (30) Business Days' prior written notice of the date on which a record date shall be selected for such dividend, distribution or right or for determining rights to vote in respect of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, and (ii) in the case of any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up, at least thirty (30) Business Days' prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause also shall specify (i) the date on which any such record is to be taken for the purpose of such dividend, distribution or right, the date on which the holders of Common Stock shall be entitled to any such dividend, distribution or right, and the amount and character thereof, and (ii) the date on which any such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of Common Stock shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reorganization, reclassification, merger, consolidation, sale, transfer, disposition, dissolution, liquidation or winding up. Each such written notice shall be sufficiently given if addressed to Holder at the last address of Holder appearing on the books of the Company and delivered in accordance with Section 14.2.

A reclassification of the Common Stock (other than a change in par value, or from par value to no par value or from no par value to par value) into shares of Common Stock and shares of any other class of stock shall be deemed a distribution by the Company to the holders of its Common Stock of such shares of such other class of stock within the meaning of this Section and, if the outstanding shares of Common Stock shall be changed into a larger or smaller number of shares of Common Stock as a part of such reclassification, such change shall be deemed a subdivision or combination, as the case may be, of the outstanding shares of Common Stock within the meaning of Section 4.1.

## **6. NO IMPAIRMENT**

The Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant, and (c) use its best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

Upon the request of Holder, the Company will at any time during the period this Warrant is outstanding acknowledge in writing, in form reasonably satisfactory to Holder, the continuing validity of this Warrant and the obligations of the Company hereunder.

## **7. RESERVATION AND AUTHORIZATION OF COMMON STOCK**

From and after the Closing Date, the Company shall at all times reserve and keep available for issue upon the exercise of Warrants such number of its authorized but unissued shares of Common Stock as will be sufficient to permit the exercise in full of all outstanding Warrants. All shares of Common Stock which shall be so issuable, when issued upon exercise of any Warrant and payment therefor in accordance with the terms of such Warrant, shall be duly and validly issued and fully paid and nonassessable, and not subject to preemptive rights.

Before taking any action which would cause an adjustment reducing the Current Warrant Price below the then par value, if any, of the shares of Common Stock issuable upon exercise of the Warrants, the Company shall take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and non-assessable shares of such Common Stock at such adjusted Current Warrant Price.

Before taking any action which would result in an adjustment in the number of shares of Common Stock for which this Warrant is exercisable or in the Current Warrant Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

## **8. TAKING OF RECORD; STOCK AND WARRANT TRANSFER BOOKS**

In the case of all dividends or other distributions by the Company to the holders of its Common Stock with respect to which any provision of Section 4 refers to the taking of a record of such holders, the Company will in each such case take such a record as of the close of business on a Business Day. The Company will not at any time close its stock transfer books or Warrant transfer books so as to result in preventing or delaying the exercise or transfer of any Warrant.

## **9. RESTRICTIONS ON TRANSFERABILITY**

The Warrants and the Warrant Stock shall not be transferred, hypothecated or assigned before satisfaction of the conditions specified in this Section 9, which conditions are intended to ensure compliance with the provisions of the Securities Act with respect to the Transfer of any Warrant or any Warrant Stock. Holder, by acceptance of this Warrant, agrees to be bound by the provisions of this Section 9.

9.1. Restrictive Legend. The Holder by accepting this Warrant and any Warrant Stock agrees that this Warrant and the Warrant Stock issuable upon exercise hereof may not be assigned or otherwise transferred unless and until (i) the Company has received an opinion of counsel for the Holder that such securities may be sold pursuant to an exemption from registration under the Securities Act or (ii) a registration statement relating to such securities has been filed by the Company and declared effective by the Commission.

(a) Each certificate for Warrant Stock issuable hereunder shall bear a legend substantially worded as follows unless such securities have been sold pursuant to an effective registration statement under the Securities Act:

“The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended (the “Act”) or any state securities laws. The securities may not be offered for sale, sold, assigned, offered, transferred or otherwise distributed for value except (i) pursuant to an effective registration statement under the Act or any state securities laws or (ii) pursuant to an exemption from registration or prospectus delivery requirements under the Act or any state securities laws in respect of which the Company has received an opinion of counsel satisfactory to the Company to such effect. Copies of the agreement covering both the purchase of the securities and restricting their transfer may be obtained at no cost by written request made by the holder of record of this certificate to the Secretary of the Company at the principal executive offices of the Company.”

