

INTEGRYS ENERGY GROUP, INC.

Form 4

August 01, 2013

FORM 4

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

OMB APPROVAL

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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

(Print or Type Responses)

1. Name and Address of Reporting Person *
RADTKE MARK A

2. Issuer Name and Ticker or Trading Symbol
INTEGRYS ENERGY GROUP, INC. [TEG]

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

(Last) (First) (Middle)
700 NORTH ADAMS STREET, P. O. BOX 19001

3. Date of Earliest Transaction (Month/Day/Year)
07/30/2013

____ Director
 Officer (give title below) _____ Other (specify below)
Exec VP Shd Srv & Chf Stg Ofc

(Street)
GREEN BAY, WI 54307-9001

4. If Amendment, Date Original Filed(Month/Day/Year)

6. Individual or Joint/Group Filing(Check Applicable Line)
 Form filed by One Reporting Person
 Form filed by More than One Reporting Person

(City) (State) (Zip)

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Ownership (Instr. 4)
			Code	V Amount (D) Price			
Common Stock	07/30/2013		M ⁽¹⁾	7,550 A \$ 48.36	29,687.6996	D	
Common Stock	07/30/2013		S ⁽¹⁾	7,550 D \$ 62.98	22,137.6996	D	
Common Stock					6,443.4567	I	By Employee Stock Ownership Plan

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474
(9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)	6. Date Exercisable and Expiration Date (Month/Day/Year)	7. Title and Amount of Underlying Security (Instr. 3 and 4)		
				Code	V (A) (D)	Date Exercisable	Expiration Date	Title	Amount of Underlying Shares
Employee Stock Option (Right to buy)	\$ 48.36	07/30/2013		M ⁽¹⁾	7,550	02/14/2009 ⁽²⁾ 02/14/2018	Common Stock		
Employee Stock Option (Right to buy)	\$ 41.58					02/11/2011 ⁽²⁾ 02/11/2020	Common Stock		
Employee Stock Option (Right to buy)	\$ 49.4					02/10/2012 ⁽²⁾ 02/10/2021	Common Stock		
Employee Stock Option (Right to buy)	\$ 53.24					02/09/2013 ⁽²⁾ 02/09/2022	Common Stock		
Employee Stock Option (Right to buy)	\$ 56					02/14/2014 ⁽²⁾ 02/14/2023	Common Stock		
Performance Rights	\$ 0 ⁽³⁾					01/01/2016 ⁽³⁾ 06/30/2016	Common Stock		
Performance Rights	\$ 0 ⁽³⁾					01/01/2014 ⁽³⁾ 06/30/2014	Common Stock		
Performance Rights	\$ 0 ⁽³⁾					01/01/2015 ⁽³⁾ 06/30/2015	Common Stock		
Phantom Stock Unit	⁽⁴⁾					⁽⁵⁾ ⁽⁵⁾	Common Stock		27.

Restricted Stock Units 2010	(6)	02/11/2011	02/11/2014	Common Stock	72
Restricted Stock Units 2011	(6)	02/10/2012	02/10/2015	Common Stock	1,
Restricted Stock Units 2012	(6)	02/09/2013	02/09/2016	Common Stock	1,
Restricted Stock Units 2013	(6)	02/14/2014	02/14/2017	Common Stock	2,0

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
RADTKE MARK A 700 NORTH ADAMS STREET P. O. BOX 19001 GREEN BAY, WI 54307-9001			Exec VP Shd Srv & Chf Stg Ofc	

Signatures

Dane E. Allen, as Power of Attorney for Mr.
Radtke

08/01/2013

__Signature of Reporting Person

Date

Explanation of Responses:

