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

FORM S-8

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

**TherapeuticsMD, Inc.**

(Exact name of registrant as specified in its charter)

**Nevada**

(State or other jurisdiction of  
incorporation or organization)

**87-0233535**

(I.R.S. Employer Identification No.)

**951 Yamato Road, Suite 220  
Boca Raton, Florida**

(Address of Principal Executive Offices)

**33431**

(Zip Code)

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**TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement**

(Full title of the plan)

**Robert G. Finizio**

**Chief Executive Officer**

**TherapeuticsMD, Inc.**

**951 Yamato Road, Suite 220**

**Boca Raton, Florida 33431**

**(561) 961-1900**

(Name, address, telephone number,  
including area code, of agent for service)

**Copies to:**

**James C. D'Arecca  
Chief Financial Officer  
TherapeuticsMD, Inc.  
951 Yamato Road, Suite 220  
Boca Raton, Florida 33431  
(561) 961-1900**

**Joshua M. Samek, Esq.  
DLA Piper LLP (US)  
200 South Biscayne Boulevard, Suite 2500  
Miami, Florida  
(305) 423-8500**

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

### CALCULATION OF REGISTRATION FEE

<b>Title of securities to be registered</b>	<b>Amount to be registered<sup>(1) (2)</sup></b>	<b>Proposed maximum offering price per share<sup>(3)</sup></b>	<b>Proposed maximum aggregate offering price<sup>(3)</sup></b>	<b>Amount of registration fee</b>
Common Stock, \$0.001 par value per share	5,500,000	\$4,510,000	\$0.82	\$492.04

(1) The number of shares of common stock, \$0.001 par value per share (“Common Stock”), of TherapeuticsMD, Inc. (the “Registrant”) registered represents an aggregate of 5,500,000 shares of Common Stock issuable upon the vesting of 2,750,000 restricted stock units designated as “Time-Based Units” and 2,750,000 restricted stock units designated as “Performance Units” issuable under the TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement, dated as of August 31, 2021, by and between the Registrant and Mr. Hugh O’Dowd.

(2) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this registration statement on Form S-8 also covers an indeterminate number of shares of Common Stock of the Registrant that may be offered or issued by reason of stock splits, stock dividends or similar transactions effected without the receipt of consideration which results in an increase in the number of outstanding shares of Common Stock of the Registrant.

(3) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(c) and (h). The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices of Registrant’s Common Stock as reported on The Nasdaq Stock Market LLC on August 26, 2021.

## EXPLANATORY NOTE

As previously disclosed on the Current Report on Form 8-K filed by TherapeuticsMD, Inc. (the “Registrant”) with the Securities and Exchange Commission (the “Commission”) on August 9, 2021, on August 3, 2021, Mr. Hugh O’Dowd was appointed President of the Registrant. In connection with Mr. O’Dowd’s appointment, the Registrant agreed to grant Mr. O’Dowd, no later than August 31, 2021, an award of 2,750,000 restricted stock units designated as “Time-Based Units” and 2,750,000 restricted stock units designated as “Performance Units”. This Registration Statement on Form S-8 (this “Registration Statement”) is being filed for the purpose of registering an aggregate of 5,500,000 shares of common stock, \$0.001 par value per share (“Common Stock”), issuable upon vesting of the Time-Based Units and Performance Units, respectively, which were granted to Mr. O’Dowd pursuant to that certain Inducement Grant Restricted Stock Unit Agreement, dated August 31, 2021, by and between the Registrant and Mr. O’Dowd (the “Inducement Award Agreement”).

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

##### **Item 1. Plan Information\***

##### **Item 2. Registrant Information and Employee Plan Annual Information\***

\* The documents containing the information specified in this Part I will be sent or given to the participant set forth in the Inducement Award Agreement as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with the rules and regulations of the Commission and the instructions to Form S-8, such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents and the documents incorporated by reference in the Registration Statement pursuant to Item 3 of Part II of this Form S-8, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into the Registration Statement the following documents previously filed with the Commission:

