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# DELTA REPORT

## 10-K

MYO - MYOMO, INC.

10-K - DECEMBER 31, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

**TOTAL DELTAS** 2832

 **CHANGES** 341

 **DELETIONS** 1013

 **ADDITIONS** 1478

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, **2022** **2023**

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 001-38109

**MYOMO, INC.**

(Exact name of registrant as specified in its charter)

Delaware

47-0944526

(State or other jurisdiction of  
incorporation or organization)

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

137 Portland St., 4th Floor, Boston, Massachusetts

02114

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code (617) 996-9058

Securities registered under Section 12(b) of the Act:

Trading

Title of each class

Symbol(s)

Name of each exchange on which registered

Common Stock, \$0.0001 par value per share

MYO

NYSE American

Securities registered under Section 12(g) of the Act: None

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Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes:  No:

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes:  No:

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, every Interactive Data File required to be submitted 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 such files). Yes  No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes Oxley Act (15 U.S.C.7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive ~~officers~~ officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant, based on the last sale price for such stock on **June 30, 2022**. **June 30, 2023** was **\$10,010,976** **9,527,470**. For purposes of this calculation, shares held by stockholders whose ownership exceeded 5% of the registrant's common stock outstanding were deemed to be held by affiliates. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant. At **March 1, 2023** **March 1, 2024**, the registrant had **20,921,712** **28,487,168** shares of common stock, par value \$0.0001 per share, outstanding.

#### DOCUMENTS INCORPORATED BY REFERENCE

Part III of this Form 10-K incorporates information by reference from the registrant's definitive proxy statement to be filed with the Securities and Exchange Commission within 120 days after the close of the fiscal year ended **December 31, 2022** **December 31, 2023**.

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Auditor Firm Id: 688

Auditor Name: Marcum, LLP

Auditor Location: New York, NY, USA

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#### **PART I**

#### **SUMMARY OF RISKS ASSOCIATED WITH OUR BUSINESS**

Our business involves significant risks, some of which are described below. The summary risk factors listed below should be read together with the text of the full risk factors that follow this summary. You should carefully consider the risks described below, as well as the other information in this Annual Report on Form 10-K, including our financial statements and the related notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations" as well as in other documents that we file with the SEC. The occurrence of any of the events or developments described in this report could have a material adverse effect on our business, financial condition, results of operations, growth prospects and stock price. In such an event, the market price of our common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations and the market price of our common stock.

- We have a history of operating losses. Factors both within and outside of our financial statements for the year ended December 31, 2022 include disclosures regarding there being substantial doubt about control could result in a delay in our ability to continue as achieve cash flow breakeven on a going concern.
- If CMS does not allow coverage for the MyoPro, insurers offering Medicare Advantage insurance plans may no longer reimburse for MyoPro, which could have an adverse effect on our business. quarterly basis.
- Our strategy to maximize revenues by focusing our efforts on patients whose insurance has reimbursed for the MyoPro in the past h

resulted in a concentration of revenues with patients covered by a particular insurer. Adverse changes in that insurer's reimbursement policy regarding the MyoPro could have an adverse effect on our business.

- The outbreak of the novel strain of coronavirus, SARS-CoV-2, which causes COVID-19, could adversely impact our business.
- We currently rely, and in the future will rely, on sales of our MyoPro products for our revenue, and we may not be able to achieve or maintain market acceptance acceptance.
- We may not be able to obtain adequate levels of third-party payer reimbursement, including reimbursement by Medicare, for our products.
- We depend on a single third-party to manufacture key subassemblies for the MyoPro, and a limited number of third-party suppliers for certain components of the MyoPro.
- We sell to orthotics and prosthetics providers and distributors who are free to market products that compete with the MyoPro, and we rely on these distributors to market and promote our products in accordance with their U.S. Food and Drug Administration, or FDA, listings, select appropriate patients and provide adequate follow-on care.
- The market for myoelectric braces is new and the rate of adoption is uncertain, and important assumptions about the potential market for our products may be inaccurate.
- Defects in our products or the software that drives them could adversely affect the results of our operations.
- We are subject to extensive governmental regulations relating to the design, development, manufacturing, labeling and marketing of products, and a failure to comply with such regulations could lead to withdrawal or recall of our products from the market.
- We depend on certain patents that are licensed to us. We do not control these patents and any loss of our rights to them could prevent us from manufacturing our products.
- Our internal computer systems, or those of our customers, collaborators or other contractors, may be subject to cyber-attacks or security breaches, which could result in a material disruption of our product development programs.

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- Our success depends in part on our ability to obtain and maintain protection for the intellectual property relating to or incorporated in our products.

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- The market price of our common stock has been and may continue to be volatile.
- Since we sell products in several overseas markets, we are subject to foreign currency fluctuations in value, which may reduce our revenue per unit in dollars.

### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements (within the meaning of the federal securities law) that involve substantial risks and uncertainties. All statements, other than statements of historical facts, included in this Annual Report on Form 10-K regarding our strategy, future operations, future financial position, future net sales, gross margin expectations, projected costs, projected

expenses, prospects and plans and objectives of management are forward-looking statements. The words "anticipates," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "will," "would," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. We have based these forward-looking statements on our current expectations and projections about future events. Although we believe that the expectations underlying any of our forward-looking statements are reasonable, these expectations may prove to be incorrect, and all of these statements are subject to risks and uncertainties. Should one or more of these risks and uncertainties materialize, or should underlying assumptions, projections, or expectations prove incorrect, our actual results, performance, or financial condition may vary materially and adversely from those anticipated, estimated, or expected. We have included important factors in the cautionary statements included in this Annual Report on Form 10-K, particularly in the section entitled "Risk Factors," that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, investments or terminations of distribution arrangements that we may make. We do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events, or otherwise, except as required by law.

The following discussion should be read in conjunction with our financial statements and the related notes contained elsewhere in this Annual Report on Form 10-K and in our other Securities and Exchange Commission filings.

Unless the context requires otherwise, references to "Myomo," "we," "our," and "us" in this Annual Report on Form 10-K refer to Myomo, Inc.

We own various U.S. federal trademark registrations, certain foreign trademark registrations and applications, and unregistered trademarks, including the following registered marks referred to in this Annual Report on Form 10-K: "MyoPro ®", "MYOMO" ®, "MyoPal" ® and "MyoCare" ®. All other trademarks or trade names referred to in this Annual Report on Form 10-K are the property of their respective owners. Solely for convenience, the trademarks and trade names in this Annual Report on Form 10-K are referred to without the symbols ® and ™, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent possible under applicable law, their rights thereto.

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### **Item 1. Business**

#### **Overview**

We are a wearable medical robotics company that offers functional improvement for those with neuromuscular disorders and upper limb paralysis. We develop and market the MyoPro product line. A MyoPro is a myoelectric-controlled upper limb brace, or orthosis. The orthosis is

a rigid brace used for the purpose of supporting a patient's weak or paralyzed arm to enable and help improve functional activities of daily living, or ADLs, in the home and community. It is custom-fabricated by trained professionals during a custom fabrication process for each individual user to meet their specific needs. Our products are designed to help improve function in adults and adolescents with neuromuscular conditions due to brachial plexus injury, stroke, traumatic brain injury, spinal cord injury and other neurological disorders. We primarily provide devices directly to patients and bill their insurance companies directly, a sales channel we refer to as direct billing. Under direct billing, we may evaluate, measure and fit the MyoPro devices using our own clinical staff or as circumstances dictate, utilize the clinical consulting services of orthotics and prosthetics, or O&P, professionals, for which they are paid a fee. We also sell our products through various other sales channels, including through O&P providers, the Veterans Administration, or VA, and to our distributors in certain accounts and geographic markets outside the United States. We operate as one business segment.

Our goal is to address the need to help regain function to individuals who have suffered partial paralysis and can no longer support or move their arm or hand despite the best efforts of surgeons and rehabilitation therapists.

Our solution, the MyoPro custom fabricated limb orthosis, is for the upper limbs. The concept was originally pioneered in the 1960s, refined in the labs of the Massachusetts Institute of Technology, or MIT, and made commercially feasible through our efforts. Partial paralysis is severe muscle weakness or loss of voluntary movement in one or more parts of the body. The MyoPro is listed in the United States with the FDA as a Class II (510(k)-exempt) device (Biofeedback Device). We believe it is the only current device commercially available in the United States that is able to help neuromuscular-impaired people who have been through therapy and have been left with partial paralysis regain function in weak arms and hands using their own muscle signals. The device consists of a portable arm brace made of a lightweight metal and includes advanced signal processing software, non-invasive sensors, small motors, and a lightweight battery unit, unit, and 3D printed materials which are unique for each patient's arm and hand measurements. The product is worn to support the dysfunctional joint arm and hand and as a functional aid for reaching and grasping and has also been shown to have therapeutic benefits for some users to increase motor control.

The MyoPro's control technology utilizes an advanced non-invasive human-machine interface based on non-invasive, patented electromyography, or EMG, control technology that continuously monitors and senses, but does not stimulate, the affected muscles. The patient self-initiates movement through his or her weakened muscle signals that indicate the intention to move. In addition to supporting the weakened limb, the MyoPro functions as a neuro-muscular orthotic by helping regain function to the impaired limb similarly to a myoelectric prosthetic for an amputee. It is prescribed by physicians and provided by trained clinical professionals as a custom-fabricated myoelectric elbow-wrist-hand orthosis.

In addition to stroke patients, we believe our technology may be used on medically appropriate patients to improve upper extremity movement in patients with peripheral nerve injury, spinal cord injury, cerebral palsy, traumatic brain injury, and other neurological disorders, depending on the individual patient's condition.

Our strategy is to establish ourselves as the market leader in myoelectric limb orthotics, and to build a set of products, software applications, and value-added services based upon our patented technology platform, sized for adults, adolescents and children. We expect to introduce the MyoPro3, which will include further improvements over the MyoPro2+, and our MyoPal device for pediatric use during calendar year 2024. at a future date.

The addressable market in the United States for products directed at all individuals with upper extremity paralysis, such as our MyoPro, is substantial, based on an estimated prevalence population of 3 million existing cases of upper extremity paralysis and our estimate that up to 10% 20% of such individuals may be medically qualified candidates for a MyoPro whose insurance may reimburse for the device, device, which now includes Medicare Part B beneficiaries. In addition, approximately 250,000 new patients are added to the prevalence population each year in the United States as a result of strokes, brachial plexus injuries and other afflictions, although afflictions. Though not all of these new chronic patients are suitable for a MyoPro.

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MyoPro, we believe that between 25,000-50,000 of these patients per year could be. According to the National Institutes of Health, it is estimated that nearly 75% of all strokes occur in people aged 65 and over. With Medicare Part B poised to begin reimbursing on a lump sum basis for the MyoPro and Medicare Advantage plans obligated to follow suit, assuming medical necessity is demonstrated, we believe our market opportunity is substantial.

To assess whether an individual is a medically-qualified candidate for a MyoPro, we and our distribution partners utilize a variety of techniques to evaluate patients, including tele-health video conference sessions, in-person evaluations, screening days at various locations, and evaluations at clinical facilities where therapists and physicians refer patients for a

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MyoPro, which requires a physician's prescription to be reimbursed by insurance. We use various media to educate individuals about the MyoPro solution for their impaired limbs, and we receive referrals from O&P providers and hospitals healthcare facilities such as the Mayo Clinic, Cleveland Clinic, and VA Medical Centers.

In most cases, private health insurance companies pay reimburse providers for the MyoPro device, either to us directly or to an O&P provider depending on the patient's insurance plan. If we are serving the patient directly, then we bill the payer and if as the provider. If an O&P provider is responsible for working with and delivering the MyoPro to the patient, then we sell the custom-fabricated MyoPro device to the O&P provider at a wholesale price, to which they add their clinical services. In November 2018, the Centers for Medicare and Medicaid Services, or CMS, issued two billing codes for the MyoPro, L8701 and L8702. We continue to be in discussions with In November 2023, CMS regarding reimbursement for reclassified the MyoPro with those discussions centering on into the appropriate brace benefit category, for effective January 1, 2024. Previously, CMS had classified the device. We believe the MyoPro should be covered as a custom-fabricated orthosis, or brace, while CMS is currently listing the device as durable medical equipment, or DME. This distinction reimbursed on a rental basis. With the classification as a brace, the MyoPro is relevant for how the device would eligible to be reimbursed. It is reimbursed on a lump sum basis if the benefit category is an orthosis, or as a rental over thirteen months under a capped rental program if it is determined that DME is the appropriate benefit category. The current determination of CMS differs from the lump-sum reimbursement currently received from commercial payers, VA hospitals, worker's compensation, and state Medicaid plans. A new rule has been published by CMS covering the process similar to request a benefit category change. In conjunction with the publication of this new rule, CMS invited us to present our request to change the benefit category for our MyoPro device to a brace at its public meeting in June 2022. In September 2022, other commercial insurance payers. Finally, on February 29, 2024, CMS published its determination, deferring its decision on our request, and further stating that coverage and final payment determinations for the MyoPro would be at the discretion Motion W (L8701) of its regional Medicare billing contractors, known as the DME MAC's. We intend to submit additional research for publication before the end of the first quarter of 2023, that is expected to add to existing evidence that the MyoPro is effective, reasonable, necessary approximately \$33,500 and appropriate for Medicare beneficiaries. Once submitted for publication, we intend to meet with the medical directors of the DME MAC's to discuss coverage and payment for the MyoPro and begin submitting claims for Medicare Part B beneficiaries. In January 2023, CMS published a notice stating that it intends to publish a proposed rule in the coming months regarding the scope Motion G (L8702) of the Medicare Part B benefit for leg, arm, back and neck braces and newer technology devices. We expect this rule to clarify whether CMS considers the MyoPro to be a brace or DME. There is no timetable for CMS to make any coverage or payment decisions, nor is there any guarantee that any such decisions will actually increase access to the

MyoPro or result in reimbursement from payers, including Medicare. In addition, we cannot predict the impact of any such decision on the amounts that we may be reimbursed by private insurance companies, if any. approximately \$65,900, effective April 1, 2024.

We are the exclusive licensee of 2 U.S. patents for the myoelectric limb orthosis device based on technology originally developed at MIT in collaboration with medical experts affiliated with Harvard Medical School, which will expire by December 2023. We also hold 20 issued 24 patents in the U.S. United States and various countries, which expire at various times from 2027 through 2039, and we have multiple 14 pending patent applications in the US United States and international markets. These patents expand upon the MIT patents and extend the life of our patent portfolio to the year 2039. Our intellectual property also consists of trade secrets related to myoelectric control software and mechanical designs from over ten years of R&D and product development activity.

We are headquartered in Boston, Massachusetts.

### **Market Opportunity: Common Causes of Arm Paralysis**

#### ***Stroke***

According to the Centers for Disease Control and Prevention, or the CDC, stroke is one of the leading causes of disability in the U.S. United States affecting approximately 800,000 people per year. We have working relationships with rehabilitation facilities in the U.S., United States, including the Mayo Clinic, Cleveland Clinic, Spaulding Rehabilitation Hospital, Loma Linda University Medical Center, Kennedy Krieger Institute, and numerous VA Medical Centers, and we have developed an appropriate set of inclusion criteria to determine which persons that are affected by stroke would be medically qualified for the intervention.

Many stroke survivors are left with hemi-paresis, hemiparesis, a partial paralysis of one side of the body, which impacts the ability to use their arm and/or hand. Occupational therapy is the common treatment recommended to regain native function for these individuals, and some do recover some movement of the upper limb. However, after 6-12 months a period of therapy, many patients plateau and continued therapy will does not likely tend to result in significant further improvement. These chronic patients then

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enter the prevalence population and become potential candidates for the MyoPro, which we believe is the most cost-effective effective alternative for regaining function for these individuals.

#### ***Vehicular and Workplace Accidents***

One of the most straightforward applications application for the MyoPro is to support the weak arm and help regain arm function to individuals who have suffered peripheral nerve injuries. A common outcome of vehicular and workplace accidents is damage to the nerves in the shoulder known as the brachial plexus. Many individuals recover from their related trauma with the exception of the ability to control their elbow and in some cases their and/or hand. Nerve transfer surgery is often a solution; however, these procedures are not always restorative. In some cases, patients undergo amputation and receive myoelectric prosthetics rather than deal with a paralyzed arm. One of the leading medical facilities in the U.S. United States for treating brachial plexus injuries is

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the Mayo Clinic. We have been working with surgeons at the Mayo Clinic who have incorporated the MyoPro into their surgical post-operative treatment protocol to help improve function in upper limbs.

### ***Spinal Cord Injuries***

According to the Christopher and Dana Reeve Foundation, spinal cord injuries are second only to strokes as a cause of paralysis, resulting in 27% of cases of paralysis. The level of paralysis depends on where the injury occurs. Currently, medically qualified individuals for a MyoPro include those with incomplete spinal cord injuries having sufficient remaining EMG signal strength to initiate movement of the devices, as determined by the clinician using a MyoPro demonstration unit.

### ***Cerebral Palsy***

Based on data provided by the CDC, the prevalence of cerebral palsy, or CP, in the United States is approximately 73,000 for children ages 6-11 years old. CP is caused by brain injury or brain malformation that occurs before, during, or immediately after birth while the infant's brain is under development.

### ***Birth Brachial Plexus Injuries***

During birth, some newborns suffer an injury to the brachial plexus nerve, which can result in arm paralysis. According to Boston Children's Hospital, one to three births out of 1,000 involve a brachial plexus injury, with roughly 20-30% resulting in arm paralysis. We have been testing our planned pediatric device on children who have suffered this nerve damage to assess its ability to improve function in upper limbs, and this new version of the MyoPro, which we refer to as MyoPal, is expected to be available to these patients during calendar year 2024.2025.

### ***Progressive Conditions***

The MyoPro has been prescribed in a few cases for individuals with progressive conditions such as multiple sclerosis and ALS. For individuals with these conditions, the MyoPro is used for functional improvement that may help provide strength conservation and help to extend the time they can maintain independence. As users continue to progress with their condition, settings can be adjusted to provide increasing amounts of assistance.

### ***Arm Paralysis Solutions & Treatments***

The standard of care for treating paralysis varies by diagnosis. In the case of neurological injuries such as stroke, occupational / physical therapy is the standard of care. Each year, stroke and other survivors undergo months of rehabilitation. Unfortunately, many are left with long term hemiparesis, which is weakness on one side of the body. Interventions such as electrical stimulation, static braces, and continued therapy are available, and yet the prevalence of chronic upper limb paralysis is in the millions.

### ***Our Solutions***

Although commercial products for powered prosthetics have been available since the 1970s, we believe that powered orthotics have been held back by issues related to weight, comfort, and the technological capability of microprocessors and software. The MyoPro is known in the medical community as a custom fabricated limb orthosis. It is created

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individually for each patient, from a cast, just like a prosthetic, except the MyoPro which is appropriate for someone who still has a limb that is non-functional. Beginning in 2022, we enabled the use of remote measurement and done by using 3D printing techniques in order to create for the orthotic parts components, where the measurements can be obtained either in-person or remotely. Using remote measurement for the device, which has reduced orthotic components can reduce the number of in-person visits by our clinical field staff.

Orthotic devices are provided by clinical professionals who custom fabricate and fit these devices. According to the American Orthotics and Prosthetics Association, there are more than 2,000 member O&P facilities located in the U.S. United States. Additionally, the VA has been a pioneer in O&P. In fact, the design of the MyoPro Motion G powered grasp product is rooted in research conducted at the Boston-area VA in the 1990s. This research demonstrated that it is technically feasible to design a myoelectric elbow-hand orthosis; however, we believe that the product was not commercially practical until we were able to incorporate recent technological developments such as improved microprocessors and software, lightweight materials and motors, and smaller batteries to create an acceptable orthosis for users.

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The MyoPro can enable individuals to self-initiate and control movements of a partially paralyzed or weakened limb using their own muscle signals. When the user tries to move, our patented EMG control system uses sensors to detect the weak muscle signal and to activate a motor to move the limb in the desired direction. The user is in control of their own limb; the brace amplifies their weak muscle signal to regain function to the affected joint. Importantly, the EMG-driven device requires that users are actively engaged throughout the movement; if they stop trying to move, the device stops. With our product, a paralyzed individual, such as one someone who has suffered upper extremity paralysis from a brachial plexus injury, stroke or other neuromuscular disorder can experience improved function in performing ADLs including feeding, reaching and lifting.

Each MyoPro brace is custom fabricated for each patient for optimum fit, mobility and performance. To qualify for a MyoPro, candidates must meet a comprehensive set of requirements determined by a trained clinical professional during an evaluation. These criteria include long term partial paralysis, detection of a muscle signal sufficient to control the device, demonstrated cognitive abilities, and lack of other conditions that might limit the effectiveness or safety of the device such as use of certain pharmaceuticals, high levels of pain, or limits to range of motion, as well as falling within measurement limitations for the arm and hand to be able to fit into the device. Finally, candidates must have meaningful and achievable functional goals that can realistically be accomplished with the device that cannot otherwise be achieved with other interventions.

Should the individual qualify, we (in the case of direct billing) or the O&P provider will determine whether the device may be covered by the individual's health insurance. If reimbursement is approved and the individual is a suitable candidate for a MyoPro, then the fabrication and

fitting process is undertaken:

- First, we capture the shape of the patient's arm, either through using our shape capture kit, which can be completed in-person measurement or utilizing telehealth and remote measurement equipment in order to obtain the patient's measurements. Once the patient's arm measurements are captured, the orthotic parts are 3D printed based on these measurements. The fabrication of the brace is completed in-house.
- Fabrication typically takes approximately 2 weeks. Once the brace is fabricated, it is delivered to the patient either by us or by an O&P practice, who will fit the device on the patient. During this fitting, the device will be calibrated to the user's individual muscle signal profile using our proprietary software, and minor adjustments to the brace can be made to optimize comfort and fit.
- The patient will be provided with initial training and a set of take-home tasks to practice with the brace donned. We now also provide a video game platform called MyoGames, which offers the patient an additional means to master the device. We or the O&P provider may then also refer the MyoPro user to a local therapist for continued training and practice with their new device, and we have a staff of occupational therapists and other qualified clinicians who train and support these therapists. Finally, In addition, under our MyoCare program, a coach is assigned to each patient and follows and guides the patient for the first year of the patient's journey with the MyoPro in order to maximize each patient's outcomes with the device.

In a cost-conscious healthcare environment, we believe that the use of the MyoPro is compelling since it enables functional improvement that can help users improve their ability to perform ADL's, which may allow them to return to work or improve their ability to be independent and remain at home. According to the U.S. CDC, 7% of adults aged 65 and over in the United States require daily help with ADLs, with such long term support services consuming almost 10% more than 13% of all healthcare spending. We believe that helping regain upper limb function to these individuals may result in fewer emergency room visits

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related to falls, increase their level of activity, and avoid the need for institutionalization. With approximately 70 million baby boomers now in or headed into their retirement years, we believe that it is vital to keep beneficiaries in the lowest cost of care setting — the home.

#### **Research and Development**

We are committed to investing in a robust product development program and to supporting a variety of clinical research studies to enhance our products, increase the body of evidence to support prescribing and reimbursing our devices, and to grow our range of product offerings. Our R&D team is comprised of engineers with a mix of BS and MS degrees in electrical engineering, mechanical engineering, robotics engineering and computer science and augmented by outside resources as needed. The R&D team seeks to combine innovative research conducted over the last 50 years with cutting edge innovations in robotics, machine learning, and material science to continue to enhance our products and product offerings. Our regulatory, clinical, and customer service personnel work closely with our suppliers and providers to promote compliance with quality standards and good manufacturing processes, which we believe result in a high-quality product and limited customer issues.

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We have continually enhanced our product offerings by increasing functionality for users by the addition of a multi-articulated wrist and introducing a powered grasp for the hand. Our flagship product is the MyoPro 2, introduced in June 2017, which features improvements in control technology, new configuration software and user interface, and a longer-lasting, pop-out battery for extended use of the brace and convenient replacement. In January 2022, we introduced the MyoPro2+, which is a lighter and more advanced version of the device, which includes 3D printed orthotics capability, software enhancements and a new design that facilitates easier donning and doffing of the device.

We plan, depending on available resources, to continually improve our system architecture and develop new product innovations that based on our product roadmap and clinician feedback to increase the value and breadth of our product offerings. During calendar year 2024, we expect to launch MyoPal, a pediatric version of the MyoPro which is designed to meet the needs of younger patients suffering from arm and hand paralysis.

### Clinical Research Studies

Evidence of effectiveness involving myoelectric orthotics dates back to 1967. We have partnered with leading researchers to study the impact of the technology to regain function to a paralyzed joint as well as the real-world benefit that comes from being able to independently perform ADLs in the home, vocational tasks at work, and community activities such as shopping. A In 2023, a study was published in January 2017 based on data obtained from our internal outcomes patient registry that demonstrated compared functional task performance while wearing a MyoPro. The results showed that the instantaneous reduction in upper limb impairment MyoPro provides stabilizing support to the weak arm of individuals after a stroke and increase in ability enables individuals to use their impaired arm to complete functional tasks independently in the home environment. An additional study has been completed and accepted for chronic stroke patients. publication that used a validated outcome measure called Disabilities of the Arm, Shoulder and Hand, or DASH, to study improvements in the arms of patients that wear a MyoPro. The results showed statistically significant and clinically meaningful improvement in DASH scores. In addition to the previous published this research, several institutions have active funded research programs. In February 2022, researchers with the Cleveland VA published a study showing clinically significant gains in motor function in individuals with chronic moderate-to-sever arm weakness. Currently funded studies include a recently funded randomized control trial by the Kessler Foundation, using the MyoPro to study the restoration of the device for patients upper extremity motor function in people with spinal cord injury, or SCI and a recently initiated randomized control trial at Kessler Rehabilitation Center in New Jersey. These studies focused on the ability of MyoPro users to initiate movement of their affected limbs and perform ADLs such as picking up objects so that they may feed themselves and live more independently. In 2021, we launched an internal outcomes patient registry to collect data on a number of patient outcomes from use of Cleveland VA using the MyoPro for stroke patients using motor learning in their homes. This is an ongoing study that will provide valuable insight into long term outcomes therapy and will also drive future development of the MyoPro. Before the end of the first quarter of 2023, we expect to submit research for publication regarding the ability of MyoPro users to perform activities of daily living from data obtained from our outcomes registry. In addition to the studies Myomo is directly involved in, various clinical facilities are undertaking their own research projects on the outcomes of MyoPro users, including a recent publication detailing outcomes for patients with brachial plexus injuries, or BPI, by the Mayo Clinic. home use. In non-clinical based research, the University of Utah has been awarded grant funding to study and improve the control systems that communicate muscle intention for better control of the motors on the MyoPro brace. This could lead to future collaboration between Myomo and the University of Utah if new intellectual property is developed.

### Sales and Marketing

Our strategic goal is to develop and commercialize products that become the standard of care for individuals with paralysis who cannot be successfully treated with conventional interventions such as rehabilitation therapy. Our strategy is to establish ourselves as a market leader in myoelectric-controlled orthotics by building a set of products, software applications, and value-added services based upon our patented technology platform. In addition to our recent

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geographic expansion to serve more areas in the United States, we are entering international markets via local partnerships and distribution arrangements to meet the large global need that we believe exists for individuals with upper limb paralysis.

We To generate awareness and interest in our products, we perform in-services for therapists and physicians, and we directly educate and inform those individuals who are potential candidates for our products. In addition, we utilize digital ads on various platforms as well as television ads to educate and inform patients who are potential candidates for our product. Once the prospective patient contacts us or is referred to us, either our trained clinical staff or a trained O&P provider will evaluate evaluates the patient for their suitability as a candidate. In instances where we are the provider, the initial evaluation clinical screening is typically often conducted using a telehealth platform. Prior to obtaining authorizations from commercial insurance companies, the patient's medical records are collected and reviewed to make sure the device is appropriate for their condition and a prescription and letter of medical necessity are is typically obtained from the patient's physician. Once these documents are obtained, our patient advocacy team submits a pre-authorization request to the patient's insurer. If we receive a pre-authorization, we will proceed to measure the patient's arm, and hand, print create the orthotic parts, using 3D printing techniques, then fabricate the MyoPro and deliver it to the patient. This process is what we refer to as direct billing. We also call on hospitals and O&P practices that provide our products to their patients as well as indirect sales through distributors in Europe and Australia. The MyoPro product line has been approved by the VA system for impaired veterans, and approximately 70 nearly 100 VA facilities have already ordered devices for their patients.

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Since we began marketing our products directly to patients in 2019, our business development efforts have focused on developing a pipeline of patients in our reimbursement process and expanding the number of payers reimbursing for our products. Beginning in 2023, our business development efforts focused only on those payers that have previously reimbursed for the MyoPro. As of December 31, 2022 December 31, 2023, 1,153 1,042 patients were in our reimbursement pipeline, a 43% an 18% increase compared to 808 883 patients in the pipeline at December 31, 2021 December 31, 2022. As of December 31, 2022 December 31, 2023, 164 230 MyoPro units were in backlog, which we define as patients for whom we received insurance authorization, or in the case of Medicare Part B patients, those who have been qualified for delivery through receipt of required medical documentation, but revenue has not been recognized, with an estimated revenue value of \$7.6 million, which is recognized. This represents a 9% 40% increase over 154 164 patients in backlog at December 31, 2021 December 31, 2022. As a cost savings measure, during 2023 we intend to focus our efforts only on those patients in our pipeline with payers who have reimbursed for our products. We have suspended activities and reduced expenditures directed to growing the number of payers reimbursing for our product until CMS begins to reimburse or states that it intends to reimburse for the MyoPro. Excluding patients with payers who have not previously reimbursed for our products, our patient pipeline was 794 patients as of December 31, 2022, a 50% increase over the comparable pipeline of 528 patients as of December 31, 2021. We refer to this measure The estimated maximum potential revenue value of the pipeline as our Adjusted Pipeline. In conjunction with our intention to only focus on those patients in our Adjusted Pipeline, we reduced our workforce by 12% in January 2023. This action and other intended costs reductions are expected to save backlog is approximately \$2 million in 2023. While

we intend to focus only on patients in our Adjusted Pipeline in 2023, the impact on backlog and revenues is expected to be deminimus, as approximately 98% of our direct billing revenues in 2022 came from patients with payers that comprise our Adjusted Pipeline. \$9.9 million.

To bring the MyoPro to what we believe is the large number of potential patients outside of the U.S., in United States. In July 2017 we met the criteria to apply the CE Mark, mark under the European Union (EU) Medical Devices Directive (93/42/EEC), or EU MDD, which is a manufacturer's declaration that the product complies with the essential requirements of the relevant European Union health, safety and environmental protection such legislation, for so that the MyoPro so that it can be marketed in Europe. the EU. The EU Medical Devices Regulation (EU) No. 2017/745, or the EU MDR, repealed and replaced the EU MDD on May 26, 2021 and we therefore worked with our EU-Authorized Representative to ensure all EU MDR requirements were met, which enables us to establish a new declaration of conformity under the EU MDR to allow continued CE mark application. In October 2017, we obtained our medical device license for Canada, enabling us to provide the MyoPro to patients in that country. We have entered into distribution agreements with O&P providers in the United Kingdom, Denmark, Germany, Italy and Australia, and have received a number of MyoPro orders from providers outside the United States in 2022, 2023, primarily from Germany.

## Competition

An individual with difficulty walking has a wide range of technology technological alternatives from canes and crutches to powered wheelchairs and exoskeleton suits. However, those with paralysis of the arm, wrist, and hand, whose physical challenges that we seek to address, have few options to regain function.

## Rehabilitation Therapy

Rehabilitation therapy is the standard of care for upper extremity paralysis and a prerequisite to qualifying for a myoelectric orthosis such as the MyoPro. After a stroke or other traumatic injury, a large portion of survivors regain

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much or all of their function. However, every year there are many survivors whose upper extremities remain paralyzed despite best efforts of rehabilitation therapists.

## Non-Powered Braces

Some individuals are able to accomplish their functional goals with braces that are non-powered or use springs to offset forces of gravity or muscle tightness, referred to as spasticity. Medical professionals who evaluate patients for myoelectric orthotics screen out individuals who could accomplish their goals with a simpler, less costly intervention such as these braces.

## Experimental Surgery: Battelle and Thomas Jefferson University — Brain Implants

An array of experimental interventions currently is being researched at universities and non-profit research facilities around the world. One such innovation recently announced by Battelle Memorial Institute in Ohio and Thomas Jefferson University in Philadelphia involves a craniotomy, which is a surgical opening into the skull performed to implant a sensor chip in the brain. An electrical cable is connected to the top of the head connecting to a system that sends pulses of electrical stimulation to activate muscles in the forearm or to control the MyoPro brace. The procedure is experimental, invasive, and costly, but may be offered as an alternative to a myoelectric orthosis.

## **Exoskeleton Suits**

During the last few years, a number of companies have emerged to provide exoskeleton suits that enable those with lower extremity paralysis to stand and walk again. Companies in this space include ReWalk, Ekso Bionics, and Cyberdyne. It is possible that companies may begin to compete with solutions such as ours for the upper extremity. Ekso Bionics has recently announced a product to be used only for rehab therapy at a hospital, and we can provide no assurance that these or other companies are not currently developing competing products for the home market.

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### **Potential New Products from O&P Manufacturers**

If our business grows, interest may develop among new or existing manufacturers of other O&P devices that compete with the MyoPro, which may or may not challenge the validity of our intellectual property. Some new products have been introduced that compete with the MyoPro from companies such as Vincent Systems and HKK in Germany.

### **Intellectual Property**

The MyoPro is protected by two core Our intellectual property efforts have focused on improvements to the patents exclusively that we licensed from MIT, for the life of the patents. The first patent (U.S. Pat. No. 7,396,337) covers a powered orthotic device, worn over a patient's elbow or other joint that senses relatively low-level muscle signals which expired in the vicinity of the joint generated by a patient. In response to the relatively low-level signals, the powered orthotic device moves, causing the patient's body part to move about the joint accordingly with adjustable force and assistance settings. The patent expires on December 1, 2023. The second patent (U.S. Pat. No. 7,367,958) covers a method of providing rehabilitation movement training for a person suffering from nerve damage, stroke, spinal cord injury, neurological trauma or neuromuscular disorder by moving a body part about a joint using a powered orthotic device. The patent claims methods that include moving the body part about the joint in two directions based on an EMG signal from a muscle associated with that body part or moving the body part about the joint in one direction based on the EMG signal and in another direction based on a return force in the absence of a sensed EMG signal. This patent expires on November 21, 2023, which represents the earliest patent expiration among Myomo's intellectual property portfolio.

The two patent licenses discussed above were granted pursuant to the MIT License. Under the MIT License, we have been granted access to those certain patent rights in exchange for the payment of royalties, which vary based on the level of our net sales. As part of the MIT License, we must pay a nonrefundable annual license maintenance fee which may be credited to any royalty amounts due in that same year. The license agreement can be terminated if certain sales

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targets are not achieved. The future minimum amounts due under this agreement is \$25,000 for the final year of the agreement in 2023.

Under the MIT License, we issued 6,172 shares of our common stock to MIT. They have the right to purchase additional shares of our common stock to maintain their pro rata ownership.

Myomo has 2024 of its own issued patents as well. These additional patents cover our MyoPro Motion G product. The Motion G product, which allows for the movement of multiple joints as compared to a single joint, which is the technology that underlies the patents previously licensed from MIT. The Motion G generated 97% of our product revenue for the year ended December 31, 2022 December 31, 2023. In January 2013, Myomo's patent entitled *Powered Orthotic Device* was granted in Europe (European Patent No. 2079361), which is validated (currently in force) in six European countries. In June 2014, a substantially similar patent was granted in Japan (Japanese Patent No. 5557529). In November 2013 and January 2015, Myomo's two U.S. patents issued entitled *Powered Orthotic Device and Method of Using Same* (U.S. Pat. Nos. 8,585,620 and 8,926,534, respectively). On July 26, 2016, Myomo's third U.S. patent was issued (U.S. Pat. No. 9,398,994). In September 2020, Myomo's fourth U.S. patent was issued entitled *Powered Orthotic Device and Method of Using the Same* (U.S. Pat No. 10758394B2). Similar patents have been issued in China, Hong Kong, and Japan and is validated (currently in force) in six European countries (European Patent No. 3307225). We also have 43 pending U.S. patent applications and 118 foreign applications under examination. We plan to continue to file additional patent applications over time. The longest term of our patents extends intellectual property rights until 2039.

In terms of trademarks, the terms Myomo, MyoPro, MyoPal and MyoCare are registered as trademarks with the U.S. Patent & Trademark Office. Our trademarks were initially registered in 2013 and 2014. Within 2014, and we have been making the first ten years from the registration dates shown above, we will be required filings to complete two (2) "maintenance" filings, one between the 5th and 6th years and the second between the 9th and 10th years. Each successive 10-year period thereafter we will be required to complete a "maintenance" filing between every 9th and 10th year. maintain our trademarks.

## Government Regulation

The MyoPro device and our operations including our supply chain and distribution channels are subject to regulation by the FDA and various other U.S. federal and state agencies. Under the Federal Food, Drug, and Cosmetic Act, or FFDCA, medical devices are classified as Class I, Class II or Class III, depending on the degree of risk associated with the device, what is known about the type of device, and the extent of control needed to provide reasonable assurance of safety and effectiveness. Classification of a device is important because the class to which a device is assigned determines, among other things, the necessity and type of FDA premarket review. We have elected to list the MyoPro Family of products under a Class II device classification regulation for biofeedback devices. Under the classification regulation, we believe our device remains 510(k)-exempt as a battery powered, external limb orthosis device that is indicated for muscle relaxation or muscle re-education are generally 510(k)-exempt under the classification regulation. While we believe our device to be exempt from FDA premarket review, our device is subject to FDA's post-market requirements, which include compliance with the applicable portions of the FDA's Quality System Regulation, or QSR, facility registration and product listing, reporting of adverse medical events, and appropriate, truthful and non-misleading labeling, advertising, and promotional materials.

We are also subject to regulation by foreign governmental agencies in connection with international sales. These agencies enforce laws and regulations that govern the development, testing, manufacturing, labeling, advertising, marketing and distribution, and market surveillance of our medical device products. In the European Union, or EU, medical devices are regulated under the European Medical Devices Regulation (EU) No. 2017/745, or the EU MDR, which was effective in May 2020. An authorized third-party, also called repealed and replaced the previous Medical Devices Directive 93/42/EEC, or EU MDD, on May 26, 2021.

The EU MDR, among other things:

- strengthens the rules on placing devices on the market (e.g., reclassification of certain devices and wider scope than the EU MDD) and reinforces surveillance once they are available;

- establishes explicit provisions on manufacturers' responsibilities for the follow up of the quality, performance and safety of devices placed on the market;

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- establishes explicit provisions on importers' and distributors' obligations and responsibilities;
- imposes an obligation to identify a Notified Body, must approve products responsible person who is ultimately responsible for CE marking and conducts periodic inspections to ensure applicable regulatory requirements are met. The CE mark is contingent upon continued all aspects of compliance to with the applicable regulations and the quality system requirements of the ISO 13485 standard. new regulation;
- improves the traceability of medical devices throughout the supply chain to the end user or patient through the introduction of a unique identification number, to increase the ability of manufacturers and regulatory authorities to trace specific devices through the supply chain and to facilitate the prompt and efficient recall of medical devices that have been found to present a safety risk; and
- sets up a central database (EUDAMED) to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU.

Under the new EU MDR, requirements, CE certificates issued under all medical devices placed on the previous directives prior to May 2020 will remain valid in accordance with their term, beyond the expiration of the transition period, however certain limitations set forth market in the EU must meet the relevant general safety and performance requirements laid down in Annex I to the EU MDR, including the requirement that a medical device must be designed and manufactured in such a way that, during normal conditions of use, it is suitable for its intended purpose. In addition, a medical device must be safe and effective and must not compromise the clinical condition or the safety of patients. To demonstrate compliance with such general safety and performance requirements, medical device manufacturers must undergo a conformity assessment procedure, which varies according to the type of medical device and its (risk) classification. Demonstration of conformity with the general safety and performance requirements includes a clinical evaluation. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device are supported by suitable evidence. Except for low-risk medical devices (Class I non-sterile, non-measuring devices), where the manufacturer can self-declare the conformity of its products with the general safety and performance requirements (except for any parts which relate to sterility or metrology), a conformity assessment procedure requires the intervention of a notified body. Notified bodies are independent organizations designated by EU member states to assess the conformity of devices before being placed on the market. A notified body would typically audit and examine a product's technical dossiers and the manufacturers' quality system. If satisfied that the relevant product conforms to the relevant essential requirements, the notified body issues a certificate of conformity, which the manufacturer uses as a basis for its own declaration of conformity. The manufacturer may then apply the need CE mark to use classifications that are different from the previous directives, would apply device, which allows the device to be placed on the market throughout the EU.

10 All manufacturers placing medical devices on the market in the EU must comply with the EU medical device vigilance system which has been reinforced by the EU MDR. Under this system, serious incidents and field safety corrective actions , or FSCAs must be reported to the

relevant authorities of the EU member states. These reports will have to be submitted through EUDAMED – once functional – and aim to ensure that, in addition to reporting to the relevant authorities of the EU member states, other actors such as the economic operators in the supply chain will also be informed. Until EUDAMED is fully functional, the corresponding provisions of the EU MDD continue to apply. A serious incident is defined as any incident, which, directly or indirectly, led, might have led or might lead to the death of a patient or user or other person, or to a temporary or permanent serious deterioration of a patient's, user's or other person's state of health, or a serious public health threat. In addition, among the new requirements of the EU MDR, manufacturers (and authorized representatives) must have available within their organization at least one person responsible for regulatory compliance, or PRRC, who possesses the requisite expertise in the field of medical devices. The PRRC is notably responsible for compliance with post-market surveillance and vigilance requirements. The European Commission has adopted various standards applicable to medical devices and there are additionally harmonized standards relating to the design and manufacture of medical devices (such as the ISO13485 standard) which are not mandatory however, if complied with, indicate that the device satisfies the applicable element of the general safety and performance requirements.