- * If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).
- ** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).
- (1) The transaction reported was effected pursuant to a Rule 10b5-1 trading plan adopted by the reporting person on September 12, 2012.
- (2) The option vests in four equal annual installments beginning on the exercisable date.
- (3) Performance stock rights represent the right to receive shares of common stock of the Company, in the event certain performance goals are satisfied. These goals are based on Company performance against an established industry benchmark, over a three year performance period. The final award of shares issued can be between 0% and 200% of the reported target award.
- (4) These phantom stock units convert to common stock on a one-for-one basis.
- (5) Upon retirement or termination of service, distribution of phantom stock units will commence in January of the year that is both (1) following the calendar year in which service terminates with the Company, and (2) at least six months following termination, or later if the participant selected a later date.
- (6) Each restricted stock unit represent a contingent right to receive one share of Company common stock. The restricted stock units vest in four equal annual installments beginning on the exercisable date.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. y. As of December 31, 2012 and 2011, \$6,936 and \$5,612, respectively was recorded as non-cash compensation on the accompanying consolidated financial statements.

In October 2011, we (i) issued a Company Warrant for 600,000 shares with a fair value of \$133,045 to an officer of the Company for services performed. The Company Warrant was valued on the date of the grant using a term of 10 years; volatility of 45.94%; risk free rate of 2.23%; and a dividend yield of 0%. The Company Warrant vests over a 44-month period beginning on November 21, 2011 (or 13,636 shares for months 1-43 and 13,652 shares for month 44). As of December 31, 2012 and 2011, of the \$133,045 fair value, \$36,284 and \$7,158, respectively, was recorded as non-cash compensation on the accompanying consolidated financial statements. The remaining \$89,603 will be expensed to non-cash compensation equitably over the remaining 30 months; (ii) issued a Company Warrant for 184,211 shares with a fair value of \$25,980 to an unrelated entity for consulting services covered under a two month agreement. The Company Warrant was valued on the date of the grant using a term of five years; volatility of 41.04%; risk free rate of 1.08%; and a dividend yield of 0%. As of December 31, 2011, the \$25,980 fair value was recorded as financing expense on the accompanying consolidated financial statements; and (iii), VitaMed entered into a two-year consulting agreement with Lang providing for a Lang representative to help evaluate improvements to existing products and new products as well as services, including but not limited to, research, design, compliance, scientific and regulatory affairs and commercialization of products.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**NOTE 10 – STOCKHOLDERS' EQUITY (continued)Warrants Issued for Services (continued)

As compensation, Lang received a Company Warrant for 800,000 shares. The Company Warrant was valued on the date of the grant using a term of 10 years; a volatility of 45.94%; risk free rate of 2.23%; and a dividend yield of 0%. The Company Warrant vested immediately. Of the \$177,394 fair value, \$88,696 and \$17,010 was recorded as non-cash compensation and \$71,688 and \$160,384 was recorded as prepaid expense as of December 31, 2012 and 2011, respectively, on the accompanying consolidated financial statements.

In December 2011, we issued a Company Warrant for 500 shares with a fair value of \$338 to an unrelated individual for consulting services covered under a three month agreement. The Company Warrant was valued on the date of the grant using a term of 10 years; volatility of 51.83%; risk free rate of 0.91%; and a dividend yield of 0%. The Company Warrant vested immediately. As of December 31, 2011, of the \$338 fair value, \$15 was recorded as non-cash compensation and \$323 was recorded as prepaid expense on the accompanying consolidated financial statements.

The weighted average fair value per share of Company Warrants granted and the assumptions used in the Black-Scholes Model during the years ended December 31, 2012 and 2011 are set forth in the table below.

	2012	2011
Weighted average fair value	\$2.05	\$0.16
Risk-free interest rate	0.72-1.04%	0.91-3.48%
Volatility	44.64-44.81%	39.13-51.83%
Term (in years)	5	5-10
Dividend yield	0.00	% 0.00 %

The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the term.