- (1) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Commission on March 4, 2021;
- (2) The Registrant's Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 14, 2021;
- (3) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2021 and June 30, 2021, filed with the Commission on May 6, 2021 and August 4, 2021, respectively;
- (4) The Registrant's Current Reports on Form 8-K filed with the Commission on January 13, 2021, February 16, 2021, April 12, 2021, May 28, 2021 and August 9, 2021 (provided that any portions of such reports that are deemed furnished and not filed pursuant to instructions to Form 8-K shall not be incorporated by reference into this Registration Statement); and
- (5) The description of the Registrant's Common Stock included under the heading "Description of Common Stock" in the prospectus forming a part of the Registration Statement on Form S-3 (File No. 333-207837), as filed with the SEC on November 5, 2015, which description has been incorporated by reference in Item 1 of the Registrant's Form 8-A (File No. 001-00100), as filed with the Commission on October 6, 2017, including any amendment or report filed with the Commission for the purpose of updating such description.

In addition, all documents that the Registrant files pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, subsequent to the effective date of this Registration Statement (except for any portions of the Registrant's Current Reports on Form 8-K furnished pursuant to Item 2.02 or Item 7.01 thereof and any corresponding exhibits thereto not filed with the Commission), but prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered hereby have been sold or which deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents.

For purposes of this Registration Statement, any document or statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such document or statement in such document. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

None.

**Item 6. Indemnification of Directors and Officers.**

The Registrant is a Nevada corporation and generally governed by the Nevada Private Corporations Code, Chapter 78 of the Nevada Revised Statutes (“NRS”).

Section 78.138 of the NRS provides that, unless the corporation’s articles of incorporation provide otherwise, a director or officer is not individually liable to the corporation or its stockholders or creditors for damages as a result of any action or omission to act as a director or officer unless the trier of fact determines that the presumption that the director or officer acted in good faith, on an informed basis and with a view to the interests of the corporation, is rebutted and it is proven that (i) the director’s or officer’s acts or omissions constituted a breach of his or her fiduciary duties, and (ii) such breach involved intentional misconduct, fraud, or a knowing violation of the law.

Section 78.7502 of the NRS permits a Nevada corporation to indemnify its directors and officers against expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with a threatened, pending, or completed action, suit, or proceeding, if the officer or director (i) is not liable pursuant to Section 78.138 of the NRS, or (ii) acted in good faith and in a manner the officer or director reasonably believed to be in or not opposed to the best interests of the corporation and, if a criminal action or proceeding, had no reasonable cause to believe the conduct of the officer or director was unlawful. Section 78.7502 of the NRS precludes indemnification by the corporation if the officer or director has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court determines that in view of all the circumstances, the person is fairly and reasonably entitled to indemnity for such expenses and Section 78.7502 requires a corporation to indemnify its officers and directors if they have been successful on the merits of the action or otherwise in defense of any claim, issue, or matter resulting from their service as a director or officer.

Section 78.751 of the NRS permits a Nevada corporation to indemnify its officers and directors against expenses incurred by them in defending a civil or criminal action, suit, or proceeding as they are incurred and in advance of final disposition thereof, upon determination by the stockholders, the disinterested board members, or by independent legal counsel. Section 78.751 of the NRS provides that the articles of incorporation, the bylaws or an agreement may require a corporation to advance expenses as incurred upon receipt of an undertaking by or on behalf of the officer or director to repay the amount if it is ultimately determined by a court of competent jurisdiction that such officer or director is not entitled to be indemnified by the corporation if so provided in the corporation’s articles of incorporation, bylaws, or other agreement. Section 78.751 of the NRS further permits the corporation to grant its directors and officers additional rights of indemnification under its articles of incorporation, bylaws, or other agreement.

Section 78.752 of the NRS provides that a Nevada corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another company, partnership, joint venture, trust, or other enterprise, for any liability asserted against him and liability and expenses incurred by him in his capacity as a director, officer, employee, or agent, or arising out of his status as such, whether or not the corporation has the authority to indemnify him against such liability and expenses. The Registrant has obtained primary and excess insurance policies insuring its directors and officers and its subsidiaries against certain liabilities they may incur in their capacity as directors and officers. Under such policies, the insurer, on the Registrant’s behalf, may also pay amounts for which the Registrant has granted indemnification to the directors or officers.

The foregoing discussion of indemnification merely summarizes certain aspects of indemnification provisions and is limited by reference to the above discussed sections of the Nevada Private Corporations Code.

