

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 10-Q**

**(Mark One)**

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

For the quarterly period ended September 30, 2015

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-33221

**HERON THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**94-2875566**  
(I.R.S. Employer  
Identification No.)

**123 Saginaw Drive**  
**Redwood City, CA**  
(Address of principal executive offices)

**94063**  
(Zip Code)

**Registrant's telephone number, including area code: (650) 366-2626**

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>

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

The number of shares of the registrant's common stock, par value \$0.01 per share, outstanding as of October 26, 2015 was 35,970,990.

**HERON THERAPEUTICS, INC.**  
**FORM 10-Q**  
**FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2015**

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(in thousands)

	September 30, 2015 (Unaudited)	December 31, 2014 (Note 2)
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 152,989	\$ 72,675
Prepaid expenses and other current assets	2,006	1,057
Total current assets	154,995	73,732
Property and equipment, net	2,982	2,820
Other long-term assets	174	130
Total assets	<u>\$ 158,151</u>	<u>\$ 76,682</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 2,735	\$ 2,549
Accrued clinical liabilities	5,167	3,811
Accrued payroll and employee-related liabilities	3,389	2,731
Other accrued expenses	3,098	2,931
Convertible notes payable to related parties, net of discount	2,061	1,598
Total current liabilities	<u>16,450</u>	<u>13,620</u>
Stockholders' equity:		
Common stock	359	292
Additional paid-in capital	522,928	378,007
Accumulated deficit	<u>(381,586)</u>	<u>(315,237)</u>
Total stockholders' equity	<u>141,701</u>	<u>63,062</u>
Total liabilities and stockholders' equity	<u>\$ 158,151</u>	<u>\$ 76,682</u>

See accompanying notes.

**HERON THERAPEUTICS, INC.****Condensed Consolidated Statements of Operations**

(unaudited)

(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Operating expenses:				
Research and development	\$ 14,241	\$ 14,731	\$ 44,920	\$ 40,638
General and administrative	8,250	4,222	20,945	14,428
Total operating expenses	<u>22,491</u>	<u>18,953</u>	<u>65,865</u>	<u>55,066</u>
Loss from operations	(22,491)	(18,953)	(65,865)	(55,066)
Other expense, net	(181)	(241)	(484)	(677)
Net loss	<u>\$(22,672)</u>	<u>\$(19,194)</u>	<u>\$(66,349)</u>	<u>\$(55,743)</u>
Basic and diluted net loss per share	<u>\$ (0.63)</u>	<u>\$ (0.66)</u>	<u>\$ (2.07)</u>	<u>\$ (2.17)</u>
Shares used in computing basic and diluted net loss per share	<u>35,773</u>	<u>29,004</u>	<u>32,090</u>	<u>25,679</u>

See accompanying notes.

**HERON THERAPEUTICS, INC.****Condensed Consolidated Statements of Cash Flows**

(unaudited)  
(in thousands)

	Nine Months Ended September 30,	
	2015	2014
<b>Operating activities:</b>		
Net loss	\$ (66,349)	\$ (55,743)
Adjustments to reconcile net loss to net cash used for operating activities:		
Depreciation and amortization	498	389
Stock-based compensation expense	8,512	5,809
Amortization of debt discount	463	425
Gain on disposal of property and equipment	(118)	—
Changes in operating assets and liabilities:		
Prepaid expenses and other assets	(993)	(2,392)
Accounts payable	186	211
Accrued clinical liabilities	1,356	2,757
Accrued payroll and employee-related liabilities	658	35
Other accrued expenses	411	1,084
Net cash used for operating activities	<u>(55,376)</u>	<u>(47,425)</u>
<b>Investing activities:</b>		
Purchases of property and equipment	(783)	(417)
Proceeds from sale of property and equipment	241	—
Net cash used for investing activities	<u>(542)</u>	<u>(417)</u>
<b>Financing activities:</b>		
Proceeds from purchases under the Employee Stock Purchase Plan	118	19
Proceeds from stock option exercises	7,915	2,832
Net proceeds from sale of common stock and/or pre-funded warrants	128,199	58,916
Net cash provided by financing activities	<u>136,232</u>	<u>61,767</u>
Net increase in cash and cash equivalents	80,314	13,925
Cash and cash equivalents at beginning of period	72,675	72,287
Cash and cash equivalents at end of period	<u>\$152,989</u>	<u>\$ 86,212</u>

See accompanying notes.

**HERON THERAPEUTICS, INC.**

**Notes to Condensed Consolidated Financial Statements**  
(unaudited)

In this quarterly report on Form 10-Q, “Heron,” the “Company,” “we,” “us,” and “our” and similar terms refer to Heron Therapeutics, Inc., Heron Therapeutics®, the Heron logo, SUSTOL® and Biochronomer® are our trademarks. All other trademarks appearing or incorporated by reference into this quarterly report on Form 10-Q are the property of their respective owners.

**1. Business**

**Overview**

Heron Therapeutics, Inc. is a biotechnology company focused on improving the lives of patients by developing best-in-class medicines that address major unmet medical needs. We are developing novel, patient-focused solutions that apply our innovative science and technologies to already-approved pharmacological agents. Our goal is to build on therapeutics with well-known pharmacology by improving their tolerability and efficacy as well as broadening their potential field of use.

We are currently developing four pharmaceutical products for patients suffering from cancer or pain. SUSTOL® (granisetron) Injection, extended release (“SUSTOL”) is being developed for the prevention of both acute and delayed chemotherapy-induced nausea and vomiting (“CINV”) associated with moderately emetogenic chemotherapy or highly emetogenic chemotherapy. Our New Drug Application for SUSTOL is pending review with the U.S. Food and Drug Administration (“FDA”), and has been assigned a Prescription Drug User Fee Act goal date of January 17, 2016. HTX-019, also being developed for the prevention of CINV, has the potential to become the first polysorbate 80-free, intravenous formulation of aprepitant, a neurokinin-1 receptor antagonist. HTX-011, a long-acting formulation of the local anesthetic bupivacaine in a fixed-dose combination with the anti-inflammatory meloxicam, is being developed for the prevention of post-operative pain. HTX-003, a long-acting formulation of buprenorphine, is being developed for the management of chronic pain and opioid addiction. All of our product candidates utilize our innovative science and technology platforms, including our proprietary Biochronomer® drug delivery technology, which can deliver therapeutic levels of a wide range of otherwise short-acting pharmacological agents over a period of days to weeks with a single injection.

**Liquidity**

We have incurred significant operating losses and negative cash flows from operations, and we had an accumulated deficit of \$381.6 million as of September 30, 2015. As of September 30, 2015, we had cash and cash equivalents on hand of \$153.0 million.

We believe that our current cash and working capital are sufficient to fund operations through 2016 based on our current operating plans, including building a commercial infrastructure to support a potential commercial launch of SUSTOL and continuing to pursue our current clinical development programs. In the event we were to pursue clinical product development in other areas, potentially acquire other strategic assets, or if SUSTOL is not approved or the degree of commercial success of SUSTOL is less than expected, we would need to raise additional capital. If we are unable to obtain sufficient financing on acceptable terms or otherwise, we may be required to reduce or defer our activities. Our capital requirements going forward will depend on numerous factors, including but not limited to: the scope, rate of progress, results and costs of preclinical testing and clinical trials; an approval decision by the FDA with respect to SUSTOL; the timing of and costs associated with the commercial launch of SUSTOL, if approved; the degree of commercial success of SUSTOL; the number and characteristics of product development programs we pursue and the pace of each program, including the timing of clinical trials; the time, cost and outcome involved in seeking other regulatory approvals; scientific progress in our research and development programs; the magnitude and scope of our research and development

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programs; our ability to establish and maintain strategic collaborations or partnerships for research, development, clinical testing, manufacturing and marketing of our product candidates; the cost and timing of establishing sales, manufacturing, marketing and distribution capabilities if we commercialize products independently; the cost of establishing clinical and commercial supplies of our product candidates and any products that we may develop; and general market conditions.

We may not be able to raise sufficient additional capital when we need it on favorable terms, or at all. The sale of additional equity in the future may be dilutive to our stockholders. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or to obtain funds by entering into financing, supply or collaboration agreements on unattractive terms.

### **2. Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the U.S. (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and nine months ended September 30, 2015 are not necessarily indicative of the results that may be expected for other quarters or the year ending December 31, 2015. The condensed balance sheet at December 31, 2014 has been derived from the audited financial statements as of that date, but does not include all of the information and disclosures required by GAAP. For more complete financial information, these unaudited condensed consolidated financial statements and the notes thereto should be read in conjunction with the audited financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed with the Securities and Exchange Commission (the “SEC”) on March 13, 2015.

### **3. Accounting Policies**

#### **Principles of Consolidation**

The accompanying unaudited condensed consolidated financial statements include the accounts of Heron Therapeutics, Inc. and its wholly owned subsidiary, Heron Therapeutics B.V., which was organized in the Netherlands in March 2015. Heron Therapeutics B.V. has no operations and no material assets or liabilities and there have been no significant transactions related to Heron Therapeutics B.V. since its inception.

#### **Use of Estimates**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and disclosures made in the accompanying notes to the financial statements. Our critical accounting policies that involve significant judgment and estimates include accrued clinical liabilities, income taxes and stock-based compensation. Actual results could differ materially from those estimates.

#### **Cash and Cash Equivalents**

Cash and cash equivalents consist of cash and highly liquid investments with original maturities from purchase date of three months or less. Our bank accounts have been placed under a control agreement in accordance with our Senior Secured Convertible Notes (“Convertible Notes”).

#### **Earnings Per Share**

Basic earnings per share (“EPS”) is calculated by dividing the net loss by the weighted-average number of common shares outstanding for the period, without consideration of common share equivalents. Diluted EPS is computed by dividing the net loss by the weighted-average number of common shares and common share equivalents outstanding for the period determined using the treasury

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stock method. For purposes of this calculation, stock options, warrants and common stock underlying Convertible Notes are considered to be common stock equivalents and are only included in the calculation of diluted EPS when their effect is dilutive.

Because we have incurred a net loss for all periods presented in the condensed consolidated statements of operations, outstanding stock options, warrants and common stock underlying Convertible Notes are not included in the computation of net loss per share because their effect would be anti-dilutive.

The following table includes the number of outstanding stock options, warrants and common stock underlying Convertible Notes not included in the computation as of the dates shown below (in thousands):

	As of September 30,	
	2015	2014
Stock options outstanding	6,960	6,456
Warrants outstanding	3,565	4,108
Common stock underlying convertible notes outstanding	6,982	6,578

### **Comprehensive Income (Loss)**

Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources. Our comprehensive net loss for all periods presented was comprised solely of our net loss, and there were no other changes in equity from non-owner sources.

### **Recent Accounting Pronouncements**

In January 2015, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2015-01, *Income Statement—Extraordinary and Unusual Items (Subtopic 225-20)* (“ASU 2015-01”). ASU 2015-01 eliminates the concept of extraordinary items from GAAP. FASB concluded that ASU 2015-01 will not result in a loss of information because although ASU 2015-01 will eliminate the requirements in Subtopic 225-20 for reporting entities to consider whether an underlying event or transaction is extraordinary, the presentation and disclosure guidance for items that are unusual in nature or occur infrequently will be retained and will be expanded to include items that are both unusual in nature and infrequently occurring. The amendments in ASU 2015-01 are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. A reporting entity may apply the amendments prospectively. A reporting entity also may apply the amendments retrospectively to all prior periods presented in the financial statements. We adopted the provisions of ASU 2015-01 in the first quarter of 2015, which did not have a material impact on our results of operations or financial condition.

In August 2014, FASB issued ASU No. 2014-15, *Presentation of Financial Statements – Going Concern (Subtopic 205-40)* (“ASU 2014-15”). ASU 2014-15 requires management to assess an entity’s ability to continue as a going concern by incorporating and expanding upon certain principles that are currently in U.S. auditing standards. Specifically, the amendments (1) provide a definition of the term substantial doubt, (2) require an evaluation every reporting period, including interim periods, (3) provide principles for considering the mitigating effect of management’s plans, (4) require certain disclosures when substantial doubt is alleviated as a result of consideration of management’s plans, (5) require an express statement and other disclosures when substantial doubt is not alleviated, and (6) require an assessment for a period of one year after the date that the financial statements are issued (or available to be issued). The amendments in ASU 2014-15 are effective for the annual period ending after December 15, 2016, and for annual periods and interim periods thereafter. Early adoption is permitted. We plan to adopt the provisions of ASU 2014-15 in 2016. We do not expect the adoption of this ASU to have a material impact on our results of operations or financial condition.

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In June 2014, FASB issued ASU No. 2014-12, *Compensation – Stock Compensation (Topic 718)* (“ASU 2014-12”). ASU 2014-12 requires that a performance target that affects vesting and that could be achieved after the requisite service period be treated as a performance condition. ASU 2014-12 is effective for annual periods and interim periods within those annual periods beginning after December 15, 2015. Earlier adoption is permitted. The amendments in ASU 2014-12 may either be applied (a) prospectively to all awards granted or modified after the effective date or (b) retrospectively to all awards with performance targets that are outstanding as of the beginning of the earlier annual period presented in the financial statements and to all new or modified awards thereafter. We plan to adopt the provisions of ASU 2014-12 in the first quarter of 2016. We do not expect the adoption of this ASU to have a material impact on our results of operations or financial condition.

#### **4. Convertible Notes to Related Parties**

In April 2011, we entered into a Securities Purchase Agreement for a private placement of up to \$4.5 million in Convertible Notes. We received a total of \$4.3 million, net of issuance costs, from the issuance of these Convertible Notes.

The Convertible Notes are secured by substantially all of our assets, including placing our bank accounts under a control agreement. The Convertible Notes bear interest at 6% per annum, payable quarterly in cash or in additional principal amount of Convertible Notes, at the election of the purchasers. The Convertible Notes mature on May 2, 2021, however, the holders of the Convertible Notes may require prepayment of the Convertible Notes at any time, at each holder’s option.

The Convertible Notes are convertible into shares of our common stock at a rate of 1,250 shares for every \$1,000 of principal and accrued interest due under the Convertible Notes. There is no right to convert the Convertible Notes to the extent that, after giving effect to such conversion, the holder would beneficially own in excess of 9.99% of our outstanding common stock. Each holder of the Convertible Notes can increase or decrease this beneficial ownership conversion limit by written notice to us, which will not be effective until 61 days after delivery of the notice.

As of September 30, 2015, we were in compliance with all covenants under the Convertible Notes. Upon the occurrence of an event of default under the Convertible Notes, the holders of the Convertible Notes have the right to require us to redeem all or a portion of their Convertible Notes.

We filed a registration statement with the SEC to register for resale 3.5 million shares underlying the Convertible Notes. The registration statement was declared effective on July 29, 2011. The Convertible Note holders have agreed to waive their right to require us to maintain the effectiveness of the registration statement and to register the additional shares underlying the Convertible Notes until they provide notice otherwise.