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The aforementioned EU rules are generally applicable in the European Economic Area, or EEA, which consists of Contents the EU member states plus Norway, Liechtenstein and Iceland.

We, together with Cogmedix, our primary contract manufacturer, actively maintain FDA 21 CFR Part 820 QSR and ISO 13485 Quality Management Systems for product design and development, manufacturing, distribution, and customer feedback processes. Following the introduction of a product, the FDA and comparable foreign agencies may engage in periodic audits of our quality management system, the product performance, and our advertising and promotional materials. These regulatory controls, as well as any changes in the policies of the FDA or comparable

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foreign agencies, can affect the time and cost associated with the development, introduction and continued availability of new products. We work to anticipate these factors in our product development processes.

We have declared conformity In addition to European Directives and apply the CE Mark for distribution of the MyoPro product line in Europe, and our EU authorization as outlined above, we have a Medical Device License for Canada. In addition, Myomo has recently obtained certification of our Quality System, or QS, to the Medical-Device-Single-Audit-Program, or MDSAP. This certifies compliance of the QS for sales in the United States, Canada, Brazil, Australia, and Japan. If we enter into other jurisdictions with additional international partners, we will need to seek the appropriate government approval to supply the devices in these countries. If we fail to comply with applicable foreign regulatory requirements, we may be subject to various administrative and legal actions against us, such as product recalls, product seizures and other civil and criminal sanctions.

#### **Healthcare and Privacy Laws and Regulation**

As an accredited Medicare provider, we are subject to broadly applicable fraud and abuse and other healthcare laws and regulations. Manufacturing, sales, promotion and other activities following product approval are also subject to regulation by numerous regulatory authorities in the United States in addition to the FDA, CMS, the Office of Inspector General and Office for Civil Rights, other divisions of the

Department of Health and Human Services, or HHS, such as the Office for Civil Rights or the Office of Inspector General, the Department of Justice, the Drug Enforcement Administration, the Consumer Product Safety Commission, the Federal Trade Commission, the Occupational Safety & Health Administration, the Environmental Protection Agency and state and local governments.

Additionally, healthcare providers and third-party payers play a primary role in the recommendation of medical devices and other medical items and services. Arrangements with providers, consultants, third-party payers and customers are subject to broadly applicable fraud and abuse, anti-kickback, false claims laws, reporting of payments to physicians and teaching hospitals, patient privacy laws and regulations and other healthcare laws and regulations that may constrain our business and/or financial arrangements. Restrictions under applicable federal and state healthcare and privacy laws and regulations, include the following:

- the federal Anti-Kickback Statute, which makes it illegal for any person, including a medical device manufacturer and DME suppliers a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration (including any kickback, bribe or certain rebate), directly or indirectly, overtly or covertly, in cash or in kind, or in return for, that is intended to induce or reward referral including the purchase, recommendation, order of a medical device or DME for which payment may be made under a federal health program, such as Medicare or Medicaid. A person or entity need not have actual knowledge of the federal Anti-Kickback Statute or specific intent to violate it in order to have committed a violation. Violations are subject to civil and criminal fines and penalties for each violation, plus imprisonment and exclusion from government healthcare programs. In addition, the government may assert that a claim that includes items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the federal civil False Claims Act, or FCA. There are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution;
- the federal civil and criminal false claims laws, including the FCA, which prohibit individuals or entities from, among other things, knowingly presenting, or causing to be presented, to the federal government, claims for payment or approval that are false, fictitious or fraudulent; knowingly making, using or causing to be made or used, a false statement or record material to a false or fraudulent claim or obligation to pay or transmit money or property to the federal government; or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay money to the federal government. Manufacturers can be held liable under the FCA even when they do not submit claims directly to government payers if they are deemed to "cause" the submission of false or fraudulent claims. DME companies that submit claims directly to payers may also be liable under the FCA for the direct submission of such claims. The

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FCA also permits a private individual acting as a "whistleblower" to bring actions on behalf of the federal government alleging violations of the FCA and to share in any monetary recovery. When an entity is determined to have violated the federal civil False Claims Act, FCA, the government may impose civil fines and penalties for each false claim, plus treble damages, and exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs;

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- the federal civil monetary penalties laws, which impose civil fines for, among other things, the offering or transfer or remuneration to Medicare or state healthcare program beneficiary if the person knows or should know it is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of services reimbursable by Medicare or a state health care program, unless an exception applies;
- the Health Insurance Portability and Accountability Act, or HIPAA, which created additional federal criminal statutes that prohibit

knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program or obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of any healthcare benefit program, regardless of the payer (e.g., public or private) and knowingly and willfully falsifying, concealing or covering up by any trick or device a material fact or making any materially false statements in connection with the delivery of, or payment for, healthcare benefits, items or services relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity can be found guilty of violating HIPAA without actual knowledge of the statute or specific intent to violate it;

- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, including the Final Omnibus Rule published in January 2013, which impose requirements on certain covered healthcare providers, health plans, and healthcare clearinghouses as well as their respective business associates that perform services for them that involve the use, or disclosure of, individually identifiable health information, relating to the privacy, security and transmission of individually identifiable health information. HITECH also created tiers of civil monetary penalties, amended HIPAA to make civil and criminal penalties directly applicable to business associates, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions;
- the federal Physician Payments Sunshine Act, created under the ACA, and its implementing regulations, which require manufacturers of drugs, devices, **biologicals** and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to report annually to HHS, under the Open Payments Program, information related to payments or other transfers of value made to physicians (defined to include doctors, dentists, optometrists, podiatrists and chiropractors), physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members;
- **federal price reporting laws, which require manufacturers to calculate and report complex pricing metrics to government programs, where such reported prices may be used in the calculation of reimbursement and/or discounts on approved products;** and
- analogous state and foreign 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 or patients; state laws that require device companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state and local laws that require the licensure of sales representatives; state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures and pricing information; data privacy and security laws and regulations in foreign jurisdictions that may be more stringent than those in the United States (such as the European Union, which adopted the General Data Protection Regulation, which became effective in May 2018); state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the

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same effect, thus complicating compliance efforts; and state laws related to insurance fraud in the case of claims involving private insurers.

Because of the breadth of these laws and the narrowness of the statutory exceptions and regulatory safe harbors available, it is possible that some of our business activities **including compensation of physicians with stock or stock options to serve on our Scientific Advisory Board** could, despite efforts to comply, be subject to challenge under one or more of such laws. Moreover, efforts to ensure that our business arrangements comply with applicable healthcare laws may involve substantial costs. It is possible that governmental and enforcement authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and 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

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significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, disgorgement, monetary fines, exclusion from participation in Medicare, Medicaid and other federal healthcare programs, integrity and oversight agreements to resolve allegations of non-compliance, contractual damages, reputational harm, diminished profits and future earnings, and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations. In addition, the commercialization of any of our products outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

### **Health Insurance Reimbursement**

In the United States and markets in other countries, patients who are prescribed medical devices for their conditions and providers delivering the prescribed devices generally rely on third-party payers to reimburse all or part of the associated healthcare costs. MyoPro devices are typically reimbursed by the patient's health insurance plan, which include government health programs in the United States such as Medicare and Medicaid, commercial health insurers and managed care organizations. To obtain approval for reimbursement, payers require various items which may include a physician's written order, a history of the patient's medical condition and past treatment, and demonstration of medical necessity. Factors payers consider in determining reimbursement are based on whether the product is: a covered benefit under its health plan; safe, effective, and medically necessary; appropriate for the specific patient; cost effective, and neither experimental nor investigational.

Our Patient Advocacy Team assists patients and O&P providers in developing and submitting this documentation for coverage of the prescribed MyoPro. Since the MyoPro is a relatively new device, payers may not be familiar with the device, and in some cases, payers may deem it to be experimental or investigational and establish non-coverage policies for the device. National and regional commercial plans, worker's compensation programs, auto insurance carriers, Medicare Advantage plans, and some state Medicaid plans have paid for the MyoPro orthosis. The orthosis on a lump sum basis. CMS has reimbursed a number of Medicare Part B beneficiaries for a MyoPro on a rental basis. Beginning January 1, 2024, CMS is able to reimburse for the MyoPro on a lump sum basis. For payers other than CMS, the reimbursement process usually requires obtaining a pre-authorization of for the MyoPro for from the patient, patient's insurer, and if the authorization request is initially denied by the payer, we may provide support to the patient, or the O&P provider as the case may be, in appealing the decision. We have been successful in obtaining coverage for the MyoPro on a case by case basis and we continue to follow up on other cases in our reimbursement pipeline which are pending an insurance decision.

As of January 1, 2019, two HCPCS codes for the MyoPro, L8701 and L8702, issued by CMS, went into effect. CMS elected to classify the MyoPro for Medicare beneficiaries as DME to be provided to patients under a capped rental payment system, where we believe providers are typically paid monthly over a period of thirteen months. We are continuing to work with system. In November 2023, CMS on publishing reimbursement guidelines for our product. In June 2022, we presented our request to CMS to change our reclassified the MyoPro billing codes (L8701 and L8702) into the brace benefit category, which makes the MyoPro eligible to be reimbursed on a brace. In September 2022, CMS published its determination that it needed more time to determine how to proceed to resolve what it lump sum, rather than a rental basis. We have submitted, and been paid for, a number of claims on both a rental basis and now on a lump sum basis, since we first started submitting claims in the first quarter of 2023. These claims are being reviewed by CMS's administrative contractors referred to as the DME MACs, on the basis of individual consideration. This means claims are being individually reviewed for medical necessity as a "complex issue", further stating condition for reimbursement. We expect that coverage and payment claims will continue be reviewed in this manner for the

MyoPro would be at near term. At some point in the discretion of future, the DME MAC's. We intend MACs will reimburse claims upon submission and conduct post-reimbursement audits to meet with determine if the medical directors of the DME MAC's to discuss coverage and payment for the MyoPro and begin submitting claims for Medicare Part B beneficiaries in early 2023. patient met CMS' reimbursement criteria.

There is no guarantee that In conjunction with our reclassification into the future level of reimbursement payments brace benefit category, on February 29, 2024, CMS published final average payment determinations for the MyoPro directly Motion W (L8701) of approximately \$33,500 and for the MyoPro Motion G (L8702) of approximately \$65,900, effective April 1, 2024. Once the final fees are effective, Medicare Advantage insurance plans are obligated to us or reimburse for the MyoPro, so long as the device is deemed to be medically necessary for their beneficiaries, which will continue to be determined on a case-by-case basis.

Based on the final published fees, our O&P distributors will be partners, as well as others whom we do not work with today, may find the fees sufficient to cover the cost of the MyoPro device, the clinical services to evaluate and fit patients, and the other support services associated with provisioning of products to patients. Further, reimbursement levels patients, which may

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affect the number of O&P providers who wish to supply the MyoPro and may limit patient access to the technology depending on the policies of their health insurance plans. result in higher sales volume from that channel.

#### **Current and Future Legislation**

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The United States and many foreign jurisdictions have enacted or proposed legislative and regulatory changes affecting the healthcare system that could affect our ability to profitably sell MyoPro. Changes in regulations, statutes or the interpretation of existing regulations could impact our business in the future by requiring, for example: (i) changes to our manufacturing arrangements; (ii) additions or modifications to product labeling; (iii) the recall or discontinuation of our products; or (iv) additional record-keeping requirements. If any such changes were to be imposed, they could adversely affect the operation of our business.

In the United States, there have been and continue to be a number of legislative initiatives and legal challenges to contain healthcare costs. For example, in March 2010, the ACA was passed, which substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacted the United States medical device industry to which we sell our products. Among other things, the ACA:

- established a 2.3% excise tax on sales of medical devices with respect to any entity that manufactures or imports specified medical devices offered for sale in the United States, although this provision was subsequently repealed in December 2019;
- established a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in and conduct comparative clinical effectiveness research;
- implemented payment system reforms, including a national pilot program to encourage hospitals, physicians and other providers to

- improve the coordination, quality and efficiency of certain health care services through bundled payment models; and
- created an independent payment advisory board that will submit recommendations to reduce Medicare spending if projected Medicare spending exceeds a specified growth rate.

Since its enactment, there have been numerous judicial, administrative, executive, and legislative challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. On June 17, 2021, the U.S. Supreme Court dismissed the most recent judicial challenge to the ACA brought by several states without specifically ruling on the constitutionality of the ACA. It is unclear how other healthcare reform measures in Congress or through executive orders, if any, to challenge repeal or replace the ACA, will impact our business.

In addition, other legislative changes have been proposed and adopted in the United States since the ACA was enacted. In August 2011, the Budget Control Act of 2011, among other things, resulted in aggregate reductions of Medicare payments to providers of 2% per fiscal year, which went into effect in 2013, and, due to subsequent legislative amendments, will remain in effect **through 2030 unless additional Congressional action is taken until 2032**. The American Taxpayer Relief Act of 2012 further reduced Medicare payments to several types of providers, including hospitals and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years.

In response to perceived increases in healthcare costs in recent years, there have been and continue to be proposals by the Presidential administrations, members of Congress, state governments, regulators and third-party payers to control these costs and, more generally, to reform the United States healthcare system, including by repealing or replacing the ACA. Many elements of health care reform such as comparative effectiveness research, payment system reforms including shared savings pilots and other provisions could meaningfully change the way healthcare is developed and delivered, and may materially adversely impact numerous aspects of our business, results of operations and financial condition.

## **Manufacturing**

Myomo's custom fabricated orthosis is comprised of two elements. The first is the electromechanical kit. The kit consists of the motor units, processor, sensors, and battery. Manufacturing for the electromechanical kit is provided by

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our supplier Cogmedix, a wholly owned subsidiary of Coughlin Companies in Worcester, MA. The second element is the custom fabrication of the orthosis itself from measurements obtained either in person or remotely. A third-party, **vendor AB Corp**, creates the orthotic parts from these measurements and the fabrication of the device is done in our facility in Boston, MA. Massachusetts.

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Coverage for the MyoPro from CMS is expected to increase sales volumes for the MyoPro. We have the ability to increase capacity at our facility in Boston to approximately 100 units per month, which is approximately double our current capacity, by adding additional labor and running a second shift. If the volume and geographic reach of our sales expand further, we may seek additional sources for manufacturing and custom fabrication of the devices as our needs may require, or expand our manufacturing space and capacity.

## Employees and Human Capital

As of December 31, 2022 December 31, 2023, we employed a total of 100 101 full time employees and 65 part time employees. In January 2023 we reduced our headcount by 12%. All employees are subject to contractual agreements that specify requirements for confidentiality, ownership of newly developed intellectual property and restrictions on working for competitors as well as other matters. None of our employees are represented by labor unions or covered by collective bargaining agreements, and we have experienced no work stoppages. We consider our relationship with our employees to be good.

We believe that our future success largely depends upon our continued ability to attract and retain highly skilled employees and personnel. Our plan to increase clinical, reimbursement and manufacturing capacity in 2024 involves the hiring of more than 50 employees by the end of the second quarter of 2024. Our human capital resources objectives include identifying, recruiting, retaining, incentivizing and integrating our existing and new employees, advisors and consultants. The principal purposes of our equity and cash incentive plans are to attract, retain and reward personnel through the granting of stock-based and cash-based compensation awards, in order to increase stockholder value and the success of our company by motivating such individuals to perform to the best of their abilities and achieve our objectives. We provide our employees with competitive salaries and bonuses, opportunities for equity ownership, support for programs that enable continued learning and growth and an employment package that promotes well-being across all aspects of their lives, including health care, retirement planning and paid time off. We value diversity at all levels and seek to make our workforce as diverse and inclusive as we can and offer advancement opportunities based on merit and performance.

## Corporate Information

We were incorporated in the state of Delaware on September 1, 2004. On June 9, 2017, we executed our initial public offering, and our common stock trades under the symbol "MYO." Our principal executive offices are located at 137 Portland St., 4<sup>th</sup> Floor, Boston, Massachusetts 02114, and our telephone number is (617) 996-9058.

## Where You Can Find More Information

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 are available through the investor relations portion of our website ([www.myomo.com](http://www.myomo.com)) free of charge as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or SEC. Information on our investor relations page and on our website is not part of this Annual Report on Form 10-K or any of our other securities filings unless specifically incorporated herein or therein by reference. In addition, our filings with the Securities and Exchange Commission SEC may be accessed through the Securities and Exchange Commission's SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system at [www.sec.gov](http://www.sec.gov). All statements made in any of our securities filings, including all forward-looking statements or information, are made as of the date of the document in which the statement is included, and we do not assume or undertake any obligation to update any of those statements or documents unless we are required to do so by law. In addition, our Code of Business Conduct and Ethics and Charters of our Audit Committee, Compensation Lead Independent Director Committee, Technology, Quality, and Regulatory Committee, Nominating and Corporate Governance Committees Committee and Lead Independent Director are available on our website and are available in print to any stockholder who requests such information.

## Item 1A. Risk Factors

The following important factors, among others, could cause our actual operating results to differ materially from those indicated or suggested by forward-looking statements made in this Form 10-K or presented elsewhere by management from time to time. Investors should carefully consider the risks described below before making an investment decision. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are not material may also significantly impair our business operations. Our business

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us or that we currently believe are not material may also significantly impair our business operations. Our business

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could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and investors may lose all or part of their investment.

#### Risks Associated with Our Business

##### Risks Related to Our Operating and Financial Results

**If CMS does not allow coverage for We have a history of operating losses. Factors both within and outside of our control could result in a delay in our ability to achieve cash flow breakeven on a quarterly basis.**

We have a history of losses since inception. For the MyoPro, insurers offering Medicare Advantage insurance plans may no longer reimburse for the MyoPro, which would have years ended December 31, 2023 and 2022, we incurred net losses of \$8.1million and \$10.7 million, respectively. At December 31, 2023, we had an adverse effect accumulated deficit of approximately \$96.9million. The extent and duration of future operating and net losses will depend on our business.ability to hire at least 50 to 60 additional employees in 2024 as we have planned to increase our clinical, reimbursement and manufacturing capacity and the ability of our supply chain to meet our volume requirements without disruption. We believe it is achievable to be cash flow breakeven on a quarterly basis by the fourth quarter of 2024. However, there can be no assurance that we can cost effectively grow our revenues without requiring additional capital.

Revenues from patients who are covered by Medicare Advantage insurance plans are becoming an increasingly significant portion. Our cash, cash equivalents and short-term investments at December 31, 2023 was approximately \$8.9 million. On January 19, 2024, we completed a registered direct offering of our overall revenues. For common stock and pre-funded warrants, generating net proceeds of approximately \$5.4 million. We believe that our existing cash at December 31, 2023, together with the year ended December 31, 2022, approximately 60% net proceeds from our January 2024 financing will be sufficient to fund our operations for the twelve months from the date of this report. If we encounter obstacles such as have been referred to above, the timing of our product revenues were derived from patients with Medicare Advantage insurance plans. If CMS does not allow coverage for ability to achieve cash flow breakeven could extend beyond the MyoPro, or if such coverage is obtained fourth quarter of 2024 and is subsequently retracted, insurers offering Medicare Advantage insurance

plans additional capital may no longer reimburse for the MyoPro. As a result, our revenues and cash flows would be negatively impacted, which could have an adverse effect on our business. See “-Risks Related to our Reliance on Third Parties—We may not be able to obtain third-party payer reimbursement, including reimbursement by Medicare, for our products” for additional information about CMS coverage decisions required.

***Our strategy to maximize revenues by focusing our efforts on patients whose insurance has reimbursed for the MyoPro in the past has resulted in a concentration of revenues with patients covered by a single insurer. Adverse changes in that insurer's reimbursement policy regarding the MyoPro could have an adverse effect on our business.***

In order to maximize revenues and minimize cash used for operations, we focus our lead generation efforts in geographical areas of the country where insurers who have previously reimbursed for the MyoPro operate their businesses. Beginning in September 2021, a large insurer that has historically reimbursed for the MyoPro began denying claims after having granted a pre-authorization and after we delivered the devices to patients, and these post-service denials currently continue. Revenues from patients insured by this payer represented 30%38% of total product revenues during the year ended December 31, 2022 December 31, 2023. With a small number of exceptions, appeals filed with the payer requesting payment have been successful and these claims have ultimately been paid. This payer also continues to provide us with pre-authorizations to serve new patients. If this payer were to start regularly denying appeals on filed claims, reduce the number of MyoPro's that it will authorize for its insured patients, or delays payments pending resolution of the denial and appeals process, our revenues and cash flows would be negatively impacted, which would have an adverse effect on our business.

***We may experience significant fluctuations in our quarterly and annual results.***

Fluctuations in our quarterly and annual financial results have resulted and will continue to result from numerous factors, including:

- timing, number and dollar value of reimbursements of our products by insurance payers;
- changes in the mix of products we sell;
- strategic actions by us, such as acquisitions of businesses, products, or technologies;
- effects of domestic and foreign economic conditions and exchange rates on our industry and/or customers;
- the divestiture or discontinuation of a product line or other revenue generating activity;
- the relocation and integration of manufacturing operations and other strategic restructuring;

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- regulatory actions which may necessitate recalls of our products or warning letters that negatively affect the markets for our product;
- costs incurred by us in connection with the termination of contractual and other relationships, including distributorships;

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- our ability to collect outstanding accounts receivable;
- the expiration or exhaustion of deferred tax assets such as net operating loss carry-forwards; carryforwards;
- increased product and price competition, due to the regulatory landscape, market conditions or other factors;
- technology changes to enhance individual data privacy that could negatively impact our ability to market our products to prospective candidates and could result in increased advertising costs;
- market reception of our new or improved product offerings; and
- the loss of any significant customer.

These factors, some of which are not within our control, may cause the price of our common stock to fluctuate substantially. If our quarterly operating results fail to meet or exceed the expectations of securities analysts or investors, our stock price could drop suddenly and significantly. We believe quarterly comparisons of our financial results are not always meaningful and should not be relied upon as an indication of our future performance.

***If CMS amends or retracts coverage requirements, insurers offering Medicare Advantage insurance plans may no longer reimburse for the MyoPro, which would have an adverse effect on our business.***

Revenues from patients who are covered by Medicare Advantage insurance plans have become a significant portion of our overall revenues. For the year ended December 31, 2023, approximately 57% of our product revenues were derived from patients with Medicare Advantage insurance plans. If CMS amends or retracts its November 2023 rule classifying MyoPro as a brace or amends or retracts any published fees, insurers offering Medicare Advantage insurance plans may no longer cover or adequately reimburse for the MyoPro. As a result, our revenues and cash flows would be negatively impacted, which could have an adverse effect on our business. See “-Risks Related to our Reliance on Third Parties—We may not be able to obtain third-party payer reimbursement, including reimbursement by Medicare, for our products” for additional information about CMS coverage decisions.

***We currently rely, and in the future will rely, on sales of our MyoPro products for our revenue, and we may not be able to achieve or maintain market acceptance.***

We currently rely, and in the future will rely, on sales of our MyoPro products for our revenue. MyoPro products are relatively new products, and market acceptance and adoption depend on educating people with limited upper extremity mobility and healthcare providers as to the distinct features, ease-of-use, improved quality of life and other benefits of MyoPro systems compared to alternative technologies and treatments. MyoPro products may not be perceived to have sufficient potential benefits compared with these alternatives, which include rehabilitation therapy or amputation with a prosthetic replacement. Also, we believe that healthcare providers tend to be slow to change their medical treatment practices because of perceived liability risks arising from the use of new products and the uncertainty of third-party reimbursement. Accordingly, healthcare providers may not recommend the MyoPro until there is sufficient evidence to convince them to alter the treatment methods they typically recommend. This evidence may include prominent healthcare providers or other key opinion leaders in the upper extremity paralysis community recommending the MyoPro as effective in providing identifiable immediate and long-term health benefits, and the publication of additional peer-reviewed clinical studies demonstrating its value. Additionally, because the MyoPro is a prescription

device, patients require the prescription of a healthcare provider to access our products and to have the device reimbursed by insurance.

Achieving and maintaining market acceptance of MyoPro products could be negatively impacted by many other factors, including, but not limited to:

- lack of sufficient evidence supporting the benefits of MyoPro over competitive products or other available treatment, or lifestyle management to accommodate the disability;
- patient resistance to wearing an external device or making required insurance co-payments;
- limitations on the ability of patients to complete evaluations and fittings, including adverse changes in their health, or other environmental, social and economic barriers to patient access;
- results of clinical studies relating to MyoPro or similar products;
- claims that MyoPro, or any component thereof, infringes on patent or other intellectual property rights of third parties;
- perceived risks associated with the use of MyoPro or similar products or technologies;
- the introduction of new competitive products or greater acceptance of competitive products;
- adverse regulatory or legal actions relating to MyoPro or similar products or technologies; and
- problems arising from the insourcing of our manufacturing capabilities, or our existing manufacturing and supply relationships with third parties.

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Any factors that negatively impact sales of MyoPro would adversely affect our business, financial condition and operating results.

#### **Risks Related to our Reliance on Third Parties**

##### ***We may not be able to obtain third-party payer reimbursement, including reimbursement by Medicare, for our products.***

Sales of our device depend, in part, on the extent to which our products will be covered by third-party payers, such as government health programs, commercial insurance and managed healthcare organizations. See section titled "Business Section – Government Regulation – Health Insurance Reimbursement." Third-party payers are increasingly challenging the prices charged, examining the medical necessity, and reviewing the cost-effectiveness of medical products and services and imposing controls to manage costs. Third-party payers may limit coverage to specific products on an approved list, also known as a formulary, which might not include all of the approved products for a particular indication. As a result, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our products to each payer separately, with no assurance that coverage and adequate reimbursement will be obtained. Currently, we are almost entirely dependent on third parties to cover the cost of our products to patients and rely on our distributors' ability to obtain reimbursement for the cost of our products. If the U.S. Department of Veterans Affairs, or the VA, health insurance companies and other third-party payers do not provide adequate coverage or reimbursement for our products, then our sales will be limited to clinical facilities and individuals who can pay for our devices without reimbursement. To our knowledge, through the year ended **December 31, 2022** **December 31, 2023**, fewer than **30** **50** units have been self-paid or funded by non-profit foundations. Some commercial health insurance plans have published statements that they will not cover the cost of the MyoPro for their members. Starting in 2023, we no longer pursue sales to patients whose insurance payers have not previously reimbursed for the MyoPro. In the event we are unsuccessful in obtaining coverage and adequate reimbursement for our products from third-party payers, our sales will be significantly constrained. Currently, reimbursement for the cost of our products is obtained primarily on a case-by-case basis until such time, if any, we obtain broad coverage policies with Medicare and third-party payers. There can be no assurance that we will be able to

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obtain these broad coverage policies. See section **title** titled **“Business Section – Government Regulation – Health Insurance Reimbursement.”**

In connection with Medicare reimbursement, the Centers for Medicare and Medicaid Services, or CMS, had published two new codes pursuant We began submitting claims to our application for HCPCS codes, which became effective on January 1, 2019. CMS placed the Myopro device in a DME rental benefit category instead of lump sum, which is standard practice for other custom-fabricated orthotics and prosthetics. We submitted an appeal to change our benefit category to an orthotic, or brace, which was presented at a public meeting in June 2022. In September 2022, CMS announced that it elected not to make a determination on our application at this time. In January 2023, CMS provided notice that it intends to publish a proposed rule covering the scope of the Medicare Part B benefit for leg, arm, back and neck braces as well as newer technology devices. We cannot give any assurance that CMS will change our benefit category determination, that the DME MAC's will cover the device on a case by case basis, or at all, or that the amount of reimbursement, if any, to be approved will be sufficient to provide a reasonable profit to us, that the receipt of these codes would result in appropriate coverage and payment terms or otherwise lead to any greater access to our products or reimbursement for such products.

While we announced that we became accredited as a Medicare provider in July 2021, enabling us to bill Medicare directly when we deliver our MyoPro powered orthosis to patients in 39 states and the District of Columbia, since we continue to await a decision by CMS on our benefit category change request, coverage policy and allowable fee for the MyoPro, we are currently not serving Medicare Part B patients, though we intend to start submitting claims MACs on behalf of Medicare Part B beneficiaries in early March 2023. There is no specific timetable A total of 40 claims have been submitted and payments have been received for 21 patients either as rentals or guarantee that CMS will in fact issue such coverage and payment guidelines, or agree to change our benefit category as purchases as of the filing date of this Annual Report on Form 10-K, covering all four of the DME MAC billing regions. The other claims remain under review. There is no guarantee that we will receive those terms in a timely manner or at all. payment for any unapproved claims. In addition, decisions by CMS or other governmental payers on whether and to what extent they would cover our products, as well as decisions on what basis they would cover our products, whether as outright purchases by patients or on a rental basis, may impact similar coverage decisions by private payers that may follow the decisions by governmental payers.

In connection with Medicare reimbursement, in November 2023 CMS reclassified the MyoPro from the durable medical equipment benefit to the brace benefit category effective January 1, 2024, thereby allowing for lump sum reimbursement. If CMS's Medicare administrative contractors, referred to as the DME MAC's, agree to reimburse for submitted claims, such reimbursements are expected to be on a lump sum basis for claims submitted after January 1, 2024. In addition, on February 29, 2024, CMS published final average payment determinations for the MyoPro Motion W (L8701) of approximately \$33,500 and the MyoPro Motion G (L8702) of approximately \$65,900, effective April 1, 2024. We believe that despite the publication of a final fee, our claims are expected to be evaluated on a case-by-case basis during most of 2024.

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Reimbursement amounts, whether on a case-by-case basis or pursuant to broader coverage policies, which may There can be established in no assurance that the future, may final fees will be insufficient sufficient to permit us to generate sufficient gross margins margin required to allow us to operate on a profitable basis. Third-party payers also may continue to deny coverage, limit reimbursement or reduce their levels of

payment, or our costs of production may increase faster than increases in reimbursement levels. In addition, we may not obtain coverage and reimbursement approvals in a timely manner. Our failure to receive such approvals would operate profitably could negatively impact market acceptance of MyoPro. Further, due to the COVID-19 pandemic, millions of individuals have lost employer-based coverage, which may adversely affect our sales to our patients relying on such coverage.

***We depend on a single third-party to manufacture key subassemblies for the MyoPro and a limited number of third-party suppliers for certain components of the MyoPro.***

While we are the manufacturer of record with the U.S. Food and Drug Administration, or the FDA, for the MyoPro device we sell, we have contracted with Cogmedix, Inc., or Cogmedix, a contract manufacturer with expertise in the medical device industry, for the contract manufacture of all of our products and the sourcing of all of our components and raw materials. Pursuant to this contract, Cogmedix manufactures the MyoPro pursuant to our specifications at its facility in West Boylston, Massachusetts. As the manufacturer of the MyoPro, we ultimately remain responsible to the FDA for overseeing Cogmedix's manufacturing activities to ensure that they conform with product specifications and applicable laws and regulations, including FDA's good manufacturing practice requirements for medical devices. Any failure to effectively oversee the regulatory compliance of the product and contract manufacturing activities by Cogmedix can lead to potential enforcement actions, including civil or criminal liabilities, as well as recalls with the FDA. We may terminate our relationship with Cogmedix at any time upon sixty (60) days' written notice. For our business strategy to be successful, Cogmedix must be able to manufacture our products in sufficient quantities, and to source raw materials and components, in compliance with regulatory requirements and quality control standards, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. Increases in our product sales, whether forecasted or unanticipated, or supply chain constraints that may arise for any number of reasons, could strain the ability of Cogmedix to manufacture an increasingly large supply of our current or future products in a manner that meets these various requirements. In addition, although we are not restricted from engaging an alternative manufacturer, the process of moving our manufacturing activities would be time consuming and costly, and may limit our ability to meet our sales commitments, which could harm our reputation and could have a material adverse effect on our business. Further, any new contract manufacturer would need to be compliant with FDA regulations and International Organization for Standardization, or ISO, standard 13485.

We also rely on third-party suppliers, some of which including AB Corp, for 3D printed orthotic components. Some third-party suppliers contract directly with Cogmedix, to supply certain components of the MyoPro products. Cogmedix does not have long-term supply agreements with most of their suppliers and, in many cases, makes purchases on a purchase order basis. We do not have any long-term supply agreements directly with Cogmedix's suppliers. Our ability and Cogmedix's ability to secure adequate quantities of such products may be limited. Suppliers may encounter problems that limit their ability to manufacture components for our products, including financial difficulties or damage to their

Cogmedix generally uses a small number of suppliers for the MyoPro products. Depending on a limited number of suppliers exposes us to risks, including limited control over pricing, availability, quality and delivery schedules. If any one or more of our suppliers ceases to provide sufficient quantities of components in a timely manner or on acceptable terms, Cogmedix would have to seek alternative sources of supply. It may be difficult to engage additional or replacement suppliers in a timely manner. Failure of these suppliers to deliver products at the level our business requires would limit our ability to meet our sales commitments, which could harm our reputation and could have a material adverse effect on our business. Cogmedix also may have difficulty obtaining similar components from other suppliers that are acceptable to the FDA or other regulatory agencies, and the failure of Cogmedix's suppliers to comply with strictly enforced regulatory requirements could expose us to regulatory action including warning letters, product recalls, termination of distribution, product seizures or civil penalties. It could also require Cogmedix to cease using the components, seek alternative components or technologies and we could be forced to modify our products to incorporate alternative components or technologies, which could result in a requirement to seek additional regulatory

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approvals. Any disruption of this nature or increased expenses could harm our commercialization efforts and adversely affect our operating results.

We also rely on a limited number of suppliers for the batteries used by the MyoPro and do not maintain any long-term supply agreement with respect to batteries. If we fail to obtain sufficient quantities of batteries in a timely manner, our reputation may be harmed and our business could suffer.

While we currently believe we have sufficient inventory in our supply chain in the near term, if we, or any third parties in our supply chain for materials which are used in either the manufacture of our products are adversely impacted by infections or restrictions resulting from public health crises, such as the coronavirus outbreak, Covid-19 pandemic, or other factors, our supply chain may be disrupted and our ability to manufacture and ship our products may be limited. While many companies are experiencing continue to experience shortages of certain electronic components, so far we and our contract manufacturing partners have been able to procure the electronic components necessary for the manufacture of our products, but we are dealing with longer lead times and delivery delays for certain critical components. There can be no assurance that such supplies will become less constrained in the future. In addition, as a result of shelter-in-place orders, workplace capacity restrictions, or other mandated travel restrictions, our on-site staff conducting sales and marketing and engineering activities may not be able to access our office or laboratory space, and these restrictions may adversely impact our contract manufacturing partners as well. Further, these core activities may be significantly limited or curtailed, possibly for an extended period of time.

#### Risks Related to Limited Operating History and Capital Requirements

**We have a history of operating losses and our financial statements for the year ended December 31, 2022 include disclosures regarding there being substantial doubt about our ability to continue as a going concern.**

We have a history of losses since inception. For the years ended December 31, 2022 and 2021, we incurred net losses of \$10.7 million and \$10.4 million, respectively. At December 31, 2022, we had an accumulated deficit of approximately \$88.8 million. We expect to continue to incur operating and net losses for the foreseeable future, though we have implemented measures to reduce our operating expenses through eliminating costs associated with activities to broaden the number of payers reimbursing for MyoPro. However, there can be no assurance that our cost reduction measures will be effective in reducing our operating expenses, or that these measures would not adversely affect our revenue-generating activities.

Our cash and cash equivalents at December 31, 2022 was approximately \$5.3 million. In January 2023, we completed a follow-on offering of our common stock and pre-funded warrants, raising net proceeds of approximately \$5.7 million. In addition, we entered into a Common Stock Purchase Agreement (the "Purchase Agreement") with Keystone Capital Partners ("Keystone") on August 2, 2022 to establish an equity line facility permitting the sale of up to \$5.0 million of shares of common stock, subject to an exchange cap that limits the number of shares that we

may sell to 1,349,334, unless stockholder approval were obtained to remove such cap. We also have an at-the-market facility with Alliance Global Partners (the "ATM Facility"), that permits us to sell up to \$0.3 million of shares of common stock from time to time. Because the shares of common stock to be sold under the Purchase Agreement and the ATM Facility are registered under our registration statement on Form S-3, we are subject to the limitations imposed by General Instruction I.B.6 of Form S-3, which limits the amount of securities that we may issue under our registration statement on Form S-3 to one-third of our public float in any 12-month period. We have also agreed with the purchasers in our January 2023 financing not to sell shares under our Purchase Agreement and ATM Facility for a period of one year.

We believe that there is substantial doubt that our cash and cash equivalents at December 31, 2022, together with the net proceeds from our January 2023 financing will be sufficient to fund our operations for the twelve months from the date of this report. Disclosure of this substantial doubt about our ability to continue operations in the future as a going concern, is disclosed in the notes to the audited financial statements for the year ended December 31, 2022. Because our financial statements raise substantial doubt about our ability to continue as a going concern, they do not reflect any adjustments that might result if we are unable to continue our business. If we cannot continue as a viable entity, our stockholders may lose some or all of their investment in our company.

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***Our limited operating history makes it difficult for us to evaluate our future business prospects and make decisions based on those estimates of our future performance.***

Since inception through December 31, 2022 December 31, 2023, we have delivered nearly 2,000 more than 2,400 units for use by patients at home and at clinical facilities. Our latest product line, the MyoPro, was introduced to the market in fiscal year 2012 and we have delivered more than 1,600 2,000 units since such time. As a result, we have a limited operating history. It is difficult to forecast our future results based upon our historical data. Because of the uncertainties related to our limited historical operations, we may be hindered in our ability to anticipate and timely adapt to increases or decreases in revenues or expenses.

***We may not have sufficient funds to meet our future capital requirements.***

Our cash, and cash equivalents, and short term investments at December 31, 2022 December 31, 2023 was approximately \$5.3 \$8.9 million. In January 2023, On January 19, 2024, we completed a follow-on registered direct offering of our common stock and pre-funded warrants, raising generating net proceeds of approximately \$5.7 million \$5.4 million. In addition, we entered into a Purchase Agreement with Keystone to establish an equity line facility permitting the sale of up to \$5.0 million of shares of common stock, subject to an exchange cap that limits the number of shares that we may sell to 1,349,334, unless stockholder approval were obtained to remove such cap. We also have an ATM Facility , that permits us to sell up to \$0.3 million of shares of common stock from time to time. Because the shares of common stock to be sold under the Purchase Agreement and the ATM Facility are registered under our registration statement on Form S-3, we are subject to the limitations imposed by General Instruction I.B.6 of Form S-3, which limits the amount of securities that we may issue under our registration statement on Form S-3 to one-third of our public float in any 12-month period. We have also agreed with the purchasers in our January 2023 financing not to sell shares under our ATM Facility for a period of one year. However, there can be no assurance that we will be able to sell any or all of the shares under the Purchase Agreement or the ATM Facility, or raise significant amounts of capital even if we do. If we cannot use these facilities to raise sufficient capital to operate our business, we may be required to utilize more costly and time-consuming means of accessing the capital markets.

Our financial statements for the year ended December 31, 2022 contain a qualification regarding substantial doubt about our ability to continue as a going concern. Our ability to continue as a going concern grow our business is dependent on our ability to generate sufficient cash flows from operations or to raise additional capital to meet our obligations. Based on our historical cash burn, we do not anticipate obligations, if necessary. We believe that our existing cash and cash equivalents proceeds from our registered direct offering in January 2024 will be sufficient to enable us to maintain achieve cash flow breakeven on a quarterly basis, which we believe is achievable by the fourth quarter of 2024, assuming that we are able to hire at least 50 additional employees during the first half of 2024 as we have planned to increase our currently planned operations for the next twelve months from the date clinical, reimbursement and

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manufacturing capacity, and our supply chain is able to meet our volume requirements without disruption. If additional capital is required to achieve cash flow breakeven, we may be unable to obtain additional funds on reasonable terms, or at all. Our ability to secure financing and the cost of raising such capital are dependent on numerous factors, including general economic and capital markets conditions, credit availability from lenders, investor confidence and the existence of regulatory and tax incentives that are conducive to raising capital. Uncertainty in the financial markets has caused banks and financial institutions to decrease the amount of capital available for lending and has significantly increased the risk premium of such borrowings. In addition, such turmoil and uncertainty has significantly limited the ability of companies to raise funds through the sale of equity or debt securities. If we are unable to raise additional funds, we may need to delay, modify or abandon some or all of our business plans or cease operations. If we raise funds through the issuance of debt, the amount of any indebtedness that we may raise in the future may be substantial, and we may be required to secure such indebtedness with our assets and may have substantial interest expenses. If we default on any future indebtedness, our lenders could declare all outstanding principal and interest to be due and payable and our secured lenders may foreclose on the facilities securing such indebtedness. The incurrence of indebtedness could require us to meet financial and operating covenants, which could place limits on our operations and ability to raise additional capital, decrease our liquidity and increase the amount of cash flow required to service our debt. If we raise funds through the issuance of equity securities, such issuance could result in dilution to our stockholders and the newly issued securities may have rights senior to those of the holders of our common stock.