The Registrant's amended and restated articles of incorporation, as amended, provide that the Registrant may indemnify to the full extent of its power to do so, all directors, officers, employees, and/or agents. Insofar as indemnification by the Registrant for liabilities arising under the Securities Act may be permitted to officers and directors of the Registrant pursuant to the foregoing provisions or otherwise, the Registrant is aware that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8 Exhibits.**

Reference is made to the attached Exhibit Index, which is incorporated by reference herein.

**Item 9. Undertakings**

- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
    - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
    - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;
    - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

*Provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
  - (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement

relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
4.1	<a href="#"><u>Composite Amended and Restated Articles of Incorporation of the Registrant, as amended (incorporated by reference to Exhibit 3.1 of the Registrant's Quarterly Report on Form 10-Q for quarter ended June 30, 2020, filed with the Commission on August 7, 2020).</u></a>
4.2	<a href="#"><u>Bylaws of the Registrant (incorporated by reference to Exhibit C of the Registrant's Definitive 14C Information Statement, filed with the Commission on June 29, 2010).</u></a>
4.3	<a href="#"><u>First Amendment to Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed with the Commission on December 22, 2015).</u></a>
4.4	<a href="#"><u>Form of Certificate of Common Stock of the Registrant (incorporated by reference to Exhibit 4.2 of the Registrant's Registration Statement on Form S-3, filed with the Commission on January 25, 2013 (SEC File No. 333-186189)).</u></a>
5.1	<a href="#"><u>Opinion of Greenberg Traurig, LLP.</u></a>
10.1*	<a href="#"><u>TherapeuticsMD, Inc. Inducement Grant Restricted Stock Unit Agreement, dated August 31, 2021, by and between TherapeuticsMD, Inc. and Hugh O'Dowd.</u></a>
23.1	<a href="#"><u>Consent of Grant Thornton LLP, Independent Registered Public Accounting Firm.</u></a>
23.2	<a href="#"><u>Consent of Greenberg Traurig, LLP (contained in Exhibit 5.1).</u></a>
24.1	<a href="#"><u>Power of Attorney (included on signature page).</u></a>

\* Portions of this exhibit have been redacted in accordance with Regulation S-K Item 601(b)(10). The omitted information is not material and would likely cause competitive harm to the Registrant if publicly disclosed.



## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boca Raton, State of Florida, on August 31, 2021.

THERAPEUTICSMD, INC.

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

## POWER OF ATTORNEY

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below hereby constitutes and appoints Robert G. Finizio and James C. D'Arecca, and each one of them acting alone, as his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them acting alone, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Position</u>	<u>Date</u>
<u>/s/ Robert G. Finizio</u> Robert G. Finizio	Chief Executive Officer, Director (Principal Executive Officer)	August 31, 2021
<u>/s/ James C. D'Arecca</u> James C. D'Arecca	Chief Financial Officer (Principal Financial Officer)	August 31, 2021
<u>/s/ Michael Donegan</u> Michael Donegan	Chief Accounting Officer (Principal Accounting Officer)	August 31, 2021
<u>/s/ Tommy G. Thompson</u> Tommy G. Thompson	Chairman of the Board of Directors	August 31, 2021
<u>/s/ Paul M. Bisaro</u> Paul M. Bisaro	Director	August 31, 2021
<u>/s/ J. Martin Carroll</u> J. Martin Carroll	Director	August 31, 2021
<u>/s/ Cooper C. Collins</u> Cooper C. Collins	Director	August 31, 2021
<u>/s/ Karen L. Ling</u> Karen L. Ling	Director	August 31, 2021
<u>/s/ Jules A. Musing</u> Jules A. Musing	Director	August 31, 2021
<u>/s/ Gail K. Naughton</u> Gail K. Naughton, Ph.D.	Director	August 31, 2021
<u>/s/ Angus C. Russell</u> Angus C. Russell	Director	August 31, 2021

August 31, 2021

TherapeuticsMD, Inc.  
951 Yamato Road  
Suite 220  
Boca Raton, Florida 33431

Re: *Registration on Form S-8 for the TherapeuticsMD, Inc.  
Inducement Grant Restricted Stock Unit Agreement*

