**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, D.C. 20549**

# FORM 10-Q

**(MARK ONE)**

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

**FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2003**

**OR**

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.**

**FOR THE TRANSITION PERIOD FROM TO**

**COMMISSION FILE NUMBER: 0-20772**

# QUESTCOR PHARMACEUTICALS, INC.

**(Exact name of Registrant as specified in its charter)**

| **CALIFORNIA** | **33-0476164** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |

**3260 Whipple Road**
**Union City, CA 94587-1217**
**(Address of Principal Executive Offices)**

**REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE: (510) 400-0700**

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter prior that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No o

Indicate by check mark whether Registrant is an accelerated filer (as defined in Rule 12B-2 of the Act). Yes o No ☒

At August 12, 2003 there were 44,268,602 shares of the Registrant's common stock, no par value per share, outstanding.

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**FORM 10-Q**

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**QUESTCOR PHARMACEUTICALS, INC.**

**CONDENSED CONSOLIDATED BALANCE SHEETS**
**(IN THOUSANDS, EXCEPT SHARES)**

| | June 30, 2003 | December 31, 2002 |
|---|---|---|
| | (Unaudited) | (Note 1) |
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 5,624 | $ 6,156 |
| Short-term investments | 3,317 | 1,350 |
| Accounts receivable, net of allowances of $42 at June 30, 2003 and $49 at December 31, 2002 | 1,359 | 1,590 |
| Inventories, net | 951 | 391 |
| Prepaid expenses and other current assets | 644 | 979 |
| Total current assets | 11,895 | 10,466 |
| Property and equipment, net | 737 | 585 |
| Purchased technology, net | 14,360 | 382 |
| Goodwill and other indefinite lived intangible assets | 479 | 479 |
| Deposits and other assets | 839 | 854 |
| Total assets | $ 28,310 | $ 12,766 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 1,301 | $ 1,230 |
| Accrued compensation | 579 | 794 |
| Other accrued liabilities | 950 | 1,205 |
| Payable relating to product acquisition | 5,183 | — |
| Short-term debt and current portion of long-term debt | 87 | 218 |
| Current portion of capital lease obligations | — | 1 |
| Total current liabilities | 8,100 | 3,448 |
| Convertible debentures, (face amount of $4,000), net of deemed discount of $845 at June 30, 2003 and $1,092 at December 31, 2002 | 3,155 | 2,908 |
| Other non-current liabilities | 851 | 833 |
| Commitments | | |
| Preferred stock, no par value, 7,500,000 shares authorized; 2,155,715 Series A shares issued and outstanding at June 30, 2003 and December 31, 2002 (aggregate liquidation preference of $10,000 at June 30, 2003 and December 31, 2002) | 5,081 | 5,081 |
| Stockholders' equity: | | |
| Preferred stock, no par value, 10,000 Series B shares issued and outstanding at June 30, 2003, net of issuance costs (aggregate liquidation preference of $10,000 at June 30, 2003) | 9,178 | — |
| Common stock, no par value, 105,000,000 shares authorized; 44,268,602 and 38,676,592 shares issued and outstanding at June 30, 2003 and December 31, 2002, respectively | 84,237 | 77,528 |
| Deferred compensation | (24) | (22) |
| Accumulated deficit | (82,268) | (76,968) |
| Accumulated other comprehensive loss | — | (42) |
| Total stockholders' equity | 11,123 | 496 |
| Total liabilities and stockholders' equity | $ 28,310 | $ 12,766 |

See accompanying notes.

**QUESTCOR PHARMACEUTICALS, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**
**(UNAUDITED)**
**(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)**

| | Three Months Ended | | Six Months Ended | |
|---|---|---|---|---|
| | June 30, 2003 | June 30, 2002 | June 30, 2003 | June 30, 2002 |
| Revenues: | | | | |
| Net product sales | $ 2,880 | $ 3,307 | $ 5,242 | $ 7,113 |
| Grant and royalty revenue | 25 | 84 | 34 | 132 |
| Technology revenue | — | 250 | 250 | 250 |
| Services revenue from a related party | — | 100 | — | 100 |
| Total revenues | 2,905 | 3,741 | 5,526 | 7,595 |
| Operating costs and expenses: | | | | |
| Cost of product sales | 1,149 | 728 | 1,824 | 1,362 |
| Sales and marketing | 1,501 | 1,652 | 2,986 | 3,027 |
| General and administrative | 1,016 | 1,216 | 2,334 | 2,747 |
| Research and development | 711 | 682 | 1,322 | 1,110 |
| Depreciation and amortization | 212 | 315 | 381 | 659 |
| Total operating costs and expenses | 4,589 | 4,593 | 8,847 | 8,905 |
| Loss from operations | (1,684) | (852) | (3,321) | (1,310) |
| Non-cash amortization of deemed discount on convertible debentures | (130) | (131) | (261) | (175) |
| Interest income (expense), net | (18) | (13) | (14) | 14 |
| Other expense, net | (3) | (181) | (80) | (110) |
| Rental income, net | 66 | 74 | 137 | 146 |
| Net loss | (1,769) | (1,103) | (3,539) | (1,435) |
| Non-cash deemed dividend related to beneficial conversion feature of Series B Preferred Stock | 93 | — | 1,394 | — |
| Dividends on Series B Preferred Stock | 200 | — | 367 | — |
| Net loss applicable to common stockholders | $ (2,062) | $ (1,103) | $ (5,300) | $ (1,435) |
| Basic and diluted net loss per common share applicable to common stockholders | $ (0.05) | $ (0.03) | $ (0.13) | $ (0.04) |
| Weighted average shares of common stock outstanding | 39,949 | 38,468 | 39,316 | 38,157 |

See accompanying notes.

**QUESTCOR PHARMACEUTICALS, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(UNAUDITED)**

**(IN THOUSANDS)**

| | Six Months Ended | |
|---|---|---|
| | June 30, 2003 | June 30, 2002 |
| **OPERATING ACTIVITIES** | | |
| Net loss | $ (3,539) | $ (1,435) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Stock-based compensation expense | 25 | 311 |
| Amortization of deemed discount on convertible debentures | 261 | 175 |
| Amortization of deferred compensation | 13 | — |
| Depreciation and amortization | 381 | 659 |
| Other-than-temporary loss on investment | 51 | 181 |
| Deferred rent expense | 18 | (24) |
| Loss on the sale of investments | 14 | — |
| (Gain)/Loss on the sale of equipment, net | 13 | (2) |
| Changes in operating assets and liabilities: | | |
| Accounts receivable | 231 | (1,035) |
| Receivable from a related party | — | (244) |
| Inventories | (495) | (321) |
| Prepaid expenses and other current assets | 319 | (102) |
| Accounts payable | 71 | 270 |
| Accrued compensation | (215) | 3 |
| Other accrued liabilities | (255) | 237 |
| Net cash flows used in operating activities | (3,107) | (1,327) |
| **INVESTING ACTIVITIES** | | |
| Purchase of property and equipment | (298) | (309) |
| Purchase of short-term investments | (3,058) | — |
| Acquisition of purchased technology | (9,124) | — |
| Proceeds from maturities and sales of short-term investments | 1,068 | — |
| Proceeds from sale of property and equipment | 15 | 19 |
| Decrease in other assets | 1 | 48 |
| Net cash flows used in investing activities | (11,396) | (242) |
| **FINANCING ACTIVITIES** | | |
| Issuance of common stock, net | 5,065 | 532 |
| Issuance of Series B preferred stock and warrants, net | 9,404 | — |
| Issuance of convertible debentures | — | 4,000 |
| Short-term borrowings | 288 | 119 |
| Repayment of note payable to bank | — | (5,000) |
| Repayment of short-term and long-term debt | (418) | (254) |
| Payment of Series B preferred stock dividends | (367) | — |
| Repayments of capital lease obligations | (1) | (28) |
| Net cash flows provided by/(used in) financing activities | 13,971 | (631) |
| Decrease in cash and cash equivalents | (532) | (2,200) |
| Cash and cash equivalents at beginning of period | 6,156 | 10,183 |
| Cash and cash equivalents at end of period | $ 5,624 | $ 7,983 |
| **SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:** | | |
| Cash paid for interest | $ 170 | $ 60 |
| Amount payable relating to product acquisition | $ 5,183 | $ — |

See accompanying notes.

**QUESTCOR PHARMACEUTICALS, INC.**

**NOTES TO CONDENSED CONSOLIDATED JUNE 30, 2003 FINANCIAL STATEMENTS**
**(UNAUDITED)**

## 1. BASIS OF PRESENTATION

Questcor Pharmaceuticals, Inc. (the "Company") is a specialty pharmaceutical company that markets and sells brand name prescription drugs and ethically promoted healthcare products. The Company focuses on the treatment of acute and critical care conditions, including central nervous system ("CNS") diseases and gastroenterological disorders. The Company's strategy is to acquire pharmaceutical products that it believes have sales growth potential, are promotion sensitive and complement the Company's existing products. In addition, through corporate collaborations, the Company intends to develop new patented intranasal formulations of previously FDA approved drugs. The Company currently markets six products in the U.S.: HP Acthar® Gel ("Acthar"), an injectable drug that is approved for the treatment of certain CNS disorders with an inflammatory component including the treatment of flares associated with Multiple Sclerosis ("MS") and is commonly used in treating patients with infantile spasm; Nascobal®, a nasal gel used for the treatment of various Vitamin B-12 deficiencies; Ethamolin®, an injectable drug used to treat enlarged weakened blood vessels at the entrance to the stomach that have recently bled, known as esophageal varices; Glofil®-125 and Inulin in Sodium Chloride, which are both injectable agents that assess how well the kidney is working by measuring glomerular filtration rate, or kidney function; and VSL#3™, a patented probiotic marketed as a dietary supplement to promote normal gastrointestinal function. Probiotics are living organisms in food and dietary supplements, which, upon ingestion in certain numbers, improve the health of the host beyond their inherent basic nutrition. On June 17, 2003, the Company acquired Nascobal®, a nasal gel formulation of Cyanocobalamin USP (Vitamin B-12), from Nastech Pharmaceutical Company, Inc. ("Nastech"). The Company began selling Nascobal in July 2003. The Company intends to market Nascobal to patients with severe deficiencies of Vitamin B-12 caused by MS and Crohn's Disease as these patients frequently have severe deficiencies of Vitamin B-12 due to a compromised ability to absorb Vitamin B-12 through the gastrointestinal system. In June 2002, the Company signed a license agreement with Fabre Kramer Pharmaceuticals, Inc., whereby Fabre Kramer will manage and provide funding for the clinical development programs for Hypnostat™ (an intranasal triazolam for the treatment of insomnia) and Panistat™ (an intranasal alprazolam for the treatment of panic disorders).

The accompanying unaudited consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States and applicable Securities and Exchange Commission regulations for interim financial information. These financial statements do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements. The unaudited financial statements should be read in conjunction with the audited financial statements and related footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2002, as filed on March 26, 2003 with the Securities and Exchange Commission. The accompanying balance sheet at December 31, 2002 has been derived from the audited financial statements at that date. In the opinion of the Company's management, all adjustments (consisting of normal recurring adjustments) considered necessary for fair presentation of interim financial information have been included. Operating results for the interim periods presented are not necessarily indicative of the results that may be expected for the year ending December 31, 2003. Certain amounts in the prior quarter's financial statements have been reclassified to conform with the current quarter's presentation. The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated.

## 2. STOCK-BASED COMPENSATION

The Company generally grants stock options to its employees for a fixed number of shares with an exercise price equal to the fair value of the shares on the date of grant. As allowed under the Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), the Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations in accounting for stock awards to employees. Accordingly, no compensation expense is recognized in the Company's financial statements in connection with stock options granted to employees with exercise prices not less than fair value. Deferred compensation for options granted to employees is determined as the difference between the deemed fair market value of the Company's common stock on the date options were granted and the exercise price. For purposes of disclosures pursuant to SFAS 123, as amended by SFAS 148, the estimated fair value of options is amortized to expense over the options' vesting periods.

Compensation expense for options granted to non-employees has been determined in accordance with SFAS 123 as the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measured. Compensation expense for options granted to non-employees is periodically re-measured as the underlying options vest.

The following table illustrates the effect on net loss per share if the Company had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation (in thousands, except per share amounts):

| | Three months ended June 30, | | Six months ended June 30, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net loss applicable to common stockholders, as reported | $(2,062) | $(1,103) | $(5,300) | $(1,435) |
| Add: Stock-based employee compensation expense included in reported net loss | 7 | 3 | 14 | 7 |
| Deduct: Total stock-based employee compensation expense determined under fair value method for all awards | (310) | (418) | (666) | (773) |
| Net loss applicable to common stockholders, pro forma | $(2,365) | $(1,518) | $(5,952) | $(2,201) |
| Basic and diluted net loss per share applicable to common stockholders: | | | | |
| As reported | $ (0.05) | $ (0.03) | $ (0.13) | $ (0.04) |
| Pro forma | $ (0.06) | $ (0.04) | $ (0.15) | $ (0.06) |

**3. REVENUE RECOGNITION**

Revenues from product sales of Acthar, Ethamolin, Glofil-125, Inulin and VSL#3 are recognized based upon shipping terms, net of estimated reserves for sales returns, government chargebacks, Medicaid rebates, and discounts. Revenue is recognized upon shipment of product, provided the title to the products has been transferred at the point of shipment. If title of product transfers at point of receipt by the customer, revenue is recognized upon customer receipt of the shipment. The Company records estimated sales allowances against product revenues for expected returns, chargebacks, Medicaid rebates and discounts based on historical sales returns, chargebacks, and Medicaid rebates, analysis of return merchandise authorizations and other known factors such as shelf life of products, as required. The Company continually assesses the historical returns and other experience including customers' compliance with return goods policy and adjusts its allowances as appropriate. The Company's return policy allows customers to return expired product for exchange within six months beyond the expiration date. Effective August 12, 2002 the Company changed its return goods policy such that it no longer issues credit memorandums for returns. Rather, returns are exchanged for replacement product, and estimated costs for such exchanges, which include actual product material costs and related shipping charges, are included in Cost of product sales. Returns are subject to quality assurance reviews prior to acceptance. The Company sells product to wholesalers, who in turn sell its products to pharmacies and hospitals. In the case of VSL#3, the Company sells directly to consumers. The Company does not require collateral from its customers.

Revenue earned under collaborative research agreements is recognized as the research services are performed. Amounts received in advance of services to be performed are recorded as deferred revenue until the services are performed.

The Company has received government grants that support the Company's research effort in specific research projects. These grants provide for reimbursement of approved costs incurred as defined in the various awards.

The Company has received payments in exchange for proprietary licenses related to technology and patents. The Company classifies these payments as "Technology Revenue." These payments are recognized as revenues upon receipt of cash and the transfer of intellectual property, data and other rights licensed, assuming no continuing material obligations exist.

Shipping and handling costs are included in Cost of product sales.

**4. NASCOBAL ACQUISITION**

On June 17, 2003, the Company acquired Nascobal, a nasal gel formulation of Cyanocobalamin USP (Vitamin B-12), from Nastech. Under the terms of the Nascobal Asset Purchase Agreement, the Company made an initial cash payment of $9 million upon the closing of the acquisition and is required to pay an additional $5.2 million payable on or before December 31, 2003. The $5.2 million payable is included in "Payable relating to product acquisition" on the accompanying Condensed Consolidated Balance Sheet. As part of the acquisition, the Company is also acquiring rights to Nascobal nasal spray, an improved dosage form, for which a New Drug Application ("NDA") is expected to be filed by Nastech with the FDA before the end of 2003. Nastech retains a security interest in the patents, trademarks, and other intellectual property relating to Nascobal. Subject to the approval of the NDA for the new Nascobal nasal spray dosage form by the FDA, the Company is required to make a $2 million payment for the transfer of the NDA from Nastech to the Company. Further, subject to the approval of the NDA for the new Nascobal nasal spray dosage form and upon

issuance of a pending U.S. patent for the new Nascobal nasal spray dosage form, the Company is required to make a second $2 million payment. The Company and Nastech have also entered into a long term supply agreement under which Nastech will continue to manufacture Nascobal for the Company at its FDA approved, cGMP manufacturing facility in Hauppauge, New York.

The Company accounted for the product acquisition as an asset purchase and allocated the purchase price based on the fair value of the assets acquired. Of the purchase cost of $14.3 million, which includes acquisition costs of $0.1 million, $14.2 million was attributed to Purchased technology, and $0.1 million to inventory. Purchased technology will be amortized over the estimated life of 15 years. Amortization expense will be approximately $511,000 for 2003, approximately $949,000 per year from 2004 through 2017, and approximately $435,000 for 2018.

**5. CASH AND CASH EQUIVALENTS AND SHORT-TERM INVESTMENTS**

The Company considers highly liquid investments with maturities from the date of purchase of three months or less to be cash equivalents. At June 30, 2003, the Company had cash, cash equivalents and short-term investments of $8,941,000.

Following is a summary of investments, at fair value, based on quoted market prices for these investments (in thousands):

| June 30, 2003 | Gross Amortized Cost | Gross Unrealized Gain | Estimated Fair Value |
|---|---|---|---|
| Cash equivalents: | | | |
| Money Market Funds | $5,708 | $ — | $5,708 |
| | $5,708 | — | $5,708 |
| Short-term investments: | | | |
| Commercial Paper | $ 249 | $ — | $ 249 |
| Corporate Bonds | 3,067 | 1 | 3,068 |
| | $3,316 | $ 1 | $3,317 |

| December 31, 2002 | Gross Amortized Cost | Gross Unrealized Loss | Estimated Fair Value |
|---|---|---|---|
| Cash equivalents: | | | |
| Money Market Funds | $5,400 | $ — | $5,400 |
| Commercial Paper | 499 | — | 499 |
| | $5,899 | $ — | $5,899 |
| Short-term investments: | | | |
| Commercial Paper | $ 498 | $ — | $ 498 |
| Corporate Bonds | 761 | — | 761 |
| Corporate Equity Investments | 133 | (42) | 91 |
| | $1,392 | $ (42) | $1,350 |

In 2003, the Company recognized an other-than-temporary loss of $51,000 and a realized loss of $14,000 related to its Rigel equity investment. These amounts are included in other income (expense) on the accompanying Consolidated Statement of Operations.

**6. INVENTORIES**

Inventories are stated at the lower of cost (first-in, first-out method) or market and consist of the following (in thousands):

| | June 30, 2003 | December 31, 2002 |
|---|---|---|
| Raw materials | $ 521 | $ 70 |
| Work in process | 77 | — |
| Finished goods | 645 | 397 |
| Less allowance for excess and obsolete inventories | (292) | (76) |
| | $ 951 | $391 |

**7. INTANGIBLE ASSETS**

Goodwill and assembled workforce no longer subject to amortization amounted to $479,000 at June 30, 2003 and December 31, 2002. In accordance with SFAS 141 and 142, the Company discontinued the amortization of goodwill on January 1, 2002. The

Company performed an impairment test of goodwill as of January 1, 2003, which did not result in an impairment charge. The Company will continue to monitor the carrying value of goodwill through the annual impairment tests.

Purchased technology at June 30, 2003 includes $14.2 million related to the Nascobal acquisition, see Note 4 – Nascobal Acquisition. The Nascobal purchased technology is being amortized over its estimated life of 15 years. The remaining net balance of $155,000 at June 30, 2003 and $382,000 at December 31, 2002 is being amortized over the estimated sales life of the associated product (seven years), which will be amortized in full during the fourth quarter of 2003.

**8. LINE OF CREDIT**

In January 2002, the Company entered into a revolving accounts receivable line of credit with Pacific Business Funding, a division of Greater Bay Bancorp. Under the agreement, the Company can borrow up to the lesser of 80% of its eligible accounts receivable balance or $3,000,000. Interest accrues on outstanding advances at an annual rate equal to prime rate plus four and one-half percent. The term of the agreement is one year and the agreement automatically renews annually, unless terminated by the Company. There were no borrowings under this line of credit as of June 30, 2003. The line of credit is secured by a blanket lien on all assets including intellectual property. As of June 30, 2003, $958,000 was available for borrowing under the line of credit.

**9. NET LOSS PER SHARE APPLICABLE TO COMMON STOCKHOLDERS**

Basic and diluted net loss per share applicable to common stockholders is based on net loss applicable to common stockholders for the relevant period, divided by the weighted average number of common shares outstanding during the period. Diluted earnings per share applicable to common stockholders gives effect to all potentially dilutive common shares outstanding during the period such as options, warrants, convertible preferred stock, and contingently issuable shares. Diluted net loss per share applicable to common stockholders has not been presented separately as, due to the Company's net loss position, it is anti-dilutive. Had the Company been in a net income position at June 30, 2003, shares used in calculating diluted earnings per share applicable to common stockholders would have included the dilutive effect of an additional 9,327,494 stock options, 12,780,446 convertible preferred shares, 2,531,646 shares issuable upon conversion of debentures (if dilutive), placement unit options for 127,676 shares and 10,340,711 warrants.

**10. EQUITY TRANSACTIONS**

In March 2003, a warrant was exercised through a cashless exercise in accordance with the terms of the warrant, and 315,827 shares of common stock were issued.

In May 2003, the number of authorized shares of the Company's no par value common stock was increased from 75,000,000 to 105,000,000.

In May 2003, the Company's 2003 Employee Stock Purchase Plan was approved by shareholders. The Company has reserved 900,000 shares of common stock for issuance under the plan.

In May 2003, the aggregate number of shares of Common Stock authorized for issuance under the Company's 1992 Employee Stock Option Plan was increased by 1,000,000 shares, from 12,500,000 shares to 13,500,000 shares.

In June 2003, a warrant was exercised through a cashless exercise in accordance with the terms of the warrant, and 72,168 shares of common stock were issued.

On June 11, 2003, the Company consummated a private placement of its Common Stock and warrants to purchase Common Stock. The Company issued 4,979,360 shares of Common Stock in the private placement at $1.01 per share, which was the volume weighted average price of the Common Stock for the five days prior to and including the close of the private placement. Gross proceeds to the Company from the private placement were approximately $5 million. Net of issuance costs, the proceeds to the Company were $4.9 million.

The purchasers of the Common Stock also received for no additional consideration warrants exercisable for an aggregate of 2,987,616 shares of Common Stock at an exercise price of $1.26 per share, which represented a 25% premium to the volume weighted average price of the Common Stock for the five days prior to and including the close of the private placement. The warrants expire in June 2008.

**11. SERIES B CONVERTIBLE PREFERRED STOCK**

In January 2003, the Company completed a private placement of Series B Convertible Preferred Stock and warrants to purchase common stock to various investors. Gross proceeds to the Company from the private placement were $10 million. Net of issuance costs, the proceeds to the Company were $9.4 million.

The Series B Preferred Stock has an aggregate stated value of $10 million and each holder is entitled to a quarterly dividend at an initial rate of 8% per year, which rate will increase to 10% per year on and after January 1, 2006, and to 12% on and after January 1, 2008. The dividends are paid in cash on a quarterly basis. In addition, on the occurrence of designated events, including the failure to maintain Net Cash, Cash Equivalent and Eligible Investment Balances, as defined in the Company's Certificate of Determination of Series B Preferred Stock (the "Certificate of Determination"), of at least 50% of the aggregate stated value of the outstanding shares of Series B Preferred Stock, the dividend rate will increase by an additional 6% per year. The Series B Preferred Stock is entitled to a liquidation preference over the Company's common stock and Series A Preferred Stock upon a liquidation, dissolution or winding up of the Company. The Series B Preferred Stock is convertible at the option of the holder into the Company's common stock at a conversion price of $0.9412 per share, subject to certain anti-dilution adjustments. The Company has the right commencing on January 1, 2006 (assuming specified conditions are met) to redeem the Series B Preferred Stock at a price of 110% of stated value, together with all accrued and unpaid dividends and accrued interest. In addition, upon the occurrence of designated Optional Redemption Events (as defined below), the holders have the right to require the Company to redeem the Series B Preferred Stock at 100% of stated value, together with all accrued and unpaid dividends and interest. The Optional Redemption Events include any of the following:

- If the Company consolidates or merges with or into another entity where the shareholders of the Company do not own at least 51% of the surviving entity and such consolidation or merger is approved by the Company's Board of Directors;

- If the Company adopts any amendment to its Amended and Restated Articles of Incorporation which materially and adversely affects the rights of the holders of Series B Preferred Stock in respect of their interests in shares of Common Stock that can be acquired upon conversion of shares of Series B Preferred Stock in a manner different and more adverse than it affects the rights of holders of Common Stock generally;

- If the Company fails to declare or pay dividends in full on the applicable dividend date, other than in circumstances where such declaration or payment would not be permitted by Section 500 or 501 of the California Corporations Code, or fails to pay certain redemption prices on any share of Series B Preferred Stock when due;

- If the Company fails to issue shares of Common Stock to any Series B holder upon conversion or upon exercise of warrants when due;

- If the Company commits certain breaches under, or otherwise violates certain terms of, the transaction documents entered into in connection with the issuance of the Series B Preferred Stock;

- If the Company's representations and warranties made in the transaction documents entered into in connection with the issuance of the Series B Preferred Stock are false or misleading in any material way when made or deemed made; and

- If the Company institutes a voluntary bankruptcy or similar proceeding;

The redemption events described above are all within the control of the Company. Therefore, in accordance with EITF Topic D-98, the Company has classified the Series B Preferred Stock in permanent equity. In addition, the Company initially recorded the Series B Preferred Stock at its fair value on the date of issuance. The Company has elected not to adjust the carrying value of the Series B Preferred Stock to the redemption value of such shares, since it is uncertain whether or when the redemption events described above will occur. Subsequent adjustments to increase the carrying value to the redemption value will be made when it becomes probable that such redemption will occur. As of June 30, 2003, the redemption value of the Series B Preferred Stock was $10 million.

The terms of the Series B Preferred Stock contain a variety of affirmative and restrictive covenants, including limitations on indebtedness and liens. Each share of Series B Preferred Stock is generally entitled to a number of votes equal to 0.875 times the number of shares of Common Stock issuable upon conversion of such share of Series B Preferred Stock. In addition, the Company agreed that two of the investors are each entitled to appoint a representative to attend Company Board of Directors meetings in a nonvoting observer capacity.

The purchasers of the Series B Preferred Stock also received for no additional consideration warrants exercisable for an aggregate of 3,399,911 shares of Common Stock at an exercise price of $1.0824 per share, subject to certain anti-dilution adjustments. The warrants expire in January 2007. The warrants issued to the Series B holders were assigned a value of $1,527,000 which decreased the carrying value of the preferred stock. The warrants were valued using the Black-Scholes method with the following assumptions: a

risk free interest rate of 3%; an expiration date of January 15, 2007; volatility of 82% and a dividend yield of 0%. In connection with the issuance of the Series B Preferred Stock and warrants, the Company recorded $1,301,000 related to the beneficial conversion feature on the Series B Preferred Stock as a deemed dividend, which increased the carrying value of the preferred stock. A beneficial conversion feature is present because the effective conversion price of the Series B Preferred Stock was less than the fair value of the Common Stock on the commitment date. The deemed dividend increased the loss applicable to common stockholders in the calculation of basic and diluted net loss per common share.

On June 13, 2003, the Company entered into agreements with the holders of record of its Series B Preferred Stock, whereby the holders of Series B Preferred Stock waived certain covenants and rights to receive additional dividends as provided in the Certificate of Determination, which may have been triggered as a result of the Nascobal acquisition and the use of the Company's cash resources to pay the purchase price (the "Acquisition"). Specifically, the holders of Series B Preferred Stock waived their right to receive an additional aggregate six percent dividend in the event that the Acquisition resulted in the Company being unable to satisfy the test set forth in Sections 500 and 501 of the California Corporations Code to allow for the Company to redeem all of the issued and outstanding shares of Series B Preferred Stock. Such waiver was granted through the earlier of (i) December 31, 2003 and (ii) the date on which (A) the Company's assets (exclusive of goodwill, capitalized research, and development expenses and deferred charges) equal less than 125% of its liabilities (not including deferred taxes, deferred income and other deferred credits) or (B) the Company's current assets equal less than 80% of its current liabilities. Additionally, the holders of Series B Preferred Stock waived their right to receive an additional aggregate six percent dividend in the event that the Acquisition resulted in the Company being unable to maintain Net Cash, Cash Equivalents and Eligible Investment Balances (as defined in the Certificate of Determination) in an amount equal to $5 million. Such waiver was granted through the earlier of (i) December 31, 2003 and (ii) the date on which the Company fails to maintain Net Cash, Cash Equivalents and Eligible Investment Balances in an amount equal to at least $2.5 million. The holders of Series B Preferred Stock also agreed that: (i) the Acquisition would not constitute a breach of the covenant in the Certificate of Determination requiring the Company to use its best efforts to maintain compliance with Sections 500 and 501 of the California Corporations Code to be able to pay dividends on and to redeem all of the issued and outstanding shares of Series B Preferred Stock; and (ii) the incurrence by the Company of contingent obligations to pay additional amounts to Nastech of $5,183,333 and the granting of a security interest in the acquired Nascobal product would not constitute a breach of the covenants in the Certificate of Determination restricting the Company's ability to incur indebtedness and create liens. In consideration of such agreements, the Company agreed to adjust the exercise price of warrants to purchase 3,399,911 shares of Common Stock previously issued by the Company to the holders of Series B Preferred Stock from $1.0824 per share to $0.9412 per share.