***Rising Persistent inflation may materially impact our financial operations or results of operations.***

Inflation has increased remained persistent during the period covered by this Annual Report on Form 10-K, and is expected to remain elevated for the near future. Inflationary factors, such as increases in the cost of our raw materials, manufacturing, interest rates and overhead costs may adversely affect our operating results. The price and availability of key components used to manufacture our products has been increasing and may continue to fluctuate significantly. In addition, the cost of labor internally or at our third-party manufacturers could increase significantly due to regulation

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or inflationary pressures. Additionally, the cost of logistics and transportation fluctuates in large part due to the price of oil, and availability can be limited due to political and economic issues. Although we do not believe that inflation has had a material impact on our financial position or results of operations to date, we may experience some effect in the near future, especially if inflation rates continue to rise.

**Risks Related to COVID-19**

***The outbreak of the novel strain of coronavirus, SARS-CoV-2, which causes COVID-19, could adversely impact our business.***

The outbreak of the novel coronavirus, SARS-CoV-2, which causes coronavirus disease 2019 ("COVID-19"), has evolved into a global pandemic. The coronavirus has spread to many regions of the world, including the United States and Europe. As a result of the coronavirus pandemic, we have experienced and may continue to experience disruptions that could materially impact our business. The extent to which the coronavirus impacts our business and operating results will depend on future developments that are highly uncertain and cannot be accurately predicted, including new information that may emerge concerning the coronavirus and the actions taken to contain the coronavirus or treat its impact, among others.

As a result of COVID-19, various aspects of our business operations have been, and could continue to be, disrupted. For example, because we provide a custom-fabricated device to each patient, the in-person contact required as part of the fabrication and delivery process has been impacted and likely will continue to be impacted if COVID-19-related public health restrictions on travel and personal interaction are broadly reinstated. Similarly, the impairment in the ability for patient consultation and fittings has caused us to delay and re-prioritize in our launch of MyoPal, our product for pediatric patients. While we continued in-person interactions with, and deliveries to, patients during the fourth quarter of 2022, incidences of the virus and its variants remain prevalent in the United States and the world. The spread of the current variants has resulted in more incidences of infection involving employees of the Company and its vendors and subcontractors as compared to earlier in the pandemic, which has impacted the Company in terms of lost productivity and temporary reductions in capacity. While current variants do not appear to be as virulent as previous variants, it is possible that future variants will be more transmissible and virulent. As a result, public health restrictions may be reinstated in various areas in the future. While insurance reimbursement practices of government and third-party payers were largely unaffected by the pandemic, we can provide no assurance that will continue in the future. While we currently believe we have sufficient inventory in our supply chain and currently expect to have sufficient fabrication capacity available to manufacture and deliver devices to patients, there can be no assurance that we will be able to continue to do so. If we, or any third parties in our supply chain for materials which are used in the manufacture of our products are adversely impacted by infections or restrictions resulting from the coronavirus outbreak, our supply chain may be disrupted and our ability to manufacture and ship our products may be limited. Further, these core activities may be significantly limited or curtailed, possibly for an extended period of time. In addition, the company through which we have a joint venture in China for our MyoPro product has advised us that effects of COVID lockdowns in China are delaying the banking and government approvals necessary to pay the remaining amounts owed to us under our technology license for the joint venture. We cannot be certain as to if or when the remaining license fee will be paid. If uncured, failure to pay us the required fees contemplated by the Agreements may entitle us to terminate such our agreements related to the joint venture and withdraw from the joint venture.

In response to COVID-19, we have implemented a work from home policy, with many of our employees continuing their work outside of our offices. The increase in working remotely could increase our cyber security risk, create data accessibility concerns, and make us more susceptible to communication disruptions, any of which could adversely impact our business operations or delay necessary interactions with local and federal regulators and manufacturing sites.

In addition, the trading prices for our common stock and other companies in the life sciences industry have been highly volatile as a result of the COVID-19 pandemic. As a result, if we needed to raise additional capital, we may face difficulties raising capital through equity or debt financings, or such financing transactions may be on unfavorable terms. While the potential economic impact brought by and the duration of the pandemic may be difficult to assess or predict, it has already caused, and is likely to result in further, significant disruption of global financial markets, which

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may reduce our ability to access capital either at all or on favorable terms. In addition, a recession, depression or other sustained adverse market event resulting from the spread of COVID-19 could materially and adversely affect our business and the value of our common stock. The ultimate impact of the current pandemic, or any other health epidemic, is highly uncertain and subject to change. We do not yet know the full extent of potential delays or impacts on our business, our commercialization, sales and marketing, research, manufacturing, and regulatory activities, healthcare systems or the global economy as a whole. However, these effects could have a material adverse impact on our operations, and we will continue to monitor the situation closely.

#### Risks Related to Competitors and Our Market

***The industries in which we operate are highly competitive and subject to rapid technological change. If our competitors are better able to develop and market products that are safer, more effective, less costly, easier to use, or are otherwise more attractive, we may be unable to compete effectively with other companies.***

Industrial and medical robotics is characterized by intense competition and rapid technological change, and we will face competition on the basis of product features, clinical outcomes, price, services and other factors. Competitors may include large medical device and other companies, some of which have significantly greater financial and marketing resources than we do, and firms that are more specialized than we are with respect to particular markets. Our competition may respond more quickly to new or emerging technologies, undertake more extensive marketing campaigns, and have greater financial, marketing and other resources than we do or may be more successful in attracting potential customers, employees and strategic partners.

Our competitive position will depend on multiple complex factors, including our ability to achieve market acceptance for our products, develop new products, implement production and marketing plans, secure regulatory clearances or approvals, if necessary, for products under development and protect our intellectual property. In some instances, competitors may also offer, or may attempt to develop, alternative therapies for disease states that may be delivered without a medical device. The development of new or improved products, processes or technologies by other companies may render our products or proposed products obsolete or less competitive. The entry into the market of manufacturers located in low-cost manufacturing locations may also create pricing pressure, particularly in developing markets. Our future success depends, among other things, upon our ability to compete effectively against current technology, as well as to respond effectively to technological advances, and upon our ability to successfully implement our marketing strategies and execute our research and development plans.

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***We sell to O&P providers and distributors who are free to market products that compete with the MyoPro, and we rely on these parties to market and promote our products in accordance with their FDA listings, select appropriate patients and provide adequate follow-on care.***

We rely on our relationships with qualified O&P providers and our distribution arrangements to market and sell our products. We believe that a meaningful percentage of our sales will continue to be generated through these channels in the future. However, none of these partners are required to sell or provide our products exclusively. If a key independent O&P provider were to cease to distribute our products, our sales could be adversely affected. In such a situation, we may need to seek alternative independent providers or increase our reliance on our other independent providers or our direct field representatives, which may not prevent our sales from being adversely affected. Additionally, to the extent that we enter into additional arrangements with independent distributors to perform sales, marketing, or distribution services, the terms of the arrangements could cause our profit margins to be lower than if we directly marketed and sold our products.

If these independent O&P providers or distributors do not follow our inclusion/exclusion criteria for patient selection or do not provide adequate follow-on care, then our reputation may be harmed by patient dissatisfaction. This could also lead to product returns and adversely affect our financial condition. When issues with distributors have arisen in the past, we have supplied additional training and documentation and/or ended the distributor relationship.

The sales and marketing of medical devices is under increased scrutiny by the FDA and other enforcement bodies. If our sales and marketing activities fail to comply with FDA regulations, such as regulations for the labeling and advertising of our products, or other applicable laws, we may be subject to warnings or enforcement actions from the

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FDA or other enforcement bodies. For example, we are restricted from promoting our products for any use that is beyond the scope of their applicable FDA classification regulation. Such promotion could result in enforcement action by the FDA, which may include, but is not limited to untitled letters or warning letters, injunctions, recall or seizure of our products, and imposition of FDA's premarket clearance or approval requirements.

***The market for myoelectric braces is new and the rate of adoption is uncertain, and important assumptions about the potential market for our products may be inaccurate.***

The market for myoelectric braces, or orthotics, is new and the rate of adoption is uncertain. Our estimates of market size are derived from statistics regarding the number of individuals with paralysis, but not necessarily limited to their upper extremities. Accordingly, it is difficult to predict the future size and rate of growth of the market. We cannot be certain whether the market will continue to develop or if orthotics will achieve and sustain a level of market acceptance and demand sufficient for us to continue to generate revenue and achieve profitability. Limited sources exist to obtain reliable market data with respect to the number of mobility-impaired individuals and the occurrence of upper extremity paralysis in our target markets. In addition, there are no third-party reports or studies regarding what percentage of those with upper extremity paralysis would be able to use orthotics in general, or our current or planned future products in particular. In order to use our current products marketed to those with upper extremity paralysis, users must meet a set of inclusion criteria and not have a medical condition which disqualifies them from being an appropriate candidate. Future products for those with upper extremity paralysis may have the same or other restrictions. Our business strategy is based, in part, on our estimates of the number of upper extremity impaired individuals and the incidence of upper extremity injuries in our target markets and the percentage of those groups that would be able to use our current and future products. Our assumptions and estimates may be inaccurate and may change.

If the upper extremity orthotics market fails to develop or develops more slowly than we expect, or if we have relied on sources or made assumptions or estimates that are not accurate, our business could be adversely affected.

In addition, because we operate in a new market, the actions of our competitors could adversely affect our business. Adverse events such as product defects or legal claims with respect to competing or similar products could cause

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reputational harm to the market on the whole. Further, adverse regulatory findings or reimbursement-related decisions with respect to other products could negatively impact the entire market and, accordingly, our business.

**Risks Related to Our Products**

***We may receive a significant number of warranty claims or our MyoPro may require significant amounts of service after sale.***

Sales of MyoPro products generally include a three-year warranty for parts and labor, other than for normal wear and tear. As the number and complexity of the features and functionalities of our products increase, we may experience a higher level of warranty claims. If product returns or warranty claims are significant or exceed our expectations, we could incur unanticipated expenditures for parts and services, which could have a material adverse effect on our operating results.

***Defects in our products or the software that drives them could adversely affect the results of our operations.***

The design, manufacture and marketing of the MyoPro products involve certain inherent risks. Manufacturing or design defects, unanticipated use of the MyoPro, or inadequate disclosure of risks relating to the use of MyoPro products can lead to injury or other adverse events. In addition, because the manufacturing of our products is outsourced to Cogmedix, we may not always be aware of manufacturing defects that could occur and corrective or preventive actions implemented by Cogmedix may not be effective at resolving such defects. Such adverse events could lead to recalls or safety alerts relating to MyoPro products (either voluntary or required by the FDA or similar governmental authorities in other countries), and could result, in certain cases, in the removal of MyoPro products from the market. A recall could result in significant costs. To the extent any manufacturing defect occurs, our agreement with Cogmedix contains a limitation on Cogmedix's liability, and therefore we could be required to incur the majority of related costs. ~~Our agreement with GRE does not contain a similar limitation of liability; however, a~~ A defect in connection with the fabrication of our products may result in significant costs in connection with lawsuits or

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refunds. Product defects or recalls could also result in negative publicity, damage to our reputation or, in some circumstances, delays in new product approvals.

MyoPro users may not use MyoPro products in accordance with safety protocols and training, which could enhance the risk of injury. Any such occurrence could cause delay in market acceptance of MyoPro products, damage to our reputation, additional regulatory filings, product recalls, increased service and warranty costs, product liability claims and loss of revenue relating to such hardware or software defects.

The medical device industry has historically been subject to extensive litigation over product liability claims. We have not been subject to such claims to date, but we may become subject to product liability claims alleging defects in the design, manufacture or labeling of our products in the future. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs and high punitive damage payments. Although we maintain product liability insurance, the coverage is subject to deductibles and limitations, and may not be adequate to cover future claims. Additionally, we may be unable to maintain our existing product liability insurance in the future at satisfactory rates or in adequate amounts.

***While there is long-term clinical data supporting the safety of our existing MyoPro products, updates to our products inherently have uncertain safety risks as they enter the market.***

While clinical data have established the safety of MyoPro products, our products undergo periodic updates for various reasons, including performance and reliability improvements and cost reductions. For example, in January 2022, we announced the availability of MyoPro2+. Because MyoPro users generally do not have feeling in their upper extremities, they may not immediately notice adverse effects from updates to the MyoPro, which could exacerbate their impact. If MyoPro products are shown to present new risks or to be unsafe or cause such unforeseen effects in the future, our business and reputation could be harmed, including through field corrections, withdrawals, removals, mandatory product recalls, suspension or withdrawal of FDA registration, significant legal liability or harm to our business reputation.

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### **Risks Related to Collaborations and Licensing Agreements**

***We may enter into collaborations, licensing arrangements, joint ventures, strategic alliances or partnerships with third parties that may not result in the development of commercially viable products or the generation of significant future revenues.***

In the ordinary course of our business, in the future we may enter into collaborations, in-licensing arrangements, joint ventures, strategic alliances or partnerships to develop the MyoPro and to pursue new markets. We are selling the MyoPro in several European countries, as well as Australia. In January 2021, we announced that we had entered into a joint venture (the "JV") with Beijing Ryzur Medical Investment Co., Ltd. ("Ryzur Medical"), to manufacture and sell the products containing our technology in China, Hong Kong, Taiwan and Macau. The company is named Jiangxi Myomo Medical Assistive Appliance Co., Ltd. (the "JV Company"). In December 2021, we entered into a technology license agreement and a trademark license agreement with the JV Company, under which we ~~will be~~ were entitled to receive a license fee of \$2.7 million and the JV Company will commit to purchase a minimum of \$10.75 million of MyoPro control units over the next ten years. As of ~~December 31, 2022~~ December 31, 2023, we received ~~\$1.0 million partial~~ full payment of the license fee. The joint venture has advised us that effects of COVID-19 lockdowns in China are delaying the banking and government approvals necessary to pay the remaining amounts owed to us under our technology license. We cannot be certain as to if or when the remaining \$2.7 million license fee will be paid. If uncured, failure to pay us the required fees contemplated by the Agreements may entitle us to terminate such our agreements related to the joint venture and withdraw from the joint venture. have received payment for MyoPro control units of \$50,000. This and any other of these relationships may require us to incur non-recurring and other charges, increase our near and long-term expenditures, issue securities that dilute our existing stockholders or disrupt our management and business. In addition, proposing, negotiating and implementing collaborations, licensing arrangements, joint ventures, strategic alliances or partnerships may be a ~~competitive~~ lengthy and complex process. We may not identify, secure, or complete any such transactions or arrangements in a timely manner, on a cost-effective basis, on acceptable terms or at all. We have limited institutional knowledge and experience with respect to these business development activities, and we may also not realize the anticipated benefits of any such transaction or arrangement. In particular, these collaborations may not result in the development of products that achieve commercial success or result in significant revenues and could be terminated prior to developing any products. Any delays in

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entering into new strategic partnership agreements related to our products could delay the development and commercialization of our products in certain geographies, which would harm our business prospects, financial condition and results of operations.

If we pursue collaborations, additional licensing arrangements and joint ventures, strategic alliances or partnerships, we may not be able to consummate them, or we may not be in a position to exercise sole decision-making authority regarding the transaction or arrangement, which could create the potential risk of creating impasses on decisions, and our collaborators may have economic or business interests or goals that are, or that may become, inconsistent with our business interests or goals. It is possible that conflicts may arise with our collaborators. Our collaborators may act in their self-interest, which may be adverse to our best interest, and they may breach their obligations to us. Any such disputes could result in litigation or arbitration which would increase our expenses and divert the attention of our management.

Further, these transactions and arrangements are contractual in nature and may be terminated or dissolved under the terms of the applicable agreements.

#### **Risks Related to Our Business Operations and Management**

##### ***If we fail to properly manage our anticipated growth, including in international markets, our business could suffer.***

As we expand the number of locations which provide the MyoPro products, including future planned international distribution, we expect that it will place significant strain on our management team and on our financial resources. Failure to manage our growth effectively could cause us to misallocate management or financial resources and result in losses or weaknesses in our infrastructure, systems, processes and controls, which could materially adversely affect our business. Additionally, our anticipated growth will increase the demands placed on our suppliers, resulting in an increased need for us to manage our suppliers and monitor for quality assurance.

Moreover, there are significant costs and risks inherent in selling our products in international markets, including: (a) time and difficulty in building a widespread network of distribution partners; (b) increased shipping and distribution costs, which could increase our expenses and reduce our margins; (c) potentially lower margins in some regions; (d) longer collection cycles in some regions; (e) compliance with foreign laws and regulations; (f) compliance with anti-bribery, anti-corruption, and anti-money laundering laws, such as the Foreign Corrupt Practices Act and the Office of Foreign Assets Control regulations, by us, our employees, and our business partners; (g) currency exchange rate

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fluctuations and related effects on our results of operations; (h) economic weakness, including inflation, or political instability in foreign economies and markets; (i) compliance with tax, employment, immigration, and labor laws for employees living or traveling abroad; (j) workforce uncertainty in countries where labor unrest is more common than in the United States; (k) business interruptions resulting from geopolitical actions, including war and terrorism, or natural disasters, including earthquakes, typhoons, floods and fires; and (l) other costs and risks of doing business internationally, such as new tariffs which may be imposed. For example, in January 2021, we announced that we had have entered into a joint venture with Beijing Ryzur Medical Investment Co., Ltd., to manufacture and sell the products containing the Company's technology in China, Hong Kong, Taiwan and Macau. In connection with this joint venture, we may encounter challenges in working with our joint venture partners, including with respect to compliance with local laws and domestic laws related to foreign operations.

These and other factors could harm our ability to implement planned international operations and, consequently, harm our business, results of operations, and financial condition. Further, we may incur significant operating expenses as a result of our planned international expansion, and it may not be successful. We have limited experience with regulatory environments and market practices internationally, and we may not be able to penetrate or successfully operate in new markets. We may also encounter difficulty expanding into international markets because of limited brand recognition, leading to delayed or limited acceptance of our products by patients in these markets. Accordingly, if we are unable to expand internationally or manage our international operations successfully, we may not achieve the expected benefits of this expansion and our financial condition and results of operations could be harmed.

**We depend on the knowledge and skills of our senior management.**

We have benefited substantially from the leadership and performance of our senior management and other key employees. We do not carry key person insurance. Our success will depend on our ability to retain our current management and key employees. Competition for these key persons in our industry is intense and we cannot guarantee

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that we will be able to retain our personnel. The loss of the services of certain members of our senior management or key employees could prevent or delay the implementation and completion of our strategic objectives or divert management's attention to seeking qualified replacements.

**We may seek to grow our business through acquisitions of complementary products or technologies, and the failure to manage acquisitions, or the failure to integrate them with our existing business, could have a material adverse effect on our business, financial condition and operating results.**

From time to time, we may consider opportunities to acquire other products or technologies that may enhance our products or technology or advance our business strategies. Potential acquisitions involve numerous risks, including:

- problems assimilating the acquired products or technologies;
- issues maintaining uniform standards, procedures, controls and policies;
- unanticipated costs associated with acquisitions;
- diversion of management's attention from our existing business;
- risks associated with entering new markets in which we have limited or no experience; and
- increased legal and accounting costs relating to the acquisitions or compliance with regulatory matters.

We have no current commitments with respect to any acquisition and no current plans to seek acquisitions; however, depending on industry and market conditions, we may consider acquisitions in the future. If we do proceed with acquisitions, we do not know if we will be able to identify acquisitions we deem suitable, whether we will be able to successfully complete any such acquisitions on favorable terms or at all, or whether we will be able to successfully integrate any acquired products or technologies. Our potential inability to integrate any acquired products or technologies effectively may adversely affect our business, operating results and financial condition.

**Our recent organizational changes and cost cutting measures may not be successful.**

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**In January 2023, we implemented reduction-in-force affecting approximately 12% of our workforce. The objective of this workforce reduction was to realign our workforce to meet our needs and to improve operating efficiency in our direct billing channel and reduce our cash burn.**

However, these restructuring and cost cutting activities may yield unintended consequences and costs, such as attrition beyond our intended reduction-in-force, a reduction in morale among our remaining employees, and the risk we may not achieve the anticipated benefits of such reduction-in-force measure, all of which may have an adverse effect on our results of operations or financial condition. In addition, while positions have been eliminated, certain functions necessary to our reduced operations remain, and we may be unsuccessful in distributing the duties and obligations of departed employees among our remaining employees. We may also discover the reductions in workforce and cost cutting measures will make it difficult for us to resume development activities we have suspended or pursue new initiatives, requiring us to hire qualified replacement personnel, which may require us to incur additional and unanticipated costs and expenses. As a result of the loss of services of substantially all of our personnel, including several of our executive officers, we may be unable to continue our operations and meet our ongoing obligations. Any of these unintended consequences may have a material adverse impact on our business, financial condition, and results of operations.

### Risks Related to Government Regulation

#### Risks Related to Healthcare Industry

**We are subject to extensive governmental regulations relating to the design, development, manufacturing, labeling and marketing, delivery and billing of our products, and a failure to comply with such regulations could lead to withdrawal or recall of our products from the market.**

Our products are regulated as medical devices in the United States under the Federal Food, Drug, and Cosmetic Act, or FFDCA, as implemented and enforced by the FDA. Under the FFDCA, medical devices are classified into one of three classes—Class I, Class II or Class III—depending on the degree of risk associated with the medical device, what is

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known about the type of device, and the extent of control needed to provide reasonable assurance of safety and effectiveness. Classification of a device is important because the class to which a device is assigned determines, among other things, the necessity and type of FDA pre-market review. This determination is required prior to marketing the device. See “Business section titled “Business — Government Regulation” in our Annual Report on Form 10-K. Regulation.”

In 2012, we listed the MyoPro device as a Class I, 510(k)-exempt, limb orthosis with the FDA. From time to time, the FDA may disagree with the classification regulation under which a registrant lists their device. For example, the FDA may disagree with a registrant's determination to classify their device as a Class I medical device. Instead, the FDA may determine the device to be a Class II or Class III device requiring the submission of a premarket notification, or 510(k), or a premarket approval, or PMA, application for premarket clearance or approval. As the FDA is now giving more attention to the differentiated performance of myoelectric controlled orthotics, we elected to change our device listing to be under a Class II classification regulation for biofeedback devices. Under the classification regulation, we believe our device remains 510(k)-exempt as a prescription battery powered external limb orthosis that is indicated for functional improvement, a device which is generally 510(k)-exempt under the classification regulation. In the event that the FDA determines that our devices, whether by functionality or marketing claims, exceed the limitations on 510(k)-exemption such that premarket clearance or approval is required (i.e., that our device is intended for a use different from the intended use of a legally marketed device in the generic type of device under the applicable classification regulation or that our modified device operates using a different fundamental scientific technology than such a legally marketed device), should be classified as Class II devices or Class III devices requiring premarket clearance or approval, or should FDA decide to reclassify our device as a Class II or Class III device requiring premarket clearance or approval, we could be precluded from marketing our devices for clinical use within the U.S. United States for months or longer depending on the requirements of the classification. Obtaining premarket clearance or approval could significantly increase our regulatory costs, including expense associated with required pre-clinical (animal) and clinical (human) trials, more extensive mechanical and electrical testing and other costs.

We are registered with the FDA as a manufacturer for medical devices. We are also subject to regulation by foreign governmental agencies in connection with international sales. The agencies enforce laws and regulations that govern the development, testing, manufacturing, labeling,

advertising, marketing and distribution, and market surveillance of our medical device products. Following the introduction of a product, the governmental agencies will periodically review our product development methodology, quality management systems, and product performance. We are under a continuing obligation to ensure that all applicable regulatory requirements, such as the FDA's medical device good manufacturing practice / Quality System Regulation, or QSR, requirements and the FDA's medical device reporting requirements for certain device-related adverse events and malfunction, continue to be met. Our facilities are subject to periodic and unannounced inspection by U.S. and foreign regulatory agencies to audit compliance with the QSR, and comparable foreign regulations.

The process of complying with the applicable QSR, medical device reporting, and other requirements can be costly and time consuming, and could delay or prevent the production, manufacturing or sale of the MyoPro. If the FDA determines that we fail to comply with applicable regulatory requirements, they may issue an inquiry or an untitled or warning letter with one or more citations of non-compliance. These inquiries or letters, if not closed promptly, can result in fines, delays or suspensions of regulatory clearances, closure of manufacturing sites, seizures or recalls of products and damage to our reputation. Similarly, if we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution. Recent changes in enforcement practice by the

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FDA and other agencies have resulted in increased enforcement activity, which increases the compliance risk that we and other companies in our industry are facing.

In addition, governmental agencies of the United States or other countries may impose new requirements regarding registration, labeling or prohibited materials that may require us to modify or re-register the MyoPro once it is already on the market or otherwise impact our ability to market the MyoPro in the US United States or other countries. For example, on February 2, 2024, the FDA published a final rule to amend its QSR requirements to align more closely with the international consensus standards for medical devices by converging with quality management system, or QMS, requirements used by other regulatory authorities from other countries. Specifically, the final rule does so primarily by incorporating by reference the 2016 edition of the ISO 13485 standard. The amended regulation is referred to as the Quality Management System Regulation, or QMSR, and is effective February 2, 2026. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing authorization that we may have obtained, which could have a material adverse effect on our business, prospects, results of operations, financial condition and our ability to achieve or sustain profitability. The process of complying with these governmental regulations can be costly and time consuming, and could delay or prevent the production, manufacturing or sale of the MyoPro. For instance, the FDA may issue mandates, known as 522 orders, requiring us to conduct post-market surveillance studies of our devices. Failure to comply could result in enforcement of the FFDCA against us or our products including an agency request that we recall our MyoPro products.

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***Our relationships with healthcare providers and physicians and third-party payers will be subject to applicable anti-kickback, fraud and abuse and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm and diminished profits and future earnings.***

We are subject to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute our products. In particular, the promotion, sales and marketing of healthcare items and services, as well as certain business arrangements in the healthcare industry (e.g., healthcare providers, physicians and third-party payers), are subject to extensive laws designed 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, structuring and commission(s), certain customer incentive programs and other business arrangements generally. We are also subject to patient information and privacy and security regulation by both the federal government and the states and foreign jurisdictions in which we conduct business. See section entitled titled “Business – Government Regulation – Healthcare Privacy Laws and Regulations.”

The scope and enforcement of each of these laws is uncertain and subject to rapid change in the current environment of healthcare reform. Federal and state enforcement bodies often scrutinize interactions between healthcare companies and healthcare providers, which has led to a number of investigations, prosecutions, convictions and settlements in the healthcare industry. Ensuring business arrangements comply with applicable healthcare laws, as well as responding to possible investigations by government authorities, can be time- and resource-consuming and can divert a company's attention from the business.

The failure to comply with any of these laws or regulatory requirements subject entities to possible legal or regulatory action. Because of the breadth of these laws and the narrowness of the statutory exceptions and regulatory safe harbors available, it is possible that some of our business activities, could, despite efforts to comply, be subject to challenge under one or more of such laws. It is possible that governmental and enforcement authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law interpreting applicable fraud and abuse or other healthcare laws and regulations. Depending on the circumstances, failure to meet applicable regulatory requirements can result in civil, criminal and administrative penalties, damages, fines, disgorgement, individual imprisonment, exclusion from participation in federal and state funded healthcare programs, contractual damages, reputational harm and the curtailment or restricting of our operations, as well as additional reporting obligations and oversight if we become subject to a corporate integrity agreement or other agreement to resolve allegations of non-compliance with these laws. Any action for violation of these laws, even if successfully defended, could cause us to incur significant legal expenses and divert management's attention from the operation of the business.

Prohibitions or restrictions on sales or withdrawal of future marketed products could materially affect

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business in an adverse way. Efforts to ensure that our business arrangements will comply with applicable healthcare laws may involve substantial costs. In addition, the commercialization of any of our products outside the United States will also likely subject us to foreign equivalents of the healthcare laws mentioned above, among other foreign laws.

***If we or our third-party manufacturers or key suppliers fail to comply with the FDA's Quality System Regulation, our manufacturing operations could be interrupted.***

We and our third-party manufacturers and key suppliers are also required to comply with the FDA's QSR which covers the methods and documentation of the production, control, quality assurance, labeling, packaging, storage and shipping of our products. We, Cogmedix, our electromechanical kit manufacturer, and other key suppliers are also subject to the regulations of foreign jurisdictions regarding the manufacturing process with respect to the market for our products abroad.

We continue to monitor our quality management, as well as that of our third-party manufacturers and suppliers to improve our overall level of compliance. Our facilities and those of our third-party manufacturers and key suppliers are subject to periodic and unannounced inspection by U.S. and foreign regulatory agencies to audit compliance with the QSR and comparable foreign regulations. If our facilities or the facilities of our third-party manufacturers and suppliers are found to be in violation of applicable laws and regulations, or if we or our third-party manufacturers and

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suppliers fail to take satisfactory corrective action in response to an adverse inspection, the regulatory authority could take enforcement action, including any of the following sanctions:

- untitled letters, warning letters, Form 483 findings (results from quality system inspections), fines, injunctions, consent decrees and penalties;
- customer notifications or repair, replacement or refunds;
- detention, recalls or seizure of our products;
- operating restrictions or partial suspension or total shutdown of production;
- withdrawing our FDA registration;
- refusing to provide certificates to foreign governments with respect to exports; and
- pursuing criminal prosecution.

Any of these sanctions could impair our ability to produce the MyoPro in a cost-effective and timely manner in order to meet our customers' demands and could have a material adverse effect on our reputation, business, results of operations and financial condition. We may also be required to bear other costs or take other actions that may have a negative impact on our future sales and our ability to generate profits.

***Our employees, principal investigators, consultants and commercial partners may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements and insider trading.***

It is not always possible to identify and deter misconduct by employees and other third parties, 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 comply with these 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, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, imprisonment, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, additional reporting requirements and oversight if we become subject to a corporate integrity agreement or similar agreement to resolve allegations of noncompliance with these laws, contractual damages, reputational harm, diminished profits and future earnings, and curtailment of our operations, any of which could adversely affect our ability to operate our business, financial condition and results of operations.

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***We face risks in connection with the Affordable Care Act or its possible replacement or modifications and other ongoing healthcare legislative and regulatory reform measures.***

The United States and many foreign jurisdictions have enacted or proposed legislative and regulatory changes affecting the healthcare system that could affect our ability to profitably sell our products. Changes in regulations, statutes or the interpretation of existing regulations could impact our business in the future by requiring, for example: (i) changes to our manufacturing arrangements; (ii) additions or modifications to product labeling; (iii) the recall or discontinuation of our products; or (iv) additional record-keeping requirements. If any such changes were to be imposed, they could adversely affect the operation of our business.

Payers, whether domestic or foreign, or governmental or private, are developing increasingly sophisticated methods of controlling healthcare costs and those methods are not always specifically adapted for new technologies. In the United States, there have been and continue to be a number of legislative and regulatory initiatives and judicial challenges to contain healthcare costs. See section titled "**Business Section – Government Regulations – Current and Future Legislation.**"

We expect that the ACA, as well as other healthcare reform measures that may be adopted in the future, may result in additional reductions in Medicare and other healthcare funding, more rigorous coverage criteria, lower reimbursement, and new payment methodologies. This could lower the price that we receive for our products. Any denial in coverage or reduction in reimbursement from Medicare or other government-funded programs may result in a similar denial or reduction in payments from private payers, including Medicare Advantage plans, which may prevent us from being

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able to generate sufficient revenue, attain profitability or commercialize our products. Litigation and legislative efforts to change or repeal the ACA are likely to continue, with unpredictable and uncertain results. It is not clear how these developments, or other future potential changes to the ACA, will change the reimbursement model and market outlook for O&P devices such as the MyoPro. We intend to monitor industry trends relative to the ACA to assist in our determination of how the MyoPro can fit into patient care protocols with providers such as rehabilitation hospitals and surgery centers. If reimbursement policies change significantly, the demand for MyoPro products may be impacted.

#### Risks Related to Cybersecurity and Data Protection

**Our internal computer systems and infrastructure, or those of our customers, collaborators, contractors, or other contractors, third parties, may be subject to cyber-attacks or security compromises or breaches, which could result in a material disruption of our product development programs, damage to our reputation or financial condition.**

Despite the implementation of security measures, our internal computer systems and infrastructures and those of our customers, collaborators, and contractors, or other contractors third parties are vulnerable to damage, compromise or interruption from computer viruses, and unauthorized access, misuse, or other security compromises or breaches. Cyber-attacks are increasing in their frequency, sophistication and intensity, and have become increasingly difficult to detect. Cyber-attacks could include the deployment of harmful malware, ransomware, denial-of-service attacks, wrongful conduct by employees, vendors, or other third parties, hostile foreign governments, industrial espionage, social engineering and business email compromises, and other means to affect service reliability and threaten or compromise the security, confidentiality, integrity and availability of systems and information. Cyber-attacks also could include phishing attempts or e-mail fraud to cause payments or information to be transmitted to an unintended recipient. A material cyber-attack or security compromise or breach could cause interruptions in our operations and could result in a material disruption of our business operations, damage to our reputation or a loss of revenues.

In the ordinary course of our business, we collect and store confidential and/or proprietary information or other sensitive data, information, including, among other things, personally identifiable personal information about our employees and patients, intellectual property, and proprietary business information. Any cyber-attack or security compromise or breach that leads to unauthorized access, use, disclosure, loss, corruption or disclosure other compromise of personal confidential and/or proprietary information or other sensitive information could harm our reputation, cause us not to comply with federal and/or state breach notification laws and foreign law equivalents and otherwise subject us to liability under laws and regulations, including those that protect the privacy and security of personal information. In addition, we could be subject to risks caused by misappropriation, misuse, leakage, falsification or intentional or accidental release or loss of information maintained

in the information technology systems, infrastructure, and networks of our company and our vendors, including personal information of our employees, and patients, and company and vendor confidential data. In addition,

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outside parties may attempt to penetrate our systems and infrastructure or those of our vendors or fraudulently induce our personnel or the personnel of our vendors to disclose sensitive information in order to gain access to our data and/or systems. If a material breach or compromise of our information technology systems or infrastructure or those of our vendors occurs, the market perception of the effectiveness of our security measures could be harmed and our reputation and credibility could be damaged.

We could be required to expend significant amounts of money and other resources to detect, mitigate and respond to these threats, compromises, or breaches and to repair or replace information technology systems infrastructure or networks and could suffer financial loss or the loss of valuable confidential and/or proprietary information. In addition, we could be subject to regulatory actions, inquiries, investigations, orders, penalties, fines, and/or claims made by individuals and groups in private litigation, including those involving privacy and security issues related to data collection and use practices and other data privacy and security laws and regulations, including claims for misuse or inappropriate disclosure of data, as well as unfair or deceptive practices. Although we develop and maintain systems and controls designed to prevent these events from occurring, and we have a process designed to identify and mitigate threats, the development and maintenance of these systems, controls and processes is costly and requires ongoing monitoring and updating as technologies change and efforts to overcome security measures become increasingly sophisticated. Moreover, despite our efforts, the possibility of these events occurring cannot be eliminated entirely and there can be no assurance that any measures we take will prevent or adequately address cyber-attacks or security compromises or breaches that could adversely affect our business.

***We, our collaborators and our service providers may be subject to a variety of privacy and data protection laws, regulations and contractual obligations, which may require us to incur substantial compliance costs, and any failure or perceived failure by us to comply with them could expose us to fines or other penalties and otherwise harm our business and operations.***

In the United States, states have recently become several layers of federal and state data protection laws and regulations may apply to be rather active in privacy. Leading efforts has been California which has recently enacted our business, including HIPAA, the Federal Trade Commission (FTC) Act and state consumer privacy and health data privacy laws. For example, the California Consumer Privacy Act, or CCPA, is a comprehensive measure law that creates new individual privacy rights for California consumers (as defined in the law) and places increased privacy and security obligations on entities handling personal data of consumers or households. The CCPA requires covered companies to provide certain disclosures to consumers about its data collection, use and sharing practices, and to provide affected California residents with ways to opt-out of certain sales or transfers of personal information. The CCPA went into effect on January 1, 2020 and the California State Attorney General became empowered to commence enforcement

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actions against violators as of July 1, 2020. Further, also in California, as of January 1, 2023, the California Privacy Rights Act (CPRA), will create additional obligations with respect to processing and storing personal information that are scheduled to take effect on January 1, 2023. We will continue to monitor developments related to the CPRA and anticipate additional costs and expenses associated with CPRA.

compliance. While the CCPA and CPRA contain an exception for certain activities involving PHI under HIPAA, we cannot yet determine the impact the CCPA, CPRA or other such future laws, regulations and standards may have on our business. information.

Certain Similar consumer privacy laws have passed or come into force in more than a dozen U.S. states. Like the CPRA, these laws grant consumers rights in relation to their personal information and impose new obligations on regulated businesses, including, in some instances, broader data security requirements. In addition, federal and state legislators and regulators have signaled their intention to further regulate health and other sensitive information, and new and strengthened requirements relating to this information could impact our business. At the state level, some states have passed or proposed laws impose similar privacy obligations and we also anticipate that more states will increasingly enact legislation similar to the CCPA and the CPRA. specifically regulate health information. For example, Washington's My Health My Data Act, which comes into force in March 2024, requires regulated entities to obtain consent to collect health information, grants consumers certain rights, including to request deletion, and provides for robust enforcement mechanisms, including enforcement by the Washington state attorney-general and a private right of action for consumer claims. At the federal level, the FTC has used its authority over "unfair or deceptive acts or practices" to impose stringent requirements on March 2, 2021, Virginia enacted the Consumer Data Protection Act, or CDPA. The CDPA became effective January 1, 2023. The CDPA regulates how businesses (which collection and disclosure of sensitive categories of personal information, including health information. Moreover, the CDPA refers to as "controllers") collect and share personal information. While the CDPA incorporates many similar concepts FTC's expanded interpretation of the CCPA and CPRA, there are also several key differences a "breach" under its Health Breach Notification Rule could impose new disclosure obligations that would apply in the scope, application, and enforcement event of the law that will change the operational practices of controllers. The new law will impact how controllers collect and process personal sensitive data, conduct data protection assessments, transfer personal data to affiliates, and respond to consumer rights requests. a qualifying breach.

Also, on July 8, 2021, Colorado's governor signed the Colorado Privacy Act, or CPA, into law. The CPA is rather similar to Virginia's CDPA, but also contains additional requirements. The new measure applies to companies conducting business in Colorado or who produce or deliver commercial products or services intentionally targeted to residents of the state that either: (1) control or process the personal data of at least 100,000 consumers during a calendar year; or (2) derive revenue or receive a discount on the price of goods or services from the sale of personal data and process or control the personal data of at least 25,000 consumers.

With the CPA, Colorado became the third state to enact a comprehensive privacy law. A number of additional other states have proposed bills for comprehensive consumer privacy laws and it is quite possible that certain of these bills will pass. The existence of comprehensive privacy laws in different states in the country, if enacted, will add additional complexity, variation in requirements, restrictions and potential legal risk, may require additional investment of resources in compliance programs, impact strategies and the availability of previously useful data, and has resulted in and may result in further increased compliance costs and/or changes in business practices and policies.

European data collection is governed by restrictive regulations governing the use, processing, and cross-border transfer of personal information.

The collection and use of personal data, including personal health data in the European Union Economic Area, or the EEA and the UK is governed by the provisions of the EU General Data Protection Regulation, or EU GDPR (with

regards to the EEA) and the UK General Data Protection Regulation, or UK GDPR, or UK GDPR (with regards to the UK), as well as applicable data protection laws in effect in the member states of the European Union, EEA and in the UK (including the UK Data Protection Act 2018). In this Annual Report on Form 10-K, "GDPR" refers to both the EU GDPR and the UK GDPR, unless specified otherwise. The GDPR applies to the processing of personal data by any company established in the EEA/UK and to companies established outside the EEA/UK to the extent they process personal data in connection with the offering of goods or services to data subjects in the EEA/UK or the monitoring of the behavior of data subjects in the EEA/UK. The GDPR imposes a broad range of strict requirements on companies subject to the GDPR, such as including requirements relating to having legal bases for processing personal data relating to identifiable individuals and transferring such information outside the European Economic Area, or EEA, EEA/UK, including to the U.S., providing details to those individuals regarding the processing of their personal data, implementing safeguards to keep personal data secure, having data processing agreements with third parties who process personal data, providing information to individuals regarding data processing activities, responding to individuals' requests to exercise their rights in respect of their personal data, obtaining consent of the individuals to whom the personal data relates, reporting security and privacy breaches involving personal data to the competent national data protection authority and affected individuals, appointing data protection officers, conducting data protection impact assessments, and record-keeping. The GDPR substantially increases the penalties to which we could be subject in the event of any non-compliance with the GDPR and any supplemental EEA Member State or UK national data protection laws, we could be subject to warning letters, mandatory audits, orders to cease/change the use of data, and financial penalties, including fines of up to €20,000,000 (£17.5 million for the UK GDPR) or 4% of total annual global revenue, whichever is greater. In addition, further The GDPR also confers a private right of action on data subjects and consumer associations to lodge complaints with supervisory authorities, seek judicial remedies, and obtain compensation for damages resulting from violations of the UK's exit from GDPR. The GDPR imposes strict rules on the EU on January 31, 2020, transfer of personal data outside of the GDPR ceased to apply in EEA or the UK at to countries that do not ensure an adequate level of protection, like the end of the transition period on December 31, 2020. However, as of January 1, 2021, the UK's European Union (Withdrawal) Act 2018 incorporated the GDPR (as it existed on December 31, 2020 but subject to United States in certain UK specific amendments) into UK law, referred to circumstances unless adequate safeguards (such as the UK GDPR. The UK GDPR and European Commission approved standard contractual clauses, or SCCs, or the UK International Data Protection Act 2018 set Transfer Agreement/Addendum or IDTA and transfer impact assessments carried out when relying on the UK's SCCs and UK IDTA. The international transfer obligations under the European data protection regime, which is independent from but aligned to the EU's data protection regime. Non-compliance with the UK GDPR laws will require significant effort and cost and may result in monetary penalties us needing to make strategic considerations around where EEA and UK personal data is transferred and which service providers we can utilize for the processing of up EEA and UK personal data. Any inability to £17.5 million or 4% of worldwide revenue, whichever is higher. transfer personal data from the EEA and UK to the United States in compliance with data protection laws may impede our ability to conduct trials and may adversely affect our business and financial position. Although the UK is regarded as a third country under the EU's GDPR, the European Commission ("EC") has now issued a decision recognizing the UK as providing adequate protection under the EU GDPR and, therefore, transfers of personal data originating in the EU EEA to the UK remain unrestricted. Like the EU GDPR, the UK GDPR restricts personal data

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transfers outside the UK to countries not regarded by the UK as providing adequate protection. The UK government has confirmed that personal data transfers from the UK to the EEA remain free flowing.