Ladies and Gentlemen:

We have acted as special Nevada counsel to TherapeuticsMD, Inc., a Nevada corporation ("TXMD"), in connection with the filing with the Securities and Exchange Commission of a Registration Statement on Form S-8 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Securities Act"). Such Registration Statement relates to the registration by TXMD of 5,500,000 shares (the "Shares") of TXMD's common stock, \$0.001 par value per share, that may be issuable pursuant to the TXMD Inducement Grant Restricted Stock Unit Agreement, dated as of August 31, 2021, by and between TXMD and Hugh O'Dowd (the "Inducement Grant Agreement"), upon the vesting, as provided therein, of 2,750,000 Time-Based Units and 2,750,000 Performance Units (as such terms are defined in the Inducement Grant Agreement).

This opinion letter is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In rendering the opinions set forth herein, we have examined and relied on originals or copies of the following documents: (1) the Registration Statement; (2) the Inducement Grant Agreement; (3) the Amended and Restated Articles of Incorporation of TXMD, as amended, effective as of June 22, 2020; (4) the Bylaws of TXMD, as amended, effective as of December 17, 2015; (5) certain resolutions adopted by the Board of Directors of TXMD relating to the Inducement Grant Agreement, the registration of the Shares and related matters; and (6) such other documents and instruments as we have deemed necessary as a basis for the opinions expressed below.

As to various questions of fact material to this opinion letter, we have relied upon representations of officers or directors of TXMD and documents furnished to us by TXMD without independent verification of their accuracy. We have also assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to authentic original documents of all documents submitted to us as copies.

Based upon the foregoing examination, we are of the opinion that the Shares have been duly authorized and, when issued and delivered by TXMD in accordance with the Inducement Grant Agreement, will be validly issued, fully paid and non-assessable.

The opinions expressed herein are specifically limited to the corporate laws of the State of Nevada and are as of the date hereof. We assume no obligation to update or supplement such opinions to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

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We hereby consent to the filing of this opinion letter as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are included within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations promulgated thereunder.

Very truly yours,

/s/ GREENBERG TRAUIG, LLP

**CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [\*\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.**

**TherapeuticsMD, Inc.**

**Inducement Grant**

**Restricted Stock Unit Agreement**

This Inducement Grant Restricted Stock Unit Agreement (this “**Agreement**”) is made and entered into as of August 31, 2021 (the “**Grant Date**”), by and between **TherapeuticsMD, Inc.**, a Nevada corporation (the “**Company**”), and **HUGH O’DOWD** (the “**Participant**”).

**WHEREAS**, as an inducement to the Participant to commence employment with the Company, the Committee has determined that it is in the best interests of the Company and its stockholders to grant the award of Units (as defined herein) provided for herein; and

**WHEREAS**, it is intended that the award of Units comply with the exemption from the stockholder approval requirement for “inducement grants” provided under Rule 5635(c)(4) of the NASDAQ Listing Rules.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1 **Definitions.** The Units have not been granted pursuant to the Company’s 2019 Stock Incentive Plan, as amended (the “**Plan**”). However, as set forth below, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Plan (the “**Applicable Plan Provisions**”).

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term “or” is not intended to be exclusive, unless the context clearly requires otherwise.

2. **ADMINISTRATION.**

All questions of interpretation concerning this Agreement shall be determined by the Committee. All determinations by the Committee made reasonably and in good faith shall be final and binding upon all persons having an interest in the Award.

3. **THE AWARD.**

3.1 **Grant of Restricted Stock Units.** On the Grant Date, subject to the provisions of this Agreement, the Participant has been granted a right (“**Units**”) to receive Shares

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based on the terms and conditions set forth in this Agreement, which shall be earned and vested (or not) as set forth in Section 4, with **5,500,000 Units** representing the maximum number of Units that may become vested Units as set forth in Section 4, all subject to adjustment as provided in Section 7. 2,750,000 of such Units are designated as “**Performance Units**” and 2,750,000 of such Units are designated as “**Time-Based Units**”. Each Unit represents a right to receive one (1) Share on the Settlement Date (as defined below).

