

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2012.

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 001-33528

OPKO Health, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

75-2402409
(I.R.S. Employer
Identification No.)

4400 Biscayne Blvd.
Miami, FL 33137
(Address of Principal Executive Offices) (Zip Code)

(305) 575-4100
(Registrant's Telephone Number, Including Area Code)

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. [X] YES [ ] NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File i



## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains “forward-looking statements,” as that term is defined under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements include statements about our expectations, beliefs or intentions regarding our product development efforts, business, financial condition, results of operations, strategies or prospects. You can identify forward-looking statements by the fact that these statements do not relate strictly to historical or current matters. Rather, forward-looking statements relate to anticipated or expected events, activities, trends or results as of the date they are made. Because forward-looking statements relate to matters that have not yet occurred, these statements are inherently subject to risks and uncertainties that could cause our actual results to differ materially from any future results expressed or implied by the forward-looking statements. Many factors could cause our actual activities or results to differ materially from the activities and results anticipated in forward-looking statements. These factors include those described below and in “Item 1A-Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2011, and described from time to time in our other reports filed with the Securities and Exchange Commission. Except as required by law, we do not undertake any obligation to update forward-looking statements. We intend that all forward-looking statements be subject to the safe-harbor provisions of the PSLRA. These forward-looking statements are only predictions and reflect our views as of the date they are made with respect to future events and financial performance.

Risks and uncertainties, the occurrence of which could adversely affect our business, include the following:

- We have a history of operating losses and we do not expect to become profitable in the near future.
- Our technologies are in an early stage of development and are unproven.
- Our business is substantially dependent on our ability to develop, launch and generate revenue from our pharmaceutical and diagnostic programs.
- Our research and development activities may not result in commercially viable products.
- ~~Historical~~ results of previous clinical trials may not be predictive of future results antfuturf c “

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- The loss of Phillip Frost, our Chairman and Chief Executive Officer, could have a material adverse effect on our business and development.
- If we fail to attract and retain key management and scientific personnel, we may be unable to successfully develop or commercialize our product candidates.
- In the event that we successfully evolve from a company primarily involved in development to a company also involved in commercialization, we may encounter difficulties in managing our growth and expanding our operations successfully.
- If we fail to acquire and develop other products or product candidates, at all or on commercially reasonable terms, we may be unable to diversify or grow our business.
- We have no experience manufacturing our pharmaceutical product candidates other than at our Israeli and Mexican facilities and we therefore rely on third parties to manufacture and supply our pharmaceutical product candidates, and would need to meet various standards necessary to satisfy FDA regulations if and when we commence manufacturing.
- We currently have no pharmaceutical or diagnostic marketing, sales or distribution capabilities other than in Chile and Mexico for sales in those countries and our API business in Israel. If we are unable to develop our sales and marketing and distribution capability on our own or through collaborations with marketing partners, we will not be successful in commercializing our pharmaceutical product candidates.
- Independent clinical investigators and contract research organizations that we engage to conduct our clinical trials may not be diligent, careful or timely.
- The success of our business is dependent on the actions of our collaborative partners.
- Our license agreement with TESARO, Inc. is important to our business. If TESARO does not successfully develop and commercialize rolapitant, our business could be adversely affected.
- If we are unable to obtain and enforce patent protection for our products, our business could be materially harmed.
- We do not have an exclusive arrangement in place with Dr. Tom Kodadek with respect to technology or intellectual property that may be material to our business.
- If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.
- We rely heavily on licenses from third parties.
- We license patent rights to certain of our technology from third-party owners. If such owners do not properly maintain or enforce the patents underlying such licenses, our competitive position and business prospects will be harmed.
- Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.
- Adverse results in material litigation matters or governmental inquiries could have a material adverse effect upon our business and financial condition.
- Medicare prescription drug coverage legislation and future legislative or regulatory reform of the health care system may affect our ability to sell our products profitably.
- Failure to obtain regulatory approval outside the United States will prevent us from marketing our product candidates abroad.
- We may not have the funding available to pursue acquisitions.



[Table of Contents](#)**PART I. FINANCIAL INFORMATION**

Unless the context otherwise requires, all references in this Quarterly Report on Form 10-Q to the “Company”, “OPKO”, “we”, “our”, “ours”, and “us” refer to OPKO Health, Inc., a Delaware corporation, including our wholly-owned subsidiaries.

**Item 1. Financial Statements**

**OPKO Health, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(unaudited) (in thousands except share and per share data)

	March 31, 2012	December 31, 2011
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents	\$ 47,118	\$ 71,516
Marketable securities	14,997	—
Accounts receivable, net	16,249	12,544
Inventory, net	18,393	13,339
Prepaid expenses and other current assets	2,654	2,179
Current assets of discontinued operations	—	4
Total current assets	99,411	99,582
Property and equipment, net	5,343	5,358
Intangible assets, net	75,094	76,730
Goodwill	40,319	39,815
Investments, net	10,136	6,717
Other assets	1,267	1,287
Total assets	<u>\$ 231,570</u>	<u>\$ 229,489</u>
<b>LIABILITIES, SERIES D PREFERRED STOCK, AND SHAREHOLDERS' EQUITY</b>		
Current liabilities		
Accounts payable	\$ 4,877	\$ 4,891
Accrued expenses	10,389	4,956
Current portion of lines of credit and notes payable	14,194	8,757
Current liabilities of discontinued operations	245	174
Total current liabilities	29,705	18,778
Other long-term liabilities, principally contingent consideration and deferred tax liabilities	22,499	25,443
Total liabilities	52,204	44,221
Commitments and contingencies		
Series D preferred stock – \$0.01 par value, 2,000,000 shares authorized; 1,129,032 and 1,129,032 shares issued and outstanding (liquidation value of \$28,915 and \$28,355) at March 31, 2012 and December 31, 2011, respectively	24,386	24,386
Shareholders' equity		
Series A Preferred stock – \$0.01 par value, 4,000,000 shares authorized; No shares issued or outstanding at March 31, 2012 and December 31, 2011, respectively	—	—
Series C Preferred Stock – \$0.01 par value, 500,000 shares authorized; No shares issued or outstanding at March 31, 2012 or December 31, 2011	—	—
Common Stock – \$0.01 par value, 500,000,000 shares authorized; 297,552,819 and 297,503,033 shares issued at March 31, 2012 and December 31, 2011, respectively	2,976	2,975
Treasury stock – 2,488,477 shares at March 31, 2012 and December 31, 2011	(8,092)	(8,092)
Additional paid-in capital	526,023	524,814
Accumulated other comprehensive income	2,406	907
Accumulated deficit	(368,333)	(359,722)
Total shareholders' equity	154,980	160,882
Total liabilities, Series D Preferred Stock, and shareholders' equity	<u>\$ 231,570</u>	<u>\$ 229,489</u>



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**OPKO Health, Inc. and Subsidiaries**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
(unaudited)  
(in thousands)

	For the three months ended March 31,	
	2012	2011
Net loss attributable to common shareholders	\$ (9,171)	\$ (6,349)
Other comprehensive income (loss)		
Change in foreign currency translation adjustment	1,390	(497)
Available for sale investments:		
Change in other net unrealized gains	109	—
Comprehensive loss	<u>\$ (7,672)</u>	<u>\$ (6,846)</u>





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**OPKO Health, Inc. an- P**

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Cash and cash equivalents consist of short-term, interest-bearing instruments with original maturities of 90 days or less at the date of purchase. We also consider all highly liquid investments with original maturities at the date of purchase of 90 days or less as cash equivalents. These investments include money markets, bank deposits, and U.S. treasury securities.

Investments with original maturities of greater than 90 days and remaining maturities of less than one year are classified as marketable securities. Marketable securities include U.S. treasury securities. Unrealized gains and temporary losses on investments are included in accumulated other comprehensive income (loss) as a separate component of stockholders' equity. Realized gains and losses, dividends, interest income, and declines in value judged to be other-than-temporary credit losses are included in other income (expense). Amortization of any premium or discount arising at purchase is included in interest income.