The UK's data protection regime is independent from but aligned to the EU's data protection regime. However following the UK's exit from the EU, or Brexit, there will be increasing scope for divergence in application, interpretation and enforcement of the data protection laws between these territories. For example, the UK Government has introduced a Data Protection and Digital Information Bill, or Data Reform Bill into the UK legislative process to reform the UK's data protection regime following Brexit. If passed, the final version of the Digital Information Bill may have the effect of further altering the similarities between the UK and EEA data protection regimes and threaten the UK adequacy decision from the EU Commission, which may lead to additional compliance costs and could increase our overall risk. The respective provisions and enforcement of the EU GDPR and UK GDPR may further diverge in the future and create additional regulatory challenges and uncertainties.

This lack of clarity on future UK laws and regulations and their interaction with EU laws and regulations could add legal risk, complexity and cost to our handling of European personal data and our privacy and data security compliance programs, and could require us to implement different compliance measures for the UK and the EEA.

Compliance with the GDPR will be a rigorous and time-intensive process that may increase our cost of doing business or require us to change our business practices, and despite those efforts, there is a risk that we may be subject to fines and penalties, litigation, and reputational harm in connection with any European and UK-based activities.

To enable the transfer

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[Table of personal data outside of the EEA or the UK, adequate safeguards must be implemented in compliance with European and UK data protection laws. On June 4, 2021, the EC issued new forms of standard contractual clauses for data transfers from controllers or processors in the EU/EEA \(or otherwise subject to the GDPR\) to controllers or processors established outside the EU/EEA \(and not subject to the GDPR\). The new standard contractual clauses replace the standard contractual clauses that were adopted previously under the EU Data Protection Directive. The UK is not subject to the EC's new standard contractual clauses but has published a draft version of a UK-specific transfer mechanism, which, once finalized, will enable transfers from the UK. We will be required to implement these new safeguards when conducting restricted data transfers under the EU and UK GDPR and doing so may require significant effort and additional cost.](#) [Contents](#)

## Risks Related to Our Intellectual Property

***We depend on certain patents that are licensed to us. We do not control these patents and any loss of our rights to them could prevent us from manufacturing our products.***

We rely on licenses to two core patents that are material to our business, including the development of the MyoPro, which expire in November 2023 and December 2023, respectively. We have entered into the MIT License for those certain patents that cover (i) a powered orthotic device worn on a patient's elbow or other joint, that senses relatively low level signals in the vicinity of the joint generated by a patient having spinal cord or other nerve damage and (ii) a method of providing rehabilitation movement training for a person suffering from nerve damage, stroke, spinal cord injury, neurological trauma or neuromuscular disorder in attempt to move a body part with a powered orthotic device. Our rights to use these patents will be subject to the continuation of and our compliance with the terms of those licenses.

We have certain revenue obligations, or Revenue Obligations under the MIT License. Our revenue exceeded \$750,000 for the fiscal years ended December 31, 2022 and 2021, which satisfied the Revenue Obligations for each of those fiscal years. The Revenue Obligations are a continuing requirement of the MIT License. While we expect to exceed the required revenue and satisfy the Revenue Obligations in 2023, the final year of the MIT License, we cannot make any assurance that we will continue to comply with these obligations. Additionally, MIT has the right to terminate the MIT License upon any future uncured material breach of the agreement or if we fail to make any payments due under the agreement. If the MIT License is terminated for any reason, our business will be harmed. Specifically, if we were to lose access to these licenses, we would be unable to manufacture the MyoPro or develop new products until we obtained access to a comparable technology.

We may not control the prosecution, maintenance or filing of the patents to which we now hold or in the future intend to acquire licenses. Enforcement of our licensed patents or defense of any claims asserting the invalidity of these patents may be subject to the control or cooperation of our licensors. We cannot be certain that our licensors will prosecute, maintain, enforce and defend the licensed patent rights in

a manner consistent with the best interests of our business. We also cannot be certain that drafting or prosecution of the licensed patents and patent applications by the relevant licensors have been or will be conducted in compliance with applicable law.

***Our success depends in part on our ability to obtain and maintain protection for the intellectual property relating to or incorporated into our products.***

Our success depends in part on our ability to obtain and maintain protection for the intellectual property relating to or incorporated into our products. We seek to protect our intellectual property through a combination of patents, trademarks, confidentiality and assignment agreements with our employees and certain of our contractors and confidentiality agreements with certain of our consultants, scientific advisors and other vendors and contractors. We licensed two core patents from Massachusetts Institute of Technology, or MIT, which expired in November 2023. While we have enhanced our patent portfolio since we entered into the license agreement with MIT in 2006, including patents which cover the movement of multiple joints, the expiration of the original MIT patents may result in new entrants to the market in the United States. In addition, we rely on trade secrets law to protect our proprietary software and product candidates or products in development.

The patent position of myoelectric orthotic inventions can be highly uncertain and involves many new and evolving complex legal, factual and technical issues. Patent laws and interpretations of those laws are subject to change and any such changes may diminish the value of our patents or narrow the scope of protection. In addition, we may fail to apply for or be unable to obtain patents necessary to protect our technology or products or enforce our patents due to

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lack of information about the exact use of technology or processes by third parties. Also, we cannot be sure that any patents will be granted in a timely manner or at all with respect to any of our patent pending applications or that any patents that are granted will be adequate to protect our intellectual property for any significant period of time or at all.

Litigation to establish or challenge the validity of patents, or to defend against or assert against others infringement, unauthorized use, enforceability or invalidity claims, can be lengthy and expensive and may result in our patents being invalidated or interpreted narrowly and our not being granted new patents related to our pending patent applications. Even if we prevail, litigation may be time consuming and force us to incur significant costs, and any damages or other remedies awarded to us may not be valuable and management's attention could be diverted from managing our business. In addition, U.S. patents and patent applications may be subject to interference proceedings, and U.S. patents may be subject to re-examination and review in the U.S. Patent and Trademark Office. Foreign patents may also be subject to opposition or comparable proceedings in the corresponding foreign patent offices. Any of these proceedings may be expensive and could result in the loss of a patent or denial of a patent application, or the loss or reduction in the scope of one or more of the claims of a patent or patent application. In addition, we seek to protect our trade secrets, know-how and confidential information that is not patentable by entering into confidentiality and assignment agreements with our employees and certain of our contractors and confidentiality agreements with certain of our consultants, scientific advisors and other vendors and contractors. However, we may fail to enter into the necessary agreements, and even if entered into, these agreements may be breached or otherwise fail to prevent disclosure, third-party infringement or misappropriation of our proprietary information, may be limited as to their term and may not provide an adequate remedy in the event of unauthorized disclosure or use of proprietary information. Enforcing a claim that a third-party illegally obtained and is using our trade secrets is expensive and time consuming, and the outcome is unpredictable. We also have taken precautions to initiate reasonable safeguards to protect our information technology systems. However, these measures may not be adequate to safeguard our proprietary information, which could lead to the loss or impairment thereof or to expensive litigation to defend our rights against competitors who may be better funded and have superior resources. In addition, unauthorized parties may attempt to copy or reverse engineer certain aspects of our products that we consider proprietary or our proprietary information may otherwise become known or may be independently developed by our competitors or other third parties. If other parties are able to use our proprietary technology or information, our ability to compete in the market could be harmed. Further, unauthorized use of our intellectual property may have occurred, or may occur in the future, without our knowledge.

If we are unable to obtain or maintain adequate protection for intellectual property, or if any protection is reduced or eliminated, competitors may be able to use our technologies, resulting in harm to our competitive position.

**We are not able to protect our intellectual property rights in all countries.**

Filing, prosecuting, maintaining and defending patents on each of our products in all countries throughout the world would be prohibitively expensive, and thus our intellectual property rights outside the United States are currently

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limited to selected countries in the European Union, or EU, China, Hong Kong, and Japan. In addition, the laws of some foreign countries, especially developing countries, do not protect intellectual property rights to the same extent as federal and state laws in the United States. Also, it may not be possible to effectively enforce intellectual property rights in some countries at all or to the same extent as in the United States and other countries. Consequently, we are unable to prevent third parties from using our inventions in all countries, or from selling or importing products made using our inventions in the jurisdictions in which we do not have (or are unable to effectively enforce) patent protection. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop, market or otherwise commercialize their own products, and we may be unable to prevent those competitors from importing those infringing products into territories where we have patent protection, but enforcement is not as strong as in the United States. These products may compete with our products and our patents and other intellectual property rights may not be effective or sufficient to prevent them from competing in those jurisdictions. Moreover, competitors or others in the chain of commerce may raise legal challenges against our intellectual property rights or may infringe upon our intellectual property rights, including through means that may be difficult to prevent or detect.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. Proceedings to enforce our patent rights in the United States or foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing, and could provoke third parties to assert patent infringement or other claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights in the United States and around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license from third parties.

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**We may be subject to patent infringement claims, which could result in substantial costs and liability and prevent us from commercializing our current and future products.**

The medical device industry is characterized by competing intellectual property and a substantial amount of litigation over patent rights. In particular, our competitors in both the United States and abroad, many of which have substantially greater resources and have made substantial investments in competing technologies, have been issued patents and filed patent applications with respect to their products and processes and may apply for other patents in the future. The large number of patents, the rapid rate of new patent issuances, and the complexities of the technology involved increase the risk of patent litigation.

Determining whether a product infringes a patent involves complex legal and factual issues and the outcome of patent litigation is often uncertain. Even though we have conducted research of issued patents, no assurance can be given that patents containing claims covering our products, technology or methods do not exist, have not been filed or could not be filed or issued. In addition, because patent applications can take years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now pending of

which we are unaware and may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, published applications may issue with claims that potentially cover our products, technology or methods.

Infringement actions and other intellectual property claims brought against us, with or without merit, may cause us to incur substantial costs and could place a significant strain on our financial resources, divert the attention of management and harm our reputation. We cannot be certain that we will successfully defend against any allegations of infringement. If we are found to infringe another party's patents, we could be required to pay damages. We could also be prevented from selling our products that infringe, unless we could obtain a license to use the technology covered by such patents or could redesign our products so that they do not infringe. A license may be available on commercially reasonable terms or none at all, and we may not be able to redesign our products to avoid infringement. Further, any modification to our products could require us to conduct clinical trials and revise our filings with the FDA and other regulatory bodies, which would be time consuming and expensive. In these circumstances, we may not be able to sell our products at competitive prices or at all, and our business and operating results could be harmed.

***We rely on trademark protection to distinguish our products from the products of our competitors.***

We rely on trademark protection to distinguish our products from the products of our competitors. We have registered the trademarks "MyoPro" (Registration No. 4,532,331), "MYOMO" (Registration No. 4,451,445), "MyoPal" (Registration No. 6,086,533) and "MyoCare" (Registration No. 6,579,736) in the United States. The MyoPro mark is

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registered in Canada and in selected European Union, or EU, countries with pending registration. In jurisdictions where we have not yet registered our trademark and are using it, and as permitted by applicable local law, we seek to rely on common law trademark protection where available. Third parties may oppose our trademark applications, or otherwise challenge our use of the trademarks, and may be able to use our trademarks in jurisdictions where they are not registered or otherwise protected by law. If our trademarks are successfully challenged or if a third-party is using confusingly similar or identical trademarks in particular jurisdictions before we do, we could be forced to rebrand our products, which could result in loss of brand recognition, and could require us to devote additional resources to marketing new brands. If others are able to use our trademarks, our ability to distinguish our products may be impaired, which could adversely affect our business. Further, we cannot assure you that competitors will not infringe upon our trademarks, or that we will have adequate resources to enforce our trademarks.

***We may be subject to damages resulting from claims that our employees or we have wrongfully used or disclosed alleged trade secrets of their former employers.***

Some of our employees were previously employed at other medical device companies, including our competitors or potential competitors, and we may hire employees in the future that are so employed. We could in the future be subject to claims that these employees, or we, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. If we fail in defending against such claims, a court could order us to pay substantial damages and prohibit us from using technologies or features that are found to incorporate or be derived from the trade secrets or other proprietary information of the former employers. If any of these technologies or features are important to our products, this could prevent us from selling those products and could have a material

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adverse effect on our business. Even if we are successful in defending against these claims, such litigation could result in substantial costs and divert the attention of management.

## Risks Related to our Securities

### **Risks Related to Ownership of Our Securities**

***Our stockholders will experience significant dilution upon the issuance of common stock if the shares of our common stock underlying our warrants, are exercised or converted.***

We have a significant number of securities convertible into, or allowing the purchase of, our common stock. Investors could be subject to increased dilution upon the conversion or exercise of these securities. For example, as in conjunction with equity offerings in January 2024, August 2023 and January 2023, we issued 224,730, 1,920,000 and 6,830,926 pre-funded warrants, respectively. Each pre-funded warrant is exercisable for one share of December 31, 2022 common stock at the nominal exercise price of \$0.0001 per share. As of December 31, 2023, we had 680,363 8,271,519 shares issuable upon the exercise of pre-funded warrants with an exercise price of \$0.0001 per share, and 668,250 shares issuable upon the exercise of other warrants, with a weighted-average exercise price of \$8.30 \$7.50 per share and 29,605 1,501,659 unvested restricted stock units outstanding. In addition, we had 24,529 shares issuable upon the exercise of stock options under our equity incentive plans, with a weighted-average exercise price of \$40.50 per share. In addition, we have 454,447 restricted stock units outstanding. In January 2023, we issued 6,830,926 pre-funded warrants in conjunction with our follow-on equity offering. Each pre-funded warrant is exercisable for one share of common stock at the nominal exercise price of \$0.0001 \$41.13 per share.

***We may not be able to maintain a listing of our common stock on the NYSE American.***

We must meet certain financial and liquidity criteria to maintain such listing. If we fail to meet any of the NYSE American's listing standards, our common stock may be delisted. In addition, our board may determine that the cost of maintaining our listing on a national securities exchange outweighs the benefits of such listing. A delisting of our common stock from the NYSE American may materially impair our stockholders' ability to buy and sell our common stock and could have an adverse effect on the market price of, and the efficiency of the trading market for, our common stock. A delisting of our common stock could significantly impair our ability to raise capital.

***There is no public market for our warrants or pre-funded warrants to purchase common stock.***

There is no established public trading market for our warrants or pre-funded warrants and we do not expect a market to develop. In addition, we do not intend to apply for listing of such warrants on any securities exchange. Without an active market, the liquidity of such warrants will be limited.

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***Holders of our warrants and pre-funded warrants have no rights as a common stockholder until such holders exercise their warrants and acquire our common stock.***

Until holders of our warrants and pre-funded warrants exercise such warrants, they will have no rights with respect to the shares of our common stock underlying such warrants. Upon exercise of such warrants, the holders thereof will be entitled to exercise the rights of a common stockholder only as to matters for which the record date occurs after the exercise date.

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

The stock market in general, and the market price of our common stock in particular will likely be subject to fluctuation, whether due to, or irrespective of, our operating results, financial condition and prospects. For example, from **June 9, 2017** **December 31, 2022** to **December 31, 2022** **December 31, 2023**, the high and low sales price of our common stock on the NYSE American has fluctuated from a low of \$0.37 to a **split adjusted** high of **\$695.88** **\$5.58** per share. During the period from **January 1, 2023** **January 1, 2024** to the date of the filing of this report, our stock price has ranged from **\$0.37** **\$2.69** to **\$0.84** **\$5.04**.

Our financial performance, our industry's overall performance, changing consumer preferences, technologies, government regulatory action, tax laws and market conditions in general could have a significant impact on the future market price of our common stock. Some of the other factors that could negatively affect our share price or result in fluctuations in our share price include:

- actual or anticipated variations in our periodic operating results;

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- increases in market interest rates that lead purchasers of our common stock to demand a higher investment return;
- changes in earnings estimates;
- changes in market valuations of similar companies;
- actions or announcements by our competitors;
- adverse market reaction to any increased indebtedness we may incur in the future;
- additions or departures of key personnel;
- actions by stockholders;
- speculation in the media, online forums, or investment community; and
- our intentions and ability to maintain our common stock on the NYSE American.

#### ***We do not expect to declare or pay dividends in the foreseeable future.***

We do not expect to declare or pay dividends in the foreseeable future, as we anticipate that we will invest future earnings in the development and growth of our business. Therefore, holders of our common stock will not receive any return on their investment unless they sell their securities, and holders may be unable to sell their securities on favorable terms or at all.

#### ***If securities industry analysts do not publish research reports on us, or publish unfavorable reports on us, then the market price and market trading volume of our common stock could be negatively affected.***

Any trading market for our common stock will be influenced in part by any research reports that securities industry analysts publish about us. We do not have any control over these analysts. We currently have limited research coverage by securities industry analysts and we may be unable to maintain analyst coverage or have analysts initiate coverage on us. If securities industry analysts cease coverage of us, the market price and market trading volume of our common stock could be negatively affected. In the event we are covered by analysts, and one or more of such analysts downgrade our securities, or otherwise reports on us unfavorably, or discontinues coverage on us, the market price and market trading volume of our common stock could be negatively affected.

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**Future issuances of our common stock or equity-related securities could cause the market price of our common stock to decline and would result in the dilution of your holdings.**

Future issuances of our common stock or securities convertible into our common stock could cause the market price of our common stock to decline. We cannot predict the effect, if any, of future issuances of our common stock or securities convertible into our common stock on the price of our common stock. In all events, future issuances of our common stock would result in the dilution of your holdings. In addition, the perception that new issuances of our common stock, or other securities convertible into our common stock, could occur, could adversely affect the market price of our common stock.

**Future issuances of debt securities, which would rank senior to our common stock upon our bankruptcy or liquidation, and future issuances of preferred stock, which could rank senior to our common stock for the purposes of dividends and liquidating distributions, may adversely affect our common stock price.**

In the future, we may attempt to increase our capital resources by offering debt securities. Upon bankruptcy or liquidation, holders of our debt securities, and lenders with respect to other borrowings we may make, would receive distributions of our available assets prior to any distributions being made to holders of our common stock. Moreover, if we issue preferred stock, the holders of such preferred stock could be entitled to preferences over holders of common stock in respect of the payment of dividends and the payment of liquidating distributions. Because our decision to issue debt or preferred securities in any future offering, or borrow money from lenders, will depend in part on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of any such future offerings or borrowings. Holders of our common stock must bear the risk that any future offerings

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we conduct or borrowings we make may adversely affect the level of return they may be able to achieve from an investment in our common stock.

***If our shares of common stock become subject to the penny stock rules, it would become more difficult to trade our shares.***

The SEC has adopted rules that regulate broker-dealer practices in connection with transactions in penny stocks. Penny stocks are generally equity securities with a price of less than \$5.00, other than securities registered on certain national securities exchanges or authorized for quotation on certain automated quotation systems, provided that current price and volume information with respect to transactions in such securities is provided by the exchange or system. If we do not retain a listing on the NYSE American or another national securities exchange and if the price of our common stock is less than \$5.00, our common stock will be deemed a penny stock. The penny stock rules require a broker-dealer, before a transaction in a penny stock not otherwise exempt from those rules, to deliver a standardized risk disclosure document containing specified information. In addition, the penny stock rules require that before effecting any transaction in a penny stock not otherwise exempt from those rules, a broker-dealer must make a special written determination that the penny stock is a suitable investment for the purchaser and receive (i) the purchaser's written acknowledgment of the receipt of a risk disclosure statement; (ii) a written agreement to transactions involving penny stocks; and (iii) a signed and dated copy of a written suitability statement. These disclosure requirements may have the effect of reducing the trading activity in the secondary market for our common stock, and therefore stockholders may have difficulty selling their shares.

***Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our common stock.***

Provisions in our amended and restated certificate of incorporation and bylaws may have the effect of delaying or preventing a change in control or changes in our management. Our amended and restated certificate of incorporation and bylaws include provisions that:

- authorize our board of directors to issue preferred stock, without further stockholder action and with voting, liquidation, dividend and rights superior to our common stock;
- establish an advance notice procedure for stockholder proposals to be brought before an annual meeting, including proposed nominations of persons for director nominees;



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- establish that our board of directors is divided into three classes, with directors in each class serving three-year staggered terms;
- require the approval of holders of two-thirds of the shares entitled to vote at an election of directors to adopt, amend or repeal our by or amend or repeal the provisions of our certificate of incorporation regarding the election and removal of directors and the ability of stockholders to take action by written consent or call a special meeting;
- prohibit cumulative voting in the election of directors; and
- provide that vacancies on our board of directors may be filled only by the vote of a majority of directors then in office, even though less than a quorum or by the holders of at least sixty-six and two-thirds percent (66 2/3%) of the issued and outstanding shares of common stock.

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 members of our board of directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or DGCL, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any “interested” stockholder for a period of three years following the date on which the stockholder became an “interested” stockholder. Any of the foregoing provisions could limit the price that investors might be willing to pay in the future for shares of our common stock, and they could deter potential acquirers of our company, thereby reducing the likelihood that you would receive a premium for your common stock in an acquisition.

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**As a result of sales of shares of our Common Stock pursuant to our equity line of credit, our existing stockholders will experience immediate dilution and our stock price may decrease.**

Pursuant to the Purchase Agreement, we may sell up to \$5,000,000 of shares of our common stock at our discretion to Keystone, subject to satisfaction of certain conditions and limitations contained in the equity line facility. Because the purchase price under the facility includes a discount to prevailing market prices, the sale of shares of our common stock pursuant to the Purchase Agreement will have a dilutive impact on our existing stockholders. Keystone may resell some or all of the shares we issue to it under the Purchase Agreement and such sales could cause the market price of our common stock to decline, and such decline could be significant.

**Risks Related to Internal Controls**

***We are a “smaller reporting company” under the reporting rules set forth under the Exchange Act. For so long as we remain a “smaller reporting company,” we may take advantage of certain exemptions from various reporting requirements that are applicable to other Exchange Act reporting companies that are not “smaller reporting companies”.***

We are a “smaller reporting company.” For as long as we continue to be a smaller reporting company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not “smaller reporting companies,” including exemption from compliance with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act (so long as we remain a non-accelerated filer) and reduced disclosure obligations regarding executive compensation in the Annual Report on Form 10-K and our periodic reports and proxy statements.

We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more

volatile.

**We are obligated to develop and maintain a system of effective internal control over financial reporting. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may harm investor confidence in our company and, as a result, the value of our common stock.**

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, or Section 404, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting in the annual and quarterly reports we file with the SEC. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. However, our auditors are not required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer a "smaller reporting company" as set forth under the Exchange Act.

We will need to continue to dedicate internal resources, engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. As we continue to grow as a public company, we may need to add additional finance staff. We may not be able to remediate any future material

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weaknesses, or to complete our evaluation, testing and any required remediation in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. If we are unable to assert that our internal control over financial reporting is effective, or if our auditors are unable to express an opinion on the effectiveness of our internal controls when they are required to issue such opinion, investors could lose confidence in the accuracy and completeness of our financial reports, which could harm our stock price.

**The preparation of our financial statements involves the use of estimates, judgments and assumptions, and our financial statements may be materially affected if such estimates, judgments or assumptions prove to be inaccurate.**

Financial statements prepared in accordance with accounting principles generally accepted in the United States typically require the use of estimates, judgments and assumptions that affect the reported amounts. Often, different

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estimates, judgments and assumptions could reasonably be used that would have a material effect on such financial statements, and changes in these estimates, judgments and assumptions may occur from period to period over time. Significant areas of accounting requiring the application of management's judgment include, but are not limited to, determining the fair value of assets and the timing and amount of cash flows from assets. These estimates, judgments and assumptions are inherently uncertain and, if our estimates were to prove to be wrong, we would face the risk that charges to income or other financial statement changes or adjustments would be required. Any such charges or changes could harm our business, including our financial condition and results of operations and the price of our securities. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" for a discussion of the accounting estimates, judgments and assumptions that we believe are the most critical to an understanding of our financial statements and our business.

**We are incurring increased costs as a public company and our management team is required to devote substantial time to new compliance initiatives and corporate governance practices.**

As a public company, and particularly after we are no longer a “small reporting company,” we will incur significant legal, accounting and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the NYSE American and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel will need to devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly.

**Risks Related to Tax Laws**

***We may be subject to adverse legislative or regulatory changes in tax laws that could negatively impact our financial condition.***

The rules dealing with U.S. federal, state and local income taxation are constantly under review by persons involved in the legislative process and by the U.S. Internal Revenue Service, or IRS and the U.S. Treasury Department. Changes to tax laws (which changes may have retroactive application) could adversely affect our stockholders or us. In recent years, many such changes have been made and changes are likely to occur in the future. We cannot predict whether, when, in what form, or with what effective dates, tax laws, regulations and rulings may be enacted, promulgated or decided, which could result in an increase in our, or our stockholders' tax liability or require changes in the manner in which we operate in order to minimize increases in our tax liability.

***Our ability to use net operating losses and research and development credits to offset future taxable income may be subject to certain limitations.***

As of December 31, 2022 December 31, 2023, we had U.S. federal and state net operating loss, or NOL, carryforwards of \$72.7 million \$77.4 million and \$64.7 million \$72.7 million, respectively, which begin to expire in the year 2028 and 2023 2024 through 2043, 2044, respectively. Additionally, we had U.S. federal and state research and development tax credits, or tax credits, of \$0.3 million \$0.4 million and \$0.1 million \$0.2 million, respectively, which begin to expire in the year 2027 2026 and 2036, 2033, respectively. These NOL and tax credit carryforwards could expire unused and be unavailable to offset future taxable income or tax liabilities, respectively. In addition, in general, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the code, Code, and corresponding provisions of state law, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change NOL carryforwards carryforwards or tax credits, or NOLs or credits, to offset future taxable

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income. For these purposes, an ownership change generally occurs where the aggregate stock ownership of one or more stockholders or groups of stockholders who owns at least 5% of a corporation's stock increases its ownership by more than 50 percentage points over its lowest ownership percentage within a specified testing period. We have determined that such ownership changes have occurred in prior years. years and as recently as January 2023. The result of these ownership changes is that we have a \$281,000 \$64,000 annual limitation on our ability to utilize pre-ownership change NOL's and that approximately \$437,000 \$20.0 million of our NOL's federal NOL's and \$48.0 million of our state NOL's will expire unutilized. We believe that we may have experienced an ownership change as a result of our follow-on equity offering in January 2023. As of the date of this report, we have not determined the extent of any further limitations on our ability to utilize our NOL's. We may undergo an ownership change in connection with future changes in our stock ownership (many of which are outside of our

control), whereby our ability to utilize NOLs or credits could be further limited by Sections 382 and 383 of the Code or under corresponding provisions of state law. Furthermore, our ability to utilize our NOLs or tax credits is conditioned upon our attaining

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profitability and generating U.S. federal and state taxable income. As described above under "Risk factors— *Risks Associated with Our Business*," we have incurred net losses since our inception and anticipate that we will continue to incur losses for the foreseeable future; and therefore, we do not know whether or when we will generate the U.S. federal or state taxable income necessary to utilize our NOLs or tax credits that are subject to limitation by Sections 382 and 383 of the Code. Under current law, U.S. federal NOL carryforwards generated in taxable years beginning after December 31, 2017 will not be subject to expiration, but the amount of such NOL carryforwards that we are permitted to deduct in a taxable year beginning after December 31, 2020 will be limited to 80% of our taxable income in each such year to which the NOL carryforwards are applied.

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#### CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under "Business," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and elsewhere in this Annual Report on Form 10-K constitute forward-looking statements. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "should," "will" and "would" or the negatives of these terms or other comparable terminology.

You should not place undue reliance on forward looking statements. The cautionary statements set forth in this Annual Report on Form 10-K, including in "Risk Factors" and elsewhere, identify important factors which you should consider in evaluating our forward-looking statements.

These factors include, among other things:

• We have a history of operating losses and our financial statements for the year ended December 31, 2022 include disclosures regarding there being substantial doubt about our ability to continue as a going concern.

- our ability to achieve reimbursement from third-party payers for our products, including the establishment of reimbursement codes for third-party payers for our products;
- our dependence upon external sources for the financing of our operations;
- our ability to operate our business during the COVID-19 pandemic, including manufacturing and delivery, sales, patient consultation, supply chain insurance reimbursement and employees;
- our ability to obtain and maintain our strategic collaborations and to realize the intended of such collaborations;

- our ability to effectively execute our business plan;
- our ability to maintain and grow our reputation and to achieve and maintain the market acceptance of our products;
- our expectations as to our clinical research program and clinical results;
- our ability to improve our products and develop new products;
- our ability to manage the growth of our operations over time;
- our ability to maintain adequate protection of our intellectual property and to avoid violation of the intellectual property rights of other
- our ability to gain and maintain regulatory approvals;
- our ability to maintain relationships with existing customers and develop relationships with new customers;
- our ability to compete and succeed in a highly competitive and evolving industry; and
- other risks and uncertainties, including those listed under the caption "Risk Factors" in this Annual Report on Form 10-K.

Although the forward-looking statements in this Annual Report on Form 10-K are based on our beliefs, assumptions and expectations, taking into account all information currently available to us, we cannot guarantee future transactions, results, performance, achievements or outcomes. No assurance can be made to any investor by anyone that the expectations reflected in our forward-looking statements will be attained, or that deviations from them will not be material and adverse. We undertake no obligation, other than as maybe be required by law, to re-issue this Annual Report on Form 10-K or otherwise make public statements updating our forward-looking statements.

***Item 1B. Unresolved Staff Comments***

Not applicable.

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***Item 1C. Cybersecurity***

We utilize a third-party managed security service provider to support our information technology services, which include ongoing support for the management of cyber risks and protection of our information technology infrastructure. Our critical business applications are provided and managed by third party cloud software providers.

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Our cybersecurity risk management strategy is informed by a recent cyber risk assessment conducted in consultation with our third party managed security service provider. The assessment was informed by industry standards and included an evaluation of our cybersecurity controls. We also leverage our managed security services provider and other third-party consultants, providers, and technologies to support our efforts to monitor, identify, and address cybersecurity risks, including managing our monitoring and alerting tools and conducting periodic assessments of certain system applications. Our efforts to address cybersecurity risks and also include training employees, both from programs provided by our third-party managed security service provider and internal policies and training, which are designed to increase awareness of cybersecurity threats.

We have a process to assess and review the cybersecurity practices of certain third-party vendors and service providers, including through review of applicable certifications and security reports, where available, and contractual requirements, as appropriate.

Although risks from cybersecurity threats have to date not materially affected, and we do not believe they are reasonably likely to materially affect, us, our business strategy, results of operations or financial condition, we could, from time to time, experience threats and communicate security incidents relating to our and our third-party vendors' information systems. For more information please see the section entitled "Risks Related to Cybersecurity and Data Protection" in Item 1A- Risk Factors. We maintain an incident response and a disaster recovery plan, which includes plans around managing cybersecurity incidents, and is intended to serve as a guide for management of such events and to set forth communication procedures regarding potential impacts to our board, investors, and other stakeholders, as appropriate.

#### **Governance Related to Cybersecurity Risks**

Our cyber risk management program and related operations and processes are directed by our Chief Financial Officer, in consultation with other members of senior management and our third-party security managed service provider. The Chief Financial Officer is responsible for identifying, evaluation, and implementing risk management control and methodologies to address any identified risks, including risks from cybersecurity threats, with advice from our third-party managed security service provider as appropriate.

The Chief Financial Officer periodically provides reports to the audit committee of the board of directors regarding information technology and cybersecurity matters and associated risks. The audit committee is responsible for reviewing and overseeing the Company's risk management process and strategy, including risks from cybersecurity threats. The audit committee periodically reports on cybersecurity risk management to the full board of directors.

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#### **Item 2. Properties**

Our primary offices are located at 137 Portland St. in Boston, Massachusetts, where we have a sublease expiring in August 2023 lease consisting of 9,094 square feet of office and laboratory space, which has been extended as a result of a lease in the same building for 3,859 square feet of space to be used for manufacturing which expires in January 2025. Additionally, we have offices at 5601 Bridge St. in, Fort Worth, TX, where we have a lease expiring in December 2025 to operate a customer service call center consisting of approximately 2,800 square feet of office space. We believe our facilities are currently adequate for us to conduct our business. A number of our employees work remotely from home across the U.S. United States.

#### **Item 3. Legal Proceedings**

The Company may be involved in legal proceedings, claims and assessments arising from the ordinary course of business. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. There is no material litigation against the Company at this time that is required to be disclosed under Item 103 of Regulation S-K.

#### **Item 4. Mine Safety Disclosures**

Not applicable.

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## **PART II**

### **Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

The information required to be disclosed by Item 201(d) of Regulation S-K, "Securities Authorized for Issuance Under Equity Compensation Plans," is incorporated herein by reference. Refer to Item 12 of Part III of this Annual Report on Form 10-K for additional information.

#### **Market Information**

Our common stock has been listed on NYSE American under the symbol "MYO" since June 12, 2017. Prior to that time, there was no public market for our common stock.

#### **Holders of Record**

On **March 1, 2023** **March 1, 2024**, the closing price per share of our common stock was **\$0.63** **\$4.01** as reported on The NYSE American, and we had approximately **282** **124** stockholders of record (not including beneficial owners whose shares are held in street name).

#### **Dividend Policy**

We have never paid or declared any cash dividends on our common stock, and we do not anticipate paying any cash dividends on our common stock in the foreseeable future. In addition, the terms of any future indebtedness that we may incur could preclude us from paying dividends. We intend to retain all available funds and any future earnings to fund the development and expansion of our business. Any future determination to pay dividends will be at the discretion of our board of directors and will depend upon a number of factors, including our results of operations, financial condition, future prospects, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant.

#### **Recent Sales of Unregistered Securities**

Not applicable

#### **Use of Proceeds from Registered Securities**

Not applicable

#### **Issuer Purchases of Equity Securities**

Not applicable.

#### **Item 6. Reserved**

Not applicable.



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### **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

*The following discussion should be read in conjunction with our financial statements and the related notes contained elsewhere in this Annual Report on Form 10-K and in our other Securities and Exchange Commission filings. The following discussion may contain predictions, estimates, and other forward-looking statements that involve a number of risks and uncertainties, including those discussed under "Risk Factors" and elsewhere in this Annual Report on Form 10-K. These risks could cause our actual results to differ materially from any future performance suggested below.*

#### **Overview**

We are a wearable medical robotics company, specializing in myoelectric braces, or orthotics, for people with neuromuscular disorders. We develop and market the MyoPro product line, which is a myoelectric-controlled upper limb brace, or orthosis. The orthosis is a rigid brace used for the purpose of supporting a patient's weak or deformed arm to enable and improve functional activities of daily living, or ADLs, in the home and community. It is custom constructed by a trained professional during a custom fabrication process for each individual user to meet their specific needs. Our products are designed to help regain function in individuals with neuromuscular conditions due to brachial plexus injury, stroke, traumatic brain injury, spinal cord injury and other neurological disorders.

We utilize digital ads on various platforms as well as television ads to reach patients who are potential candidates for our product. Once the prospective patient contacts us or is referred to us, either our trained clinical staff or a trained O&P provider will evaluate the patient for their suitability as a candidate. Initial evaluations by our trained clinical staff are conducted using telehealth techniques, followed by an in-person clinical evaluation of the candidate. Prior to obtaining authorizations from commercial insurance companies, the patient's medical records are collected and reviewed to make sure the device is appropriate for their condition and a prescription is always obtained from a physician. Once these documents are obtained, a pre-authorization request is submitted to the patient's insurer. If we receive a pre-authorization, we proceed to measure the patient's arm. Beginning in 2022, this is being done in some cases using a remote measurement kit supplied to the patient. We then use those measurements to 3D print orthotic parts, which are used to fabricate the MyoPro, and then deliver it to the patient. Since we are directly providing the device to the patient and then billing insurance ourselves, we refer to this process as direct billing. We also call on hospitals and O&P practices in the U.S., United States, Europe and Australia that provide our products to their patients as well as generate indirect sales. The MyoPro product line has been approved by the VA system for impaired veterans, and over 70 VA facilities have ordered devices for their patients.

Our myoelectric orthoses have been clinically shown in peer reviewed published research studies to help regain the ability to complete functional tasks by supporting the affected joint and enabling individuals to self-initiate and control movement of their partially paralyzed limbs by using their own muscle signals.

Our technology was originally developed at MIT in collaboration with medical experts affiliated with Harvard Medical School. Myomo was incorporated in 2004 and completed licensing of its technology from MIT in 2006.

Other milestones in our history include:

- In 2012, we introduced the MyoPro, the primary business focus shifted during this time period, from devices which were designed for

rehabilitation therapy and sold to hospitals, to providing an assistive device through O&P providers to patients who are otherwise impaired for use at home, work, and in the community that facilitates activities of daily living or ADLs.

- During 2015, we extended our basic MyoPro for the elbow with the introduction of the MyoPro Motion W, a multi-articulated non-powered wrist and the MyoPro Motion G, which includes a powered grasp. The MyoPro Motion W allows the user to use their sound arm to adjust the device and then, for instance, open a refrigerator door, carry a shopping bag, hold a cell phone, or stabilize themselves to avoid a fall and potential injury. The MyoPro Motion G model allows users with severely weakened or clenched hands, such as seen in certain stroke survivors, to open and close their hands and perform a large number of ADLs.
- On June 9, 2017, we completed our initial public offering, ("IPO") or IPO, and a private offering concurrent with the IPO, generating net proceeds of \$6.9 million in the aggregate.

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- On July 31, 2017, we met the criteria to apply the CE Mark mark for the MyoPro. MyoPro under the EU MDD. The EU MDR repealed and replaced the EU MDD on May 26, 2021, and we therefore worked with our EU-Authorized Representative to ensure all EU MDR requirements were met, which enabled us to establish a new declaration of conformity under the EU MDR to allow continued to CE mark application. This has enabled us to sell the MyoPro to individuals in the European Union (the "EU"). EU.
- In November 2018, we announced that the CMS had published two new codes (L8701, L8702) that describe our products, pursuant to our application for HCPCS codes which become effective in early 2019. The assignment of unique L-Codes, if followed by appropriate payment terms (which are still pending), would may offer greater access to the MyoPro for Medicare beneficiaries.
- In 2019 we transitioned our business to become a direct provider of the MyoPro to patients and bill insurance companies directly.
- In July 2021, we announced that we became accredited as a Medicare provider.
- In January 2022, we introduced the MyoPro 2+ and began in-house fabrication of the device.

## **Recent Developments**

### **China Joint Venture**

On January 21, 2021, we entered into a definitive agreement with Beijing Ryzur Medical Investment Co., Ltd. ("Ryzur Medical"), a medical device manufacturer based in Beijing, to form a joint venture (the "JV") to manufacture and sell our current and future products in greater China, including Hong Kong, Macau and Taiwan (the "JV Agreement").

Majority ownership in the JV, named Jiangxi Myomo Medical Assistive Appliance Co., Ltd. (the "JV Company"), is held by Ryzur Medical and Wuxi Chinaleaf Medical Investment and Management Fund, a private fund that invests in growth opportunities in new technologies. We own a minimum 19.9% stake in the JV. Ryzur Medical and its partners have committed to invest a minimum of \$8 million and up to \$20 million in the JV over five years.

The JV Company was established on August 12, 2021. On December 29, 2021, we entered into an amendment to the JV Agreement, as well as a Technology License Agreement and a Trademark License Agreement (collectively, the "Agreements"). Under the Agreements, we and the JV Company have entered into a ten-year agreement to license our intellectual property, including recently issued patents in China and Hong Kong, and purchase MyoPro Control System units from us. Under the Agreements, we are were entitled to receive an upfront license fee of \$2.7 million, of which \$1.0 million has been paid concurrent with the beginning of limited operations as of December 31, 2022 December 31, 2023. The JV Company has advised us that effects of COVID-19 in China are delaying the banking and government approvals necessary to

pay the remainder of the license fee. We cannot be certain as to if or when the remaining license fee will be paid. If uncured, failure to pay us the required fees contemplated by the Agreements may entitle us to terminate such Agreements and withdraw from the joint venture. Pursuant to the Agreements, the JV Company has agreed to an escalating purchase commitment for a minimum of \$10.75 million in MyoPro Control System Units during the next ten years, subject to receipt of regulatory approvals necessary to permit sales of the product in the greater China territory.