Estimated volatility is a measure of the amount by which our stock price is expected to fluctuate each year during the term of the award. Our estimated volatility is an average of the historical volatility of the stock prices of its peer entities whose stock prices were publicly available. Our calculation of estimated volatility is based on historical stock prices over a period equal to the term of the awards. We used the historical volatility of peer entities due to the lack of sufficient historical data of its stock price during 2001-2012.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**NOTE 10 – STOCKHOLDERS’ EQUITY (continued)Warrants Issued for Services (continued)

A summary of our Common Stock purchase warrant activity and related information for the years ended December 31, 2012 and 2011 follows:

	Number of Shares Under Company Warrants	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Balance at December 31, 2010	-0-			
Granted	3,057,627	\$ 0.36	7.9	\$3,483,691
Exercised	-0-			
Expired	-0-			
Cancelled	-0-			
Balance at December 31, 2011	3,057,627	\$ 0.36	7.9	\$3,483,691
Granted	17,332,500	\$ 1.26	4.3	\$31,891,150
Exercised	(8,145,486)	\$ 0.38		
Expired	-0-			
Cancelled	(51,142)	\$ 0.24		
Balance at December 31, 2012	12,193,499	\$ 1.63	4.8	\$17,971,994
Vested and Exercisable at December 31, 2012	11,784,408	\$ 1.69	4.7	\$16,859,266

Stock Options

In 2009, we adopted the 2009 Long Term Incentive Compensation Plan (the “2009 Plan”) to provide financial incentives to employees, members of the Board, advisers, and consultants of our company who are able to contribute towards the creation of or who have created stockholder value by providing them stock options and other stock and cash

Explanation of Responses:

incentives (the “Awards”). The Awards available under the 2009 Plan consist of stock options, stock appreciation rights, restricted stock, restricted stock units, performance stock, performance units, and other stock or cash awards as described in the 2009 Plan. There are 25,000,000 shares authorized for issuance thereunder. Prior to the Merger, no awards had been issued under the 2009 Plan. As of December 31, 2012 there were 11,508,488 shares issued under the 2009 Plan.

On February 23, 2012, our Board of Directors adopted the 2012 Stock Incentive Plan, a non-qualified plan not requiring approval by our stockholders (the “2012 Plan”). The 2012 Plan was designed to serve as an incentive for retaining qualified and competent key employees, officers, directors, and certain consultants and advisors of our company. There are 10,000,000 shares of our Common Stock authorized for issuance thereunder. As of December 31, 2012 there were 2,225,000 shares issued under the 2012 Plan.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**NOTE 10 – STOCKHOLDERS' EQUITY (continued)Stock Options (continued)

A summary of activity under the 2009 and 2012 Plans and related information follows:

	Number of Shares Under Company Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Balance at December 31, 2010	-0-			
Granted ⁽¹⁾	10,682,218	\$ 0.16	7.6	\$14,188,484
Exercised	(92,057)	\$ 0.19		
Expired	-0-			
Cancelled	-0-			
Balance at December 31, 2011	10,590,161	\$ 0.16	7.6	\$14,067,649
Granted	5,121,250	\$ 2.80	9.7	\$1,737,530
Exercised	(1,931,788)	\$ 0.13		
Expired	-0-			
Cancelled	(46,135)			
Balance at December 31, 2012	13,733,488	\$ 1.16	7.7	\$26,804,117
Vested and Exercisable at December 31, 2012	8,370,408	\$ 0.38	6.7	\$22,811,422

⁽¹⁾ This includes: (i) VitaMed Options granted between October 2008 and December 31, 2010 for an aggregate of 7,639,722 Units of which 16,000 were canceled prior to conversion (or Company Options for 9,357,561 shares per the Conversion Ratio), (ii) VitaMed Options granted between January 1, 2011 and October 3, 2011 for an aggregate of 621,000 Units (or Company Options for 762,235 shares per the Conversion Ratio) and (iii) Company Options granted between October 4, 2011 and December 31, 2011 for an aggregate of 562,422 shares. The terms and conditions of the

VitaMed Options were reflected in the replacement Company Options including the number of shares vested.

The weighted-average grant date fair value of Company Options granted during the years ended December 31, 2012 and 2011 was \$1.16 and \$0.16, respectively.