(b) Except as otherwise provided in this Section 9, the Warrant shall be stamped or otherwise imprinted with a legend in substantially the following form:

“This Warrant and the securities represented hereby have not been registered under the Securities Act of 1933, as amended, or any state securities laws and may not be transferred in violation of such Act, the rules and regulations thereunder or any state securities laws or the provisions of this Warrant.”

9.2. Notice of Proposed Transfers. Prior to any Transfer or attempted Transfer of any Warrants or any shares of Restricted Common Stock, the Holder shall give five (5) days’ prior written notice (a “Transfer Notice”) to the Company of Holder’s intention to effect such Transfer, describing the manner and circumstances of the proposed Transfer, and obtain from counsel to Holder an opinion that the proposed Transfer of such Warrants or such Restricted Common Stock may be effected without registration under the Securities Act or state securities laws. After the Company’s receipt of the Transfer Notice and opinion, such Holder shall thereupon be entitled to Transfer such Warrants or such Restricted Common Stock, in accordance with the terms of the Transfer Notice. Each certificate, if any, evidencing such shares of Restricted Common Stock issued upon such Transfer and the Warrant issued upon such Transfer shall bear the restrictive legends set forth in Section 9.1, unless in the opinion of such counsel such legend is not required in order to ensure compliance with the Securities Act.

9.3. Termination of Restrictions. Notwithstanding the foregoing provisions of Section 9, the restrictions imposed by this Section upon the transferability of the Warrants, the Warrant Stock and the Restricted Common Stock (or Common Stock issuable upon the exercise of the Warrants) and the legend requirements of Section 9.1 shall terminate as to any particular Warrant or share of Warrant Stock or Restricted Common Stock (or Common Stock issuable upon the exercise of the Warrants) (i) when and so long as such security shall have been effectively registered under the Securities Act and applicable state securities laws and disposed of pursuant thereto or (ii) when the Company shall have received an opinion of counsel that such shares may be transferred without registration thereof under the Securities Act and applicable state securities laws. Whenever the restrictions imposed by Section 9 shall terminate as to this Warrant, as hereinabove provided, the Holder hereof shall be entitled to receive from the Company upon written request of the Holder, at the expense of the Company, a new Warrant bearing the following legend in place of the restrictive legend set forth hereon:

“THE RESTRICTIONS ON TRANSFERABILITY OF THE WITHIN WARRANT CONTAINED IN SECTION 9 HEREOF TERMINATED ON \_\_\_\_\_, 20\_\_\_, AND ARE OF NO FURTHER FORCE AND EFFECT.”

All Warrants issued upon registration of transfer, division or combination of, or in substitution for, any Warrant or Warrants entitled to bear such legend shall have a similar legend endorsed thereon. Whenever the restrictions imposed by this Section shall terminate as to any share of Restricted Common Stock, as hereinabove provided, the holder thereof shall be entitled to receive from the Company, at the Company’s expense, a new certificate representing such Common Stock not bearing the restrictive legends set forth in Section 9.1.

9.4. Listing on Securities Exchange. If the Company shall list any shares of Common Stock on any securities exchange, it will, at its expense, list thereon, maintain and, when necessary, increase such listing of, all shares of Common Stock issued or, to the extent permissible under the applicable securities exchange rules, issuable upon the exercise of this Warrant so long as any shares of Common Stock shall be so listed during the Exercise Period.

## 10. SUPPLYING INFORMATION

The Company shall cooperate with Holder in supplying such information as may be reasonably necessary for Holder to complete and file any information reporting forms presently or hereafter required by the Commission as a condition to the availability of an exemption from the Securities Act for the sale of any Warrant or Restricted Common Stock.

## 11. LOSS OR MUTILATION

Upon receipt by the Company from Holder of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of this Warrant and indemnity reasonably satisfactory to it (it being understood that the written agreement of the Holder shall be sufficient indemnity), and in case of mutilation upon surrender and cancellation hereof, the Company will execute and deliver in lieu hereof a new Warrant of like tenor to Holder; provided, in the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

## 12. OFFICE OF THE COMPANY

As long as any of the Warrants remain outstanding, the Company shall maintain an office or agency (which may be the principal executive offices of the Company) where the Warrants may be presented for exercise, registration of transfer, division or combination as provided in this Warrant, such office to be initially located at 951 Broken Sound Parkway NW, Suite 320, Boca Raton, FL 33487, provided, however, that the Company shall provide prior written notice to Holder of a change in address no less than thirty (30) days prior to such change.