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We record derivative financial instruments on our balance sheet at their fair value and the





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In February 2012, we made a \$1.0 million investment in ChromaDex Corporation (“ChromaDex”), a publicly traded company and leading provider of proprietary ingredients and products for the dietary supplement, nutraceutical, food and beverage, functional food, pharmaceutical and cosmetic markets, in exchange for 1,333,333 shares of ChromaDex common stock, at \$0.75 per share. In connection with our investment, we also entered into a license, supply and distribution agreement with ChromaDex pursuant to which we obtained exclusive distribution rights to certain of its products in Latin America. Our investment was part of a \$3.7 million

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Beginning balance	\$ —	\$ 18,002
Additions	1,700	—
Change in fair value included in:		
Statement of operations	—	1,144
Other income and expense, net	1,063	—
Ending balance	<u>\$2,763</u>	<u>\$ 19,146</u>

**NOTE 8 DERIVATIVE CONTRACTS**

We enter into foreign currency forward exchange contracts to cover the risk of exposure to exchange rate differences arising from inventory purchases on letters of credit. Under these forward contracts, for any rate above or below the fixed rate, we receive or pay the difference between the spot rate and the fixed rate for the given amount at the settlement date.

In January 2012, we entered into a foreign exchange, fixed interest rate swap contract that provides for us to pay a fixed interest rate on the underlying loan balance denominated in Chilean Pesos. We entered into this agreement in Chile for purchases of inventory denominated in U.S. dollars. A hypothetical 1% interest rate change or 10% foreign exchange rate change will not have a material impact on our results from operations or financial position.

We record derivative financial instruments on our balance sheet at their fair value and the effect on loss is recorded in other accrued expenses and the changes in the fair value are recognized in other income expense, net. To qualify the derivative instrument as a hedge, we are required to meet strict hedge effectiveness and contemporaneous documentation requirements at the initiation of the hedge and assess the hedge effectiveness on an ongoing basis over the life of the hedge. At March 31, 2012, the forward contracts did not meet the documentation requirements to be designated as hedges. Accordingly, we recognize all changes in fair values in income.

The Neovasc warrants are accounted for as derivatives as they are readily convertible into cash. As a result, the fluctuations in fair value are recorded in our statement of operations in other income and expense as an unrealized gain or loss. During the three months ended March 31, 2012, we recorded an unrealized gain of approximately \$0.1 million in other income and expense to reflect the change in fair value based on the increase in Neovasc's stock price. The warrants are based on the market price of Neovasc's common stock at the reporting date.

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The outstanding contracts at March 31, 2012, have been recorded at fair value, and their maturity details are as follows:

(in thousands)				
<u>Days until maturity</u>		<u>Contract</u>	<u>:</u>	<u></u>

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In January 2011, we entered into a definitive agreement with CURNA and each of CURNA's stockholders and option holders, pursuant to which we agreed to acquire all of the outstanding stock of CURNA in exchange for \$10.0 million in cash, plus \$0.6 million in liabilities, of which \$0.5 million was paid at closing. At the time of the transaction, The Scripps Research Institute ("TSRI") owned approximately 4% of CURNA. Dr. Frost serves as a Trustee for TSRI and Dr. Richard Lerner, a director of the Company, served as its President until December 2011.

Our unutilized \$12.0 million line of credit with the Frost Group, LLC (the "Frost Group") expired on March 31, 2012. The Frost Group members include a trust controlled by Dr. Frost, who is the Company's Chief Executive Officer and Chairman of the board of directors, Dr. Jane H. Hsiao, who is the Vice Chairman of the board of directors and Chief Technical Officer, Steven D. Rubin who is Executive Vice President — Administration and a director of the Company, and Rao Uppaluri, who is the Chief Financial Officer of the Company. On June 2, 2010 we repaid all amounts outstanding on the line of credit including \$12.0 million in principal and \$4.1 million in interest. We did not have any borrowings under the line of credit at any time during the 2011 or 2012 fiscal years. We were obligated to pay interest upon maturity, capitalized quarterly, on any outstanding borrowings under the line of credit at an 11% annual rate. The line of credit was collateralized by all of our U.S. personal property except our intellectual property.

In November 2010, we made an investment in Fabrus, Inc., a privately held early stage biotechnology company with next generation therapeutic antibody drug discovery and development capabilities. In exchange for the investment, we acquired approximately 13% of Fabrus on a fully diluted basis. Our investment was part of a \$2.1 million financing for Fabrus. Other investors participating in the financing include the Gamma Trust and Hsu Gamma. In connection with the financing, Drs. Frost and Hsiao joined the Fabrus Board of Managers. Dr. Richard Lerner, a director of the Company, owns approximately 5% of Fabrus. Vaughn Smider, Founder and CEO of Fabrus, is an Assistant Professor at The Scripps Research Institute ("TSRI"). Dr. Frost serves as a Trustee for TSRI and Dr. Richard Lerner served as its President until December 2011.

On July 20, 2010, we entered into a use agreement for approximately 1,100 square feet of space in Jupiter, Florida to house our molecular diagnostics operations with TSRI. Dr. Frost is a member of the Board of Trustees of TSRI and Dr. Richard Lerner, a member of our Board of Directors, was the President of TSRI until December 2011. Pursuant to the terms of the use agreement, which was effective as of November 1, 2009, gross rent was approximately \$40 thousand per year for a two-year term. We ceased use of this space in September 2011.

On June 1, 2010, we entered into a cooperative research and development agreement with Academia Sinica in Taipei, Taiwan ("Academia Sinica"), for pre-clinical work for a compound against various forms of cancer. Dr. Alice Yu, a member of our Board of Directors, is a Distinguished Research Fellow and Associate Director at the Genomics Research Center, Academia Sinica ("Genomics Research Center"). In connection with the agreement, we are required to pay Academia Sinica approximately \$0.2 million over the term of the agreement.

On July 20, 2009, we entered into a worldwide exclusive license agreement with Academia Sinica for a new technology to develop protein vaccines against influenza and other viral infections. Dr. Alice Yu, a member of our Board of Directors, is a Distinguished Research Fellow and Associate Director at the Genomics Research Center. Effective March 5, 2010, the Frost Group assigned two license agreements with Academia Sinica to us. The license agreements pertain to alpha-galactosyl ceramide analogs and their use as immunotherapies and peptide ligands in the diagnosis and treatment of cancer. In connection with the assignment of the two licenses, we agreed to reimburse the Frost Group for the licensing fees previously paid by the Frost Group to Academia Sinica in the amounts of \$50 thousand and \$75 thousand, respectively, as well as reimbursement of certain expenses of \$50 thousand.

Effective September 26, 2009, we entered into a license agreement to which we invested \$2.5 million in Cocrystal in exchange for 1,701,723 shares of Cocrystal's Convertible Series A Preferred Stock. A group of investors, led by the Frost Group (the "Cocrystal Investors") previously invested \$5 million in Cocrystal, and agreed to invest an additional \$5 million payable in two equal installments in September 2009 and March 2010. As a result of an amendment to the license agreement, we agreed to invest an additional \$5 million in Cocrystal in March 2010. The license agreement also provides for a \$500,000 investment in Cocrystal in March 2010.

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On June 10, 2009, we entered into a stock purchase agreement with Sorrento, pursuant to which we invested \$2.3 million in Sorrento. Refer to Note 5. In exchange for the investment, we acquired approximately one-third of the outstanding common shares of Sorrento and received a fully-paid, exclusive license to the Sorrento antibody library for the discovery and development of therapeutic antibodies in the field of ophthalmology. On September 21, 2009, Sorrento entered into a merger transaction with Quikbyte Software, Inc. Prior to the merger transaction, certain investors, including Dr. Frost and other members of OPKO management, made an investment in Quikbyte. Dr. Richard Lerner, a member of our Board of Directors, serves as a consultant and scientific advisory board member to Sorrento and owns less than one percent of its shares.