As of December 31, 2012 and 2011, Company Options outstanding covered an aggregate of 13,733,488 and 10,590,161 shares, respectively, with a weighted average contractual life of 7.7 and 7.6 years, respectively, and exercise prices ranging from \$2.20 to \$3.40 per share in 2012 and \$0.10 to \$1.22 per share in 2011 resulting in a weighted average exercise price of \$1.16 and \$0.16 per share, respectively.

The valuation methodology used to determine the fair value of Company Options is the Black-Scholes-Merton option-pricing model ("Black-Scholes Model"), an acceptable model in accordance with ASC 718-10. The Black-Scholes Model requires the use of a number of assumptions including volatility of the stock price, the risk-free interest rate, and the expected life.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**NOTE 10 – STOCKHOLDERS' EQUITY (continued)Stock Options (continued)

The assumptions used in the Black-Scholes Model during the years ended December 31, 2012 and 2011 and are set forth in the table below.

	2012	2011
Risk-free interest rate	0.61-2.23%	0.91-2.54%
Volatility	40.77-46.01%	37.92-40.48%
Expected life (in years)	5-6.25	5.5-6.25
Dividend yield	0.00	% 0.00 %

The risk-free interest rate assumption is based upon observed interest rates on zero coupon U.S. Treasury bonds whose maturity period is appropriate for the expected life.

Estimated volatility is a measure of the amount by which our stock price is expected to fluctuate each year during the term of the award. Our estimated volatility is an average of the historical volatility of the stock prices of its peer entities whose stock prices were publicly available. Our calculation of estimated volatility is based on historical stock prices over a period equal to the term of the awards. We used the historical volatility of peer entities due to the lack of sufficient historical data of its stock price during 2001-2011. The average expected life is based on the contractual term of the option using the simplified method.

Share-based compensation expense for Company Options recognized in our results for the years ended December 31, 2012 and 2011 (\$1,832,062 and \$183,355 respectively) is based on awards vested and we estimated no forfeitures. ASC 718-10 requires forfeitures to be estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from the estimates.

At December 31, 2012 and 2011, total unrecognized estimated compensation expense related to non-vested Company Options granted prior to that date was approximately \$4,391,000 and \$244,000, respectively, which is expected to be recognized over a weighted-average period of 1.8 years. No tax benefit was realized due to a continued pattern of operating losses.

NOTE 11- INCOME TAXES

With the advent of the Merger, we determined that VitaMed would become the sole focus of our company and previous business performed by our predecessor was discontinued. Because of these events, deferred income taxes are determined by calculating the loss from operations of our company starting October 4, 2011. Deferred income taxes are determined using the liability method for the temporary differences between the financial reporting basis and income tax basis of our assets and liabilities. Deferred income taxes are measured based on the tax rates expected to be in effect when the temporary differences are included in our tax return. Deferred tax assets and liabilities are recognized based on anticipated future tax consequences attributable to differences between financial statement carrying amounts of assets and liabilities and their respective tax bases. For the years December 31, 2012 and 2011, there was no provision for income taxes, current or deferred.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****NOTE 11– INCOME TAXES (continued)**

At December 31, 2012 and 2011, we had a net operating loss carry forward of approximately \$14,900,000 and \$2,100,000 million, respectively, available to offset future taxable income through 2032.

At December 31, 2012 and 2011, we had state net operating loss carryforwards of approximately \$12,800,000 and \$25,000, respectively, available to offset future losses through 2032. We established valuation allowances equal to the full amount of the deferred tax assets because of the uncertainty of the utilization of the operating losses in future periods. We periodically assess the likelihood that we will be able to recover the deferred tax assets. We consider all available evidence, both positive and negative, including historical levels of income, expectations and risks associated with estimates of future taxable income.

Our deferred tax asset and liability as presented in financial statements consist of the following:

	2012	2011
Deferred Income Tax Assets:		
Net operating losses	\$5,920,861	\$748,404
Valuation allowance	(5,920,861)	(748,404)
Deferred Income Tax Assets, net	\$-0-	\$-0-

Our provision for income taxes differs from applying the statutory U.S. federal income tax rate to the income before income taxes. The primary differences result from deducting certain expenses for financial statement purposes but for federal income tax purposes.