As a result of the decrease to the exercise price of the warrants, the Company revalued the warrants issued to the Series B Preferred Stockholders, resulting in an incremental value of $93,000 which decreased the carrying value of the preferred stock. The warrants were valued using the Black-Scholes method with the following assumptions: a risk free interest rate of 1.4%; an expiration date of January 15, 2007; volatility of 70% and a dividend yield of 0%. In connection with the revaluation, the Company recorded $93,000 related to the beneficial conversion feature on the Series B Preferred Stock as an additional deemed dividend, which increased the carrying value of the Series B Preferred Stock. The deemed dividend increased the net loss applicable to common stockholders in the calculation of basic and diluted net loss per common share.

**12. RELATED PARTY TRANSACTIONS**

In December 2001, the Company entered into a promotion agreement with VSL Pharmaceuticals Inc. ("VSL"), a private company owned in part by the major shareholders of Sigma Tau. Sigma Tau beneficially owned approximately 34% of the Company's outstanding stock as of June 30, 2003. In June 2002, the Company signed an amendment to the promotion agreement. Under these agreements, the Company has agreed to purchase VSL#3 from VSL at a stated price, and has also agreed to promote, sell, warehouse and distribute the VSL#3 product direct to customers at its cost and expense, subject to certain expense reimbursements. Revenues from sales of VSL#3 are recognized when product is shipped to the customer. The Company does not accept returns of VSL#3. VSL#3 revenue for the quarter ending June 30, 2003 was $222,000 and is included in Net product sales. Included in Accounts Payable is $76,000 for amounts owed to VSL at June 30, 2003. An access fee to VSL is calculated quarterly, which varies based upon sales and costs incurred by the Company subject to reimbursement under certain circumstances. For the quarter ended June 30, 2003, the amount of reimbursable costs incurred by the Company was greater than the amount owing to VSL. This net reimbursement to the Company for the quarter ended June 30, 2003, of $14,000 is included as a deduction in Sales and marketing expense in the accompanying Consolidated Statement of Operations. During the quarter ended June 30, 2003 the Company paid $103,000 to VSL for the purchase of VSL#3 product.

In January 2002, the Company entered into a royalty agreement with Glenridge Pharmaceuticals LLC ("Glenridge"). Kenneth R. Greathouse, the Company's Vice President of Commercial Operations, is a part owner of Glenridge. This agreement calls for the payment of royalties on a quarterly basis on the net sales of Acthar®. The Company paid Glenridge $56,000 and $143,000 in the quarters ended June 30, 2003 and 2002, and $151,000 and $248,000 for the six months ended June 30, 2003 and 2002, respectively,

related to royalties on Acthar® sales. The Company has accrued $79,000 for royalties earned in the quarter ended June 30, 2003, which is included in Other accrued liabilities on the accompanying Consolidated Balance Sheet.

**13. COMPREHENSIVE LOSS**

Comprehensive loss is comprised of net loss and the change in unrealized holding gains and losses on available-for-sale securities.

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2003 | 2002 | 2003 | 2002 |
| Net loss | $(1,769) | $(1,103) | $(3,539) | $(1,435) |
| Other comprehensive income | 1 | 191 | 42 | 100 |
| Comprehensive loss | $(1,768) | $ (912) | $(3,497) | $(1,335) |

**14. SHAREHOLDER RIGHTS PLAN**

On February 11, 2003 the Board of Directors of the Company adopted a Shareholder Rights Plan. In connection with the Rights Plan, the Board of Directors declared a dividend of one preferred share purchase right (the “Rights”) for each outstanding share of common stock, no par value per share (the “Common Shares”), of the Company outstanding at the close of business on February 21, 2003 (the “Record Date”). Each Right will entitle the registered holder thereof, after the Rights become exercisable and until February 10, 2013 (or the earlier redemption, exchange or termination of the Rights), to purchase from the Company one one-hundredth (1/100th) of a share of Series C Junior Participating Preferred Stock, no par value per share (the “Preferred Shares”), at a price of $10 per one one-hundredth (1/100th) of a Preferred Share, subject to certain anti-dilution adjustments (the “Purchase Price”). Until the earlier to occur of (i) ten (10) days following a public announcement that a person or group of affiliated or associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the Common Shares (an “Acquiring Person”) or (ii) ten (10) business days (or such later date as may be determined by action of the Board of Directors prior to such time as any person or group of affiliated persons becomes an Acquiring Person) following the commencement or announcement of an intention to make a tender offer or exchange offer the consummation of which would result in the beneficial ownership by a person or group of 15% or more of the Common Shares (the earlier of (i) and (ii) being called the “Distribution Date”), the Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate. An Acquiring Person does not include any Existing Holder (defined as Sigma-Tau Finanziaria S.p.A., together with all of its Affiliates and Associates, including, without limitation Defiante Farmaceutica L.D.A., Sigma-Tau International S.A., Paolo Cavazza and Claudio Cavazza,), unless and until such time as such Existing Holder shall become the beneficial owner of one or more additional Common Shares of the Company (other than (i) pursuant to a dividend or distribution paid or made by the Company on the outstanding Common Shares in Common Shares or pursuant to a split or subdivision of the outstanding Common Shares or (ii) additional Common Shares purchased prior to June 15, 2003 in accordance with the terms of that certain Letter Agreement dated December 1, 2001 by and between the Company and Sigma-Tau Finanziaria S.p.A., Paolo Cavazza and Claudio Cavazza), unless, upon becoming the beneficial owner of such additional Common Shares, such Existing Holder is not then the beneficial owner of 15% or more of the Common Shares then outstanding.

In the event that a Person becomes an Acquiring Person or if the Company were the surviving corporation in a merger with an Acquiring Person or any affiliate or associate of an Acquiring Person and the Common Shares were not changed or exchanged, each holder of a Right, other than Rights that are or were acquired or beneficially owned by the Acquiring persons (which Rights will thereafter be void), will thereafter have the right to receive upon exercise that number of Common Shares having a market value of two times the then current Purchase Price of one Right. In the event that, after a person has become an Acquiring Person, the Company were acquired in a merger or other business combination transaction or more than 50% of its assets or earning power were sold, proper provision shall be made so that each holder of a Right shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price of the Right, that number of shares of common stock of the acquiring company which at the time of such transaction would have a market value of two times the then current purchase price of one Right.

**Independent Accountants' Review Report**

The Board of Directors
Questcor Pharmaceuticals, Inc.

We have reviewed the accompanying condensed consolidated balance sheet of Questcor Pharmaceuticals, Inc. as of June 30, 2003, and the related condensed consolidated statements of operations for the three and six month periods ended June 30, 2003 and 2002, and the condensed consolidated statements of cash flows for the six month periods ended June 30, 2003 and 2002. These financial statements are the responsibility of the Company's management.

We conducted our reviews in accordance with standards established by the American Institute of Certified Public Accountants. A review of interim financial information consists principally of applying analytical procedures to financial data, and making inquiries of persons responsible for financial and accounting matters. It is substantially less in scope than an audit conducted in accordance with auditing standards generally accepted in the United States, which will be performed for the full year with the objective of expressing an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

Based on our reviews, we are not aware of any material modifications that should be made to the accompanying condensed consolidated financial statements referred to above for them to be in conformity with accounting principles generally accepted in the United States.

We have previously audited, in accordance with auditing standards generally accepted in the United States, the consolidated balance sheet of Questcor Pharmaceuticals, Inc. as of December 31, 2002, and the related consolidated statements of operations, preferred stock and stockholders' equity (deficit), and cash flows for the year then ended and in our report dated February 11, 2003, we expressed an unqualified opinion on those consolidated financial statements. In our opinion, the information set forth in the accompanying condensed consolidated balance sheet as of December 31, 2002 is fairly stated, in all material respects, in relation to the consolidated balance sheet from which it has been derived.

/s/ ERNST & YOUNG LLP

Palo Alto, California
July 24, 2003

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

Except for the historical information contained herein, the following discussion contains forward-looking statements that involve risks and uncertainties, including statements regarding the period of time during which our existing capital resources and income from various sources will be adequate to satisfy our capital requirements. Our actual results could differ materially from those discussed herein. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in this section, as well as those discussed in our annual report on form 10-K for the fiscal year ended December 31, 2002, including Item 1 "Business of Questcor," and including without limitation "Risk Factors," as well as factors discussed in any documents incorporated by reference herein or therein. Whenever used in this Quarterly Report, the terms "Questcor," "Company," "we," "our," "ours," and "us" refer to Questcor Pharmaceuticals, Inc. and its consolidated subsidiaries.

### Overview

We are a specialty pharmaceutical company that markets and sells brand name prescription drugs and ethically promoted healthcare products. We focus on the treatment of acute and critical care conditions, including central nervous system ("CNS") diseases and gastroenterological disorders. Our strategy is to acquire pharmaceutical products that we believe have sales growth potential, are promotion sensitive and complement our existing products. In addition, through corporate collaborations, we intend to develop new patented intranasal formulations of previously FDA approved drugs. We currently market six products in the U.S.: HP Acthar® Gel ("Acthar"), an injectable drug that is approved for the treatment of certain CNS disorders with an inflammatory component including the treatment of flares associated with multiple sclerosis ("MS") and is also commonly used in treating patients with infantile spasm; Nascobal®, a nasal gel used for the treatment of various Vitamin B-12 deficiencies; Ethamolin®, an injectable drug used to treat enlarged weakened blood vessels at the entrance to the stomach that have recently bled, known as esophageal varices; Glofil®-125 and Inulin in Sodium Chloride, which are both injectable agents that assess how well the kidney is working by measuring glomerular filtration rate, or kidney function; and VSL#3™, a patented probiotic marketed as a dietary supplement to promote normal gastrointestinal (GI) function. Probiotics are living organisms in food and dietary supplements, which, upon ingestion in certain numbers, improve the health of the host beyond their inherent basic nutrition. On June 17, 2003, we acquired Nascobal®, a nasal gel formulation of Cyanocobalamin USP (Vitamin B-12), from Nastech Pharmaceutical Company, Inc. ("Nastech"). We began selling Nascobal in July 2003. We intend to market Nascobal to patients with severe deficiencies of Vitamin B-12 caused by MS and Crohn's Disease as these patients frequently have severe deficiencies of Vitamin B-12 due to a compromised ability to absorb Vitamin B-12 through the gastrointestinal system.

Consistent with our efforts to focus on sales and marketing, our spending on research and development activities is minimal. Expenses incurred for the manufacturing site transfer and medical and regulatory affairs are classified as Research and development expenses in the accompanying statement of operations. We have entered into several agreements with pharmaceutical and biotechnology companies to further the development of certain technology acquired from RiboGene. In June 2002, we signed a definitive License Agreement with Fabre Kramer Pharmaceuticals, Inc. ("Fabre Kramer") for the exclusive worldwide development and commercialization of Hypnostat™ (intranasal triazolam for insomnia) and Panistat™ (intranasal alprazolam for panic disorders). Under the License Agreement, Fabre Kramer assumed the primary responsibility for the development of Hypnostat and Panistat. Our antiviral drug discovery program has been partnered with Rigel Pharmaceuticals, Inc. of South San Francisco, CA. and our antibacterial program has been partnered with Dainippon Pharmaceuticals Co., Ltd. of Osaka, Japan.

We have sustained an accumulated deficit of $82.3 million from inception through June 30, 2003. At June 30, 2003, we had $8.9 million in cash, cash equivalents and short-term investments. Results of operations may vary significantly from quarter to quarter depending on, among other factors, the results of our sales efforts, timing of expiration of our products and the resulting shipment of replacement product under our exchange policy, customers adherence to our sales and exchange policies, completion of the Acthar site transfer, the amount of inventory existing at the wholesale level, the availability of finished goods from our sole-source manufacturers, the timing of certain expenses, the acquisition of marketed products, the establishment of strategic alliances and corporate partnering arrangements and the receipt of milestone payments.

### Critical Accounting Policies

Our management discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures. On an on-going basis, we evaluate our estimates, including those related to product returns, sales allowances, bad debts, inventories, investments and intangible assets. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances, the results of which form the

basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following critical accounting policies affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

***Sales Allowances and Product Returns and Rebates***

We have estimated allowances for product returns, government chargebacks, Medicaid rebates and cash discounts for prompt payment. We estimate our allowances by utilizing historical information for existing products and data obtained from external sources. For new products, we estimate our allowances for product returns and rebates on specific terms for product returns and rebates and our experience with similar products. Effective August 12, 2002, we changed our return goods policy such that we no longer issue credit memorandums for returns, rather all returns are exchanged for replacement product. The estimated costs for such exchanges, which include actual product costs and related shipping charges, are included in cost of product sales. In estimating returns, we analyze (i) historical returns and sales patterns, (ii) current inventory on hand at wholesalers and in the distribution channel and the remaining shelf life of that inventory (ranging from 45 days to 3 years), and (iii) changes in demand. We continually assess our historical experience including customers' compliance with return goods policy, and we adjust our allowances as appropriate. In estimating Medicaid rebates, we match the actual rebates to the actual sale on a product-by-product basis to arrive at an actual rebate percentage. This actual percentage is used to estimate a rebate percentage which is applied to current period sales to arrive at the rebate expense for the period. In particular, we consider allowable prices by Medicaid. If actual product returns, government chargebacks, Medicaid rebates and cash discounts are greater than our estimates, additional allowances may be required.

***Inventories***

We maintain inventory reserves primarily for obsolescence (due to the expiration of shelf life). In estimating inventory obsolescence reserves, we analyze on a product-by-product basis (i) the shelf life and the expiration date, and (ii) our sales forecasts. Judgment is required in determining whether the forecasted sales information is sufficiently reliable to enable us to estimate inventory obsolescence.

***Intangible Assets***

We have intangible assets related to goodwill and other acquired intangibles. The determination of related estimated useful lives and whether or not these assets are impaired involves significant judgment. Changes in strategy and/or market conditions could significantly impact these judgments and require adjustments to recorded asset balances. We review intangible assets, as well as other long-lived assets, for impairment whenever events or circumstances indicate that the carrying amount may not be fully recoverable.

**Results of Operations**

**Three months ended June 30, 2003 compared to the three months ended June 30, 2002:**

For the quarter ended June 30, 2003, we incurred a net loss of $1,769,000 as compared to a net loss of $1,103,000 for the quarter ended June 30, 2002, an increase of $666,000. Net loss applicable to common stockholders was $2,062,000 for the quarter ended June 30, 2003, and included the impact of the non-cash deemed dividend of $93,000 related to the beneficial conversion feature on the Series B Preferred Stock and Preferred Stock dividends of $200,000. Net loss applicable to common stockholders was the same as net loss for the quarter ended June 30, 2002.

Total revenues for the quarter ended June 30, 2003 decreased $836,000, or 22%, to $2,905,000 from total revenues of $3,741,000 for the quarter ended June 30, 2002.

For the quarter ended June 30, 2003, net product sales decreased $427,000, or 13%, to $2,880,000 from $3,307,000 for the quarter ended June 30, 2002. The net product sales for the second quarter of 2002 included the impact of advance buying upon notification of the price increase for Ethamolin and Acthar that went into effect June 24, 2002. From the date of the notification of the price increase through the effective date of the price increase, we received $3,231,000 of Acthar and Ethamolin orders of which $777,000 had shipped prior to June 30, 2002. The remaining orders of $2,454,000 were filled in July 2002. We believe that a portion of the decrease in net product sales for the quarter ended June 30, 2003 as compared to the quarter ended June 30, 2002 is attributable to these purchases made last year as a result of the notification of the price increase. The list price of both Acthar and Ethamolin was increased in April 2003; however, there was no advance notification of this price increase. During the quarter ended June 30, 2003, we replaced vials at no cost for certain of the returned product of Acthar batches that expired in November 2002 and May 2003. Subsequent to June 30, 2003, we will continue to replace returned product from the November 2002 and May 2003 expired batches. We will do so again for the Acthar batch that expires in January 2004.

We believe the shipment of replacement product may have displaced sales in the quarter ended June 30, 2003, and the replacement of product expiring in May 2003, January 2004 and future expiring product may displace future quarter sales. The extent of this displacement is not ascertainable at this time.

For the quarter ended June 30, 2003, net product sales of Ethamolin declined substantially. We reviewed the external demand data and noted that the demand for Ethamolin is declining. We believe this decline is partially a result of procedures and devices being used to treat bleeding esophageal varices rather than sclerosing agents. Also in the current period, we noted one of our major customers purchased large quantities of Ethamolin. We believe, through review of external data, that the amount purchased by this major customer was in excess of historical demand and represents several months of inventory. To the extent that inventory at the wholesale level exceeds the ultimate demand, we believe that this will adversely impact our future net product sales.

Grant and royalty revenue decreased by $59,000, or 70%, to $25,000 for the quarter ended June 30, 2003 from $84,000 for the quarter ended June 30, 2002. This decrease was primarily a result of lower reimbursement under our Small Business Innovation Research ("SBIR") grant due to less activity taking place with the GERI compound research projects in the quarter ended June 30, 2003, as compared to the quarter ended June 30, 2002.

For the quarter ended June 30, 2003, we did not recognize any technology revenue. We recognized $250,000 in technology revenue, related to the License Agreement with Fabre-Kramer for the quarter ended June 30, 2002. Additionally, we had services revenue from a related party of $100,000 for the quarter ended June 30, 2002. This amount reflects revenues recorded through June 30, 2002, resulting from a $200,000 payment made to us by VSL for certain promotional activities we undertook to support the launch of VSL#3™ in the quarter ended June 30, 2002. The remaining balance of $100,000 was recognized as revenue ratably through December 2002, at which time it was fully recognized.

Cost of product sales increased $421,000, or 58%, to $1,149,000 for the quarter ended June 30, 2003 from $728,000 for the quarter ended June 30, 2002. This increase is due to increases in our excess inventory allowance, increases in per unit material costs and increases in costs related to the replacement of expired product. We expect per unit material costs to increase in the future due to higher contract manufacturing costs. Cost of product sales as a percentage of net product sales increased to 40% for the quarter ended June 30, 2003 as compared to 22% for the quarter ended June 30, 2002, primarily due to a change of product mix and a charge of $233,000 in the period to increase the excess inventory allowance. In April 2003, we decided to outsource certain functions previously performed in our Carlsbad, California distribution center, including, but not limited to, warehousing, shipping and quality control studies. We have entered into agreements with various vendors to distribute Acthar, Nascobal, Ethamolin, Glofil and Inulin, and we distribute VSL#3 from our Union City facility.

Sales and marketing expenses for the quarter ended June 30, 2003 decreased $151,000 or 9% to $1,501,000 from $1,652,000 for the quarter ended June 30, 2002. The decrease is primarily due to less marketing costs incurred in the quarter ended June 30, 2003 as compared to June 30, 2002. The VSL#3 formal product launch took place in May 2002, which contributed heavily to the sales and marketing expense in the quarter ended June 30, 2002.

General and administrative expenses for the quarter ended June 30, 2003 decreased $200,000, or 16%, to $1,016,000 from $1,216,000 for the quarter ended June 30, 2002. The decrease was primarily due to a decrease in legal expenses relating to potential product acquisitions and financing opportunities and an overall reduction of spending in the general and administrative functions for the quarter ended June 30, 2003 as compared to the quarter ended June 30, 2002.

Research and development expenses for the quarter ended June 30, 2003 increased $29,000, or 4%, to $711,000, from $682,000 for the quarter ended June 30, 2002. The costs included in research and development relate primarily to manufacturing site transfers and medical and regulatory affairs compliance activities. This increase is primarily due to consulting and outside testing costs incurred related to the Acthar site transfer in the current quarter. For the quarter ended June 30, 2003, a third party contract laboratory performed several tests as part of the Acthar manufacturing site transfer. To date, this laboratory has been unsuccessful in qualifying the assay in order to complete the transfer. If this laboratory is unable to validate this specific assay, we may be forced to find a new contractor to complete this work, which in turn could increase our costs substantially. The costs related to the Acthar site transfer may fluctuate, depending on the timing of work performed and the costs related to such activities.

Depreciation and amortization expense decreased by $103,000, or 33%, to $212,000 for the quarter ended June 30, 2003, from $315,000 for the quarter ended June 30, 2002. This decrease was due to minimal new capital purchases made in the period, assets becoming fully depreciated, and a portion of purchased technology becoming fully amortized, offset by a partial month's amortization of the purchased technology related to the Nascobal product acquisition (for $14.2 million), which will be amortized over 15 years. The prior purchased technology's net remaining balance of $155,000 will be fully amortized in 2003.

Non-cash amortization of deemed discount on convertible debentures for the quarter ended June 30, 2003 was $130,000, consistent with the quarter ended June 30, 2002. The convertible debentures were issued March 15, 2002.

Interest expense, net remained flat for the quarter ended June 30, 2003 as compared to the quarter ended June 30, 2002.

Other expense, net decreased $178,000, or 98%, to $3,000 for the quarter ended June 30, 2003, from $181,000 of other expense, net for the quarter ended June 30, 2002. For the quarter ended June 30, 2002, we recorded an other-than-temporary loss of $181,000 on our Rigel equity securities investment. The Rigel investment was sold in its entirety in the second quarter of 2003.

Rental income, net remained flat for the quarter ended June 30, 2003 as compared to the quarter ended June 30, 2002.

Non-cash deemed dividend of $93,000 for the period ended June 30, 2003 is related to an increase to the beneficial conversion feature in connection with the Series B Preferred Stock and warrants issued in January 2003. On June 13, 2003, we obtained a letter from our Series B Preferred Stock holders whereby certain covenants were waived. In exchange for such waiver, the exercise price of the warrant was reduced. The beneficial conversion feature was revalued using the new exercise price and the increase in value was recorded as a deemed dividend.

Preferred Stock dividends of $200,000 represent the 8% cash dividends payable to the Series B Preferred Stock holders. These dividends are required to be paid in cash quarterly.

**Six months ended June 30, 2003 compared to the six months ended June 30, 2002:**

For the six months ended June 30, 2003, we incurred a net loss of $3,539,000 as compared to a net loss of $1,435,000 for the six months ended June 30, 2002, an increase of $2,104,000. Net loss applicable to common stockholders was $5,300,000 for the six months ended June 30, 2003, which included the impact of the non-cash deemed dividend related to the beneficial conversion feature on the Series B Preferred Stock of $1,394,000 and Preferred Stock dividends of $367,000. Net loss applicable to common stockholders was the same as net loss for the six months ended June 30, 2002.

For the six months ended June 30, 2003, net product sales decreased $1,871,000, or 26%, to $5,242,000 from $7,113,000 for the six months ended June 30, 2002. This decline in net product sales was partially offset by an increase in the list price of Acthar and Ethamolin in April 2003. The net product sales for the six months of 2002 included the impact of advance buying upon notification of the price increase for Ethamolin and Acthar that went into effect June 24, 2002. From the date of the notification of the price increase through the effective date of the price increase, we received $3,231,000 of Acthar and Ethamolin orders of which $777,000 had shipped prior to June 30, 2002. The remaining orders of $2,454,000 were filled in July 2002. In addition, during the six months ended June 30, 2002, we shipped backorders outstanding at December 31, 2001 amounting to $334,000 for Acthar and $408,000 for Ethamolin. We believe that a portion of the decrease in net product sales for the six months ended June 30, 2003 is attributable to these purchases made as a result of the notification of the price increase and from the shipment of the backorders. The remaining decrease in net product sales can be partially attributed to our decision to not ship short-dated materials during the first quarter of 2003 and may also be attributed to the replacement of previously expired product at no cost to the customer in accordance with our exchange policy. In the first quarter of 2003, due to the relatively short dating of Acthar in our inventories and at the wholesale level, we briefly limited Acthar shipments to critical care and emergency situations. After we obtained approval in November 2002 to extend the expiration date on Acthar to 18 months from 12 months, we resumed shipments of Acthar with a January 2004 expiration date when the extended dated material was released late in the first quarter of 2003. During the six months ended June 30, 2003, we replaced vials at no cost for certain of the returned product of Acthar batches that expired in November 2002 and May 2003. Subsequent to June 30, 2003, we will continue to replace returned product from the November 2002 and May 2003 expired batches. We will do so again for the Acthar batch that expires in January 2004.

We believe the shipment of replacement product may have displaced sales in the six months ended June 30, 2003, and the replacement of product expiring in May 2003, January 2004 and future expiring product may displace future quarter sales. The extent of this displacement is not ascertainable at this time.

For the six months ended June 30, 2003, net product sales of Ethamolin declined substantially. We reviewed the external demand data and noted that the demand for Ethamolin is declining. We believe this decline is partially a result of devices being used to treat bleeding esophageal varices rather than sclerosing agents. Also in the current period, we noted one of our major customers purchased large quantities of Ethamolin. We believe, through review of external data, that the amount purchased by this major customer was in

excess of historical demand and represents several months of inventory. To the extent that inventory at the wholesale level exceeds demand, we believe that this will adversely impact our future net product sales.

Grant and royalty revenue for the six months ended June 30, 2003 decreased $98,000, or 74%, to $34,000 from $132,000 for the six months ended June 30, 2002. This decrease was a result of lower reimbursement under the SBIR grant due to less activity taking place with the GERI compound research project in the six months ended June 30, 2003 as compared to the six months ended June 30, 2002. The royalty revenue represents sales of Pramidin® in Italy, under a license agreement we had with sirton Pharmaceuticals, S.p.A. that expired in accordance with its terms in June 2002.

In both the six months ended June 30, 2003 and 2002, we recognized $250,000 in technology revenue related to the License Agreement with Fabre-Kramer. Additionally, we had services revenue from a related party of $100,000 for the six months ended June 30, 2002. This amount reflects revenues resulting from the $200,000 payment made by VSL for certain promotional activities we undertook to support the launch of VSL#3. The remaining balance of $100,000 was recognized as revenue ratably through December 2002 at which time it was fully recognized.

Cost of product sales for the six months ended June 30, 2003 increased $462,000, or 34%, to $1,824,000 from $1,362,000 for the six months ended June 30, 2002. The increase is due to increases in our excess inventory allowance, increases in per unit material costs and increases in costs related to the replacement of expired product. We expect per unit material costs to increase in the future due to higher contract manufacturing costs. Cost of product sales as a percentage of net product sales increased to 35% for the six months ended June 30, 2003 from 19% for the six months ended June 30, 2002. This was primarily due to a change in our product mix and a charge of $270,000 in the period to increase the excess inventory allowance. In April 2003, we decided to outsource certain functions previously performed in our Carlsbad, California distribution center, including, but not limited to, warehousing, shipping and quality control studies. We have entered into agreements with various vendors to distribute Acthar, Nascobal, Ethamolin, Glofil and Inulin, and we distribute VSL#3 from our Union City facility.

Sales and marketing expenses for the six months ended June 30, 2003 decreased by $41,000 to $2,986,000, from $3,027,000 for the six months ended June 30, 2002. While the sales and marketing expenses were flat, a decreased marketing spend for the six months ended June 30, 2003 was offset by increased salary and other costs as a result of the full six months impact of the expansion to our sales and marketing departments that took place in May 2002.

General and administrative expenses for the six months ended June 30, 2003 decreased by $413,000, or 15%, to $2,334,000 from $2,747,000 for the six months ended June 30, 2002. The decrease was primarily due to $243,000 of non-cash charges for stock-based compensation taken in the six months ended June 30, 2002. Also contributing to the decrease was an overall reduction of spending in the general and administrative functions.