3.2 **No Monetary Payment Required.** The Participant is not required to make any monetary payment (other than applicable tax withholding, if any) as a condition to receiving the Units or Shares issued upon settlement of the Units, the consideration for which shall be past services actually rendered and/or future services to be rendered to the Company and/or its Subsidiaries for its benefit.

4. **VESTING OF UNITS.**

4.1 **Performance Units.**

(a) **Earned Applicable Performance Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries at each Date of Determination set forth below, the Performance Units shall become earned as and when provided in this Section 4.1(a) based upon the Company’s Market Capitalization (as defined below) at each Date of Determination (“**Earned Applicable Performance Units**”) in accordance with the following tables:

<u>Date of Determination</u>	<u>Maximum Number of Performance Units that may become Earned Applicable Performance Units on such Date of Determination (the percent earned on each such date will be determined per the Market Capitalization table below)</u> <i>(“Applicable Units”)</i>
First Anniversary of Vesting Commencement Date	916,666 Performance Units (“ <b>First Tranche Units</b> ”)
Second Anniversary of Vesting Commencement Date	916,666 Performance Units plus any First Tranche Units that did not become earned on the First Anniversary of the Grant Date (“ <b>Second Tranche Units</b> ”)
Third Anniversary of Vesting Commencement Date	916,667 Performance Units plus any Second Tranche Units that did not become earned on the First Anniversary or Second Anniversary of the Grant Date

<u>Market Capitalization as of each Date of Determination</u>	<u>Percent of Applicable Units that will become earned on each Date of Determination</u>
[***]	25%
[***]	50%
[***]	75%
[***]	100%

For purposes of this Agreement,

“**Market Capitalization**” shall be equal to the VWAP multiplied by the number of Shares outstanding on each Date of Determination, as determined in good faith by the Committee:

“**Vesting Commencement Date**” means August 31, 2021.

“**Vesting Date**” means each date on which any Performance Units or Time Based Units become vested pursuant to Sections 4.1 and 4.2 hereof.

“**VWAP**” shall mean the average of the daily volume weighted average price of the Shares on the Listed Market for the ten (10) trading days ending immediately prior to the applicable Date of Determination.

Within thirty (30) days after each Date of Determination the Company will notify the Participant of the number of Applicable Units that have become Earned Applicable Performance Units as of such Date of Determination.

Notwithstanding the foregoing, subject to the Participant’s continued employment or other service with the Company or its Subsidiaries through such Change in Control, upon a Change in Control 100% of the Performance Units (whether or not previously earned) will be deemed Earned Applicable Performance Units.

(b) **Vesting Dates for Earned Applicable Performance Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries on the Applicable Performance Units Vesting Date (as defined herein), all Earned Applicable Performance Units will become Vested Units on the first to occur of the following (each the “**Applicable Performance Units Vesting Date**”) (i) the third anniversary of the Vesting Commencement Date, (ii) a Change in Control, or (iii) the occurrence of any other event specified in Section 3(b)(ii), (iii) or (iv) of the Employment Agreement by and between the Company and the Participant dated August 3, 2021 (the “**Employment Agreement**”).

4.2 **Time-Based Units.** Subject to the Participant’s continued employment or other service with the Company or its Subsidiaries through the Applicable Time-Based Vesting Date (as defined herein), the Time-Based Units shall become vested and earned on the following vesting dates: one-third (1/3) of the Time-Based Units shall vest and become earned on each of

the one-year, two-year and three year anniversaries of the Vesting Commencement Date; provided that any remaining unvested Time-Based Units shall become fully vested and earned upon any earlier Change in Control or the occurrence of any other event specified in Section 3(b)(ii), (iii) or (iv) of the Employment Agreement (each an “**Applicable Time-Based Vesting Date**”).

5. **SETTLEMENT OF THE AWARD.**

5.1 **Issuance of Shares of Stock.** Subject to the provisions of Section 6 below, not later than ten (10) days following each Vesting Date for Time-Based Units and thirty (30) days following any Vesting Date for Performance Units (the “**Settlement Date**”), the Company shall issue to the Participant in settlement of the Units vested on such Vesting Date, the number of Shares equal to such Vested Units, and all such Vested Units will cease to be outstanding as “Units” under this Agreement upon such issuance of such Shares.