In November 2007, we entered into an office lease with Frost Real Estate Holdings, LLC, an entity affiliated with Dr. Frost. The lease is for approximately 8,300 square feet of space in an office building in Miami, Florida, where the Company's principal executive offices are located. We had previously been leasing this space from Frost Real Estate Holdings on a month-to-month basis while the parties were negotiating the lease. The lease provides for payments of approximately \$18 thousand per month in the first year increasing annually to \$24 thousand per month in the fifth year, plus applicable sales tax. The rent is inclusive of operating expenses, property taxes and parking. The rent for the first year was reduced to reflect a \$30 thousand credit for the costs of tenant improvements.

We reimburse Dr. Frost for Company-related use by Dr. Frost and our other executives of an airplane owned by a company that is beneficially owned by Dr. Frost. We reimburse Dr. Frost in an amount equal to the cost of a first class airline ticket between the travel cities for each executive, including Dr. Frost, traveling on the airplane for Company-related business. We do not reimburse Dr. Frost for personal use of the airplane by Dr. Frost or any other executive; nor do we pay for any other fixed or variable operating costs of the airplane. We reimbursed Dr. Frost approximately \$65 thousand and \$57 thousand, respectively, for Company-related travel by Dr. Frost and other OPKO executives during the three months ended March 31, 2012 and 2011.

### **NOTE 10 COMMITMENTS AND CONTINGENCIES**

In connection with our acquisitions of CURNA, Claros and FineTech, we agreed to pay future consideration to the sellers upon the achievement of certain events. As a result, we recorded \$19.1 million as con n e e







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**RESULTS OF OPERATIONS  
FOR THE THREE MONTHS ENDED MARCH 31, 2012 AND 2011**

Revenue for the three months ended March 31, 2012, was \$8.8 million, compared to \$7.0 million for the comparable 2011 period. The increase in revenue during the first three months of 2012 is primarily due to revenue generated by our Israeli Active Pharmaceutical Ingredient (“API”) manufacturer which we acquired in December 2011.

Gross margin for the three months ended March 31, 2012, was \$3.8 million compared to \$2.8 million for the comparable period of 2011. Gross margin for the three months ended March 31, 2012, increased from the 2011 period primarily as a result of the increased gross margin generated by our pharmaceutical businesses in Israel and Mexico, partially offset by decreased gross margin generated by our pharmaceutical business in Chile principally due to increased inventory reserves. Gross Margin for the three months ended March 31, 2012 benefited from the correction of an error related to certain costs for inventory purchases. The correction of the error resulted in an increase of \$1.0 million.

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**LIQUIDITY AND CAPITAL RESOURCES**

At March 31, 2012, we ha

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On January 1, 2012, we adopted revised guidance issued by the FASB related to the testing of goodwill for impairment. Under the revised guidance, an entity has the option to perform a qualitative assessment of whether it is more-likely-than-not that a reporting unit's fair value is less than its carrying value prior to performing the two-step quantitative goodwill impairment test. If, based on the qualitative factors, an entity determines that the fair value of the reporting unit is greater than its carrying amount, then the entity would not be required to perform the two-step quantitative impairment test for that reporting unit. However, if the qualitative assessment indicates that it is not more-likely-than-not that the reporting unit's fair value exceeds its carrying value, then the quantitative assessment must be performed. An entity is permitted to perform the qualitative assessment on none, some or all of its reporting units and may also elect to bypass the qualitative assessment and begin with the quantitative assessment of goodwill impairment. This amendment did not have a material impact on our consolidated financial statements.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

In the normal course of doing business, we are exposed to the risks associated with foreign currency exchange rates and changes in interest rates.

**Foreign Currency Exchange Rate Risk** – Although we do not speculate in the foreign exchange market, we may from time to time manage exposures that arise in the normal course of business related to fluctuations in foreign currency exchange rates by entering into offsetting positions through the use of foreign exchange forward contracts. Certain firmly committed transactions are hedged with foreign exchange forward contracts. As exchange rates change, gains and losses on the exposed transactions are partially offset by gains and losses related to the hedging contracts. Both the exposed transactions and the hedging contracts are translated at current spot rates, with gains and losses included in earnings.

Our derivative activities, which consist of foreign exchange forward contracts and swaps, are initiated to hedge forecasted cash flows that are exposed to foreign currency risk. The foreign exchange forward contracts generally require us to exchange local currencies for foreign currencies based on pre-established exchange rates at the contracts' maturity dates. As exchange rates change, gains and losses on these contracts are generated based on the change in the exchange rates that are recognized in the consolidated statement of operations at maturity, and offset the impact of the change in exchange rates on the foreign currency cash flows that are hedged. If the counterparties to the exchange contracts do not fulfill their obligations to deliver the contracted currencies, we could be at risk for currency related fluctuations. During January 2012, we entered into a foreign exchange, fixed interest rate swap contract that provides for us to pay a fixed interest rate on the underlying loan balance denominated in Chilean Pesos. We entered into this agreement in Chile for purchases of inventory denominated in U.S. dollars. A hypothetical 1% interest rate change or 10% foreign exchange rate change will not have a material impact on our results from operations or financial position. We enter into these contracts with counterparties that we believe to be creditworthy and do not enter into any leveraged derivative transactions. We had \$3.2 million in foreign exchange forward contracts outstanding at March 31, 2012, primarily to hedge Chilean-based operating cash flows against US dollars. If Chilean Pesos were to strengthen in relation to the US dollar, our loss or gain on hedged foreign currency cash-flows would be offset by the derivative contracts, with a net effect of zero.

We do not engage in trading market risk sensitive instruments or purchasing hedging instruments or "other than trading" instruments that are likely to expose us to significant market risk, whether interest rate, foreign currency exchange, commodity price, or equity price risk.

**Interest Rate Risk** – Our exposure to market risk relates to our cash and investments and to our borrowings. We maintain an investment portfolio of money market funds. The securities in our investment portfolio are not leveraged, and are, due to their very short-term nature, subject to minimal interest rate risk. We currently do not hedge interest rate exposure. Because of the short-term maturities of our investments, we do not believe that a change in market interest rates would have a significant negative impact on the value of our investment portfolio except for reduced income in a low interest rate environment. At March 31, 2012, we had cash, cash equivalents and marketable securities of \$62.1 million. The weighted average interest rate related to our cash and cash equivalents for the three months ended March 31, 2012 was 0%. As of March 31, 2012, the principal value of our credit lines was \$14.2 million at a weighted average interest rate of approximately 7% for the three months then ended.

The primary objective of our investment activities is to preserve principal while at the same time maximizing yields without significantly increasing risk. To achieve this objective, we invest our excess cash in debt instruments of the U.S. Government and its agencies, bank obligations, repurchase agreements and high-quality corporate issuers, and money market funds that invest in such debt instruments, and, by policy, restrict our exposure to any single corporate issuer by imposing concentration limits. To minimize the exposure due to adverse shifts in interest rates, we maintain investments at an average maturity of generally less than three months.

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**Item 4. Controls and Procedures**

The Company's management, under the supervision and with the participation of the Company's Chief Executive Officer ("CEO") and Chief Financial Officer, conducted an evaluation of the effectiveness of the Company's internal control over financial reporting as of the end of the period covered by this report.



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**Item 6. Exhibits.**

Exhibit 2.7



**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: May 10, 2012

**OPKO Health, Inc.**

/s/ Adam Logal

Adam Logal  
Executive Director of Finance, Chief Accounting Officer and  
Treasurer

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**Agreement**

In consideration of the preliminary statements and the respective representations and warranties, covenants and agreements contained in this Agreement, the parties agree as set forth below:

**ARTICLE 1**

**Definitions**

In addition to terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings indicated below:

**Ac ex**

**Contrato**

En virtud de las declaraciones preliminares y de las declaraciones y garantías, convenios y acuerdos respectivos contenidos en el presente Contrato, las partes acuerdan lo siguiente:

**ARTÍCULO 1**

**Definiciones**

Además de los términos definidos en este Contrato, los términos a continuación tendrán los siguientes significados al utilizarse en este Contrato:

**“Competing Transaction”** means any of the following: (a) any merger, consolidation, capital exchange, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company, (b) any sale, exchange, transfer or other disposition or issuance of any of the Quotas or any other registered capital or other ownership interests in the Company (including any financing of the Company), or (c) any other transaction the consummation of which would reasonably be expected to impede, prevent or materially delay the transactions contemplated by this Agreement.