## 13. LIMITATION OF LIABILITY

No provision hereof, in the absence of affirmative action by Holder to purchase shares of Common Stock, and no enumeration herein of the rights or privileges of Holder hereof, shall give rise to any liability of Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

## 14. MISCELLANEOUS

14.1. Non-waiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice Holder's rights, powers or remedies, notwithstanding all rights hereunder terminate on the Expiration Date. If the Company fails to make, when due, any payments provided for hereunder, or fails to comply with any other provision of this Warrant, the Company shall pay to Holder such amounts as shall be sufficient to cover any direct and indirect losses, damages, costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

14.2. Notice Generally. Except as may be otherwise provided herein, any notice or other communication or delivery required or permitted hereunder shall be in writing and shall be delivered personally or sent by certified mail, postage prepaid, or by a nationally recognized overnight courier service, and shall be deemed given when so delivered personally or by overnight courier service, or, if mailed, three (3) days after the date of deposit in the United States mails, as follows:

(a) if to the Company, to: TherapeuticsMD, Inc.  
951 Broken Sound Parkway, Suite 321  
Boca Raton, FL 33487  
Attention: Robert G. Finizio  
Phone: (561) 961-1911  
Fax: (561) 431-3389

with a copy to: Joel C. Schneider, Esq.  
Sommer & Schneider, LLP  
595 Stewart Avenue, Suite 710  
Garden City, NY 11530  
Phone: (516) 228-8181  
Phone: (516) 228-8181

(b) if to the Holder to:

The Company or the Holder may change the foregoing address by notice given pursuant to this Section 14.2.

14.3. Successors and Assigns. Subject to the provisions of Sections 3.1 and 9, this Warrant and the rights evidenced hereby shall inure to the benefit of and be binding upon the successors of the Company and the successors and assigns of Holder. The provisions of this Warrant are intended to be for the benefit of all Holders from time to time of this Warrant and, with respect to Section 9 hereof, holders of Warrant Stock, and shall be enforceable by any such Holder or holder of Warrant Stock.

14.4. Amendment. This Warrant and all other Warrants may be modified or amended or the provisions hereof waived only with the prior written consent of the Company and the Holder.

14.5. Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant.

14.6. Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

14.7. Governing Law. This Warrant shall be governed by the laws of the State of Florida, without regard to the provisions thereof relating to conflict of laws. The Company consents to the jurisdiction of the federal courts whose districts encompass any part of Florida in connection with any dispute arising under this Warrant or any of the transactions contemplated hereby, and hereby waives, to the maximum extent permitted by law, any objection, including any objections based on *forum non conveniens*, to the bringing of any such proceeding in such jurisdictions.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed and its corporate seal to be impressed hereon and attested by its Secretary or an Assistant Secretary.

Dated: \_\_\_\_\_

\_\_\_\_\_  
THERAPEUTICSMD, INC.

By:

Robert G. Finizio  
Chief Executive Officer

Attest:

By: \_\_\_\_\_  
John C.K. Milligan, IV  
Secretary

**EXHIBIT 1**

**SUBSCRIPTION FORM**

[To be executed only upon exercise of Warrant]

The undersigned registered owner of this Warrant irrevocably exercises this Warrant for the purchase of \_\_\_\_\_ Shares of Common Stock of TherapeuticsMD, Inc., and herewith makes payment therefor in cash or by check or bank draft made payable to the Company, all at the price and on the terms and conditions specified in this Warrant and requests that certificates for the shares of Common Stock hereby purchased (and any securities or other property issuable upon such exercise) be issued in the name of and delivered to \_\_\_\_\_ whose address is \_\_\_\_\_ and, if such shares of Common Stock shall not include all of the shares of Common Stock issuable as provided in this Warrant, that a new Warrant of like tenor and date for the balance of the shares of Common Stock issuable hereunder be delivered to the undersigned.

\_\_\_\_\_  
(Name of Registered Owner)

\_\_\_\_\_  
(Signature of Registered Owner)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City) (State) (Zip Code)

NOTICE: The signature on this subscription must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.

**EXHIBIT 2**

**ASSIGNMENT FORM**

FOR VALUE RECEIVED the undersigned registered owner of this Warrant hereby sells, assigns and transfers unto the Assignee named below all of the rights of the undersigned under this Warrant, with respect to the number of shares of Common Stock set forth below:

Name and Address of Assignee No. of Shares of Common Stock

and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney-in-fact to register such transfer on the books of TherapeuticsMD, Inc. maintained for the purpose, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_

NOTICE: The signature on this assignment must correspond with the name as written upon the face of the within Warrant in every particular, without alteration or enlargement or any change whatsoever.