5.2 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice, any or all Shares acquired by the Participant pursuant to the settlement of the Award. Except as provided by the preceding sentence, a certificate or book entry for the Shares as to which the Award is settled shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

5.3 **Restrictions on Grant of the Award and Issuance of Shares.** The grant of the Award and issuance of Shares upon settlement of the Award shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities and issuance of the Shares may be delayed where the Company reasonably anticipates that the making of the payment will violate federal securities law or other applicable law; provided that the payment is made at the earliest date at which the Company reasonably anticipates that the making of the payment will not cause such violation.

6. **TAX IMPLICATIONS.**

6.1 **Withholding.** As a condition to the Company’s obligations with respect to Shares settled under this Agreement (including, without limitation, any obligation to deliver any Shares) hereunder, the Participant shall make arrangements, either by requiring the Shares to be issued hereunder to be delivered to Participant’s broker under sell to cover instructions, or other arrangement satisfactory to the Company, to pay to the Company any federal, state or local taxes of any kind required to be withheld with respect to the delivery of such Shares. If the Recipient shall fail to make the tax payments as are required, the Company shall, to the extent permitted by law, have the right to deduct from any payment of any kind (including by the withholding out of any Shares that otherwise would be delivered to Participant under this Agreement) otherwise due to the Participant Shares with a Fair Market Value equal to any federal, state or local withholding amounts of any kind required by law to be withheld with respect to such Shares.

7. **ADJUSTMENTS FOR CHANGES IN CAPITAL STRUCTURE.**

Subject to any required action by the stockholders of the Company and the requirements of Section 409A, in the event of any change in the Shares effected without receipt of

consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Shares (excepting normal cash dividends) that has a material effect on the Fair Market Value of Shares, appropriate and proportionate adjustments shall be made in the number of Units subject to the Award and/or the number and kind of Shares to be issued in settlement of the Award, in order to prevent dilution or enlargement of the Participant's rights under the Award. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number. Such adjustments shall be determined by the Committee, and its determination shall be final, binding and conclusive.

8. **RIGHTS AS A STOCKHOLDER, DIRECTOR, EMPLOYEE OR CONSULTANT.** The Participant shall have no rights as a stockholder with respect to any Units until the date of the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the Shares are issued, except as provided in Section 7. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between the Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Agreement shall confer upon the Participant any right to continue in the service of the Company or any Subsidiary or interfere in any way with any right of such entities to terminate the Participant's service at any time.

9. **MISCELLANEOUS PROVISIONS.**

9.1 **Termination or Amendment.** The Board may terminate or amend the Plan or this Agreement at any time; provided, however, that no such termination or amendment may adversely affect the Participant's rights under this Agreement without the consent of the Participant unless such termination or amendment is necessary to comply with applicable law or government regulation, including, but not limited to, Section 409A of the Code. No amendment or addition to this Agreement shall be effective unless in writing.

9.2 **Nontransferability of the Award.** Prior to the issuance of Shares on the applicable Settlement Date, neither this Award nor any Units subject to this Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to the Award exercisable during the Participant's lifetime shall only be exercised by the Participant or the Participant's guardian or legal representative.

9.3 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Agreement.



9.4 **Binding Effect.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

9.5 **Delivery of Documents and Notices.** Any document relating to this Agreement or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by the Company, or upon delivery or refusal of delivery by the U.S. Postal Service or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address shown below that party's signature hereto or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The grant documents, which may include but do not necessarily include: the Applicable Plan Provision, this Agreement, the Plan's prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, the Participant may deliver electronically the Agreement to the Company or to such third party involved in administering this Agreement as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery and Execution.** The Participant acknowledges that the Participant has read Section 9.5 of this Agreement and consents to the electronic delivery of the grant documents, as described in Section 9.5(a). The Participant acknowledges that the Participant may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant may revoke the Participant's consent to the electronic delivery of documents described in Section 9.5(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that the Participant is not required to consent to electronic delivery of documents described in Section 9.5(a). Electronic execution of this Agreement shall have the same binding effect as a written or hard copy signature and accordingly, shall bind the Participant and the Company to all of the terms and conditions set forth in the Applicable Plan Provisions and this Agreement.