The Convertible Notes contain an embedded conversion feature that was in-the-money on the issuance dates. Based on an effective fixed conversion rate of 1,250 shares for every \$1,000 of principal and accrued interest due under the Convertible Notes, the total conversion benefit at issuance exceeded the loan proceeds. Therefore, a debt discount was recorded in an amount equal to the face value of the Convertible Notes on the issuance dates and we began amortizing the resultant debt discount over the respective 10-year term of the Convertible Notes. During the nine months ended September 30, 2015, accrued interest of approximately \$244,000 was paid-in-kind and rolled into the Convertible Note principal balance, which resulted in an additional debt discount of approximately \$244,000. For the three months ended September 30, 2015 and 2014, interest expense relating to the stated rate was approximately \$84,000 and \$79,000, respectively, and interest expense relating to the amortization of the debt discount was approximately \$158,000 and \$145,000, respectively. For the nine months ended September 30, 2015 and 2014, interest expense relating to the stated rate was approximately \$248,000 and \$233,000, respectively, and interest expense relating to the amortization of the debt discount was approximately \$463,000 and \$425,000, respectively.

As of September 30, 2015, the carrying value of the Convertible Notes was approximately \$2,061,000, which is comprised of the \$5,586,000 principal amount of the Convertible Notes outstanding, less debt discount of \$3,525,000. If the \$5,586,000 principal amount of Convertible Notes is converted, we would issue 6,981,833 shares of our common stock.

## **5. Stockholders' Equity**

### ***2013 Common Stock Offering***

In November 2013, we sold approximately 7.7 million shares of our common stock at a public offering price of \$8.00 per share. We received total net proceeds of approximately \$57.8 million (net of approximately \$3.9 million in issuance costs).

### ***2014 Common Stock Offering***

In June 2014, we sold approximately 4.8 million shares of our common stock at a public offering price of \$11.75 per share. In addition, as a component of the offering, we sold 600,000 pre-funded warrants to purchase shares of our common stock at a public offering price of \$11.74 per share. The pre-funded warrants have an exercise price of \$0.01 per share and expire on June 30, 2021. We received total net proceeds of approximately \$58.9 million (net of approximately \$4.0 million in issuance costs) from the sale of the common stock and the pre-funded warrants.

### ***2015 Common Stock Offering***

In June 2015, we sold approximately 5.5 million shares of our common stock at a public offering price of approximately \$24.75 per share. We received total net proceeds of approximately \$128.2 million (net of approximately \$8.4 million in issuance costs) from the sale of the common stock.

### ***Private Placement Warrants***

In June 2011, we sold shares of common stock and warrants to purchase common stock in a private placement. A total of 4.0 million warrants to purchase common stock at an exercise price of \$3.60 per share were issued as part of this private placement. The warrants were immediately exercisable and expire on July 1, 2016. The warrants may be exercised for cash only, or, if a registration statement is not then effective and available for the resale of the shares of common stock issuable upon exercise of the warrants, by surrender of such warrant, or a portion of such warrant, by way of cashless exercise. There is no right to exercise the warrants to the extent that, after giving effect to such exercise the holder would beneficially own in excess of 9.99% of our outstanding shares of common stock or such other limit as may be designated by any particular purchaser. Each holder of the warrants can amend or waive the foregoing limitation by written notice to us, with such waiver taking effect only upon the expiration of a 61-day notice period.

During the nine months ended September 30, 2015, warrant holders exercised 343,813 warrants under the cashless exercise provision in each holder's warrant, which resulted in the net issuance of 285,713 shares of common stock and no net cash proceeds to us. During the nine months ended September 30, 2014, warrant holders exercised 460,706 warrants under the cashless exercise provision in the warrant agreement, which resulted in the net issuance of 303,614 shares of common stock and no net cash proceeds to us. As of September 30, 2015, 2,965,477 warrants from the June 2011 Private Placement remain outstanding.

### ***Stock Option Exercises***

For the nine months ended September 30, 2015, 882,579 shares of common stock were issued pursuant to the exercise of stock options, resulting in proceeds to us of approximately \$7,915,000. For the nine months ended September 30, 2014, option holders exercised 719,092 stock options, a portion of which were exercised under the cashless exercise provision of our 2007 Amended and Restated Equity Incentive Plan, resulting in the net issuance of 550,496 shares of common stock and cash proceeds to us of approximately \$2,832,000.

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### Stock-Based Compensation

The following table summarizes stock-based compensation expense related to stock-based payment awards granted pursuant to all of our equity compensation arrangements for the three and nine months ended September 30, 2015 and 2014 (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
Research and development	\$ 927	\$ 715	\$2,652	\$ 2,423
General and administrative	1,894	1,045	5,860	3,386
Stock-based compensation expense included in operating expenses	<u>\$ 2,821</u>	<u>\$ 1,760</u>	<u>\$8,512</u>	<u>\$ 5,809</u>
Impact on basic and diluted net loss per share	<u>\$ 0.08</u>	<u>\$ 0.06</u>	<u>\$ 0.27</u>	<u>\$ 0.23</u>

As of September 30, 2015, there was \$31,150,000 of total unrecognized compensation cost related to non-vested, stock-based payment awards granted under all of our equity compensation plans and all non-plan option grants. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures. We expect to recognize this compensation cost over a weighted-average period of 2.0 years.

We estimated the fair value of each option grant on the grant date using the Black-Scholes option pricing model with the following weighted-average assumptions:

	September 30,	
	2015	2014
Risk-free interest rate	1.7%	2.0%
Dividend yield	0.0%	0.0%
Volatility	90.7%	102.9%
Expected life (years)	6	6

We estimate the fair value of each purchase right granted under the ESPP at the beginning of each new offering period using the Black-Scholes option valuation model. There were no new offering periods for the quarters ended September 30, 2015 and 2014.

The following table summarizes the stock option activity for the nine months ended September 30, 2015:

	Shares (in thousands)	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term (Years)
Balance at January 1, 2015	7,918	\$ 8.69	7.92
Granted	375	\$ 29.26	
Exercised	(883)	\$ 8.97	
Expired and forfeited	(450)	\$ 11.02	
Balance at September 30, 2015	<u>6,960</u>	<u>\$ 9.61</u>	7.90

**6. Income Taxes**

Deferred income tax assets and liabilities are recognized for temporary differences between financial statements and income tax carrying values using tax rates in effect for the years such differences are expected to reverse. Due to uncertainties surrounding our ability to generate future taxable income and consequently realize such deferred income tax assets, a full valuation allowance has been established. We continue to maintain a full valuation allowance against our deferred tax assets as of September 30, 2015.

The impact of an uncertain income tax position on the income tax return must be recognized at the largest amount that is more likely than not to be sustained upon audit by the relevant tax authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. There have been no material changes in our unrecognized tax benefits since December 31, 2014 and, as such, disclosures included in our 2014 Annual Report on Form 10-K for the year ended December 31, 2014 continue to be relevant for the period ended September 30, 2015.

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

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited condensed consolidated financial statements and related notes included in this quarterly report on Form 10-Q and the audited financial statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2014 (“Annual Report”) filed with the Securities and Exchange Commission (the “SEC”), on March 13, 2015.

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the federal securities laws. You can identify forward-looking statements by the use of the words “believe,” “expect,” “anticipate,” “intend,” “estimate,” “project,” “will,” “should,” “may,” “plan,” “intend,” “assume” and other expressions which predict or indicate future events and trends and which do not relate to historical matters. You should not rely on forward-looking statements, because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to be materially different from the anticipated future results, performance or achievements expressed or implied by the forward-looking statements.

Factors that might cause these differences include the following:

- estimates of the outcome of our New Drug Application (“NDA”) resubmission to the U.S Food and Drug Administration (“FDA”) for SUSTOL® (granisetron) Injection, extended release (“SUSTOL”) and potential regulatory approval for and commercial launch of SUSTOL;
- the possibility that the FDA might not interpret the results of our recent Phase 3 MAGIC study for SUSTOL for the prevention of delayed chemotherapy induced nausea and vomiting (“CINV”) associated with highly emetogenic chemotherapy (“HEC”) regimens to be sufficient to support as broad a label indication as we might desire;
- the anticipated progress of our current research and development programs for HTX-011, HTX-019, and any other research and development programs we may pursue, including the initiation of new clinical trials and preclinical testing and the results of bioequivalence and stability studies;
- whether safety and efficacy results of our clinical trials and other required tests for approval provide data to warrant further development and potential regulatory approval of SUSTOL or any of our other product candidates;
- if approved, the market conditions at commercial launch of SUSTOL or other future product candidates;

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- our ability to successfully market, commercialize and achieve market acceptance for SUSTOL or other future product candidates, including our positioning relative to competing products;
- our ability to successfully develop and achieve regulatory approval for other future product candidates utilizing our proprietary Biochronomer® drug delivery technology;
- our ability to establish key collaborations for our products and any other future product candidates;
- our ability to successfully develop and commercialize any technology that we may in-license or products we may acquire;
- unanticipated delays due to manufacturing difficulties, supply constraints, or changes in the regulatory environment;
- our ability to successfully establish and maintain key vendor relationships necessary for the manufacture of our products;
- our ability to successfully operate in other non-U.S. jurisdictions in which we may choose to do business, including compliance with applicable regulatory requirements and laws;
- uncertainties associated with obtaining and enforcing patents to protect our products, and our ability to successfully defend ourselves against unforeseen third party infringement claims;
- our estimates regarding our capital requirements; and
- our ability to obtain additional financing and raise capital as necessary to fund operations or pursue business opportunities.

These forward-looking statements were based on information, plans and estimates at the date of this Quarterly Report on Form 10-Q, and we assume no obligation to update any forward-looking statements to reflect changes in underlying assumptions or factors, new information, future events or other changes. In addition, please see the “Risk Factors” section of our Annual Report. These risk factors may be updated from time to time by our future filings under the Securities Exchange Act of 1934 (the “Exchange Act”). You should carefully review all information therein.

### **Overview**

Heron Therapeutics, Inc. is a biotechnology company focused on improving the lives of patients by developing best-in-class medicines that address major unmet medical needs. We are developing novel, patient-focused solutions that apply our innovative science and technologies to already-approved pharmacological agents. Our goal is to build on therapeutics with well-known pharmacology by improving their tolerability and efficacy as well as broadening their potential field of use.

We are currently developing four pharmaceutical products for patients suffering from cancer or pain. SUSTOL is being developed for the prevention of both acute and delayed chemotherapy-induced nausea and vomiting (“CINV”) associated with moderately emetogenic chemotherapy (“MEC”) or highly emetogenic chemotherapy (“HEC”). Our NDA for SUSTOL is pending review with the FDA, and has been assigned a Prescription Drug User Fee Act (“PDUFA”) goal date of January 17, 2016. HTX-019, also being developed for the prevention of CINV, has the potential to become the first polysorbate 80-free, intravenous formulation of aprepitant, a neurokinin-1 (“NK<sub>1</sub>”) receptor antagonist. HTX-011, a long-acting formulation of the local anesthetic bupivacaine in a fixed-dose combination with the anti-inflammatory meloxicam, is being developed for the prevention of post-operative pain. HTX-003, a long-acting formulation of buprenorphine, is being developed for the management of chronic pain and opioid addiction. All of Heron’s product candidates utilize our innovative science and technology platforms, including our proprietary Biochronomer® drug delivery technology, which can deliver therapeutic levels of a wide range of otherwise short-acting pharmacological agents over a period of days to weeks with a single injection.

## **CINV Product Portfolio**

### ***SUSTOL***

SUSTOL, which utilizes Heron's proprietary Biochronomer drug delivery technology, is a novel, long-acting formulation of granisetron for the prevention of CINV. Granisetron, an FDA approved 5-hydroxytryptamine type 3 ("5-HT<sub>3</sub>") receptor antagonist was selected due to its broad use by physicians based on a well-established record of safety and efficacy. SUSTOL has been shown to maintain therapeutic drug levels of granisetron for five days with a single subcutaneous injection. SUSTOL is being developed for the prevention of both acute (day 1 following the administration of chemotherapy agents) and delayed (days 2-5 following the administration of chemotherapy agents) CINV associated with MEC or HEC. While other 5-HT<sub>3</sub> antagonists are approved for the prevention of CINV, SUSTOL is the first agent in the class to demonstrate efficacy in reducing the incidence of delayed CINV in patients receiving HEC, a major unmet medical need, in a randomized Phase 3 study.

According to industry estimates, CINV affects 70-80% of patients undergoing chemotherapy and is one of the most debilitating side effects of such treatments, often attributed as a leading cause of premature discontinuation of cancer treatment. 5-HT<sub>3</sub> receptor antagonists have been shown to be among the most effective and preferred treatments for CINV. However, an unmet medical need exists for patients suffering from CINV during the delayed phase, which occurs on days 2-5 following the administration of chemotherapy agents. Only one 5-HT<sub>3</sub> receptor antagonist is approved for the prevention of delayed CINV associated with MEC, and no 5-HT<sub>3</sub> receptor antagonists are approved for prevention of delayed CINV associated with HEC.

SUSTOL was the subject of a recently completed, multi-center, placebo-controlled, Phase 3 clinical study in patients receiving HEC regimens known as MAGIC. The MAGIC study evaluated the efficacy and safety of SUSTOL as part of a three-drug regimen with the intravenous ("IV") NK<sub>1</sub> receptor antagonist fosaprepitant and the corticosteroid dexamethasone. The MAGIC study, which was conducted entirely in the U.S. using the 2011 ASCO guidelines for classification of emetogenic potential, is the only Phase 3 CINV prophylaxis study in a HEC population performed to date to use the currently recommended, standard-of-care, three-drug regimen as a comparator: a 5-HT<sub>3</sub> receptor antagonist, fosaprepitant, and dexamethasone. The study's primary endpoint was achieved. Specifically, the percentage of patients who achieved a Complete Response in the delayed phase was significantly higher in the SUSTOL arm compared with the comparator arm (p=0.014). Adverse events reported in the study were generally mild to moderate in severity and of short duration, with the most common being injection site reactions. SUSTOL is not currently approved by the FDA or any other regulatory authority. We resubmitted our NDA for SUSTOL to the FDA in July 2015. The FDA has assigned a PDUFA goal date of January 17, 2016.

### ***HTX-019***

HTX-019 is a proprietary intravenous formulation of aprepitant, an NK<sub>1</sub> receptor antagonist for the prevention of CINV. NK<sub>1</sub> receptor antagonists are typically used in combination with 5-HT<sub>3</sub> receptor antagonists. At present, the only injectable NK<sub>1</sub> receptor antagonist approved in the U.S. contains polysorbate 80, a surfactant, which may cause hypersensitivity reactions, infusion site reactions or other adverse reactions in some patients. Our formulation for HTX-019 does not contain polysorbate 80 and may have a lower incidence of certain types of adverse reactions than reported with the commercially available injectable NK<sub>1</sub> receptor antagonist. We intend to file an NDA for HTX-019 using the 505(b)(2) pathway in the second half of 2016.

## **Pain Management Portfolio**

### ***HTX-011***

HTX-011, which utilizes our proprietary Biochronomer drug delivery technology, is a long-acting formulation of the local anesthetic bupivacaine in a fixed-dose combination with the anti-inflammatory meloxicam for the prevention of post-operative pain. By delivering sustained levels of both a potent anesthetic and an anti-inflammatory agent, HTX-011 was designed to provide extended pain relief while potentially reducing the need for systemically administered pain medications such as opioids, which carry the risk of harmful side effects, abuse and addiction.