Research and development expenses for the six months ended June 30, 2003 increased by $212,000, or 19%, to $1,322,000 from $1,110,000 for the six months ended June 30, 2002. The costs included in research and development relate primarily to manufacturing site transfers and medical and regulatory affairs compliance activities. This increase is primarily due to consulting and outside testing costs incurred related to the Acthar site transfer in the first six months of 2003 as compared to the first six months of 2002. In the six months ended June 30, 2003, a third party contract laboratory completed several tests as part of the Acthar manufacturing site transfer. To date, this laboratory has been unsuccessful in qualifying the assay in order to complete the transfer. If this laboratory is unable to validate this specific assay, we may be forced to find a new contractor to complete this work, which in turn could increase our costs substantially. The costs related to the Acthar site transfer may fluctuate, depending on the timing of work performed and the costs related to such activities.

Non-cash amortization of deemed discount on convertible debentures for the six months ended June 30, 2003 increased by $86,000, or 49%, to $261,000 from $175,000 for the six months ended June 30, 2002. The increase was due to the current period representing a full six month’s amortization of deemed discount related to the convertible debentures. The convertible debentures were issued March 15, 2002.

Interest expense, net, increased by $28,000 to $14,000 for the six months ended June 30, 2003 from net interest income of $14,000 for the six months ended June 30, 2002. This was primarily due to the current period representing a full six months interest expense on the convertible debentures issued March 15, 2002.

Other expense, net, decreased by $30,000, or 27%, to $80,000 for the six months ended June 30, 2003 from $110,000 for the six months ended June 30, 2002. The decrease in expense is primarily due to a smaller loss related to the Rigel equity securities investment recorded in the six months ended June 30, 2003 as compared to the same period for 2002. For the six months ended June 30, 2003 we recorded an other-than-temporary loss of $51,000 and realized losses of $14,000 on the Rigel equity investment as compared to a $181,000 other-than-temporary loss recorded on the Rigel equity securities investment for the six month period

ended June 30, 2002. The other expense for the six months ended June 30, 2002, was partially offset by other income recognized in the period as a result of receipt of profits arising from short swing stock trades executed by one of our 10% shareholders.

Rental income, net remained flat for the quarter ended June 30, 2003 as compared to the quarter ended June 30, 2002.

Non-cash deemed dividend of $1,394,000 at June 30, 2003 is related to the beneficial conversion feature in connection with the Series B Preferred Stock and warrants issued in January 2003. A beneficial conversion feature is present because the effective conversion price of the Preferred Stock was less than the fair value of the Common Stock on the commitment date. In addition, on June 13, 2003, we obtained a letter from our Series B Preferred Stock holders whereby certain covenants were waived. In exchange for such waiver, the exercise price of the warrant was reduced. The beneficial conversion feature was revalued using the new exercise price and the increase in value was recorded as a deemed dividend.

Preferred Stock dividends of $367,000 represent the 8% cash dividends payable to the Series B Preferred Stock holders. These dividends are required to be paid in cash quarterly.

**Liquidity and Capital Resources**

We have funded our activities to date principally through various issuances of equity securities. Through June 30, 2003, we have raised total net proceeds of $60.6 million. We have also funded our activities to date to a lesser extent through product sales.

At June 30, 2003, we had cash, cash equivalents and short-term investments of $8,941,000 compared to $7,506,000 at December 31, 2002. At June 30, 2003, our working capital was $3,795,000 compared to $7,018,000 at December 31, 2002. The decrease in our working capital was principally due to the $9,000,000 cash payment we made to Nastech to acquire Nascobal, offset by net proceeds received in the private placement of $10,000,000 of Series B Convertible Preferred Stock in January 2003 and the private placement of $5 million of Common Stock and warrants in June 2003.

As a result of the Nascobal product acquisition we are required to pay an additional $5.2 million payable to Nastech on or before December 31, 2003. The $5.2 million payable is included in the “Payable relating to product acquisition” on the accompanying Condensed Consolidated Balance Sheet. As part of the acquisition, we are also acquiring rights to Nascobal nasal spray, an improved dosage form, for which an NDA is expected to be filed by Nastech with the FDA before the end of 2003. Subject to the approval of the NDA for the new Nascobal nasal spray dosage form by the FDA, we will be required to make a $2 million payment for the transfer of the NDA from Nastech to us. Further, subject to the approval of the NDA for the new Nascobal nasal spray dosage form and upon issuance of a pending U.S. patent for the new Nascobal nasal spray dosage form, we will be required to make a second $2 million payment.

We may have substantial cash outlays for the Acthar site transfer. The site transfer process is not complete and may require substantial cash outlays for the work performed, capital expenditures and inventory, prior to the transfer being complete.

In January 2002, we entered into a revolving accounts receivable line of credit with Pacific Business Funding, a division of Greater Bay Bancorp. Under the agreement, we can borrow up to the lesser of 80% of our eligible accounts receivable balance or $3,000,000. Interest accrues on outstanding advances at an annual rate equal to prime rate plus four and one-half percent. The term of the agreement is one year and the note automatically renews annually, unless we terminate the agreement. There were no borrowings under this line of credit as of June 30, 2003. The line of credit is secured by a blanket lien on all of our assets including intellectual property. As of June 30, 2003, $958,000 was applicable for borrowing under the line of credit.

In January 2003, we completed a private placement of Series B Convertible Preferred Stock and warrants to purchase common stock to various healthcare investors. Our gross proceeds from the private placement were $10 million. The Series B Preferred Stock has an aggregate stated value of $10 million and is entitled to a quarterly dividend at an initial rate of 8% per year, which rate will increase to 10% per year on and after January 1, 2006, and to 12% on and after January 1, 2008. In addition, on the occurrence of designated events the dividend rate will increase by an additional 6% per year. The Series B Preferred Stock is entitled to a liquidation preference over our common stock and Series A Preferred Stock upon a liquidation, dissolution or winding up of Questcor. The Series B Preferred Stock is convertible at the option of the holder into our common stock at a conversion price of $0.9412 per share, subject to certain anti-dilution adjustments. We have the right commencing on January 1, 2006 (assuming specified conditions are met) to redeem the Series B Preferred Stock at a price of 110% of stated value, together with all accrued and unpaid dividends and arrearage interest. In addition, upon the occurrence of designated Optional Redemption Events, the holders have the right to require us to redeem the Series B Preferred Stock at 100% of stated value, together with all accrued and unpaid dividends and accrued interest. The terms of the Series B Preferred Stock contain a variety of affirmative and restrictive covenants, including limitations on indebtedness and liens. Each share of Series B Preferred Stock is generally entitled to a number of votes equal to 0.875 times the number of shares

of common stock issuable upon conversion of such share of Series B Preferred Stock. The purchasers of the Series B Preferred Stock also received for no additional consideration warrants exercisable for an aggregate of 3,399,911 shares of our common stock at an exercise price of $1.0824 per share, subject to certain anti-dilution adjustments. The warrants expire in January 2007. In June 2003, the exercise price of the warrants was adjusted to $0.9412 per share.

On June 11, 2003, we consummated a private placement of our Common Stock and warrants to purchase Common Stock. We issued 4,979,360 shares of Common Stock in the private placement at $1.01 per share, which was the volume weighted average price of the common stock for the five days prior to and including the close of the private placement. Gross proceeds to us from the private placement were approximately $5 million. The purchasers of our Common Stock also received for no additional consideration warrants exercisable for an aggregate of 2,987,616 shares of Common Stock at an exercise price of $1.26 per share, which represented a 25% premium to the volume weighted average price of the Common Stock for the five days prior to and including the close of the private placement. The warrants expire in June 2008.

Our future funding requirements will depend on many factors, including; the timing and extent of product sales, returns of expired product, any expansion or acceleration of our development programs; the acquisition and licensing of products, technologies or compounds, if any; our ability to manage growth; competing technological and market developments; costs involved in filing, prosecuting, defending and enforcing patent and intellectual property claims; the receipt of licensing or milestone fees from current or future collaborative and license agreements, if established; the timing of regulatory approvals; the timing and successful completion of the Acthar site transfer; payment of dividends and compliance to prevent additional dividend events or optional redemption events, and other factors.

We are funding a portion of our operating expenses through our cash flow from operations, but may need to seek additional funds through public or private equity financing or from other sources. While we raised gross proceeds of $10 million through Series B Preferred Stock in January 2003 and $5 million in a private placement in June 2003, and anticipate that our capital resources based on our internal forecasts and projections will be adequate to fund operations and capital expenditures, if we experience unanticipated cash requirements, or if revenues fail to grow, we could be required to raise additional cash. Regardless, we may seek additional funds, before the end of 2003, through public or private equity financing or from other sources to potentially avoid the payment of additional dividends of 6% under the Series B Convertible Preferred Stock for which we have a waiver through the end of 2003, to acquire additional products and expand our operations and to meet future obligations. Additionally, we may seek to raise additional capital whenever conditions in the financial markets are favorable, even if we do not have an immediate need for additional cash at that time. There can be no assurance that additional funds can be obtained on desirable terms or at all.

## RISK FACTORS

You should carefully consider the following risk factors, in addition to the other information included in this prospectus, before purchasing shares of our common stock. Each of these risks could adversely affect our business, financial condition and results of operations, as well as adversely affect the value of an investment in our common stock.

**We have a history of operating losses and may never generate sufficient revenue to achieve profitability.**

We have a history of recurring operating losses. Our operating losses from inception through June 30, 2003 were $82.3 million, of which $5.3 million represented the loss applicable to common stockholders for the six months ended June 30, 2003, $2.8 million represented the loss for the year ended December 31, 2002, and $8.7 million represented the loss for the year ended December 31, 2001. Further substantial operating losses are expected to continue at least through the end of 2003. To date, our revenues have been generated principally from sales of Acthar, Ethamolin, Glofil-125, Inulin and VSL#3. In July 2003, we began selling Nascobal, a product that we acquired in June 2003. We are currently unable to estimate our future sales from Nascobal due to our limited history with marketing and selling the product. We do not expect Hypnostat or Panistat to be commercially available for a number of years, if at all. Further, revenues from the sale of Emitasol, if any, will also be dependent on FDA approval and the development of Emitasol in conjunction with a new strategic partner, which has not yet been obtained.

Our ability to achieve a consistent, profitable level of operations will be dependent in large part upon our ability to:

- finance and acquire additional marketed products,
- increase sales of current products,
- finance the future growth of our sales/marketing and customer service organization,
- finance operations with external capital until positive cash flows are achieved,
- enter into agreements with corporate partners for the development of Emitasol,
- properly and timely complete the transfer of the manufacturing of Acthar to new contract manufacturers including receiving the appropriate approvals from the FDA and other regulatory authorities,
- continue to receive products from our sole-source contract manufacturers on a timely basis and at acceptable costs, and
- ensure customers compliance with our sales and exchange policies.

If we are unable to generate sufficient revenues from the sale of our products, or if we are unable to contain costs and expenses, we may not achieve profitability and may ultimately be unable to fund our operations.

**If our revenues from sales of Acthar decline or fail to grow, we may not have sufficient revenues to fund our operations.**

We rely heavily on sales of Acthar. Acthar revenues comprised 68%, 65% and 41% of our total product revenues for the six months ended June 30, 2003 and years ended December 31, 2002 and December 31, 2001 (sales of Acthar began in September 2001), respectively. We review external data sources to estimate customer demand for our products. In the event that demand for our products is less than our sales to wholesalers, excess inventory may result at the wholesaler level, which may impact future product sales. If the supply of Acthar available at the wholesale level exceeds the future demand, our future revenues from the sales of Acthar may be affected adversely.

In December 2002, we noted that certain of our customers were not complying with our expired product exchange policy. These customers were deducting from amounts owed to us the full price of expired Acthar they returned to us. While we reached an agreement with these customers to pay the short-remittances upon their receipt of replacement product, certain customers have continued to deduct from amounts owed to us the full price of expired Acthar they return to us. Additionally, certain customers received an administration fee from us for the Acthar that expired in November 2002 and May 2003. We will provide replacement vials to them at no cost for Acthar that expired in November 2002 and in May 2003. In the first quarter of 2003, due to the relatively short dating of Acthar in our inventories and at the wholesale level, we limited Acthar shipments to critical care and emergency situations. A lot of Acthar, with an expiration date of January 2004 was released in the first quarter of 2003. With the release of this lot normal shipments of Acthar resumed. We believe that the replacement of expired Acthar at no cost and the decision to briefly limit shipment of Acthar had a negative impact on our first quarter 2003 product sales of Acthar.

In 2002 and 2001, the Acthar vials we sold had a one year shelf life and, in the first quarter of 2003, we began shipping product which expires in January 2004. Due to the short shelf-life of Acthar, significant quantities could expire at the wholesale or pharmacy level, which could then be returned for replacement product under our exchange policy. Such shipment of replacement product may displace future sales.

We are reviewing the amount of Acthar at the wholesale level to help assess the demand for Acthar in 2003. We expect that Acthar will continue to constitute a significant portion of our revenues for 2003. Although our goal is to actively promote Acthar, and we have no reason to believe that our promotion of Acthar will not be successful, we cannot predict whether the strong demand for Acthar will continue in the future or that we will continue to generate significant revenues from sales of Acthar. In addition, we cannot currently predict whether our efforts to promote Acthar for the treatment of MS will be successful. If the demand for Acthar declines, or if we are forced to reduce the price, or if exchange of product is higher than anticipated, or if we are forced to re-negotiate contracts or terms, or if our customers do not comply with our existing policies, or we are not successful in promoting Acthar for the treatment of MS, our revenues from the sale of Acthar would decline. If the cost to produce Acthar increases, and we are unable to raise the price correspondingly, our gross margins on the sale of Acthar would decline. Any delays or problems associated with the site transfer of the manufacturers of Acthar could also reduce the amount of the product that will be available for sale. If our revenues from the sale of Acthar decline or fail to grow, our total revenues, gross margins and operating results would be harmed and we may not have sufficient revenues to fund our operations.

**If we are unsuccessful in completing the Acthar site transfer, we may be unable to meet the demand for Acthar and lose potential revenues.**

Under our agreement with Aventis Pharmaceuticals, Inc. (“Aventis”), Aventis manufactured and supplied Acthar through July 2002. Aventis filled one final lot of Acthar that is included in inventories at June 30, 2003. It is anticipated that the inventory of Acthar on hand at June 30, 2003, will be sufficient to meet expected demand through late 2003. We have signed a definitive agreement with Chesapeake Biological Laboratories (“CBL”) a contract manufacturer for Acthar finished product and will continue to transfer the final fill and labeling process from Aventis to CBL. Under our agreement with Aventis, we purchased the active pharmaceutical ingredient (“API”) and other inventory residing at Aventis. We believe this API will be sufficient to meet our forecasted demand through 2005. This API originally manufactured by Aventis has been transferred to CBL, the new final fill manufacturer. It is anticipated that CBL will complete the transfer and begin supplying to us finished product using the API manufactured by Aventis during 2003. CBL has completed an initial fill of one lot of Acthar in June 2003. Based on information we have received to date, we believe that this lot of Acthar will be available for commercialization before the end of 2003. If this lot is not available for commercialization before the end of 2003, we may not be able to meet the demand for Acthar, which in turn will lead to a decrease in revenues.

We have identified a potential new manufacturer, BioVectra dcl (“BioVectra”) for the Acthar API. We have entered into an equipment and materials transfer agreement with BioVectra which was extended indefinitely through a verbal agreement, and we are currently negotiating a definitive API supply agreement with BioVectra. However, we have experienced delays and cost overruns in the validation of the release assay from Aventis to our new third party contract laboratory. If we are unable to efficiently and timely validate the release assay before we exhaust the API purchased from Aventis, we will not be able to release finished goods and therefore we may not be able to meet the expected demand for Acthar.

As described above, the process of manufacturing Acthar is complex and we may encounter problems associated with the site transfer. Once the site transfer to CBL and the new API manufacturer has been completed and the release assay has been validated and they begin supplying Acthar to us, the cost of the product is expected to increase which may cause our gross margins to decline. In addition, if the site transfers and the corresponding approval by the FDA and other regulatory authorities do not occur on a timely basis at the appropriate costs to us, we will lose sales. Moreover, contract manufacturers that we may use must continually adhere to current good manufacturing practices regulations enforced by the FDA. If the facilities of these manufacturers cannot pass an inspection, we may lose the FDA approval of our products. Failure to obtain products for sale for any reason may result in an inability to meet product demand and a loss of potential revenues.

**We have little or no control over our wholesalers buying patterns, which may impact future revenues, exchanges and excess inventory.**

We sell our products primarily through major drug wholesalers located in the United States. Consistent with the pharmaceutical industry, most of our revenues are derived from the three largest drug wholesalers. While we attempt to estimate inventory levels of

our products at our major wholesale customers using inventory data obtained from customers, historical prescription information and historical purchase patterns, this process is inherently imprecise. We rely solely upon our wholesale customers to effect the distribution allocation of our products. There can be no assurance that these customers will adequately manage their local and regional inventories to avoid outages or inventory build-ups. We noted in the second quarter of 2003 that one of our major customers has purchased Ethamolin units in excess of what we estimate their historical demand to be which may adversely impact future sales.

Our therapeutic pharmaceutical products have expiration dates that range from 18 to 36 months from date of manufacture. We will generally accept for exchange pharmaceutical products that have reached the expiration date. We establish reserves for these exchanges at the time of sale. There can be no assurance that we will be able to accurately forecast the reserve requirement that will be needed in the future. Although our estimates are reviewed quarterly for reasonableness, our product return activity could differ significantly from our estimates because our analysis of product shipments, prescription trends and the amount of product in the distribution channel may not be accurate. Judgment is required in estimating these reserves. The actual amounts could be different from the estimates and differences are accounted for in the period in which they become known.

We do not control or significantly influence the purchasing patterns of wholesale customers. These are highly sophisticated customers that purchase our products in a manner consistent with their industry practices and perceived business interests. Our sales are subject to the purchase requirements of our major customers, which, presumably, are based upon their projected demand levels. Purchases by any customer, during any period, may be above or below actual prescription volumes of one or more of our products during the same period, resulting in increases or decreases in product inventory existing in the distribution channel, which are managed presumably in accordance with such customer's business practices.

We provide reserves for potentially excess, dated or otherwise impaired inventory. Reserves for excess inventory are based on an analysis of expected future sales that will occur before the inventory on hand will expire. Judgment is required in estimating reserves for excess inventories. The actual amounts could be different from the estimates and differences are accounted for in the period in which they become known.

**We have no experience marketing Nascobal and may be unsuccessful in doing so.**

In June 2003, we acquired the product Nascobal, a nasal gel used for the treatment of various Vitamin B-12 deficiencies for $14.2 million. We currently have no sales and marketing experience with respect to Nascobal. We also cannot predict what the demand for Nascobal will be. If the demand for Nascobal is less than we anticipate, or we are unsuccessful in marketing Nascobal, our revenues from the sale of Nascobal will be less than we are currently anticipating. We made an initial $9 million payment to Nastech to acquire Nascobal, and we are required to pay an additional $5.2 million in non-contingent payments to Nastech by December 31, 2003. We need to generate revenues from sales of Nascobal in order to raise the necessary funds to make these payments. If we are not successful in marketing Nascobal, we may need to seek other sources of cash to make such payments or to fund operations. Moreover, if the amount of Nascobal inventory at the wholesale level at the time that we purchased Nascobal was higher than we anticipated, this may also affect the demand for Nascobal in the near term.

**Our inability to secure additional funding could lead to a loss of your investment.**

While we raised gross proceeds of $10 million through Series B Preferred Stock in January 2003 and $5 million in a private placement in June 2003, and anticipate that our capital resources based on our internal forecasts and projections will be adequate to fund operations and capital expenditures, if we experience unanticipated cash requirements, or if revenues fail to grow, we could be required to raise additional funds. Regardless, we may seek additional funds, before the end of 2003, through public or private equity financing or from other sources to potentially avoid the payment of additional dividends of 6% under the Series B Convertible Preferred Stock of which we have a waiver through the end of 2003, to acquire additional products and expand our operations and to meet future obligations. Additionally, we may seek to raise capital whenever conditions in the financial markets are favorable, even if we do not have an immediate need for additional cash at that time. There can be no assurance that additional funds can be obtained on desirable terms or at all.

In order to conduct our operating activities, we may require substantial additional capital resources in order to acquire new products, increase sales of existing products, and maintain our operations. In addition, if revenues from product sales do not significantly increase or if further capital investments do not materialize, or if such investments cannot be completed at attractive terms to us, or if we are unable to receive any additional capital investments at all, this may further limit our ability to fund operations. Our future capital requirements will depend on many factors, including the following:

- existing product sales performance,
- cost maintenance and potential future expansion of our sales force,
- the cost and timing of the Acthar site transfer,
- achieving better operating efficiencies,
- obtaining product from our sole-source contract manufacturers and completing the site transfer to new contract manufacturers, and
- acquiring additional products.

We anticipate obtaining additional financing through public or private debt or equity financings. However, additional financing may not be available to us on acceptable terms, if at all. Further, additional equity financings will be dilutive to our shareholders. If sufficient capital is not available, then we may be required to reduce our operations or to delay, reduce the scope of, eliminate or divest one or more of our products, product acquisition or manufacturing efforts.

**If we are unable to contract with third party manufacturers, we may be unable to meet the demand for our products and lose potential revenues.**

We will rely on third party contract manufacturers to produce our marketed products, Acthar, Nascobal, Ethamolin, Glofil, Inulin and VSL#3, and other products that we may develop, commercialize or acquire in the future. Third party manufacturers may not be able to meet our needs with respect to timing, cost, quantity or quality. All of our manufacturers are sole-source manufacturers and no currently qualified alternative suppliers exist.

Ethamolin is currently being manufactured by Ben Venue Laboratories ("Ben Venue"). We do not have a formal Ethamolin manufacturing contract in place with Ben Venue, rather we have an agreement on terms and conditions, and we purchase product on a purchase order basis under these agreed upon terms and conditions. Glofil is manufactured by ISO-Tex Diagnostics, Inc. pursuant to a supply contract we have with them. The API for Inulin is manufactured by Pfanstiehl Laboratories, Inc. on a purchase order basis, and the final fill product for Inulin is manufactured by Ben Venue pursuant to an agreement on terms and conditions, and we purchase product on a purchase order basis under these agreed upon terms and conditions. We have been notified by Pfanstiehl Laboratories, Inc. that they will no longer produce the Inulin API for us. We are currently looking for alternative sources of Inulin API, however, we may not be successful in our search. If we are unable to find an alternative supplier for Inulin API, we may no longer be able to sell Inulin. VSL#3 is supplied by VSL Pharmaceuticals, Inc. under a promotion agreement we have with them. VSL has the sole responsibility for manufacturing and/or acquiring the VSL#3 product.

If we are unable to contract for a sufficient supply of our required products and substances on acceptable terms, or if we should encounter delays or difficulties in our relationships with our manufacturers, or if the site transfers and the corresponding approval by the FDA and other regulatory authorities does not occur on a timely basis at the appropriate costs to us, we will lose sales. Moreover, contract manufacturers that we may use must continually adhere to current good manufacturing practices enforced by the FDA. If the facilities of these manufacturers cannot pass an inspection, we may lose the FDA approval of our products. During December of 2001, we experienced a short supply situation with Ethamolin and Acthar due to manufacturing constraints at two of our third party contract manufacturers, which were resolved in 2002. We cannot guarantee that we will not have supply interruptions in the future for Ethamolin and Acthar or any of our current or future products. Failure to obtain products for sale for any reason may result in an inability to meet product demand and a loss of potential revenues.

**If our third party distributors are unable to distribute our products, we will lose potential revenues.**

We currently outsource certain functions previously performed in our Carlsbad, California distribution center, including, but not limited to, warehousing, shipping and quality control studies. The outsourcing of these functions is complex, and we may experience difficulties at the third party contractor level that could result in the non-shipment of our products. We have transferred the distribution of Acthar, Nascobal, Ethamolin, Glofil and Inulin to third party distributors, and we distribute VSL#3 from our Union City facility. If we encounter problems with the distribution of these products at the third party distribution level the products could become unavailable and we could lose revenues, or the costs to distribute these products could become higher than we anticipated.

**If we lose the services of certain key personnel or are unable to hire skilled personnel in the future, our business will be harmed.**

We are highly dependent on the services of Charles J. Casamento, Chairman, President, and Chief Executive Officer, Timothy E. Morris, Senior Vice President of Finance and Administration and Chief Financial Officer, and Kenneth R. Greathouse, Senior Vice President of Commercial Operations. If we were to lose either Mr. Casamento, Mr. Morris or Mr. Greathouse as employees, our business could be harmed. Moreover, we do not carry key person life insurance for our senior management or other personnel. Additionally, the future potential growth and expansion of our business is expected to place increased demands on our management skills and resources. Although only minor increases in staffing levels are expected during 2003, recruiting and retaining management and operational personnel to perform sales and marketing, business development, regulatory affairs, medical affairs and contract manufacturing in the

future will also be critical to our success. We do not know if we will be able to attract and retain skilled and experienced management and operational personnel in the future on acceptable terms given the intense competition among numerous pharmaceutical and biotechnology companies for such personnel. If we are unable to hire necessary skilled personnel in the future, our business could be harmed.

**Our products in the development stage may not be accepted by the market, which may result in lower future revenues as well as a decline in our competitive positioning.**

Emitasol, an intranasal medication used to treat nausea and vomiting, is in the development stage. Emitasol could be developed for two indications: a decreased movement of the stomach region in diabetics causing fullness, bloating and nausea, known as diabetic gastroparesis, and delayed onset emesis, the vomiting associated with cancer chemotherapy patients occurring the day after and beyond the chemotherapy treatment. The diabetic gastroparesis drug candidate was being developed in collaboration with a subsidiary of Shire Pharmaceutical Group plc in the U.S. and had completed a Phase II clinical trial in patients with diabetic gastroparesis. With the expiration in July 2001 of the exclusive option to develop Emitasol held by Shire, development of Emitasol under this collaboration stopped. Further development of Emitasol is on hold pending our entering into an agreement with a future partner to fund the development of Emitasol. We also have intranasal drug candidates, Panistat for the management of panic disorders, and Hypnostat for the treatment of insomnia, which have now been licensed to Fabre Kramer. There is no guarantee that any of these drugs will successfully complete the additional clinical testing needed to obtain FDA approval. Clinical trial results are frequently susceptible to varying interpretations by scientists, medical personnel, regulatory personnel, statisticians and others, which may delay, limit or prevent further clinical development or regulatory approvals of a product candidate. Also, the length of time that it takes for our partners to complete clinical trials and obtain regulatory approval for product marketing can vary by product and by the indicated use of a product. If one or more of these drugs fail to successfully pass Phase III testing, we would be unable to market or sell the product, which could result in lower future revenues as well as a decline in our competitive positioning.

Additionally, our commercial products and any products that we successfully develop, if approved for marketing, may never achieve market acceptance. These products, if successfully developed, will compete with drugs and therapies manufactured and marketed by major pharmaceutical and other biotechnology companies. Physicians, patients or the medical community in general may not accept and utilize the products that we may develop or that our corporate partners may develop.

The degree of market acceptance of any products that we develop will depend on a number of factors, including:

- the establishment and demonstration of the clinical efficacy and safety of the product candidates,
- their potential advantage over alternative treatment methods and competing products,
- reimbursement policies of government and third-party payors, and
- our ability to market and promote the products effectively.

The failure of our products to achieve market acceptance may result in lower future revenues as well as a decline in our competitive positioning.

**A large percentage of our common stock is beneficially owned by one shareholder and its affiliates, who in the future could attempt to take over control of our management and operations or exercise voting power to advance their own best interests and not necessarily those of other shareholders.**

Sigma-Tau Finanziaria S.p.A. and its affiliates (“Sigma-Tau”) beneficially own, directly or indirectly, approximately 27% of the voting power of our outstanding voting capital stock, and they beneficially own, including shares of our common stock issuable upon conversion of a convertible debenture and exercise of warrants, approximately 34% of our outstanding common stock, as of June 30, 2003. Accordingly, these shareholders may control the outcome of certain shareholder votes, including votes concerning the election of directors, the adoption or amendment of provisions in our Articles of Incorporation, and the approval of mergers and other significant corporate transactions. This level of concentrated ownership may, at a minimum, have the effect of delaying or preventing a change in the management or voting control of us by a third party. It may also place us in the position of having our large shareholder take control of us and having new management inserted and new objectives adopted.

On January 17, 2003, Sigma-Tau requested that we increase the size of our Board of Directors by two, with such directors to be nominated by Sigma-Tau and elected by our Board of Directors as soon as possible. Sigma-Tau subsequently rescinded this request. On March 11, 2003, Sigma-Tau indicated that they have determined to sell all or a portion of the shares of our common stock that they currently own. They further indicated that such sales, if they occur, will be through open market transactions or privately negotiated, and will depend on prevailing market conditions at time of sale. Such sales, if they occur, could have a depressing effect on the market price of our common stock. Since this announcement in March, according to information filed with the Securities and Exchange Commission, Sigma-Tau has sold 30,000 shares of our common stock.