9.6 **Integrated Agreement.** This Agreement and the Applicable Plan Provisions, together with the Employment Agreement governing this Award shall constitute the entire understanding and agreement of the Participant and the Company with respect to the subject matter contained herein or therein and supersedes any prior agreements, understandings, restrictions, representations, or warranties between the Participant and the Company with respect to such subject matter other than those as set forth or provided for herein or therein. To the extent contemplated herein or therein, the provisions of the Agreement shall survive any settlement of the Award and shall remain in full force and effect.

9.7 **Section 409A.** This Agreement and the Units granted hereunder are intended to fit within the “short-term deferral” exemption from Section 409A of the Code as set forth in Treasury Regulation Section 1.409A-1(b)(4). In administering this Agreement, the Company shall interpret this Agreement in a manner consistent with such exemption. Notwithstanding the foregoing, if it is determined that the Units fail to satisfy the requirements of the short-term deferral rule and are otherwise deferred compensation subject to Section 409A, and if Participant is a “Specified Employee” (within the meaning set forth Section 409A(a)(2)(B)(i) of the Code) as of the date of Participant’s separation from service (within the meaning of Treasury Regulation Section 1.409A-1(h)), then the issuance of any Shares that would otherwise be made upon the date of the separation from service or within the first six (6) months thereafter will not be made on the originally scheduled date(s) and will instead be issued in a lump sum on the date that is six (6) months and one day after the date of the separation from service, but if and only if such delay in the issuance of the Shares is necessary to avoid the imposition of additional taxation on Participant in respect of the Shares under Section 409A of the Code. Each installment of Shares that vests is intended to constitute a “separate payment” for purposes of Section 409A of the Code and Treasury Regulation Section 1.409A-2(b)(2).

9.8 **Clawback.** Participant agrees that in addition to being subject to any compensation recovery or clawback policy implemented by the Company before or after the Grant Date, including any policy adopted by the Company to comply with the requirements of Applicable Laws, if, in the opinion of the independent directors of the Board, the Company’s financial results are restated or materially misstated due in whole or in part to intentional fraud or misconduct by the Participant, the independent directors may, based upon the facts and circumstances surrounding the restatement, direct that the Company seek to recoup any gains realized with respect to this Agreement (including any proceeds, gains or other economic benefit received by the Participant from any subsequent sale of Shares issued upon payment of the Units), regardless of when issued.

9.9 **Applicable Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida or other conflict-of-interest provisions to the contrary. Venue for any action arising out of this Agreement or the employment relationship shall be brought only in courts of competent jurisdiction in or for Palm Beach County, Florida and each party hereby irrevocably waives, to the fullest extent permitted by law, any objection which they may now or hereafter have to the laying of venue in such courts and submits to the jurisdiction of such courts. THE PARTIES (BY THEIR ACCEPTANCE HEREOF) HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTES BASED UPON OR ARISING OUT OF THIS AGREEMENT.

9.10 **Severability.** If any term or provision of this Agreement or the application thereof to any Participant or circumstance shall to any extent be invalid or unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect and the remainder of this Agreement, or the application of such term or provision to Participants or circumstances other than those held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.11 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.12 **Acceptance.** By signing the Agreement, the Participant: (a) acknowledges receipt of and represents that the Participant has read and is familiar with this Agreement and the Applicable Plan Provisions, (b) accepts the Award subject to all of the terms and conditions of this Agreement and the Applicable Plan Provisions and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under this Agreement except as otherwise provided in this Agreement. The Participant acknowledges that there may be adverse tax consequences upon the vesting or settlement of the Units or disposition of the underlying Shares and that the Participant has been advised to consult a tax advisor prior to such vesting, settlement or disposition.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THERAPEUTICSMD, INC.

By: /s/ Robert Finizio

Name: Robert Finizio

Title: Chief Executive Officer

Address: 951 Yamato Road, Suite 220  
Boca Raton, Florida 33431

HUGH O' DOWD

/s/ Hugh O'Dowd

Signature

August 31, 2021

Date

Address:

[Signature Page to Inducement Grant]

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated March 3, 2021 with respect to the consolidated financial statements of TherapeuticsMD, Inc. included in the Annual Report on Form 10-K for the year ended December 31, 2020, which is incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in this Registration Statement.

/s/ GRANT THORNTON LLP

Miami, Florida

August 31, 2021