In September 2015, we reported positive, top-line results from a randomized, placebo-controlled, double-blind, Phase 2 clinical trial of HTX-011 in patients undergoing bunionectomy. The primary and all key secondary endpoints in this study were achieved with a high degree of statistical significance. The primary endpoint, the difference as compared to placebo in pain intensity as measured by the Summed Pain Intensity (SPI) score in the first 24 hours post-surgery (SPI 0-24), was achieved ( $p < 0.0001$ ). HTX-011 also produced significantly reduced pain intensity scores after the first 48 hours and 72 hours post-surgery. In addition, the time to first use of opioid rescue medication was significantly increased in the HTX-011 group compared to the placebo group ( $p < 0.0001$ ), and there were significantly more patients receiving no opioid rescue medication in the HTX-011 group compared to the placebo group ( $p < 0.0001$ ). HTX-011 was generally well-tolerated in the study. The most frequent adverse events reported were headache, nausea, vomiting, erythema, cellulitis, dizziness, and hypoxia, none of which were considered drug-related.

HTX-011 is currently being evaluated in a Phase 2 clinical trial for the prevention of post-operative pain in patients undergoing inguinal hernia repair. Based on the positive Phase 2 results of HTX-011 in patients undergoing bunionectomy, we plan to expand target enrollment for this ongoing inguinal hernia repair study. The increased target enrollment to approximately 100 patients now provides 90% power to detect a statistical improvement ( $p < 0.05$ ) in the study. We expect to report results from this study in the first half of 2016.

We plan to further develop HTX-011 within a broad-based development program targeting the wide range of surgical procedures with significant potential for post-operative pain. In the fourth quarter of 2015 and the first quarter of 2016, we plan to initiate additional Phase 2 studies of HTX-011 to evaluate the product candidate in various models of post-operative pain, including potentially in abdominoplasty, orthopedic procedures, nerve block and further studies in inguinal hernia repair, and bunionectomy.

### ***HTX-003***

HTX-003, which utilizes our proprietary Biochronomer drug delivery technology, is a long-acting formulation of buprenorphine for the management of chronic pain and opioid addiction. HTX-003 is designed to maintain therapeutic drug levels of buprenorphine for 30 days following a single subcutaneous injection with a low potential for patient abuse.

## **Our Technologies**

All of Heron's product candidates utilize our innovative science and technology platforms, including our proprietary Biochronomer® drug delivery technology, which can deliver therapeutic levels of a wide range of otherwise short-acting pharmacological agents over a period of days to weeks with a single subcutaneous injection. Our Biochronomer technology consists of bioerodible polymers that have been the subject of comprehensive animal and human toxicology studies that have established them to be safe and well tolerated. When injected into subcutaneous tissue, the polymers undergo controlled hydrolysis, resulting in a controlled, sustained release of the pharmacological agent encapsulated within the Biochronomer-based composition. Furthermore, more than one pharmacological agent can be incorporated into our Biochronomer polymer such that multimodal therapy can be delivered with a single injection.

## Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. 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 disclosure of contingent assets and liabilities. We evaluate our estimates on an ongoing basis, including those related to clinical trial accruals, income taxes and stock-based compensation. We base our estimates on historical experience and on assumptions that we believe to be reasonable under the circumstances, the results of which form the basis of making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ materially from these estimates under different assumptions or conditions.

There have been no material changes to the critical accounting policies as previously disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2014 filed with the SEC on March 13, 2015.

## Recent Accounting Pronouncements

See Note 2 of Notes to Condensed Consolidated Financial Statements included in Item 1 of this Quarterly Report on Form 10-Q.

## Results of Operations for the Three and Nine Months Ended September 30, 2015 and 2014

### Research and Development Expense

Research and development expense consisted of the following (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2015	2014	2015	2014
SUSTOL related costs	\$ 4,708	\$ 9,461	\$20,358	\$26,531
HTX-011 related costs	3,843	509	8,041	1,254
HTX-019 related costs	721	—	2,523	—
New product development related costs	388	996	1,451	1,928
Personnel and related costs	2,518	2,175	6,984	6,099
Stock-based compensation expense	927	715	2,652	2,423
Facility related costs	499	460	1,455	1,540
Other	637	415	1,456	863
Total research and development expense	<u>\$14,241</u>	<u>\$14,731</u>	<u>\$44,920</u>	<u>\$40,638</u>

For the three months ended September 30, 2015, research and development expense decreased to \$14.2 million from \$14.7 million for the same period in 2014 primarily due to the completion of our Phase 3 clinical study in May 2015. This decrease was partially offset by an increase of \$3.3 million in clinical and manufacturing costs associated with our Phase 1 and Phase 2 clinical studies for HTX-011, an increase of \$0.7 million in manufacturing and preclinical costs associated with our continued development of HTX-019, an increase in salaries and related expense of \$0.3 million for personnel to support our development efforts, and an increase in stock-based compensation expense of approximately \$0.2 million.

For the nine months ended September 30, 2015, research and development expense increased to \$44.9 million from \$40.6 million for the same period in 2014. This increase was primarily a result of an increase of \$6.8 million in research and development expense for clinical and manufacturing costs associated with our Phase 1 and Phase 2 clinical studies for HTX-011 and an increase of \$2.5 million in costs associated with the development of HTX-019. The increase was also due to an increase of \$0.9 million

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in salaries and related expense for personnel and increased stock-based compensation expense of \$0.2 million. These increases were partially offset by a decrease in SUSTOL related costs, as our Phase 3 clinical study was completed in May 2015.

### ***General and Administrative Expense***

For the three and nine months ended September 30, 2015, general and administrative expense increased to \$8.3 million and \$20.9 million, respectively, from \$4.2 million and \$14.4 million, respectively, for the same periods in 2014. The increase in general and administrative expense was primarily due to an increase in activities in preparation for the commercial launch of SUSTOL, as well as an increase in stock-based compensation expense. For the three and nine months ended September 30, 2015, general and administrative expense consisted primarily of salaries and related expenses, professional fees, pre-commercialization costs and insurance expense.

### ***Other Expense, net***

For the three and nine months ended September 30, 2015, other expense, net, was \$0.2 million and \$0.5 million, respectively, compared to \$0.2 million and \$0.7 million, respectively, for the same periods in 2014. The decrease for the nine months was a result of a gain on sale of property and equipment of approximately \$0.1 million recognized in the second quarter of 2015, as well as interest income of approximately \$0.1 million earned on cash equivalents during the nine months ended September 30, 2015. For the three and nine months ended September 30, 2015, other expense, net, primarily consisted of interest expense and amortization of debt discount related to our outstanding Senior Secured Convertible Notes (“Convertible Notes”), the gain on sale of property and equipment discussed above and interest income.

### **Capital Resources and Liquidity**

As of September 30, 2015, we had approximately \$153.0 million in cash and cash equivalents, compared to \$72.7 million in cash and cash equivalents as of December 31, 2014. The net increase in cash and cash equivalents of approximately \$80.3 million was primarily due to approximately \$128.2 million received from the common stock offering completed in June 2015 and \$7.9 million from stock option exercises, partially offset by the use of cash to fund our continued development of SUSTOL and our other product candidates, personnel costs and for other general corporate purposes (approximately \$55.8 million).

Historically, we have financed our operations, including technology and product research and development, primarily through sales of our common stock and other securities.

In November 2013, we completed a public offering of common stock whereby we received approximately \$57.8 million in proceeds, net of issuance costs.

In June 2014, we completed a public offering of common stock and pre-funded warrants whereby we received approximately \$58.9 million in proceeds, net of issuance costs.

In June 2015, we completed a public offering of common stock whereby we received approximately \$128.2 million in proceeds, net of issuance costs.

We believe that our cash and current working capital are sufficient to fund operations through 2016 based on our current operating plans, including building a commercial infrastructure to support a potential commercial launch of SUSTOL and continuing to pursue our current clinical development programs. In the event we were to pursue clinical product development in other areas, potentially acquire other strategic assets, or if SUSTOL is not approved or the degree of commercial success of SUSTOL is less than expected, we would need to raise additional capital. If we are unable to obtain sufficient financing on acceptable terms or otherwise, we may be required to reduce or defer our activities. Our capital requirements going forward will depend on numerous factors, including but not limited to: the scope, rate of progress, results and costs of preclinical testing and clinical trials; an approval decision by

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the FDA with respect to SUSTOL; the timing of and costs associated with the commercial launch of SUSTOL, if approved; the degree of commercial success of SUSTOL; the number and characteristics of product development programs we pursue and the pace of each program, including the timing of clinical trials; the time, cost and outcome involved in seeking other regulatory approvals; scientific progress in our research and development programs; the magnitude and scope of our research and development programs; our ability to establish and maintain strategic collaborations or partnerships for research, development, clinical testing, manufacturing and marketing of our product candidates; the cost and timing of establishing sales, manufacturing, marketing and distribution capabilities if we commercialize products independently; the cost of establishing clinical and commercial supplies of our product candidates and any products that we may develop; and general market conditions.

We may not be able to raise sufficient additional capital when we need it on favorable terms, or at all. The sale of additional equity in the future may be dilutive to our stockholders. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or to obtain funds by entering into financing, supply or collaboration agreements on unattractive terms.

We have no current means of generating material cash flows from operations. There can be no assurance that our product development efforts related to any of our product candidates will be successfully completed, that required regulatory approvals will be obtained, or that any products, if introduced, will be successfully marketed or achieve commercial acceptance. Until we can generate significant continuing revenues, we expect to satisfy our future cash needs through public or private equity offerings, debt financings and corporate collaboration and licensing arrangements. We cannot be certain that additional funding will be available to us on acceptable terms, or at all. Our ability to obtain new financing may be constrained by our failure to achieve significant business objectives, covenants applicable to the Convertible Notes, and numerous other factors.

### Contractual Obligations

Below is a summary of fixed payments related to certain contractual obligations (in thousands), consisting solely of our operating lease obligations. This table excludes amounts already recorded on our balance sheet as current liabilities as of September 30, 2015.

	Payment due by period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating lease obligations	<u>\$1,352</u>	<u>\$ 1,141</u>	<u>\$ 211</u>	<u>\$ —</u>	<u>\$ —</u>

The holders of the Convertible Notes may require prepayment of the Convertible Notes at any time at each holder's option (see Note 4 of Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q). As of September 30, 2015, \$5,586,000 aggregate principal amount of Convertible Notes were outstanding.

We also enter into agreements from time to time with clinical sites and clinical research organizations for the conduct of our clinical trials. We make payments to these sites and organizations based in part upon the number of eligible patients enrolled and the length of their participation in the clinical trials. Under certain of these agreements, we may be subject to penalties in the event that we prematurely terminate these agreements. At this time, due to the variability associated with clinical site and contract research organization agreements, we are unable to estimate with certainty the future costs we will incur. We intend to use our current financial resources to fund our obligations under these commitments.

### Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements that have, or are reasonably likely to have, a current or future effect on our financial condition, expenses, results of operations, liquidity, capital expenditures or capital resources.

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

The primary objective of our investment activities is to preserve our capital to fund operations. Our exposure to market risk for changes in interest rates relates primarily to the increase or decrease in the amount of interest income we can earn. Our risk associated with fluctuating interest income is limited to our investments in interest rate-sensitive financial instruments. As of September 30, 2015, our cash equivalents consisted of investments in money market funds. Our debt obligations on our Convertible Notes carry a fixed interest rate and, as a result, we are not exposed to interest rate risk on our convertible debt. We seek to ensure the safety and preservation of our invested principal by limiting default risk, market risk and reinvestment risk. We do not have any material foreign currency obligations or other derivative financial instruments.

**ITEM 4. CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports, filed under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable and not absolute assurance of achieving the desired control objectives. In reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, a control may become inadequate because of changes in conditions or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

As required by the SEC Rule 13a-15(b), we carried out an evaluation under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this report. Based on the foregoing, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There has been no change in our internal control over financial reporting during the third quarter of 2015 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

None.

**ITEM 1A. RISK FACTORS**

You should carefully consider the following information about risks and uncertainties that may affect us or our business, together with the other information appearing elsewhere in this Quarterly Report on Form 10-Q. If any of the following events, described as risks, actually occur, our business, financial condition, results of operations and future growth prospects would likely be materially and adversely affected. In these circumstances, the market price of our common stock could decline, and you may lose all or part of your investment in our securities. An investment in our securities is speculative and involves a high degree of risk. You should not invest in our securities if you cannot bear the economic risk of your investment for an indefinite period of time and cannot afford to lose your entire investment.

## Risks Related to our Business

***We are substantially dependent upon the approval and success of our investigational product APF530, also referred to as SUSTOL® (granisetron) Injection, extended release.***

The success of our business is dependent upon our ability to develop and commercialize our most advanced product candidate, APF530, which we intend to market as SUSTOL, subject to regulatory approval. We have invested a significant portion of our time and financial resources in the development of SUSTOL, which is being developed for the prevention of both acute and delayed chemotherapy-induced nausea and vomiting (“CINV”) associated with moderately emetogenic chemotherapy (“MEC”) or highly emetogenic chemotherapy (“HEC”). In May 2015, we reported positive top-line results from our Phase 3 MAGIC study, which evaluated the efficacy and safety of SUSTOL for the prevention of delayed CINV associated with HEC regimens. SUSTOL, when administered as part of a three-drug regimen with NK<sub>1</sub> receptor antagonist fosaprepitant and corticosteroid dexamethasone, demonstrated a statistically significant benefit in the prevention of delayed CINV compared to the currently recommended, standard-of-care, three-drug regimen. Results from the MAGIC study were included in our New Drug Application (“NDA”) for SUSTOL, which we resubmitted to the U.S. Food and Drug Administration (“FDA”) on July 17, 2015. The FDA has assigned a Prescription Drug User Fee Act goal date of January 17, 2016.

Our ability to generate revenue in the next one to two years and our future success, in large part, depends on the approval and successful commercialization of SUSTOL. We will not be able to commercialize SUSTOL until we obtain regulatory approval in the U.S. In September 2012, we resubmitted the NDA seeking approval for SUSTOL with the FDA. In March 2013, we received a Complete Response Letter (“CRL”) from the FDA pertaining to our resubmission of our NDA for SUSTOL. In the CRL, the FDA identified several remaining issues that need to be addressed prior to approval of our NDA for SUSTOL including issues relating to: manufacturing of SUSTOL, the administration of SUSTOL and our analysis of efficacy data for SUSTOL under more recent guidelines classifying chemotherapy regimens. We believe we have substantially addressed the issues, although there can be no assurance that the FDA will agree. The FDA’s review of our resubmission may not produce positive decisions as to whether:

- SUSTOL is safe and effective in its proposed use(s) and whether its benefits outweigh the risks;
- the proposed labeling for SUSTOL includes our desired product indications covering acute and delayed CINV, for use in both HEC and MEC regimens; and
- the methods used in manufacturing SUSTOL and the controls used to maintain its quality are adequate to preserve chain of identity, strength, quality and purity.

Delays in obtaining regulatory approval for SUSTOL, or the issuance of another CRL by the FDA, would, among other consequences, delay the launch of SUSTOL and impact our ability to raise additional capital, which would have a material adverse effect on our business and financial condition.