**If competitors develop and market products that are more effective than ours, our commercial opportunity will be reduced or eliminated.**

The pharmaceutical and biotechnology industries are intensely competitive and subject to rapid and significant technological change. A number of companies are pursuing the development of pharmaceuticals and products that target the same diseases and conditions that we target. For example, there are products on the market that compete with Acthar, Nascobal, Ethamolin, Glofil-125, Inulin, and VSL#3. Moreover, technology controlled by third parties that may be advantageous to our business may be acquired or licensed by competitors of ours, preventing us from obtaining this technology on favorable terms, or at all.

Our ability to compete will depend on our ability to create and maintain scientifically advanced technology, and to develop, acquire and commercialize pharmaceutical products based on this technology, as well as our ability to attract and retain qualified personnel, obtain patent protection, or otherwise develop proprietary technology or processes, and secure sufficient capital resources for the expected substantial time period between technological conception and commercial sales of products based upon our technology.

Acthar is currently used in patients suffering from arthritis, multiple sclerosis, and infantile spasm. Acthar may be challenged by newer agents, such as synthetic corticosteriods, immune system suppressants known as immunosuppressants, and anti-seizure medications (in the case of infantile spasms) and other types of anti-inflammatory products for various autoimmune conditions that have inflammation as a clinical aspect of the disease. An injectable form of B-12 is widely available in generic form and provides the same benefit as Nascobal at a lower overall cost. One company offers a sclerotherapy agent (chemicals injected into varicose veins that damage and scar the inside lining of the vein, causing it to close) that competes with Ethamolin. Other competitive agents include Rubber Band Ligation methods (procedures in which bleeding esophageal varices are tied off at their base with rubber bands, cutting off the blood flow) such as the Multi-band Superview manufactured by Boston-Scientific, the Multi-band Six Shooter manufactured by Wilson-Cook, and the Multi-band Ligator manufactured by Bard. Other products may reduce the number of bleeding esophageal varices by lowering portal hypertension, such as Sandostatin® manufactured by Novartis. The competition to market FDA-approved active bleeding esophageal varices therapies is intense.

There are numerous products that may be viewed as competitors to Glofil-125. These include intrinsic tests, such as serum creatinine tests and creatinine clearance tests, both used to measure how quickly the kidneys are able to clear creatinine, an endogenously produced natural chemical, from the blood. Extrinsic tests use such products as Tc-DTPA, manufactured by Mallinckrodt, Inc., Omnipaque® (an injectable contrast media agent), manufactured by Sanofi, a division of Sanofi-Synthelabo, and Conray®-iothalamate meglumine (another injectable contrast medium), manufactured by Mallinckrodt, Inc. There is intense competition among both FDA and non-FDA approved products to measure kidney function.

Virtually any number of manufacturers of probiotics may be considered competitors to VSL#3. Among the most notable are Culturelle™ by ConAgra and Probiotica by Johnson and Johnson.

Several large companies' products will compete with Emitasol in the delayed onset emesis market, including Zofran® (a medication used to prevent and treat chemotherapy induced nausea and vomiting) by Glaxo-Wellcome, Kytril® (a medication used to prevent and treat chemotherapy induced nausea and vomiting) by SmithKline Beecham and Reglan® (a medication used to prevent and treat chemotherapy induced nausea and vomiting) by A.H. Robins. These competitive products, however, are currently available in oral and intravenous delivery forms only. Additionally, on March 26, 2003, the FDA approved Merck's Emend (aprepitant) for various indications including delayed onset emesis. The competition to develop FDA-approved drugs for delayed onset emesis and diabetic gastroparesis is intense.

Many of the companies developing competing technologies and products have significantly greater financial resources and expertise in development, manufacturing, obtaining regulatory approvals, and marketing than we do. Other smaller companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies.

Academic institutions, government agencies and other public and private research organizations may also seek patent protection and establish collaborative arrangements for clinical development, manufacturing, and marketing of products similar to ours. These companies and institutions will compete with us in recruiting and retaining qualified sales and marketing and management personnel, as well as in acquiring technologies complementary to our programs. We will face competition with respect to:

- product efficacy and safety,
- the timing and scope of regulatory approvals,
- availability of resources,
- price, and
- patent position, including potentially dominant patent positions of others.

If our competitors succeed in developing technologies and drugs that are more effective or less costly than any that we are developing, our technology and future drugs may be rendered obsolete and noncompetitive. In addition, our competitors may succeed in obtaining the approval of the FDA or other regulatory approvals for drug candidates more rapidly than we will. Companies that complete clinical trials, obtain required regulatory agency approvals and commence commercial sale of their drugs before their competitors may achieve a significant competitive advantage, including patent and FDA marketing exclusivity rights that would delay our ability to market specific products. We do not know if drugs resulting from the joint efforts of our existing or future collaborative partner will be able to compete successfully with our competitors' existing products or products under development or whether we will obtain regulatory approval in the U.S. or elsewhere.

**We face possible delisting from the American Stock Exchange that would result in a limited public market for our common stock.**

Certain of our financial measures have fallen below certain of the American Stock Exchange's ("AMEX") continued listing standards and we have therefore become subject to possible delisting. Specifically, on August 9, 2002, we received notification from AMEX that we had fallen below the standards set forth in the AMEX Guide Section 1003(a)(i) by having (1) shareholders' equity of less than $2,000,000 and losses from continuing operations in the last two fiscal years and (2) shareholders' equity of less than $4,000,000 and losses from continuing operations in the last three fiscal years. The notification provided that we could submit a plan to AMEX by September 10, 2002 advising it of the measures we intended to take in order to bring us into compliance with AMEX's continuing listing standards. We submitted such a plan of compliance to the AMEX on September 10, 2002. On October 15, 2002, the AMEX notified us that it had completed its review of our plan of compliance and determined that, in accordance with Section 1009 of the AMEX Company Guide, the plan made a reasonable demonstration of our ability to regain compliance with the continued listing standards within eighteen months. We will be subject to periodic review by the AMEX staff during the eighteen month extension period during which period we are required to make progress consistent with our plan and to ultimately comply with the continued listing standards. If we are delisted from AMEX, the public market for our common stock would be limited. In January 2003 we completed a $10 million private placement of Series B convertible preferred stock, and in June 2003 we completed a $5 million private placement of common stock and warrants. These placements increased our net equity and we believe this may bring us back into compliance with the AMEX listing requirements.

**If we fail to maintain or enter into new contracts related to collaborations and in-licensed or acquired technology and products, our product development and commercialization could be delayed.**

Our business model has been dependent on our ability to enter into licensing and acquisition arrangements with commercial or academic entities to obtain technology for commercialization or marketed products. If we are unable to enter into any new agreements in the future, our development and commercialization efforts will be delayed. Disputes may arise regarding the inventorship and corresponding rights in inventions and know-how resulting from the joint creation or use of intellectual property by us and our licensors or scientific collaborators. We may not be able to negotiate additional license and acquisition agreements in the future on acceptable terms, if at all. In addition, current license and acquisition agreements may be terminated, and we may not be able to maintain the exclusivity of our exclusive licenses.

If collaborators do not commit sufficient development resources, technology, regulatory expertise, manufacturing, marketing and other resources towards developing, promoting and commercializing products incorporating our discoveries, the development of our

licensed products progress will be stalled. Further, competitive conflicts may arise among these third parties that could prevent them from working cooperatively with us. The amount and timing of resources devoted to these activities by the parties could depend on the achievement of milestones by us and otherwise generally may be controlled by other parties. In addition, we expect that our agreements with future collaborators will likely permit the collaborators to terminate their agreements upon written notice to us. This type of termination would substantially reduce the likelihood that the applicable research program or any lead candidate or candidates would be developed into a drug candidate, would obtain regulatory approvals and would be manufactured and successfully commercialized.

If none of our collaborations are successful in developing and commercializing products, or if we do not receive milestone payments or generate revenues from royalties sufficient to offset our significant investment in product development and other costs, then our business could be harmed. Disagreements with our collaborators could lead to delays or interruptions in, or termination of, development and commercialization of certain potential products or could require or result in litigation or arbitration, which could be time-consuming and expensive and may result in lost revenues and substantial legal costs which could negatively impact our results from operations. In addition, if we are unable to acquire new marketed products on a timely basis at appropriate purchase price and terms, we may not reach profitability and may not generate sufficient cash to fund operations.

**If we are unable to protect our proprietary rights, we may lose our competitive position and future revenues.**

Our success will depend in part on our ability to:

- obtain patents for our products and technologies,
- protect trade secrets,
- operate without infringing upon the proprietary rights of others, and
- prevent others from infringing on our proprietary rights.

We will only be able to protect our proprietary rights from unauthorized use by third parties to the extent that these rights are covered by valid and enforceable patents or are effectively maintained as trade secrets and are otherwise protectable under applicable law. We will attempt to protect our proprietary position by filing U.S. and foreign patent applications related to our proprietary products, technology, inventions and improvements that are important to the development of our business.

The patent positions of biotechnology and biopharmaceutical companies involve complex legal and factual questions and, therefore, enforceability cannot be predicted with certainty. Patents, if issued, may be challenged, invalidated or circumvented. Thus, any patents that we own or license from third parties may not provide any protection against competitors. Pending patent applications we may file in the future, or those we may license from third parties, may not result in patents being issued. Also, patent rights may not provide us with proprietary protection or competitive advantages against competitors with similar technology. Furthermore, others may independently develop similar technologies or duplicate any technology that we have developed or we will develop. The laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the U.S.

In addition to patents, we rely on trade secrets and proprietary know-how. We currently seek protection, in part, through confidentiality and proprietary information agreements. These agreements may not provide meaningful protection or adequate remedies for proprietary technology in the event of unauthorized use or disclosure of confidential and proprietary information. The parties may not comply or may breach these agreements. Furthermore, our trade secrets may otherwise become known to, or be independently developed by competitors.

Our success will further depend, in part, on our ability to operate without infringing the proprietary rights of others. If our activities infringe on patents owned by others, we could incur substantial costs in defending ourselves in suits brought against a licensor or us. Should our products or technologies be found to infringe on patents issued to third parties, the manufacture, use and sale of our products could be enjoined, and we could be required to pay substantial damages. In addition, we, in connection with the development and use of our products and technologies, may be required to obtain licenses to patents or other proprietary rights of third parties, which may not be made available on terms acceptable to us, if at all.

**Since we must obtain regulatory approval to market our products in the United States and in foreign jurisdictions, we cannot predict whether or when we will be permitted to commercialize our products.**

Any products that we develop are subject to regulation by federal, state and local governmental authorities in the U.S., including the FDA, and by similar agencies in other countries. Any product that we develop must receive all relevant regulatory approvals or clearances before it may be marketed in a particular country. The regulatory process, which includes extensive pre-clinical studies and clinical trials of each product to establish its safety and efficacy, is uncertain, can take many years and requires the expenditure of substantial resources. Data obtained from pre-clinical and clinical activities are susceptible to varying interpretations that could delay, limit or prevent regulatory approval or clearance. In addition, delays or rejections may be encountered based upon changes in regulatory policy during the period of product development and the period of review of any application for regulatory approval or clearance for a product. Delays in obtaining regulatory approvals or clearances could:

- stall the marketing, selling and distribution of any products that our corporate partners or we develop,
- impose significant additional costs on our corporate partners and us,
- diminish any competitive advantages that we or our corporate partners may attain, and
- decrease our ability to receive royalties and generate revenues and profits.

Regulatory approval, if granted, may entail limitations on the indicated uses for which a new product may be marketed that could limit the potential market for the product. Product approvals, once granted, may be withdrawn if problems occur after initial marketing. Furthermore, manufacturers of approved products are subject to pervasive review, including compliance with detailed regulations governing FDA good manufacturing practices. The FDA periodically revises the good manufacturing practices regulations. Failure to comply with applicable regulatory requirements can result in warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to grant marketing applications and criminal prosecution.

In addition, we cannot predict the extent of government regulations or the impact of new governmental regulations that may result in a delay in the development, production and marketing of our products. As such, we may be required to incur significant costs to comply with current or future laws or regulations. For example, successful late stage Phase III clinical trials for such potentially important treatments such as diabetic gastroparesis and delayed onset emesis may require the enrollment of many patients. Together, the costs of these trials, if funded solely by us, could exceed our current financial resources.

**Our ability to generate revenues is affected by the availability of reimbursement on our products, and our ability to generate revenues will be diminished if we fail to obtain an adequate level of reimbursement for our products from third party payors.**

In both domestic and foreign markets, sales of our products will depend in part on the availability of reimbursement from third-party payors such as state and federal governments (for example, under Medicare and Medicaid programs in the U.S.) and private insurance plans. Because of VSL#3's non-prescription status, it is not widely covered by third party payors. In certain foreign markets, the pricing and profitability of our products generally are subject to government controls. In the U.S., there have been, and we expect there will continue to be, a number of state and federal proposals that limit the amount that state or federal governments will pay to reimburse the cost of drugs. In addition, we believe the increasing emphasis on managed care in the U.S. has and will continue to put pressure on the price and usage of our products, which may impact product sales. Further, when a new therapeutic is approved, the reimbursement status and rate of such a product is uncertain. In addition, current reimbursement policies for existing products may change at any time. Changes in reimbursement or our failure to obtain reimbursement for our products may reduce the demand for, or the price of, our products, which could result in lower product sales or revenues, thereby weakening our competitive position and negatively impacting our results of operations.

In the U.S., proposals have called for substantial changes in the Medicare and Medicaid programs. If such changes are enacted, they may require significant reductions from currently projected government expenditures for these programs. Driven by budget concerns, Medicaid managed care systems have been implemented in several states and local metropolitan areas. If the Medicare and Medicaid programs implement changes that restrict the access of a significant population of patients to its innovative medicines, the market acceptance of these products may be reduced.

To facilitate the availability of our products for Medicaid patients, we have contracted with the Center for Medicare and Medicaid Services. As a result, we pay quarterly rebates consistent with the utilization of our products by individual states. We also must give discounts under contract on purchases or reimbursements of pharmaceutical products by certain other federal and state agencies and programs. If these discounts and rebates become burdensome to us and we are not able to sell our products through these channels, our net sales could decline.

**Our stock price has a history of volatility, and an investment in our stock could decline in value.**

The price of our stock, like that of other specialty pharmaceutical companies, is subject to significant volatility. Our stock price has ranged in value from $2.18 to $0.75 over the last two years. Any number of events, both internal and external to us, may continue to affect our stock price. These include, without limitation, the quarterly and yearly revenues and earnings/losses, our ability to acquire and market appropriate pharmaceuticals, announcement by us or our competitors regarding product development efforts, including the status of regulatory approval applications; the outcome of legal proceedings, including claims filed by us against third parties to enforce our patents and claims filed by third parties against us relating to patents held by the third parties; the launch of competing products; our ability to obtain product from our contract manufacturers; the resolution of (or failure to resolve) disputes with collaboration partners and corporate restructuring by us.

**If product liability lawsuits are successfully brought against us or we become subject to other forms of litigation, we may incur substantial liabilities and costs and may be required to limit commercialization of our products.**

Our business will expose us to potential liability risks that are inherent in the testing, manufacturing and marketing of pharmaceutical products. The use of any drug candidates ultimately developed by us or our collaborators in clinical trials may expose us to product liability claims and possible adverse publicity. These risks will expand for any of our drug candidates that receive regulatory approval for commercial sale and for those products we currently market. Product liability insurance for the pharmaceutical industry is generally expensive, if available at all. We currently have product liability insurance for claims up to $10,000,000. However, if we are unable to maintain insurance coverage at acceptable costs, in a sufficient amount, or at all, or if we become subject to a product liability claim, our reputation, stock price and ability to devote the necessary resources to the commercialization of our products could be negatively impacted.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Our exposure to market risk at June 30, 2003 has not changed materially from December 31, 2002, and reference is made to the more detailed disclosures of market risk included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2002 as filed with the Securities and Exchange Commission on March 26, 2003.

**ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES**

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to the Company's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Rule 13a(b), the Company carried out an evaluation, under the supervision and with the participation of the Company's management, including the Company's Chief Executive

Officer and the Company's Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of the end of the quarter covered by this report. Based on the foregoing, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective at the reasonable assurance level.

There has been no change in the Company's internal controls over financial reporting during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal controls over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

Not applicable

**ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS**

Not applicable

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

The Company held its 2003 annual meeting of shareholders on May 12, 2003. The following matters received the votes at the meeting as set forth below:

1. Election of Directors to hold office until the 2004 Annual Meeting of Shareholders.

| | Votes For | Votes Withheld |
|---|---|---|
| Charles J. Casamento | 32,007,104 | 1,618,570 |
| Robert F. Allnutt | 32,395,717 | 1,229,957 |
| Frank J. Sasinowski | 32,383,458 | 1,242,216 |
| Jon S. Saxe | 32,555,909 | 1,069,765 |
| John T. Spitznagel | 32,399,022 | 1,226,652 |
| Roger G. Stoll | 32,571,408 | 1,054,266 |
| Virgil Thompson | 32,566,108 | 1,059,566 |

2. An amendment to the Company's Amended and Restated Articles of Incorporation increasing the total number of shares of the Company's Common Stock, authorized for issuance by 30,000,000 shares, so that the total number of shares of Common Stock authorized for issuance is 105,000,000 shares.

| | |
|---|---|
| For | 31,102,927 |
| Against | 2,490,425 |

| | |
|---|---|
| Abstain | 32,222 |

3. An amendment to the Company's 1992 Employee Stock Option Plan (the "1992 Plan") increasing the aggregate number of shares of Common Stock authorized for issuance under the 1992 Plan by 1,000,000 shares, from 12,500,000 shares to 13,500,000 shares.

| | |
|---|---|
| For | 31,418,748 |
| Against | 2,174,505 |
| Abstain | 32,421 |

4. Approval of the Company's 2003 Employee Stock Purchase Plan which provides for 900,000 shares of Common Stock to be authorized for employee purchases.

| | |
|---|---|
| For | 32,305,729 |
| Against | 1,274,555 |
| Abstain | 45,390 |

5. Ratification of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending December 31, 2003.

| | |
|---|---|
| For | 33,442,834 |
| Against | 147,888 |
| Abstain | 34,952 |

**ITEM 5. OTHER INFORMATION**

Not applicable

**ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits

| | |
|---|---|
| 10.28 | Asset Purchase Agreement between Nastech Pharmaceutical Company, Inc. and Questcor Pharmaceuticals, Inc. |
| 10.29 | Supply Agreement by and between Nastech Pharmaceutical Company, Inc and Questcor Pharmaceuticals, Inc. † |
| 15.1 | Letter regarding Unaudited Financial Information. |
| 31 | Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32 | Certification pursuant to Section 906 of the Public Company Accounting Reform and Investor Act of 2002. |

† The Company has requested confidential treatment with respect to portions of this exhibit.

(b) Reports on Form 8-K

On January 16, 2003, we reported on Form 8-K, reporting under Item 5, that we had consummated a $10 million private placement of Series B Convertible Preferred Stock and Warrants to purchase Common Stock.

On February 14, 2003, we reported on Form 8-K, reporting under Item 5, that on February 11, 2003 our Board of Directors adopted a Shareholder Rights Plan.

On May 15, 2003, we furnished on Form 8-K, under Item 9, our press release of our results for the quarter ended March 31, 2003.

On June 17, 2003, we reported on Form 8-K, reporting under Item 5, that on June 17, 2003 we completed the Nascobal Product Acquisition, a private placement of Common Stock and Warrants and entered into an agreement with our Series B Preferred Stockholders.

**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.

PHARMACEUTICALS, INC.

Date: August 14, 2003

By: /s/ CHARLES J. CASAMENTO

By: **Charles J. Casamento**
**Chairman, President & CEO**

Date: August 14, 2003

/s/ TIMOTHY E. MORRIS

**Timothy E. Morris**
**Vice President, Finance & Administration**
**And Chief Financial Officer (Principal**
**Financial and Accounting Officer)**

**Exhibit Index**

| | |
|---|---|
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† The Company has requested confidential treatment with respect to portions of this exhibit.

EXHIBIT 10.28
EXECUTION COPY

# ASSET PURCHASE AGREEMENT

BETWEEN

NASTECH PHARMACEUTICAL COMPANY, INC.

(SELLER)

AND

QUESTCOR PHARMACEUTICALS, INC.

(BUYER)

DATED JUNE 16, 2003

CONTENTS

INDEX OF SCHEDULES AND EXHIBITS

# ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is made as of this 16th day of June, 2003, by and between NASTECH PHARMACEUTICAL COMPANY, INC., a Delaware corporation ("SELLER"), and QUESTCOR PHARMACEUTICALS, INC., a California corporation ("BUYER").

## RECITALS

A. Seller has rights to a manufacturing procedure for the preparation of an intranasally delivered cyanocobalamin formulation marketed under the brand name NASCOBAL(R) and to a patent for the formulation of related products, and is engaged, amonG other businesses, in the development of such products for sale and distribution.

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, certain assets relating to such products, for the consideration and on the terms and conditions set forth in this Agreement.

C. In connection with, and as additional consideration for, the asset sale and purchase described in this Agreement, Seller and Buyer desire to enter into a supply agreement pursuant to which Seller will produce and sell to Buyer all of Buyer's requirements for the Product on the terms and conditions set forth therein.

NOW, THEREFORE, in consideration of the covenants and conditions set forth in this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

## AGREEMENT

### 1. DEFINITIONS

Certain terms are defined in the text of this Agreement. In addition, terms that appear in this Agreement with their initial letters capitalized shall have the meanings set forth below unless the context expressly requires otherwise:

"ACQUIRED ASSETS" shall have the meaning set forth in Section 2.1.

"AFFILIATE" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purpose of the definition of Affiliate, the term "control" (including the terms "controlling" and "controlled") means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"AGREEMENT" shall mean this Asset Purchase Agreement, including the Schedules and Exhibits attached hereto and hereby made a part hereof, as the same may be amended, modified or supplemented from time to time in accordance with the provisions hereof.

"ASSIGNED CONTRACTS" shall have the meaning set forth in Section 2.1.3.

"ASSIGNED PROPERTY" shall have the meaning set forth in Section 2.1.1.

"ASSIGNMENT AND ASSUMPTION AGREEMENT" shall mean that certain Assignment and Assumption Agreement, substantially in the form of Exhibit A attached hereto.

"BILL OF SALE" shall mean that certain Bill of Sale, substantially in the form of Exhibit B attached hereto.

"BUYER INDEMNIFIED PARTIES" shall have the meaning set forth in Section 11.2.

"BUYER'S ADVISORS" shall have the meaning set forth in Section 8.1.1.

"BUYER'S NDA OPTION" shall have the meaning set forth in Section 2.6.2.

"BUYER'S SPRAY PATENT OPTION" shall have the meaning set forth in Section 2.6.5.

"CLAIM" shall mean any civil, criminal or administrative claim, demand, cause of action, suit, proceeding, arbitration, hearing or investigation.

"CLOSING" shall mean the consummation of the purchase and sale of certain of the Assets contemplated by this Agreement.

"CLOSING DATE" shall have the meaning set forth in Section 4.

"CODE" shall mean the Internal Revenue Code of 1986, as amended.

"CONFIDENTIAL INFORMATION" shall mean information concerning the business, methods, products, strategies, operations, prospects, systems, plans, policies, relationships with customers, suppliers, distributors and other agents, and other sensitive, non-public information of either Buyer or Seller or their respective Affiliates. The term "Confidential Information" shall not include information that (i) becomes generally available to the public other than as a result of a disclosure by the party subject to the obligation of confidentiality with respect to such information (the "RECEIVING PARTY"), or the representatives or Affiliates of such party, in breach of this Agreement, the Confidentiality Agreement or any other confidentiality agreement, or any fiduciary duty or other obligation of secrecy in favor of the other party and/or its Affiliates; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the other party or its representatives or Affiliates, provided, that the Receiving Party believes that such source is not bound by a confidentiality agreement with, and does not have a fiduciary duty or any other obligation of secrecy to the other party or another Person with respect to such information; (iii) was rightfully in the possession of the Receiving Party or any of its Affiliates prior to receipt from the other party or its representatives or Affiliates, other than through prior disclosure by any of them; or (iv) is discovered or developed by the Receiving Party or any of its Affiliates independently of any use of the other party's Confidential Information.

"CONFIDENTIALITY AGREEMENT" shall mean that certain Confidentiality Agreement, dated as of March 14, 2003, between Seller and Buyer.

"CONTINGENT PAYMENT" shall have the meaning set forth in Section 3.4.

"CORD AGREEMENT" shall mean that certain Wholesale Service Agreement, dated as of October 1, 2002, by and between Seller and Cardinal Distribution.

"DEFERRED NON-CONTINGENT PAYMENTS" shall have the meaning set forth in Section 3.3.

"ENCUMBRANCE" shall mean any lien, mortgage, deed of trust, pledge, security interest, charge, condition, equitable interest, right of first refusal, community property interest, covenant, option, title defect, claim, restriction, variance, exception, or other adverse claim or interest or encumbrance of any kind or nature whatsoever, whether or not perfected, including, without limitation, any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"ENFORCEABILITY EXCEPTION" shall mean, with respect to any agreement, contract or commitment, any limitation thereon imposed by any bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Law affecting creditors' rights and remedies generally and by general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

"EXCLUDED ASSETS" shall have the meaning set forth in Section 2.2.

"EXHIBITS" shall mean the Exhibits hereby incorporated into and made a part of this Agreement for all purposes.

"FDA" shall mean the U.S. Food and Drug Administration, and any successor agency or entity thereto.

"GEL IND" shall mean the Investigational New Drug Application, No. 25,696, relating to the Product in gel form, and received by the FDA on January 22, 1985.

"GEL NDA" shall mean the New Drug Application, No. 19-722, relating to the Product in gel form, and approved by the FDA on November 5, 1996.

"GOVERNMENTAL ENTITY" shall mean a federal, state, provincial, local, county or municipal government, governmental, regulatory or administrative agency, department, commission, board, bureau, or other authority or instrumentality, domestic or foreign, including, without limitation, any body exercising or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"INDEMNIFIED PARTY" shall have the meaning set forth in Section 11.4.

"INDEMNIFYING PARTY" shall have the meaning set forth in Section 11.4.

"INITIAL PAYMENT" shall have the meaning set forth in Section 3.2.

"INTELLECTUAL PROPERTY" shall mean: (a) inventions and discoveries, improvements thereto, and patents, patent applications, invention disclosures, and other rights of invention, worldwide, including without limitation any reissues, divisions, continuations and continuations-

in-part, provisionals, reexamined patents or other applications or patents claiming the benefit of the filing date of any such application or patent; (b) trademarks, service marks, trade names, trade dress, logos, domain names, product names and slogans, including any common law rights, registrations, and applications for registration for any of the foregoing, and the goodwill associated with all of the foregoing, worldwide; (c) copyrightable works, copyrights, website content, and other rights of authorship, and any applications, registrations and renewals in connection therewith, worldwide; (d) trade secrets, Know-How, and any other confidential business and technical information; (e) rights to exclude others from appropriating any of such Intellectual Property, including the rights to sue for and remedies against past, present and future infringements of any or all of the foregoing and rights of priority and protection of interests therein; and (f) any other proprietary, intellectual property and other rights relating to any or all of the foregoing anywhere in the world.

"IRS" shall mean the U.S. Internal Revenue Service.

"KNOW-HOW" shall mean all material non-patented know-how owned or controlled by Seller as of the date hereof which, in each case, are material to the formulation, manufacture, use, marketing and sale of the Product and all available summaries or references sufficient for identification purposes of same.

"KNOWLEDGE OF SELLER" shall mean, with respect to a particular fact or other matter, the actual current knowledge after reasonable investigation of the Chief Executive Officer or Chief Financial Officer of Seller.

"LAW" shall mean any domestic or foreign constitutional provision, statute or other law, rule, regulation or interpretation of any Governmental Entity and any decision, decree, injunction, judgment, order, ruling or assessment of any Governmental Entity or any arbitrator.

"LICENSED ASSETS" shall have the meaning set forth in Section 5.1.

"LOSSES" shall have the meaning set forth in Section 11.2.

"MARKS" shall have the meaning set forth in Section 6.6.1.

"MATERIAL ADVERSE EFFECT" shall mean a material adverse effect on the Product.