**“Contracts”** means all contracts, agreements, covenants, commitments and other instruments of any kind, whether oral or written, in which the Company is a party or to which any Assets (as defined below) of the Company are bound.

**“Environmental Law”** means any applicable law and any enforceable judicial or administrative interpretation thereof relating to pollution or protection of the environment or any aspect of air, water or land.

**“Operación de la Competencia”** hace referencia a: (a) toda fusión, absorción, consolidación, canje de capital, traspaso de acciones, fusión de empresas, recapitalización, liquidación, disolución u otra operación similar que involucre a la Empresa, (b) toda venta, permuta, canje, transferencia, cesión u otra forma de disposición o emisión de cualquiera de las Cuotas, otro capital registrado u otras participaciones en la Empresa (incluida cualquier financiación de la Empresa), o (c) cualquier otra operación, cuya consumación, se espera que razonablemente impida, evite o retrase sustancialmente las operaciones contempladas en este Contrato.

**“Contratos”** se refiere a todo contrato, acuerdo, convenio u otro instrumento de cualquier tipo, sea verbal o escrito, del que la Empresa sea una de las partes o al que cualquier Activo (definido más adelante) de la empresa esté obligado.

**“Environmental Law”** means any applicable law and any enforceable judicial or administrative interpretation thereof relating to pollution or protection of the environment or any aspect of air, water or land.



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**Investment Companies** jointly refers to INVER



“**Non-Compete Agreement**” means the non-compete agreement between the Company, each of the Sellers, Arama Laboratories and its controlling persons in the form attached hereto as Exhibit B.

“**Organizational Documents**” means any and all documents pursuant to which an entity is organized and/or operates under the applicable laws of its jurisdiction.

“**Person**” means any natural person, corporation, limited liability corporation, unincorporated organization, partnership, association, joint stock company, joint venture, trust or government, or any agency or political subdivision of any government, or any other entity.

“**Peso**” or “**Ch\$**” means the lawful currency of the Republic of Chile.

“**Quota Transfer Deed**” means the notarial deed, substantially in the form attached hereto as Exhibit C, to be executed by the Parties on the Closing.

“**Subsidiary**” of a specified Person means a Person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the specified Person.

“**Tax**” means any national, provincial, or local income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, all gross receipts, sales, use, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, assets, minimum income, environmental, customs, duties, real property, personal property, capital stock, social security obligations or contributions, unemployment, disability, payroll,

“**Acuerdo de No Competencia**” se refiere al acuerdo de no competencia celebrado entre la Empresa, cada uno de los Vendedores, Arama Laboratorios y sus personas controladoras, conforme al modelo adjunto a este Contrato como Anexo B.

“**Documentos Constitutivos**” se refiere a todos y cada uno de los documentos en virtud de los cuales se constituye y/u opera una empresa conforme a la ley pertinente de su jurisdicción.

“**Persona**” quiere decir toda persona física, persona jurídica, sociedad de responsabilidad limitada, asociación sin personería jurídica, sociedad colectiva, asociación, sociedad por acciones, (empresa conjunta), fideicomiso o gobierno, o cualquier organismo o subdivisión política de cualquier gobierno, o cualquier otra entidad.

“**Peso**” o “**Ch\$**” se refiere a la moneda de curso legal en la República de Chile.

“**Escritura de Cesión de Cuota**” se refiere a la escritura notarial, sustancialmente de acuerdo con el modelo adjunto al presente como Anexo C, que las Partes deberán celebrar y firmar al Cierre.

“**Filial**” de una Persona específica es una Persona que directa o indirectamente por medio de uno o más intermediarios controla o es controlada por, o bien ejercer el control común con la Persona especificada.

“**Impuesto**” se refiere a todos los ingresos o rentas, nacionales, provinciales o locales, ingresos brutos, franquicias nacionales, provinciales o locales, estimados, mínimo alternativo, mínimo adicional, ventas, usos, transferencia, registros o inscripciones, todos los ingresos brutos, venta, uso, valor agregado, impuesto indirecto, recursos naturales, indemnización, sellado, ocupación, prima, beneficio imprevisto, activos, ingresos mínimos, ambientales, derechos de aduana, aranceles, bienes inmuebles, bienes muebles, capital



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the Company as of the date of the Closing. Such deductions shall be made pro rata from the proceeds to each of the Sellers. All those amounts shall be delivered in immediately available funds (the "*Closing Consideration*").

cualquiera de los Vendedores, Arama Laboratorios o cualquiera de sus partes relacionadas con la Empresa a la fecha de Cierre. Dich



its properties may be bound or effected, in each case which would materially adversely affect the ability of the Buyers to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement.

#### **ARTICLE 4**

##### **REPRESENTATIONS AND WARRANTIES OF EACH OF THE SELLERS RELATING TO THE COMPANY AND TO THE SELLERS**

In order to induce the Buyers to enter into this Agreement and to consummate the transactions contemplated hereby, each of the Sellers, on a joint and several basis, make the representations and warranties set forth below as of the date hereof and as of the Closing Date.

**4.1. Organization.** The Company has been duly organized and is validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as the case may be. The Company is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary. The Company has all requisite right, power and authority to (a) own or lease and operate its properties and (b) conduct its business as presently conducted. The Company is not in violation of any provision of its Organizational Documents.

**4.2. Authorization; Enforceability.** Each of the Sellers has all necessary power and authority to execute and deliver the Transaction Documents, to carry out its obligations thereunder, and to consummate the transactions contemplated thereby. The execution and

ninguna propiedad ni bienes de los Compradores conforme a cualquier instrumento, contrato, obligación ni acuerdo del que los Compradores sea una de las partes o por el cual los Compradores o sus bienes estén obligados o se vean afectados; en cada caso que afectarían de manera sustancialmente adversa la capacidad de los Compradores de cumplir sus obligaciones según, o materializar las operaciones contempladas en, este Contrato.

#### **ARTÍCULO 4**

##### **DECLARACIONES Y GARANTÍAS DE CADA VENDEDOR RELACIONADAS CON LA EMPRESA Y CON LOS VENDEDORES**

Para conseguir que los Compradores suscriban este Contrato y materialicen las operaciones contempladas en el presente, cada uno de los Vendedores, en forma solidaria, realiza las declaraciones y garantías enunciadas a continuación las que serán válidas a partir de esta fecha y de la Fecha de Cierre.

**4.1. Constitución.** La Empresa es una sociedad debidamente constituida, existente y solvente, conforme a las Leyes vigentes en el estado en el que obtuvo su personería jurídica o se creó, según el caso. La Empresa está debidamente habilitada o facultada para desarrollar sus actividades comerciales, y existe válidamente en cada jurisdicción en la que se encuentran ubicados los bienes que posee, arrienda u opera o la naturaleza de sus actividades comerciales hace que tal habilitación o autorización sea necesaria. La Empresa goza de todos los derechos, facultades y autoridad requeridos para (a) ser propietario o arrendar sus bienes; y (b) llevar a cabo sus actividades comerciales como lo realiza hasta el presente. La Empresa cumple con todas las disposiciones de sus Documentos Constitutivos.

**4.2. Autorización, Aplicación.** Cada Vendedor posee todas las facultades y autoridad necesarias para celebrar y otorgar y cumplir con los Documentos de la Operación, cumplir con sus obligaciones y materializar las operaciones contempladas en el presente Contrato y

delivery of the Transaction Documents by each of the Sellers and the consummation by it of the transactions contemplated thereby have been duly and validly authorized by all requisite action. This Agreement has been, and upon execution the Escrow Agreement shall have been, duly and validly executed and delivered by each of the Sellers and constitutes the legal, valid and binding obligations of each of the Sellers, enforceable in accordance with their respective terms.