***If SUSTOL is approved, but does not attain market acceptance by healthcare professionals and patients, our business and results of operations will suffer.***

Even if SUSTOL receives regulatory approval for commercial sale by the FDA, the revenue that we may receive from the sale of SUSTOL may be less than expected and will depend on many factors that are outside of our control. Factors that may affect revenue from SUSTOL, if approved, include:

- the scope of our approved product label;
- the perception of physicians and other members of the health care community of the safety and efficacy and cost-competitiveness relative to that of competing products;

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- acceptance by institutional formulary committees;
- patient and physician satisfaction with the product;
- our ability to have SUSTOL manufactured at a commercial production level successfully and on a timely basis;
- the cost and availability of raw materials;
- the size of the potential market for the product;
- our ability to obtain adequate reimbursement from government and third-party payors;
- unfavorable publicity concerning the product or similar products;
- the introduction, availability and acceptance of competing treatments;
- adverse event information relating to the product;
- product liability litigation alleging injuries relating to the product;
- product labeling or product insert language required by the FDA or regulatory authorities in other countries;
- regulatory developments related to the manufacture or continued use of the product;
- any post-approval study requirements and the results thereof;
- the extent and effectiveness of sales and marketing and distribution support for the product; and
- our competitors' activities, including decisions as to the timing of competing product launches, pricing and discounting.

Our revenue will be adversely affected if, due to these or other factors, our commercialization of SUSTOL does not achieve the acceptance and demand to sustain product revenue growth. If we are unable to successfully commercialize SUSTOL, we may not be able to earn sufficient revenues to continue our business.

### ***We have yet to receive regulatory approval for a product utilizing our proprietary drug delivery technology.***

Our proprietary Biochronomer® drug delivery technology has not yet been proven through commercial approval, and successful launch, of a product utilizing this technology. We may not be able to substantiate the commercial viability of our drug delivery technology for a variety of reasons, including:

- the failure to receive regulatory approval of a drug utilizing the delivery technology;
- the inability to show consistent results in the quality or quantity of product manufactured utilizing this delivery technology; and
- the inability to manufacture drugs using this delivery platform at a cost effective price.

In the event we are unable to demonstrate commercial success and viability of products utilizing this delivery technology, our prospects for success and growth would be significantly harmed.

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***We rely on third parties to do our preclinical testing and conduct our clinical trials, and their failure to perform their obligations in a timely and competent manner may delay development and commercialization of our product candidates and our business could be substantially harmed.***

We have used contract research organizations (“CROs”) to date to oversee our clinical trials for SUSTOL, HTX-011 and our other product candidates and we expect to use the same or similar organizations for our future clinical trials and pipeline programs. There can be no assurance that these organizations will perform their obligations at all times in a competent or timely fashion, and we must rigorously oversee their activities in order to place confidence in their conduct of these trials on our behalf. If the organizations fail to commit resources to our product candidates, our clinical programs related to our product candidates could be delayed, terminated, or unsuccessful and we may not be able to obtain regulatory approval for or successfully commercialize them. Different cultural and operational issues in foreign countries could cause delays or unexpected problems with patient enrollment or with the data obtained from those locations. If we experience significant delays in the progress of our clinical trials or experience doubts with respect to the quality of data derived from our clinical trials, we could face significant delays in gaining necessary product approvals.

We also rely on third parties to assist in conducting our preclinical studies in accordance with Good Laboratory Practices, and the Animal Welfare Act requirements. We, our CROs, and other third parties are required to comply with current good clinical practices (“GCP”), which are regulations and guidelines enforced by the FDA, the Competent Authorities of the Member States of the European Economic Area and comparable foreign regulatory authorities. Regulatory authorities enforce GCP through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of our CROs fail to comply with applicable GCP, the clinical data generated in the clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our ongoing or future clinical trials comply with GCP requirements. In addition, any of our clinical trials must be conducted with product produced under GCP requirements. Failure to comply with these regulations may require us to repeat preclinical and clinical trials, which would delay the regulatory approval process.

Our CROs and other third parties we may engage to support our development programs, are not our employees, and except for remedies available to us under our agreements with such CROs, we cannot control whether or not they devote sufficient time and resources to our on-going clinical, nonclinical and preclinical programs. Outsourcing these functions involves risk that third parties may not perform to our standards, may not produce results in a timely manner, or may fail to perform at all. If CROs do not successfully carry out their contractual duties or obligations or meet expected deadlines or if the quality or accuracy of the preclinical results or clinical data they obtain is compromised due to the failure to adhere to test requirements, our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated and we may not be able to obtain regulatory approval for or successfully commercialize our product candidates. As a result, our results of operations and the commercial prospects for our product candidates would be harmed, our costs could increase and our ability to generate revenues could be delayed.

***If our suppliers and contract manufacturers fail to manufacture SUSTOL in a timely manner or fail to comply with stringent regulatory requirements, we will face delays in our ability to obtain regulatory approval for SUSTOL.***

We are dependent on single third-party manufacturers for the manufacture of our product candidates as well as on third parties for our supply chain, and if we experience problems with any of these third parties, the approval or manufacturing of SUSTOL or any of our product candidates could be delayed, which could harm our results of operations. To date, we have relied on third parties to manufacture and perform important pre-commercialization manufacturing activities for SUSTOL. As part of the process for obtaining regulatory approval, we must demonstrate that the facilities, equipment and processes used to manufacture SUSTOL are capable of consistently producing a product that meets all

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applicable quality criteria, and that is comparable to the product that was used in our clinical trials. We must also provide the FDA with information regarding the validation of the manufacturing facilities, equipment and processes of our third-party suppliers and manufacturers, and data supporting the stability of SUSTOL. If our third-party suppliers and manufacturers are not in compliance with current Good Manufacturing Practice (“cGMP”) requirements, the approval by regulatory authorities for us to begin marketing a product may be delayed, existing product batches may be compromised, and we may experience delays in the availability of SUSTOL for commercial distribution.

For example, our most recent CRL from the FDA regarding our NDA resubmission for SUSTOL stated that the NDA could not be approved due to, among other issues, deficiencies observed during an inspection of the facilities used by our third-party suppliers and manufacturers to produce SUSTOL. If the FDA is not satisfied with our response and corrective actions taken by these third parties, we may be required to complete additional manufacturing development activities or provide other information to the FDA, which could cause substantial delays in obtaining regulatory approval for SUSTOL, increase our costs and have a material adverse effect on our business and financial condition.

***If our suppliers and contract manufacturers are unable to manufacture in commercially viable quantities, we could face delays in our ability to commercialize SUSTOL, and our costs will increase.***

To date, SUSTOL has been manufactured primarily in small quantities for clinical trials. If in the future, SUSTOL or any of our product candidates are approved for commercial sale, we will need to be able to consistently manufacture our products in larger quantities, and be able to show equivalency for the FDA in the manufacture of product at commercial scale as compared to development batch size. The commercial success of our products will be dependent upon the ability of our contract manufacturers to produce a product in commercial quantities at competitive costs of manufacture in a process that is validated by the FDA. If SUSTOL receives regulatory approval, we plan to scale-up manufacturing for SUSTOL in order to realize important economies of scale. These scale-up activities take time to implement, require additional capital investment, process development and validation studies, and regulatory approval. We cannot guarantee that we will be successful in achieving competitive manufacturing costs through such scale-up activities.

***We expect to depend on contract manufacturers for manufacturing any future products we develop, and if our contract manufacturers do not perform as expected, our business could suffer.***

We do not own or operate manufacturing facilities for the production of clinical or commercial quantities of any product. Our ability to progress and commercialize any products we may develop will depend in part on our ability to manufacture, or arrange for other parties to manufacture, our products at a competitive cost, in accordance with regulatory requirements, and in sufficient quantities for clinical testing and eventual commercialization. We currently rely on a small number of third-party manufacturers to produce compounds used in our product development activities and expect to continue to do so to meet the preclinical and clinical requirements of our potential products and for all of our commercial needs. Certain of our contract manufacturers are at present our sole resource to manufacture certain key components of SUSTOL, and for products in preclinical testing in our research and development program. Although we entered into a long-term commercial manufacturing agreement with Lifecore Biomedical, LLC (“Lifecore”) in May 2015 for the manufacture of SUSTOL, we may not be able to successfully negotiate long-term agreements with any additional third parties. Further, we may have difficulties with these relationships, including with Lifecore, and we may not be able to find replacement contract manufacturers on satisfactory terms or on a timely basis.

Further, we, along with our contract manufacturers, are required to comply with FDA requirements related to product testing, quality assurance, manufacturing and documentation. Our contract manufacturers may not be able to comply with the applicable FDA regulatory requirements. They may be required to pass an FDA preapproval inspection for conformity with cGMPs before we can obtain approval to manufacture our products and will be subject to ongoing, periodic, unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with cGMP, and other applicable government regulations and corresponding foreign standards. If we and our contract

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manufacturers fail to achieve and maintain high manufacturing standards in compliance with cGMP regulations, or fail to scale up manufacturing processes in a timely manner, we may experience manufacturing errors resulting in defective products that could be harmful to patients, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery, delay or prevention of filing or approval of marketing applications for our products, cost overruns or other problems that could seriously harm our business. Not complying with FDA requirements could result in an enforcement action such as product recall or prevent commercialization of our product candidates and delay our business development activities. In addition, such failure could be the basis for the FDA to issue a warning or untitled letter or take other regulatory or legal action, including recall or seizure, total or partial suspension of production, suspension of ongoing clinical trials, refusal to approve pending applications or supplemental applications, and potentially civil and/or criminal penalties depending on the matter.

SUSTOL, HTX-011, HTX-019 or any of our other product candidates may be in competition with other products for access to the facilities of third parties. Consequently, SUSTOL, HTX-011, HTX-019 or any of our other product candidates may be subject to manufacturing delays if our contractors give other companies' products greater priority than our products. For this and other reasons, our third-party contract manufacturers may not be able to manufacture SUSTOL, HTX-011, HTX-019 or any of our other product candidates in a cost-effective or timely manner. If not manufactured in a timely manner, the clinical development of any of our product candidates or their submission for regulatory approval could be delayed, and our ability to deliver products to market on a timely basis could be impaired.

***Certain of the components used in the manufacture of SUSTOL, HTX-011, HTX-019 and our other product candidates are sourced from a single vendor.***

Some of the critical materials and components used in manufacturing SUSTOL, HTX-011, HTX-019 and our other product candidates are sourced from single suppliers. An interruption in the supply of a key material could significantly delay commercialization of SUSTOL, if approved, our research and development process or increase our expenses for commercialization or development products. Specialized materials must often be manufactured for the first time for use in drug delivery technologies, or materials may be used in the technologies in a manner different from their customary commercial uses. The quality of materials can be critical to the performance of a drug delivery technology, so a reliable source of a consistent supply of materials is important. Materials or components needed for our drug delivery technologies may be difficult to obtain on commercially reasonable terms, particularly when relatively small quantities are required or if the materials traditionally have not been used in pharmaceutical products.

***If we are unable to establish sales and marketing capabilities or enter into agreements with third parties to sell and market any products we may develop, we may be unable to generate product revenue.***

We do not currently have an internal sales organization for the sale, marketing and distribution of SUSTOL, or for any other products we may develop. In order to successfully commercialize SUSTOL or any other product, we must build our sales, marketing, distribution and other non-technical capabilities or make arrangements with third parties to perform these services. The establishment and development of a sales organization to market SUSTOL and our other product candidates will be expensive and time consuming and could delay product launch, and we cannot be certain that we will be able to successfully develop this capacity. If we are unable to establish adequate sales, marketing and distribution capabilities, whether independently or with third parties, we may not be able to generate product revenue and may not become profitable.

***If we are unable to recruit and retain skilled employees, we may not be able to achieve our objectives.***

We depend on a small number of key management and technical personnel. Retaining our current employees and recruiting qualified scientific personnel to perform future research and development and commercialization work will be critical to our success. Competition is always present for

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highly skilled and experienced personnel, and an inability to recruit or retain sufficient skilled personnel could result in delays in our business growth and development and adversely impact our research and development or commercial activities. If we lose key members of our senior management team, we may not be able to find suitable replacements and our business may be harmed as a result.

***Our business strategy may include acquisitions of other businesses, products or product licenses. We may not be able to successfully manage such activities.***

We may engage in strategic transactions that could cause us to incur contingent liabilities, commitments, or significant expense. In the course of pursuing strategic opportunities, we may evaluate potential acquisitions or investments in strategic technologies, products, or businesses. Future acquisitions or investments could subject us to a number of risks, including, but not limited to:

- our inability to appropriately evaluate and take into consideration the potential uncertainties associated with the other party to such a transaction, including but not limited to the prospects of that party and their existing products or product candidates and regulatory approvals;
- difficulties associated with realizing the perceived potential for commercial success with respect to any acquired technology, product, or business;
- our ability to effectively integrate any new technology, product, and/or business including personnel, intellectual property or business relationships into our company;
- our inability to generate revenues from acquired technology and/or products sufficient to meet our objectives in undertaking the acquisition or even to offset the associated acquisition and maintenance costs and/or assumption of liabilities; and
- the distraction of our management from our existing product development programs and initiatives in pursuing an acquisition.

In connection with an acquisition, we must estimate the value of the transaction by making certain assumptions that may prove to be incorrect, which could cause us to fail to realize the anticipated benefits of a transaction. Any strategic transaction we may pursue may not result in the benefits we initially anticipate, and/or result in costs that end up outweighing the benefits, and may adversely impact our financial condition and be detrimental to our future business prospects.

***Our business strategy may include the entry into collaborative agreements. We may not be able to enter into additional collaborative agreements or may not be able to negotiate commercially acceptable terms for these agreements.***

Our current business strategy may include the entry into collaborative agreements for the development and commercialization of our products and product candidates. The negotiation and consummation of these types of agreements typically involve simultaneous discussions with multiple potential collaborators and require significant time and resources from our officers, business development and research and development staff. In addition, in attracting the attention of pharmaceutical and biotechnology company collaborators, we compete with numerous other third parties with product opportunities as well as the collaborators' own internal product opportunities. We may not be able to consummate collaborative agreements, or we may not be able to negotiate commercially acceptable terms for these agreements.

If we do enter into such arrangements, we could be dependent upon the subsequent success of these other parties in performing their respective responsibilities and the cooperation of our partners. Our collaborators may not cooperate with us or perform their obligations under our agreements with them. We cannot control the amount and timing of our collaborators' resources that will be devoted to our research activities related to our collaborative agreements with them. Our collaborators may choose to pursue existing or alternative technologies in preference to those being developed in collaboration with us.

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Under agreements with any collaborators we may work with in the future, we may rely significantly on them, among other activities, to:

- fund research and development activities with us;
- pay us fees upon the achievement of milestones; and
- market for or with us any commercial products that result from our collaborations.

If we do not consummate collaborative agreements, we may consume money more rapidly on our product development efforts, continue to defer certain development activities or forego the exploitation of certain geographic territories, any of which could have a material adverse effect on our business prospects. Further, we may not be successful in overseeing any such collaborative arrangements. If we fail to establish and maintain necessary collaborative relationships, our business prospects could suffer.