"NDA" shall mean that certain New Drug Application to be filed by or on behalf of Seller with the FDA for the spray formulation of the Product used in the Phase III bioequivalency study completed and reported upon in December 2002.

"NDA CLOSING" shall have the meaning set forth in Section 2.6.1.

"NDC" shall mean a National Drug Code for the Product.

"ORDER" shall mean any award, decision, injunction, restraining order, judgment, decree, writ, order, regulation, rule, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Entity or by any arbitrator.

"PATENTS" shall have the meaning set forth in Section 6.6.1.

"PERMITTED PURPOSES" shall have the meaning set forth in Section 8.4.

"PERSON" shall mean any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, Governmental Entity and any other legal entity.

"PROCEEDING" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving any Governmental Entity or arbitrator.

"PRODUCT" shall mean any product developed by Seller, existing as of the date hereof, that contains cyanocobalamin as an active ingredient formulated for intranasal delivery.

"PURCHASE PRICE" shall have the meaning set forth in Section 3.1.

"SCHEDULES" shall mean the Schedules hereby incorporated into and made a part of this Agreement for all purposes.

"SECURITY AGREEMENTS" shall have the meaning set forth in Section 2.4.

"SELLER EMPLOYEE" shall have the meaning set forth in Section 8.6.

"SELLER INDEMNIFIED PARTIES" shall have the meaning set forth in Section 11.3.

"SPRAY PATENT APPLICATIONS" shall mean (i) U.S. Provisional Patent Application No. 60/451,899, "Cyanocobalamin Low Viscosity Aqueous Formulations for Intranasal Delivery" filed March 4, 2003; (ii) U.S. Provisional Patent Application Docket No 03-02P2, "Cyanocobalamin Low Viscosity Aqueous Formulations for Intranasal Delivery" filed April 4, 2003; (iii) all U.S. applications claiming priority from (i) and/or (ii) (including all continuations, continuations-in-part, reexaminations, reissues and extensions thereof); and (iv) and any additional patent applications with claims covering a spray formulation of the Product.

"SPRAY PATENT CLOSING" shall have the meaning set forth in Section 2.6.4.

"SPRAY PATENTS" shall mean any patent claiming priority from any of the Spray Patent Applications.

"STUDIES AND RECORDS" shall have the meaning set forth in Section 2.1.4.

"SUPPLY AGREEMENT" shall mean that certain Supply Agreement by and between Buyer and Seller, in the form of Exhibit C attached hereto.

"TAX" (and, in the plural, "TAXES") shall mean (a) U.S. or foreign federal, state or local taxes, charges, fees, levies, imposts, duties and governmental fees or other like assessments or charges of any kind whatsoever (including, without limitation, any income, net income, gross income, receipts, windfall profit, severance, property, production, sales, use, business and occupation, license, excise, registration, franchise, employment, payroll, withholding, alternative

or add-on minimum, intangibles, ad valorem, transfer, gains, stamp, estimated, transaction, title, capital, paid-up capital, profits, occupation, premium, value-added, recording, real property, personal property, inventory and merchandise, business privilege, federal highway use, commercial rent or environmental tax), and (b) interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with any item described in clause (a).

"TRANSACTION DOCUMENTS" shall mean the Bill of Sale, the Assignment and Assumption Agreement, the Supply Agreement and the Security Agreement.

"USPTO" shall mean the United States Patent and Trademark Office.

2. PURCHASE AND SALE OF ASSETS

2.1 PURCHASE AND SALE

Subject to the terms and conditions of this Agreement, Seller shall sell, transfer, convey, assign and deliver, or cause to be sold, transferred, conveyed, assigned or delivered to Buyer, and Buyer shall purchase and acquire from Seller, at Closing, all of Seller's right, title and interest in, to and under the following (collectively, the "ACQUIRED ASSETS"):

2.1.1 TANGIBLE PERSONAL PROPERTY

The personal property identified on Schedule 2.1.1 hereof (collectively, the "ASSIGNED PROPERTY").

2.1.2 PATENTS AND MARKS

The Patents and Marks identified on Schedule 2.1.2 hereof.

2.1.3 CONTRACT RIGHTS

The contracts, applications, agreements, licenses, obligations, promises, instruments and other undertakings and arrangements identified on Schedule 2.1.3 hereof (collectively, the "ASSIGNED CONTRACTS").

2.1.4 STUDIES AND RECORDS

Any marketing studies, promotional materials and other information identified on Schedule 2.1.4 hereof (collectively, the "STUDIES AND RECORDS").

2.1.5 REGULATORY APPROVALS

All regulatory approvals and pending approvals permitting the sale of the Product in the United States and all foreign countries identified on Schedule 2.1.5 hereof and the right to file for approval in countries where the Product is not approved.

2.1.6 CLINICAL DATA

All clinical data and technical information identified on Schedule 2.1.6 hereof.

2.1.7 VALIDATION LOTS

All validation lots identified on Schedule 2.1.7 hereof.

On the Closing Date, Seller shall deliver to Buyer the Bill of Sale and such other deeds, endorsements, assignment and assumption agreements, and other good and sufficient instruments of conveyance and transfer as Buyer may reasonably request, to vest in Buyer all the right, title and interest of Seller in, to and under any or all of the Acquired Assets.

2.2 EXCLUDED ASSETS

The assets, properties, rights, contracts, claims or interests related to the Product and listed on Schedule 2.2 hereof (the "EXCLUDED ASSETS") are not being purchased by Buyer under this Agreement and are being retained by Seller.

2.3 ASSUMED LIABILITIES

2.3.1 Upon the terms and subject to the conditions of this Agreement, effective at the time of the Closing, Buyer shall assume and become responsible for all obligations under the Assigned Contracts arising on and after the Closing Date (collectively, the "ASSUMED LIABILITIES").

2.3.2 At Closing, Buyer shall deliver its executed Assignment and Assumption Agreement evidencing, among other things, its assumption of the Assumed Liabilities.

2.4 SECURITY AGREEMENT AND NEGATIVE PLEDGE

At the Closing, Buyer shall enter into agreements, substantially in the forms of Exhibit D attached hereto, giving Seller a first priority security interest in the Acquired Assets and undertaking not to allow any other security interest or Encumbrance to attach to the Acquired Assets (collectively, the "SECURITY AGREEMENTS").

2.5 CERTAIN LIABILITIES

Notwithstanding the foregoing, certain obligations will be divided between Buyer and Seller as follows:

2.5.1 Buyer will be responsible for all liability incurred in connection with the use and sale of the Product or the Marks on and after the Closing Date, and Seller will be responsible for all liability, whether known or unknown, incurred in connection with the manufacture, use or sale of the Product or the Marks prior to the Closing Date;

2.5.2 Buyer will be liable for any and all customer chargebacks and returns for Products sold with Buyer's NDC, and Seller will be liable for any and all customer chargebacks and returns for Products sold with Seller's NDC;

2.5.3 Buyer will be liable for any and all rebates for all Medicaid and state rebate programs for all Products sold with Buyer's NDC and paid for by Medicaid or state rebate programs and for which a qualified rebate invoice is issued, and Seller will be liable for any and all rebates for all Medicaid and state rebate programs for all Products sold with Seller's NDC and paid for by Medicaid or state rebate programs and for which a qualified rebate invoice is issued;

2.5.4 Buyer will be liable for any and all rebates for all Product sold with Buyer's NDC and paid for by a managed care facility, and Seller will be liable for any and all rebates for all Products sold with Seller's NDC and paid for by a managed care facility; and

2.5.5 Buyer shall notify Seller of any demand made by a customer of Buyer for the chargeback, return or rebate for Products sold to such customer by Seller with Seller's NDC, as set forth in Sections 2.5.2 through 2.5.4. Seller shall exercise its commercially reasonable efforts to resolve the customer's claim for chargeback, return or rebate of the Products. Upon the expiration of ninety (90) days from the date upon which Buyer shall have notified Seller of the customer's demand, and to the extent that Seller shall have been unable to reach agreement with the customer on the resolution of such claim, Buyer may allow any reasonable chargeback, return or rebate or may reprocess the Products, and the reasonable out-of-pocket costs thereof shall be borne by Seller. Such amounts shall be applied by Buyer to the following Deferred Non-Contingent Payment or Contingent Payment.

2.6 DEFERRED TRANSFER AND ASSIGNMENT OF CERTAIN INTELLECTUAL PROPERTY RIGHTS

2.6.1 Subject to the terms and conditions of this Agreement, upon FDA approval of the NDA, Seller shall sell, transfer, convey, assign and deliver, or cause to be sold, transferred, conveyed, assigned or delivered to Buyer, and Buyer shall purchase and acquire from Seller, all of Seller's right, title and interest in, to and under the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form (the "NDA CLOSING"). The NDA Closing shall be held at 10:00 a.m., New York time, at the offices of Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, New York as soon as practicable following FDA approval of the NDA, but in no event later than ten (10) days following the date of such approval, unless another place, date and time is mutually agreed upon by Buyer and Seller. At the NDA Closing: (i) Buyer shall pay to Seller the Contingent Payment due Seller in accordance with Section 3.4, and (ii) provided that Buyer shall have made to Seller each Deferred Non-Contingent Payment due Seller through such time in accordance with Section 3.3, Seller shall provide to Buyer the original or a copy (as mutually agreed to by Buyer and Seller) of the NDA together with a receipt that notice of such transfer has been delivered to the FDA.

2.6.2 Subject to the terms and conditions of this Agreement, if Seller abandons its pursuit of the NDA prior to such time as FDA approval of the NDA has been obtained, then Buyer may, at Buyer's option, exercised in writing (the "BUYER'S NDA OPTION"), request that Seller transfer, assign and deliver to Buyer all of Seller's right, title and interest in, to and under the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form. No later than ten (10) days following receipt by Seller of Buyer's NDA Option, provided that Buyer shall have made to Seller each Deferred Non-Contingent Payment due Seller in accordance with Section 3.3, Seller shall transfer, assign and deliver, or cause to be

transferred, assigned or delivered to Buyer, and Buyer shall acquire from Seller, at no cost to Buyer, all of Seller's right, title and interest in, to and under the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form.

2.6.3 Notwithstanding Section 2.6.1 and 2.6.2 above, Seller shall retain a perpetual, royalty-free, non-exclusive license to incorporate, disclose and otherwise use and have used all information relating to the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form, including but not limited to information collected or developed under the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form, to prepare, supplement and prosecute the Spray Patent Applications and to perform in full Seller's obligations under the Supply Agreement.

2.6.4 Subject to the terms and conditions of this Agreement, upon issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA, Seller shall sell, transfer, convey, assign and deliver, or cause to be sold, transferred, conveyed, assigned or delivered to Buyer, and Buyer shall purchase and acquire from Seller, all of Seller's right, title and interest in, to and under the Spray Patents and the Spray Patent Applications (the "SPRAY PATENT CLOSING"). The Spray Patent Closing shall be held at 10:00 a.m., New York time, at the offices of Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, New York as soon as practicable following issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA, but in no event later than ten (10) days following the date of such issuance, unless another place, date and time is mutually agreed upon by Buyer and Seller. At the Spray Patent Closing: (i) Buyer shall pay to Seller the Contingent Payment due Seller in accordance with Section 3.4, and (ii) provided that Buyer shall have made to Seller each Deferred Non-Contingent Payment due Seller through such time in accordance with Section 3.3, Seller shall deliver to Buyer, at no cost to Buyer, such assignment and assumption documents as are reasonably requested by Buyer in order to transfer to Buyer from Seller the Spray Patents and the Spray Patent Applications.

2.6.5 Subject to the terms and conditions of this Agreement, if Seller abandons its prosecution of the last of the Spray Patent Applications prior to the issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA, then Buyer may, at Buyer's option, exercised in writing (the "BUYER'S SPRAY PATENT OPTION"), request that Seller transfer, assign and deliver to Buyer all of Seller's right, title and interest in, to and under the Spray Patents and the Spray Patent Applications. No later than ten (10) days following receipt by Seller of Buyer's Spray Patent Option, provided that Buyer shall have made to Seller each Deferred Non-Contingent Payment and Contingent Payment due Seller in accordance with Sections 3.3 and 3.4, respectively, Seller shall transfer, assign and deliver, or cause to be transferred, assigned or delivered to Buyer, and Buyer shall acquire from Seller, at no cost to Buyer, all of Seller's right, title and interest in, to and under the Spray Patents and the Spray Patent Applications.

2.6.6 To effect the transfer of (i) the NDA from Seller to Buyer pursuant to Section 2.6.1 or 2.6.2 above or (ii) the Spray Patents and the Spray Patent Applications from

Seller to Buyer pursuant to Section 2.6.4 or 2.6.5 above, Seller shall deliver to Buyer a bill of sale and such other deeds, endorsements, assignment and assumption agreements, and other good and sufficient instruments of conveyance and transfer as Buyer may reasonably request, to vest in Buyer all the right, title and interest of Seller in, to and under the property being transferred. Without limiting the generality of the foregoing, (x) simultaneously with the transfer of the NDA from Seller to Buyer pursuant to Section 2.6.1 or 2.6.2 above, Buyer and Seller shall promptly file with the FDA and all relevant Governmental Entities all information required in order to transfer to Buyer the NDA and all subsequent FDA submissions by or on behalf of Seller with respect to the Product in spray form; Seller shall file the information required of a former owner, and Buyer shall file the information required of a new owner, in each case at Buyer's expense; and (y) simultaneously with the transfer of the Spray Patents and the Spray Patent Applications from Seller to Buyer pursuant to Section 2.6.4 or 2.6.5 above, Buyer and Seller shall promptly file with the USPTO and all relevant Governmental Entities all information required in order to transfer to Buyer the Spray Patents and the Spray Patent Applications, in substantially the form set forth on Exhibit 2.6.6 attached hereto.

3. PURCHASE PRICE

3.1 CONSIDERATION

The aggregate consideration for the Assets (the "PURCHASE PRICE") shall be: (a) cash in the amount of up to Eighteen Million One Hundred Eighty-Three Thousand Three Hundred and Thirty-Three Dollars ($18,183,333), plus (b) Buyer's assumption of the Assumed Liabilities.

3.2 INITIAL PAYMENT

Buyer shall pay Seller an initial payment toward the Purchase Price in the amount of Nine Million Dollars ($9,000,000) (the "INITIAL PAYMENT") at Closing by wire transfer of immediately available funds to an account designated by Seller. The Initial Payment shall be non-refundable and shall not be credited against any fee or other amount required to be paid by Seller.

3.3 DEFERRED NON-CONTINGENT PAYMENTS

In addition to the Initial Payment, Buyer shall make to Seller additional payments (the "DEFERRED NON-CONTINGENT PAYMENTS") as follows:

| Date | Amount of Payment: |
|---|---|
| On or before September 30, 2003 | $3,000,000 |
| On or before December 31, 2003 | $2,183,333 |

Buyer shall pay Seller each Deferred Non-Contingent Payment by wire transfer of immediately available funds to an account designated by Seller.

3.4 CONTINGENT PAYMENTS

Subject to the terms of this Agreement, Buyer shall make to Seller payments (each, a "CONTINGENT PAYMENT") within ten (10) days after the occurrence of each of the events listed below, in the amount provided.

| Contingent Trigger Event | Amount of Payment |
| --- | --- |
| FDA approval of the NDA | $2,000,000 |
| Upon the occurrence of both (i) FDA approval of the NDA and (ii) issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA | $2,000,000 |

Buyer shall pay Seller each Contingent Payment by wire transfer of immediately available funds to an account designated by Seller.

4. CLOSING

Subject to the conditions set forth in this Agreement, the Closing shall be held at 10:00 a.m., New York time, at the offices of Kramer Levin Naftalis & Frankel LLP, 919 Third Avenue, New York, New York on the third business days after the parties' satisfaction or waiver of the conditions set forth in Sections 9 and 10 (or the waiver thereof by the applicable party), unless another place, date and time is mutually agreed upon by Buyer and Seller (the "CLOSING DATE").

5. GRANT OF LICENSES; RETAINED RIGHTS

5.1 GRANT OF LICENSE TO KNOW-HOW

Subject to Seller's reservation of rights as set forth in Section 5.2, effective as of the Closing, Seller hereby grants to Buyer a personal, fully-paid up, royalty-free, nontransferable, worldwide, non-exclusive license under the Know-How to make, have made, use, promote, market, sell, offer for sale, import and distribute the Product (except as to the promotion, marketing, sale, offer for sale, importation and distribution of the Product in Israel) (collectively, the "LICENSED ASSETS"). Seller shall not license the Know-How to any Persons to research, develop, manufacture, sell, market, distribute or license any product that contains cyanocobalamin as an active ingredient formulated for intranasal delivery. Notwithstanding the foregoing, Seller shall have and retain the right to use the Know-How: (i) to prepare, supplement, and prosecute the Spray Patent Applications and the NDA; (ii) to perform in full Seller's obligations under the Supply Agreement; or (iii) for any other internal purpose. Should any licensee of Seller, through no fault of Seller, attempt to use the Know-How of Seller to research, develop, manufacture, sell, market, distribute or license any product that contains

cyanocobalamin formulated for intranasal delivery, Seller shall use its commercially reasonable efforts to assist and cooperate with Buyer in any efforts Buyer may elect to undertake to prevent or halt such use of Know-How by Seller's licensee.

5.2 RESERVATION OF RIGHTS; CROSS-LICENSE

5.2.1 Effective as of the Closing, Seller shall have and retain at all times during the term of the Supply Agreement all rights and licenses under the Patents, Marks, Gel NDA and Gel IND and other proprietary rights and licenses of Buyer (by Buyer's grant of an exclusive license, with the right to grant sublicenses, hereby made), in each case necessary to make, have made and supply the Product to or on behalf of Buyer and to otherwise fulfill Seller's obligations under this Agreement, the Supply Agreement or any other agreement with Seller.

5.2.2 Effective as of the Closing, Seller shall have and retain all rights and licenses under the Gel NDA and the Gel IND and other proprietary rights and licenses of Buyer (by Buyer's grant of an exclusive license, with the right to grant sublicenses, hereby made), in each case necessary to pursue the NDA and to prosecute the Spray Patent Applications, until the later to occur of (i) FDA approval of the NDA or Seller's abandonment of its pursuit of the NDA; and (ii) issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA or Seller's abandonment of its prosecution of the Spray Patent Applications.

5.2.3 The parties agree that Seller shall retain all rights to (including the exclusive rights to, and to license third parties to) research, develop, make, have made, use, sell, offer for sale and import products, processes and services using or containing cyanocobalamin as an inactive or inert ingredient (including as a carrier).

5.3 OWNERSHIP AND RESERVATION OF RIGHTS

This Agreement does not grant to Buyer any right, title or interest with respect to the Licensed Assets, Intellectual Property or Product, or any right, title or interest with respect to any other products, services, uses or other tangible or intangible matter whatsoever, other than those which are expressly provided herein. Seller hereby reserves all rights and licenses not specifically, expressly and exclusively granted to Buyer by the terms of this Agreement.

6. REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

6.1 ORGANIZATION AND AUTHORITY

Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Seller has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as presently conducted and to perform its obligations under all Assigned Contracts. Seller is duly qualified to do business as a corporation and is in good standing under the laws of each state or other jurisdiction, in which either the ownership or use of the Acquired Assets by Seller, or the nature of the activities

conducted by Seller, requires such qualification, except for those states where the failure to so qualify would not have a material adverse effect.

6.2 AUTHORIZATION; ENFORCEABILITY; NO CONFLICT

6.2.1 Seller has the requisite corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Transaction Documents to which Seller is a party and the consummation of the transactions contemplated hereby and thereby by Seller have been duly and validly authorized by all necessary corporate action on the part of Seller, and no other corporate action on the part of Seller is necessary to authorize the execution and delivery of this Agreement or the Transaction Documents to which Seller is a party or to consummate the transactions contemplated hereby or thereby by Seller.

6.2.2 This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms except as enforcement may be limited by the Enforceability Exception. Upon execution and delivery by Seller of the Transaction Documents to which it is a party, such Transaction Documents will constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms except as enforcement may be limited by the Enforceability Exception.

6.2.3 Neither the execution or the delivery of this Agreement or the Transaction Documents to which Seller is a party, nor the consummation or performance of any of the transactions contemplated hereby or thereby by Seller will, directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with, or result in a violation of any provision of the Certificate of Incorporation or the By-laws of Seller; or

(b) contravene or conflict with, or result in a violation of, or give any Governmental Entity or other Person the right to challenge any of the transactions contemplated by this Agreement or the Transaction Documents or to exercise any remedy or obtain any relief under, any Order to which Seller, or any of the Acquired Assets, may be subject.

6.3 CONSENTS

No notices, reports or other filings are required to be made by Seller with, nor are any consents, approvals or authorizations required to be obtained by Seller from, any Governmental Entity or any other Person in connection with the execution, delivery and performance by Seller of this Agreement or the Transaction Documents to which Seller is a party, or the consummation by Seller of the transactions contemplated hereby or thereby, except where the failure to obtain any such consent, approval or authorization or to make any such notice, report or filing would not have a Material Adverse Effect.

6.4 TITLE TO ASSETS

Except as set forth on Schedule 6.4 hereto, Seller has marketable title to all of the Acquired Assets free and clear of all Encumbrances except for liens for Taxes not yet due. Except for the Excluded Assets, the Acquired Assets constitute all of the assets, properties, rights, contracts, claims and interests related to the Product.

6.5 ASSIGNED CONTRACTS

6.5.1 Each Assigned Contract is in full force and effect as to Seller, and to the Knowledge of Seller, each other party thereto, and constitutes a valid and binding agreement of Seller, and to the Knowledge of Seller, each other party thereto, enforceable in accordance with its terms, subject to the Enforceability Exception.

6.5.2 Seller is in compliance with all applicable terms and requirements of each Assigned Contract under which Seller has any obligation or liability or by which Seller or any of the Acquired Assets is bound, except where non-compliance would not have a Material Adverse Effect.

6.5.3 Seller has not received written notice, and to the Knowledge of Seller, any other notice regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Assigned Contract, except where such violation, breach or default would not have a Material Adverse Effect.

6.5.4 Each Assigned Contract is assignable by Seller to Buyer without the consent of any third party.

6.6 INTELLECTUAL PROPERTY

6.6.1 Schedule 2.1.2 contains an accurate and complete list of (i) all domestic and foreign patents, pending patent applications and patent applications in process but not yet filed, owned by or licensed to Seller as of the date hereof which cover the Product in gel form, including, but not limited to, the formulation, manufacture, use, marketing and sale of the Product in gel form (the "PATENTS"); and (ii) all domestic and foreign registered trademarks and service marks and pending applications therefor owned by Seller as of the date hereof which incorporate the formative "NASCOBAL" (together with the goodwill of that part of Seller's business associated with and symbolized by such marks, the "MARKS"). Notwithstanding the foregoing, Marks shall not include any marks incorporating Seller's house marks or corporate marks.

6.6.2 Seller owns all right, title and interest in and to, or has the right to use, the Intellectual Property used by it as of the date hereof in the formulation, manufacture and use of the Product in gel form according to Seller's practices in accordance with the approved NDA, and there are no Encumbrances or restrictions on the transfer of any interest held by Seller in such Intellectual Property, except for liens for Taxes not yet due.

6.6.3 To the Knowledge of Seller, Seller has not infringed, misappropriated or violated any Intellectual Property rights of any third party in respect of Seller's formulation,

manufacture or use of the Product in gel form. Seller has never received in writing, or, to the Knowledge of Seller, in any other manner, any charge, complaint, claim, demand, or notice alleging that it has infringed, misappropriated, or violated any Intellectual Property rights of any third party in respect of Seller's formulation, manufacture or use of the Product in gel form.

6.6.4 To the Knowledge of Seller, no third party has infringed, misappropriated or violated any Intellectual Property rights of Seller in respect of Seller's formulation, manufacture or use of the Product in gel form.

6.6.5 To the Knowledge of Seller, no third party has asserted or made any claim contesting or, otherwise challenged, (a) Seller's ownership of any of the Intellectual Property in respect of Seller's formulation, manufacture or use of the Product in gel form or (b) the validity or enforceability of any of such Intellectual Property.

6.6.6 Seller has taken commercially reasonable measures to protect the secrecy, confidentiality and value of the trade secrets and Know-How in respect of Seller's formulation, manufacture or use of the Product in gel form.

6.6.7 No approval or consent of any third party is needed so that the interest of Buyer in the Intellectual Property assigned hereunder shall continue to be in full force and effect following the transactions contemplated by this Agreement.

6.7 NO VIOLATIONS; ORDERS

6.7.1 Seller is not in violation of, nor has Seller violated any Order entered by any Governmental Entity which violation, after the Closing, could materially and adversely affect Buyer's right, title and interest to the Acquired Assets.

6.7.2 Seller is not subject to any Order that relates to the Product or any of the Acquired Assets and, to the Knowledge of Seller, no officer, manager, member, agent, or employee of Seller is subject to any Order that materially prohibits such officer, manager, member, agent, or employee from engaging in or continuing any conduct, activity or practice relating to the Product.

6.8 LEGAL PROCEEDINGS

There is no pending Proceeding (i) that has been commenced by or against Seller or that otherwise relates to or may affect the Product, or any of the Acquired Assets, or (ii) that challenges, or may have the effect of preventing, materially delaying, making illegal, or otherwise materially interfering with, any of the transactions contemplated by this Agreement or the Transaction Documents. To the Knowledge of Seller: (A) no such Proceeding has been threatened, and (B) no event has occurred or circumstance exists that may give rise to or serve as a basis for the commencement of any such Proceeding.

6.9 COMPLIANCE WITH LAW

All required filings with Governmental Entities relating to the Product are current and complete in all material respects and are in compliance with the Law.

6.10 BROKERS OR FINDERS

Except as set forth on Schedule 6.10 hereto, neither Seller nor any Person acting on behalf of Seller has directly or indirectly incurred, nor will incur as a result of any action taken by or on behalf of Seller, any liability for brokerage or finders' fees or agents' commissions or any similar fees, charges or payments in connection with this Agreement or the Transaction Documents, or any transaction contemplated hereby or thereby. Seller shall pay all fees and expenses due to any broker or finder identified on Schedule 6.10.

6.11 SHELF LIFE OF ASSIGNED PROPERTY

The Product in gel form included in the Assigned Property has a shelf life expiration date on or after February 15, 2005.

6.12 NO OTHER AGREEMENTS TO SELL THE ASSETS

Neither Seller nor its Affiliates has any commitment or legal obligation, absolute or contingent, to any other Person or firm other than Buyer to sell, assign, transfer or effect a sale of the Acquired Assets (other than inventory in the ordinary course of business) or to enter into any agreement or cause the entering into of an agreement with respect to any of the foregoing.

7. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

7.1 ORGANIZATION AND AUTHORITY

Buyer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Buyer has all requisite power and authority to own, operate and lease its properties and assets and to carry on its business as presently conducted. Buyer is duly qualified to do business as a corporation and is in good standing under the laws of each state or other jurisdiction in which the nature of the activities conducted by Buyer requires such qualification, except for those states where the failure to so qualify would not have a material adverse effect.

7.2 AUTHORIZATION; ENFORCEABILITY; NO CONFLICT

7.2.1 Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby by Buyer have been duly and validly authorized by all necessary corporate action on the part of Buyer, and no other corporate action on the part of Buyer is necessary to authorize the execution and delivery of this Agreement or the Transaction Documents to which Buyer is a party or to consummate the transactions contemplated hereby or thereby by Buyer.

7.2.2 This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms except as enforcement may be limited by the Enforceability Exception. Upon execution and delivery by Buyer of the Transaction Documents to which it is a party, such Transaction Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms except as enforcement may be limited by the Enforceability Exception.

7.2.3 Neither the execution and delivery of this Agreement or the Transaction Documents to which it is a party, nor the consummation or performance of any of the transactions contemplated hereby and thereby by Buyer, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with, or result in a violation of any provisions of the articles of incorporation or the bylaws of Buyer;

(b) contravene or conflict with, or result in a violation of, or give any Governmental Entity or other Person the right to challenge any of the transactions contemplated by this Agreement or the Transaction Documents or to exercise any remedy or obtain any relief under, any Order to which Buyer may be subject; or

(c) contravene, conflict with, or result in a violation of or breach of, any provisions of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any contract, agreement, lease, note or other restriction, encumbrance, obligation or liability to which Buyer is a party or by which Buyer is bound or to which any assets of Buyer are subject.