#### **Equity Line of Credit Offerings**

On August 2, 2022, the Company entered into January 19, 2024 we completed a Common Stock Purchase Agreement ("Purchase Agreement") with Keystone Capital Partners ("Keystone"), establishing a registered direct equity line facility. On October 28, 2022, we filed a Definitive Proxy Statement for notice of a special Shareholders Meeting to be held on December 7, 2022 to vote on a proposal to permit us to sell additional offering, selling 1,354,218 shares of common stock under and 224,730 pre-funded warrants at \$3.80 per share, or \$3,7999 per pre-funded warrant, generating net proceeds after fees and expenses of approximately \$5.4 million. Net proceeds from the Purchase Agreement, offering are expected to be used to hire more than 50 people through the second quarter of 2024 in excess order to increase our clinical, reimbursement and manufacturing capacity to serve Medicare Part B beneficiaries. On August 29, 2023, we completed a public equity offering, selling 5,413,334 shares of an exchange cap contained therein. We were unable to achieve a quorum for the meeting, common stock and as a result, withdrew the proposal. See "Liquidity" for further discussion.

#### **Equity Offering**

1,920,000 pre-funded warrants at \$0.60 per share, or at \$0.5999 per pre-funded warrant, generating net proceeds after fees and expenses of approximately \$3.9 million. In January 2023, we completed a public equity offering, of our common stock, whereby we sold 13,169,074 shares of common stock and 6,830,926 pre-funded warrants at \$0.325 per share, or \$0.3249 per pre-funded warrant. Each pre-funded warrant in the above offerings entitles the holder to one share of common stock upon exercise at a nominal exercise price of \$0.0001 per share. Net proceeds from the transaction were approximately \$5.7 million, and will be used to fund operations while we continue to work with CMS to obtain coverage and reimbursement for our products. See "Liquidity" section titled "Liquidity" for further discussion.

#### **46 CMS Status**

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On November 1, 2023, CMS issued a final rule that results in a change in the benefit category associated with products billed under the HCPCS codes for our products from durable medical equipment rental to a brace, which would permit reimbursement of MyoPro sales on a lump sum basis. The rule became effective on January 1, 2024. On February 29, 2024, CMS published final average payment determinations for the HCPCS codes describing our products of approximately \$33,500 for L8701, the MyoPro Motion W, and approximately \$65,900 for L8702, the MyoPro Motion G, which are effective April 1, 2024.

Beginning March 2023, we began submitting claims to the Medicare program via CMS' - durable medical equipment administrative contractors, referred to as the DME MACs. A total of 40 claims have been submitted, and 21 claims have been paid, either as a rental fee or a purchase across all of the DME MACs as of the filing date of this Annual Report on Form 10-K. The remaining patients' claims are under review as part of the process of individual consideration. We cannot provide any assurance as to whether additional claims for reimbursement for our

products will be approved and paid by CMS or by a DME MAC nor can we provide any assurance as to the timing of any such future payments.

## Results of Operations

We have been growing revenues while incurring net losses and negative cash flows from operations since inception and anticipate this to continue at least through the third quarter of 2024. We believe it is achievable to be cash flow breakeven on a quarterly basis by the fourth quarter of 2024 assuming the final fees published by CMS are not significantly different than the preliminary fees published, that we are able to hire 50 additional employees by the end of the second quarter of 2024 in 2023 as we focus order to increase our efforts on patients with insurance payers who have reimbursed for the MyoPro clinical, reimbursement and manufacturing capacity to serve an expected increase in the past, grow our operations in Germany volume from Medicare Part B beneficiaries and invest in the enhancement of our MyoPro products, there are no unexpected supply chain disruptions.

**Comparison of the year ended December 31, 2022 December 31, 2023 to the year ended December 31, 2021 December 31, 2022**

The following table sets forth our revenue, gross profit and gross margin for each of the years presented.

	Year-to-year					Years Ended December 31,		Year-to-year change	
	Years Ended December 31,		change		Years Ended December 31,	2023	2022	\$	%
	2022	2021	\$	%					
Product revenue	14,555,29	13,856,374	698,855	5 %	\$ 17,476,238	\$ 14,555,229	\$ 2,921,009	20 %	
License revenue	1,000,000	-	1,000,000	NM	1,764,920	1,000,000	764,920	NM	
Total revenue	15,555,29	13,856,374	1,698,855	12 %	19,241,158	15,555,229	3,685,929	24 %	
Cost of revenue	5,302,133	3,544,097	1,758,036	50 %	6,058,775	5,302,133	756,642	14 %	
Gross profit	10,253,096	10,312,277	\$ (59,181)	- (8.5 %)	\$ 13,182,383	\$ 10,253,096	\$ 2,929,287	29 %	
Gross margin	65.9 %	74.4 %	5 %)		68.5 %	65.9 %		2.6 %	

## Revenues

We derive revenue primarily from providing devices directly to patients and billing insurance companies directly. We also sell our products to O&P providers in the U.S. United States, Europe and Australia, to the VA and to rehabilitation hospitals. Though we increasingly provide devices directly to patients, we sometimes utilize the clinical services of O&P providers for which they are paid a fee.

We expect that our revenues will continue to grow, primarily as a result of our increased patient pipeline entering 2023 expected ability to serve Medicare Part B beneficiaries and through expected higher revenue from O&P practices outside of the United States.

Product revenue in 2022 increased by approximately \$0.7 million \$2.9 million, or 5% 20%, compared to 2021. The revenue increase was driven primarily by a higher average selling price, offset by as well as a lower higher number of revenue units . units. Including the license revenue received from our joint venture partner in China, total revenue increased 12% 24% compared to 2021 2022. Revenues generated

through the direct billing channel were approximately \$10.7 million \$12.3 million, or 74% 71% of product revenue in 2022, 2023, compared to approximately \$10.7 million, or 77% 74%, of product revenue in 2021, 2022.

### **Gross margin**

Cost of revenue consists of direct costs for the manufacturing, casting/printing of orthotic parts, fabrication and fitting of our products, inventory reserves, warranty costs and royalties associated with licensed technologies and instruction technologies.

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Gross margin decreased increased to 65.9% 68.5% for the year ended December 31, 2022 December 31, 2023, as compared to 74.4% 65.9% in the comparable period of 2021, 2022. The decrease increase in gross margin was driven primarily by higher component costs and other costs in the current inflationary environment, unabsorbed fixed costs and an increase in license revenue as well as a higher average selling price. Excluding the warranty reserve, license fees, gross margin was 65.3% and 63.6% for the years ended December 31, 2023 and 2022, respectively. The increase in gross margin on product sales, was driven by a higher average selling price, as well as higher revenues in 2023.

We expect our gross margins margin to vary depending on the mix of channel revenues and timing of reimbursements from certain third-party payers, which impacts revenue recognition.

### **Operating expenses**

The following table sets forth our operating expenses for each of the years presented.

	Years Ended December 31,		Year-to-year change	
	2022	2021	\$	%
Research and development	\$ 2,482,489	\$ 2,557,367	\$ (74,878)	(3%)
Selling, general and administrative	18,442,811	18,022,975	419,836	2
Total operating expenses	\$ 20,925,300	\$ 20,580,342	\$ 344,958	2%

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	Years Ended December 31,		Year-to-year change	
	2023	2022	\$	%
Research and development	\$ 2,636,487	\$ 2,482,489	\$ 153,998	6%
Selling, general and administrative	18,777,445	18,442,811	334,634	2
Total operating expenses	\$ 21,413,932	\$ 20,925,300	\$ 488,632	2%

### **Research and development**

Research and development ("R&D") expenses consist of costs for our R&D personnel, including salaries, benefits, bonuses and stock-based compensation, product development costs, clinical studies and the cost of certain third-party contractors and travel expense. R&D costs are expensed as they are incurred. We intend to enhance our existing products in 2023 2024 and expect R&D costs to increase on an annual basis.

R&D expenses decreased increased by approximately \$0.1 million \$0.2 million or 3% 6% in 2022 2023 compared to 2021 2022. The decrease increase during 2022 2023 was driven primarily by lower prototype and other outside engineering costs incurred in the second half of 2023 in order to accelerate completion of certain product development expenses related to the introduction of the MyoPro2+ in January 2022.projects.

#### **Selling, general and administrative**

Selling expenses consist of costs for our field clinical staff, clinical training organization, and marketing personnel, including salaries, benefits, bonuses, stock-based compensation and sales commissions, costs of digital advertising, marketing and promotional events, corporate communications, product marketing and travel expenses. Variable compensation for personnel engaged in sales and marketing activities is generally earned and recorded as expense when the product is delivered. We expect sales and marketing expenses to be roughly flat or decrease slightly increase in 2023 2024 as a result of a reduction in force in January 2023 and efforts we increase our clinical capacity to reduce advertising spend while maintaining our existing lead generating capability. serve Medicare Part B beneficiaries.

General and administrative expenses consist primarily of costs for administrative, reimbursement, and finance personnel, including salaries, benefits, bonuses and stock-based compensation, professional fees associated with legal matters, consulting expenses, costs for pursuing insurance reimbursements for our products and costs required to comply with the regulatory requirements of the SEC and Medicare accreditation, as well as costs associated with accounting systems, insurance premiums and other corporate expenses. We expect that general and administrative expenses will increase slightly in 2023 2024 as a result of increased incentive compensation expense, offset by the effect of the reduction increasing our reimbursement capacity in force in January 2023, order to serve Medicare Part B beneficiaries.

Selling, general and administrative expenses increased by approximately \$0.4 million \$0.3 million or 2% in 2022 2023 compared to 2021 2022. The increase was primarily due to higher advertising stock compensation expense, and insurance costs, professional fees, partially offset by a decrease in wages as well as lower payroll advertising costs related to lower bonus compensation in 2022 2023.

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#### Other expense (income)

The following table sets forth our interest and other expense (income) for each of the years presented.

Years Ended December 31,	Year-to-year change	Years Ended December 31,	Year-to-year change
--------------------------	---------------------	--------------------------	---------------------

	2022	2021	\$	%	2023	2022	\$	%
	(88,73)		(87,11)					
Interest income	\$ 1)	\$ (1,612)	\$ 9)	NM				
Interest income, net			\$ (410,274)	\$ (88,731)	\$ (321,543)	362 %		
			(15,84)					
Other expense, net	1,101	16,948	7)	(94)%	785	1,101	(316)	(29)
Loss on equity investment	66,511	-	66,511	NM	169,503	66,511	102,992	155
Total other expense (income)	(21,11)		(36,45)	(23)				
	\$ 9)	\$ 15,336	\$ 5)	8)%				
Total other income			\$ (239,986)	\$ (21,119)	\$ (218,867)	1036 %		

Interest income increased due to higher interest rates and a higher average investment balances in 2022. 2023. Loss on equity investment represents our share of the losses incurred by the JV Company, which began limited operations in 2022. 2023.

#### Income tax expense

Income tax expense recorded during the years ended December 31, 2022 December 31, 2023 and 2021 2022 represents the provision for income taxes for our wholly-owned subsidiary, Myomo Europe GmbH. The decrease increase in income tax expense relates to decreased increased income from Myomo Europe GmbH in 2022 2023 compared to 2021. 2022.

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#### **Adjusted EBITDA**

We believe that the presentation of Adjusted EBITDA, a non-GAAP financial measure, provides investors with additional information about our financial results. Adjusted EBITDA is an important supplemental measure used by our board of directors and management to evaluate our operating performance from period-to-period on a consistent basis and as a measure for planning and forecasting overall expectations and for evaluating actual results against such expectations.

We define Adjusted EBITDA as earnings before interest and other income (expense), taxes, depreciation and amortization, adjusted for stock-based compensation and the loss on equity investment in the JV Company.

Adjusted EBITDA is not in accordance with, or an alternative to, measures prepared in accordance with U.S. GAAP. In addition, this non-GAAP measure is not based on any comprehensive set of accounting rules or principles. As a non-GAAP measure, Adjusted EBITDA has limitations in that it does not reflect all of the amounts associated with our results of operations as determined in accordance with U.S. GAAP. In particular:

- Adjusted EBITDA does not include interest income; income, net;
- Adjusted EBITDA does not reflect the amounts we paid in taxes or other components of our tax provision;
- Adjusted EBITDA does not include depreciation expense from fixed assets, or amortization of leased assets;
- Adjusted EBITDA does not include the impact of stock-based compensation; and
- Adjusted EBITDA does not include the loss on equity investment in the JV Company.

Because of these limitations, you should consider Adjusted EBITDA alongside other financial performance measures including net income (loss) and our financial results presented in accordance with U.S. GAAP.

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The following table provides a reconciliation of net loss to Adjusted EBITDA for each of the years indicated:

	2022	2021	2023	2022
GAAP net loss	\$ (10,721,022)	\$ (10,372,329)	\$ (8,147,565)	\$ (10,721,022)
Adjustments to reconcile to Adjusted EBITDA:				
Interest income	(88,731)	(1,612)		
Interest income, net			(410,274)	(88,731)
Loss on equity investment	66,511	-	169,503	66,511
Income Taxes	69,937	88,928		
Income taxes			156,002	69,937
Depreciation and amortization expense	192,799	145,995	164,306	192,799
Stock-based compensation	1,190,494	1,096,408	1,115,602	1,190,494
Adjusted EBITDA	<u>\$ (9,290,012)</u>	<u>\$ (9,042,610)</u>	<u>\$ (6,952,426)</u>	<u>\$ (9,290,012)</u>

## Liquidity and Capital Resources

### Liquidity

We measure our liquidity in a number of ways, including the following:

	December 31,		December 31,	
	2022	2021	2023	2022
Cash	\$ 5,345,967	\$ 15,524,378		
Cash and cash equivalents			\$ 6,871,306	\$ 5,345,967
Short-term investments			\$ 1,994,662	-
Working capital	5,613,521	14,903,804	8,173,925	5,613,521

We had working capital and stockholders' equity of approximately \$5.6 million \$8.2 million and \$6.4 million \$9.0 million respectively, as of December 31, 2022 December 31, 2023. We used \$10.2 million \$6.2 million in cash for operating activities during the year ended December 31, 2022 December 31, 2023.

We have historically funded our operations through financing activities, including raising equity and debt capital. In January 2024, we completed a registered direct equity offering, pursuant to which we sold 1,354,218 shares of common stock and 224,730 pre-funded warrants at \$3.80 per share, or \$3.7999 per pre-funded warrant, generating net proceeds after fees and expenses of approximately \$5.4 million. In August 2023, we completed a public equity offering pursuant to which we sold 5,413,334 shares of common stock and 1,920,000 pre-funded warrants at \$0.60 per share or at \$0.5999 per warrant, generating proceeds after fees and expenses of approximately \$3.9 million. In January 2023, we completed an equity offering under which we sold 13,169,074 shares of common stock and 6,830,926 pre-funded warrants at \$0.325 per share, generating proceeds after fees and expenses of approximately \$5.7 million. During the fourth quarter of 2022, we sold 692,914 shares of common stock under the a Common Stock Purchase Agreement with Keystone Capital Partners, LLC at a weighted average sales price of \$0.683 per share, generating proceeds after fees and expenses of approximately \$0.4 million. During 2021, \$12.1 million was received from the exercise of warrants, including \$4.8 million in net proceeds in October 2021 from a transaction to induce the exercise of warrants issued in conjunction with our equity offering in February 2020 at a reduced exercise price of \$5.00 per share. These financing activities, in addition to funding of \$1.1 million received from sales of common stock under our ATM Facility, with Alliance Global Partners during the year ended December 31, 2021 are helping us to sustain our operations. Considering our cash balance as of December 31, 2022 and December 31, 2023, the net proceeds from the equity offering in January 2023 as well as 2024 and managements plans to grow our cash used from operations during the year ended December 31, 2022, clinical, reimbursement and manufacturing capacity to serve Medicare Part B beneficiaries in 2024, management believes there is substantial doubt regarding will be sufficient cash to fund our ability to continue as a going concern operations and capital expenditures for the next 12 months from the date of this report.

Our operating plans are primarily focused on growing our revenues and limiting operating expenses through focusing increasing our clinical, and reimbursement efforts on patients with insurers that have previously reimbursed for the MyoPro. We believe the growth in our patient pipeline during 2022 provides us an opportunity to achieve increased revenue in 2023 compared to 2022. We intend to stop activities directed at increasing the number of payers that will reimburse for our products until CMS either begins to reimburse for the MyoPro or states its intention to do so. As a result, we have undertaken cost reduction activities, including the reduction of approximately 12% of our workforce in January 2023. This and other cost reduction efforts are expected to reduce our operating expenses by approximately \$2.0 million in 2023. With respect to CMS, we expect to meet with the medical directors of the DME MAC's during the first quarter of 2023 to discuss coverage and reimbursement and begin submitting claims on behalf manufacturing capacity in order to serve a higher volume of Medicare Part B beneficiaries patients in 2024. Based on the final fees published for our products by CMS, we believe that if we are able to hire at least 50 to 60 additional employees during the first half of 2024 as soon as practical thereafter. we have planned to increase our clinical, reimbursement and manufacturing capacity, and our supply chain is able to meet our volume requirements without disruption, we believe we can achieve cash flow breakeven on a quarterly basis by the fourth quarter of 2024.

Our business is dependent upon reimbursement of our products by insurance companies and government-controlled health care plans such as Medicare and Medicaid in the United States and by Statutory Health Insurance plans in Germany, which could prevent our revenues from growing to the level necessary to achieve cash flow breakeven. If public health restrictions on travel and patient interaction are broadly reinstated in 2023 due to new variants of COVID-19 and increasing infections in the U.S., that will have an adverse effect on our business. We believe that we have access to capital resources, if necessary, through payment of the technology license fee associated with our JV in China, potential public or private equity offerings, exercises of outstanding warrants, additional debt financings, or other

means; however, we may be unable to raise sufficient additional capital when we need it or raise capital on favorable terms. As part of our equity offering in January 2023, we agreed to not sell any shares of our common stock to Keystone under the Purchase Agreement or under our ATM facility for a period of one year from the closing of the offering. We have remaining capacity under our Purchase Agreement with Keystone of approximately 1.0 million shares and approximately \$0.3 million under our ATM facility. However, we are subject to the limitations

imposed by General Instruction I.B.6 of Form S-3, which limits the amount of securities that we may issue under our registration statement on Form S-3 to one-third of our public float in any 12-month period. Further, the amount of stock that we may sell to Keystone under the Purchase Agreement is limited to a total of 1,349,334 shares of common stock, pursuant to an exchange cap imposed by the rules of the NYSE American, unless we obtain approval from our stockholders to lift such cap. As of December 31, 2022 1,008,458 million shares remain available under the exchange cap. Should we consider debt financing, such a transaction may require us to pledge certain assets and enter into covenants that could restrict certain business activities or our ability to incur further indebtedness and may contain other terms that are not favorable to our stockholders or us.

means. If we are unable to obtain adequate funds on reasonable terms, we may be required to significantly curtail or discontinue operations or obtain funds by entering into financing agreements on unattractive terms. We may also explore strategic alternatives for the purpose of maximizing

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stockholder value. There can be no assurance we will be successful in implementing our plans to sustain our operations and continue to conduct our business.

### **Cash Flows**

	Year Ended December 31,		Year Ended December 31,	
	2022	2021	2023	2022
Net cash used in operating activities	\$ (10,233,542)	\$ (9,547,695)	\$ (6,172,764)	\$ (10,233,542)
Net cash used in investing activities	(310,793)	(326,462)	(2,029,565)	(310,793)
Net cash provided by financing activities	376,858	13,167,666	9,713,457	376,858
Effect of foreign exchange rate changes on cash	(10,934)	(10,392)	14,211	(10,934)
Net increase (decrease) in cash and cash equivalents	\$ (10,178,411)	\$ 3,283,117	\$ 1,525,339	\$ (10,178,411)

**Operating Activities.** The net cash used in operating activities for the year ended December 31, 2023 was primarily used to fund a net loss net approximately \$8.1 million, adjusted for non-cash expenses in the aggregate amount of approximately \$1.7 million of which approximately \$1.1 million is related to non-cash adjustments related to stock-based compensation, and approximately \$0.34 million of cash generated from changes in operating assets and liabilities, primarily related to an increase in accounts payable and accrued expenses, offset by increases in inventory and accounts receivable.

Net cash used in operating activities for the year ended December 31, 2022 was primarily used to fund a net loss net approximately \$10.7 million, adjusted for non-cash expenses in the aggregate amount of approximately \$1.9 million of which approximately \$1.1 million \$1.2 million of non-cash adjustments related to stock-based compensation, and approximately \$1.4 million of cash used from changes in operating assets and liabilities, primarily related to an increase in inventory and decreases a decrease in accounts payable and accrued expenses and operating lease liabilities.

The net cash used in operating activities for the year ended December 31, 2021 was primarily used to fund a net loss net approximately \$10.4 million, adjusted for non-cash expenses in the aggregate amount of approximately \$1.4 million of which approximately \$1.1 million of non-cash adjustments related to stock-based compensation, and approximately \$0.6 million of cash used from changes in operating assets and liabilities, primarily related to an increase in accounts payable and accrued expenses, offset by increases in inventory and accounts receivable. inventory.

**Investing Activities.** During the year ended December 31, 2022 December 31, 2023 our cash used in investing activities of \$0.3 million \$2.0 million was primarily due to our investment in short-term investments and purchases of equipment. Cash used in investing activities in 2022 was primarily for our investment in a joint venture with Ryzur Medical and purchases of equipment. Cash used in investing activities in 2021 was primarily for leasehold improvements to our new headquarters facility in Boston.

**Financing Activities.** During the year ended December 31, 2023 cash provided by financing activities of approximately \$9.7 million was due to net proceeds received from the sale of common stock and pre-funded warrants, net of offering costs.

During the year ended December 31, 2022 cash provided by financing activities of approximately \$0.4 million was due to net proceeds received from stock issued under our equity line of credit.

During the year ended December 31, 2021 cash provided by financing activities of approximately \$13.2 million was primarily due to approximately \$12.1 million of net proceeds received from the exercise of warrants and net proceeds of approximately \$1.1 million from the issuance of shares through our ATM facility.

## Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements in the years ended December 31, 2022 December 31, 2023 and December 31, 2021 December 31, 2022.

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### Critical Accounting Policies and Estimates

#### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America require management to make estimates and assumptions that affect certain reported amounts and disclosures. These estimates and assumptions are reviewed on an on-going basis and updated as appropriate. Actual results could differ from those estimates. Our significant estimates include the valuation of our deferred tax valuation allowances, valuation of stock-based compensation, warranty obligations, the discount rate on leases and inventory reserves.

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## **Cash Equivalents and Short-Term Investments**

We consider all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist principally of deposit accounts and money market accounts at December 31, 2023 and 2022.

The Company considers all investments with an original maturity of greater than three months to be short-term investments. Short-term investments primarily consists of commercial paper and U.S. Treasury Bills and are carried on the consolidated balance sheets at fair value. Short-term investments as of December 31, 2023 consists of U.S. Treasury Bills, which are classified as held-maturity, and Certificates of Deposit totaling approximately \$1,994,700 as of December 31, 2023, there were no Short-term investments as of December 31, 2022. The Company determines the appropriate balance sheet classification of its investments at the time of purchases and evaluates the classification at the date of purchase. Unrealized gains and losses on short-term investments are recorded to accumulated other comprehensive income on the consolidated balance sheets and other gain (loss) on the consolidated statements of comprehensive loss. Once unrealized gains and losses become realized, they are reclassified from other comprehensive gains and losses to cost of goods sold.

## **Accounts Receivable**

We carry accounts receivable at invoiced amounts less an allowance for doubtful accounts. credit losses. We evaluate our accounts receivable on a continuous basis, and if necessary, establish an allowance for doubtful accounts credit losses based on a number of factors, including current credit conditions and customer payment history. We do not require collateral or accrue interest on accounts receivable and credit terms are generally 30 days.

## **Joint Venture**

On March 28, 2022, we invested cash consideration of \$199,000 for a 19.9% ownership stake in the JV Company. The JV Company, once fully operational will manufacture and sell our current and future products in greater China, including Hong Kong, Macau and Taiwan. We account for our investment in the JV Company under the equity method because we exert significant influence over its management. The investment is included in total assets on the consolidated balance sheet, which was fully written off to loss on equity investment in other income (expense), net as of December 31, 2023. In addition, we have receivables from the JV Company. So long as the JV Company generates losses and we have assets from the JV Company, we will continue to record losses and reduce the carrying value of these assets on balance sheet. There was no impairment charge for If cash is received from the year ended December 31, 2022 associated with this equity investment. We record our share JV Company, the difference between the amount paid and the carrying value of the JV Company's earnings asset will be recorded as an offset to loss on equity investment in our consolidated statement the Statement of operations in other expense (income). Operations.

## **Inventories**

Inventories are recorded at the lower of average cost or net realizable value. Cost is determined using average cost, which approximates the first-in, first out (FIFO) method. We reduce the carrying value of inventory for those items that are potentially excess, obsolete or slow-moving based on changes in customer demand, technology developments or other economic factors.

## **Research and Development Costs**

We expense research and development costs as incurred. Research and development costs primarily consist of salaries and benefits, facility and overhead costs, and outsourced research activities.

## **Revenue Recognition**

Accounting for revenues under ASC 606 and all the related amendments (Topic 606) requires revenue be recognized either at a "point in time" or "over time," depending on the facts and circumstances of the arrangement and are evaluated using a five-step model. Generally, we recognize revenue at a point in time.

We recognize revenue after applying the following five steps:

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- 1) Identification of the contract, or contracts, with a **customer**, **customer**;
- 2) Identification of the performance obligations in the contract, including whether they are distinct within the context of the **contract** **contra**;
- 3) Determination of the transaction price, including the constraint on variable **consideration** **consideration**;
- 4) Allocation of the transaction price to the performance obligations in the **contract** **contract**; and
- 5) Recognition of revenue when, or as, performance obligations are **satisfied** **satisfied**.

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Revenue is recognized when control of these services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services.

### **Product Revenue**

Increasingly, we derive our revenue from direct **billing**. **We** **billing**, and **we** also derive revenue from the sale of our products to O&P providers in the United States and internationally and the VA. Under direct billing, we recognize revenue when all of the following criteria are met:

- (i) Our product has been delivered to the patient, including completion of initial instruction on its use.
- (ii) Collection is deemed probable and it has been determined that a significant reversal of the revenue to be recognized is not deemed probable when the uncertainty associated with the variable consideration is resolved.
- (iii) The amount to be collected is estimable using the "expected value" estimation techniques, or the "most likely amount" as defined in A 606.

For revenue derived from certain insurance companies where we have demonstrated sufficient payment history, we recognize revenue when we receive a pre-authorization from the insurance company and control passes to the patient upon delivery of the device in an amount that reflects the consideration we expect to receive in exchange for the device. These insurers represented approximately **44%** **66%** and **39%** **44%** of the direct billing channel revenue in **2022** **2023** and **2021**, **2022**, respectively. Depending on the timing of product deliveries to customers, which is when cost of revenue must be recorded, and when we meet the criteria to record revenue, there may be fluctuations in gross margin.

For revenues derived from O&P providers, the VA and rehabilitation hospitals, we recognize revenue when control passes to the customer in an amount that reflects the consideration we expect to receive in exchange for those services. Revenues may be recognized upon shipment or upon delivery, depending on the terms of the arrangement, provided that persuasive evidence of an arrangement exists, there are no uncertainties regarding customer acceptance and collectability is deemed probable. In certain cases where we ship its products to O&P providers pending reimbursement from non-government, third-party payers. As a result of this arrangement, elements of are the revenue recognition criteria have not been met upon shipment. In this instance, we recognize revenue when the amount is estimable direct provider and we determine it is probable that payment will be received. In many cases, do not have sufficient collection history with the payer, we are not able to recognize revenue in these situations until payment is received, as then all of the revenue recognition criteria have been met.

We have elected to record taxes collected from customers on a net basis and do not include tax amounts in revenue or cost of revenue.

#### ***License Revenue***

If a license to our intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, we recognize revenue allocated to the license when the license is transferred to the customer, the customer is able to use and benefit from the license, and collectability is deemed probable.

Under the JV Agreements, we are were entitled to receive an upfront license fee of \$2.7 million, which was paid in full as of which \$1.0 million has been paid and recognized during December 31, 2023. We are entitled to guaranteed minimum payments for purchases of MyoPro Control Units for a period of 10 years from the year ended December 31, 2022, effective date of the Technology License Agreement. We will recognize revenue on the remaining amount due upon payment as the fee has not been paid according to the contractual terms. these amounts when invoiced and collectability is assured.

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#### ***Leases***

We account for leases under Accounting Standards Codification ("ASC") Topic 842, leases. "Leases". We assess whether a contract is or contains a lease at inception of the contract and recognize right-of-use assets and corresponding lease liabilities at the lease commencement date, except for short-term leases, which are under one year, and leases of low value. For these leases, we recognize the lease payments as an operating expense on a straight-line basis over the term of the lease.

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#### ***Income Taxes***

We account for income taxes under ASC 740, Income Taxes. Under "Income Taxes under ASC 740, 740", deferred tax assets and liabilities are determined based on the difference between the financial reporting and tax bases of assets and liabilities and net operating loss and credit

carryforwards using enacted tax rates in effect for the year in which the differences are expected to impact taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

ASC 740 requires that the tax effects of changes in tax laws or rates be recognized in the financial statements in the period in which the law is enacted.

ASC 740 also clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

Tax benefits claimed or expected to be claimed on a tax return are recorded in our financial statements. A tax benefit from an uncertain tax position is only recognized if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution. We believe there are no uncertain tax positions that could have a material impact on our financial condition, results of operations or cash flows.

#### ***Stock-Based Compensation***

We account for stock awards to employees and non-employees by measuring the cost of services received in exchange for the award of equity instruments based upon the fair value of the award on the date of grant. The fair value of that award is then ratably recognized as expense over the period during which the recipient is required to provide services in exchange for that award.

#### ***Net Loss per Share***

Basic loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted net loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding, plus potentially dilutive common shares. Convertible debt, preferred stock, restricted stock units, stock options and warrants are excluded from the diluted net loss per share calculation when their impact is antidilutive. We reported a net loss for the years ended **December 31, 2022**, **December 31, 2023** and **2021, 2022**, and as a result, all potentially dilutive common shares are considered antidilutive for these years.

#### **Recent Accounting Standards**

In September 2022, the FASB issued ASU 2022-04, **Liabilities** "Liabilities - Supplier Finance Programs" (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations, that requires entities that use supplier finance programs in connection with the purchase of goods and services to disclose the key terms of the programs and information about obligations outstanding at the end of the reporting period, including a **rollforward** **roll-forward** of those obligations. The guidance does not affect the recognition, measurement or financial statement presentation of supplier finance program obligations. The new standard's requirements to disclose the key terms of the programs and information about obligations outstanding are effective for fiscal years, including interim periods, beginning after December 15, 2022, except for the requirement to disclose a **rollforward** **roll-forward** of obligations outstanding will be effective for fiscal years

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beginning after December 15, 2023. Early adoption is permitted. We are currently evaluating do not believe the effect of this new standard, which is not expected to will have a material impact on our financial position and results of operations.

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**Table** In October 2023, the FASB issued ASU 2023-06, "Disclosure Improvements, Codification Amendments in Response to the SECs Disclosure Update and Simplification Initiative", that adds 14 of **Contents** the 27 identified disclosure or presentation requirements to the Codification, each amendment in the ASU will only become effective if the SEC removes the related disclosure or presentation from its existing regulations by June 30, 2027. We currently comply with these disclosure requirements as applicable under Regulation S-X or Regulation S-K and will adopt these new standards depending on timing of when they become effective, which is not expected to have a material impact on our financial position and results of operations.

In May 2021, December 2023, the FASB issued ASU 2021-04 Earnings Per Share 2023-09, "Accounting standards update, Income Taxes (Topic 260), Debt—Modifications 740: Improvements to Income Tax Disclosures". ASU 2023-09 focuses on income tax disclosures around effective tax rates and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts cash income taxes paid. This amendment in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the FASB Emerging Issues Task Force). The amendments in this update are ASU will become effective for all entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early application is permitted, including in an interim period public companies as of the beginning December, 15 2024 and effective to all other companies one year later. We will adopt these new standards when they become effective, which is not expected to have a material impact on its financial position and results of the fiscal year that includes that interim period. We adopted the provisions of ASU 2021-04 in the fourth quarter of 2021. The implementation resulted in a deemed dividend of approximately \$640,000 on the discounting and repricing of certain warrants, operations.

### Quantitative and Qualitative Disclosure about Market Risk

Our unrestricted cash and cash equivalents, totaling approximately \$5.3 million \$6.9 million as of December 31, 2022 December 31, 2023, was deposited in bank accounts. The cash in these accounts is held for working capital purposes and invested by the bank in overnight money market funds that invest in short-term government or government backed securities. Our short-term investments are only in high-quality instruments with maturities of nine months or less. Our primary objective is to preserve our capital for purposes of funding our operations.

#### Item 7A. Quantitative and Qualitative Disclosures about Market Risk

This item is not applicable to us as a smaller reporting company.

#### Item 8. Financial Statements and Supplementary Data

See the financial statements filed as part of this Annual Report on Form 10-K as listed under Item 15 below.

#### Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not Applicable.

#### Item 9A. Controls and Procedures

### ***Evaluation of Disclosure Controls and Procedures***

The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), refers to controls and procedures that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that such information is accumulated and communicated to a company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

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Our management, with the participation of our Chief Executive Officer, our principal executive officer, and our Chief Financial Officer, our principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2022 December 31, 2023, the end of the period covered by this Annual Report on Form 10-K. Based upon such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of such date, such that the information required to be disclosed by us in our SEC reports is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures.

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### ***Management's Report on Internal Control over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Our internal control system was designed to provide reasonable assurance to our management and board of directors regarding the preparation and fair presentation of published financial statements.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022 December 31, 2023. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework (2013). Based on our assessment we believe that as of December 31, 2022 December 31, 2023, our internal control over financial reporting is effective based on those criteria.

### ***Changes in Internal Control over Financial Reporting***

There was no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) identified in connection with the evaluation of our internal control that occurred during the fiscal quarter ended December 31, 2022 December 31, 2023 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

### ***Inherent Limitations of Internal Controls***

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. 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, control may become inadequate because of changes in conditions, or the degree of compliance with the 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.

#### **Item 9B. Other Information**

None.

During the quarter ended December 31, 2023, no director or officer (as defined in Rule 16a-1(f) of the Exchange Act) of the Company adopted, modified or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408 of Regulation S-K.

#### **Item 9C. Disclosure Regarding Foreign Jurisdiction That Prevent Inspections**

Not Applicable

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### **PART III**

#### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item is incorporated by reference to our Proxy Statement relating to our **2022** **2024** Annual Meeting of Shareholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after our fiscal year ended **December 31, 2022** December 31, 2023.

Our Board of Directors has adopted a Code of Business Conduct and Ethics, that applies to all directors, officers, and employees, which is available on our website at [www.myomo.com](http://www.myomo.com). We intend to satisfy the disclosure requirements of Item 5.05 of Form 8-K by disclosing substantive amendments to or waivers (including implicit waivers) of any provision of the Code of Business Conduct and Ethics that apply to our principal executive officer, principal financial officer, principal accounting officer, or controller, or persons performing similar functions, by posting such information on our website available at [www.myomo.com](http://www.myomo.com).

#### **Item 11. Executive Compensation**

The information required by this item is incorporated herein by reference to our Proxy Statement relating to our 2022 2024 Annual Meeting of Shareholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after our fiscal year ended December 31, 2022 December 31, 2023.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by this item is incorporated herein by reference to our Proxy Statement relating to our 2022 2024 Annual Meeting of Shareholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after our fiscal year ended December 31, 2022 December 31, 2023.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this item is incorporated herein by reference to our Proxy Statement relating to our 2022 2024 Annual Meeting of Shareholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after our fiscal year ended December 31, 2022 December 31, 2023.

**Item 14. Principal Accounting Fees and Services**

The information required by this item is incorporated herein by reference to our Proxy Statement relating to our 2022 2024 Annual Meeting of Shareholders. The Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after our fiscal year ended December 31, 2022 December 31, 2023.

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**PART IV**

**Item 15. Exhibits and Financial Statement Schedules**

a) The following documents are filed as part of this Annual Report on Form 10-K

(1) Financial Statements

See Index to Financial Statements on page F-1 of this Annual Report on Form 10-K

(2) Financial Statement Schedules

Schedules not listed above have been omitted because they are not required, not applicable, or the required information is otherwise included elsewhere in Annual Report on Form 10-K.

(3) Exhibits

Exhibit No.	Exhibit Description
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3.1 [Eight Amended and Restated Certificate of Incorporation \(Incorporated by reference to Exhibit 2.3 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

3.2 [Amended and Restated Bylaws \(Incorporated by reference to Exhibit 2.4 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

3.3 [Certificate of Amendment to the Eighth Amended and Restated Certificate of Incorporation, as amended, of Myomo, Inc., filed with the Secretary of the State of Delaware on January 30, 2020 \(Incorporated by reference to Exhibit 3.1 contained in the Registrant's Form 8-K filed on January 30, 2020\)](#)

3.4 [Second certificate of Amendment to the Eighth Amended and Restated Certificate of Incorporation, as amended, of Myomo, Inc., filed with the Secretary of the State of Delaware on June 10, 2021 \(Incorporated by reference to Exhibit 3.1 contained in the Registrant's Form 8-K filed on June 15, 2021\)](#)

4.1 [Form of Investor Warrant in connection with the Company's February 2020 public offering \(Incorporated by reference to Exhibit 4.1 contained in the Registrant's Form 8-K filed on February 12, 2020\)](#)

4.2 [Form of Underwriter's Warrant \(Incorporated by reference to Exhibit 4.1 in the Registrant's Form 8-K filed on February 8, 2019\)](#)

4.3 [Form of pre-funded warrant. \(Incorporated by reference to Exhibit 4.1 in the Registrant's Form 8-K filed on January 13, 2022\)](#)

4.4 [Form of pre-funded warrant. \(Incorporated by reference to Exhibit 4.1 in the Registrant's Form 8-K filed on August 28, 2023\)](#)

4.5 [Form of pre-funded warrant. \(Incorporated by reference to Exhibit 4.1 in the Registrant's Form 8-K filed on January 17, 2024\)](#)

4.6 [Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 \(Incorporated by reference to Exhibit 4.7 in the Registrant's Form 10-K filed on March 13, 2020\)](#)

10.1+ [2004 Stock Option and Incentive Plan and form of award agreements \(Incorporated by reference to Exhibit 6.1 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

10.2+ [2014 Stock Option and Grant Plan and form of award agreements \(Incorporated by reference to Exhibit 6.2 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

10.3+ [2016 Equity Incentive Plan and form of award agreements \(Incorporated by reference to Exhibit 6.3 contained in the Registrant's Form 10-K filed on March 12, 2018\)](#)

10.4 [License Agreement between Amendment No. 2 to the Company Myomo, Inc. 2018 Stock Option and the Massachusetts Institute of Technology, dated October 30, 2006 \(Incorporated Incentive Plan \(incorporated by reference to Exhibit 6.18 99.3 contained in the Registrant's Form 1-A S-8 filed on January 6, 2017\) June 28, 2023\)](#)

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10.5 [First Amendment to the License Agreement between the Company and the Massachusetts Institute of Technology, dated May 5, 2010 \(Incorporated by reference to Exhibit 6.19 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

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10.6+ 10.5 [Form of Indemnification Agreement \(Incorporated by reference to Exhibit 6.21 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

10.7 [Waiver to License Agreement between the Company and the Massachusetts Institute of Technology, dated November 15, 2016 \(Incorporated by reference to Exhibit 6.22 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

10.8+ [Employment Agreement between the Company and Paul R. Gudonis, dated December 23, 2016 \(Incorporated by reference to Exhibit 6.24 contained in the Registrant's Form 1-A filed on January 6, 2017\)](#)

10.9+ [Employment Agreement, dated February 6, 2019, by and between the Company and David Henry \(Incorporated by reference to Exhibit 10.2 contained in the Registrant's Form 8-K filed on February 6, 2019\)](#)

10.10+ [Employment Agreement Amendment 1, dated December 13, 2019, by and between the Company and Paul R. Gudonis \(Incorporated by reference to Exhibit 10.1 contained in the Registrant's Form 8-K filed on December 18, 2019\)](#)

10.11+ [Executive Employment Agreement, dated April 22, 2021, by and between the Company and Paul Gudonis \(Incorporated by reference to Exhibit 10.1 contained in the Registrant's Form 8-K filed on April 28, 2021\)](#)

10.12+ 10.6+ [Executive Employment Agreement, dated April 22, 2021, by and between the Company and David Henry \(Incorporated by reference to Exhibit 10.2 contained in the Registrant's Form 8-K filed on April 28, 2021\)](#)

10.13+ 10.7 [Executive Employment Agreement, dated April 22, 2021, by and between the Company and Micah Mitchell \(Incorporated by reference to Exhibit 10.3 contained in the Registrant's Form 8-K filed on April 28, 2021\)](#)

10.14\* 10.8 [Employment Agreement dated December 13, 2023 by and between the Company and Paul R Gudonis](#)

+\* [Amendment to Employment Agreement dated February 21, 2024 by and between Myomo, Inc. and David Henry \(Incorporated by reference to Exhibit 10.1 contained in the Registrant's Form 8-K filed on February 22, 2024\)](#)

10.10+\* [Amendment to Employment Agreement dated February 21, 2024 by and between Myomo, Inc. and Micah Mitchell](#)

10.11+ [Amended and Restated Change of Control and Severance Agreement dated February 21, 2024 by and between Myomo, Inc. and Harry Kovelman \(Incorporated by reference to Exhibit 10.2 contained in the Registrant's Form 8-K filed on February 22, 2024\)](#)

10.12\*\* [Equity Joint Venture Contract, by and between Myomo, Inc. and Beijing Ryzur Medical Investment Co., Ltd., dated as of January 21, 2021 \(Incorporated by reference to Exhibit 10.1 contained in the Registrant's Form 8-K filed on January 26, 2021\)](#)

10.15*	<a href="#">Sublease between Myomo, Inc. and Upstatement, LLC dated December 17, 2020. (Incorporated by reference to Exhibit 10.26 contained in the Registrant's Annual Report on Form 10-K filed March 10, 2021)</a>
10.16* 10.1	<a href="#">Amended and Restated Equity Joint Venture Contract by and between Myomo, Inc., Anhui Ryzur Medical Equipment Manufacturing Co. Ltd., Wuxi Chinaleaf Rehabilitation Industry Equity Investment Fund (Limited Partnership) and Beijing Ryzur Medical Investment Company Ltd., dated December 29, 2021. (Incorporated by reference to Exhibit 10.27 contained in the Registrant's Annual Report on Form 10-K dated March 11, 2022).</a>
3**	
10.17* 10.1	<a href="#">Technology License Agreement by and between Myomo, Inc. and Jiangxi Myomo Medical Assistive Appliance Co., Ltd., dated December 29, 2021. (Incorporated by reference to Exhibit 10.28 contained in the Registrant's Annual Report on Form 10-K dated March 11, 2022).</a>
4**	
10.18 10.15	<a href="#">Trademark License Agreement by and between Myomo, Inc. and Jiangxi Myomo Medical Assistive Appliance Co., Ltd., dated December 29, 2021. (Incorporated by reference to Exhibit 10.29 contained in the Registrant's Annual Report on Form 10-K dated March 11, 2022).</a>
10.19	<a href="#">Common Stock Purchase Agreement dated August 2, 2022 by and between Myomo, Inc., and Keystone Capital Partners, LLC. (Incorporated by reference to Exhibit 1.1 contained in the Registrant's Form 8-K dated August 2, 2022)</a>
10.20 10.16	<a href="#">Form of Securities Purchase Agreement between Myomo, Inc. and investors identified on the signatures thereto dated January 13, 2023. (Incorporated by reference to Exhibit 10.1 in the Registrant's Form 8-K filed on January 13, 2023).</a>
10.21 10.17	<a href="#">Form of Securities Purchase Agreement between Myomo, Inc. and investors identified on the signatures thereto dated January 16, 2024. (Incorporated by reference to Exhibit 10.1 in the Registrant's Form 8-K filed on January 17, 2024)</a>
10.18	<a href="#">Placement Agency Agreement by and between Myomo, Inc. and AGP Alliance Global Partners dated January 11, 2023. (Incorporated by reference to Exhibit 10.2 contained in the Registrant's Form 8-K filed on January 13, 2023).</a>
10.19	<a href="#">Placement Agency Agreement by and between Myomo, Inc. and AGP Alliance Global Partners dated August 24, 2023. (Incorporated by reference to Exhibit 10.1 contained in the Registrant's Form 8-K filed on August 28, 2023)</a>
10.20	<a href="#">Placement Agency Agreement by and between Myomo, Inc. and AGP Alliance Global Partners dated January 16, 2024. (Incorporated by reference to Exhibit 10.2 contained in the Registrant's Form 8-K filed on January 17, 2024)</a>

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21.1\* [List of Subsidiaries](#)

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23.1*	<a href="#">Consent of Marcum LLP</a>
31.1*	<a href="#">Certification of Chief Executive Principal Officer, pursuant to Rule 13a-14(a) or 15(d)-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2*	<a href="#">Certification of Chief Financial Principal Officer, pursuant to Rule 13a-14(a) or 15(d)-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1*	<a href="#">Certification of Chief Executive Principal Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2*	<a href="#">Certification of Chief Financial Principal Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
97.1+*	<a href="#">Compensation Recovery Policy</a>
101*	The following financial information from the Registrant's Annual Report on Form 10-K for the year ended <b>December 31, 2022</b> December 31, 2023 formatted in Extensible Business Reporting Language (XBRL): (i) Balance Sheets, (ii) Statements of Operations, (iii) Statements of Changes in Stockholders' Equity, (iv) Statements of Cash Flows and (v) Notes to Financial Statements.
104*	The cover page from the <b>Company's Registrant's</b> Annual Report on Form 10-K for the year ended <b>December 31, 2022</b> December 31, 2023, formatted in Inline XBRL

+ Management contract or compensatory arrangement.