### **Risks Related to our Financial Condition**

***We have a history of losses, we expect to generate losses in the near future, and we may never achieve or maintain profitability.***

We have incurred significant operating losses and negative cash flows from operations and had an accumulated deficit of \$381.6 million through September 30, 2015. Even if SUSTOL is approved, we expect to continue to generate substantial losses over at least the next several years as we:

- build a sales and marketing organization and commence commercialization of SUSTOL, if approved;
- expand product development activities with respect to our product candidates;
- conduct preclinical development and clinical trials for our product candidates;
- pursue regulatory approvals for any product candidates or others we may develop in the future; and
- engage in commercialization efforts with respect to any future approved product candidates.

To achieve and sustain profitability, we must, alone or in cooperation with others, successfully develop, obtain regulatory approval for, manufacture, market and sell our products. If SUSTOL is approved for commercialization, we must successfully launch and commercialize the product. If SUSTOL is not approved, we will likely experience significant delays before we begin to recognize meaningful levels of revenue, if ever. We will incur substantial expenses in our efforts to develop and commercialize our products and we may never generate sufficient revenue to become profitable or to sustain profitability.

***Additional capital may be needed in the future to enable us to implement our business plan, and we may be unable to raise capital, which would force us to limit or cease our operations and related product development programs.***

In June 2015 we completed an underwritten public offering of 5,520,000 shares of our common stock for net proceeds of approximately \$128.2 million and as of September 30, 2015, the Company had cash and cash equivalents in the amount of \$153.0 million. We believe that our current working capital is sufficient to fund operations, including pursuing regulatory approval for SUSTOL in the U.S. and commercial launch, if approved, making significant investments to support necessary business growth to support commercialization, and completing Phase 1, 2 and 3 human clinical studies and related preclinical activities expected to commence in 2015 and 2016 relative to our HTX-011 and HTX-019 product candidates. In the event we were to pursue clinical product development in other areas, potentially acquire other strategic assets, or if SUSTOL is not approved or the degree of commercial

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success of SUSTOL is less than expected, we would need to raise additional capital. If we are unable to obtain sufficient financing on acceptable terms or otherwise, we may be required to reduce or defer our activities. Our capital requirements going forward will depend on numerous factors, including but not limited to: the scope, rate of progress, results and costs of preclinical testing and clinical trials; an approval decision by the FDA with respect to SUSTOL; the timing of and costs associated with the commercial launch of SUSTOL, if approved; the degree of commercial success of SUSTOL; the number and characteristics of product development programs we pursue and the pace of each program, including the timing of clinical trials; the time, cost and outcome involved in seeking other regulatory approvals; scientific progress in our research and development programs; the magnitude and scope of our research and development programs; our ability to establish and maintain strategic collaborations or partnerships for research, development, clinical testing, manufacturing and marketing of our product candidates; the cost and timing of establishing sales, marketing and distribution capabilities if we commercialize products independently; the cost of establishing clinical and commercial supplies of our product candidates and any products that we may develop; and general market conditions.

***We may not be able to raise additional capital when needed or desired, or we may need to raise additional capital on unfavorable terms, which could result in dilution to existing stockholders.***

We may not be able to raise sufficient additional capital when we need it on favorable terms, or at all. If we are unable to obtain adequate funds, we may be required to curtail significantly or cease operations.

The timing and degree of any future capital requirements will depend on many factors, including:

- the status of regulatory approval of any pending applications with the FDA, as the case may be, and the costs involved with pursuing regulatory approvals;
- the number and characteristics of product development programs we pursue and the pace of each program;
- the scope, rate of progress, results and costs of preclinical testing and clinical trials;
- our ability to establish and maintain strategic collaborations or partnerships for research, development, clinical testing, manufacturing and marketing of our product candidates;
- the cost and timing of establishing sales and marketing capabilities if we commercialize any products independently; and
- the cost of establishing supply arrangements for clinical and commercial development of our product candidates and any products that we may develop.

If we issue additional equity securities or securities convertible into equity securities to raise funds, our stockholders will suffer dilution of their investment, and such issuance may adversely affect the market price of our common stock. Any debt financing we enter into may involve covenants that restrict our operations. These restrictive covenants may include, among other things, limitations on borrowing and specific restrictions on the use of our assets, as well as prohibitions on our ability to create liens, pay dividends, redeem capital stock or make investments. Our Senior Secured Convertible Notes (“Convertible Notes”) also include restrictions on our use of cash and financial activities. In the event that additional funds are obtained through arrangements with collaborative partners, these arrangements may require us to relinquish rights to some of our technologies, product candidates or products on terms that are not favorable to us or require us to enter into a collaboration arrangement that we would otherwise seek to develop and commercialize ourselves. If adequate funds are not available, we may be required to delay, reduce the scope of, or eliminate one or more of our product development programs and reduce personnel-related and other costs, which would have a material adverse effect on our business.

***Provisions contained in our Convertible Notes limit our ability to incur additional indebtedness.***

The Convertible Notes are secured by substantially all of our assets, including our cash accounts, and the terms of the Convertible Notes require us to seek approval from the holders of the Convertible Notes before taking certain actions, including incurring additional indebtedness or modifying the terms of existing indebtedness. The Convertible Notes also include events of default which include any default of our financial obligations under certain material contracts we may enter into. In addition, potential third party lenders may be unwilling to subordinate new debt to the Convertible Notes. As a result, we may not be able to raise funds through the issuance of debt in the future, which could impair our ability to finance our business obligations or pursue business expansion initiatives.

**Risks Related to our Industry**

***Clinical drug development involves a lengthy and expensive process with an uncertain outcome, and results of earlier studies and trials may not be predictive of future trial results.***

Conducting clinical trials is a lengthy, time-consuming and expensive process. For example, we have incurred significant expenses in developing SUSTOL and, even if approved, it may not result in a commercially viable product. Before obtaining regulatory approvals for the commercial sale of any products, we, or our potential partners, must demonstrate through preclinical testing and clinical trials that our product candidates are safe and effective for their intended uses in humans. We have incurred and will continue to incur substantial expense and devote a significant amount of time to preclinical testing and clinical trials.

The outcome of clinical testing is inherently uncertain. Failure can occur at any time during the clinical trial process. The results of preclinical studies and early clinical trials of product candidates may not be predictive of the results of later stage clinical trials. Our business, results of operations and financial condition may be materially adversely affected by any delays in, or termination of, our clinical trials. Factors impacting our ability to generate commercially viable products through the conduct of clinical trials include:

- insufficient funds to conduct clinical trials;
- the inability to find partners if necessary, for support including research, development, manufacturing or clinical needs;
- the failure of tests or studies necessary in order to submit an NDA, such as bioequivalence studies in support of a 505(b)(2) regulatory filing, or stability studies, to meet the required standards;
- the failure of clinical trials to demonstrate the safety and efficacy of our product candidates to the extent necessary to obtain regulatory approvals;
- the failure by us or third-party investigators, CROs, or other third parties involved in the research to adhere to regulatory requirements applicable to the conduct of clinical trials;
- the failure of preclinical testing and early clinical trials to predict results of later clinical trials;
- any delay in completion of clinical trials, resulting in increased costs; and
- the inability to obtain regulatory approval of our product candidates following completion of clinical trials, or delays in obtaining such approvals.

There can be no assurance that if our clinical trials are successfully initiated and completed we will be able to obtain approval by the FDA in the U.S. or similar regulatory authorities elsewhere in the world in a timely manner, if at all. If we fail to successfully develop and commercialize one or more of our product candidates, we may be unable to generate sufficient revenues to attain profitability and our reputation in the industry and in the investment community would likely be damaged, each of which would cause our stock price to decrease.

***Delays in clinical testing could increase our costs and delay our ability to obtain regulatory approval and commercialize our product candidates.***

Before we can receive regulatory approval for the commercial sale of our potential products, the FDA and comparable authorities in non-U.S. jurisdictions require extensive preclinical safety testing and clinical trials to demonstrate their safety and efficacy. Significant delays in preclinical and clinical testing could materially impact our product development costs and delay regulatory approval of our product candidates. Completing clinical trials in a timely manner depends on, among other factors:

- delay or failure in reaching agreement with the FDA or comparable foreign regulatory authority on a trial design that we are able to execute;
- delay or failure in obtaining authorization to commence a trial or inability to comply with conditions imposed by a regulatory authority regarding the scope or design of a clinical study;
- delay or failure in reaching agreement on acceptable terms with prospective CROs, and clinical trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- delay or failure in obtaining institutional review board (“IRB”) approval or the approval of other reviewing entities, including comparable foreign entities, to conduct a clinical trial at each site;
- withdrawal of clinical trial sites from our clinical trials as a result of changing standards of care or the ineligibility of a site to participate in our clinical trials;
- delay or failure in obtaining clinical materials;
- delay or failure in recruiting and enrolling suitable subjects to participate in a trial;
- delay or failure in having subjects complete a trial or return for post-treatment follow-up;
- clinical sites and investigators deviating from trial protocol, failing to conduct the trial in accordance with regulatory requirements, or dropping out of a trial;
- inability to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs, including some that may be for the same indication;
- failure of our third-party clinical trial managers to satisfy their contractual duties or meet expected deadlines;
- delay or failure in adding new clinical trial sites;
- ambiguous or negative interim results, or results that are inconsistent with earlier results;
- feedback from the FDA, the IRB, data safety monitoring boards, or comparable foreign entities, or results from earlier stage or concurrent preclinical and clinical studies, that might require modification to the protocol;
- decision by the FDA, the IRB, comparable foreign regulatory entities, or recommendation by a data safety monitoring board or comparable foreign regulatory entity, to suspend or terminate clinical trials at any time for safety issues or for any other reason;

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- unacceptable risk-benefit profile or unforeseen safety issues or adverse side effects;
- failure to demonstrate a benefit from using a drug;
- manufacturing issues, including problems with manufacturing or obtaining from third parties sufficient quantities of a product candidate for use in clinical trials; and
- changes in governmental regulations or administrative actions or lack of adequate funding to continue the clinical trial.

Patient enrollment, a significant factor in the timing of clinical trials, is affected by many factors including the size and nature of the patient population, the proximity of subjects to clinical sites, the eligibility criteria for the trial, the design of the clinical trial, the ability to obtain and maintain patient consents, whether enrolled subjects drop out before completion, competing clinical trials, and clinicians' and patients' perceptions as to the potential advantages of the drug being studied in relation to other available therapies, including any new drugs that may be approved for the indications we are investigating. Furthermore, we rely on CROs and clinical trial sites to ensure the proper and timely conduct of our clinical trials and while we have agreements governing their activities, we have limited influence over their actual performance.

Our failure to successfully establish, recruit for, and oversee our clinical trials could delay our product development effects and negatively impact our business. If we experience delays in the completion of any ongoing study, the commercial prospects of HTX-011, HTX-019 or any of our other product candidates could be harmed, and our ability to generate product revenue will be delayed. Any delays in completing our clinical trials will increase our costs, slow down our product candidates' development and approval process, and jeopardize our ability to commence product sales and generate revenues. Any of these occurrences may harm our business, financial condition and prospects significantly.

***We may not obtain regulatory approval for any of our product candidates. Regulatory approval may also be delayed or revoked or may impose limitations on the indicated uses of a proposed product. If we are unable to obtain regulatory approval for SUSTOL or any of our other product candidates, our business will be substantially harmed.***

The process for obtaining approval of a new drug is time consuming, subject to unanticipated delays and costs, and requires the commitment of substantial resources. The regulatory process is uncertain, can take many years and requires the expenditure of substantial resources. Any product that we or our potential future collaborative partners develop must receive all necessary regulatory agency approvals or clearances before it may be marketed in the U.S. or other countries. Human pharmaceutical products are subject to rigorous preclinical and clinical testing and other requirements by the FDA in the U.S. and similar health authorities in foreign countries. We may not receive necessary regulatory approvals or clearances to market SUSTOL or any other product candidate in the U.S. or in other jurisdictions, as a result of changes in regulatory policies prior to approval or other events. Additionally, data obtained from preclinical and clinical activities, or from stability or bioequivalence studies, are susceptible to varying interpretations that could delay, limit or prevent regulatory agency approvals or clearances.

SUSTOL or any of our other product candidates could fail to receive regulatory approval from the FDA or a comparable foreign regulatory authority for many reasons, including:

- disagreement with the design or implementation of our clinical trials;
- failure to demonstrate that the product candidate is safe and effective for its proposed indication;
- failure of clinical trial results to meet the level of statistical significance required for approval;

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- failure to demonstrate that the product candidate's clinical and other benefits outweigh its safety risks;
- disagreement with our interpretation of data from preclinical studies or clinical trials;
- the insufficiency of data collected from clinical trials to support the submission and filing of an NDA or other submission or to obtain regulatory approval;
- disapproval of the manufacturing processes or facilities of third-party manufacturers with whom we contract for clinical and commercial supplies; and
- changes in approval policies or regulations that render our preclinical and clinical data insufficient for approval.

The FDA or a comparable non-U.S. regulatory authority may require additional preclinical or clinical data to support approval, such as confirmatory studies and other data or studies to address questions or concerns that may arise during the FDA review process.

Even if granted, regulatory approvals may include significant limitations on the uses for which products may be marketed. Failure to comply with applicable regulatory requirements can, among other things, result in warning letters, imposition of civil penalties or other monetary payments, delay in approving or refusal to approve a product candidate, suspension or withdrawal of regulatory approval, product recall or seizure, operating restrictions, interruption of clinical trials or manufacturing, injunctions and criminal prosecution.

In addition, the marketing and manufacturing of products are subject to continuing FDA review, and later discovery of previously unknown problems with a product, its manufacture or its marketing may result in the FDA requiring further clinical research or restrictions on the product or the manufacturer, including withdrawal of the product from the market.

***Failure to obtain regulatory approval in international jurisdictions would prevent SUSTOL or any of our other product candidates from being marketed abroad.***

In the event we pursue the right to market and sell SUSTOL or any other product candidates in jurisdictions other than the U.S., we would be required to obtain separate marketing approvals and comply with numerous and varying regulatory requirements. The approval procedure varies among countries and can involve additional testing. The time required to obtain approval may differ substantially from that required to obtain FDA approval. The regulatory approval process outside the U.S. generally includes all of the risks associated with obtaining FDA approval. In addition, in many countries outside the U.S., it is required that the product be approved for reimbursement before the product can be approved for sale in that country. In the event we choose to pursue them, we may not obtain approvals from regulatory authorities outside the U.S. on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries or jurisdictions, and approval by one regulatory authority outside the U.S. does not ensure approval by regulatory authorities in other countries or jurisdictions or by the FDA. If we are unable in the future to obtain approval of a product candidate by regulatory authorities in non-U.S. jurisdictions, the commercial prospects of that product candidate may be significantly diminished and our business prospects could decline.