**4.3. No Violation or Conflict.** The execution and delivery of the Transaction Documents by each of the Sellers, the consummation of the transactions contemplated thereby, and compliance with the provisions thereof, do not and will not: (a) violate or conflict with any provision of the Company's Organizational Documents; (b) violate or conflict with any Law applicable to each of the Sellers; and (c) with or without the passage of time or the giving of notice, result in the breach of, or constitute a default under, or give to others any right of acceleration of performance, termination, amendment or cancellation of, or result in the creation of any Lien u<sup>n</sup> ion5on

en esos documentos. La celebración y otorgamiento de los Documentos de Operación por cada uno de los Vendedores y la materialización de las operaciones contempladas en el presente y en esos documentos han sido debida y válidamente autorizadas por todas las resoluciones corporativas exigidas. Este Contrato se ha celebrado, y en el momento de la celebración del Contrato de Depósito en Garantía habrá estado, debidamente otorgado por cada uno de los Vendedores, y constituye, y en el momento de la celebración del Contrato de Depósito en Garantía constituirá, la obligación legal, válida y vinculante de cada uno de los Vendedores, exigible de acuerdo con sus términos respectivos.







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terminated its relationship with the Company, (ii) has advised the Company of its intention to cancel, suspend or terminate its relationship or to materially decrease its purchase of the products or services of the Company or to change the terms upon which it purchases products or services, or (iii) could reasonably be expected to cancel, suspend or terminate its relationship or to decrease its purchase of the products or services of the Company as a result of the consummation of the transactions contemplated hereby.

suspender ni terminar su relación o de disminuir de forma material su compra de productos o servicios a la Empresa o bien modificar los términos mediante los cuales compra productos o servicios, ni (iii) se espera que, dentro de lo razonable, cancelaría, suspendería o terminaría su relación o disminuiría su compra de productos o servicios a la Empresa como resultado de la materialización de las operaciones contempladas en el presente.

**4.12. Tax Matters.** All Tax returns and other similar documents required to be filed with respect to the Company have been timely filed with the appropriate Governmental Authorities in all jurisdictions in which such returns and documents are required to be filed, all of the foregoing are true, correct and complete and reflect accurately all liabilities for Taxes of the for the periods to which such returns and documents relate, and all amounts shown as owing thereon have been paid. All Taxes, if any, collectible or payable by the Company or relating to or chargeable to and amount to

conducted. All of the Assets are in good operating condition and repair, ordinary wear and tear excepted.

#### **4.14. Intellectual Property.**

(a) ~~Schedule 4.14(a) establishes a true and~~ complete list of (i) all patents and patent applications, registered trademarks and trademark applications, registered copyrights and copyright applications and domain names included in the Company Intellectual Property, (ii) all Company IP Agreements, (iii) other Company Intellectual Property material to the Company's business; and (iv) all Pharmaceutical Health Records that are to be considered part of the assets of the Company as of the Closing Date and that as of this date are in the process of being registered under the name of the Company before the Instituto de Salud Pública ("ISP") y the trademark registrations of Arama Laboratorios y Compañía Limitada that as of this date are in the process of being transferred to the Company in the Instituto Nacional de Propiedad Industrial ("INAPI") or the relevant Governmental Authority as the case may be, in the following manner and order: (a) from Arama Laboratories to each of the Investment Companies; then (b) from Arama Laboratories to the Company (in the case of the "Arama" trademark Registration N° 662065); and then (c) from each of the Investment Companies to the Company (as capital contribution).

comerciales de la Empresa de acuerdo con las prácticas establecidas en el pasado y de la forma esperada. Todos los Activos se encuentran en buenas condiciones de uso y funcionamiento, con los deterioros propios del normal uso y del transcurso del tiempo.

#### **4.14. Propiedad Intelectual.**

(a) El Schedule 4.14(a) establece una lista auténtica y completa de: (i) todas las patentes y solicitudes de patentes, registros de marcas y solicitudes de marcas, derechos de autor registrados y solicitudes de derechos de autor y nombres de dominio incluidos en la Propiedad Intelectual de la Empresa, (ii) todos los Acuerdos de PI de la Empresa, (iii) toda otra Propiedad Intelectual de la Empresa importante para sus actividades, y (iv) todos los Registros hisc

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(c) The Company, as of this Date, is the exclusive owner of the entire right, title and interest in and to the Company Intellectual Property listed in Schedule 4.14(a), and has a valid license to use any Licensed Intellectual



rights, severance payments, or other contingent obligations of any nature whatsoever of the Company in favor of any such Persons by reason of the transactions contemplated by this Agreement.

(b) Schedule 4.17(b) contains a list of the employees of the Company who shall continue to provide services after the Closing and with respect to whom the Sellers shall not be bound or liable. After the Closing Date, the Company and the Buyers shall be exclusively liable for their salaries, social security contributions, compensation, settlements and, in general, any other legal obligation regarding labor, benefits and social security matters.

(c) Personnel. Schedule 4.17(c) contains the names, job descriptions and annual salary rates, bonus payments and other compensation of any kind of all officers, directors, advisory board members, consultants and employees of the Company (including compensation paid or payable by the Company under the collective bargaining agreements or union contracts). ~~En el~~

de estas Personas por concepto de las operaciones contempladas en este Contrato.

(b) El Schedule 4.17 (b) contiene una lista de los empleados de la Empresa, que continuarán prestando servicios después del Cierre y respecto de los cuales, los Vendedores no tendrán obligación ni responsabilidad alguna. Después de la fecha de Cierre, sus remuneraciones, cotizaciones previsionales, indemnizaciones, finiquitos y en general obligaciones legales en materia laboral, previsional y de seguridad social, serán de exclusiva responsabilidad de la Empresa y los compradores.





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**4.23. Compliance with Laws.** Except as set forth in Schedule 4.23, the Company is in compliance with all Laws applicable to it, its business or properties. The Company has not received notification from any Governmental Authority asserting that it is not in compliance with or has violated any Laws, or threatening to revoke any authorization, consent, approval, franchise, license, or Permit, and the Company is not subject to any Governmental Order, agreement or consent decree with any Governmental Authority arising out of previously asserted violations

**4.23. Cumplimiento de las Leyes.** Con excepción de lo establecido en el Schedule 4.23, la Empresa cumple todas las Leyes que son aplicables a ella, sus actividades o bienes. La Empresa no ha recibido notificación de ninguna Autoridad Gubernamental por

**4.27. Title to Securities.** Each of the Sellers is and shall be, the legal and beneficial owner of the Quotas, respectively, and such Quotas are owned free and clear of all Liens, rights of first refusal, partners' agreements, preemptive rights, charges and other encumbrances and agreements of any nature whatsoever. At the Closing, each of the Sellers will transfer and convey, and the Buyers will acquire, good and valid title to the Quotas, free and clear of all Liens.

Prior to the date hereof:

- (i) Each of Messrs. Arama, Sergiani y Le Goff have transferred to their respective Investment Companies referred to in the preliminary statements of this Agreement, 100% of the Quotas in the Company;
- (ii) Each of the Investment Companies acquired from Arama Laboratories y Compañía Limitada all of the trademarks, pending applications of trademarks registers, Intellectual Property, product registrations and Pharmaceutical Health Records relating to all products developed, manufactured and/or sold or contemplated to be sold by or on behalf of Arama Laboratories y Compañía Limitada, including without limitation, the, product registrations, the applications and Pharmaceutical Health Records set forth on Schedule 4.14(a) hereto (the "**Arama Assets**") which have been contributed to the Company by means of the capital increase described in letter C. of the preliminary statements to this Contract; and
- (iii) Arama Laboratories transferred its trademark "Arama", Registration N° 662065, through the document "Reconocimiento de Deuda y Dación en Pago" between Arama Laboratories and the Company dated December 9<sup>th</sup> 2011, which is included in the Agreement as Annex E (included within the Arama Assets definition set forth above) to the Company for the purposes of paying off a debt it had with the Company;

**4.27. Titularidad de Valores.** Cada Vendedor es y debe ser el propietario directo e indirecto de las Cuotas, respectivamente, y dichas Cuotas se encuentran libres y exentas de todo Gravamen, derechos de opción de compra, acuerdos de socios, derechos preferentes, cargas u otros gravámenes de cualquier naturaleza. Al Cierre, cada Vendedor transferirá a los Compradores, y los Compradores adquirirán, el dominio absoluto y perpetuo sobre todas las Cuotas, libre y exento de todo Gravamen.