A reconciliation between taxes computed at the federal statutory rate and the consolidated effective tax rate is as follows:

	2012	2011
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Explanation of Responses:

Federal statutory tax rate	35.0 %	35.0 %
State tax rate, net of federal tax benefit	5.5 %	-0- %
Adjustment in valuation allowances	(18.2)%	(5.8)%
Permanent and other differences	(22.3)%	(29.2)%
Provision (Benefit) for Income Taxes	-0- %	-0- %

NOTE 12 – RELATED PARTIES

Loan Guaranty

In March 2011, VitaMed entered into a Business Loan Agreement and Promissory Note for a \$300,000 bank line of credit (the “Bank LOC”) for which the bank required personal guarantees and cash collateral. Personal guarantees and cash collateral limited to \$100,000 each were provided by Robert Finizio and John Milligan, officers of VitaMed, and by Reich Family Limited Partnership, an entity controlled by Mitchell Krassan, also an officer of VitaMed. The Bank LOC accrued interest at the rate of 3.020% per annum based on a year of 360 days and was due on March 1, 2012. The bank and VitaMed negotiated a one year extension to the Bank LOC which was executed on March 19, 2012 (the “Bank LOC Extension”).

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THERAPEUTICSMD, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 12 – RELATED PARTIES (continued)

Loan Guaranty (continued)

The Bank LOC Extension accrues interest at the rate of 2.35% and is due on March 1, 2013. In consideration for the personal guarantees and cash collateral, VitaMed issued VitaMed Warrants for an aggregate of 499,998 Units (or Company Warrants for an aggregate of 613,713 shares pursuant to the Conversion Ratio). The Company Warrants vest at the rate of an aggregate of 76,714 shares per calendar quarter end and have an exercise price of \$0.2444 per share. In the event that the bank loan is repaid prior to being fully vested, the Company Warrants will be reissued only for the number of shares vested through the date of repayment. On November 13, 2012, the then outstanding balance of \$299,220 was repaid in full and the Company and the bank amended the Business Loan Agreement and Promissory Note to reflect a \$100,000 bank line of credit (the “Amended Bank LOC”). As part of the Amended Bank LOC, the personal guarantees and cash collateral were removed for Mr. Finizio and Mr. Milligan. In accordance with the terms of the Company Warrants, the Company Warrants previously granted to Mr. Finizio and Mr. Milligan have been amended to reflect the amount vested prior to the date of the Amended Bank LOC (179,000 each). At December 31, 2012, an aggregate of 562,571 Company Warrants were vested.

Loans from Affiliates

In June 2011, VitaMed issued Promissory Notes (the “VitaMed Promissory Notes”) in the aggregate principal amount of \$500,000 of which \$100,000 was sold to affiliates (the “Affiliate Notes”). In June 2012, the Affiliate Notes were extended to October 15, 2012 (one held by Mr. Milligan for \$50,000 and one for \$50,000 held by BF Investments, LLC (owned by Brian Bernick, a member of the board of directors of our company). On October 4, 2012 these VitaMed Promissory Notes were paid in full including \$5,341 in accrued interest.

In December 2011, we issued 4% promissory notes to Mr. Finizio and Mr. Milligan and for an aggregate of \$100,000 (\$50,000 each) with original due dates of March 1, 2012. These promissory notes were extended by mutual agreement to June 1, 2012. In June 2012, the VitaMed Promissory Note held by Mr. Finizio was paid in full, including \$888 in accrued interest. Mr. Milligan’s VitaMed Promissory Note was extended to October 15, 2012. On October 4, 2012 this VitaMed Promissory Notes was paid in full including \$1,519 in accrued interest.