\* Filed herewith

\*\* Portions of this exhibit filed herewith containing confidential information have been omitted pursuant to a confidential treatment order granted by the SEC pursuant to Rule 406 under the Securities Act. Confidential information has been omitted from the exhibit in places marked "[" and "]" and has been filed separately with the SEC.

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### **Item 16. Form 10-K Summary**

Not applicable.

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## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, on March 13, 2023.

**Myomo, Inc.,**

By:

/s/ Paul R. Gudonis

Date: March 7, 2024

**Paul R. Gudonis**

**Chairman, Chief Executive Officer and President  
(Principal Executive Officer)**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Paul R. Gudonis <b>Paul R. Gudonis</b>	Chief Executive Officer and Chairman of the Board <i>(Principal Executive Officer)</i>	March 13, 2023 7, 2024
/s/ David A. Henry <b>David A. Henry</b>	Chief Financial Officer <i>(Principal Financial and Accounting Officer)</i>	March 13, 2023 7, 2024
/s/ Amy Knapp <b>Amy Knapp</b>	Director	March 13, 2023 7, 2024
/s/ Thomas A. Crowley, Jr. <b>Thomas A. Crowley, Jr.</b>	Director	March 13, 2023 7, 2024
/s/ Thomas F. Kirk <b>Thomas F. Kirk</b>	Director	March 13, 2023 7, 2024
/s/ Milton M. Morris <b>Milton M. Morris</b>	Director	March 13, 2023 7, 2024
/s/ Yitzchak Jacobovitz <b>Yitzchak Jacobovitz</b>	Director	March 13, 2023 7, 2024

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<a href="#">Consolidated Balance Sheets as of December 31, 2022 December 31, 2023 and 2021 2022</a>	F-3
<a href="#">Consolidated Statements of Operations for the years ended December 31, 2022 December 31, 2023 and 2021 2022</a>	F-4
<a href="#">Consolidated Statements of Comprehensive Loss for the years ended December 31, 2022 December 31, 2023 and 2021 2022</a>	F-5
<a href="#">Consolidated Statements of Changes in Stockholders' Equity for the years ended December 31, 2022 December 31, 2023 and 2021 2022</a>	F-6
<a href="#">Consolidated Statements of Cash Flows for the years ended December 31, 2022 December 31, 2023 and 2021 2022</a>	F-7
<a href="#">Notes to Consolidated Financial Statements</a>	F-8

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Shareholders and Board of Directors of

**Myomo, Inc.****Opinion on the Financial Statements**

We have audited the accompanying consolidated balance sheets of Myomo, Inc. and subsidiary (the "Company") as of December 31, 2022 December 31, 2023 and 2021 2022, the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity and cash flows for each of the two years in the period ended December 31, 2022 December 31, 2023, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 December 31, 2023 and 2021 2022, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2022 December 31, 2023, in conformity with accounting principles generally accepted in the United States of America.

**Explanatory Paragraph – Going Concern**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As more fully described in Note 1, the Company has incurred significant losses and needs to raise additional funds to meet its obligations and sustain its operations. These conditions raise substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

#### **Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

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Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

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#### **Critical Audit Matters**

Critical audit matters are matters arising from the current period audit of the financial statements that were communicated or required to be communicated to the audit committee and that: (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. We determined that there are no critical audit matters.

/s/ Marcum LLP

Marcum LLP

We have served as the Company's auditor since 2016.

New York, NY

March 13, 2023

7, 2024

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**MYOMO, INC.**  
**CONSOLIDATED BALANCE SHEETS**

<u>December 31,</u>	<u>2022</u>	<u>2021</u>	<u>2023</u>	<u>2022</u>
<b>ASSETS</b>				
<b>Current Assets:</b>				
Cash and cash equivalents	15,524,37			
	\$ 5,345,967	\$ 8	\$ 6,871,306	\$ 5,345,967
Short-term investments			1,994,662	
Accounts receivable, net	1,896,163	1,960,037	2,382,658	1,896,163
Inventories, net	1,399,865	808,308	1,803,507	1,399,865
Prepaid expenses and other current assets	573,462	799,164	598,850	573,462
<b>Total Current Assets</b>	<b>19,091,88</b>			
	9,215,457	7	13,650,983	9,215,457
Equipment, net	194,283	275,289	175,794	194,283
Operating lease assets with right-of-use	508,743	632,906	663,554	508,743
Investment in Jiangxi Myomo Medical Assistive Appliance Co. Ltd.	132,489	-	—	132,489
Other Assets	111,034	95,330	91,237	111,034
<b>Total Assets</b>	<b>10,162,00</b>	<b>20,095,41</b>		
	\$ 6	\$ 2	\$ 14,581,568	\$ 10,162,006
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>				
<b>Current Liabilities:</b>				
Accounts payable and accrued expenses	3,179,362	3,910,639	4,885,944	3,179,362
Current operating lease liability	353,701	333,380	486,143	353,701
Income taxes payable	48,220	39,145	96,461	48,220
Deferred revenue	20,653	249	8,510	20,653
<b>Total Current Liabilities</b>	<b>3,601,936</b>	<b>4,283,413</b>	<b>5,477,058</b>	<b>3,601,936</b>
Non-current operating lease liability	200,207	401,622	115,160	200,207
Deferred revenue	498	1,246	—	498
<b>Total Liabilities</b>	<b>3,802,641</b>	<b>4,686,281</b>	<b>5,592,218</b>	<b>3,802,641</b>
<b>Commitments and Contingencies</b>	—	—		
<b>Commitments and Contingencies - Note 10</b>			—	—
<b>Stockholders' Equity:</b>				

Preferred stock, \$0.0001 par value; 10,000,000 shares authorized; no shares issued or outstanding				
Common stock par value \$0.0001 per share 65,000,000 shares authorized; 7,750,635 and 6,869,753 shares issued as of December 31, 2022 and 2021, respectively, and 7,750,608 and 6,869,726 shares outstanding as of December 31, 2022 and 2021, respectively.	775	687		
Common stock par value \$0.0001 per share 65,000,000 shares authorized; 27,135,061 and 7,750,635 shares issued as of December 31, 2023 and 2022, respectively, and 27,135,034 and 7,750,608 shares outstanding as of December 31, 2023 and 2022, respectively.			2,715	775
Additional paid-in capital	95,105,07	93,537,80		
	1	7	105,840,239	95,105,071
Accumulated other comprehensive income (loss)	43,227	(60,677)		
Accumulated other comprehensive income			83,669	43,227
Accumulated deficit	(88,783,2	(78,062,2		
	44)	22)	(96,930,809)	(88,783,244)
Treasury stock, at cost; 27 shares of common stock	(6,464)	(6,464)	(6,464)	(6,464)
<b>Total Stockholders' Equity</b>		15,409,13		
	6,359,365	1	8,989,350	6,359,365
<b>Total Liabilities and Stockholders' Equity</b>	10,162,00	20,095,41		
	\$ 6	\$ 2	\$ 14,581,568	\$ 10,162,006

*The accompanying notes are an integral part of the consolidated financial statements.*

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### MYOMO, INC. CONSOLIDATED STATEMENTS OF OPERATIONS

<u>For the years ended December 31,</u>	<u>2022</u>	<u>2021</u>	<u>2023</u>	<u>2022</u>
<b>Revenue</b>				
Product Revenue	\$ 14,555,229	\$ 13,856,374	\$ 17,476,238	\$ 14,555,229
License Revenue	1,000,000	-	1,764,920	1,000,000
	15,555,229	13,856,374	19,241,158	15,555,229

<b>Cost of revenue</b>	5,302,133	3,544,097	6,058,775	5,302,133
<b>Gross profit</b>	10,253,096	10,312,277	13,182,383	10,253,096
<b>Operating expenses:</b>				
Research and development	2,482,489	2,557,367	2,636,487	2,482,489
Selling, general and administrative	18,442,811	18,022,975	18,777,445	18,442,811
	20,925,300	20,580,342	21,413,932	20,925,300
<b>Loss from operations</b>	(10,672,20)	(10,268,06)		
	4)	5)	(8,231,549)	(10,672,204)
<b>Other expense (income)</b>				
Interest income	(88,731)	(1,612)		
Interest income, net			(410,274)	(88,731)
Other expense, net	1,101	16,948	785	1,101
Loss on equity investment	66,511	-	169,503	66,511
	(21,119)	15,336	(239,986)	(21,119)
<b>Loss before income taxes</b>	(10,651,08)	(10,283,40)		
	5)	1)	(7,991,563)	(10,651,085)
<b>Income tax expense</b>	69,937	88,928	156,002	69,937
<b>Net loss</b>	(10,721,02)	(10,372,32)		
	\$ 2)	\$ 9)	\$ (8,147,565)	\$ (10,721,022)
Deemed dividend on discounting and repricing of warrants	-	(639,953)		
<b>Net loss attributable to common stockholders</b>	(10,721,02)	(11,012,28)		
	\$ 2)	\$ 2)		
<b>Weighted average number of common shares outstanding:</b>				
Basic and diluted	7,051,447	5,830,353	29,499,341	7,051,447
<b>Net loss per share available to common stockholders:</b>				
Basic and diluted	\$ (1.52)	\$ (1.89)	\$ (0.28)	\$ (1.52)

*The accompanying notes are an integral part of the consolidated financial statements.*

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**MYOMO, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**

For the years ended December 31,	2022	2021	2023	2022
Net loss	\$ (10,721,022)	\$ (10,372,329)	\$ (8,147,565)	\$ (10,721,022)
Other comprehensive gain (loss), net of tax:				
Foreign currency translation gain (loss)	103,904	(47,987)		
Other comprehensive gain (loss)	103,904	(47,987)		
Other comprehensive income, net of tax:				
Foreign currency translation gain			41,199	103,904
Unrealized loss on short-term investments			(757)	—
Total other comprehensive income			40,442	103,904
Comprehensive loss	\$ (10,617,118)	\$ (10,420,316)	\$ (8,107,123)	\$ (10,617,118)

*The accompanying notes are an integral part of the consolidated financial statements.*

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**MYOMO, INC.**  
**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**  
For the years ended **December 31, 2022 December 31, 2023 and 2021 2022**

Add										Total									
itio										Total									
nal										Additional									
Co										Total									
Common	pa	nsiv	ulat	Treasury	old					Common stock									
stock	d-in	e	ed	stock	ers'					paid-in									
										Comprehensive									
										Accumulated									
										Treasury stock									
										Stockholders'									
										(loss)									
										s)									
Sh	Am	inc		Sh	Am														
are	oun	capi	om	defi	are	oun	Equ			Shares	Amount	capital	(loss) income	deficit	Shares	Amount	Equity		
s	t	tal	e	cit	s	t	ity												

Balance,	7	(6	1
January 1,	4,	9,	7,
2021	5	2	6
	9	7	(1 8
	3,	3,	2, 9,
	1	4	9 6 8
	8	5	6 9 9 2 6 7
	4	\$ 7	\$ 4 \$ 0) \$ 3) 7 \$ 4) \$ 4
Exercise of		1	1
warrants, net	2,	2,	2,
of offering	0	0	0
costs of	1	6	6
\$349,400	5,	7,	7,
	2	2	6 8
	4	0	6 6
	3	4	1 — — — — 5
Common	1		
stock issued	5		
upon vesting	3,		
of restricted	3		
stock units	5	1 (1	
	7	5 5)	— — — — —
Proceeds			
from		1,	1,
issuances	1	0	0
under at-	0	9	9
market sales	7,	9,	9,
facility, net of	5	7	8
offering costs	0	1 8	0
of \$152,853	0	1 9	— — — — 0
Restricted	3		
stock vested	0	— — — — —	
Exercise of	4		
stock options	3		
	9	— — — — —	
Stock-based		1,	1,
compensation		0	0
		9	9
		6,	6,
		4	4
		0	0
	— —	8	— — — — 8

Unrealized	(4	(4
loss on	7,	7,
foreign	9	9
currency	8	8
—	—	—
Net loss	(1	(1
	0,	0,
	3	3
	7	7
	2,	2,
	3	3
	2	2
—	—	—
Balance,	9	(7
December 31, 2021	6,8	3,8,
	8	5,0
	6	3,(6,6
	9,	7,0,2,(6,9,
	7,6,8,6,2,2,4,1	
	5,8,0,7,2,2,6,3	
	3,7,7,7,2,7,4,1	
Balance,		
January 1, 2022		6,869,753
Exercise of warrants	6	687
	6	93,537,807
	6	(60,677)
	—	(78,062,222)
	—	27
	—	(6,464)
	—	15,409,131
Common stock issued upon vesting of restricted stock units	1,3,7,3,0,1,(1,2,4,4)	666
		—
		—
		—
		—
Common stock issued for commitment fee under equity line of credit	5,0,0,0,5,0,5,(5)	137,302
		14
		(14)
		—
		—
		—
Common stock issued for commitment fee under equity line of credit	5,0,0,0,5,0,5,(5)	50,000
		5
		(5)
		—
		—
		—
		—

Proceeds	6	3	3													
from	9	7	7													
issuances	2,	6,	6,													
under equity	9	7	8													
line of credit	1	6	8													
net of costs	4	9	9	—	—	—	—	—	—	—	—	—	—	—	8	
Proceeds																
from																
issuances																
under equity																
line of credit,																
net of costs															376,858	
Stock-based		1,	1,													
compensation		1	1													
		9	9													
		0,	0,													
		4	4													
		9	9													
	—	—	4	—	—	—	—	—	—	—	—	—	—	—	1,190,494	
Unrealized		1	1													
gain on		0	0													
foreign		3,	3,													
currency		9	9													
		0	0													
	—	—	—	4	—	—	—	—	—	—	—	—	—	—	103,904	
Net Loss		(1	(1													
		0,	0,													
		7	7													
		2	2													
		1,	1,													
		0	0													
		2	2													
	—	—	—	—	2)	—	—	—	—	—	—	—	—	—	(10,721,022)	
Balance,		9	(8													
December 31,	7,	5,	8,													
2022	7	1	7													
	5	0	4	8												
	0,	5,	3,	3,												
	6	7	0	2	2											
	3	7	7	2	4	2										
	5	\$ 5	\$ 1	\$ 7	\$ 4)	7	\$ 4)	\$ 5								
	5	5	1	7	4)	7	4)	5	7,750,635	775	95,105,071	43,227	(88,783,244)	27	(6,464)	6,359,365

Common stock issued in public offerings (net of offering costs	\$996,269)	18,582,408	1,858	6,529,824	—	—	—	—	6,531,682
Proceeds from sale of 8,750,926 pre-funded warrants (net of offering costs	\$273,236)			3,097,940	—	—	—	—	3,097,940
Common stock issued upon vesting of restricted stock units, net of 16,744 shares withheld for taxes		322,611	34	(8,150)	—	—	—	—	(8,116)
Exercise of prefunded warrants	479,407	48		(48)	—	—	—	—	—
Stock-based compensation	—	—	1,115,602	—	—	—	—	—	1,115,602
Unrealized gain on foreign currency	—	—	—	41,199	—	—	—	—	41,199
Unrealized loss on short-term investments	—	—	—	(757)	—	—	—	—	(757)
Net Loss	—	—	—	—	(8,147,565)	—	—	—	(8,147,565)
Balance, December 31, 2023	27,135,061	\$ 2,715	\$ 105,840,239	\$ 83,669	\$ (96,930,809)	27	\$ (6,464)	\$ 8,989,350	

*The accompanying notes are an integral part of the consolidated financial statements.*

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**MYOMO, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

<u>For the years ended December 31,</u>	<u>2022</u>	<u>2021</u>	<u>2023</u>	<u>2022</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net loss	(10,721,02	(10,372,32	\$ (8,147,565)	\$ (10,721,022)
	\$ 2)	\$ 9)		
Adjustments to reconcile net loss to net cash used in operations:				
Depreciation	192,799	145,995	164,306	192,799
Stock-based compensation	1,190,494	1,096,408	1,115,602	1,190,494
Loss on disposal of asset	-	202		
Accretion of discount on short-term investments			(110,788)	—
Bad debt expense	26,075	—	28,401	26,075
Loss on equity investment	66,511	—	169,503	66,511
Amortization of right-of-use assets	349,828	189,968	353,375	349,828
Other non-cash charges	111,755	(19,929)		
Other non-cash changes			(38,809)	111,755
<b>Changes in operating assets and liabilities:</b>				
Accounts receivable	47,445	(1,046,282)	(495,599)	47,445
Inventories	(607,400)	(118,222)	(384,781)	(607,400)
Prepaid expenses and other current assets	224,677	(323,644)	(115,523)	224,677
Other assets	(15,704)	—	19,797	(15,704)
Accounts payable and accrued expenses	(711,898)	1,113,235	1,790,133	(711,898)
Operating lease liabilities	(406,759)	(92,525)	(460,790)	(406,759)
Deferred revenue	19,657	(2,512)	(12,642)	19,657
Other liabilities	—	(118,060)		
Income tax payable			(47,384)	—
Net cash used in operating activities	(10,233,54			
	2)	(9,547,695)		
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
			(6,172,764)	(10,233,542)

Purchases of equipment	(111,793)	(326,462)	(145,816)	(111,793)
Investment in China Joint Venture	(199,000)	-		
Investment in China joint venture			-	(199,000)
Maturities of short-term investments			4,000,000	-
Purchases of short-term investments			(5,883,749)	-
Net cash used in investing activities	(310,793)	(326,462)	(2,029,565)	(310,793)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Proceeds from issuances under equity line of credit net of costs	376,858	-		
Proceeds from exercise of warrants		12,067,86		
	-	5		
Proceeds from at the market offering, net of offering costs	-	1,099,801		
Proceeds from issuances under equity line of credit, net of costs			-	376,858
Net settlement of vested restricted stock units to fund related employee statutory tax withholding			(8,116)	-
Proceeds from sale of common stock and pre-funded warrants, net of offering costs			9,721,573	-
Net cash provided by financing activities	13,167,66			
	376,858	6	9,713,457	376,858
Effect of foreign exchange rate changes on cash	(10,934)	(10,392)	14,211	(10,934)
Net (decrease) increase in cash and cash equivalents	(10,178,41)			
	1)	3,283,117		
Net increase (decrease) in cash and cash equivalents			1,525,339	(10,178,411)
Cash and cash equivalents beginning of year	15,524,37	12,241,26		
	8	1	5,345,967	15,524,378
Cash and cash equivalents end of year		15,524,37		
	\$ 5,345,967	\$ 8	\$ 6,871,306	\$ 5,345,967
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION</b>				
Cash paid during the period for income taxes	\$ 4,889	\$ -	\$ -	\$ 4,889
Non-cash financing and investing activities				
Issuance of 50,000 shares of common stock as commitment fee for future financing	\$ 5	\$ -	\$ -	\$ 5
Right of use assets obtained in exchange for lease obligations	\$ 225,665	\$ 654,091	\$ 508,186	\$ 225,665
Deferred offering costs incurred in a prior period to additional paid in capital			\$ (91,952)	\$ -

*The accompanying notes are an integral part of the consolidated financial statements.*

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**MYOMO, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1 — Description of Business**

Myomo Inc. ("Myomo" or the "Company") is a wearable medical robotics company that develops, designs, and produces myoelectric orthotics for people with neuromuscular disorders. The MyoPro® myoelectric upper limb orthosis product is registered with the Food and Drug Administration as a Class II medical device. The Company provides the device to patients and bills their insurance companies directly, sometimes utilizing the clinical services of orthotics and prosthetics ("O&P") providers for which they are paid a fee. The Company sells the product to O&P providers around the world and the Veterans Health Administration ("VA" ("VA"). The Company was incorporated in the State of Delaware on September 1, 2004 and is headquartered in Boston, Massachusetts.

Pursuant to an amended and restated certificate of incorporation, the Company is authorized to issue up to 75,000,000 shares of stock, consisting of 65,000,000 shares of common stock, par value \$0.0001, and 10,000,000 shares of undesignated Preferred Stock, par value of \$0.0001.

**Going Concern and Management Plans Liquidity**

The Company incurred net losses of approximately \$10,721,000 8,147,600 and \$10,372,000 10,721,000 during the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively, and has an accumulated deficit of approximately \$88,783,000 96,930,800 and \$78,062,000 88,783,200 at December 31, 2022 December 31, 2023 and 2021, 2022, respectively. Cash used in operating activities was approximately \$10,234,000 6,172,800 and \$9,548,000 10,233,500 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively. The Company's historical losses and cash used in operations are indicators of substantial doubt regarding the Company's ability to continue as a going concern.

The Company has historically funded its operations through financing activities, including raising equity and debt capital. On January 19, 2024, the Company completed a registered direct equity offering, pursuant to which it sold 1,354,218 shares of common stock and 224,730 pre-funded warrants at \$3.80 per share, or \$3.7999 per pre-funded warrant, generating net proceeds after fees and expenses of approximately \$5.4 million. (See Note 12 - Subsequent Events for further discussion.) On August 29, 2023, The Company completed a public equity offering, selling 5,413,334 shares of common stock and 1,920,000 pre-funded warrants at \$0.60 per share, or at \$0.5999 per pre-funded warrant, generating proceeds after fees and expenses of approximately \$3.9 million. In January 2023, the Company completed an a public equity offering under pursuant to which it sold 13,169,074 shares of common stock and 6,830,926 pre-funded warrants at \$0.325 per share, or \$0.3249 per pre-funded warrant, generating proceeds after fees and expenses of approximately \$5.7 million. (See Note 13 7 - Subsequent Events Common Stock for further discussion.) During the fourth quarter of 2022, the Company sold 692,914 shares of common stock under a Common Stock Purchase Agreement (the "Purchase Agreement" "Purchase Agreement") with Keystone Capital Partners, ("Keystone" LLC ("Keystone"), generating net proceeds after fees and expenses of approximately \$0.4 million. (See Note 7 - Common Stock for further discussion.) During 2021, \$12.1 million was received from the exercise of warrants, including \$4.8 million in net proceeds in October 2021 from a transaction to induce the exercise of warrants issued in conjunction with its equity offering in February 2020 at a reduced exercise price of \$5.00 per share. These financing activities in addition to funding of \$1.1 million received from sales of common stock under an At Market Sales Facility, or ATM facility, with Alliance Global Partners ("AGP") during the year ended December 31, 2021 is enabling have enabled the Company to sustain its operations. Considering the Company's cash balance as of December 31, 2022 and net proceeds from the equity offering in January 2023 and its cash used from operations during the year ended December 31, 2022, management believes there is substantial doubt regarding its ability to continue as a going concern.

Management's operating plans are primarily focused on growing its revenues and limiting operating expenses through focusing increasing its clinical, reimbursement and reimbursement efforts on manufacturing capacity in order to serve a higher volume of Medicare Part B patients with insurers that have previously reimbursed for the MyoPro. in 2024. The Company believes that based on the growth in its patient pipeline during 2022 provides an opportunity to accelerate its revenue growth in 2023. The Company has stopped activities geared toward increasing the number of payers that will reimburse for its products until the Company receives reimbursement for its products provided to Medicare Part B beneficiaries from final fees published by the Centers for Medicare and Medicaid Services ("CMS" ("CMS") on February 29, 2024 for the Company's products (See Note 12 - Subsequent Events for further discussion), or CMS states in intention to reimburse for its products. As a result, if the Company has undertaken cost reduction activities, including is able to hire at least 50 to 60 additional employees during the reduction first half of approximately 12% of 2024 as planned to increase its workforce in January 2023. This clinical, reimbursement and other cost reduction efforts are expected manufacturing capacity, and its supply chain is able to reduce meet its operating expense run-rate by approximately \$2.0 million in 2023. With respect to CMS, volume requirements without disruption, the Company expects to meet with the medical directors of CMS's administrative billing contractors, referred to as the DME MAC's, before the end of the first quarter of 2023 to discuss coverage and reimbursement, and begin submitting claims on behalf of Medicare Part B beneficiaries as soon as practical thereafter. The Company's success is dependent upon reimbursement of its products by insurance companies and government-controlled health care plans such as Medicare and Medicaid in the United States and Statutory Health Insurance plans in Germany, which could prevent our revenues from growing to the level necessary to believes it can achieve cash flow breakeven. If public health restrictions break even on travel and patient interaction are broadly reinstated in 2023 due to new variants a quarterly basis by the fourth quarter of COVID-19 and

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increasing infections in 2024. In addition, the U.S., that will have an adverse effect on the Company's business, and it is possible that the Company will need to raise additional capital to sustain its operations through 2023.

The Company believes that it has access to capital resources through payment of the technology license fee associated with its joint venture in China, possible public or private equity offerings, exercises of outstanding warrants, additional debt financings, or other means; however, the Company may be unable to raise sufficient additional capital when it needs it or raise capital on favorable terms. As part of the Company's equity offering in January 2023, the Company agreed to not sell any shares of its common stock to Keystone under the Purchase Agreement or under its ATM Facility for a period of one year from the closing of the offering. The Company has remaining capacity under its Purchase Agreement with Keystone of approximately 1.0 million shares and approximately \$0.3 million under its ATM Facility. However, due to its public float, the amount of securities the Company may sell from time to time under the registration statement which registered the ATM Facility may be subject to the limitations imposed by General Instruction I.B.6 of Form S-3. Further, selling the full \$5 million to Keystone under the Purchase Agreement requires approval from shareholders to sell shares in excess of the exchange cap under the rules of the NYSE American. Should the Company consider debt means. Debt financing such a transaction may require the Company to pledge certain assets and enter into covenants that could restrict certain business activities or its ability to incur further indebtedness and may contain other terms that are not favorable to the Company or its stockholders or stockholders. Based on the Company. Company's latitude as to the timing and amount of certain expenses, its current cash position and the net proceeds received from the equity offering completed in January 2024, the Company believes that the substantial doubt is mitigated as of the issuance date of these financial statements.

If Based upon its expected cash flows and the funds raised in the January 2024 equity offering, the Company is unable to obtain adequate funds on reasonable terms, believes that its available cash will fund its operations for at least the Company may be required to significantly curtail or discontinue operations or obtain funds by entering into financing agreements on unattractive terms. next twelve months from the issuance date of these

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financial statements. There can be no assurance that the Company will be successful in implementing its operating plans.

## Note 2 — Summary of Significant Accounting Policies

### **Basis of Consolidation**

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiary Myomo Europe GmbH. All significant intercompany balances and transactions are eliminated.

### **Reclassifications**

Certain prior year amounts have been reclassified to conform to current year's presentation, which management does not consider to be material.

### **Comprehensive Loss**

Comprehensive loss includes all changes in equity during a period, except those resulting from investments by stockholders and distributions to stockholders. The Company's comprehensive loss includes changes in foreign currency translation adjustments, adjustments and unrealized gains and losses on short term investments. There were no reclassifications was a reclassification which management does not consider to be material out of accumulated other comprehensive loss income (loss) to other (income) expense related to realized gains or losses on short-term investments in the years ended year ending December 31, 2023. There were no reclassifications in the year ending December 31, 2022 and 2021.

### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America require management to make estimates and assumptions that affect certain reported amounts and disclosures. These estimates and assumptions are reviewed on an on-going basis and updated as appropriate. Actual results could differ from those estimates. The Company's estimates include deferred income tax valuation allowances, valuation of stock-based compensation, warranty obligations and reserves for slow-moving inventory.

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### **Cash, and Cash Equivalents and Short-Term Investments**

The Company considers all highly liquid investments with an original maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents consist principally of deposit accounts and money market accounts at December 31, 2022 December 31, 2023 and 2021. 2022.

The Company considers all investments with an original maturity of greater than three months to be short-term investments. Short-term investments primarily consists of commercial paper and U.S. Treasury Bills and are carried on the consolidated balance sheets at fair value. Short-term investments as of December 31, 2023 consists of U.S. Treasury Bills, which are classified as held-maturity, and Certificates of Deposit totaling approximately \$1,994,700 as of December 31, 2023, there were no Short-term investments as of December 31, 2022. The Company determines the appropriate balance sheet classification of its investments at the time of purchases and evaluates the classification at the date of purchase. Unrealized gains and losses on short-term investments are recorded to accumulated other comprehensive income on the consolidated balance sheets and other gain (loss) on the consolidated statements of comprehensive loss. Once unrealized gains and losses become realized, they are reclassified from other comprehensive gains and losses to cost of goods sold.

#### **Accounts Receivable and Allowance for Doubtful Accounts Credit Losses**

The Company reports accounts receivable at invoiced amounts less an allowance for doubtful accounts. The Company evaluates its accounts receivable on a continuous basis, and if necessary, establishes an allowance for doubtful accounts based on a number of factors, including current credit conditions and customer payment history. The Company does not require collateral or accrue interest on accounts receivable and credit terms are generally 30 days. At December 31, 2022 December 31, 2023 and 2021, 2022, the Company recorded an allowance for doubtful credit losses accounts which was immaterial to the financial statements.

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#### **Inventories**

Inventories are recorded at the lower of average cost or net realizable value. Average cost approximates valuation on a first-in, first-out basis. The Company reduces the carrying value of inventory for those items that are potentially excess, obsolete or slow-moving based on changes in customer demand, technology developments or other economic factors. In addition, the carrying value of consigned inventories is reduced units used by patients on a trial basis only includes the value of MyoPro devices motor units that will not can be re-used. Orthotic components on trial units are expensed to cost of goods sold based on historical experience. once consumed.

#### **Equipment**

Equipment is stated at historical cost, net of accumulated depreciation and is depreciated using the straight-line method over the estimated useful lives of the related assets, generally three years. Leasehold improvements are depreciated amortized using the straight-line method over the shorter of the lease term or the estimated useful life. Expenditures for maintenance and repairs, which do not extend the economic useful life of the related assets, are charged to operations as incurred, and expenditures, which extend the economic life, are capitalized. When assets are retired, or otherwise disposed of, the costs and related accumulated depreciation or amortization are removed from the accounts and any gain or loss on disposal is recognized.

Demonstration units are sometimes provided by the Company to its indirect sales channel for marketing and patient evaluation purposes. These units are manufactured by the Company and are expensed in the consolidated statements of operations to selling, general and administrative expense. During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, the Company charged to operations

approximately \$19,700 37,200 and \$22,200 19,700, respectively, for these units. **Demonstrations** Demonstration units provided to its own sales force are capitalized as equipment on the Company's **consolidated** balance sheet.

Test units are provided to research and development staff to use in their development process and to end users who are given free units to act as testers so that research and development staff can evaluate and understand their use by patients. A primary objective of these units is to determine when and under what conditions they fail, at which time they are analyzed for cause of failure and then scrapped. These units are expensed in the statements of operations as part of research and development expense. During the year ended **December 31, 2022** **December 31, 2023** and **2021** **2022** the Company charged to operations approximately \$11,200 36,700 and \$17,400 11,200, respectively, for these units.

#### ***Impairment of Long-Lived Assets***

The Company assesses the recoverability of its long-lived assets, including equipment when there are indications that the assets might be impaired. When evaluating assets for potential impairment, the Company compares the carrying value of the asset to its estimated undiscounted future cash flows. If an asset's carrying value exceeds such estimated undiscounted cash flows, the Company records an impairment charge for the difference. Based on its assessments, the Company did not record any impairment charges for the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022**.

#### ***Leases***

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The Company accounts for leases under Accounting Standards Topic 842 ("ASC 842"). The Company assesses whether a contract is or contains a lease at inception of the contract and **leases**, recognizes right-of-use assets and corresponding lease liabilities at the lease commencement date, except for short-term leases, which are under one year, and leases of low value. For these leases, the Company recognizes the lease payments as an operating expense on a straight-line basis over the term of the lease.

#### ***Joint Venture***

On March 28, 2022, the Company invested cash consideration of \$199,000 for a 19.9% ownership stake in Jiangxi Myomo Medical Assistive Appliance Co., Ltd. (the "JV Company"), a company headquartered in China that is majority-owned by Beijing Ryzur Medical Investment Co., Ltd. ("Ryzur Medical"). **Under the Agreements**, **In addition**, we and the JV Company have entered into a ten-year agreement to license our intellectual property, including recently issued

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patents in China and Hong Kong, and purchase MyoPro Control System units from us. The JV Company will manufacture and sell the Company's current and future products in greater China, including Hong Kong, Macau and Taiwan, and has begun limited operations. The Company accounts for its investment in the JV Company under the equity method because the Company exerts significant influence over its management. The investment is included in total assets on the consolidated balance sheet. **There** **As a result of recording its share of losses in**

the JV Company, the investment was no impairment charge for the year ended December 31, 2022, associated with this equity investment. written off as of December 31, 2023. The Company records its share of the JV Company's earnings in its consolidated statement of operations in other expense (income). The Company will continue to record its share of losses going forward to the extent there are other assets on the consolidated balance sheet from the JV Company. The Company recorded a loss on equity investment of approximately \$169,500 and \$66,500 for the years ended of December 31, 2022, December 31, 2023 and 2022, respectively.

### **Revenue Recognition**

The Company accounts for revenue under ASC 606, "Revenue from Contracts with Customers" and all the related amendments (Topic 606). Revenues under Topic 606 are required to be recognized either at a "point in time" or "over time," depending on the facts and circumstances of the arrangement and are evaluated using a five-step model. Generally, the Company recognizes revenue at a point in time.

The Company recognizes revenue after applying the following five steps:

- 1) Identification of the contract, or contracts, with a customer,
- 2) Identification of the performance obligations in the contract, including whether they are distinct within the context of the contract
- 3) Determination of the transaction price, including the constraint on variable consideration
- 4) Allocation of the transaction price to the performance obligations in the contract; and
- 5) Recognition of revenue when, or as, performance obligations are satisfied.

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Revenue is recognized when control of these services is transferred to its customers, in an amount that reflects the consideration the Company expects to be entitled to in exchange for those services.

### **Product Revenue**

The Company derives the majority of its revenue from direct billing. The Company also derives revenue from the sale of its products to O&P clinical consulting services of orthotics and prosthetics or "O&P" providers in the U.S. United States and internationally and the VA. Under direct billing, the Company recognizes revenue when all of the following criteria are met:

- (i) The product has been delivered to the patient, including completion of initial instruction on its use.
- (ii) Collection is deemed probable and it has been determined that a significant reversal of the revenue to be recognized is not deemed probable when the uncertainty associated with the variable consideration is resolved; and
- (iii) The amount to be collected is estimable using the "expected value" estimation techniques, or the "most likely amount" as defined in A 606.

For revenue derived from certain insurance companies where the Company has demonstrated sufficient payment history, the Company recognizes revenue when it receives a pre-authorization from the insurance company and control passes to the patient upon delivery of the device in an amount that reflects the consideration the Company expect to receive in exchange for the device. During 2022 2023 and 2021, 2022, the Company made such a determination for certain insurers. These insurers represented approximately 44 66% and 39 44% of direct billing channel revenue in 2022 2023 and 2021, 2022, respectively.

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Depending on the timing of product deliveries to customers, which is when cost of revenue must be recorded, and when the Company meets the criteria to record revenue, there may be fluctuations in gross margin on an ongoing basis. During the years ended **December 31, 2022** December 31, 2023 and **2021, 2022**, the Company recognized revenue of approximately **\$2,044,000** **1,554,800** and **\$2,050,300** **2,044,000**, respectively, from O&P providers or other third-party payers for which costs related to the completion of the Company's performance obligations were recorded in a prior period.

For revenues derived from O&P providers, the VA, and distributors, the Company recognizes revenue when control passes to the customer in an amount that reflects the consideration the Company expects to receive in exchange for those services, which may be recognized upon shipment or upon delivery, depending on the terms of the arrangement, provided that persuasive evidence of an arrangement exists, there are no uncertainties regarding customer acceptance and collectability is deemed probable. In certain cases, the Company ships its products to O&P providers pending reimbursement from non-government, third-party payers. As a result of this arrangement, elements of the revenue recognition criteria have not been met upon shipment. In this instance, the Company recognizes revenue when payment has been received, as then all of the revenue recognition criteria has been met.

The Company has elected to record taxes collected from customers on a net basis and does not include tax amounts in revenue or cost of revenue.

#### **License Revenue**

If a license to the Company's intellectual property is determined to be distinct from the other performance obligations identified in the arrangement, the Company recognizes revenue allocated to the license when the license is transferred to the customer, the customer is able to use and benefit from the license, and collectability is deemed probable.

On January 21, 2021, the Company entered into a Technology License Agreement (the "Agreement") with the JV Company. Under the Agreement, the Company is entitled to receive an upfront license fee of \$2.7 million, of which **\$1.7** million and **\$1.0** million has been paid and recognized as licensee revenue during the **year** years ended **December 31, 2022** December 31, 2023 and 2022, respectively, and is paid in full. In addition, the Company is entitled to receive a guaranteed minimum payment for purchase of MyoPro Control Units for a period of ten years from the effective date of the Agreement. The Company will recognize revenue on the remaining amount due these amounts upon payment as the fee has not been paid according the invoicing to the contractual terms and JV Company so long as a result collectability is not deemed to be assured.