Con anterioridad a esta fecha:

- (i) Cada uno de los Señores Arama, Sergiani y Le Goff han transferido a sus respectivas Sociedades de Inversión referidas en las declaraciones preliminares de este Contrato, todas las Cuotas en el capital de la Empresa;
- (ii) Cada una de las Sociedades de Inversión han adquirido de Arama Laboratorios todas las marcas, solicitudes de registros de marcas, Propiedad Intelectual, registros de productos y los Registros Sanitarios Farmacéuticos relacionados con aquellos productos desarrollados, manufacturados y/o comercializados o que se contempla sean comercializados por o en representación de Arama Laboratorios y Compañía Limitada, incluido sin limitación, los registros de productos, las solicitudes y los Registros Sanitarios Farmacéuticos descritos en el Schedule 4.14(a) a este Contrato (los "**Activos Arama**"), los cuales han sido aportados a la Empresa mediante el aumento de capital descrito en la letra C. de las declaraciones preliminares a este Contrato; y
- (iii) Arama Laboratorios ha transferido la marca de su propiedad "Arama", Registro N° 662065 , a través del documento Reconocimiento de Deuda y Dación en Pago entre Arama Laboratorios y la Empresa de fecha 09 de diciembre de 2011 y que se incluye como Anexo E, el cual se entiende formar parte de este Acuerdo (la cual se entiende incluida dentro de la definición de Activos Arama establecida precedentemente) a la Empresa, a efectos de liquidar una deuda que mantenía con la Empresa

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**Article 5**

**COVENANTS**

During the period from the date of this Agreement through the Closing Date, each of the Company, the Sellers and the Buyers, as applicable, agree to perform the covenants set forth below

**5.1. Interim Operations of the Company**

(a) Except as otherwise approved in writing by the Buyers, the Company shall, and each of the Sellers shall cause the Company to, operate its business in, and not take any action except in, the ordinary course consistent with past practice and to preserve intact their respective business organizations, Assets, Intellectual Property, and the current relationships and goodwill of their customers, suppliers and others with whom it has significant business relations.

(b) The Company, and each of the Sellers shall cause the Company not to, during the period from the date of this Agreement to the Closing Date, except with the prior written consent of the Buyers, directly or indirectly:

- (i) amend or otherwise change the Organizational Documents of the Company;
- (ii) issue, sell, dispose of, create a Lien on, or authorize the issuance, sale, disposal or creation of any Lien on, (A) any capital stock of, or other ownership interests in, the Company, including the Quotas (including, but not limited to, by way of stock split, dividend or distribution) or any subscriptions, options, warrants, convertible securities or other rights to acquire the foregoing, or (B) any Asset or property right, except for sales of inventory in the ordinary course of business consistent with past practice;

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**ARTÍCULO 5**

**CONVENIOS**

Durante el período comprendido a partir de la fecha de este Contrato hasta la Fecha de Cierre, la Empresa, los Vendedores y los Compradores, según corresponda, acuerdan llevar a cabo los convenios establecidos a continuación.

**5.1. Operaciones Provisorias de la Empresa**

(a) A menos que los Compradores aprueben por escrito lo contrario, la Empresa, y cada Vendedor dispondrá que la Empresa, llevará a cabo sus actividades, y no adoptará medida alguna excepto durante el giro ordinario de sus negocios de acuerdo con la práctica establecida en el pasado y para preservar intactas todas sus empresas comerciales, Activos, Propiedad Intelectual y las relaciones y buena voluntad existentes con sus clientes, proveedores y terceros con quienes mantenga relaciones comerciales importantes.

(b) La Empresa, y cada Vendedor impedirá que la Empresa, durante el período comprendido a partir de la fecha del presente Contrato hasta la Fecha de Cierre, excepto con el consentimiento por escrito de los Compradores, en forma directa o indirecta:

- (i) corrija o modifique de alguna forma u otra los Documentos Constitutivos de la Empresa;
- (ii) emita, venda, disponga de, cree un gravamen sobre, o autorice la emisión, venta, disposición o creación de gravámenes sobre, (A) capital social de, u otra participación o parte de interés en, la Empresa, incluidas las Cuotas (que incluyen, pero no se limitan, a modo de división de acciones, dividendo o distribución) o cualquier suscripción, opción, warrants, títulos-valores convertibles u otros derechos para adquirir las anteriores, o (B) cualquier Activo o derecho de propiedad, con excepción de las ventas de existencias durante el giro ordinario de los negocios de la Empresa de acuerdo con la práctica establecida en el pasado;

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| (iii) redeem, purchase, reclassify, combine, split, subdivide, change the terms of, or otherwise acquire, any ownership interests in, the Company;  | (iii) rescatar, comprar, reclasificar, combinar, dividir, subdividir, modificar los términos de, o de otra manera adquirir, una participación o parte de interés en, la Empresa;                                   |
| (iv) declare or pay any distribution (whether in cash, ownership interests or other property) with respect to any ownership interests in, the Company;  | (iv) declarar ni pagar una comisión (sea en efectivo, en participaciones sociales o en especie) con respecto a una participación o parte de interés en, la Empresa;  |
| (v) with respect to the Company create, incur or assume any indebtedness or any Liability, including granting or becoming subject to any Guaranty, individually or in the aggregate, in excess of US\$10,000; | (v) con respecto a la Empresa, generar, incurrir en o asumir ningún endeudamiento o Pasivo, incluido el otorgamiento o quedar sujeto a ninguna Garantía, de forma individual o conjunta, por encima de US\$10.000; |
| (vi) with respect to the Company make or commit to make any capital expenditures, individually or in the aggregate, in excess of US\$10,000;  | (vi) con respecto a la Empresa, incurrir o comprometerse a incurrir en gastos de capital, de forma individual o conjunta, por encima de US\$10.000;  |
| (vii) with respect to the ~ &   |  |

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| <p>(x) with respect to the Company, acquire (including, without limitation, by merger, consolidation or acquisition of stock or assets) any interest in any Person or assets (other than the acquisition of inventory in the ordinary course of business);</p> | <p>(x) Con respecto a la Empresa, adquirir (incluyendo, sin restricciones, por fusión, absorción, consolidación o adquisición de acciones o activos) una participación en una Persona o activos (distintos de la adquisición de existencias durante el giro ordinario de la actividad empresarial);</p> |
| <p>(xi) alter the manner of keeping the books, accounts or records of the Company, or change in any manner the accounting practices, methods or assumptions therein reflected;</p>   | <p>(xi) alterar la forma de llevar los libros, cuentas o registros contables de la Empresa, ni modificar de cualquier forma las prácticas, métodos contables o presunciones reflejadas en ellos;</p>  |
| <p>(xii) amend, terminate, cancel or compromise any material claims of the Company or waive any other material rights of the Company;</p>  | <p>(xii) corregir, terminar, cancelar o transigir cualquier reclamos esenciales de la Empresa o renunciar a cualquier otro derecho esencial de la Empresa;</p>  |
| <p>(xiii) with respect to the Company, delay or postpone the payment of accounts payable or other Liabilities;</p>   | <p>(xiii) con respecto a la Empresa, retrasar o posponer el pago de las cuentas por pagar u otros Gravámenes;</p>   |
| <p>(xiv) take or omit to take any action which is intended to render any of each of the Seller's representations or warranties untrue or misleading, or which would be a material breach of any of each of the Sellers' covenants or agreements;</p>           | <p>(xiv) Tomar, omitir o no tomar alguna acción que pretenda ocasionar a cualquiera de las declaraciones o garantías de cada Vendedor como falsa o engañosa, o que pueda ser incumplimiento material de alguno de los convenios o acuerdos de los Vendedores;</p>                                       |
| <p>(xv) allow any Permit to lapse or terminate or fail to renew any Permit;</p>  | <p>(xv) Autorizar ningún Permiso para caducar, terminar o incumplir la renovación de cualquier Permiso de cualquier tipo que sea necesario para la operación de la Empresa;</p>   |
| <p>(xvi) take any action which is intended to delay the consummation of the transaction contemplated by this Agreement; or</p>   | <p>(xvi) Tomar alguna acción que pretenda ocasionar un Efecto Material Adverso o retrasar la materialización de las operaciones contempladas en el presente Acuerdo y/o</p>   |



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commitment

## ARTICLE 6

### Additional Agreements

**6.1. Survival of the Representations and Warranties.** The representations and warranties contained in this Agreement shall survive the Closing Date for the applicable statute of limitations. If written notice of a claim has been given prior to the expiration of the applicable representations and warranties by a Party hereto to another Party hereto, then the relevant representations and warranties shall survive as to such claim until such claim has been finally resolved.