***Even if SUSTOL or any of our other product candidates receives regulatory approval, it may still face future development and regulatory difficulties. If we fail to comply with continuing federal, state and foreign regulations, we could lose our approvals to market drugs, and our business would be seriously harmed.***

Even if we obtain regulatory approval for SUSTOL or any of our other product candidates, it would be subject to ongoing requirements of the FDA and comparable foreign regulatory authorities, including requirements related to manufacturing, quality control, further development, labeling, packaging,

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storage, distribution, safety surveillance, import, export, advertising, promotion, recordkeeping, and reporting of safety and other post-market information. Following initial regulatory approval of any drugs we may develop, including SUSTOL, we will be subject to continuing regulatory review, including review of adverse drug experiences and clinical results that are reported after our drug products become commercially available. This would include results from any post-marketing tests or continued actions required as a condition of approval. The manufacturer and manufacturing facilities we use to make any of our drug candidates will be subject to periodic review and inspection by the FDA. If a previously unknown problem or problems with a product or a manufacturing and laboratory facility used by us is discovered, the FDA or foreign regulatory agency may impose restrictions on that product or on the manufacturing facility, including requiring us to withdraw the product from the market. Any changes to an approved product, including the way it is manufactured or promoted, often require FDA approval before the product, as modified, can be marketed. We and our contract manufacturers will be subject to ongoing FDA requirements for submission of safety and other post-market information. If we and our contract manufacturers fail to comply with applicable regulatory requirements, a regulatory agency may:

- issue warning letters;
- impose civil or criminal penalties;
- suspend or withdraw our regulatory approval;
- suspend or terminate any of our ongoing clinical trials;
- refuse to approve pending applications or supplements to approved applications filed by us;
- impose restrictions on our operations;
- close the facilities of our contract manufacturers; or
- seize or detain products or require a product recall.

The occurrence of any event or penalty described above may inhibit our ability to commercialize our products and generate revenue.

Additionally, such regulatory review covers a company's activities in the promotion of its drugs, with significant potential penalties and restrictions for promotion of drugs for an unapproved use or other inappropriate sales and marketing activities. Advertising and promotion of any product candidate that obtains approval in the U.S. will be heavily scrutinized by the FDA, the Department of Justice, and the Department of Health and Human Services' Office of Inspector General. Violations of applicable advertising and promotion laws and regulations, including promotion of products for unapproved (or off-label) uses, are subject to enforcement letters, inquiries and investigations, and civil and criminal sanctions by the FDA. We are also required to submit information on our open and completed clinical trials to public registries and databases; failure to comply with these requirements could expose us to negative publicity, fines and penalties that could harm our business. If SUSTOL is approved, we will also be required to comply with the requirements to submit to governmental authorities information on payments to physicians and certain other third parties; failure to comply with these requirements could expose us to negative publicity, fines and penalties that could harm our business.

***We face intense competition from other companies developing products in the CINV indication, including those with potentially competitive delivery technologies.***

SUSTOL, if approved, is expected to face significant competition. In particular, competition may come from Eisai's ALOXI® (palonosetron), a 5-hydroxytryptamine type 3 ("5-HT<sub>3</sub>") receptor antagonist, and also generic versions of this class of product, which depending on the outcome of pending litigation could become available on the market in 2015. In addition to ALOXI and any future generic versions of palonosetron, SUSTOL will compete with generic forms of granisetron (formerly marketed as KYTRIL) and ondansetron (formerly marketed as ZOFTRAN). We are also aware of several companies that have

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developed, or are developing, both generic and new formulations of 5-HT<sub>3</sub> receptor antagonists, including ProStrakan's SANCUSO® (granisetron transdermal patch) and Eisai's AKYNZEO®, an oral combination product consisting of a neurokinin-1 (NK<sub>1</sub>) receptor antagonist and palonosetron, indicated for the treatment of acute and delayed CINV associated with both HEC and MEC regimens. If we are able to successfully develop HTX-019 for the treatment of CINV, we will compete with other injectable products targeted towards this indication, such as Merck's EMEND® for Injection (fosaprepitant).

With respect to our pain management program, in the event we are able to successfully develop HTX-011 for the treatment of post-operative pain, we will compete with marketed products such as EXPAREL® (bupivacaine liposome injectable suspension), marketed by Pacira Pharmaceuticals, Inc.

Smaller or early stage companies and research institutions may also prove to be significant competitors, particularly through collaborative arrangements with large and established pharmaceutical companies. We will also face competition from these parties in recruiting and retaining qualified scientific and management personnel, establishing clinical trial sites and patient registration for clinical trials, and acquiring and in-licensing technologies and products complementary to our programs or potentially advantageous to our business. If any of our competitors succeed in obtaining approval from the FDA or other regulatory authorities for their products sooner than we do or for products that are more effective or less costly than ours, our commercial opportunity could be significantly reduced. Major technological changes can happen quickly in the biotechnology and pharmaceutical industries, and the development of technologically improved or different products or drug delivery technologies may make our product candidates or platform technologies obsolete or noncompetitive.

### ***Our products may face competition from lower cost generic products offered by our competitors.***

Pricing for therapeutics can be extremely competitive, and strict formulary guidelines enforced by payors may create significant challenges in the acceptance and profitability of branded products. The market for generic products can be very lucrative, and is dominated by companies that may have much larger distribution capabilities than we may have in the future. It can be very difficult to predict the timing of the launch of generic products given the commonality of litigation with manufacturers over anticipated patent expiration. Our inability to accurately foresee and plan accordingly in the event of generic launch of products that may compete with those we may sell may significantly impact our potential revenues from such products. Upon the expiration or loss of patent protection for a branded product, or upon the "at-risk" launch (despite pending patent infringement litigation against the generic product) by a manufacturer of a generic version of a drug that may compete with one of our products, we could quickly lose a significant portion of our sales of that product. The inability for a branded product we may sell to successfully compete against generic products could negatively impact sales of our product, reduce our ability to grow our business, and could significantly harm our business prospects.

### ***If we cannot establish pricing of our product candidates acceptable to the U.S. or foreign governments, insurance companies, managed care organizations and other payors, or arrange for favorable reimbursement policies, any product sales will be severely hindered.***

The continuing efforts of the U.S. and foreign governments, insurance companies, managed care organizations and other payors of health care costs to contain or reduce costs of health care may adversely affect our ability to generate adequate revenues and gross margins to make the products we develop commercially viable. Our ability to commercialize any product candidates successfully will depend in part on the extent to which governmental authorities, private health insurers and other organizations establish appropriate reimbursement levels for the cost of such products and related treatments.

In certain foreign markets, the pricing of prescription pharmaceuticals is subject to government control. In the U.S., given recent federal and state government initiatives directed at lowering the total cost of health care, the U.S. Congress and state legislatures will likely continue to focus on health care reform, reducing the cost of prescription pharmaceuticals and on the reform of the Medicare and Medicaid systems. The trend toward managed health care in the U.S., which could significantly influence the purchase of health care services and products, as well as legislative proposals to reform health care,

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control pharmaceutical prices or reduce government insurance programs, may result in lower prices for our products, if approved for marketing. While we cannot predict whether any legislative or regulatory proposals affecting our business will be adopted, the announcement or adoption of these proposals could have a material and adverse effect on our potential revenues and gross margins.

***If we cannot arrange for adequate third-party reimbursement for our products, our future revenue will suffer.***

In both domestic and foreign markets, sales of our potential products, including SUSTOL, will depend in substantial part on the availability of adequate reimbursement from third-party payors such as government health administration authorities, private health insurers and other organizations. Third-party payors often challenge the price and cost-effectiveness of medical products and services and such pressure may increase in the future. Significant uncertainty exists as to the adequate reimbursement status of newly approved health care products. Any products we are able to successfully develop may not be reimbursable by third-party payors. In addition, our products may not be considered cost-effective and adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize a profit. Legislation and regulations affecting the pricing of pharmaceuticals may change before our products are approved for marketing and any such changes could further limit reimbursement. Reimbursement policies utilized by our collaborators or ourselves may be challenged by regulatory entities, with resultant fines, negative publicity and the need to implement changes that reduce the utilization of our products. If any products we develop do not receive adequate reimbursement, our revenue could be severely limited.

***The pharmaceutical industry is subject to significant regulation and oversight pursuant to anti-kickback laws, false claims statutes, and anti-corruption laws, which may result in significant additional expense and limit our ability to commercialize our products. In addition, any failure to comply with these regulations could result in substantial fines or penalties.***

In the U.S., upon commercial launch of a product, we will be subject to health care fraud and abuse regulation and enforcement by both the federal government and the states in which we conduct our business. Healthcare providers, physicians and third-party payors play a primary role in the recommendation and prescription of any product for which we obtain marketing approval. Our future arrangements with third-party payors and customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations that may constrain the business or financial arrangements and relationships through which we market, sell and distribute our products for which we obtain marketing approval. Restrictions under applicable federal and state healthcare laws and regulations include, but are not limited to, the following:

- the Federal health care programs' Anti-Kickback Law, which prohibits, among other things, persons from knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual for, or the purchase, lease, order or recommendation of, any good or service for which payment may be made under federal health care programs such as the Medicare and Medicaid programs;
- federal false claims laws which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other federal health care programs that are false or fraudulent. This false claims liability may attach in the event that a company is found to have knowingly submitted false average sales price, best price or other pricing data to the government or to have unlawfully promoted its products;
- federal "sunshine" laws that require transparency regarding financial arrangements with health care providers, such as the reporting and disclosure requirements imposed by the Patient Protection and Affordable Care Act ("PPACA") on drug manufacturers regarding any "payment or transfer of value" made or distributed to physicians and teaching hospitals; and

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- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws which may apply to items or services reimbursed by any third-party payer, including commercial insurers.

The risk of being found in violation of these laws is increased by the fact that many of them have not been fully interpreted by the regulatory authorities or the courts, and their provisions are open to a variety of interpretations. Moreover, recent health care reform legislation has strengthened many of these laws. For example, PPACA, among other things, amends the intent requirement of the federal anti-kickback and criminal health care fraud statutes to clarify that a person or entity does not need to have actual knowledge of this statute or specific intent to violate it. In addition, PPACA provides that a claim including items or services resulting from a violation of the federal anti-kickback statute constitutes a false or fraudulent claim for purposes of the false claims statutes.

In addition, a number of states have laws that require pharmaceutical companies to track and report payments, gifts and other benefits provided to physicians and other health care professionals and entities. Similarly, the federal Physician Payments Sunshine Act within PPACA requires pharmaceutical companies to report to the federal government certain payments to physicians and teaching hospitals. The Physician Payments Sunshine Act provisions required manufacturers that participate in federal health care programs to begin collecting such information after a six-month period following commercial launch of a product; however state law equivalents may require compliance at commercial launch.

In addition, we may in the future be subject to the Foreign Corrupt Practices Act of 1997 (“FCPA”). The FCPA and other similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from providing money or anything of value to officials of foreign governments, foreign political parties, or international organizations with the intent to obtain or retain business or seek a business advantage. Recently, there has been a substantial increase in anti-bribery law enforcement activity by U.S. regulators, with more frequent and aggressive investigations and enforcement proceedings by both the Department of Justice and the U.S. Securities and Exchange Commission. A determination that our operations or activities are not, or were not, in compliance with U.S. or foreign laws or regulations could result in the imposition of substantial fines, interruptions of business, loss of supplier, vendor or other third-party relationships, termination of necessary licenses and permits, and other legal or equitable sanctions. Other internal or government investigations or legal or regulatory proceedings, including lawsuits brought by private litigants, may also follow as a consequence.

If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government-funded healthcare programs, like Medicare and Medicaid, and the curtailment or restructuring of our operations. Any penalties, damages, fines, curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. Although compliance programs can mitigate the risk of investigation and prosecution for violations of these laws, the risks cannot be entirely eliminated. Any action against us for violation of these laws or regulations, even if we successfully defend against it, could cause us to incur significant legal expenses and divert our management’s attention from the operation of our business. Moreover, achieving and sustaining compliance with applicable federal and state privacy, security and fraud laws may prove costly.

***Our employees may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements, which could have a material adverse effect on our business.***

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with FDA regulations or similar regulations of comparable foreign regulatory authorities, provide accurate information to the FDA or comparable foreign regulatory authorities, comply with manufacturing standards we have established, comply with federal and state healthcare fraud and abuse laws and regulations and similar laws and regulations established and enforced by comparable foreign regulatory authorities, report financial information or data accurately, or

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disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. It is not always possible to identify and deter employee misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business and results of operations, including the imposition of significant fines or other sanctions.

***We are subject to certain data privacy and security requirements, which are very complex and difficult to comply with at times. Any failure to ensure adherence to these requirements could subject us to fines and penalties, and damage our reputation.***

We are required to comply, as applicable, with numerous federal and state laws, including state security breach notification laws, state health information privacy laws and federal and state consumer protection laws, govern the collection, use and disclosure of personal information. Other countries also have, or are developing, laws governing the collection, use and transmission of personal information. In addition, most healthcare providers who may prescribe products we may sell in the future and from whom we may obtain patient health information are subject to privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). We are not a HIPAA covered entity, do not intend to become one, and we do not operate as a business associate to any covered entities. Therefore, these privacy and security requirements do not apply to us. However, we could be subject to criminal penalties if we knowingly obtain individually identifiable health information from a covered entity in a manner that is not authorized or permitted by HIPAA or for aiding and abetting the violation of HIPAA. We are unable to predict whether our actions could be subject to prosecution in the event of an impermissible disclosure of health information to us. The legislative and regulatory landscape for privacy and data protection continues to evolve, and there has been an increasing amount of focus on privacy and data protection issues with the potential to affect our business, including recently enacted laws in a majority of states requiring security breach notification. These laws could create liability for us or increase our cost of doing business, and any failure to comply could result in harm to our reputation, and potentially fines and penalties.

***Our use of hazardous materials could subject us to liabilities, fines and sanctions.***

Our laboratory and clinical testing sometimes involve use of hazardous, radioactive or otherwise toxic materials. We are subject to federal, state and local laws and regulations governing how we use, manufacture, handle, store and dispose of these materials.

Although we believe that our safety procedures for handling and disposing of such materials comply in all material respects with all federal, state and local regulations and standards, there is always the risk of accidental contamination or injury from these materials. In the event of an accident, we could be held liable for any damages that result and such liability could exceed our financial resources. If we fail to comply with these regulations and standards or with the conditions attached to our operating licenses, the licenses could be revoked, and we could be subjected to criminal sanctions and substantial financial liability or be required to suspend or modify our operations. Compliance with environmental and other laws may be expensive and current or future regulations may impair our product development efforts.

## Risks Related To Our Intellectual Property

*If we are unable to adequately protect or enforce our intellectual property rights, we may lose valuable assets or incur costly litigation to protect our rights.*

Our success will depend in part on our ability to obtain patents and maintain trade secret protection, as well as successfully defending these patents against challenges, while operating without infringing the proprietary rights of others. We have filed a number of U.S. patent applications on inventions relating to the composition of a variety of polymers, specific products, product groups and processing technology. At December 31, 2014, we had a total of 16 issued U.S. patents and an additional 42 issued (or registered) foreign patents. The patents on the bioerodible technologies expire between January 2016 and April 2026. The product SUSTOL is covered by patents in the U.S. and in foreign countries. Currently, the product SUSTOL is covered by six patents issued in the U.S. and by nine patents issued in foreign countries including Brazil, Canada, the EU, Japan, and Taiwan. U.S. patents covering SUSTOL have expiration dates ranging from January 2016 to September 2024; foreign patents covering SUSTOL have expiration dates ranging from January 2017 to September 2025. Granted patents include claims covering the product composition, methods of use and methods of preparation. Our existing patents may not cover future products, additional patents may not be issued, and current patents, or patents issued in the future, may not provide meaningful protection or prove to be of commercial benefit.