7.3 CONSENTS

No notices, reports or other filings are required to be made by Buyer with, nor are any consents, approvals or authorizations required to be obtained by Buyer from, any Governmental Entity or any other Person in connection with the execution, delivery and performance by Buyer of this Agreement or the Transaction Documents to which Buyer is a party, or the consummation by Buyer of the transactions contemplated hereby or thereby, except where the failure to obtain any such consent, approval or authorization or to make any such notice, report or filing would not have a material adverse effect.

7.4 LEGAL PROCEEDINGS

There is no pending Proceeding that has been commenced against Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement or the Transaction Documents.

7.5 BROKERS OR FINDERS

Neither Buyer nor any Person acting on behalf of Buyer has directly or indirectly incurred, or will incur as a result of any action taken by or on behalf of Buyer, any liability for brokerage or finders' fees or agents' commissions or any similar fees, charges or payments in

connection with this Agreement or the other Transaction Documents, or any transaction contemplated hereby or thereby.

8. COVENANTS

8.1 ACCESS

During the period commencing on the date of this Agreement and ending on the earlier of the Closing Date or the termination of this Agreement pursuant to Section 13 hereof, and after advance notice from Buyer, Seller shall (i) give Buyer and its accounting, legal, business, environmental, engineering, intellectual property and other representatives and advisors (collectively, "BUYER'S ADVISORS") reasonable supervised access, during normal business hours, to the offices, properties, books and records of Seller related to the Product and (ii) make available Seller's employees and advisors, including, without limitation, officers and management personnel, and cause Seller's employees and advisors to furnish Buyer and Buyer's Advisors with data and other information related to the Product as may be reasonably requested by Buyer and Buyer's Advisors, and to discuss the Product with Buyer and Buyer's Advisors, provided that any contact between Buyer and Buyer's Advisors and Seller's employees shall take place only after specific advance written notice to Seller and shall include, to the extent deemed appropriate by Seller, participation by Seller's management and its representatives.

8.2 CONDUCT OF BUSINESS

Except for actions taken with the prior written consent of Buyer, from the date of this Agreement until the Closing Date or the termination of this Agreement pursuant to Section 13 hereof, Seller shall use the Acquired Assets and conduct the business of the Product in the ordinary course of business consistent with past practice.

8.3 COMMERCIALLY REASONABLE EFFORTS

Upon the terms and subject to the conditions of this Agreement, each party shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement and the Transaction Documents.

8.4 CONFIDENTIALITY

8.4.1 Each party acknowledges that Confidential Information of the other party and/or its Affiliates from time to time may be furnished to the other party and/or its Affiliates in connection with the exercise by the parties of their respective rights and the fulfillment of their respective obligations under this Agreement. Each party acknowledges that its access to the Confidential Information of the other party is being granted solely for the purpose of exercising its rights and performing its obligations under this Agreement or the Supply Agreement (the "PERMITTED PURPOSES") and for no other purposes. Notwithstanding the foregoing, either party may disclose the Confidential Information of the other party upon reasonable prior written notice to the other party to the extent required by law, regulation, judicial or administrative process, including any reporting requirements of the Securities and Exchange Commission.

8.4.2 Each party agrees that its use of the Confidential Information of the other party will be solely for the Permitted Purposes and that such information will be kept confidential and disclosed to no other Person, except that the Confidential Information may be disclosed to such representatives and Affiliates of the first party who need to know such information in furtherance of effecting the Permitted Purposes, who have been informed of the confidential nature of such information and who have been directed, and who shall have agreed, to treat such information confidentially and to use such information only for the Permitted Purposes.

8.4.3 Each party shall be entitled to obtain, without posting any bond and without proof of actual damages, a restraining order, injunction, specific performance or other form of equitable or extraordinary relief for breach of the provisions of this Section 8.4 by the other party, in addition to all other remedies available at law or in equity. The parties further agree that no failure or delay by a party in exercising any right, power or privilege under this Section 8.4.3 will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege.

8.4.4 The parties hereby agree that as of the date hereof, the Confidentiality Agreement shall be superceded in its entirety by the provisions of this Section 8.4 and shall be of no further force or effect; provided, that, any information that was provided by one party to the other party during the term of the Confidentiality Agreement and was "Confidential Information" (as defined therein) for purposes thereof shall (subject to the second sentence of the definition of "Confidential Information" in this Agreement) be deemed to be "Confidential Information" hereunder and subject to the provisions of this Section 8.4.

8.4.5 The provisions of this Section 8.4 shall survive any termination or expiration of this Agreement, in whole or in part.

8.5 NON-COMPETITION

Seller recognizes that the covenants of Seller contained in this Section 8.5 are part of the bargained-for consideration associated with the transactions contemplated by this Agreement. On and after the Closing Date, Seller shall not manufacture or sell, or license any other Person to manufacture or sell, the Product or any other product developed by Seller that contains cyanocobalamin as an active ingredient formulated for intranasal delivery. In no event shall the foregoing sentence prohibit (i) any acquisition or subsequent operation (A) by Seller of another Person whose business is engaged in the manufacture or sale of the Product; or (B) of Seller by another Person whose business is engaged in the manufacture or sale of the Product; (ii) any activity that Seller is required to or may engage in pursuant to this Agreement or any other Transaction Document; or (iii) Seller, from the manufacture, sale or license to any other Person to manufacture or sell, a product that contains cyanocobalamin as an inactive or inert ingredient (including as a carrier).

8.6 NON-SOLICITATION

During the period commencing on the date hereof and continuing for twelve (12) months thereafter without the prior written consent of Seller, Buyer shall not, and shall cause its

Affiliates not to, directly or indirectly, attempt or endeavor to solicit or entice away any former, current or future director, officer, partner, principal, employee, agent, representative or consultant of Seller or its Affiliates (a "SELLER EMPLOYEE"), without the prior written consent of Seller, nor shall Buyer, directly or indirectly, employ or aid or assist in or procure the employment by any other Person of any Seller Employee during such period, without the prior written consent of Seller. This Section 8.6 shall not prohibit recruiting or general solicitations through the media that is not directed specifically at the Seller Employees.

8.7 PATENT AND TRADEMARK ENFORCEMENT AND PROSECUTION

8.7.1 On and after the Closing Date, Seller shall continue to have the sole right and responsibility to prosecute the Spray Patent Applications. Seller shall use commercially reasonable efforts to prosecute the Spray Patent Applications at Seller's sole expense. Seller may abandon efforts to prosecute the Spray Patent Applications if Seller reasonably determines that such efforts are no longer commercially useful or cost effective.

8.7.2 Seller shall promptly provide Buyer with copies of all correspondence with the USPTO concerning prosecution of the Spray Patent Applications and otherwise inform Buyer of any developments relating to such prosecution efforts. Seller will promptly respond to Buyer's reasonable requests for information regarding such prosecution efforts.

8.7.3 Buyer and Seller shall each promptly notify the other in writing of any alleged or threatened infringement of any third-party rights that appears likely to adversely affect the development or commercialization of the Product, or if either party, or any of its Affiliates, is individually named as a defendant in a Proceeding by a third party for infringement because of the manufacture, use, marketing, importation, offer to sell, or sale of a Product. In the event such action or proceeding is brought against Buyer or Seller or their respective Affiliates, the party so sued may elect to defend such suit provided that it does so at its own expense (subject to such indemnification as may be available under Section 11.2 or 11.3 hereof), and shall fully consult with the other party in respect of such defense. If such party shall decline to defend such action or proceeding, it shall promptly notify the other party of this decision. The other party shall, in any event, have the right, but not the obligation, to join or intervene in the defense of such action or proceeding at its own expense.

8.7.4 Each party shall promptly notify the other in writing of any alleged third party infringement of or challenge (including any claim of invalidity or interference, opposition or similar proceeding) with respect to any rights relating to the Spray Patent Applications, the Spray Patents or the Marks.

8.8 NDA PROSECUTION

On and after the Closing Date, Seller shall use its commercially reasonable efforts to secure FDA approval of the NDA at Seller's sole expense. Prior to securing FDA approval of the NDA, Seller shall promptly (i) provide Buyer with copies of all correspondence concerning the NDA and otherwise inform Buyer of any developments relating to such efforts, including reporting any adverse events and complaints by physicians relating to the Product in spray form, and (ii) respond to Buyer's reasonable requests for information regarding such prosecution

efforts. Seller may abandon such efforts to pursue the NDA if Seller reasonably determines that such efforts are no longer commercially useful or cost effective.

8.9 GEL NDA MAINTENANCE

On and after the Closing Date, Buyer shall timely comply with all FDA regulations concerning the Gel NDA at Buyer's sole expense. Prior to FDA approval of the NDA (or Seller's earlier abandonment of its pursuit of the NDA), Buyer shall promptly provide Seller with copies of all correspondence concerning the Gel NDA and the Gel IND and otherwise inform Seller of any developments relating to such efforts, including reporting any adverse events and complaints by physicians relating to the Product in gel form. Subsequent to FDA approval of the NDA and Seller's transfer of the approved NDA to Buyer pursuant to Section 2.6.1, Buyer will continue to make available to Seller information that Seller may reasonably request in connection with its prosecution of the Spray Patent Applications, unless such prosecution has been abandoned or transferred to Buyer pursuant to Section 2.6.2.

8.10 PRODUCT MAINTENANCE

On and after the Closing Date, except as otherwise provided herein, Buyer shall be solely responsible for handling all adverse events reporting, recalls, customer complaints, field alerts and all other maintenance relating to, or concerning, the Product or the Assigned Property.

8.11 PRODUCT MODIFICATION

Seller shall not make any material modifications to the Product or the manufacturing process for the Product without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

8.12 CUSTOMER INFORMATION

On and after the Closing Date, Seller shall provide Buyer with (i) copies of relevant customer lists, customer sales data and copies of customer sales contracts to the extent the same are related to the Product in a manner intended to preserve continuity in the marketplace for the Product; and (ii) lists of patient special interest groups by whom use of the Product would be appropriate or necessary.

8.13 TERMINATION OF CORD AGREEMENT

At or prior to the Closing, Seller shall terminate the Cord Agreement, except as Buyer and Seller shall have otherwise agreed in writing.

8.14 NATIONAL DRUG CODE

Unless otherwise agreed to in writing by Buyer and Seller, no later than five (5) days following Closing, Buyer shall assign and publish a new NDC for the Product currently marketed by Seller under the Gel NDA that uniquely identifies the Product as a product of Buyer directly associated with the FDA's unique assigned labeler code of Buyer.

8.15 MAINTENANCE OF CROSS-LICENSES

On and after the Closing Date, Buyer shall ensure that Seller retain all rights and licenses retained by Seller (i) under Section 5.2.1 hereof until the expiration or earlier termination of the Supply Agreement and (ii) under Section 5.2.2 hereof until the later to occur of (A) FDA approval of the NDA (or Seller's earlier abandonment of its pursuit of the NDA) and (B) the issuance by the USPTO of any patent claiming priority from any of the Spray Patent Applications with any independent claim covering any formulation which treats any indication in the approved NDA (or Seller's earlier abandonment of its prosecution of the Spray Patent Applications).

8.16 FURTHER ASSURANCES

Upon the terms and subject to the conditions of this Agreement, after the Closing, each party agrees to use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable to give full effect to the transactions contemplated by this Agreement and the Transaction Documents.

9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

Buyer's obligations to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of all of the following conditions, each of which is for the sole benefit of Buyer and may be waived only in writing by Buyer:

9.1 NO CLAIM, ORDER OR PROCEEDING

As of the Closing Date, there shall not be any Claim, Order or Proceeding threatened, pending or made that questions or challenges the lawfulness of the transactions contemplated by this Agreement or the Transaction Documents under any Law or seeks to delay, restrain or prevent such transactions.

9.2 REPRESENTATIONS, WARRANTIES AND COVENANTS

9.2.1 The representations and warranties made by Seller in this Agreement shall be accurate and complete in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except to the extent any such representation or warranty expressly speaks of a particular date, in which case it shall be true and correct as of such date.

9.2.2 Seller shall have performed and complied in all material respects with the covenants and obligations required by this Agreement to be performed and complied with by Seller on or prior to the Closing Date.

9.3 SECRETARY'S CERTIFICATE

Buyer shall have received a certificate, in form and substance reasonably satisfactory to Buyer, signed by the Secretary of Seller, dated the Closing Date, certifying as to the following:

(i) the Certificate of Incorporation of Seller as in effect on the date thereof; (ii) the By-Laws of Seller as in effect on the date thereof; (iii) the resolutions (or written consent) of Seller's board of directors authorizing and approving this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby; and (iv) the signatures and incumbency of the Persons signing this Agreement and the Transaction Documents on behalf of Seller.

9.4 BILL OF SALE

Buyer shall have received the Bill of Sale duly executed and delivered by Seller.

9.5 ASSIGNMENT AND ASSUMPTION AGREEMENT

Buyer shall have received the Assignment and Assumption Agreement duly executed and delivered by Seller.

9.6 SUPPLY AGREEMENT

Buyer shall have received the Supply Agreement duly executed and delivered by Seller.

9.7 TAXES

All Taxes and other assessments applicable to the Acquired Assets that are due and owing as of the Closing Date shall have been paid, except for Taxes and assessments to be apportioned between the parties as of the Closing pursuant to Section 12.3 or paid pursuant to Section 12.1.

9.8 LISTING AND ACCOUNT OF ASSIGNED PROPERTY

Buyer shall have received from Seller an exact listing and account of the Assigned Property transferred by Seller to Buyer under this Agreement.

9.9 OTHER DOCUMENTS

Buyer shall have received all other instruments, documents and certificates as may be reasonably requested by Buyer, each in form and substance reasonably satisfactory to Buyer, that are necessary for the consummation at the Closing of the transactions contemplated by the Transaction Documents.

10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

Seller's obligations to consummate the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of all of the following conditions, each of which is for the sole benefit of Seller and may be waived only in writing by Seller:

10.1 NO CLAIM, ORDER OR PROCEEDING

As of the Closing Date, there shall not be any Claim, Order or Proceeding threatened, pending or made that questions or challenges the lawfulness of the transactions contemplated by

this Agreement or the Transaction Documents under any Law or seeks to delay, restrain or prevent such transactions.

10.2 REPRESENTATIONS, WARRANTIES AND COVENANTS

10.2.1 The representations and warranties made by Buyer in this Agreement shall be accurate and complete in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except to the extent any such representation or warranty expressly speaks of a particular date, in which case it shall be true and correct as of such date.

10.2.2 Buyer shall have performed and complied in all material respects with the covenants and obligations required by this Agreement to be performed and complied with by Buyer on or prior to the Closing Date.

10.3 SECRETARY'S CERTIFICATE

Seller shall have received a certificate, in form and substance reasonably satisfactory to Seller, signed by the Secretary or Assistant Secretary of Buyer, dated the Closing Date, certifying as to the following: (i) the articles of incorporation of Buyer as in effect on the date thereof; (ii) the by-laws of Buyer as in effect on the date thereof; (iii) the resolutions (or written consent) of Buyer's board of directors authorizing and approving this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby; and (iv) the signatures and incumbency of the Persons signing this Agreement and the Transaction Documents on behalf of Buyer.

10.4 ASSIGNMENT AND ASSUMPTION AGREEMENT

Seller shall have received the Assignment and Assumption Agreement duly executed and delivered by Buyer.

10.5 SECURITY AGREEMENTS

Seller shall have received the Security Agreements duly executed and delivered by Buyer.

10.6 SUPPLY AGREEMENT

Seller shall have received the Supply Agreement duly executed and delivered by Buyer.

10.7 OTHER DOCUMENTS

Seller shall have received all other instruments, documents and certificates as may be reasonably requested by Seller, each in form and substance reasonably satisfactory to Seller, that are necessary for the consummation at the Closing of the transactions contemplated by the Transaction Documents.

## 11. SURVIVAL; INDEMNIFICATION

### 11.1 SURVIVAL

The representations, warranties, covenants and agreements of the parties hereto contained in this Agreement shall survive the Closing for a period of eighteen (18) months; provided, that, (i) the representations and warranties in Sections 6.2.2, 6.4, 6.6 and 7.2.2 and the agreements in Section 2, Section 3, this Section 11 and Section 12 shall survive the Closing indefinitely; and (ii) each of the covenants and agreements in Section 8 shall survive for the period of time stated in such covenant or agreement or, if no such period is specified, indefinitely. Notwithstanding the time limits set forth above, any covenant, agreement, representation or warranty in respect of which indemnity may be sought under Sections 11.2 or 11.3 shall survive (but only as to that portion of any such covenant, agreement, representation or warranty to which such indemnity claim relates) the time at which it would otherwise terminate pursuant to the preceding sentence if notice of the inaccuracy or breach thereof giving rise to such right to indemnity shall have been given to the party against whom such indemnity may be sought prior to such time and such notice was delivered in accordance with the procedures described in Section 11.4 below.

### 11.2 INDEMNIFICATION BY SELLER

Subject to the terms of this Section 11, Seller hereby indemnifies Buyer and its successors, assigns, directors, officers, stockholders, employees, Affiliates, agents and representatives (collectively, the "BUYER INDEMNIFIED PARTIES") from and against any and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses and reasonable expenses of investigation in connection with any action, suit or proceeding), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement (collectively, "LOSSES") imposed on, incurred or suffered by or asserted against any Buyer Indemnified Party, as a result of, arising out of or in connection with (i) Seller's manufacture, ownership, use or possession of the Acquired Assets before the Closing Date; (ii) the operations of Seller at any time before or after the Closing; or (iii) any breach of warranty, covenant or agreement made or to be performed by Seller pursuant to this Agreement.

### 11.3 INDEMNIFICATION BY BUYER

Subject to the terms of this Section 11, Buyer agrees to indemnify, defend and hold harmless Seller and its successors, assigns, directors, officers, stockholders, employees, Affiliates, agents and representatives (collectively, the "SELLER INDEMNIFIED PARTIES") from and against any and all Losses imposed on, incurred or suffered by or asserted against any Seller Indemnified Party, as a result of, arising out of or in connection with (i) the Assumed Liabilities; (ii) Buyer's ownership, use or possession of the Acquired Assets after the Closing Date; (iii) the operations of Buyer at any time before or after the Closing; or (iv) any breach of warranty, covenant or agreement made or to be performed by Buyer pursuant to this Agreement.

### 11.4 PROCEDURES; NO WAIVER; EXCLUSIVITY

Any Party seeking indemnification pursuant to this Section 11.4 (the "INDEMNIFIED PARTY") shall promptly notify the other Party (the "INDEMNIFYING PARTY") of the claim as to which indemnification is sought, shall afford the Indemnifying Party, at the Indemnifying Party's

sole expense, the opportunity to defend or settle the claim (in which case the Indemnifying Party shall not be responsible for the attorneys' fees of the Indemnified Party with respect such claim) and shall cooperate to the extent reasonably requested by the Indemnifying Party in the investigation and defense of such claim; provided, however, that any settlement of any such claim that would adversely affect the rights of the Indemnified Party shall require the written approval of such Indemnified Party, which approval shall not be unreasonably withheld; and provided, further that an Indemnified Party shall not settle any such claim without the written approval of the Indemnifying Party, which approval shall not be unreasonably withheld.

11.5 OFFSET; LIMITATIONS

Any Losses for which Seller may finally be determined to be liable to Buyer under this Section 11 shall be (i) first, offset against the amount of the Deferred Non-Contingent Payment due December 31, 2003 to the extent not yet paid (whether or not then due); (ii) second, to the extent such Losses exceed the amount of such Deferred Non-Contingent Payment, offset against the amount of the Deferred Non-Contingent Payment due September 30, 2003 to the extent not yet paid (whether or not then due); and (iii) finally, to the extent the amount of such Losses exceed the unpaid amount of both Deferred Non-Contingent Payments, paid by Seller to Buyer. In no event shall Seller's cumulative and aggregate obligations under this Agreement exceed the lesser of (i) the sum of (x) the Initial Payment; and (y) the amount of Deferred Non-Contingent Payments actually received by Seller under Section 3.3 hereof and (ii) $14,000,000. Notwithstanding the foregoing, in no event shall this Section 11.5 apply to any breach of Section 8.5 hereof.

11.6 SOLE AND EXCLUSIVE REMEDIES AND LIABILITY

Except for any breach of Section 8.4 hereof, for which the non-breaching party shall be entitled to seek equitable relief, including injunction and specific performance, as a remedy for such breach, the indemnification obligations under this Section 11 shall constitute the sole and exclusive remedies of each party and the sole and exclusive liability of each party with respect to any Loss, suit, action, claim or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby (including, without limitation, negligence) or otherwise (except with respect to Buyer's obligation to pay the Purchase Price).

12. TAXES AND COSTS; APPORTIONMENTS

12.1 TRANSFER TAXES

Buyer shall be responsible for the payment of all transfer, sales and use and documentary Taxes, filing and recordation fees and similar charges relating to the sale or transfer of the Acquired Assets hereunder.

12.2 TRANSACTION COSTS

Each party shall be responsible for its own costs and expenses incurred in connection with the preparation, negotiation and delivery of this Agreement and the other Transaction Documents, including but not limited to attorneys' and accountants' fees and expenses.

12.3 APPORTIONMENTS; REFUNDS

Any and all Taxes, assessments, lease rentals, utilities, and other charges applicable to the Acquired Assets will be pro-rated to the Closing Date, and such Taxes and other charges shall be allocated between the parties by adjustment at the Closing, or as soon thereafter as the parties may agree, in accordance with the principle that Seller shall be responsible for periods or portions thereof ending on or before the Closing Date, and Buyer shall be responsible for periods or portions thereof beginning after the Closing Date. All such Taxes shall be allocated on the basis of the fiscal year of the jurisdiction in question. Seller shall be entitled to any refunds of Taxes or other charges paid by Seller with respect to the Acquired Assets for periods or portions thereof ending on or prior to the Closing Date, and Buyer shall be entitled to all other refunds for Taxes or other charges with respect to the Acquired Assets.

13. TERMINATION

13.1 TERMINATION

This Agreement may be terminated any time prior to the Closing Date:

(a) by the mutual written consent of Buyer and Seller;

(b) by Seller, on the one hand, or Buyer, on the other hand, if all the conditions for Closing set forth in Sections 9 and 10 hereof, as the case may be, shall not have been satisfied or waived on or before June 30, 2003, other than as a result of a breach of this Agreement by the terminating party;

(c) by Seller if Buyer has breached in any material respect any representation, warranty, covenant or agreement contained in this Agreement, which breach has not been cured on or prior to ten (10) days following delivery of written notice of such breach by Seller to Buyer;

(d) by Buyer if Seller has breached in any material respect any representation, warranty, covenant or agreement contained in this Agreement, which breach has not been cured on or prior to ten (10) days following delivery of written notice of such breach by Buyer to Seller; or

(e) by Seller or Buyer, if a permanent injunction or other legal requirement by any court, arbitral tribunal or Governmental Entity which would make it illegal or otherwise restrain or prohibit the consummation of this Agreement shall have been issued and shall have become final and nonappealable.

13.2 NOTICE OF TERMINATION

Any termination of this Agreement under Section 13.1 hereof will be effective by the delivery of written notice of the terminating party to the other party hereto.

13.3 EFFECT OF TERMINATION

In the event of any termination of this Agreement as provided in this Section 13, this Agreement shall forthwith become void and shall be of no further force and effect, without any liability on the part of any party hereto or its Affiliates, directors, officers, stockholders, employees, agents and representatives, solely in respect of such termination; provided, that, the provisions of Sections 8.4, 8.5, 12.2, 14.1, 14.4, 14.10 and this Section 13.3 shall remain in full force and effect and survive any termination of this Agreement.

14. MISCELLANEOUS

14.1 PUBLIC ANNOUNCEMENTS

Neither party shall, nor may it permit its Affiliates to, make any public announcement or publish any press release in regard to the transactions contemplated by this Agreement and the Transaction Documents without the other party's prior written consent, which consent shall not be unreasonably withheld, except as may be required by Law, in which case the parties shall use reasonable efforts to coordinate with each other with respect to the timing, form and content of such required disclosures. Notwithstanding the foregoing, each party shall give the other party no less than two (2) business days to review and comment on any proposed public announcement or press release.

14.2 SEVERABILITY

If any trier of fact determines that any part or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be given full force and effect and remain binding upon the parties. Furthermore, the trier of fact shall have the power to replace the invalid or unenforceable part or provision with a provision that accomplishes, to the extent possible, the original intent of such part or provision in a valid and enforceable manner.

14.3 MODIFICATION AND WAIVER

This Agreement may not be amended or modified in any manner except by an instrument in writing signed by all of the parties. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, or in any way affect the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach.

14.4 NOTICES

All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be sent by facsimile transmission, or mailed postage prepaid by first-class certified mail, or delivered by a nationally recognized express courier service, or hand-delivered, addressed as follows:

if to Buyer: Questcor Pharmaceuticals, Inc.

| | |
|---|---|
| | 3260 Whipple Road<br>Union City, California 94587<br>Attention: Chief Executive Officer<br>Facsimile: (510) 500-0715 |
| with a copy that shall not constitute notice to: | Latham & Watkins LLP<br>701 B Street, Suite 2100<br>San Diego, CA 92101<br>Attention: David A. Hahn, Esq.<br>Facsimile: (619) 696-7419 |
| if to Seller: | Nastech Pharmaceutical Company, Inc.<br>3450 Monte Villa Parkway<br>Bothell, Washington 98021<br>Attention: Chief Executive Officer<br>Facsimile: (425) 908-3650 |
| with a copy that shall not constitute notice to: | Kramer Levin Naftalis & Frankel LLP<br>919 Third Avenue<br>New York, New York 10022<br>Attention: Richard Marlin, Esq.<br>Facsimile: (212) 715-8000 |

Any party may change the Persons or addresses to which any notices or other communications to it should be addressed by notifying the other parties as provided above. Any notice or other communication, if addressed and sent, mailed or delivered as provided above, shall be deemed given or received three days after the date of mailing as indicated on the certified mail receipt, or on the next business day if delivered to an express courier service, or on the date of delivery or transmission if hand-delivered or sent by facsimile transmission.

14.5 ASSIGNMENT

Neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, either party may assign or transfer this Agreement without the other party's consent to a third party that acquires all or substantially all of the transferring party's assets or business; provided, however, that in no event shall Buyer assign or transfer this Agreement to any Person a material portion of whose business is engaged in the research and development or manufacturing of intranasally delivered products. This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns.

14.6 CAPTIONS

The captions and headings used in this Agreement have been inserted for convenience of reference only and shall not be considered part of this Agreement or be used in the interpretation hereof.

14.7 ENTIRE AGREEMENT

This Agreement, together with the Confidentiality Agreement, constitutes the entire agreement and understanding among the parties with respect to its subject matter and supersedes all prior agreements, understandings, negotiations, representations and statements, whether oral, written, implied or expressed, relating to such subject matter.

14.8 NO THIRD-PARTY RIGHTS

Nothing in this Agreement is intended, nor shall be construed, to confer upon any Person other than Buyer, Seller (and, only to the extent expressly provided herein, their respective Affiliates and representatives) any right or remedy under or by reason of this Agreement.

14.9 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement.

14.10 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the internal laws of California as though made and to be fully performed in that State.

14.11 ARBITRATION

Any dispute, controversy or claim arising out of or in connection with this Agreement shall be determined and settled by arbitration in Bothell, Washington, pursuant to the Rules of Arbitration then in effect of the American Arbitration Association. Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court having competent jurisdiction. Any arbitration hereunder shall be (i) submitted to an arbitration tribunal comprised of three (3) independent members knowledgeable in the pharmaceutical industry, one of whom shall be selected by the other two arbitrators; (ii) allow for the parties to request discovery pursuant to the rules then in effect under the Federal Rules of Civil Procedure for a period not to exceed 90 days; and (iii) require the award to be accompanied by findings of fact and a statement of reasons for the decision. Each party shall bear its own costs and expenses, including attorney's fees incurred in any dispute, which is determined and/or settled by arbitration pursuant to this Section 14.11. Except where clearly prevent by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved. Arbitration shall not prevent any party from seeking injunctive relief where such remedy is an appropriate form of remedy under the circumstances.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SELLER:

NASTECH PHARMACEUTICAL
COMPANY, INC.

By _____
Name: Steven C. Quay, M.D., Ph.D.
Title: President & CEO

BUYER:

QUESTCOR PHARMACEUTICALS, INC.

By _____
Title:

SCHEDULE 2.1.1

ASSIGNED PROPERTY

All supply of the Product in gel form, owned by Seller and located in the warehouses of Seller or any other Person, identified by the lot number 3002 and the Seller's NDC code 57459-1002-1, with shelf life expiration dates on or after February 15, 2005.