**6.2. General Release.** As additional consideration for the sale of the Quotas pursuant to this Agreement, each of the Seller hereby unconditionally and irrevocably releases and forever discharges, effective as of the Closing Date, the Company and their Representatives, from any and all rights, claims, demands, judgments, obligations, Liabilities and damages, whether accrued or unaccrued, asserted or unasserted, and whether known or unknown, relating to the Company, which ever existed, now exist, or may hereafter exist, by reason of any tort, breach of contract, violation of Law or other act or failure to act which shall have occurred at or prior to the Closing Date, or in relation to any other Liabilities of the Company. The Sellers expressly intend that the foregoing release shall be effective regardless of whether the basis for any claim or right hereby released shall have been known to or anticipated by the Sellers.

### 6.3. Indemnification.

**(a) Indemnification.** Each of the Sellers agree, on a joint and several basis, to indemnify and hold harmless the Buyers and their respective affiliates and their respective representatives, successors and assigns (the "**Buyers Indemnified Parties**") from, against and in respect of, the full amount of:

(i) any and all Liabilities arising from, in connection with any breach or violation of (A) any representation or warranty of each of the Sellers contained in this Agreement or in any schedule or exhibit hereto, and (B) any covenant or agreement of each of the Sellers contained in this Agreement;

## ARTÍCULO 6

### ACUERDOS ADICIONALES

**6.1. Vigencia de las Declaraciones y Garantías.** Las declaraciones y garantías contenidas en este Contrato continuarán vigentes con posterioridad al vencimiento de la Fecha de Cierre para los efectos de la ley de prescripción aplicable. Si el reclamo se ha notificado por escrito antes del vencimiento de las declaraciones y garantías pertinentes, por una de las Partes del presente a la otra, entonces las declaraciones y garantías pertinentes permanecerán vigentes con posterioridad a dicho reclamo hasta su resolución definitiva.

**6.2. Renuncia General.** Como contraprestación adicional a la venta de las Cuotas en virtud de este Contrato, cada Vendedor por la presente libera y exime en forma incondicional y a perpetuidad, con efecto a partir de la Fecha de Cierre, a la Empresa, de todos los derechos, reclamos, sentencias, obligaciones, Pasivos y daños y perjuicios, devengados o no devengados, declarados o no declarados, conocidos o desconocidos, relacionados con la Empresa, existentes en el pasado, que existan actualmente, o que existirán en el futuro, como consecuencia de cualquier hecho ilícito civil, incumplimiento de contrato, violación de la Ley o cualquier otra acción u omisión que haya ocurrido en o antes la Fecha de Cierre, o en relación con cualquier otro Pasivo de la Empresa. Los Vendedores procuran expresamente que la exención anterior sea válida independientemente de que el fundamento de cualquier reclamo o derecho liberado en el presente haya sido conocido o previsto por los Vendedores.

### 6.3. Indemnización.

**(a) Indemnización.** Cada Vendedor acuerda, de forma solidaria, indemnizar y mantener indemne y libre y exento de responsabilidad a los Compradores y sus respectivas coligadas y sus respectivos representantes, sucesores y cesionarios (las "**Partes Indemnizadas de los Compradores**") de, contra, y en lo que se refiere a, la cantidad total de:

(i) Cualquiera y todo Pasivo que surja de, en relación con, cualquier incumplimiento o violación de (A) cualquier declaración o garantía de cada uno de los Vendedores contenida en este Contrato o en cualquier anexo o apéndice del mismo f (ndi e de l ndid



(ii) any other Taxes related to or arising from the transactions contemplated hereby or in contemplation hereof by reason of any Liability for Taxes of the Company's partners which has its origin in operations before Closing and assessed by any taxing authority against the Sellers, their shareholders, the Company, either before or after the Closing Date;

(ii) Cualquier otro Impuesto relacionado con o derivado de las operaciones contempladas en el presente, o previstas en el presente, como consecuencia de cualquier Deuda Tributaria de los socios de la Empresa, que tenga su origen en operaciones realizadas antes del cierre y exigido por una autoridad fiscal contra los Vendedores, sus socios, la Empresa, sea antes o después de la Fecha de Cierre;

(iii) any and all liabilities of the Company for products or services delivered by the Company prior to Closing, including Liabilities for product recall, product defects, claims, personal injury, death; and

Todo Pasivo relacionado con o derivado de productos o servicios provistos por la Empresa antes de la Fecha de Cierre, incluyendo los Pasivos por retiro de productos, defectos de productos, reclamos de garantía, lesiones personales o fallecimiento; y

(iv) any and all actions, demands, suits, claims, costs and expenses of any kind incurred by the Company or any of the Sellers in connection with the Closing;

Acción, demanda, valuación o sentencia, costo y gastos inherentes a cualquiera de ellos.

(b) Indemnification The Seller shall indemnify the Company on

el procedimiento de indemnización respecto de Reclamos de

provided, however, that the Buyers Indemnified Party (1) shall be permitted to join the defense and settlement of such Claim and to employ counsel reasonably satisfactory to it at its expense, and (2) shall cooperate fully with the Sellers in the defense and any settlement of such Claim in any manner reasonably requested by the Sellers. The Sellers shall not make any settlement of any claims without the written consent of the Buyers Indemnified Party.

(ii) If the Sellers fail to assume the defense of such Claim or, having assumed the defense and settlement of such Claim, fail reasonably to contest such Claim in good faith, or the remedy sought by the claimant with respect to such Claim is not solely for money damages, the Buyers Indemnified Party, without waiving its right to indemnification, may, but is not required to, assume the defense and settlement of such Claim at the respective Sellers' expense, provided, however, that (A) each of the Sellers shall cooperate with the Buyers Indemnified Party in the defense and settlement of such Claim in any manner reasonably requested by the Buyers Indemnified Party, and (B) the Buyers Indemnified Party shall not settle such Claim without the written consent of each of the Sellers, which consent shall not be unreasonably withheld or delayed

**6.4. Confidentiality.** Each of the Sellers acknowledge that the Company Intellectual Property, the Licensed Intellectual Property and all other confidential or proprietary information with respect to the business and operations of the Company are valuable, special and unique. Each of the Sellers shall not, at any time after the Closing Date, disclose, directly or indirectly, to any Person, or use or purport to authorize any Person to use any Company

\_\_\_\_\_ la Parte Indemnizada de los Compradores (1) sea autorizada para participar en la defensa y resolución de dicho Reclamo o Demanda y contratar a un abogado que sea razonablemente satisfactorio para ello, debiendo soportar sus gastos; y (2) cooperará en todo sentido con los Vendedores en la defensa y resolución de dicho Reclamo de cualquier manera que sea razonablemente requerida por los Vendedores. Los Vendedores no procederán a resolver reclamos sin el previo consentimiento escrito de la Parte Indemnizada de los Compradores.

(ii) Si los Vendedores no asumen la defensa de dicho Reclamo o, tras haber asumido la defensa y resolución de tal Reclamo, omiten responder razonablemente al Reclamo de buena fe, o si el recurso pretendido por el demandante con respecto a dicho Reclamo no consiste exclusivamente en un resarcimiento por daños y perjuicios pecuniarios, la Parte Indemnizada de los Compradores, sin renunciar a su derecho a indemnización puede, pero no se le exige que lo haga, asumir la defensa y resolución de dicho Reclamo por cuenta y cargo de los Vendedores, en el entendido de que (A) cada uno de los Vendedores cooperará con la Parte Indemnizada de los Compradores en la defensa y resolución de dicho Reclamo de la manera razonablemente requerida, por la Parte Indemnizada de los Compradores, y (B) la Parte Indemnizada de los Compradores no resolverá Reclamo sin el revio consentimiento escrito de cada uno de los Vendedores, cuyo consentimiento no podrá denegarse ni demorarse injustificadamente.