The patent positions of pharmaceutical companies, including ours, are uncertain and involve complex legal and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued. Consequently, our patent applications may not issue into patents, and any issued patents may not provide sufficient protection for our product candidates or provide sufficient protection to afford us a commercial advantage against competitive technologies or may be held invalid if challenged or circumvented. Patent applications in the U.S. are maintained in confidence for at least 18 months after their filing. Consequently, we cannot be certain that the patent applications we are pursuing will lead to the issuance of any patent or be free from infringement or other claims from other parties. Our competitors may also independently develop products similar to ours or design around or otherwise circumvent patents issued to us or licensed by us. In addition, the laws of some foreign countries may not protect our proprietary rights to the same extent as U.S. laws.

We may enter into collaborative agreements which may subject us to obligations that must be fulfilled and require us to manage complex relationships with third parties. In the future, if we are unable to meet our obligations or manage our relationships with our collaborators under these agreements our revenue may decrease. The loss or diminution of our intellectual property rights could result in a decision by our third-party collaborators to terminate their agreements with us. In addition, these agreements are generally complex and contain provisions that could give rise to legal disputes, including potential disputes concerning ownership of intellectual property and data under collaborations. Such disputes can lead to lengthy, expensive litigation or arbitration, requiring us to divert management time and resources to such dispute.

We also rely upon trade secrets, technical know-how and continuing technological innovation to develop and maintain our competitive position. We require our employees, consultants, advisors and collaborators to execute appropriate confidentiality and assignment-of-inventions agreements with us. These agreements typically provide that all materials and confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances, and that all inventions arising out of the individual's relationship with us shall be our exclusive property. These agreements may be breached, and in some instances, we may not have an appropriate remedy available for breach of the agreements. Furthermore, our competitors may independently develop substantially equivalent proprietary information and techniques, reverse engineer our information and techniques, or otherwise gain access to our proprietary technology. We may be unable to meaningfully protect our rights in trade secrets, technical know-how and other non-patented technology. We may have to resort to litigation to protect our intellectual property rights, or to determine their scope, validity or enforceability. In addition, interference proceedings declared by the U.S. Patent and Trademark Office may be necessary to determine the

priority of inventions with respect to our patent applications. Enforcing or defending our proprietary rights is expensive, could cause diversion of our resources and may not prove successful. In addition, courts outside the U.S. may be less willing to protect trade secrets. Costly and time-consuming litigation could be necessary to seek to enforce and determine the scope of our proprietary rights. Any failure to enforce or protect our rights could cause us to lose the ability to exclude others from using our technology to develop or sell competing products.

***We may infringe on the intellectual property rights of others, and any litigation could force us to stop developing or selling potential products and could be costly, divert management attention and harm our business.***

We must be able to develop products without infringing the proprietary rights of other parties. Because the markets in which we operate involve established competitors with significant patent portfolios, including patents relating to the composition of a variety of polymers, specific products, product groups and processing technology, it could be difficult for us to use our technologies or develop products without infringing the proprietary rights of others. We may not be able to design around the patented technologies or inventions of others and we may not be able to obtain licenses to use patented technologies on acceptable terms, or at all. If we cannot operate without infringing the proprietary rights of others, we will not be able to develop or commercialize some or all of our product candidates, and consequently will not be able to earn product revenue.

If we are required to defend ourselves in a lawsuit, we could incur substantial costs and the lawsuit could divert management attention, regardless of the lawsuit's merit or outcome. These legal actions could seek damages and seek to enjoin testing, manufacturing and marketing of the accused product or process. In addition to potential liability for significant damages, we could be required to obtain a license to continue to manufacture or market the accused product or process and any license required under any such patent may not be made available to us on acceptable terms, if at all.

Periodically, we review publicly available information regarding the development efforts of others in order to determine whether these efforts may violate our proprietary rights. We may determine that litigation is necessary to enforce our proprietary rights against others. Such litigation could result in substantial expense, regardless of its outcome, and may not be resolved in our favor.

***We could be exposed to significant product liability claims that could be time consuming and costly to defend, divert management attention and adversely impact our ability to obtain and maintain insurance coverage.***

The testing, manufacture, marketing and sale of our products involve an inherent risk that product liability claims will be asserted against us. Although we are insured against such risks up to an annual aggregate limit in connection with clinical trials and commercial sales of our products, our present product liability insurance may be inadequate and may not fully cover the costs of any claim or any ultimate damages we might be required to pay. Product liability claims or other claims related to our products, regardless of their outcome, could require us to spend significant time and money in litigation or to pay significant damages. Any successful product liability claim may prevent us from obtaining adequate product liability insurance in the future on commercially desirable or reasonable terms. In addition, product liability coverage may cease to be available in sufficient amounts or at an acceptable cost. An inability to obtain sufficient insurance coverage at an acceptable cost or otherwise to protect against potential product liability claims could prevent or inhibit the commercialization of our products. A product liability claim could also significantly harm our reputation and delay market acceptance of our products.

## **Risks Related To Our Common Stock**

### ***The price of our common stock has been and may continue to be volatile.***

The stock markets, in general, and in particular with respect to biotech and life sciences companies, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock. In addition, the limited trading volume of our stock may contribute to its volatility. Our stock price may be particularly volatile given the stage of our business, which is still pre-commercial and subject to more speculation by stock market investors.

In the past, following periods of volatility in the market price of a particular company's securities, litigation has often been brought against that company. If litigation of this type is brought against us, it could be extremely expensive and divert management's attention and our company's resources.

### ***Our certificate of incorporation, our bylaws and Delaware law contain provisions that could discourage another company from acquiring us and may prevent attempts by our stockholders to replace or remove our current management.***

Provisions of Delaware law, our certificate of incorporation and our bylaws may discourage, delay or prevent a merger or acquisition that stockholders may consider favorable, including transactions in which you might otherwise receive a premium for your shares. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace or remove our board of directors. These provisions include authorizing the issuance of "blank check" preferred stock without any need for action by stockholders.

In addition, Section 203 of Delaware General Corporation Law may discourage, delay or prevent a change in control of our company by prohibiting stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us, unless certain approvals are obtained.

### ***Conversion of our Convertible Notes would result in substantial dilution for our existing stockholders.***

Our outstanding Convertible Notes bear interest at a rate of 6% per annum, payable quarterly in cash or in kind, at the election of the holders of the Convertible Notes. The Convertible Notes are convertible into shares of our common stock at a rate of 1,250 shares for every \$1,000 of principal and accrued interest that is being converted. In the event the holders of the Convertible Notes were to opt to convert in full the outstanding principal and accrued interest due under the Convertible Notes as of September 30, 2015, we would be required to issue an aggregate of 6,981,833 shares, representing approximately 16% of our outstanding shares, after giving effect to such conversion. This would result in substantial dilution of our existing stockholders.

### ***Concentration in stockholder ownership could influence strategic actions.***

Our directors, executive officers, principal stockholders and affiliated entities currently beneficially own or control a significant percentage of our outstanding common stock. In addition, certain of our principal stockholders hold outstanding warrants that are exercisable for additional shares of our common stock. As of September 30, 2015, Tang Capital Partners, LP and its affiliates' ("TCP") beneficial ownership in our common stock, as determined in accordance with Rule 13d-3 of the Exchange Act, was approximately 15%, excluding the exercise of outstanding warrants. In addition, as of September 30, 2015, TCP has the right to acquire 5,585,465 shares upon conversion of the Convertible Notes. Kevin C. Tang, the Managing Director of Tang Capital Management, LLC, the general partner of Tang Capital Partners, LP, is also chairman of our Board of Directors.

Such a substantial concentration of common stock ownership or control could significantly influence corporate actions on various strategic matters, including, for example, receptivity to collaborations and merger or sale overtures to the extent that stockholder approval is required for such

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transactions. Further, covenants contained in the Convertible Notes would require approval from the noteholders for any change of control transaction we might consider. Accordingly, we may only be able to pursue transactions that are supported by these large stockholders. In addition, the conversion of the Convertible Notes, the exercise of these warrants, or the sale by our current stockholders of a substantial number of shares, or the expectation that such exercises or sales may occur, could significantly reduce the market price of our common stock.

### ***Future utilization of net operating loss carry-forwards may be impaired due to recent changes in ownership.***

We believe our net operating losses and tax attributes may be subject to limitation under Section 382 of the Internal Revenue Code of 1986. As a result, our deferred tax assets, and related valuation allowance, have been reduced for the estimated impact of the net operating losses and credits that we currently estimate may expire unused. Utilization of our remaining net operating loss and research and development credit carry-forwards may still be subject to substantial annual limitations due to ownership change limitations provided by the Internal Revenue Code and similar state provisions for ownership changes after December 31, 2014, including those that may come in conjunction with future equity financings or market trades by our stockholders.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

### **ITEM 5. OTHER INFORMATION**

None.

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**ITEM 6. EXHIBITS**

<u>Exhibit Number</u>	<u>Description</u>
10.1*	Executive Employment Agreement, dated October 12, 2015, by and between Heron Therapeutics, Inc. and Neil Clendeninn
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Extension Definition
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

\* Management contract or compensatory plan, contract or arrangement

**SIGNATURES**

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

Date: November 6, 2015

Heron Therapeutics, Inc.

/s/ Barry D. Quart

Barry D. Quart, Pharm.D.  
Chief Executive Officer  
(On behalf of the Registrant)

/s/ Brian G. Drazba

Brian G. Drazba  
Vice President, Finance and Chief Financial Officer  
(As Principal Financial and Accounting Officer)

**HERON THERAPEUTICS, INC.**

**INDEX TO EXHIBITS**

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## EXECUTIVE EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (the “*Agreement*”) is made and entered into effective as of October 12, 2015 (the “*Effective Date*”), by and between HERON THERAPEUTICS, INC. (the “*Company*”), and NEIL CLENDENINN (the “*Executive*”). The Company and the Executive are hereinafter collectively referred to as the “*Parties*”, and individually referred to as a “*Party*”.

## AGREEMENT

In consideration of the foregoing and the mutual promises and covenants herein contained, and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

**1. EMPLOYMENT.**

**1.1 Title.** The Executive shall initially have the title of Senior Vice President and Chief Medical Officer of the Company and shall serve in such other capacity or capacities as the Company may from time to time prescribe and to which the Executive agrees. The Executive shall initially report to the Chief Executive Officer.

**1.2 Duties.** The Executive shall do and perform all services, acts or things necessary or advisable to manage and conduct the business of the Company and which are normally associated with the position of Senior Vice President and Chief Medical Officer, consistent with the Bylaws of the Company and as required by the Board of Directors of the Company (the “*Board*”).

**1.3 Policies and Practices.** The employment relationship between the Parties shall be governed by the policies and practices established by the Company and the Board. The Executive acknowledges that he has read the Company’s employee handbook and other governing policies, which will govern the terms and conditions of his employment with the Company, collectively with this Agreement. In the event that the terms of this Agreement differ from or are in conflict with the Company’s policies or practices or the Company’s employee handbook, this Agreement shall control.

**2. LOYAL AND CONSCIENTIOUS PERFORMANCE; NONCOMPETITION.**

**2.1 Loyalty.** During the Executive’s employment by the Company, the Executive shall devote the Executive’s full business energies, interest, abilities and productive time to the proper and efficient performance of the Executive’s duties under this Agreement.

**2.2 Covenant Not to Compete.** Except with the prior written consent of the Board, which shall not be unreasonably withheld, the Executive will not, during his employment by the Company, engage in competition with the Company and/or any of its Affiliates, either directly or indirectly, in any manner or capacity, as adviser, principal, agent, affiliate, promoter, partner, officer, director, employee, stockholder, owner, co-owner, consultant, or member of any association or otherwise, in any phase of the business of developing, manufacturing and marketing of products or services which are in the same field of use or which otherwise compete with the products or services or proposed products or services of the Company and/or any of its Affiliates. For purposes of this Agreement, “*Affiliate*” means, with respect to any specific entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified entity.

**2.3 Agreement Not to Participate in Company's Competitors.** During the term of this agreement, the Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by the Executive to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise or in any company, person or entity that is, directly or indirectly, in competition with the business of the Company or any of its Affiliates. Ownership by the Executive, as a passive investment, of less than two percent (2%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or in the over-the-counter market shall not constitute a breach of this paragraph.

### **3. COMPENSATION OF THE EXECUTIVE.**

**3.1 Base Salary.** The Company shall pay the Executive a base salary of at least \$400,000 per year, less payroll deductions and all required withholdings payable in regular periodic payments in accordance with Company policy. Such base salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year.

**3.2 Performance Bonus.** In addition to the Executive's base salary, the Executive shall be eligible for a performance bonus based upon the Executive's and the Company's achievement of specified objectives established by the Board during the first quarter of each year after consultation with the Executive, as evaluated by the Board in its discretion. The target bonus for full achievement of all objectives shall be 40% of the Executive's Base Salary.

#### **3.3 Equity Incentives.**

(a) Subject to approval by the Board (or the compensation committee thereof), as soon as practicable following the Effective Date, Executive will be granted an option to purchase up to 150,000 shares of the Company's common stock (the "**Option**"). Subject to the Executive continuing to serve as Senior Vice President and Chief Medical Officer of the Company (except as set forth below), vesting of the Option will be as follows: (i) 100,000 shares (the "**Time-Based Shares**") vesting over a four-year period, with 25,000 shares vesting on the first anniversary of the date of grant, and then the remainder of the Time-Based Shares vesting pro rata monthly thereafter over the next three years, and (ii) 50,000 shares vesting upon receipt by the Company of FDA approval for SUSTOL (the shares subject to vesting in clause (ii) being the "**Performance-Based Shares**"). If any vesting condition for the Performance-Based Shares is met within 60 days following Executive's termination of service either by the Company without Cause or by the Executive for Good Reason, then the vesting condition will be deemed satisfied with respect to that condition (such circumstance being a "**Post-Termination Vesting Event**"). The Option will have a ten-year term and will be treated as an incentive stock option to the maximum extent possible under applicable regulations, with the remainder being non-statutory stock options. The portion of the Option that is vested as of the date of termination of the Executive's service with the Company shall remain exercisable for a period of 90 days following termination. Any portion of the Option that vests as a result of a Post-Termination Vesting Event shall remain exercisable for a period of 90 days following the occurrence of such event.

**3.4 Changes to Compensation.** The Executive's compensation will be reviewed on a regular basis by the Company and may be changed from time to time as deemed appropriate. For clarity, the provisions of this Section 3.4 are not meant to supersede the right of the Executive to terminate for Good Reason in the event of a material reduction of Executive's Base Salary as provided in Section 4.5.3.

**3.5 Employment Taxes.** All of the Executive's compensation shall be subject to customary withholding taxes and any other employment taxes as are commonly required to be collected or withheld by the Company.

#### **4. TERMINATION.**

**4.1 Termination by the Company.** The Executive's employment by the Company shall be at will. The Executive's employment with the Company may be terminated by the Company at any time and for any reason or no reason, with or without "**Cause**" (as defined below), subject to the provisions of this Section 4.