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#### **Contract Balances**

The timing of revenue recognition may differ from the timing of payment by customers. The Company records a receivable when revenue is recognized prior to payment and there is an unconditional right to payment. Alternatively, when payment precedes the provision of the related services, the Company records deferred revenue until the performance obligations are satisfied. The Company had approximately \$21,200 8,500 and \$1,500 21,200 of deferred revenue as of December 31, 2022 December 31, 2023 and 2021, 2022, respectively. The Company expects the current portion of deferred revenue as of December 31, 2022 to be recognized in 2023.

#### ***Disaggregated Revenue from Contracts with Customers***

The following table presents revenue by major source:

	2022	2021	2023	2022
Clinical/medical providers	\$ 4,841,424	\$ 3,186,248	\$ 5,128,864	\$ 3,841,424
Direct-to-patient	10,713,805	10,670,126	12,347,374	10,713,805
License revenue	1,000,000	-	1,764,920	1,000,000
Total revenue from contracts with customers	\$ 15,555,229	\$ 13,856,374	\$ 19,241,158	\$ 15,555,229

#### ***Geographic Data***

The Company generated 73% of its revenue from the United States, 16% from Germany, 10% from China and 1% from other international locations for the year ended December 31, 2023. The Company generated 81% of its revenue from the United States, 12% from Germany, 6% from China and 1% from other international locations for the year ended December 31, 2022. The Company generated 89% of its revenue from the United States, 10% from Germany and 1% from other international locations for the year ended December 31, 2021.

#### ***Cost of Revenue***

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In conjunction with the adoption of ASC 606, there are certain cases in which the Company will expense costs when incurred as required by ASC 340-40-25, such as when the Company ships the MyoPro device to O&P providers, or provides the device directly to patients, pending reimbursement from certain third-party payers, which triggers revenue recognition. For the years ended December 31, 2022 December 31, 2023 and December 31, 2021 December 31, 2022, the Company recorded cost of goods sold of approximately \$441,600 65,200 and \$21,400 441,600, respectively, without corresponding revenue. The cost of clinical services by O&P providers for which they are paid a fee in conjunction with devices being sold directly to patients and billing their insurance companies directly are expensed as incurred as required by ASC 340-40-25, as a cost of obtaining a contract. These costs are recorded as sales and marketing expense, with the remaining costs associated with the patient being expensed to cost of revenue.

#### ***Shipping and Handling Costs***

Shipping and handling costs paid by customers are netted against the related shipping costs we incur. The net cost is recorded in cost of revenues. Historically, such costs have not been material.

#### **Income Taxes**

The Company accounts for income taxes under Accounting Standards Codification ASC 740, **Income Taxes** "Income Taxes" ("ASC 740"). Under ASC 740, deferred tax assets and liabilities are determined based on the difference between the financial reporting and tax bases of assets and liabilities and net operating loss and credit carryforwards using enacted tax rates in effect for the year in which the differences are expected to impact taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized.

ASC 740 requires that the tax effects of changes in tax laws or rates be recognized in the financial **statement** **statements** in the period in which the law is enacted.

ASC 740 also clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return.

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Tax benefits claimed or expected to be claimed on a tax return are recorded in the Company's financial statements. A tax benefit from an uncertain tax position is only recognized if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution.

The Company files income tax returns in federal, state and foreign jurisdictions and is no longer subject to examinations by tax authorities for years prior to **2019**, **2020**. Currently, there are no income tax audits in process.

#### **Stock-Based Compensation**

The Company accounts for stock awards to employees by measuring the cost of services received in exchange for the award of equity instruments based upon the fair value of the award on the date of grant. The fair value of that award is then ratably recognized as expense over the period during which the recipient is required to provide services in exchange for that award.

#### **Foreign Currency Translation**

The functional currency of the Company's foreign subsidiary, Myomo Europe GmbH, is the Euro. Foreign exchange translation gains and losses from the Euro to U.S. dollars are included in other comprehensive gain (loss). **gain**. The Company recorded a gain **gains** of approximately **\$103,900** **41,200** and a loss of approximately **\$48,000** **103,900** during the years ended **December 31, 2022** **December 31, 2023** and **2021**, **2022**, respectively, which are included in accumulated other comprehensive income (loss) in the consolidated balance sheets.

**Transaction and translation** **Transactional** foreign exchange gains and losses from a foreign currency to the functional currency are included in selling, general and administrative expenses in the consolidated statement of operations. Such amounts were immaterial for the years ended **December 31, 2022** **December 31, 2023** and **2021**, **2022**. The balance sheet is translated using the spot date on the day of reporting and the income statement is translated monthly using the average rate for the month.

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[Table of Contents](#)**Net Loss per Share**

Basic loss per common share is computed by dividing net loss attributable to common stockholders by the weighted average number of common shares outstanding during the period. Diluted net loss per common share is computed by dividing net loss attributable to common stockholders by the weighted average number of common shares outstanding, plus potentially dilutive common shares. Restricted stock units, stock options and warrants are excluded from the diluted net loss per share calculation when their impact is antidilutive. The Company reported a net loss for the years ended **December 31, 2022** **December 31, 2023** and **2021, 2022**, respectively, and as a result, all potentially dilutive common shares are considered antidilutive for these periods.

Potentially common shares issuable at **December 31, 2022** **December 31, 2023** and **2021, 2022** consist of:

	2022	2021
Options	29,605	31,447
Warrants	680,363	693,643
Restricted stock units	454,447	292,473
<b>Total</b>	<b>1,164,415</b>	<b>1,017,841</b>
	2023	2022
Options	24,529	29,605
Warrants	668,250	680,363
Restricted stock units	1,501,659	454,447
<b>Total</b>	<b>2,194,438</b>	<b>1,164,415</b>

Due to their nominal exercise price of \$0.0001 per share, a total of 8,271,519 outstanding pre-funded warrants as of December 31, 2023 are considered common stock equivalents and are included in weighted average shares outstanding in the accompanying consolidated statements of operations as of the closing dates of the Company's public equity offerings in January 2023 and August 2023, respectively.

**Advertising**

The Company charges the costs of advertising to operating expenses as incurred. Advertising expense amounted to approximately **\$4,069,300** **3,216,100** and **\$3,587,300** **4,069,300** in **2022, 2023** and **2021, 2022**, respectively.

**Research and Development Costs**

The Company expenses research and development costs as incurred. Research and development costs primarily consist of salaries and benefits, facility and overhead costs, and outsourced research activities.

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## Recent Accounting Standards

In October 2023, the FASB issued ASU 2023-06, , "Disclosure Improvements, Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative", that adds 14 of the 27 identified disclosure or presentation requirements to the Codification, each amendment in the ASU will only become effective if the SEC removes the related disclosure or presentation from its existing regulations by June 30, 2027. The Company currently complies with these disclosure requirements as applicable under Regulation S-X or Regulation S-K and will adopt these new standards depending on timing of when they become effective, which is not expected to have a material impact on its financial position and results of operations.

In September 2022, the FASB issued ASU 2022-04, **Liabilities** "Liabilities - Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program **Obligations** **Obligations**", that requires entities that use supplier finance programs in connection with the purchase of goods and services to disclose the key terms of the programs and information about obligations outstanding at the end of the reporting period, including a rollforward of those obligations. The guidance does not affect the recognition, measurement or financial statement presentation of supplier finance program obligations. The new standard's requirements to disclose the key terms of the programs and information about obligations outstanding are effective for fiscal years, including interim periods, beginning after December 15, 2022, except for the requirement to disclose a rollforward of obligations outstanding will be effective for fiscal years beginning after December 15, 2023. Early adoption is permitted. The Company **is currently evaluating the effect of** **does not believe that** this new standard **will have a material impact on its financial position and results of operations.**

In December 2023, the FASB issued ASU 2023-09, "Accounting standards update, Income Taxes (Topic 740: Improvements to Income Tax Disclosures". ASU 2023-09 focuses on income tax disclosures around effective tax rates and cash income taxes paid. This amendment in the ASU will become effective for public companies as of December, 15 2024 and effective to all other companies one year later. The Company **will adopt these new**

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standards when they become effective, which is not expected to have a material impact on its financial position and results of operations.

In May 2021, the FASB issued ASU 2021-04 Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the FASB Emerging Issues Task Force). The amendments in this update are effective for all entities for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early application is permitted, including in an interim period as of the beginning of the fiscal year that includes that interim period. The Company adopted the provisions of ASU 2021-04 in the fourth quarter of 2021. The implementation resulted in a deemed dividend of approximately \$640,000 on the discounting of certain warrants.

## Subsequent Events

The Company evaluates whether there have been subsequent events through the date the financial statements were issued and determines whether subsequent events exist that would require recognition in the financial statements or disclosure in the notes of the financial statements.

### Note 3 — Inventories

Inventories consist of the following at December 31:

	2022	2021	2023	2022
Finished goods	\$ 512,028	\$ 176,082	\$ 321,484	\$ 512,028
Work in Process	18,971	23,161	6,589	18,971
Rental units	51,694	62,531	-	51,694
Parts and subassemblies	903,581	584,996	1,475,434	903,581
	1,486,274	846,770	1,803,507	1,486,274
Less: Reserve for rental and trial units	(86,409)	(38,462)	-	(86,409)
Inventories, net	\$ 1,399,865	\$ 808,308	\$ 1,803,507	\$ 1,399,865

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### Note 4 — Equipment, net

Equipment consists of the following at December 31:

	2022	2021	2023	2022
Computer equipment	\$ 249,621	\$ 180,979	\$ 318,559	\$ 249,621
Sales demonstration units	210,624	186,951	278,710	210,624
R&D tools and molds	52,644	52,644	52,644	52,644
Leasehold improvements	254,043	246,268	254,043	254,043
Furniture and fixtures	60,836	40,341	60,837	60,836
	827,768	707,183	964,793	827,768
Less: accumulated depreciation	(633,485)	(431,894)	(788,999)	(633,485)
Equipment, net	\$ 194,283	\$ 275,289	\$ 175,794	\$ 194,283

Depreciation expense was approximately \$192,800 164,300 and \$146,000 192,800 for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

### Note 5 — Fair Value of Financial Instruments

The Company measures the fair value of financial assets and liabilities based on the guidance of ASC 820 "Fair Value Measurements and Disclosures" Measurements" ("ASC 820"), which defines fair value, establishes a framework for measuring fair value, and establishes disclosures about fair value measurements.

ASC 820 defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. ASC 820 also establishes a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. ASC 820 describes three levels of inputs that may be used to measure fair value:

- Level 1 — Quoted prices available in active markets for identical assets or liabilities.

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- Level 2 — Observable inputs other than quoted prices included in Level 1, such as quotable prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
- Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar valuation techniques that use significant unobservable inputs.

The carrying amounts of the Company's financial instruments such as cash and cash equivalents, accounts receivable and accounts payable, approximate fair value due to the short-term nature of these instruments. Cash equivalents ~~are~~ consists of a money market fund that limits its investments to only short-term U.S. Treasury securities and repurchase agreements related to these securities.

The Company considers all investments with an original maturity of greater than three months to be short-term investments. Short-term investments primarily consists of commercial paper and U.S. Treasury Bills and are carried on the consolidated balance sheets at fair value. Short-term investments as of December 31, 2023 consists of U.S. Treasury Bills, which are classified as held-maturity, and Certificates of Deposit totaling approximately \$1,994,700 as of December 31, 2023, there were no Short-term investments as of December 31, 2022. The Company determines the appropriate balance sheet classification of its investments at the time of purchases and evaluates the classification at the date of purchase. Unrealized gains and losses on short-term investments are recorded to accumulated other comprehensive income on the consolidated balance sheets and other gain (loss) on the consolidated statements of comprehensive loss. Once unrealized gains and losses become realized, they are reclassified from other comprehensive gains and losses to cost of goods sold.

Cash equivalents and short-term investments, which are measured at fair value, were as follows At December 31, 2022 December 31, 2023:

	In Active				December 31, 2022	
	Markets for		Significant			
	Identical	Other	Significant			
	Assets or	Observable	Unobservable			
	Liabilities	Inputs	Inputs			
	(Level 1)	(Level 2)	(Level 3)			
Cash equivalents	\$ 4,350,657	—	—		\$ 4,350,657	

	In Active				December 31, 2023	
	Markets for		Significant			
	Identical	Other	Significant			
	Assets or	Observable	Unobservable			
	Liabilities	Inputs	Inputs			
	(Level 1)	(Level 2)	(Level 3)			
Cash equivalents	\$ 4,350,657	—	—		\$ 4,350,657	

Money market funds	\$ 4,893,387	—	—	\$ 4,893,387
Commercial paper	—	\$ 746,762	—	\$ 746,762
Short-term investments	—	\$ 1,994,662	—	\$ 1,994,662

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Cash equivalents, which are measured at fair value, were as follows at December 31, 2021 December 31, 2022:

	In Active				December 31, 2021	
	Markets for	Significant				
		Identical	Other	Significant		
	Assets or	Observable	Unobservable			
	Liabilities	Inputs	Inputs			
	(Level 1)	(Level 2)	(Level 3)			
Cash equivalents	\$ 14,803,456	—	—	—	\$ 14,803,456	

	In Active				December 31, 2022	
	Markets for	Significant				
		Identical	Other	Significant		
	Assets or	Observable	Unobservable			
	Liabilities	Inputs	Inputs			
	(Level 1)	(Level 2)	(Level 3)			
Cash equivalents	\$ 4,350,657	—	—	—	\$ 4,350,657	

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**Note 6 – Accounts Payable and other Accrued Expenses**

Accounts Payable and Other Accrued Expenses consists of the following at December 31:

2022	2021	2023	2022
------	------	------	------

Trade payables	\$ 569,681	\$ 723,352	\$ 1,073,405	\$ 569,681
Accrued compensation and benefits	959,228	2,188,869	1,964,487	959,228
Accrued professional services	124,548	108,417	52,202	124,548
Deferred payroll taxes under CARES Act	-	113,423		
Warranty reserve	234,647	176,281	231,108	234,647
Customer Deposits	753,232	192,501		
Customer deposits			1,114,979	753,232
Other	538,026	407,796	449,763	538,026
	<u>\$ 3,179,362</u>	<u>\$ 3,910,639</u>	<u>\$ 4,885,944</u>	<u>\$ 3,179,362</u>

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### **Note 7 — Common Stock**

On August 2, 2022, ("the "Agreement Date"" "Agreement Date"") the Company entered into a Purchase Agreement ("Agreement") with Keystone, establishing an equity line facility under which the Company, at its sole discretion, can direct Keystone to purchase the Company's common stock from time to time through delivery of a purchase notice ("Notice"). The purchase price is was at the lesser of prevailing market prices of the Company's common stock as defined in the Purchase Agreement, at a 10% discount. The Company can could sell shares of common stock to Keystone up to the Maximum Amount, provided that the Company has agreed to issue no more than 1,399,334 shares of common stock at a discount, (the "Minimum Shares"), representing 19.99% of the Company's outstanding shares on the Agreement Date, (the "Exchange Cap"), of which 50,000 shares were issued to Keystone as a commitment fee after closing of the transaction. During the fourth quarter of 2022, the Company sold 692,914 shares to Keystone at a weighted average sales price of \$0.683 per share, generating proceeds after fees and expenses of approximately \$376,900. In order to sell more than conjunction with the Minimum Shares the Company's shareholders must vote public equity offering in favor of permitting August 2023, the Company to sell shares in excess of terminated the Exchange Cap. Of the shares sold to Keystone, sales of 352,038 shares were made above market according to the rules of the NYSE American, thus were not subject to the Exchange Cap. As a result, 1,008,458 shares remain to be sold under the Exchange Cap as of December 31, 2022. Keystone's obligation to purchase shares of the Company's common stock is subject to the Company's ability to maintain an effective registration statement, continued listing on the NYSE American or other trading market and a minimum price per share of \$0.50, among other conditions. Keystone's beneficial ownership of the common stock is limited to 4.99% of the Company's outstanding common stock during the Term Agreement.

In addition to the commitment fee, on the Agreement Date the Company paid Keystone \$20,000 for its expenses incurred in conjunction with the transaction. The commitment fee was recorded to common stock and Keystone's Keystone's expenses reimbursed by the Company were recorded to additional paid-in capital as of December 31, 2022.

In June 2021, the The Company entered into an ATM Facility with AGP, Alliance Global Partners on August 2, 2022. Under the ATM Facility, the Company may sell up to an aggregate of \$15 million of the Company's common stock from time to time and shall pay to AGP cash commissions of 3.0% of the gross proceeds of sales of common stock under the ATM Facility. There were no sales under the ATM Facility during the year ended December 31, 2022. The Company sold 107,500 shares under the ATM Facility during the year ended December 31, 2021, at an average selling price \$12.02 per share, generating net proceeds after sales commissions December 31, 2023 and offering expenses of approximately \$1,099,800 December 31, 2022. In conjunction with entering into the Purchase Agreement with Keystone, public equity offering in August 2023, the Company reduced the amount available to sell under the ATM Facility to \$0.31,000 million. This amount remains available for sale at December 31, 2022 December 31, 2023.

In conjunction with the Company's equity offering in January 2023 (See Note 13 - Subsequent Events) On January 17, 2023, the Company agreed to not sell any completed a public equity offering, selling 13,169,074 shares of its common stock under and 6,830,926 pre-funded warrants at \$0.325 per share or at \$0.3249 per warrant, generating proceeds after fees and expenses of approximately \$5.7 million. Each pre-funded warrant is exercisable for one share of the Purchase Agreement Company's common stock at a nominal exercise price of \$0.0001 per share.

On August 29, 2023, the Company completed a public equity offering, selling 5,413,334 shares of common stock and 1,920,000 pre-funded warrants at \$0.60 per share, or its ATM facility at \$0.5999 per warrant, generating proceeds after fees and expenses of approximately \$3.9 million. Each pre-funded warrant is exercisable for one share of the Company's common stock at a period nominal exercise price of one year from the closing date. \$0.0001 per share.

No shares of common stock were issued through the exercise of stock options during the year ended December 31, 2022. The Company issued 439 shares of common stock through the exercise of stock options in the year ended December 31, 2021. December 31, 2023 and 2022.

During the years ended December 31, 2022 December 31, 2023 and 2021, 2022, the Company issued 137,302 339,335 and 153,357 137,302 shares of common stock, respectively, upon the vesting of restricted stock units.

During the year ended December 31, 2021, the Company issued 30 shares of common stock upon the vesting of restricted stock awards.

## Note 8 — Stock Award Plans and Stock-Based Compensation

### ***Equity Incentive Plan***

On June 19, 2018, the Company's Shareholders and the Board of Directors (the "Board of Directors") approved the Myomo, Inc. 2018 Stock Options and Incentive Plan (the "2018 Plan"). On January 1 of each year, the number of shares of common stock reserved and available for issuance under the 2018 Plan will cumulatively increase by 4% of the number shares of common stock outstanding on the immediately preceding December 31 or such lesser number of shares of common

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stock determined by management in consultation with members of the Board of Directors, including the compensation committee, committee of the Board of Directors.

On January 1, 2022 January 1, 2023 and 2021, 2022, the number of shares reserved and available for issuance under the 2018 Plan increased by 274,789 310,024 and 183,726 274,789 shares, respectively. At December 31, 2022 December 31, 2023, there were 74,120 119,123 shares available for future grant under the 2018 Plan.

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Under the terms of the 2018 Plan, incentive stock options (**ISOs**) ("ISOs") may be granted to officers and employees and non-qualified stock options and awards may be granted to directors, consultants, officers and employees of the Company. The exercise price of ISOs cannot be less than the fair market value of the Company's Common Stock on the date of grant. The options vest over a period determined by the Company's Board of Directors, ranging from immediate to four years, and expire not more than ten years from the date of grant.

### **Stock Option Awards**

Stock option activity under the Stock Option Plans during the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022** is as follows:

	Weighted				Weighted			
	d		Average		Weighted		Weighted	
	Weighted	Remaini	Average	Intrinsi	Weighted	Average	Remaining	Intrinsic
	Shares	Exercise	Life	Value	Shares	Exercise Price	Life (years)	Value
Balance at January 1, 2021	24,0	51.290		23,1				
	88	\$ 0	7.51	\$ 94				
Balance at January 1, 2022					31,447	\$ 40.5800	7.51	\$ 23,194
Granted	9,25	17.070			1,700	8.0000		
	0	0						
Forfeited or cancelled	(1,45	50.960			(3,293)	28.4000		
	2)	0						
Exercised	(439)	0.0500			(249)	9.1900		
Balance at December 31, 2021	31,4	40.580		23,1				
	47	0	7.51	\$ 94				
Balance at December 31, 2022					29,605	40.5000	6.52	\$ 587
Granted	1,70				-	-		
	0	8.0000						
Forfeited or cancelled	(3,29	28.040			(3,139)	17.5800		
	3)	0						
Expired	(249)	9.1900			(1,937)	69.6100		

Balance at December 31, 2022	29,605	\$ 0	6.52	\$ 587				
Options exercisable at December 31, 2021	17,390	\$ 0	5.97	\$ 92				
Balance at December 31, 2023			24,529	\$ 41,1300	5.53	\$ 7,468		
Options exercisable at December 31, 2022	20,229	\$ 54,960		\$ 54,9600	5.67	\$ 587		
Options exercisable at December 31, 2023			19,733	\$ 49,0300	5.05	\$ 6,850		

The Company uses the Black-Scholes option pricing model to estimate the grant date fair value of its stock options. There was no income tax benefit recognized in the financial statements for share-based compensation arrangements for the years ended December 31, 2022 December 31, 2023 and 2021. There were no stock options granted during the year ended December 31, 2023. The weighted-average grant date fair value per share was \$6.92 and \$8.32 per share for the years year ended December 31, 2022 and 2021, respectively. The following weighted average assumptions underlying the calculation of grant date fair value are as follows:

	2022	2021
Volatility	117.18%	111.90%
Risk-free interest rate	1.68%	1.15%
Weighted-average expected option term (in years)	6.25	6.25
Dividend yield	0%	0%

  

	2022
Volatility	117.18%
Risk-free interest rate	1.68%
Weighted-average expected option term (in years)	6.25
Dividend yield	0%

The stock price volatility for the Company's options was determined using the Company's historical volatility since its initial public offering in June 2017. The risk-free interest rate was derived from U.S. Treasury rates existing on the date of grant for the applicable expected option term. The expected term represents the period of time that options are expected to be outstanding. Because the Company has only very limited historical exercise behavior, it determines the expected life assumption using the simplified method, which is an average of the contractual term of the option and its ordinary vesting period. The expected dividend yield assumption is based on the fact that the Company has never paid, nor has any intention to pay, cash dividends.

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### Restricted Stock Awards

There were no restricted stock awards outstanding as of December 31, 2022 and 2021. Restricted stock activity for the year ended December 31, 2021 is summarized below:

	Weighted average	Weighted average

	Number of Shares	grant date fair value	remaining contractual life (in years)
Outstanding as January 1, 2021	30	\$ 202.50	0.62
Awarded	-	-	-
Vested	(30)	202.50	
Canceled	-	-	-
Outstanding as December 31, 2021	-	\$ —	-

#### **Restricted Stock Units**

Restricted stock unit "RSU" activity for the years ended December 31, 2022 December 31, 2023 and 2021 2022 is summarized below:

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	Number of Shares	Weighted average		
		Weighted average		remaining contractual
		grant date fair	value	
Outstanding as of January 1, 2021	276,568	\$ 4.22		2.36
Awarded	194,295		13.29	
Vested	(153,357)		5.18	
Canceled	(24,948)		5.33	
Outstanding as of December 31, 2021	292,558		9.64	2.27
Awarded	340,923		2.13	
Vested	(137,302)		2.47	
Canceled	(41,702)		5.10	
Outstanding as of December 31, 2022	454,477	\$ 5.06		1.44
Weighted average				
grant date fair				
value				
remaining contractual				
life (in years)				
Outstanding as of January 1, 2022	292,558	\$ 9.64		2.27
Awarded	340,923		2.13	
Vested	(137,332)		2.47	
Canceled	(41,702)		5.10	

Outstanding as of December 31, 2022	454,447	5.06	1.44
Awarded	1,450,445	0.57	
Vested	(339,409)	2.37	
Canceled	(63,824)	4.51	
Outstanding as of December 31, 2023	<u>1,501,659</u>	<u>\$ 1.53</u>	<u>1.22</u>

In 2022 2023 and 2021 2022, the Company granted an aggregate of 340,923 1,450,445 and 194,295 340,923 RSUs to employees, respectively, of which 172,500 608,000 and 79,600 RSU's 203,510 RSUs were granted to executive officers, respectively, which vest over a period of two years and three years, respectively. In 2021 2023, the Company granted 11,780 239,952 RSU's RSUs to independent members of the board of directors, which vest in four equal quarterly installments. No RSU's RSUs were granted to independent members of the board of directors in 2022.

The Company determined the fair value of these grants based on the closing price of the Company's common stock on the respective grant dates. The compensation expense is being amortized over the respective vesting periods.

During the year ended December 31, 2021, the Company's compensation committee granted certain executives a performance-based stock grant with a target of 52,900 RSU's, a maximum of 105,800, and a minimum of 0. The number of RSU's earned is dependent on the total shareholder return of the Company's common stock compared to a set of peer companies from the grant date through March 9, 2024. Any RSU's earned will vest in their entirety on June 9, 2024. As these grants are subject to market-based vesting criteria, the Company is recognizing compensation expense for these awards subject to market-based vesting conditions regardless of whether it becomes probable that these conditions will be achieved or not, and compensation expense for share-settled awards is not reversed if vesting does not actually occur. The Company recognizes compensation expense based on the fair value on the date of grant as determined by a Monte Carlo valuation model over the expected vesting period.

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Awards of RSU's RSUs may be net share settled upon vesting to cover the required employee statutory withholding taxes and the remaining amount is converted into shares based upon their share-value on the date the award vests. These payments of employee withholding taxes, if made, are presented in the statements of cash flows as a financing activity.

#### **Share-Based Compensation Expense**

The Company recognized stock-based compensation expense related to the issuance of stock option awards to employees and non-employees and time-based and performance-based restricted stock units to employees and directors, and restricted stock units to employees in the consolidated statements of operations as follows:

	2022	2021	2023	2022
Cost of goods sold	\$ 75,778	\$ 53,130	\$ 91,604	\$ 75,778
Research and development	127,198	132,610	(4,488)	127,198
Selling, general and administrative	987,518	910,668	1,028,486	987,518
Total	<u>\$ 1,190,494</u>	<u>\$ 1,096,408</u>	<u>\$ 1,115,602</u>	<u>\$ 1,190,494</u>

As of December 31, 2022 December 31, 2023, there was approximately \$59,500 25,800 of unrecognized compensation cost related to unvested stock options which is expected to be recognized over a weighted-average period of 2.3 1.5 years.

As of December 31, 2022 December 31, 2023, there was approximately \$1,389,900 867,200 of unrecognized compensation cost related to unvested restricted stock unit awards which is expected to be recognized over a weighted-average period of 1.4 1.2 years.

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**Note 9 — Warrants**

The following table presents the Company's common stock warrant activity for the years ended December 31, 2022 December 31, 2023 and 2021: 2022:

	Weighted Average				Weighted Average			
	Warrants		Exercise Price		Warrants		Exercise Price	
	Outstanding	Exercisable	Outstanding	Exercisable	Outstanding	Exercisable	Outstanding	Exercisable
Balance, Jan 1, 2021	2,709,159	2,709,159	\$ 7.77	\$ 7.77				
Expired			194.1	194.1				
	(273)	(273)	0	0				
Exercised	(2,015,243)	(2,015,243)	7.40	7.40				
Balance, Dec 31, 2021	693,643	693,643	8.76	8.76				
Balance, Jan 1, 2022					693,643	693,643	8.76	8.76
Expired	(12,614)	(12,614)	29.30	29.30	(12,614)	(12,614)	29.30	29.30
Exercised	(666)	(666)	—	—	(666)	(666)	—	—
Balance, Dec 31, 2022	680,363	680,363	\$ 8.30	\$ 8.30	680,363	680,363	8.30	8.30
Issued					8,750,926	8,750,926		
Expired					(12,113)	(12,113)	0.53	0.53
Exercised					(479,407)	(479,407)	—	—
Balance, Dec 31, 2023					8,939,769	8,939,769	\$ 0.56	\$ 0.56

Due to their nominal exercise price of \$0.0001 per share, a total of 8,271,519 outstanding pre-funded warrants as of December 31, 2023 are considered common stock equivalents and are included in weighted average shares outstanding in the accompanying consolidated statements of operations as of the closing dates of the Company's public equity offerings in January 2023 and August 2023, respectively. A total of 479,407 pre-funded warrants were exercised during the year ended December 31, 2023. The pre-funded warrants have no maturity date. The weighted average remaining contractual life of warrants outstanding and exercisable, excluding pre-funded warrants at December 31, 2022 December 31, 2023 was 2.1 1.1 years.

#### **Note 10 — Related Party Transactions**

The Company sells its products to an orthotics and prosthetics practice whose ownership includes an individual who was both a shareholder and executive officer of the Company. The executive resigned his position with the Company effective March 31, 2021. As a result, the orthotics and prosthetics practice is no longer a related party effective April 1, 2021. Sales to this related party were sold at standard list prices. During the year ended December 31, 2021 (the portion of the year the party was related to the Company) revenue recognized on sales to this orthotics and prosthetics practice amounted to approximately \$25,900.

The Company also obtains consulting and fabrication services, reported in cost of goods sold, from the same previously related party. Charges for these services amounted to approximately \$112,900 during the year ended December 31, 2021 (the portion of the year the party was related to the Company).

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#### **Note 11 — Commitments and Contingencies**

##### ***Litigation***

The Company may be involved in legal proceedings, claims and assessments arising from the ordinary course of business. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. During 2022, a former employee that was terminated in 2021 brought an age discrimination claim against the Company. While During the fourth quarter of 2023, the Company disputes this settled the claim with its former employee. The Company deems it believes that it is probable that its insurance company will pay its share of the claim. As a loss will result of this assumed gain contingency, the Company reduced its accrual to an amount that is not expected to be incurred for this matter covered by insurance, and has recorded a loss contingency liability of approximately \$135,000 55,000 to accounts payable for severance and accrued legal expenses as of December 31, 2022 December 31, 2023. The Company expects its insurance to cover the majority of the loss that may be incurred. There is no other material litigation against the Company at this time.

##### ***Operating Leases***

The Company has a non-cancelable sublease agreement for its corporate headquarters in Boston, MA expiring Massachusetts which expired in August 2023, consisting of 9,094 square feet of office and laboratory space. In conjunction with entering into a non-cancelable lease agreement for its manufacturing space in the same building for 3,859 square feet of space to be used for manufacturing, Boston in January 2022, the Company agreed to enter into a lease for its corporate headquarters space, from the landlord after expiration of the sublease, effective September 1, 2023. Both leases expire in January 2025. In addition, it has Boston as well as a non-cancelable lease agreement for its office space in Fort Worth, TX, expiring in 2025 with 2025. The Fort Worth, TX lease has the option to terminate early, termination which became available at the company's Company's discretion in 2023. 2023, which is did not take. Termination options were not included in the lease term for the Company's existing operating leases. Certain of the arrangements have discounted rent periods or escalating

rent payment provisions. Leases with an initial term of twelve months or less are not recorded on the **condensed** consolidated balance sheets. We recognize rent expense on a straight-line basis over the lease **term** **term**.

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As of **December 31, 2022** December 31, 2023, operating lease assets were approximately \$508,700 663,600 and operating lease liabilities were approximately \$553,900 601,300. The maturity of the Company's operating lease liabilities as of **December 31, 2022** December 31, 2023, **are** **were** as follows:

	As of December 31, 2022	As of December 31, 2023
2023	411,142	
2024	159,872	578,198
2025	67,981	102,842
2026		—
Thereafter	—	—
Total future minimum lease payments	638,995	681,040
Less imputed interest	85,087	79,737
Total operating lease liabilities	<u>\$ 553,908</u>	<u>\$ 601,303</u>
<b>Included in the consolidated balance sheet:</b>		
Current operating lease liabilities	\$ 353,701	\$ 486,143
Non-current operating lease liabilities	200,207	115,160
Total operating lease liabilities	<u>\$ 553,908</u>	<u>\$ 601,303</u>

For the twelve months ended **December 31, 2022** December 31, 2023, the total lease cost **is** comprised of the following amounts:

	Years ended December 31,		Years ended December 31,	
	2022	2021	2023	2022
Operating lease expense	493,203	372,114	454,040	493,203
Short-term lease expense	3,250	29,759	3,989	3,250
Total lease expense	<u>\$ 496,453</u>	<u>\$ 401,873</u>	<u>\$ 458,029</u>	<u>\$ 496,453</u>

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The Company paid cash of approximately \$557,500 550,600 and \$275,300 557,500 for its operating leases for the years ended December 31, 2022 December 31, 2023 and 2021, 2022, respectively.

The following summarizes additional information related to operating leases:

	As of December 31		As of December 31	
	2022	2021	2023	2022
Weighted-average remaining lease term	1.8	2.5	1.2	1.8
Weighted-average discount rate	20 %	20 %	23.3 %	20 %

If the rate implicit in the lease is not readily determinable, the Company uses its incremental borrowing rate as the discount rate. The Company uses its best judgment when determining the incremental borrowing rate, which is the rate of interest that the Company would have to pay to borrow on a collateralized basis over a similar term to the lease payments in a similar currency.

#### ***Licensing Agreement***

During 2006, the Company entered into an exclusive licensing agreement (the "MIT License") with Massachusetts Institute of Technology ("MIT") for access to certain patent rights that require the payment of royalties, which vary based on the level of the Company's net sales and whether the customer is located in the U.S., United States, or in an international location. As part of the agreement, the Company must was required to pay to MIT a nonrefundable annual license maintenance fee which may be could have been credited to any royalty amounts due in that same year. The license agreement can be terminated if certain sales targets are not achieved. The royalty charge for each of the years ended December 31, 2022 December 31, 2023 and 2021 2022 was approximately \$264,200 244,900 and \$262,200 264,200, respectively, and is included as a component of cost of revenue.

The future minimum amount due under this agreement for 2023, the final year of the agreement, is \$25,000: MIT license expired in November 2023.

Under the MIT License, the Company has issued

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#### ***shares Table of Common Stock to MIT Contents***

The MIT License includes a share adjustment provision in the event that the Company has a dilutive financing, as defined. The MIT License also includes an anti-dilution provision such that MIT's ownership of the outstanding common stock shall not fall below 1% on a fully diluted basis. Under this anti-dilution provision, MIT has the right to purchase additional shares of common stock at the then current market price in order to maintain its pro rata ownership. As a result of the follow-on equity offering in January 2023 (See Note 13), MIT is entitled to receive an additional 928 shares of common stock.

On November 15, 2016, the Company and MIT entered into a waiver agreement with regard to certain revenue and commercialization milestones of the Company required under the License Agreement. Under the waiver agreement, MIT waived the compliance with any and all

of such milestone obligations prior to the date of the waiver agreement. For the year ended December 31, 2022 the Company met its minimum sales covenant of \$750,000.

#### **Warranty Liability**

The Company accrues an estimate of their exposure to warranty claims based on historical warranty costs incurred and the number units under warranty to estimate future warranty costs to be insured. Most of the Company's current product sales include a three-year warranty. The Company assesses the adequacy of their recorded warranty liability annually and adjusts the amount as necessary.

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Changes in warranty liability were as follows:

	2022	2021	2023	2022
Accrued warranty liability, beginning of year	\$ 176,281	\$ 119,713	\$ 234,647	\$ 176,281
Accrual provided for warranties issued during the period	117,986	79,142	71,797	117,986
Adjustments to prior accruals	—	26,735	—	—
Actual warranty expenditures	(59,620)	(49,309)	(75,337)	(59,620)
Accrued warranty liability, end of year	<u>\$ 234,647</u>	<u>\$ 176,281</u>	<u>\$ 231,108</u>	<u>\$ 234,647</u>

#### **Credit Risk**

Financial instruments that potentially expose the Company to a concentration of credit risk consist primarily of cash, cash equivalents, and restricted cash short-term investments and accounts receivable. The Company maintains attempts to maintain its operating cash within federally insured limits. Its cash equivalents, including money market funds, are invested in instruments that are off the balance sheets of its operating banks. Its short term investments are held in high quality instruments with large companies and U.S. Treasury Bills. Its cash equivalents and restricted cash, with short-term investments, to the extent that there are balances in excess of federally insured limits, are with major financial institutions that management believes are financially sound and have minimum credit risk. The Company has not experienced any losses in such accounts and believes credit risks related to its cash, cash equivalents and restricted cash short-term investments are limited based upon the creditworthiness of the financial institutions holding these funds.

#### **Supplier Finance Program Obligations**

The Company finances its Directors and Officers Insurance policy which requires the Company to make a down payment, followed by equal payments over a defined term. During the twelve months ended December 31, 2023, the Company completed its payment obligation associated with its 2022-2023 policy and entered into a new policy covering the twelve-month period ending June 2024. Under this new financing arrangement, the Company made a down payment during the three months ended June 30, 2023 and is making nine equal monthly payments of approximately \$29,000, starting in July 2023. No assets are pledged as security under this arrangement.

#### **Major Customers**

For the year ended December 31, 2022 December 31, 2023 and 2021, there were no customers which accounted for more than 10% of revenues. For the year ended December 31, 2022 December 31, 2023 a U.S. insurance payer represented 38% of product revenues. For the

year ended December 31, 2022, a U.S insurance payer represented 32% of product revenues. For the year ended December 31, 2021, a U.S insurance payer represented 30% of product revenues and another represented 11% of revenues, respectively.

For the year ended December 31, 2022 December 31, 2023 and 2021, one insurer and its affiliates accounted for approximately 62.71% and 43.62% of accounts receivable, respectively.

For the year ended December 31, 2022 December 31, 2023 and 2021, approximately 57% and 60% and 59% of the Company's Companys product revenues were derived from patients with Medicare Advantage insurance plans, respectively.

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**Note 12.11 — Income Taxes**

Income (loss) before provision for incomes income taxes was as follows:

	2022	2021
United States	\$ (10,831,796)	\$ (10,494,693)
Foreign	\$ 180,711	\$ 211,292
<b>Loss before income taxes</b>	<b>\$ (10,651,085)</b>	<b>\$ (10,283,401)</b>

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	2023	2022
United States	\$ (8,716,749)	\$ (10,831,796)
Foreign	\$ 725,186	\$ 180,711
<b>Loss before income taxes</b>	<b>\$ (7,991,563)</b>	<b>\$ (10,651,085)</b>

The income tax provision (benefit) for the years ended December 31, 2022 December 31, 2023 and 2021 consist 2022 consists of the following:

	2022	2021	2023	2022
U.S. federal				
Current	\$ —	\$ —	\$ —	\$ —
Deferred	(2,791,239)	(2,038,000)	2,762,774	(2,791,239)

State and local				
Current	—	—	—	—
Deferred	(615,573)	(510,000)	3,278,803	(615,573)
Foreign				
Current	69,937	88,928	156,002	69,937
Deferred	—	—	—	—
	(3,336,876)	(2,459,072)	6,197,579	(3,336,876)
Change in valuation allowance	3,406,813	2,548,000	(6,041,578)	3,406,813
Income tax provision	\$ 69,937	\$ 88,928	\$ 156,002	\$ 69,937

The reconciliation between the U.S statutory federal income tax rate and the **Company's** **Companys** effective rate for the years ended **December 31, 2022** **December 31, 2023** and **2021** **2022** is as follows:

	2022	2021	2023	2022
U.S. federal statutory rate	21.00 %	21.00 %	21.00 %	21.00 %
State income taxes, net of federal benefit	5.60 %	5.21 %	(38.19) %	5.60 %
State rate change and other	(0.06) %	1.36 %	(2.16) %	(0.06) %
NOLs' to expire unutilized due to 382 limitation			(51.74) %	
Foreign tax rate differential	(0.15) %	(0.86) %	(0.82) %	(0.15) %
Other permanent items	(0.28) %	(2.79) %	(5.63) %	(0.28) %
Prior year taxes	5.91 %	0.00 %	(0.02) %	5.91 %
Change in valuation allowance	(32.67) %	(24.78) %	75.60 %	(32.67) %
Effective rate	(0.66) %	(0.86) %	(1.95) %	(0.66) %

The significant components of the Company's deferred tax assets are as follows:

	2022	2021	2023	2022
Net operating loss carryover	\$ 18,052,725	\$ 16,067,000	\$ 11,744,294	\$ 18,052,725
Tax credits	423,036	311,000	130,722	423,036
Research & Experimental cost capitalization	657,076	-		
Research and Experimental cost capitalization			1,027,243	657,076
Stock-based compensation	900,144	27,000	890,334	900,144
Other	411,258	648,000	610,069	411,258
Total deferred tax asset	20,444,240	17,053,000	14,402,661	20,444,240
Less: valuation allowance	(20,444,240)	(17,053,000)	(14,402,661)	(20,444,240)
Deferred tax asset, net of valuation allowance	\$ —	\$ —	\$ —	\$ —

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There were no deferred tax liabilities at **December 31, 2022** **December 31, 2023** or **2021**. **2022**.

As of **December 31, 2022** **December 31, 2023** and **2021**, the Company had approximately **\$72,726,000** **77,360,000** and **\$64,709,000** **72,726,000** of Federal NOL's NOLs and **\$61,239,000** and **\$67,302,000** and **\$55,721,000** of state NOL's NOLs, respectively, available to offset future taxable income. The Federal NOL's NOLs incurred prior to 2018 of approximately **\$26,425,000**, if not utilized, begin expiring in the year 2028. The Federal NOL's NOLs incurred after 2017 of approximately **\$46,001,000** **50,935,000** have an indefinite carryforward period. The state NOL's if not utilized begin to expire in **2023** **2024** through **2043** **2044**.