The New Drug Application, No. 19-722, relating to the Product in gel form, and approved by the FDA on November 5, 1996.

The Investigational New Drug Application, No. 25,696, relating to the Product in gel form, and received by the FDA on January 22, 1985.

SCHEDULE 2.1.2

INTELLECTUAL PROPERTY

Patents

1. U.S. Patent No. 4,724,231 "Nasal Compositions Containing Vitamin B12" issued February 9, 1988.

2. E.U. Patent No. EP0216917B1 "Nasal Compositions Containing Vitamin B12."

3. E.U. Patent No. EP0218679B1 "Aerosol Compositions for Nasal Delivery of Vitamin B12."

| WWKMN REF. NO.; (TTC REF. NO.); COUNTRY; CLIENT REF. NO.; | TITLE | APPL'N NO. FILING DATE | PATENT NO. ISSUE DATE |
|---|---|---|---|
| NPCI-0008 Canada (20833-000700CA) 719-21CANADA | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 506,798 04/16/86 | 1,317,881 05/18/93 |
| NPCI-0010 Europe (20833-000700EP) 719-21PCT/EPO | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0011 Belgium (20833-000700BE) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0012 France (20833-000700FR) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0013 Great Britain (20833-000700GB) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0014 Denmark (20833-000700DE) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | P3682862.9 12/11/91 |
| NPCI-0015 Italy (20833-000700IT) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0016 Luxembourg (20833-000700LU) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |

| WWKMN REF. NO.; (TTC REF. NO.); COUNTRY; CLIENT REF. NO.; | TITLE | APPL'N NO. FILING DATE | PATENT NO. ISSUE DATE |
|---|---|---|---|
| NPCI-0017 Netherlands (20833-000700NL) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0018 Sweden (20833-000700SE) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0019 Switzerland (20833-000700CH) | Aerosol Compositions for Nasal Delivery of Vitamin B12 | 86-902640.1 04/02/86 | 0218679 12/11/91 |
| NPCI-0034 US (20833-000610US) 719-16CIP | Nasal Compositions Containing Vitamin B12 | 06/848,690 04/08/86 | 4,724,231 02/09/88 |
| NPCI-0035 PCT (20833-000610PC) 719-16CIP/PCT | Nasal Compositions Containing Vitamin B12 | PCT/US86/00793 04/15/86 | |
| NPCI-0036 Australia (20833-000610AU) | Nasal Compositions Containing Vitamin B12 | 57757/86 04/15/86 | 584703 10/20/89 |
| NPCI-0037 Canada (20833-000610CA) | Nasal Compositions Containing Vitamin B12 | 506,799 04/26/86 | 1,300,014 05/05/92 |
| NPCI-0038 Europe (20833-000610EP) 719-16CIP/PCT/EPO | Nasal Compositions Containing Vitamin B12 | 86902732.6 04/15/86 | 0216917 07/04/90 |
| NPCI-0039 Belgium (20833-000610BE) | Nasal Compositions Containing Vitamin B12 | 86902732.6 04/15/86 | 0216917 07/04/90 |
| NPCI-0040 Denmark (20833-000610DK) | Nasal Compositions Containing Vitamin B12 | 6038/86 EP86902732.6 04/15/86 | |
| NPCI-0041 France (20833-000610FR) | Nasal Compositions Containing Vitamin B12 | 86902732.6 04/15/86 | 0216917 07/04/90 |
| NPCI-0042 Great Britain (20833-000610GB | Nasal Compositions Containing Vitamin B12 | 86902732.6 04/15/86 | 0216917 07/04/90 |

| WWKMN REF. NO.;<br>(TTC REF. NO.);<br>COUNTRY;<br>CLIENT REF. NO.; | TITLE | APPL'N NO.<br>FILING DATE | PATENT NO.<br>ISSUE DATE |
|---|---|---|---|
| NPCI-0043<br>Germany<br>(20833-000610DE) | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90<br>(German P/N |
| NPCI-0044<br>Ireland<br>(20833-000610IE) | Nasal Compositions Containing Vitamin B12 | 974/86<br>04/15/86 | 58533<br>09/27/93 |
| NPCI-0045<br>Italy<br>(20833-000610IT) | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90 |
| NPCI-0046<br>Luxembourg<br>(20833-000610LU | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90 |
| NPCI-0047<br>Netherlands<br>(20833-000610NL) | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90 |
| NPCI-0048<br>Spain<br>(20833-000610ES) | Nasal Compositions Containing Vitamin B12 | 553,999<br>04/15/86 | 553,999<br>04/20/87 |
| NPCI-0049<br>Sweden<br>(20833-000610SE) | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90 |
| NPCI-0050<br>Switzerland<br>(20833-000610CH) | Nasal Compositions Containing Vitamin B12 | 86902732.6<br>04/15/86 | 0216917<br>07/04/90 |
| NPCI-0051<br>Hungary<br>(20833-000610HU) | Nasal Compositions Containing Vitamin B12 | 2345/86<br>04/15/86 | 196124<br>06/16/88 |
| NPCI-0052<br>Japan<br>(20833-000610JP) | Nasal Compositions Containing Vitamin B12 | 502336/86<br>04/15/86 | 1945666<br>06/23/95 |
| NPCI-0053<br>Norway<br>(20833-000610NO) | Nasal Compositions Containing Vitamin B12 | 865010<br>04/15/86 | 174.182<br>03/30/94 |
| NPCI-0054<br>South Africa<br>(20833-000610ZA) | Nasal Compositions Containing Vitamin B12 | 86/2845<br>04/16/86 | 86/2845<br>10/29/86 |
| NPCI-0055<br>Taiwan<br>(20833-000610TW) | Nasal Compositions Containing Vitamin B12 | 75102030<br>05/06/86 | NI-029728<br>12/10/88 |

Trademarks

| Case No. | Mark | Country | Appl. No. | Filing Date | Reg. No. | Status |
|---|---|---|---|---|---|---|
| NPCI-0279 | NASCOBAL | U.S. | 194046 | 11/6/1996 | 2157683 | REGISTERED |
| NPCI-0282 | NASCOBAL | Australia | 733493 | 4/30/1997 | 733493 | REGISTERED |
| NPCI-0284 | NASCOBAL | Switzerland | 338597 | 4/30/1997 | 446146 | REGISTERED |
| NPCI-0285 | NASCOBAL | Community Trademark CTM | 528455 | 5/2/1997 | 528455 | REGISTERED |
| NPCI-0286 | NASCOBAL | Hungary | M9701528 | 4/30/1997 | 150653 | REGISTERED |
| NPCI-0287 | NASCOBAL | Japan | 9-113198 | 5/2/1997 | 4190179 | REGISTERED |
| NPCI-0288 | NASCOBAL | Norway | 97.3451 | 4/30/1997 | 187.774 | REGISTERED |
| NPCI-0289 | NASCOBAL | Taiwan | 8622191 | 5/5/1997 | 798240 | REGISTERED |
| NPCI-0290 | NASCOBAL | South Africa | 97/06437 | 4/30/1997 | 97/06437 | REGISTERED |

SCHEDULE 2.1.3

ASSIGNED CONTRACTS

1. Detailing Agreement, dated as of April 20, 2003, by and between Nastech Pharmaceutical Company, Inc. and Vanguard Pharma.

2. Physician Program Agreement, dated as of May 22, 2003, by and between Nastech Pharmaceutical Company, Inc. and Deborah Woods and Associates.

SCHEDULE 2.1.4

STUDIES AND RECORDS

1. Gastroenterologist and B12 Patient Study, July 2002.

2. Gastroenterologist Market Research, May 2003.

3. NASCOBAL(R)promotional materials.

4. Where feasible, NASCOBAL(R)website information, materials, images and HTML programming language.

SCHEDULE 2.1.5

REGULATORY APPROVALS

All regulatory approvals permitting the sale of the Product in the United States, Sweden and Israel.

The right to file for approval of the Product in gel form in countries where the Product in gel form has not obtained regulatory approvals as of the date of this Agreement.

SCHEDULE 2.1.6

CLINICAL DATA

1. Relative Bioavailability Study of Vitamin B12 Formulations (Single Dose, Three-Way Crossover); Protocol 160-01; Study Completion 1985

2. Relative Bioavailability Study of Five Vitamin B12 Formulations (Single Dose, No Crossover); Protocol 160-02; Study Completion 1985

3. Relative Bioavailability Study of Four Vitamin B12 Formulations (Single Dose, No Crossover); Protocol 160-04; Study Completion 1985

4. Relative Bioavailability Study of Vitamin B12 Formulations (Single Dose, No Crossover); Protocol 160-05; Study Completion 1985

5. Relative Bioavailability Study of Vitamin B12 Formulations (Single Dose, No Crossover); Protocol 160-06; Study Completion 1985

6. Bioavailability of Intranasal Cyanocobalamin Administered as Maintenance or Initial Therapy in Vitamin B12 Deficiency Anemia; Study Completion 1987

7. A Clinical Evaluation of the Effectiveness and Safety of Cyanocobalamin Nasal Gel in the Maintenance of Patients with a Documented History of Pernicious Anemia Successfully Maintained Previously by the Intramuscular Administration of Vitamin B12; Protocol A; Study Completion 1987

8. A Clinical Evaluation of the Effectiveness and Safety of Cyanocobalamin Nasal Gel in the Treatment of Patients with Newly-Diagnosed Pernicious Anemia who had never Previously Received Vitamin B12 Treatment; Protocol B; Study Completion 1987

9. Comparative, Crossover Bioavailability Study in Pernicious Anemia Patients of 500 mcg Cyanocobalamin Nasal Gel and 100 mcg Cyanocobalamin Injectable Solution. Protocol Number 91001; Study Completion 1993

10. Nasal Applicator Tube Dose Delivery Study, Study Completion 1994

11. The Pharmacokinetic Profile of Intramuscular and Repeated Intranasal Cyanocobalamin in Vitamin B12 Deficiency Anemia Patients, Protocol Number C95-001; Study Completion 1996.

SCHEDULE 2.1.7

VALIDATION LOTS

None.

SCHEDULE 2.2

EXCLUDED ASSETS

None.

EXHIBIT 2.6.6

# P A T E N T  A S S I G N M E N T

WHEREAS, Nastech Pharmaceutical Company, Inc., a Delaware corporation having its principal place of business located at 3450 Monte Villa Parkway, Bothell, Washington, (the "ASSIGNOR"), is the owner of all right, title and interest in and to the United States patents and patent applications recorded in the United States Patent and Trademark Office and the foreign counterpart patents and patent applications recorded in the respective jurisdictions in which said foreign patents are registered or are pending, all of which are identified in the attached Schedule A, and is the owner of all right, title and interest in and to the inventions and improvements disclosed in the aforesaid patents and patent applications (all of the aforesaid patents, patent applications, inventions and improvements being hereinafter collectively referred to as the "Patents"); and

WHEREAS, Questcor Pharmaceuticals, Inc., a California corporation having its principal place of business at 3260 Whipple Road, Union City, California (hereinafter the "ASSIGNEE"), is desirous of obtaining the entire right, title and interest in, to and under the Patents;

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt and sufficiency of which ASSIGNOR does hereby acknowledge, ASSIGNOR does hereby sell, assign, transfer, set over and convey, unto the ASSIGNEE, ASSIGNEE's successors, legal representatives and assigns, the ASSIGNOR's entire right, title and interest, in the United States and throughout the Universe, in and to the Patents, including, without limitation: (i) all confirmations, divisions, renewals, extensions, reissues, continuations, continuations-in-part, substitutes, amendments and modifications (including reexamination amendments), certificates, utility models and additions as may at any time be applied for or granted with respect to said Patents; (ii) all rights, titles and interests granted to ASSIGNOR pursuant to any previously executed assignment agreement between the inventor of each invention embodied by the Patents and ASSIGNOR or any of ASSIGNOR'S predecessors in interest; (iii) all rights to petition, sue or otherwise seek and recover damages, profits and any other remedy (monetary, injunctive, declaratory or other), in the United States and anywhere throughout the Universe, for any past, present or future infringement, conversion or misappropriation of, or other injury, offense, violation, breach of duty or wrong relating to, any of the Patents or any license, agreement, contract or other matter relating thereto; and (iv) the ASSIGNOR's entire right, title, interest, and privileges and immunities, under any treaty or convention relating to any of the Patents, including, without limitation, the right to file foreign patent applications and license recordations. Such right, title and interest in and to the Patents, shall be held and enjoyed by ASSIGNEE, its successors, legal representatives and assigns, as fully, entirely and exclusively as the same would have been held and enjoyed by ASSIGNOR had this Assignment not been made.

This Assignment is effective as of the date hereof. ASSIGNOR agrees to execute and deliver, or cause to be executed and delivered, to ASSIGNEE or ASSIGNEE's legal representatives, any other or additional assignments, powers and other appropriate documentation, and to take such actions as are reasonable and necessary, to enable ASSIGNEE to effectuate, validate and record this Assignment with the United States Patent and Trademark Office and the appropriate agencies and offices of all jurisdictions in which any of the Patents are or may be registered or in which applications for registration of any of the Patents are pending,

pursuant to the terms, conditions and time periods prescribed by the relevant laws and regulations of the United States and other jurisdictions identified in Schedule A as soon as is practicable after the date of this Assignment.

ASSIGNOR hereby authorizes and requests the Commissioner of Patents and Trademarks of the United States of America and the appropriate officers of all other jurisdictions in which the Patents are or may be registered or in which applications included among the Patents are pending, to record the title of ASSIGNEE, its successors, legal representatives and assigns, as owner of all right, title and interest in and to the Patents and to issue to ASSIGNEE, its successors, legal representatives and assigns, patent registrations and recordations of patent rights resulting from any application included among the Patents or renewal for any existing registration of any of the Patents, in accordance with the terms of this instrument.

IN WITNESS WHEREOF, the undersigned has executed this Assignment as of this _____ day of _____, ____.

NASTECH PHARMACEUTICAL COMPANY, INC.

SEAL

By:_____
Name:
Title:

A C K N O W L E D G M E N T

STATE OF _____ )
) ss:
COUNTY OF _____ )

On this _____ day of _____, ____, before me personally appeared _____, to me personally known, who, being duly sworn, did say that he is the _____ of Nastech Pharmaceutical Company, Inc. and that he duly executed the foregoing instrument for and on behalf of Nastech Pharmaceutical Company, Inc. being duly authorized to do so and that said individual acknowledged said instrument to be the free act and deed of said corporation.

_____
Notary Public

DISCLOSURE SCHEDULES

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT B

BILL OF SALE

EXHIBIT C

SUPPLY AGREEMENT

EXHIBIT D

SECURITY AGREEMENTS

EXHIBIT 10.29
EXECUTION COPY

# SUPPLY AGREEMENT

by and between

NASTECH PHARMACEUTICAL COMPANY, INC.,
a Delaware corporation,

and

QUESTCOR PHARMACEUTICALS, INC.,
a California corporation

Dated as of June 17, 2003

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(continued)

This SUPPLY AGREEMENT is made as of June 17, 2003 (the "Effective Date"), by and between Nastech Pharmaceutical Company, Inc., a Delaware corporation ("Seller"), and Questcor Pharmaceuticals, Inc., a California corporation ("Buyer").

WHEREAS, Seller is engaged, among other things, in the development, production, marketing, distribution and sale of an intranasal cyanocobalamin formulation having the brand name NASCOBAL(R); and

WHEREAS, Seller and Buyer are executing simultaneously herewith that certain Asset Purchase Agreement, of even date herewith (the "Asset Purchase Agreement"), pursuant to which Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller, all of Seller's right, title and interest in, to and under certain assets relating to or respecting the NASCOBAL(R) brand products as therein provided; and

WHEREAS, Seller continues to have the manufacturing facilities, capacity, know-how and expertise to produce the NASCOBAL(R) brand products; and

WHEREAS, subject to the terms, conditions, commitments and undertakings herein provided, Seller is willing to manufacture and sell such products to Buyer, and Buyer desires to purchase such products from Seller, in such quantities as Buyer shall request, subject to the terms and conditions of this Agreement; and

WHEREAS, it is a condition of Seller's willingness to consummate the transactions contemplated by the Asset Purchase Agreement that Buyer undertake its commitments as herein provided;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

## ARTICLE I
## DEFINITIONS

SECTION 1.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Article I:

"Act" has the meaning set forth in Section 7.1 of this Agreement.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purpose of the definition of Affiliate, the term "control" (including the terms "controlling" and "controlled") means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership or voting securities, by contract or otherwise.

"Agreement" means this Supply Agreement, as amended from time to time in accordance with the provisions hereof.

"Annual QA/QC Increase" has the meaning set forth in Section 3.8 of this Agreement.

"Annual QA/QC Payment" has the meaning set forth in Section 3.8 of this Agreement.

"API" means the active pharmaceutical ingredient contained in the Product.

"Asset Purchase Agreement" has the meaning set forth in the recitals to this Agreement.

"Artwork" has the meaning set forth in Section 5.1 of this Agreement.

"Buyer" has the meaning set forth in the preamble of this Agreement.

"Buyer's Warranty" has the meaning set forth in Section 7.2 of this Agreement.

"Calendar Year" means each twelve (12) month period commencing on January 1 and ending on December 31.

"cGMP" means all laws, guidelines and regulations applicable to the manufacture of Product including the current Good Manufacturing Practice regulations as promulgated under the Act at 21 CFR (Chapters 210, 211, 600 and 610), as the same may be amended or re-enacted from time to time.

"Confidential Information" means information concerning the business, methods, products, strategies, operations, prospects, systems, plans, policies, relationships with customers, suppliers, distributors and other agents, and other sensitive, non-public information of either Party or its Affiliates. The term "Confidential Information" shall not include information that (i) is or becomes generally available to the public other than as a result of a disclosure by the Party subject to the obligation of confidentiality with respect to such information (the "Receiving Party"), or the representatives or Affiliates of such Party, in breach of this Agreement, the Confidentiality Agreement or any other confidentiality agreement, or any fiduciary duty or other obligation of secrecy in favor of the other Party and/or its Affiliates; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the other Party or its representatives or Affiliates, provided, that the Receiving Party believes that such source is not bound by a confidentiality agreement with, and does not have a fiduciary duty or any other obligation of secrecy to other Party or another Person with respect to such information; (iii) was rightfully in the possession of the Receiving Party or any of its Affiliates prior to receipt from the other Party or its representatives or Affiliates, other than through prior disclosure by any of them; or (iv) is discovered or developed by the Receiving Party or any of its Affiliates independently of any use of the other Party's Confidential Information.

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of March 14, 2003, between Buyer and Seller.

"Delivery Range" has the meaning set forth in Section 3.3 of this Agreement.

"Effective Date" has the meaning set forth in the preamble of this Agreement.

"FDA" means the United States Food and Drug Administration or any successor agency or entity thereto.

"Firm Order" has the meaning set forth in Section 3.2 of this Agreement.

"Force Majeure Event" has the meaning set forth in Section 9.2 of this Agreement.

"Gel Product" means any product in gel form developed by Seller, existing as of the date hereof, that contains cyanocobalamin as an active ingredient formulated for intranasal delivery.

"Governmental Entity" means a federal, state, provincial, local, county or municipal government, governmental, regulatory or administrative agency, department, commission, board, bureau, or other authority or instrumentality, domestic or foreign, including, without limitation, any body exercising or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Indemnified Party" has the meaning set forth in Section 7.4 of this Agreement.

"Indemnifying Party" has the meaning set forth in Section 7.4 of this Agreement.

"Losses" has the meaning set forth in Section 7.4 of this Agreement.

"NDA" shall mean (i) with respect to the Gel Product, the New Drug Application, No. 19-722, relating to the Product in gel form, and approved by the FDA on November 5, 1996, and (ii) with respect to the Spray Product, that certain new drug application to be filed by or on behalf of Seller with the FDA for the spray formulation of the Product used in the Phase III bioequivalency study completed and reported upon in December 2002.

"NDC" shall mean a National Drug Code for the Product.

"Party" or "Parties" means Seller or Buyer or both, as the context requires.

"Permitted Purposes" has the meaning set forth in Section 6.1 of this Agreement.

"Person" means any individual, partnership, joint venture, corporation, trust, limited liability company, unincorporated organization, Governmental Entity any other legal entity.

"Product" means the Gel Product and, upon approval by the FDA of the NDA for the Spray Product, the Spray Product.

"Purchase Order" has the meaning set forth in Section 3.6 of this Agreement.

"Purchase Price" means, for the Gel Product or the Spray Product, as the case may be, [ * ] per Unit of such Product, to be adjusted beginning with the Calendar Year commencing January 1, 2004 (i) annually, immediately following release of the Producer Price Index - Pharmaceutical Preparations (code PCU 2834), as published in the U.S. Department of Labor, Bureau of Labor Statistics, to increase the fixed direct labor costs of [ * ] included in the cost per Unit of Product by the product of (x) [ * ] and (y) the cumulative percentage increase in

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

such index between the most recent Calendar Year for which such data is available and the Calendar Year commencing January 1, 2002 and ending December 31, 2002 (the "Direct Labor Cost Increase"); and (ii) upon receipt of each Purchase Order, by the amount of any increases in the per Unit cost to Seller of the raw materials included in the subject Units over the cost of those applicable to the raw materials included in the Units produced in Seller's last production run immediately preceding the Effective Date. For the avoidance of doubt, the Parties agree that in no event shall the Purchase Price be adjusted to reflect any decreases in either (x) the direct labor costs included in the cost per Unit of Product or (y) the cost of raw materials included in the subject Units.

"Recall" has the meaning set forth in Section 7.6 of this Agreement.

"Remaining Products" has the meaning set forth in Section 3.5 of this Agreement.

"Seller" has the meaning set forth in the preamble of this Agreement.

"Seller Employee" has the meaning set forth in Section 6.2 of this Agreement.

"Seller's Non-Infringement Warranty" has the meaning set forth in Section 7.1 of this Agreement.

"Seller's Product Warranty" has the meaning set forth in Section 7.1 of this Agreement.

"Specifications" means the specifications and quality assurance and other testing for the Product attached hereto as Schedule 1.

"Spray Product" means any product in spray form developed by Seller as of the date of approval of that certain new drug application to be filed by or on behalf of Seller with the FDA for the spray formulation of the Product used in the Phase III bioequivalency study completed and reported upon in December 2002 that contains cyanocobalamin as an active ingredient formulated for intranasal delivery.

"Substitute Manufacturer" has the meaning set forth in Section 2.1 of this Agreement.

"Term" has the meaning set forth in Section 8.1 of this Agreement.

"Unit" means, in the case of the Gel Product, one vial of Nascobal (Cyanocobalamin, NDC 57459-1002-1, or such other NDC established by Buyer for the Gel Product) Gel in final approved packaging suitable for commercial sale available as a metered dose in 5 mL glass bottles containing 2.3 mL of gel and, in the case of the Spray Product, one vial of Nascobal (Cyanocobalamin, NDC 57459-1002-2, or such other NDC established by Buyer for the Spray Product) Spray in final approved packaging suitable for commercial sale available as a metered dose in 3 mL glass bottles containing 2.3 mL of spray solution.

The terms "herein", "hereof", "hereunder" and like terms, unless otherwise specified, shall be deemed to refer to this Agreement in its entirety and shall not be limited to any particular section or provision hereof. The term "including" as used herein shall be deemed to mean "including, but not limited to." The term "days" shall refer to calendar days unless specified

otherwise. References herein to "Articles", "Sections" and "Exhibits" shall be deemed to mean Articles, Sections of and Exhibits to this Agreement unless otherwise specified. All monetary amounts referenced with a "$" symbol shall refer to U.S. dollars.

## ARTICLE II
## PURCHASE AND SALE OF PRODUCTS

SECTION 2.1 Agreement to Purchase and Sell Products. (a) During the Term, and subject to the terms and conditions of this Agreement, Seller shall manufacture and sell to Buyer, and Buyer shall purchase from Seller, all of Buyer's requirements for the Product. Buyer shall not itself manufacture the Product or otherwise obtain it from any third party, except as provided herein. If and to the extent (but only to the extent) that (i) Seller is unable or has indicated that it does not have the capacity during any specified period to manufacture and deliver the Product in the amount reflected under any Firm Order, or (ii) Seller shall have terminated this Agreement pursuant to Section 8.3, Buyer shall be permitted to purchase only those quantities of the Product that Seller is unable to manufacture from Persons other than Seller (a "Substitute Manufacturer"), or itself to manufacture such quantities of the Product; provided, however, that in no event shall such Substitute Manufacturer be any Person who is primarily engaged in the business of researching and developing or manufacturing intranasally delivered products. Seller shall use its commercially reasonable efforts to assist and cooperate with Buyer in qualifying the Substitute Manufacturer as a manufacturer of the Product, subject to any agreements as are customarily agreed to between similarly situated parties, including such Substitute Manufacturer's agreement to the benefit of Seller to maintain the confidentiality of any information received by it in connection with the manufacture of the Product and the fulfillment of its obligations as contemplated hereunder and to use such information solely for the purposes of manufacturing the Product and otherwise fulfilling its obligations as contemplated hereunder.

(b) The Product to be sold to Buyer pursuant to this Agreement shall be manufactured by Seller or an Affiliate of Seller in a cGMP compliant facility licensed by the FDA for manufacturing the Product and under the requirements included in the NDA. Seller may subcontract the manufacture of the Product or the manufacture of any component of the Product to a manufacturer that is not an Affiliate of Seller with Buyer's prior written consent, which consent shall not be unreasonably withheld. Seller shall remain responsible for the performance of all subcontractors, to the extent permitted hereunder, with the terms and conditions of this Agreement.

## ARTICLE III
## FORECASTS AND VOLUME LIMITATIONS; CERTAIN COVENANTS

SECTION 3.1 Forecasts. Buyer's initial twelve (12) month rolling forecast of its requirements by month of the Gel Product is set forth in Exhibit 3.1 hereto. Buyer shall on the first day of each calendar month during the Term beginning the first calendar month following the Effective Date provide a twelve (12) month rolling forecast (commencing with the immediately following month) of the quantity of Product which Buyer expects to require from Seller during each of the next twelve (12) months.

SECTION 3.2 Firm Orders. From time to time, Buyer shall submit to Seller a firm order (the "Firm Order") indicating the quantities of Product Buyer desires to purchase from Seller pursuant to such Firm Order. Buyer (i) must deliver each Firm Order to Seller at least ninety (90) days prior to the first delivery date requested in such Firm Order and (ii) may amend any Firm Order hereunder by written notice to Seller at any time before the day that is sixty (60) days prior to such first delivery date requested. Firm Orders may include the Spray Product only after FDA approval of the Spray Product for commercial use and sale.

SECTION 3.3 Delivery Obligations. As to each Firm Order, Seller shall be obligated to deliver to Buyer Product constituting between ninety percent (90%) and one hundred and ten percent (110%) of such Firm Order (the "Delivery Range"), and Buyer agrees that any delivery of Product within the Delivery Range shall constitute full and complete compliance by Seller of its delivery obligations under such Firm Order. Buyer further agrees that any Product produced by Seller pursuant to a Firm Order and subsequently used by Seller for reasonable and customary pharmacovigilence, quality assurance or quality control purposes, in connection with Seller's marketed products stability program only, pursuant to Section 3.8 of this Agreement shall be deemed to have been delivered by Seller in compliance with its delivery obligations under such Firm Order. Seller shall notify Buyer from time to time of the amount of Product used by Seller for such pharmacovigilence, quality assurance or quality control purposes.

SECTION 3.4 Firm Order Quantities. Buyer agrees that the amount of all Firm Orders shall be in lots of [ * ] Units of Spray Product or [ * ] Units of Gel Product.

SECTION 3.5 Manufacturing Delays. In the event that Seller encounters any manufacturing delays of Product with respect to any Firm Order, Seller shall immediately notify Buyer of such delay, which notice shall set forth in reasonable detail the nature of such delay, and shall deliver to Buyer in accordance with the delivery schedule set forth in the Purchase Order any and all Products produced by Seller for such order that was not affected by such manufacturing delay. If the Products so delivered by Seller shall be less than ninety percent (90%) of such Firm Order, Seller shall have a period, not to exceed thirty (30) days from the date of delivery provided for in the applicable Firm Order, in which to produce and deliver the remaining Products that were to have been delivered on such date (the "Remaining Products"). Buyer agrees that any delivery of the Remaining Products in conformity with the requirements of this Section 3.5 shall constitute full and complete compliance by Seller of its delivery obligations under such Firm Order.

SECTION 3.6 Orders. Firm Orders shall be made through the issuance by Buyer to Seller of duly executed purchase orders, substantially in the form attached hereto as Exhibit 3.6 (each, a "Purchase Order").