Lock Up Agreements

As required by of the Merger Agreement, a Lock Up Agreement (“Agreement”) was entered into between us and security holders covering the aggregate of 70,000,000 shares of our Common Stock issued pursuant to the Merger or reserved for issuance pursuant to Company Options and Company Warrants. Each security holder agreed that from the date of the Agreement until 18 months thereafter (the “Lock-Up Period”), they would not make or cause any sale of our securities. After the completion of the Lock-Up Period, the security holder agreed not to sell or dispose of more than 2.5% of the aggregate Common Stock or shares reserved for issuance for Company Options and Company Warrants per quarter over the following 12 month period (the “Dribble Out Period”). Upon the completion of the Dribble Out Period, the Agreements shall terminate.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 12 – RELATED PARTIES (continued)

Purchases by Related Parties

During 2012 and 2011, we sold our products to Dr. Brian Bernick, a director of our company, in the amounts of \$2,632 and \$20,669, respectively, while \$1,272 and \$0 of receivables related thereto remained outstanding at December 31, 2012 and 2011, respectively.

Agreements with Pernix Therapeutics, LLC

On February 29, 2012, Cooper C. Collins, President and largest shareholder of Pernix Therapeutics, LLC (“Pernix”), was elected to serve on our Board of Directors. We closed a Stock Purchase Agreement with Pernix on October 5, 2011. From time to time, we have entered and will continue to enter into agreements with Pernix in the normal course of business. All such agreements are reviewed by independent directors or a committee consisting of independent directors. During the years ended December 31, 2012 and 2011, we made purchases of approximately \$404,000 and \$19,000, respectively, from Pernix. At December 31, 2012 and 2011, there were amounts due Pernix of approximately \$308,000 and 19,000 outstanding, respectively.

Warrants assigned to Related Party

In June 2012, a 100,000 Company Warrant was assigned to the son of Chairman of our Board of Directors by a non-affiliated third party.

NOTE 13 - BUSINESS CONCENTRATIONS

We purchase our products from several suppliers, with approximately 76% and 95% of our purchases from one supplier for the years ended December 31, 2012 and 2011, respectively.

We sell our prescription dietary supplement products to wholesale distributors, specialty pharmacies, specialty distributors, and chain drug stores that generally sell products to retail pharmacies, hospitals, and other institutional customers. For the year ended December 31, 2012, 28% of our recognized revenue and 98% of our deferred revenue was generated from sales to only three customers: AmerisourceBergen Corporation, Cardinal Health, Inc., and McKesson Corporation. We did not sell to these customers in prior years.

NOTE 14- COMMITMENTS AND CONTINGENCIES

Operating Lease

We lease administrative and distribution facilities in Boca Raton, Florida pursuant to a 45 month non-cancelable operating lease expiring in 2013. The lease stipulates, among other things, base monthly rents ranging from \$5,443 to \$5,933 over the term of the lease plus our share of monthly estimated operating expenses of \$3,500 and sales tax. The lease expires May 31, 2013 and we believe we will be able to extend the lease in a manner adequate to meet our current needs.

The rental expense related to this lease totaled \$106,315 and \$122,752 for the years ended December 31, 2012 and 2011, respectively. Future minimum rental payments through May 31, 2013 total \$29,667.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14- COMMITMENTS AND CONTINGENCIES (continued)

Employment Agreements

On November 8, 2012, the Compensation Committee of our Board of Directors recommended that the Board of Directors approve employment agreements with our executive officers, namely: Chief Executive Officer (Robert G. Finizio), President (John C.K. Milligan, IV) and Chief Financial Officer (Daniel A. Cartwright) (each an “Executive; together the “Executives”). Our Board of Directors approved the Employment Agreements with an effective date of November 8, 2012. With the exception of compensation, the three-year employment agreements are substantially the same with the Executives receiving employee benefits, vacation and other perquisites as may be determined from time to time and an automatic renewal option for one additional year. Conditions of termination for all employment agreements call for (i) termination immediately upon death, (ii) termination upon a disability in which the Executive is unable to perform his duties for more than 180 total calendar days during any 12-month period, (iii) voluntary termination by the Executive upon a 14 calendar day prior notice, (iv) involuntary termination by our company without cause with 60-day notice or 90-day notice when termination is due to the non-extension of the employment term by our company, (v) termination for cause and (vi) termination for good reason wherein the Executive shall have 90 days from the date of notice to terminate his employment. In addition, if we are subject to a change in control, the Executive shall be entitled to receive severance benefits as outlined therein. The employment agreements contain standard provisions for confidentiality and noncompetition.