**4.2 Termination by Mutual Agreement of the Parties.** The Executive's employment pursuant to this Agreement may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement.

**4.3 Termination by the Executive.** The Executive's employment by the Company shall be at will. The Executive shall have the right to resign or terminate the Executive's employment at any time and for any reason, or no reason, with or without "**Good Reason**" (as defined below), subject to the provisions of this Section 4.

#### **4.4 Compensation Upon Termination.**

**4.4.1 With Cause or Without Good Reason.** If the Executive's employment shall be terminated by the Company for Cause, or if the Executive terminates employment hereunder for other than Good Reason, the Company shall pay the Executive's base salary and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings, and the Company shall thereafter have no further obligations to the Executive under this Agreement.

**4.4.2 Without Cause or With Good Reason.** If the Executive's employment shall be terminated by the Company without Cause, or by the Executive for Good Reason, the Executive shall receive the payments specified in Section 4.4.1, and, in addition, within ten days of the Executive's delivery to the Company of a fully effective and irrevocable Release and Waiver in the form attached hereto as **Exhibit A**, within the applicable time period set forth therein, but in no event later than 21 days following termination of the Executive's employment, the Executive shall receive the following: (i) a lump sum payment equal to the sum of (A) the Executive's annual base salary then in effect and (B) the Executive's target performance bonus then in effect, less required deductions and withholdings; (ii) accelerated time-based vesting of shares subject to all stock awards issued by the Company, for the number of shares which would have vested accordingly had the Executive continued employment with the Company for a period of 12 months after termination (for the avoidance of doubt, which shall include partial accelerated vesting of the Time-Based Shares, but not the Performance-Based

Shares); and (iii) to the extent permitted under applicable law, reimbursement for or continuation of payment by the Company of its portion of the health insurance benefits provided to Executive immediately prior to termination pursuant to the terms of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“**COBRA**”) or other applicable law for a period of up to 12 months from the date of termination.

**4.4.3 Change in Control.** If the Executive’s employment shall be terminated by the Company without Cause, or by the Executive for Good Reason within three months before or within 18 months following a Change in Control, the Executive shall receive the payments specified in Section 4.4.1, and, in addition, within ten days of the Executive’s delivery to the Company of a fully effective and irrevocable Release and Waiver in the form attached hereto as **Exhibit A**, within the applicable time period set forth therein, but in no event later than 45 days following termination of the Executive’s employment, the Executive shall receive the following: (i) a lump sum payment equal to the Executive’s annual base salary then in effect, less required deductions and withholdings; (ii) the greater of the Executive’s target performance bonus then in effect, less required deductions and withholdings, or the Executive’s performance bonus paid in the year preceding the year in which termination occurs, less required deductions and withholdings; (iii) accelerated vesting of 100% of any outstanding and unvested stock awards held by the Executive at such time (including both time-based and performance-based stock awards) and (iv) to the extent permitted under applicable law, provided that the Executive timely elects continued coverage under COBRA, the COBRA benefit for a period of up to 12 months.

**4.4.4 Parachute Payment.** If any payment or benefit Executive would receive pursuant to a Change in Control or otherwise (“**Payment**”) would (i) constitute a “parachute payment” within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the “**Excise Tax**”), then such Payment shall be reduced to the Reduced Amount. The “**Reduced Amount**” shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive’s receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting “parachute payments” is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. In the event that acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of Executive’s stock awards.

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, then the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to the Executive and the Company within 15 calendar days after the date on which the Executive's right to a Payment is triggered (if requested at that time by the Executive or the Company) or such other time as requested by the Executive or the Company. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon the Executive and the Company.

**4.4.5 Application of Section 409A.** Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Agreement (the "**Severance Benefits**") that constitute "deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**") and the regulations and other guidance thereunder and any state law of similar effect (collectively "**Section 409A**") that are payable upon termination of employment shall not commence in connection with Executive's termination of employment unless and until Executive has also incurred a "separation from service" (as such term is defined in Treasury Regulation Section 1.409A-1(h) ("**Separation From Service**")), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A.

It is intended that each installment of the Severance Benefits payments provided for in this Agreement is a separate "payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For the avoidance of doubt, it is intended that payments of the Severance Benefits set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). However, if the Company (or, if applicable, the successor entity thereto) determines that the Severance Benefits constitute "deferred compensation" under Section 409A and Executive is, on the termination of Executive's service, a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Severance Benefit payments shall be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive's Separation From Service or (ii) the date of Executive's death (such applicable date, the "**Specified Employee Initial Payment Date**"), and the Company (or the successor entity thereto, as applicable) shall (A) pay to Executive a lump sum amount equal to the sum of the Severance Benefit payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the Severance Benefits had not been so delayed pursuant to this Section and (B) commence paying the balance of the Severance Benefits in accordance with the applicable payment schedules set forth in this Agreement.

Except to the extent that payments may be delayed until the Specified Employee Initial Payment Date pursuant to the preceding paragraph, on the first regular payroll pay day following the effective date of the Release and Waiver, the Company will pay Executive the Severance Benefits Executive would otherwise have received under the Agreement on or prior to such date but for the delay in payment related to the effectiveness of the Release and Waiver, with the balance of the Severance Benefits being paid as originally scheduled. All amounts payable under the Agreement will be subject to standard payroll taxes and deductions.

#### 4.5 Definitions.

**4.5.1 Cause.** For purposes of this Agreement, “*Cause*” means that, in the reasonable determination of the Company, the Executive

has:

- (i) been indicted for or convicted of or pleaded guilty or no contest to any felony or crime involving dishonesty that is likely to inflict or has inflicted demonstrable and material injury on the business of the Company;
- (ii) participated in any fraud against the Company;
- (iii) willfully and materially breached a Company policy;
- (iv) intentionally damaged any property of the Company thereby causing demonstrable and material injury to the business of the Company; or
- (v) engaged in conduct that, in the reasonable determination of the Company, demonstrates gross unfitness to serve.

Notwithstanding the foregoing, Cause shall not exist based on conduct described in clause (iii) above unless the conduct described in such clause has not been cured within 15 days following the Executive’s receipt of written notice from the Company specifying the particulars of the conduct constituting Cause.

**4.5.2 Change in Control.** For purposes of this Agreement, “*Change in Control*” means the occurrence of any of the following:

- (i) the closing of an Ownership Change Event or a series of related Ownership Change Events (collectively, a “*Transaction*”) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company’s voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or such surviving entity immediately outstanding after the Transaction, or, in the case of an Ownership Change Event the entity to which the assets of the Company were transferred (the “*Transferee*”), as the case may be; or
- (ii) the liquidation or dissolution of the Company.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities in the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive. The Board may also, but need not, specify that other transactions or events constitute a Change in Control.

**4.5.3 Good Reason.** “*Good Reason*” for the Executive to terminate the Executive’s employment hereunder shall mean the occurrence of any of the following events without the Executive’s consent:

- (i) a material reduction (20% or more) by the Company of the Executive’s Base Salary as initially set forth herein or as the same may be increased from time to time;
- (ii) a material reduction by the Company of the Executive’s management responsibilities;
- (iii) a material breach of this Agreement by the Company;

provided however, that any resignation by the Executive due to any of the following conditions shall only be deemed for Good Reason if: (i) the Executive gives the Company written notice of the intent to terminate for Good Reason within 90 days following the first occurrence of the condition(s) that the Executive believes constitutes Good Reason, which notice shall describe such condition(s); (ii) the Company fails to remedy, if remediable, such condition(s) within 15 days following receipt of the written notice (the “*Cure Period*”) of such condition(s) from the Executive; and (iii) Executive actually resigns his employment within the first 15 days after expiration of the Cure Period.

**4.5.4 Ownership Change Event.** For purposes of this Agreement, “*Ownership Change Event*” means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than 50% of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company.

## **5. ASSIGNMENT AND BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of the Executive and the Executive’s heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of the Executive’s duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by the Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives.

## **6. CHOICE OF LAW.**

This Agreement is made in California. This Agreement shall be construed and interpreted in accordance with the internal laws of the State of Delaware.

## **7. INTEGRATION.**

This Agreement, including *Exhibit A*, contains the complete, final and exclusive agreement of the Parties relating to the terms and conditions of the Executive’s employment and

the termination of Executive's employment, and supersedes all prior and contemporaneous oral and written employment agreements or arrangements between the Parties. To the extent this Agreement conflicts with the terms of the Company's employee handbook, governing policies, or bylaws, this Agreement controls.

**8. AMENDMENT.**

This Agreement cannot be amended or modified except by a written agreement signed by the Executive and the Company.

**9. WAIVER.**

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the waiver is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

**10. SEVERABILITY.**

The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision which most accurately represents the Parties' intention with respect to the invalid or unenforceable term or provision.

**11. INTERPRETATION; CONSTRUCTION.**

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but the Executive has been encouraged to consult with, and has consulted with, the Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**12. REPRESENTATIONS AND WARRANTIES.**

The Executive represents and warrants that the Executive is not restricted or prohibited, contractually or otherwise, from entering into and performing each of the terms and covenants contained in this Agreement, and that the Executive's execution and performance of this Agreement will not violate or breach any other agreements between the Executive and any other person or entity.

**13. COUNTERPARTS.**

This Agreement may be executed in two counterparts, each of which shall be deemed an original, all of which together shall contribute one and the same instrument.

#### **14. ARBITRATION.**

To ensure the rapid and economical resolution of disputes that may arise in connection with the Executive's employment with the Company, the Executive and the Company agree that any and all disputes, claims, or causes of action, in law or equity, arising from or relating to the Executive's employment, or the termination of that employment, will be resolved pursuant to the Federal Arbitration Act and to the fullest extent permitted by law, by final, binding and confidential arbitration conducted by the Judicial Arbitration and Mediation Services ("**JAMS**"), or its successors, under the then current rules of JAMS for employment disputes; provided that the arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (ii) issue a written arbitration decision including the arbitrator's essential findings and conclusions and a statement of the award. Both the Executive and the Company shall be entitled to all rights and remedies that either the Executive or the Company would be entitled to pursue in a court of law. The Company shall pay all fees, including the arbitrator's fee. Nothing in this Agreement is intended to prevent either the Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration.

#### **15. TRADE SECRETS OF OTHERS.**

It is the understanding of both the Company and the Executive that the Executive shall not divulge to the Company and/or its subsidiaries any confidential information or trade secrets belonging to others, including the Executive's former employers, nor shall the Company and/or its Affiliates seek to elicit from the Executive any such information. Consistent with the foregoing, the Executive shall not provide to the Company and/or its Affiliates, and the Company and/or its Affiliates shall not request, any documents or copies of documents containing such information.

#### **16. ADVERTISING WAIVER.**

The Executive agrees to permit the Company and/or its Affiliates, and persons or other organizations authorized by the Company and/or its Affiliates, to use, publish and distribute advertising or sales promotional literature concerning the products and/or services of the Company and/or its Affiliates, or the machinery and equipment used in the provision thereof, in which the Executive's name and/or pictures of the Executive taken in the course of the Executive's provision of services to the Company and/or its Affiliates, appear. The Executive hereby waives and releases any claim or right the Executive may otherwise have arising out of such use, publication or distribution during the term of this Agreement.

*[Signature Page Follows.]*

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

**HERON THERAPEUTICS, INC.**

/s/ Barry Quart

\_\_\_\_\_  
**Barry Quart**  
**Chief Executive Officer**

Dated: October 12, 2015

**EXECUTIVE:**

/s/ Neil Clendeninn

\_\_\_\_\_  
**NEIL CLENDENINN**

Dated: October 12, 2015

**EXHIBIT A**  
**RELEASE AND WAIVER OF CLAIMS**  
**TO BE SIGNED AT TIME OF TERMINATION WITHOUT CAUSE OR**  
**RESIGNATION FOR GOOD REASON**

In consideration of the payments and other benefits set forth in Section 4.4 of the Executive Employment Agreement dated [DATE], to which this form is attached, I, NEIL CLENDENINN hereby furnish HERON THERAPEUTICS, INC. (the "**Company**"), with the following release and waiver (the "**Release and Waiver**").

In exchange for the consideration provided to me by the Employment Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its directors, officers, employees, stockholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, Affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release and Waiver. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including, but not limited to, salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including, but not limited to, claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including, but not limited to, claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("**ADEA**"), and the California Fair Employment and Housing Act (as amended).

I also acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR"**

I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims I may have against the Company.

I acknowledge that, among other rights, I am waiving and releasing any rights I may have under ADEA, that this Release and Waiver is knowing and voluntary, and that the consideration given for this Release and Waiver is in addition to anything of value to which I was already entitled as an executive of the Company. If I am 40 years of age or older upon execution of this Release and Waiver, I further acknowledge that I have been advised, as required by the Older Workers Benefit Protection Act, that: (a) the release and waiver granted herein does not relate to

claims under the ADEA which may arise after this Release and Waiver is executed; (b) I should consult with an attorney prior to executing this Release and Waiver; (c) I have twenty-one (21) days in which to consider this Release and Waiver (although I may choose voluntarily to execute this Release and Waiver earlier); (d) I have seven (7) days following the execution of this Release and Waiver to revoke my consent to this Release and Waiver; and (e) this Release and Waiver shall not be effective until the eighth day after I execute this Release and Waiver and the revocation period has expired (the "**Effective Date**").

I understand that among other things, I must not use or disclose any confidential or proprietary information of the Company and I must immediately return all Company property and documents (including all embodiments of proprietary information) and all copies thereof in my possession or control.

This Release and Waiver constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated herein. This Release and Waiver may only be modified by a writing signed by both me and a duly authorized officer of the Company.

Date:

By: \_\_\_\_\_  
**NEIL CLENDENINN**

## SECTION 302 CERTIFICATION

I, Barry D. Quart, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

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

Date: November 6, 2015

/s/ Barry D. Quart

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Barry D. Quart, Pharm.D.  
Chief Executive Officer

## SECTION 302 CERTIFICATION

I, Brian G. Drazba, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Heron Therapeutics, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

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

Date: November 6, 2015

/s/ Brian G. Drazba

Brian G. Drazba  
Vice President, Finance and  
Chief Financial Officer (As  
Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Each of the undersigned, in his capacity as Chief Executive Officer and Chief Financial Officer, respectively, of Heron Therapeutics, Inc. (the "Registrant"), hereby certifies, for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of his knowledge that:

- the Quarterly Report of the Registrant on Form 10-Q for the quarter ended September 30, 2015 (the "Report"), which accompanies this certification, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- the information contained in the Report fairly presents, in all material respects, the financial condition of the Registrant at the end of such quarter and the results of operations of the Registrant for such quarter.

Dated: November 6, 2015

/s/ Barry D. Quart

Barry D. Quart, Pharm.D.  
Chief Executive Officer

/s/ Brian G. Drazba

Brian G. Drazba  
Vice President, Finance and Chief Financial Officer (As  
Principal Financial and Accounting Officer)

This certification accompanies the Report to which it relates, is not deemed to be filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Heron Therapeutics, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

Note: A signed original of this written statement required by Section 906 has been provided to Heron Therapeutics, Inc. and will be retained by Heron Therapeutics, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.