SECTION 3.7 Shelf Life. Seller shall use its commercially reasonable efforts to manufacture the Product such that it has a minimum 21-month shelf life upon delivery to Buyer.

SECTION 3.8 Quality Assurance; Quality Control. Seller shall maintain the existing pharmacovigilence, quality assurance and quality control studies for the Product, including stability testing, in a manner consistent with past practice. Seller shall remain responsible for all sampling and testing of the Product to assure that the Product is in conformity in all respects with

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the Specifications. Prior to each shipment of Product, Seller shall provide Buyer a certificate of analysis, substantially in the form attached hereto as Exhibit 3.8, attesting to the quality of each batch contained within the shipment, including review and approval by the appropriate quality unit of all batch production and control records. To cover expenses incurred by Seller in connection with such efforts, Buyer agrees to pay to Seller (i) for each Calendar Year during the Term of this Agreement, [ * ] (the "Annual QA/QC Payment"), which payment shall be made no later than the tenth day following the commencement of each such Calendar Year; (ii) for the period commencing the Effective Date until December 31, 2003, a pro rata portion of the Annual QA/QC Payment, based on a calendar year of 365 days, which payment shall be made no later than the tenth day following the Effective Date; and (iii) for the period commencing January 1, 2008 through the scheduled expiration of the Agreement, a pro rata portion of the Annual QA/QC Payment, based on a calendar year of 365 days, which payment shall be made no later than January 10, 2008. The Annual QA/QC Payment shall be adjusted annually, beginning with the Calendar Year commencing January 1, 2004, immediately following release of the Producer Price Index - Pharmaceutical Preparations (code PCU 2834), as published in the U.S. Department of Labor, Bureau of Labor Statistics, to increase the Annual QA/QC Payment by the product of (x) [ * ] and (y) the cumulative percentage increase in such index between the most recent Calendar Year for which such data is available and the Calendar Year commencing January 1, 2002 and ending December 31, 2002 (the "Annual QA/QC Increase"). Following adjustment of the Annual QA/QC Payment, Buyer shall promptly pay to Seller the Annual QA/QC Increase.

SECTION 3.9 Buyer's Technical Representative. During the term of this Agreement, upon thirty (30) days' prior written notice to Seller, Buyer shall have the right to have one or more technical representatives present in the area of where the Product is being manufactured to (i) review the manufacture of the Product; (ii) review any relevant records in connection with such manufacturing of the Product and assess its compliance with cGMP and the Specifications; and (iii) discuss any related issues with Seller's management personnel. Buyer's technical representatives, when on-site at Seller's facilities, shall comply with Seller's rules and regulations.

SECTION 3.10 Communications Regarding Product. Seller agrees to advise Buyer promptly of any proposed inspection of the Product or manufacturing process or procedures by any governmental agency or authority and will, to the extent practicable, permit Buyer to be present during any such inspection. Seller also agree to provide copies of any other written communication it receives from any governmental agency or authority relating to the Product, and to the extent permissible, Seller agrees to give Buyer an opportunity to comment and contribute to the preparation of any responsive communications.

SECTION 3.11 Product Modification. Seller shall not make any modifications to the Product or the manufacturing process for the Product, including, without limitation, changes to Product specifications, labeling, API, raw materials, components, suppliers, testing methods and third party testing laboratories, without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Seller shall be allowed to change the outer carton of the Product from a plastic carton to a cardboard carton, provided such change meets all applicable regulatory requirements.

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SECTION 3.12 Order Quantities. Buyer agrees to use its good faith efforts to cooperate with Seller to establish the timing of the delivery of the Products requested by Buyer pursuant to Purchase Orders. If at any time Buyer proposes to submit a Purchase Order that would require delivery of greater than [ * ] Units of Product, in the aggregate, Buyer shall provide to Seller market data, including wholesaler data, and such other data as Seller may reasonably request to show that market demand for the Product exceeds [ * ] Units for the period covered by the Purchase Order.

## ARTICLE IV
## SHIPMENT AND PAYMENT

SECTION 4.1 Shipment. Seller shall use best efforts to deliver the Product to Buyer within sixty (60) days of receipt of Buyer's Purchase Order. The terms of delivery for the Products shall be F.C.A. (Incoterms 2000) Buyer, to the destination designated by Buyer in its Purchase Order, unless otherwise agreed by the Parties. Buyer shall reimburse Seller for Seller's out-of-pocket expenses for freight, handling, insurance, duty, customs, and any other charges associated with the shipment and importation of the Products. Title and risk of loss to all Products sold hereunder shall pass to Buyer upon delivery to the common carrier for delivery.

SECTION 4.2 Prices. The price for Product purchased and sold pursuant to this Agreement shall be the Purchase Price.

SECTION 4.3 Manner of Payments. With respect to each Purchase Order, Seller shall invoice Buyer upon shipment of the Units under such Purchase Order. The invoice shall be for the full price of the Units actually produced in respect of such Purchase Order. Each such invoice shall set forth in reasonable detail the basis for the calculation of the amounts shown to be owed thereon. Each such invoice may also set forth the amount of any Direct Labor Cost Increase owed by Buyer to Seller. Buyer shall pay to Seller each such invoice within thirty (30) days of receipt of the Product by the Buyer.

SECTION 4.4 Taxes. Buyer shall be responsible for any and all taxes due or payable on any sums paid to Seller under this Agreement other than taxes on Seller's net income.

SECTION 4.5 Interest on Late Payments. Subject to Section 4.6, if Buyer fails to make timely payment of any undisputed amounts due under this Agreement, Buyer shall pay to Seller (or its designee), on demand, interest at the rate of one percent (1.0%) per month, or if such rate exceeds the maximum permitted by law, the next highest rate permitted by law. Interest shall be assessed from the first day after payment of the amount in question first became due, and thereafter calculated and payable monthly on the last day of each month, not in advance.

SECTION 4.6 Disputes as to Payments. To the extent that Buyer disputes any portion of the payments that Buyer is required to pay under this Agreement, Buyer shall promptly so notify Seller in writing, which notice shall set forth in reasonable detail the amounts in dispute and the nature of such dispute. Each party agrees to use its commercially reasonable efforts to resolve any such dispute. Buyer shall promptly, but in no event later than five (5) days, following resolution of such dispute pay to Seller any amounts determined by the parties to be due Seller.

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Notwithstanding the foregoing, Buyer shall pay to Seller all amounts then due Seller which are not in dispute.

SECTION 4.7 No Excuse. Neither Party shall be excused from or relieved of its obligations owed to the other Party under this Agreement by commercial or other impracticability or impossibility, or frustration of essential purpose.

## ARTICLE V
## ARTWORK AND TRADEMARKS

SECTION 5.1 Artwork. Buyer shall provide approved specifications for labeling and packaging and approved artwork, trade dress, advertising and packaging information (collectively "Artwork") to be used by Seller on the Product supplied hereunder. Artwork shall be considered a part of the Specifications.

SECTION 5.2 Use of Name. Buyer may on all packages of the Product and literature referring to the Product, identify Seller as the supplier of Product supplied or to be supplied by Seller in a fair manner, reasonably acceptable to Seller, which acceptance shall not be unreasonably withheld. Buyer may also use Seller's name in promoting, marketing and selling the Product; provided, however, that the particular reference to Seller's name in any promotional material shall be subject to Seller's prior review and written consent, which consent shall not be unreasonably withheld; and, provided, further, that all costs associated with such promotional material shall be borne exclusively by Buyer. All samples of the Product shall be clearly marked "For Sample Use Only."

## ARTICLE VI
## CONFIDENTIALITY; NON-SOLICITATION

SECTION 6.1 Confidentiality. (a) Each Party acknowledges that Confidential Information of the other Party and/or its Affiliates from time to time may be furnished to the other Party and/or its Affiliates in connection with the exercise by the Parties of their respective rights and the fulfillment of their respective obligations under this Agreement. Each Party acknowledges that its access to the Confidential Information of the other Party is being granted solely for the purpose of exercising its rights and performing its obligations under this Agreement or the Asset Purchase Agreement (the "Permitted Purposes") and for no other purposes. Notwithstanding the foregoing, either Party may disclose the Confidential Information of the other Party upon reasonable prior written notice to the other Party, to the extent required by law, regulation, judicial or administrative process, including any reporting requirements of the Securities and Exchange Commission.

(b) Each Party agrees that its use of the Confidential Information of the other Party will be solely for the Permitted Purposes and that such information will be kept confidential and disclosed to no other Person, except that the Confidential Information may be disclosed to such representatives and Affiliates of the first Party who need to know such information in furtherance of effecting the Permitted Purposes, who have been informed of the confidential nature of such information and who have been directed, and who shall have agreed, to treat such information confidentially and to use such information only for the Permitted Purposes.

(c) Each Party shall be entitled to obtain, without posting any bond and without proof of actual damages, a restraining order, injunction, specific performance or other form of equitable or extraordinary relief for breach of the provisions of this Section 6.1 by the other Party, in addition to all other remedies available at law or in equity. The Parties further agree that no failure or delay by a Party in exercising any right, power or privilege under this Section 6.1 will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Section 6.1.

SECTION 6.2 Non-Solicitation. During the period commencing the Effective Date and continuing for twelve (12) months thereafter, Buyer shall not, and shall cause its Affiliates not to, directly or indirectly, attempt or endeavor to solicit or entice away any former, current or future director, officer, partner, principal, employee, agent, representative or consultant of Seller or its Affiliates (each, a "Seller Employee") without the prior written consent of Seller, nor shall Buyer, directly or indirectly, employ or aid or assist in or procure the employment by any other Person of any Seller Employee during such period without the prior written consent of Seller. This Section 6.2 shall not prohibit recruiting or general solicitations through the media that is not directed specifically at the Seller Employees.

## ARTICLE VII
## WARRANTY; LIMITATION OF LIABILITY

SECTION 7.1 Seller's Warranty. Seller warrants to Buyer that at the time of shipment to Buyer (a) the Products shall: (i) conform to the Specifications; (ii) be free from material defects; (iii) be manufactured in accordance with cGMPs, and all other applicable laws and regulations, including, but not limited to, all other requirements of the FDA; (iv) have been stored and distributed in conformity with all applicable cGMP requirements and with the Specifications, including storage conditions and applicable rules and regulations relating to the environment and health and safety; and (v) not be adulterated or misbranded within the meaning of the United States Food, Drug and Cosmetic Act, as amended, or the regulations issued thereunder (collectively, the "Act"), or any similar law of any other applicable jurisdiction ((i) through (v) being referred to collectively as the "Seller's Product Warranty"). Seller also represents and warrants to Buyer that the Product, as manufactured by Seller as of the date hereof, shall be manufactured in a manner that does not infringe any third party's intellectual property rights (the "Seller's Non-Infringement Warranty").

SECTION 7.2 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NO REPRESENTATIONS OR WARRANTIES OF ANY KIND ARE EXPRESSED OR IMPLIED, IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, WHETHER WRITTEN OR ORAL, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, IN RESPECT OF THE PRODUCTS OR ANY OTHER SUBJECT MATTER WHATSOEVER, INCLUDING ANY REPRESENTATIONS OR EXPRESS OR IMPLIED WARRANTIES OF NONINFRINGEMENT, VALUE, ADEQUACY, FREEDOM FROM FAULT, QUALITY, EFFICIENCY, SUITABILITY, USEFULNESS, OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SECTION 7.3 Defective Products. (a) Claims by Buyer relating to a breach of the Seller's Product Warranty must be made prior to the expiration date of the Product and in no event later than thirty (30) days after the date of discovery of the alleged breach and must be in writing, specifying in reasonable detail the nature and basis of the claim and citing relevant control or lot numbers or other information to enable identification of the Product in question, including samples of the Product as to which the claim is made. Other than claims arising as a result of Seller's gross negligence or willful misconduct, subject to Section 7.4, Seller's sole and exclusive liability to Buyer for any such claim that is substantiated shall be limited to a refund for the price of the related Products plus any related reimbursed shipping costs or, at Buyer's option, replacement thereof with the Product that complies with the Seller's Product Warranty.

(b) If Seller does not agree with Buyer's determination that any batch of the Product fails to comply with the Seller's Product Warranty, Seller may submit the rejected batch of the Product to a third party testing laboratory mutually acceptable to Buyer and Seller, which laboratory shall determine whether such Product complies with the Seller's Product Warranty. The parties agree that such testing laboratory's determination shall be final and the costs of such testing will be paid by the non-prevailing party.

(c) Each Party shall notify the other Party in writing promptly and in any event within five (5) days of receiving any customer complaints and reported defects relating to the Product.

(d) Any notifications to either Party pursuant to this Section 7.3 shall be subject to the confidentiality provisions of Article VI above.

SECTION 7.4 Indemnification. (a) Subject to Section 7.5, Seller shall indemnify and hold Buyer and its Affiliates harmless from and against any losses, costs, damages, fees or expenses (including, without limitation, reasonable attorney's fees and expenses and reasonable expenses of investigation in connection with any action, suit or proceeding) (collectively, "Losses") arising out of any third party claim resulting from Seller's breach of Seller's Non-Infringement Warranty or Seller's Product Warranty. Buyer shall indemnify and hold harmless Seller and its Affiliates from and against any Losses arising out of any third party claim resulting from any claim relating to the Products other than those for which Seller is obligated to indemnify Buyer pursuant to this Section 7.4.

(b) Any Party seeking indemnification pursuant to this Section 7.4 (the "Indemnified Party") shall promptly notify the other Party (the "Indemnifying Party") of the claim as to which indemnification is sought, shall afford the Indemnifying Party, at the Indemnifying Party's sole expense, the opportunity to defend or settle the claim (in which case the Indemnifying Party shall not be responsible for the attorneys' fees of the Indemnified Party with respect such claim) and shall cooperate to the extent reasonably requested by the Indemnifying Party in the investigation and defense of such claim; provided, however, that any settlement of any such claim that would adversely affect the rights of the Indemnified Party shall require the written approval of such Indemnified Party, which approval shall not be unreasonably withheld; and provided, further that an Indemnified Party shall not settle any such claim without the written approval of the Indemnifying Party, which approval shall not be unreasonably withheld.

(c) The foregoing indemnification obligations shall survive any termination or expiration of this Agreement, in whole or in part.

SECTION 7.5 Limitation of Liability. (a) Neither Party shall be liable to the other Party for loss of profits or consequential, indirect, special, punitive or other similar damages arising out of any breach of this Agreement.

(b) Except for obligations arising under Section 7.4 or as a result of a breach by either Party of Section 6.1 hereof, in no event shall either Party be liable to the other Party for any amounts in excess of the amounts actually paid to Seller under this Agreement during the preceding twelve (12) month period or $175,000, whichever is less. Other than claims arising as a result of gross negligence or willful misconduct, neither Party shall be liable to the other Party under Section 7.4 of this Agreement for amounts in excess of the insurance recovery available in respect of the subject third-party claim under the policy maintained by the indemnifying party in accordance with Section 7.7 of this Agreement.

SECTION 7.6 Recalls. Buyer shall be the sole Party that may initiate a recall, field alert, Product withdrawal or field correction (collectively "Recall"), unless otherwise required by applicable laws. In the event Buyer believes a Recall is necessary for any Product, Buyer shall notify Seller of such Recall, and Seller shall provide all necessary cooperation and assistance to Buyer. Seller shall bear the cost of any Recall if such Recall is a result of Seller's breach of its obligations under this Agreement, including any of Seller's Product Warranty or Seller's Non-Infringement Warranty; otherwise, Buyer shall be responsible for the cost of any Recall.

SECTION 7.7 Insurance. (a) Buyer represents that it has, and will maintain in effect during the Term and for two (2) years thereafter commercial insurance coverage (including products liability insurance) with limits of not less than $5,000,000 per occurrence, and $5,000,000 in the aggregate. Buyer shall obtain a vendor's endorsement under such insurance coverage naming Seller as an additional insured, and shall obtain a waiver of subrogation under such coverage with respect to Seller. Buyer shall furnish Seller with a certificate(s) evidencing such insurance, which certificate(s) shall contain a provision requiring the insurance carrier to give Seller at least thirty (30) days prior written notice of any cancellation or material change in such insurance.

(b) Seller represents that it has, and will maintain in effect during the Term and for two (2) years thereafter commercial insurance coverage (including products liability insurance) with limits of not less than $5,000,000 per occurrence, and $5,000,000 in the aggregate. Seller shall obtain a vendor's endorsement under such insurance coverage naming Buyer as an additional insured, and shall obtain a waiver of subrogation under such coverage with respect to Buyer. Seller shall furnish Buyer with a certificate(s) evidencing such insurance, which certificate(s) shall contain a provision requiring the insurance carrier to give Buyer at least thirty (30) days prior written notice of any cancellation or material change in such insurance.

## ARTICLE VIII
## TERM; TERMINATION

SECTION 8.1 Term of Agreement. Unless terminated sooner pursuant to the terms hereof, this Agreement shall commence on the Effective Date and shall continue in effect until the fifth anniversary of the Effective Date (such period, as it may be terminated, being referred to as the "Term"). At the end of the Term, both Parties can agree in writing to renew this Agreement for additional two-year terms.

SECTION 8.2 Termination by Either Party. Either Party may terminate this Agreement as follows:

(a) in the event of a material breach or default of the other Party of the terms and conditions of this Agreement; provided, however, that the non-defaulting Party shall first give to the defaulting Party written notice of the proposed termination of this Agreement, specifying the grounds therefor. Upon receipt of such notice, the defaulting Party shall have forty-five (45) days to respond by curing such material breach or default. If the defaulting Party fully cures such stated material breach or default within the forty-five (45) day period, this Agreement shall continue in full force and effect. If the defaulting Party fails to fully cure such stated material breach or default within the forty-five (45) day period, the non-defaulting Party may terminate this Agreement effective upon delivery of a written notice to the defaulting Party at any time before the breach or default is cured; or

(b) if the other Party is adjudicated bankrupt, becomes insolvent, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency, reorganization or other relief act, or if a receiver or trustee be appointed for its property, or if any substantial part of the assets is the object of attachment, sequestration or other type of comparable proceeding, and such proceeding is not vacated or terminated within sixty (60) days after its commencement or institution.

SECTION 8.3 Termination by Seller. Seller may terminate this Agreement in the event of a material change in the requirements of the FDA or the Act that Seller reasonably believes would render Seller unable on a commercially reasonable basis to manufacture or sell the Product in conformity with the requirements of either the FDA or the Act.

SECTION 8.4 Rights Upon Termination. (a) Following the expiration or termination of this Agreement, all further rights and obligations of the Parties under this Agreement shall cease; provided, however, that the termination or expiration of this Agreement shall not affect the rights and obligations of the Parties arising prior to such termination or expiration; and provided, further that the Parties shall not be relieved of (i) their respective obligations to pay monies due or which become due as of or subsequent to the date of expiration or termination; and (ii) any other respective obligations under any provision of this Agreement which by its terms survive the date of such expiration or termination, including, without limitation, the provisions of Sections 6.1, 6.2, 7.4, 7.5, 7.7, 9.4 and 9.9 and this Section 8.4.

(b) In the event Buyer terminates this Agreement pursuant to Section 8.2 of this Agreement, Seller shall provide Buyer with reasonable access to Seller's manufacturing process,

records, approvals and personnel to assist Buyer in arranging an uninterrupted supply of finished Products or an effective and efficient manufacture site transfer from Seller to Buyer, and all information obtained by Buyer as a result of such access shall be protected as "Confidential Information" hereunder.

(c) Except as otherwise expressly provided in this Section 8.4, no consideration or indemnity shall be payable to Buyer or Seller either for loss of profit, goodwill, creation of clientele or other like items, or for advertising costs, costs of samples or supplies, termination of employees, employees' salaries and other related items solely by virtue of termination of this Agreement.

## ARTICLE IX
## MISCELLANEOUS

SECTION 9.1 Assignment. This Agreement may not be assigned or otherwise transferred by any Party without the prior written consent of the other Party, such consent not to be unreasonably withheld; provided, however, that no such assignment shall relieve the assigning Party of liability for its obligations hereunder. Notwithstanding the foregoing sentence, either Party may assign or otherwise transfer this Agreement to any Affiliate; provided, that this Agreement shall be retransferred to the transferring Party if such entity ceases to be an Affiliate of such Party; and provided, that the assigning Party shall guarantee the performance of such Affiliate; and provided, further, that in no event shall Buyer assign or transfer this Agreement to any Person a material portion of whose business is engaged in the research and development or manufacturing of intranasally delivered products. Notwithstanding the foregoing, either Party may assign or transfer this Agreement without the other Party's consent to a third party that acquires all or substantially all of the transferring Party's assets or business; provided, that in no event shall Buyer assign or transfer this Agreement to any Person a material portion of whose business is engaged in the research and development or manufacturing of intranasally delivered products. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the Parties. Any purported assignment or other transfer not in compliance with this Section 9.1 shall be null and void.

SECTION 9.2 Force Majeure. The Parties shall not be liable for the failure or delay in performing any obligation under this Agreement (other than the failure to pay any sums due and payable hereunder) if and to the extent such failure or delay is due to (i) acts of God; (ii) weather, fire or explosion; (iii) war, acts of terror, invasion, riot or other civil unrest; (iv) governmental laws, orders, restrictions, actions, embargoes or blockages; (v) action by the FDA or any other regulatory authority which prohibits the manufacture, sale or distribution of the Products, except to the extent due to Seller's breach of its obligations hereunder; (vi) regional, national or foreign emergency; (vii) injunction, strikes, lockouts, labor trouble or other industrial disturbances beyond the control of the affected Party; (viii) shortage of adequate fuel, power, materials, or transportation facilities; or (ix) any other event which is beyond the reasonable control of the affected Party (each, a "Force Majeure Event"); provided, however, that the Party affected shall promptly notify the other Party in writing of the Force Majeure Event and shall exert its reasonable commercial efforts to eliminate, cure or overcome any such causes and to resume performance of its obligations as soon as possible.

SECTION 9.3 Entire Agreement; Amendments; Modification. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all previous negotiations, agreements and commitments with respect thereto, and shall not be released, discharged, amended or modified in any manner except by instruments signed by duly authorized representatives of each of the Parties hereto. If any provision of this Agreement or the application thereof to any Party or circumstance shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use their best efforts to replace the invalid or unenforceable provision with a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.

SECTION 9.4 Applicable Law. This Agreement, all sales transactions pursuant hereto, and any claim or controversy relating hereto or thereto, shall be governed by and interpreted exclusively in accordance with the internal laws of the State of California without regard to principles of conflicts of laws, except matters of intellectual property law, which shall be determined in accordance with the intellectual property laws relevant to the intellectual property in question. Each of the Parties waives any application of the United Nations Convention on Contracts for the International Sale of Goods.

SECTION 9.5 Arbitration. Any dispute, controversy or claim arising out of or in connection with this Agreement shall be determined and settled by arbitration in Bothell, Washington, pursuant to the Rules of Arbitration then in effect of the American Arbitration Association. Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court having competent jurisdiction. Any arbitration hereunder shall be (i) submitted to an arbitration tribunal comprised of three (3) independent members knowledgeable in the pharmaceutical industry, one of whom shall be selected by the other two arbitrators; (ii) allow for the parties to request discovery pursuant to the rules then in effect under the Federal Rules of Civil Procedure for a period not to exceed 90 days; and (iii) require the award to be accompanied by findings of fact and a statement of reasons for the decision. Each party shall bear its own costs and expenses, including attorney's fees incurred in any dispute, which is determined and/or settled by arbitration pursuant to this Section. Except where clearly prevented by the area in dispute, both parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved. Arbitration shall not prevent any party from seeking injunctive relief where such remedy is an appropriate form of remedy under the circumstances.

SECTION 9.6 Independent Contractor. Nothing contained in this Agreement shall constitute a Party as a partner, employee or agent of the other Party, nor shall any Party hold itself out as such. Neither Party shall have the right or authority to incur, assume or create, in writing or otherwise, any warranty, liability or other obligation of any kind, express or implied, in the name or on behalf of the other Party, and each Party is and shall remain an independent contractor, responsible for its own actions. Except as otherwise explicitly provided herein, each Party shall be responsible for its own expenses incidental to its performance of this Agreement.

SECTION 9.7 Set-Off. The Parties' obligations under this Agreement shall be unconditional, except as provided in this Agreement, and shall not be subject to any defense,

setoff, counterclaim or similar right against the other Party or any of its Affiliates that could be asserted by the Parties or any of their Affiliates under any other contract, agreement, arrangement or understanding between the Parties or otherwise under law.

SECTION 9.8 Waivers. No claim or right arising out of or relating to a breach of any provision of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved Party. Any failure by any Party to enforce at any time any provision under this Agreement shall not be considered a waiver of that Party's right thereafter to enforce each and every provision of this Agreement.

SECTION 9.9 Notices. All notices and communications required or permitted to be given under this Agreement shall be in writing and shall be sent by facsimile transmission, or mailed postage prepaid by first-class certified mail, or delivered by a nationally recognized express courier service, or hand-delivered, addressed as follows:

(a) If to Seller: Nastech Pharmaceutical Company, Inc.

3450 Monte Villa Parkway
Bothell, Washington 98021
Attention: Chief Executive Officer
Fax: (425) 908-3650

(b) If to Buyer: Questcor Pharmaceuticals, Inc.

3260 Whipple Road
Union City, California 94587
Attention: Chief Executive Officer
Fax: (510) 400-0715

Any party may change the Persons or addresses to which any notices or other communications to it should be addressed by notifying the other parties as provided above. Any notice or other communication, if addressed and sent, mailed or delivered as provided above, shall be deemed given or received three (3) days after the date of mailing as indicated on the certified mail receipt, or the next business day if delivered to an express courier service, or on the date of delivery or transmission if hand-delivered or sent by facsimile transmission.

SECTION 9.10 Headings. The headings contained herein are included for convenience of reference only and do not constitute a part of this Agreement.

SECTION 9.11 Severability. If any provision hereof should be held invalid, illegal or unenforceable in any respect in any jurisdiction, the invalid, illegal or unenforceable of one or several provisions of this Agreement shall not affect the validity of this Agreement as a whole. The Parties shall make a good faith effort to replace the invalid or unenforceable provision with a valid one which in its economic effect is most consistent with the invalid or unenforceable one.

SECTION 9.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first written above.

NASTECH PHARMACEUTICAL COMPANY, INC.

By: _____
Name: Steven C. Quay, M.D., Ph.D.
Title: President and CEO

QUESTCOR PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EXHIBIT 15.1

August 12, 2003

The Board of Directors
Questcor Pharmaceuticals, Inc.

We are aware of the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-30558, 333-46990, 333-81243, 333-105694 and 333-105693), pertaining to the 1992 Stock Option Plan, the 1993 Non-Employee Directors' Equity Incentive Plan and the 2000 Employee Stock Purchase Plan, and in the Registration Statements on Form S-3 (Nos. 333-102988, 333-85160, 333-61866, 333-25661, 333-32159, 333-23085, 333-17501, 333-03507 and 333-107755) and the related prospectuses, of our report dated July 24, 2003 relating to the unaudited condensed consolidated interim financial statements of Questcor Pharmaceuticals, Inc. that are included in its Form 10-Q for the quarter ended June 30, 2003.

Pursuant to Rule 436(c) of the Securities Act of 1933 our report is not a part of the registration statement prepared or certified by accountants within the meaning of Section 7 or 11 of the Securities Act of 1933.

EXHIBIT 31

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Charles J. Casamento, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Questcor Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

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

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

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

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

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

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

Date: August 14, 2003

/s/ Charles J. Casamento
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CHARLES J. CASAMENTO
CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER

EXHIBIT 31

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Timothy E. Morris, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Questcor Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

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

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

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

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

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

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

Date: August 14, 2003

/s/ Timothy E. Morris
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TIMOTHY E. MORRIS
CHIEF FINANCIAL OFFICER

EXHIBIT 32

CERTIFICATIONS

On August 14, 2003, Questcor Pharmaceuticals, Inc. filed its Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 (the "Form 10-Q") with the Securities and Exchange Commission. Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the following certifications are being made to accompany the Form 10-Q:

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Questcor Pharmaceuticals, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2003 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 14, 2003

/s/ Charles J. Casamento
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Charles J. Casamento
Chief Executive Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to 18 U.S.C. Section 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Questcor Pharmaceuticals, Inc. (the "Company") hereby certifies, to such officer's knowledge, that:

(i) the Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2003 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 14, 2003

/s/ Timothy E. Morris
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Timothy E. Morris
Chief Financial Officer

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.