Compensation for services rendered by Robert G. Finizio as Chief Executive Officer calls for: (i) a time-based ten-year stock option (the “Time-Based Option”) granted and issued on November 30, 2012 (“Date of Grant”) to purchase 900,000 shares of our Common Stock with the exercise price equal to the closing price of our Common Stock on the Date of Grant with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a performance-based ten-year stock option (the “Performance-Based Option”) in an amount to be determined, (iii) a base salary of not less than \$355,100 per year and (iv) an annual short-term incentive compensation bonus of up to 35% of the base salary, at the discretion of our Board of Directors.

Compensation for services rendered by John C.K. Milligan, IV as President calls for: (i) a Time-Based Option granted and issued on the Date of Grant to purchase 800,000 shares of our Common Stock with the exercise price equal to the closing price of our Common Stock on the Date of Grant with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a Performance-Based Option in an amount to be determined, (iii) a base salary of not less than \$288,100 per year and (iv) an annual short-term incentive compensation bonus of up to 30% of the base salary, at the discretion of our Board of Directors.

Compensation for services rendered by Daniel A. Cartwright as Chief Financial Officer calls for: (i) a Time-Based Option granted and issued on the Date of Grant to purchase 700,000 shares of our Common Stock with the exercise price equal to the closing price of our Common Stock on the Date of Grant with the underlying shares vesting annually over three years on the anniversary of the employment date, (ii) the right to receive a Performance-Based Option in an amount to be determined, (iii) a base salary of not less than \$257,100 per year and (iv) an annual short-term incentive compensation bonus of up to 30% of the base salary, at the discretion of our Board of Directors.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14- COMMITMENTS AND CONTINGENCIES (continued)

Employment Agreements (continued)

The employment agreements provide that as soon as reasonably practicable, we shall file a Form S-8 registration statement, subsequent to any S-1 or S-3 registration statement, to register the issuance of shares under the Time-Based Options.

In addition, should we experience a change in control, the executives are entitled to receive severance benefits in conjunction with a qualifying termination or Change in Control (“CIC”) Severance Benefits. A qualifying termination includes the occurrence of any one or more of the following events on or after the date of the announcement of a transaction which would lead to a change in control and up to 12 months following the date of the change of control shall trigger the payment of CIC Severance Benefits: (a) an involuntary termination of the Executive’s employment by us for reasons other than cause, death or disability, and (b) the voluntary termination by the Executive for Good Reason as evidenced by a Notice of Termination delivered to the us by the Executive. CIC Severance Benefits include (i) an amount equal to 1.0 to 1.5 times the Executive’s annual Base Salary established for the fiscal year in which the termination occurs, (ii) an amount equal to 1.0 to 1.5 times the Executive’s Targeted Annual Bonus Award established for the fiscal year in which the termination occurs, (iii) an amount equal to the Executive’s unpaid Base Salary and accrued but unused vacation pay through the date of termination, (iv) all outstanding long-term incentive awards shall accelerate and become fully vested, (v) a continuation of the welfare benefits of health care, life and accidental death and dismemberment, and disability insurance coverage for 1.0 to 1.5 years after the termination. The payment of the CIC Severance Benefits mentioned herein shall be paid in cash to the Executive in a single lump sum within sixty (60) days of termination.

Litigation

We are party to various legal actions arising in the ordinary course of business, including actions related to our intellectual property. While it is not feasible to determine the actual outcome of these actions at this time, we do not believe that these matters, including those described below, will have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.