**6.4. Confidencialidad.** Cada Vendedor reconoce que la Propiedad Intelectual de la Empresa, la Propiedad Intelectual Autorizada y otras informaciones confidenciales o propias de la empresa con respecto a sus actividades comerciales y operaciones son valiosas, especiales y únicas. Los Vendedores no divulgarán, en ningún momento con posterioridad a la Fecha de Cierre, en forma directa o indirecta, ni utilizarán o intentarán utilizar ninguna Propiedad Intelectual de la Empresa,











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The transfer of the Arama Assets to the Company is an essential component of the Buyers agreeing to enter into this transaction and any failure to transfer the Arama Assets and fully vest such Arama Assets in the Company shall constitute a material breach of this Agreement.

La transferencia de los Activos Arama a la Empresa es un componente esencial para que los Compradores acuerden suscribir la presente transacción por lo que cualquier fracaso en la transferencia de los Activos Arama a la Empresa será constitutivo de un incumplim c



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#### **7.4. Termination**

(a) This Agreement and the transactions contemplated hereby may be terminated prior to the Closing:

(i) at any time by mutual consent of the Parties;

(ii) by either Party if the Closing has not occurred on or prior to April 30, 2012 (the "**Termination Date**"), provided that the failure of the Closing to occur by such date is not the result of the failure of the Party seeking to terminate this Agreement to perform or fulfill any of its obligations hereunder;

(iii) by either Party if there shall be any Governmental Order that is final and non-appealable having the effect of making the purchase of the Quotas to the Sellers illegal;

(iv) by the Buyers, upon a breach of any representation, warranty, covenant or agreement on the part of the Company or any Seller set forth in this Agreement or if any representation or warranty of the Company or any Seller shall have become untrue, such that, in either case, the conditions set forth in

#### **7.4 Terminación.**

(a) Este Contrato y las operaciones contempladas en este pueden terminar antes del Cierre:

(i) en cualquier momento por consentimiento mutuo de las Partes;

(ii) por cada Parte si el Cierre no se ha llevado a cabo antes del día 30 de abril de 2012 (la "**Fecha de Terminación**"), siempre y cuando el incumplimiento del Cierre no haya sido ocasionado por la Parte que pretende terminar este Contrato como consecuencia del incumplimiento de cualquiera de sus obligaciones establecidas en el presente;

(iii) por cualquiera de las Partes en caso de que se haya pronunciado una Orden Gubernamental que sea definitiva e inapelable y que disponga que la Compra de las Cuotas por parte de los Vendedores es contraria a la ley;

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terminated by the Sellers for so long as the Buyers continues to exercise its best efforts to cure such breach, unless such breach is not cured with 10 days after notice of such breach is provided by the Sellers.

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## **ARTICLE 8**

### **MISCELLANEOUS**

**8.1. Notices.** Any notice or other communication under this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, postage prepaid, or sent by facsimile or prepaid overnight courier to the Parties at the addresses set forth below their names on the signature pages of this Agreement (or at such other addresses as shall be specified by the Parties by like notice).

Such notices, demands, claims and other communications shall be deemed given when actually received or (a) in the case of delivery by overnight service with guaranteed next day delivery, the next day or the day designated for delivery, (b) in the case of facsimile, the date upon which the transmitting Party received confirmation of receipt by facsimile, telephone or otherwise.

To such effect, the Buyers establishes his domicile in Agustinas 640, 10th floor, in the City of Santiago, A copy of any communications or notices delivered to the Buyers shall also be sent to OPKO Health, Inc., 4400 Biscayne Boulevard, Miami, Florida 33137, Attn: Deputy General Counsel, Fax (305) 575-4140.

To such effect, the Sellers establish their domiciles in Santa Lucía 330, Segundo Piso, Santiago.

**8.2. Entire Agreement.** This Agreement, its schedules and exhibits, and the Transaction Documents contain every obligation and understanding between the Parties relating to the subject matter hereof, merges all prior discussions, negotiations and agreements, if any, between them, and none of the Parties shall be bound by any representations, warranties, covenants, or other understandings, other than as expressly provided or referred to herein or therein.

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## **ARTÍCULO 8**

### **DISPOSICIONES VARIAS**

**8.1. Notificaciones.** Toda notificación u otro comunicado que se exija en este Contrato se realizará por escrito y se entregará personalmente o se enviará por correo certificado, con acuse de recibo, franqueo pagado por anticipado, o será enviado por fax o por un servicio de correo privado dirigidos a las otras Partes a las direcciones que se indican debajo de sus nombres en las páginas de firmas de este Contrato, (o a tales otras direcciones que sean especificadas por escrito por las Partes mediante una notificación similar).

Tales notificaciones, demandas, reclamos, y otros comunicados se considerarán entregados cuando hayan sido efectivamente recibidos o (a) en el caso de la entrega por servicio de correo privado, que garantiza la entrega al día siguiente, el día posterior o bien el día designado para su entrega, (b) en el caso de que sea enviada por fax, la fecha en la cual la Parte que realiza la notificación reciba la confirmación de recepción por fax, teléfono u otro medio.

Para estos efectos, el comprador fija su domicilio en Agustinas 640, piso 10, Santiago, debiendo enviarse copia de toda comunicación o notificación a las oficinas de OPKO Health, Inc., 4400 Biscayne Boulevard, Miami, Florida 33137, A la atención de: Deputy General Counsel, Fax (305) 575-4140.

Para estos efectos, los vendedores fijan su domicilio en calle Santa Lucía 330, Segundo Piso, Santiago.

**8.2. Contrato Completo.** Este Contrato, sus anexos y apéndices y los Documentos de la Transacción, contienen todas las obligaciones y acuerdos convenidos entre las Partes relacionadas con su contenido, reúne todas las discusiones, negociaciones y acuerdos previos, si los hubiere, entre ellas, y ninguna de las Partes estará obligada a cumplir ninguna declaración, garantía, obligación u otro arreglo, que no esté expresado ni referido aquí.



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**The Disclosure Schedules and Exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company hereby undertakes to furnish supplementally any of the omitted schedules upon request by the Securities and Exchange Commission. Following is a list briefly identifying the contents of all omitted schedules and exhibits:**

Annex A-----	Toll Manufacturing Agreement
Annex B-----	Non-compete Agreements
Annex C-----	Quota Transfer Deed
Annex D-----	Escrow Agreement
Annex E-----	Reconocimiento de Deuda y Dación en Pago
Schedule 4.5-----	Capitalization
Schedule 4.9-----	Accounts and Notes Receivable and/or Payable
Schedule 4.8-----	Liabilities
Schedule 4.11-----	List of 25 most important Clients
Schedule 4.14(a)-----	Intellectual Property
Schedule 4.15(b)-----	Real Property
Schedule 4.17(a)-----	Employment Agreements
Schedule 4.17(b)-----	List of Employees (Remaining in ALS)
Schedule 4.17(c)-----	Compensation List
Schedule 4.17(e)-----	Labor Policies
Schedule 4.19-----	Material Contracts
Schedule 4.19(ii)-----	Material Contracts under Default
Schedule 4.20(a)-----	Product and Services
Schedule 4.20(b)-----	Recall, withdrawal, suspension or seizure of any Product
Schedule 4.21-----	Related Parties
Schedule 4.23-----	Compliance with Lk <sup>t</sup>



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**CERTIFICATIONS**

I, Rao Uppaluri, ce rr

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**Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002  
(Subsections (a) and (b) of Section 1350, Chapter 73 of Title 18, United States Code)**

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant section 906 of the Sarbanes-Oxley Act of 2002, I, Rao Uppaluri, Chief Financial Officer of OPKO Health, Inc. (the "Company"), hereby certify that:

The Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2012 (the "Form 10-Q") of the Company 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 Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: May 10, 2012

/s/ Rao Uppaluri

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Rao Uppaluri

Chief Financial Officer