Aceto Corporation

On November 13, 2012, Aceto Corporation filed a lawsuit against our company in the United States District Court for the Southern District of Florida. The lawsuit alleges, among other things, that we are improperly obtaining and using the Quatrefolic product and related trademarks that we have acquired pursuant to an allegedly invalid sublicense with Pernix Therapeutics, LLC, a subsidiary of Pernix Therapeutics Holdings, Inc., or Pernix. Cooper C. Collins, a member of our Board of Directors, is the President, Chief Executive Officer, and a director of Pernix. The lawsuit seeks to enjoin us from using the Quatrefolic products and trademarks, in addition to unspecified actual and punitive damages. We filed a motion to dismiss on January 2, 2013, as amended on February 27, 2013. Based on our initial assessment of the case which is in the pre-discovery stage, we believe that the case is without merit and, as a result, should not have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.

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THERAPEUTICSMD, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 14- COMMITMENTS AND CONTINGENCIES (continued)

Litigation (continued)

Avion Pharmaceuticals, LLC

On November 30, 2012, Avion Pharmaceuticals, LLC (“Avion”), filed a lawsuit against our company in the United States District Court for the Northern District of Georgia. The lawsuit alleges, among other things, unfair competition and trademark infringement against Avion’s “Prenate” trademarks based on the use of our Prenal branded products which we launched in November 2012. The lawsuit seeks to enjoin us from using the Prenal name, in addition to unspecified actual and punitive damages. We filed an answer and counterclaim on January 17, 2013, as amended on February 27, 2013. Based on our initial assessment of the case which is in the early discovery stage, we believe that the case is without merit and, as a result, should not have a material adverse effect on our consolidated financial condition, results of operations, or cash flows.

NOTE 15 – SUBSEQUENT EVENTS

Revolving Credit Note

On January 31, 2013, we issued a Multiple Advance Revolving Credit Note (the “Note”) to Plato and Associates, LLC, a Missouri limited liability company (“Plato”). The Note allows us to draw down funding up to the \$10 million maximum principal amount, at a stated interest rate of 6% per annum (the “Stated Interest Rate”). Plato may make advances to us from time to time under the Note at our request, which advances will be of a revolving nature and may be made, repaid, and made from time to time. Interest payments shall be due and payable on the tenth day following the end of each calendar quarter in which any interest is accrued and unpaid, commencing on April 10, 2013, and the principal balance outstanding under the Note, together with all accrued interest and other amounts payable under the Note, if any, will be due and payable on February 24, 2014. The default interest rate under the Note will be a per annum rate equal to the Stated Interest Rate plus eight percentage points (the “Default Interest Rate”), and the principal amount outstanding under the Note shall bear interest at the Default Interest Rate upon the occurrence of an event of default as specified in the Note, including, our nonpayment of amounts due under the Note or our failure to comply with any

provision of the Note, among others.

As additional consideration for the Note, we issued Plato a warrant to purchase 1,250,000 shares of our Common Stock at an exercise price \$3.20 per share (the "Warrant"). The Warrant will vest and become exercisable on October 31, 2013 and may be exercised any time after that date prior to the January 31, 2019 expiration date of the Warrant. These Warrants, with a fair value of approximately \$1.7 million, were valued on the date of the grant using a term of six years; a volatility of 44.29%; risk free rate of 0.88%; and a dividend yield of 0%. As of March 7, 2013 we had drawn \$200,000 from this Note.

March 2013 Prospectus Supplement

On March 7, 2013 we filed a Prospectus Supplement for an underwritten public offering of our common stock with anticipated gross proceeds of \$50 million. The securities being offered by us are pursuant to a shelf registration statement previously filed with the Securities and Exchange Commission (the "SEC") on January 25, 2013, which the SEC declared effective on February 5, 2013. We intend to use the proceeds of the offering for general corporate purposes, including funding our Phase 3 clinical trials for our proposed hormone therapy products. Jefferies LLC is acting as sole book-running manager for the offering, and Noble Financial Capital Markets is acting as co-manager for the offering.

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