Additionally, the Company has U.S. federal and state research and development tax credits of **\$337,000** **437,000** and **\$109,400** **167,000**, respectively, which will begin to expire in the year 2027 and 2036, respectively.

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NOL carryforwards may face limitations caused by changes in ownership under Section 382 of the Internal Revenue Code. During **2020**, **2023**, the Company experienced an ownership change within the meaning of Section 382 of the Internal Revenue Code of 1986. In 2022, the Company did not perform a section 382 study, which may identify a potential ownership change. The ownership change has and will continue to subject the Company's pre-ownership change net operating loss carryforwards to an annual limitation, which will significantly restrict its ability to use them to offset taxable income in periods following the ownership change. The annual use limitation equals the aggregate value of the Company's stock at the time of the ownership change multiplied by a specified tax-exempt interest rate. As a result of these ownership changes, the Company is limited to an approximate **approximately \$281,000** **64,000** annual limitation on its ability to utilize pre-change NOLs during the carryforward period and has determined that approximately **\$437,000** **20,000,000** and **\$48,000,000** of the Company's pre-change Federal and State NOLs, respectively, will expire unutilized. Accordingly, the deferred tax asset and valuation allowance have been adjusted by approximately **\$92,000** **4,200,000** and **\$3,900,000** to reflect the Federal and State NOL's, respectively that will expire unutilized.

On August 16, 2022, the Inflation Reduction Act of 2022, which includes changes to the U.S. federal taxation of corporations, was enacted into law. The Inflation Reduction Act among other things implements a corporate book minimum tax ("BMT") 15% rate that could apply to companies with average revenues in excess of \$1.0 billion over a three-year period. The BMT has various limitations, including a more restrictive limit on availability of net operating loss carryforwards. The Company does not believe the new law will have any impact on its financial statements.

ASC 740, "Income Taxes" "Income Taxes" requires that a valuation allowance be established when it is "more" "more likely than not" "not" that all, or a portion of, deferred tax assets will not be realized. A review of all available positive and negative evidence needs to be considered, including the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies. After consideration of all the information available, management believes that uncertainty exists with respect to future realization of its deferred tax assets and has, therefore, established a full valuation allowance as of **December 31, 2021** **December 31, 2023** and **2020**. As of **December 31, 2022**. For the years ended **December 31, 2023** and **December 31, 2021** **December 31, 2022**, the change in valuation allowance was a decrease of **(\$6,042,000)** and an increase of **\$3,365,000** and an **\$2,548,000** **3,407,000**, respectively.

The Company recognizes interest and penalties relating to unrecognized tax benefits on the income tax expense line in the statement of operations. There are no tax penalties and interest on the statement of operations as of **December 31, 2022** **December 31, 2023** and

December 31, 2021 December 31, 2022. The Company operates in multiple tax jurisdictions and, in the normal course of business, its tax returns are subject to examination by various taxing authorities. Such examinations may result in future assessments by these taxing authorities. The Company is subject to examination by U.S. tax authorities beginning with the year ended December 31, 2019 December 31, 2020. To the extent the Company has tax attribute carryforwards the tax years in which the attribute was generated may still be adjusted upon examination by the Internal Revenue Service, or state or foreign tax authorities to the extent utilized in a future period.

There ~~are~~ were no accrued interest and penalties at December 31, 2022 December 31, 2023 and December 31, 2021 December 31, 2022.

#### Note 13.12 — Subsequent Events

On January 17, 2023 January 19, 2024, the Company completed ~~an~~ a registered direct equity offering, selling 13,169,074 1,354,218 shares of common stock and 6,830,926 224,730 pre-funded warrants at \$0.325 3.80 per share, or at \$3.7999 per pre-funded warrant, generating proceeds after fees and expenses of approximately \$5.7 5.4 million. The offering was conducted pursuant to a registration statement on Form S-1 (Registration No. 333-268705), as amended, which was declared effective on January 11, 2023. Each pre-funded warrant is exercisable for one share of the Company's common stock at a nominal exercise price of \$0.0001 per share. Members of management and a board advisor purchased an aggregate of 1,422,074 shares in the offering.

On February 29, 2024, CMS published final fees for the Company's billing codes for the MyoPro. The final average payment determinations for the MyoPro Motion W (L8701) of approximately \$33,500 and for the MyoPro Motion G (L8702) of approximately \$65,900, become effective April 1, 2024.

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Exhibit 10.8

#### EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is ~~likely~~ between Myomo, Inc. ("Myomo" or the "Company"), a Delaware corporation with offices at 137 Portland St., 4th Floor, Boston, MA 02114, and Paul R. Gudonis, an individual ("Executive") residing at 56 Masconomo St., Manchester, MA 01944, is made as of the date of the last signature on the signature pages hereto and upon the commencement of the Term (as defined below), supersedes in its entirety the existing Employment Agreement, dated as of April 22, 2021.

#### WITNESSETH:

**WHEREAS**, Myomo desires to continue to employ Executive as its Chief Executive Officer, and Executive desires to be so employed;

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein contained, Myomo agrees to continue to employ Executive, and Executive accepts continued employment with Myomo on the terms and conditions set forth in this Agreement, to which the parties agree as follows:

## **1. Employment.**

**(a) Term.** The term of the Agreement will be for three (3) years, commencing on January 1, 2024 and ending on December 31, 2026, subject to earlier termination pursuant to the terms and conditions discussed in this Agreement below, or extension upon the written agreement of the parties hereto (the "Term"). The parties commit to engage in discussions about whether this Agreement will be renewed on or before the 90th day prior to expiration (the "Additional Term"). Unless the Agreement is expressly renewed in writing, it shall not renew, subject to the notice, severance and restrictive covenant provisions provided for in paragraphs 4(c) and 7 below, and the arbitration provisions in paragraph 8, which shall survive the termination of this Agreement.

**(b) Position and Duties.** During the Term, the Executive's title shall be Chief Executive Officer ("CEO"). Executive shall report to the Board of Directors. Executive's duties and responsibilities shall include: developing and achieving the company's strategy and business plan, overseeing the operations of the company, communicating with investors, and such other duties and responsibilities consistent with the CEO role as may be assigned or delegated to him from time to time by the Board of Directors of Myomo (hereinafter the "Services"). Executive shall also have the authority necessary to carry out the Services and perform his role as the CEO, which shall include hiring senior staff and managing the company's operating budget subject to Board oversight and approval. Executive shall comply with all federal, state and local laws, rules and regulations in the performance of his duties under this Agreement.

**(c) Outside Work.** During the Term of this Agreement, Executive agrees to faithfully, diligently, and to the best of his ability, devote his entire business time and best efforts, energies, skills and experience to the discharge of his duties and responsibilities hereunder. Executive will not take any other employment or be involved in any other business for remuneration, except that Executive may reasonably be engaged in civic and charitable endeavors and may also serve as a member of the boards of directors of up to two for-profit companies and two non-profit enterprises provided that none of such activities raise a conflict of interest or detract from his service to the Company.

## **2. Compensation and Related Matters.**

**(a) Salary.** During the Term, Executive's annual base salary shall be adjusted to Three Hundred Fifty Thousand Dollars (\$350,000) per annum ("Annual Salary"), which gross sum shall be less statutory withholding taxes and required deductions, effective as of January 1, 2024. Executive shall be paid in accordance with Myomo's standard payroll practices. Executive's salary shall be reviewed on an annual basis to be market-competitive with peer medical device companies and may be subject to further upward adjustment (unless otherwise provided in the Good

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Reason definition) in the sole discretion of the Board of Directors and the Compensation Committee, based upon Executive's and Myomo's performance.

**(b) Incentive Compensation.** During the Term, Executive shall be eligible to receive target annual incentive compensation of 75% of the then-current Base Salary. The actual amount and type of the annual incentive compensation for each fiscal year will be determined by the Board and Compensation Committee and shall be based upon Executive and the Company meeting certain Board approved reasonable strategic, operational, and financial goals and targets established by the Board with input from Executive if practicable. Incentive compensation

payments shall be prorated for any year in which Executive works less than a full year, provided that Executive has worked at least six (6) months of the year, except if Executive's employment is terminated by Myomo without Cause or by Executive for Good Reason (as defined in paragraph 3(c) below), in which case the incentive compensation payment shall be prorated for whatever time was worked by Executive. No incentive compensation payment shall be payable to Executive should (i) his employment be terminated by Myomo for Cause (as defined in paragraph 3(c) below) or (ii) should Executive resign his employment without Good Reason (as defined in paragraph 3(e) below) and without providing the Notice of Termination (as contemplated in Paragraph 3(f) below) and working throughout said Notice of Termination period if so required by Myomo. Incentive compensation payments shall be paid within 90 days of the end of the calendar year in which the incentive compensation is earned.

**(c) Restricted Stock Units (RSUs) and other Stock-Based Awards.** On an annual basis, the Company shall grant RSUs to the Executive based upon the amount of shares available in the Company's Equity Incentive Plan and a review of market-competitive equity grants for comparable medical device companies, with such vesting subject to the terms for acceleration as provided in Sections 4(b) or 5(a) below. Executive may also receive such further stock-based awards as may be determined by the Board in its sole discretion, from time to time.

**(d) Expenses.** Myomo will reimburse Executive for all reasonable expenses in the performance of his duties under the Agreement, in accordance with Myomo's standard reimbursement policies. Executive further agrees to comply with Myomo's reimbursement procedures and with the conditions for reimbursements as required by the Internal Revenue Code and the rules and regulations thereunder in connection with the incurring and reporting of business expenses.

**(e) Benefits.** During the Term, the Executive shall be entitled to participate in or receive benefits under the Company's employee benefit plans in effect from time to time, subject to the terms of such plans.

**(f) Vacations.** During the Term, the Executive shall be entitled to accrue up to twenty (20) paid vacation days in each year, which shall be accrued ratably. Vacation must be taken in accordance with the policies of the Company, as in effect from time to time. Up to 20 vacation days that are not used in a particular calendar year may be carried over into a subsequent calendar year, however, the Executives unused vacation account shall not exceed the maximum amount as defined by Company's policy. The Executive shall also be entitled to all paid holidays given by the Company to its executives.

### **3. Termination.**

**(a) Death.** The Executive's employment shall terminate upon his death.

**(b) Disability.** If, as a result of the offering, incapacity of Executive due to physical or mental illness as determined by the Myomo Board of Directors, the Executive is unable to perform substantially and continuously the duties assigned to him hereunder for a period of sixty (60) days or more, with or without a reasonable accommodation being made by Myomo, and compliance by Myomo with all applicable statutes, if any, Myomo may terminate this Agreement for "Disability," upon ten (10) calendar days' notice. In said event, Myomo shall be required to pay Executive all accrued and unpaid salary and if Executive worked at least six months of the year of the disability, the pro-rata portion of his target annual incentive compensation. In addition, Myomo shall provide Executive and his dependents with any benefit continuation rights as required by law.

**(c) Termination by Company for Cause.** Myomo may terminate Executive's employment hereunder at any time for any reason, including but not limited to for Cause. For purposes of this Agreement, "Cause" shall mean

termination based upon: (i) the failure by Executive to follow directions of the Board of Directors in the handling of material matters which are legal and consistent with Executive's position; (ii) the willful or continued engagement by Executive in conduct which is materially injurious to Myomo, monetarily or otherwise, including, but not limited to, the disclosure by Executive of Confidential Information (as defined in paragraph 7(a)), which is inconsistent with Executive's responsibilities set forth in paragraph 1(b), breach by Executive of his fiduciary duties to Myomo, violation by Executive of any restrictive covenant, including covenants not to compete, to solicit Myomo's clients or employees or disparage Myomo or their officers, employees, business partners, affiliates or representatives, as further defined in paragraph 7 below; (iii) a conviction of, a plea of nolo contendere, a guilty plea or confession by Executive to an act of fraud, misappropriation or embezzlement or to a felony; (iv) Executive's use, sale or possession of illegal substances, or habitual intoxication while conducting Myomo's business; (v) a knowing and material violation of Myomo's employment policies as specified in the Employee Handbook; (vi) a material breach by Executive of this Agreement; or (vii) Executive's willful absence from his employment or willful failure or refusal to perform or gross neglect in the performance of his duties or responsibilities hereunder. Prior to termination under subparagraphs (i) or (v) above, Myomo will provide Executive with written notice pursuant to the Cause Process" shall mean that (i) Myomo reasonably determines in good faith that a "Cause" condition has occurred; (ii) Myomo notifies Executive in writing of any act or omission it believes constitutes Cause for termination, including stating the reasons for such belief, which notice shall occur within 90 days of the first occurrence of such condition; and (iii) Myomo terminates Executive's employment within 30 days after the end of the Cure Period. In the event of termination of Executive by Myomo for Cause, Myomo shall have no obligation to pay Executive anything other than any salary earned to date and to provide him with any benefit continuation rights as required by law.

(d) **Termination Without Cause.** The Company may terminate the Executive's employment hereunder at any time without Cause. Any termination by Company of the Executive's employment under this Agreement which does not constitute a termination for Cause under Section 3 (c) and does not result from the death under Section 3 (a) or disability of the Executive under Section 3 (b) shall be deemed a termination without Cause.

(e) **Termination by the Executive.** The Executive may terminate his employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Executive has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) diminution in Executive's title and any material diminution in the Executive's responsibilities, authority or duties; (ii) any diminution in the Executive's Base Salary except that a diminution up to 20% shall be permitted where that diminution is part of an across-the-board salary reduction based on the Company's financial performance with the same percentage diminution to all or substantially all senior management employees of the Company; (iii) a material change in the geographic location at which the Executive provides services to the Company, experienced which change shall occur if Executive's office changes at the Company's direction to a location more than 40 miles from his main residence address (provided that a change in the Executive's residence shall not trigger Good Reason); or (iv) the material breach of this Agreement by the Company. "Good Reason Process" shall mean that (i) the Executive reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Executive notifies the Company in writing of any act or omission it believes constitutes Good Reason for termination, including stating the reasons for such belief, which notice shall occur within 90 days of the first occurrence of such condition; (iii) the Executive cooperates in good faith, for a period of 30 days following such notice (the "Cure Period"), with the Company's efforts to respond to the notice, including providing the opportunity for the company to respond to him; (iv) notwithstanding such efforts, Executive is unable to demonstrate that the basis for such Cause has been reasonably cured or refuted or explained so that there is no such basis; (iv) Good Reason condition continues to exist; and (v) the Executive terminates his employment within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

(f) **Notice of Termination.** Except for termination as specified in Section 3(a), any termination of the Executive's employment by the Company or any such termination by the Executive shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon.

(g) **Date of Termination.** "Date of Termination" shall mean: (i) if the Executive's employment is terminated by his death, the date of his death; (ii) if the Executive's employment is terminated on account of disability under Section

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3(b), by the Company for Cause under Section 3(c), or if the Executive's employment is terminated by the Company under Section 3(d), the date on which a Notice of Termination is given; (iii) if the Executive's employment is terminated by the Executive under Section 3(e) without Good Reason, 30 days after the date on which a Notice of Termination is given, and (iv) if the Executive's employment is terminated by the Executive under Section 3(e) with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period.

Notwithstanding the foregoing, in the event that the Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement.

#### **4. Compensation Upon Termination.**

(a) **Termination Generally.** If the Executive's employment with the Company is terminated for any reason, the Company shall pay or provide to the Executive (or to his authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements (subject to, and in accordance with, Section 2(c) of this Agreement) and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Executive's Date of Termination; and (ii) any vested benefits the Executive may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

(b) **Termination by the Company Without Cause or by the Executive with Good Reason.** During the Term, if the Executive's employment is terminated by the Company without Cause as provided in Section 3(d), or the Executive terminates his employment for Good Reason as provided in Section 3(e), then the Company shall pay the Executive his Accrued Benefit. In addition, subject to the Executive signing a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property and non-disparagement, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming irrevocable, all within 60 days after the Date of Termination:

(i) The Company shall pay the Executive an ownership change amount equal to 100% of (A) the Executive's Base Salary plus (B) the Executive's Board Approved Annual Incentive Compensation for the current fiscal year. In no event shall "Target Annual Incentive Compensation" include any sign-on bonus, retention bonus or any other special bonus. Notwithstanding the foregoing, if the Executive breaches any of the provisions contained in Section 7 of this Agreement, all payments of the Severance Amount shall immediately cease; and

(ii) Upon the Date of Termination, all restricted stock units and any stock options and/or other stock- based awards held by the Executive in which the Executive would have vested if he had remained employed for an additional twelve months following the Date of Termination shall vest and become exercisable or nonforfeitable as of the Date of Termination; and

(ii) If the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a monthly cash payment for twelve months or the Executive's COBRA health continuation period, whichever ends earlier, in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company; and

(iv) the amounts payable under this Section 4(b) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over six months commencing within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, the Severance Amount shall begin to be paid in the second calendar year by the last day of such 60-day period; provided, further, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section I.409A- 2(b)(2).

(c) **Expiration/Non-Renewal of the Agreement by the Company and Continued At-Will Employment.** For the avoidance of doubt, a non-renewal of this Agreement by the Company (in accordance with Section 1(a) above) will not constitute a termination of employment by the Company without Cause and the Executive acknowledges that the severance provisions of Section 4(b) will not apply. Should the parties decide not to renew this Agreement but to continue to work together in an employment relationship, Executive's employment shall continue on an at-will basis, with no stated term, pursuant to the terms and conditions of this Agreement which shall remain in effect, unless otherwise modified in writing. Executive shall likewise remain obligated to abide by the confidentiality and restrictive covenant provisions specified in paragraph 7 which, along with this provision, shall survive the termination of this Agreement.

**5. Change in Control Payment.** The provisions of this Section 5 set forth certain terms of an agreement reached between the Executive and the Company regarding the Executive's rights and obligations upon the occurrence of a Change in Control of the Company. These provisions are intended to assure and encourage in advance the Executive's continued attention and dedication to his assigned duties and his objectivity during the pendency and after the occurrence of any such event. These provisions shall apply in lieu of, and expressly supersede, the provisions of Section 4(b) regarding severance pay and benefits upon a termination of employment, if such termination of employment occurs within 12 months after the occurrence of the first event constituting a Change in Control. These provisions shall terminate and be of no further force or effect beginning 12 months after the occurrence of a Change in Control.

(a) **Change in Control.** During the Term, if the closing of a Change in Control occurs, and if Executive is engaged as the CEO at such time, notwithstanding anything to the contrary in any applicable option agreement or stock-based award agreement: (i) all time-based stock options and other stock-based awards subject to time-based vesting held by the Executive shall immediately accelerate and become fully exercisable or non-forfeitable as of the closing date of such Change in Control; and (ii) the measurement date of any unvested performance-based stock awards shall accelerate to the closing date of a Change in Control. If upon such acceleration of the measurement date, the Executive is entitled to vesting of all or a portion of such performance-based stock award, such earned portion shall immediately accelerate and become fully exercisable or non-forfeitable as of the closing date of such Change in Control.

**(b) Change in Control and Qualifying Termination.** During the Term, if within 12 months after a Change in Control, the Executive's employment is terminated by the Company without Cause as provided in Section 3(d) or the Executive terminates his employment for Good Reason as provided in Section 3(e), then, subject to the signing of the Separation Agreement and Release by the Executive and the Separation Agreement and Release becoming irrevocable, all within 60 days after the Date of Termination.

- (i) the Company shall pay the Executive a lump sum in cash in an amount equal to 100% times the sum of (A) the Executive's current Base Salary (or the Executive's Base Salary in effect immediately prior to the Change in Control, if higher) plus (B) the Executive's Annual Board Approved Incentive Compensation; and
- (ii) if the Executive was participating in the Company's group health plan immediately prior to the Date of Termination and elects COBRA health continuation, then the Company shall pay to the Executive a monthly cash payment for twelve months or the Executive's COBRA health continuation period, whichever ends earlier, in an amount equal to the monthly employer contribution that the Company would have made to provide health insurance to the Executive if the Executive had remained employed by the Company; and
- (iii) the amounts payable under this Section 5(a) shall be paid or commence to be paid within 60 days after the Date of Termination; provided, however, that if the 60-day period begins in one calendar year and ends in a second calendar year, such payment shall be paid or commence to be paid in the second calendar year by the last day of such 60-day period.

**(b) Additional Limitation.**

- (i) Anything in this Agreement to the contrary notwithstanding, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Executive, whether paid or payable or

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distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Code and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Executive becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Executive receiving a higher After Tax Amount (as defined below) than the Executive would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. § 1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. § 1.280 G-1, Q&A-24(b) or (c).

- (ii) For purposes of this Section 5(6), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Executive as a result of the Executive's receipt of the Aggregate Payments. For

purposes of determining the After Tax Amount, the Executive shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

(iii) The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Executive. Any determination by the Accounting Firm shall be binding upon the Company and the Executive.

(c) **Definitions.** For purposes of this Section 5, the following terms shall have the following meanings:

"Change in Control" shall mean any of the following:

(i) any "person", as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 126-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 50 percent or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); or

(ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or

(iii) the consummation of (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50 percent of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company, or (C) any tender offer, going private transaction, or other sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of shares representing in the aggregate more than 50 percent of the voting shares of the Company.

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Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50 percent or more of the combined voting power of all of

the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50 percent or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred for purposes of the foregoing clause (i).

## **6. Section 409A.**

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive's separation from service within the meaning of Section 382 409A of the Internal Revenue Code. As Code, the Company determines that the Executive is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the issuance Code, then to the extent any payment or benefit that the Executive becomes entitled to under this Agreement on account of the Executive's separation from service would be considered deferred compensation otherwise subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of these (A) six months and one day after the Executive's separation from service, or (B) the Executive's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule.

(b) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Executive during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

(c) To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Executive's termination of employment, then such payments or benefits shall be payable only upon the Executive's "separation from service". The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section I.409A-1 (h).

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section I .409A-2(b)(2). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party.

(e) The Company makes no representation or warranty and shall have no liability to the Executive or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section.

## **7. Confidential Information. Noncompetition and Cooperation.**

(a) **Confidential Information.** As used in this Agreement, "Confidential Information" means information belonging to the Company which is of value to the Company in the course of conducting its business and the disclosure of

which could result in a competitive or other disadvantage to the Company. Confidential Information includes, without limitation, financial statements, information, reports, and forecasts; inventions, improvements and other intellectual property; trade secrets; know-how; designs, processes or formulae; software; market or sales information or plans; customer lists; and business plans, prospects and opportunities (such as possible acquisitions or dispositions of businesses or facilities) which have been discussed or considered by the management of the Company. Confidential Information includes information developed by the Executive in the course of the Executive's employment by the Company, as well as other information to which the Executive may have access in connection with the Executive's employment. Confidential Information also includes the confidential information of others with which the Company has a business relationship. Notwithstanding the foregoing, Confidential Information does not completed include information in the public domain, unless due to breach of the Executive's duties under Section 7(b).

(b) **Confidentiality.** The Executive understands and agrees that the Executive's employment creates a relationship of confidence and trust between the Executive and the Company with respect to all Confidential Information. At all times, both during the Executive's employment with the Company and after its termination, the Executive will keep in confidence and trust all such Confidential Information, and will not use or disclose any such Confidential Information without the written consent of the Company, except as may be necessary in the ordinary course of performing the Executive's duties to the Company. For avoidance of doubt, nothing in this analysis Agreement shall be interpreted or applied to prohibit the Executive from making any good faith report to any governmental agency or other governmental entity concerning any act or omission that the Executive reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation. Nothing contained in this Agreement, any other agreement with the Company, or any Company policy limits Executive's ability, with or without notice to the Company, to: (i) file a charge or complaint with any federal, state or local governmental agency or commission (a "Government Agency"), including without limitation, the Equal Employment Opportunity Commission, the National Labor Relations Board or the Securities and Exchange Commission; (ii) communicate with any Government Agency or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including by providing non-privileged documents or information; (iii) exercise any rights under Section 7 of the National Labor Relations Act, which are available to non-supervisory employees, including assisting co-workers with or discussing any employment issue as part of engaging in concerted activities for the purpose of mutual aid or protection; (iv) discuss or disclose information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Executive have reason to believe is unlawful; or (v) testify truthfully in a legal proceeding. Any such communications and disclosures must not violate applicable law and the information disclosed must not have been obtained through a communication that was subject to the attorney-client privilege (unless disclosure of that information would otherwise be permitted consistent with such privilege or applicable law). In addition, for the avoidance of doubt, pursuant to the federal Defend Trade Secrets Act of 2016, the Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (B) solely for the purpose of reporting or investigating a suspected violation of law ; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(c) **Documents, Records, etc.** All documents, records, data, apparatus, equipment and other physical property, whether or not pertaining to Confidential Information, which are furnished to the Executive by the Company or are produced by the Executive in connection with the Executive's employment will be and remain the sole property of the Company. The Executive will return to the Company all such materials and property as and when requested by the Company. In any event, the Executive will return all such materials and property immediately upon

termination of the Executive's employment for any reason. The Executive will not retain with the Executive any such material or property or any copies thereof after such termination.

(d) **Noncompetition and Nonsolicitation.** (i) During the Executive's employment with the Company and for 12 months unless Executive breaches this Agreement, in which case the period is for 24 months, thereafter, regardless of any other reason for the termination (the "Noncompete Restricted Period"), the Executive will not, directly or indirectly, whether as owner, partner, shareholder, consultant, agent, employee, co-venturer or otherwise, engage, participate, assist or invest in any Competing Business (as hereinafter defined); (ii) During the Executive's employment with the Company and for 18 months unless Executive breaches this Agreement in which case the

period is for 24 months, thereafter, regardless of any other reason for the termination, the Executive (the "Nonsolicit Restricted Period") will refrain from directly or indirectly employing, attempting to employ, recruiting or otherwise soliciting, inducing or influencing any person to leave employment with the Company (other than terminations of employment of subordinate employees undertaken in the course of the Executive's employment with the Company); and (iii) during the Nonsolicit Restricted Period, the Executive will refrain from soliciting or encouraging any customer or supplier to terminate or otherwise modify adversely its business relationship with the Company. The Executive understands that the restrictions set forth in this Section 7(d) are intended to protect the Company's interest in its Confidential Information and established employee, customer and supplier relationships and goodwill, and agrees that such restrictions are reasonable and appropriate for this purpose. In accordance with M.G.L. c.149 Section 24L. During the Noncompete Restricted Period, Company shall be required to provide "garden leave" for the duration of the non-compete period (but for no more than 12 months after employment ends) of at least 50% of the Executive's highest salary within the last two years of employment unless Executive breaches the restrictions in this Agreement. For purposes of this Agreement, the term "Competing Business" shall mean a business conducted anywhere in geographic regions where the Company's products/services are offered, which manufactures or sells medical devices that provide non-invasive, powered arm braces (orthoses) to restore function in the paralyzed or weakened arms and hands of individuals, in competition with devices manufactured and sold by the Company, or any other business activity in which the Company is materially engaged. Notwithstanding the foregoing, the Executive may own up to one percent (1%) of the outstanding stock of a publicly held corporation which constitutes or is affiliated with a Competing Business. Executive acknowledges and agrees that the changes to this Agreement, including the increase compensation eligibility described herein, constitutes mutually agreed upon, fair and reasonable consideration that is independent of the Executive's employment with the Company. Executive agrees that Executive has been advised to seek legal counsel in reviewing this Agreement. Executive agrees that this Agreement shall become effective no earlier than 10 business days after Executive received the draft of this Agreement containing revised noncompete provisions.

(e) **Third Party Agreements and Rights.** The Executive hereby confirms that the Executive is not bound by the terms of any agreement with any previous employer or other party which restricts in any way the Executive's use or disclosure of information or the Executive's engagement in any business. The Executive represents to the Company that the Executive's execution of this Agreement, the Executive's employment with the Company and the performance of the Executive's proposed duties for the Company will not violate any obligations the Executive may have to any such previous employer or other party. In the Executive's work for the Company, the Executive will not disclose or make use of any information in violation of any agreements with or rights of any such previous employer or other party, and the Executive will not bring to the

premises of the Company any copies or other tangible embodiments of non-public information belonging to or obtained from any such previous employment or other party.

(f) **Litigation and Regulatory Cooperation.** During and after the Executive's employment, the Executive shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while the Executive was employed by the Company. The Executive's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Executive's employment, the Executive also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Executive was employed by the Company. The Company ~~evaluated~~ shall reimburse the Executive for all his reasonable and documented out-of-pocket expenses incurred in connection with the Executive's performance of obligations pursuant to this Section 7(f). Additionally, after the term of employment, if the cooperation requested is more than 15 hours per calendar quarter, the Company shall pay Executive's consulting fees and time for cooperation shall be arranged for Executive's convenience.

(g) **Injunction.** The Executive agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Executive of the promises set forth in this Section 7, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, subject to Section 8 of this Agreement, the Executive agrees that if the Executive breaches, or proposes to breach, any portion of this Agreement, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or

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other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company.

**8. Arbitration of Disputes.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof or otherwise arising out of the Executive's employment or the termination of that employment (including, without limitation, any claims of unlawful employment discrimination whether based on age or otherwise) shall, to the fullest extent permitted by law, be settled by arbitration in any forum and form agreed upon by the parties or, in the absence of such an agreement, under the auspices of the American Arbitration Association ("AAA") in Boston, Massachusetts in accordance with the Employment Dispute Resolution Rules of the AAA, including, but not limited to, the rules and procedures applicable to the selection of arbitrators. In the event that any person or entity other than the Executive or the Company may be a party with regard to any such controversy or claim, such controversy or claim shall be submitted to arbitration subject to such other person or entity's agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. This Section 8 shall be specifically enforceable. Notwithstanding the foregoing, this Section 8 shall not preclude either party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or a preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Section 8.

**9. Consent to Jurisdiction.** To the extent that any court action is permitted consistent with or to enforce Section 8 of this Agreement, the parties hereby consent to the jurisdiction of the Superior Court of the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts. Accordingly, with respect to any such court action, the Executive (a) submits to the personal jurisdiction of such

courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

10. **Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter.

11. **Withholding.** All payments made by the Company to the Executive under this Agreement shall be net of any tax or other amounts required to be withheld by the Company under applicable law.

12. **Successor to the Executive.** This Agreement shall inure to the benefit of and be enforceable by the Executive's personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Executive's death after his termination of employment but prior to the completion by the Company of all payments due him under this Agreement, the Company shall continue such payments to the Executive's beneficiary designated in writing to the Company prior to his death (or to his estate, if the Executive fails to make such designation).

13. **Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. **Survival.** The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Executive's employment to the extent necessary to effectuate the terms contained herein.

15. **Waiver.** No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent events through enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

16. **Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the issuance Executive at the last address the

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Executive has filed in writing with the Company or, in the case of the Company, at its main offices, attention of the Board.

17. **Amendment.** This Agreement may be amended or modified only by a written instrument signed by the Executive and by a duly authorized representative of the Company.

18. **Governing Law.** This is a Massachusetts contract and shall be construed under and be governed in all respects by the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws principles of such Commonwealth. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the First Circuit.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

20. **Successor to Company.** The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

21. **Gender Neutral.** Wherever used herein, a pronoun in the masculine gender shall be considered as including the feminine gender unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date written below.

MYOMO, INC.

By: /s/ Tom Crowley  
Tom Crowley  
Chair,  
Compensation  
Committee

December 13, 2023  
Date

/s/ Paul R. Gudonis  
Paul R. Gudonis

December 13, 2023  
Date

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Exhibit 10.10

**AMENDMENT TO EMPLOYMENT AGREEMENT**

This Amendment (the “Amendment”) is made as of February 21, 2024, and amends the Employment Agreement dated April 22, 2021 between Myomo, a Delaware corporation (the “Company”), and Micah Mitchell (the “Executive”) (such Agreement, the “Employment Agreement”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and in consideration for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree:

1. All references in the Employment Agreement to “Commencement Date” shall mean February 21, 2024.
2. Section 2(a) of the Employment Agreement is amended by replacing “\$185,400” with “\$210,000” and deleting the words “which shall be effective April 1, 2021.”

3. Section 2(b) of the Employment Agreement is amended by replacing "80%" with "65%."
4. In Section 5(a) of the Employment Agreement, the following two sentences are added between the heading "Change in Control" and the words "During the Term":

During the Term, if the closing of a Change in Control occurs, and if Executive is engaged as the Chief Commercial Officer at such time, notwithstanding anything to the contrary in any applicable option agreement or stock-based award agreement: (i) all time-based stock options and other stock-based awards subject to time-based vesting held by the Executive shall immediately accelerate and become fully exercisable or non-forfeitable as of the closing date of such Change in Control; and (ii) the financial statements measurement date of any unvested performance-based stock awards shall accelerate to the closing date of a Change in Control. If upon such acceleration of the measurement date, the Executive is entitled to vesting of all or a portion of such performance-based stock award, such earned portion shall immediately accelerate and determined become fully exercisable or non-forfeitable as of the closing date of such Change in Control.

5. Section 5(a)(ii) of the Employment Agreement is hereby deleted.
6. Section 7(b) of the Employment Agreement is amended by deleting the words between "For avoidance of doubt" and "made under seal." and replacing them with the following language:

Nothing contained in this Agreement, any other agreement with the Company, or any Company policy limits the Executive's ability, with or without notice to the Company, to:

(i) file a charge or complaint with any federal, state or local governmental agency or

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commission (a "Government Agency"), including without limitation, the Equal Employment Opportunity Commission, the National Labor Relations Board or the Securities and Exchange Commission; (ii) communicate with any Government Agency or otherwise participate in any investigation or proceeding that except may be conducted by any Government Agency, including by providing non-privileged documents or information; (iii) exercise any rights under Section 7 of the National Labor Relations Act, which are available to non-supervisory employees, including assisting co-workers with or discussing any employment issue as part of engaging in concerted activities for the events discussed above, there purpose of mutual aid or protection; (iv) discuss or disclose information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that the Executive have reason to

believe is unlawful; or (v) testify truthfully in a legal proceeding. Any such communications and disclosures must not violate applicable law and the information disclosed must not have been no additional subsequent events obtained through a communication that would require recognition in the financial statements or disclosure in the notes was subject to the financial statements. attorney-client privilege (unless disclosure of that information would otherwise be permitted consistent with such privilege or applicable law). In addition, for the avoidance of doubt, pursuant to the federal Defend Trade Secrets Act of 2016, the Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (i) is made (A) in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney and (B) solely for the purpose of reporting or investigating a suspected violation of law ; or (ii) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal

7. Except as expressly amended in this Amendment, the Employment Agreement remains in full effect. The Amendment, the Employment Agreement (as amended) and any confidentiality and restrictive covenant obligations Executive has to the Company constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements between the parties concerning such subject matter.

IN WITNESS WHEREOF, the parties have executed this Amendment effective on the date and year first above written.

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**Myomo, Inc.**

By: /s/ Paul R. Gudonis

Paul R. Gudonis

Its: CEO

/s/ Micah Mitchell  
Micah Mitchell

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**Exhibit 21.1**

**Myomo, Inc.**  
**List of Subsidiaries**

Subsidiary Legal Name	Employer	ID Number	% Owned	State/Country Incorporated
Myomo Europe GmbH	NA		100%	Germany

**Exhibit 23.1****Consent of Marcum LLP****INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT**

We consent to the incorporation by reference in the Registration Statement of Myomo, Inc. on Form S-3 [File No. 333-256159], Form S-8 [File No. 333-222263], Form S-8 [File No. 333-225952], Form S-8 [File No. 333-239133], Form S-8 [File No. 333-237288], Form S-8 [File No. 333-230272] and Form S-1 [File No. 333-269189] of our report dated **March 13, 2023** **March 7, 2024**, which includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of Myomo, Inc. as of **December 31, 2022** **December 31, 2023** and **2021** **2022** and for the two years ended **December 31, 2022**, **December 31, 2023** and **2021** **2022**

2022, which report is included in this Annual Report on Form 10-K of Myomo, Inc. for the year ended December 31, 2022 December 31, 2023.

/s/ Marcum LLP

Marcum LLP

New York, NY

March 13, 2023 7, 2024

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**Exhibit 31.1**

**Certification Pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934**

I, Paul R. Gudonis, certify that:

1. I have reviewed this Annual Report on Form 10-K of Myomo, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 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: **March 13, 2023** **March 7, 2024**

**/s/ Paul R. Gudonis**

**Paul R. Gudonis**

**President and Chief Executive Officer (Principal Executive Officer)**

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**Exhibit 31.2**

**Certification Pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934**

I, David A. Henry, certify that:

1. I have reviewed this Annual Report on Form 10-K of Myomo, Inc.;

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

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

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 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: **March 13, 2023** **March 7, 2024**

/s/ David A. Henry

David A. Henry

Chief Financial Officer (Principal Financial Officer)

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**Exhibit 32.1**

**Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

I, Paul R. Gudonis, President and Chief Executive Officer of Myomo, Inc. (the "Company"), certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that, to my knowledge:

- (1) the Annual Report on Form 10-K of the Company for the period ended **December 31, 2022** **December 31, 2023** (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: **March 13, 2023** **March 7, 2024**

/s/ Paul R. Gudonis

Paul R. Gudonis

President and Chief Executive Officer  
(Principal Executive Officer)

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**Exhibit 32.2**

**Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

I, David A. Henry, Chief Financial Officer of Myomo, Inc. (the "Company"), certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that, to my knowledge:

- (1) the Annual Report on Form 10-K of the Company for the period ended **December 31, 2022** **December 31, 2023** (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: **March 13, 2023** **March 7, 2024**

/s/ David A. Henry

David A. Henry

Chief Financial Officer  
(Principal Financial Officer)

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**Exhibit 97.1**

**MYOMO, INC.**

## COMPENSATION RECOVERY POLICY

Adopted as of September 13, 2023

Myomo, Inc., a Delaware corporation (the “Company”), has adopted a Compensation Recovery Policy (this “Policy”) as described below.

### 1. Overview

The Policy sets forth the circumstances and procedures under which the Company shall recover Erroneously Awarded Compensation from current and former Executive Officers of the Company in accordance with rules issued by the United States Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934 (the “Exchange Act”) and the New York Stock Exchange American. Please refer to Section 3 below for definitions of capitalized terms used and not otherwise defined herein.

### 2. Compensation Recovery Requirement

In the event the Company is required to prepare a Material Financial Restatement, the Company shall reasonably promptly recover all Erroneously Awarded Compensation with respect to such Material Financial Restatement, and each Covered Person shall be required to take all actions necessary to enable such recovery.

### 3. Definitions

- a. “Applicable Recovery Period” means with respect to a Material Financial Restatement, the three completed fiscal years immediately preceding the Restatement Date for such Material Financial Restatement. In addition, in the event the Company has changed its fiscal year: (i) any transition period of less than nine months occurring within or immediately following such three completed fiscal years shall also be part of such Applicable Recovery Period and (ii) any transition period of nine to 12 months will be deemed to be a completed fiscal year.
- b. “Applicable Rules” means any rules or regulations adopted by the Exchange pursuant to Rule 10D-1 under the Exchange Act and any applicable rules or regulations adopted by the SEC pursuant to Section 10D of the Exchange Act.
- c. “Board” means the Board of Directors of the Company.
- d. “Committee” means the Compensation Committee of the Board or, in the absence of such committee, a majority of independent directors serving on the Board.
- e. A “Covered Person” means any Executive Officer. A person’s status as a Covered Person with respect to Erroneously Awarded Compensation shall be determined as of

the time of receipt of such Erroneously Awarded Compensation regardless of their current role or status with the Company (e.g., if a person began service as an Executive Officer after the beginning of an Applicable Recovery Period, that person would not be considered a Covered Person with respect to Erroneously Awarded Compensation received before the person began service as an Executive Officer, but would be considered a Covered Person with respect to Erroneously Awarded Compensation received after the person began service as an Executive Officer where such person served as an Executive Officer at any time during the performance period for such Erroneously Awarded Compensation).

- f. “Effective Date” means September 13, 2023.
- g. “Erroneously Awarded Compensation” means, with respect to a Material Financial Restatement, the amount of any Incentive-Based Compensation received by a Covered Person on or after the Effective Date during the Applicable Recovery Period that exceeds the amount that otherwise would have been received by the Covered Person had such compensation been determined based on the restated amounts in the Material Financial Restatement, computed without regard to any taxes paid. Calculation of Erroneously Awarded Compensation with respect to Incentive-Based Compensation based on stock price or total shareholder return, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in a Material Financial Restatement, shall be based on a reasonable estimate of the effect of the Material Financial Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was received, and the Company shall maintain documentation of the determination of such reasonable estimate and provide such documentation to the Exchange in accordance with the Applicable Rules.
- h. “Exchange” means the New York Stock Exchange American.
- i. An “Executive Officer” means any person who served the Company in any of the following roles, received Incentive-Based Compensation after beginning service in any such role (regardless of whether such Incentive-Based Compensation was received during or after such person’s service in such role) and served in such role at any time during the performance period for such Incentive-Based Compensation: the president, chief executive officer, the principal financial officer, the principal accounting officer, corporate controller, chief commercial officer, chief medical officer, any vice president in charge of a principal business unit, division or function (such as sales, quality, administration or finance), any other officer who performs a policy making function, any other person who performs similar policy making functions for the issuer, and any other officer pursuant to Item 401(b) of Regulation S-K. Executive officers of parents or subsidiaries of the Company may be deemed

executive officers of the Company if they perform such policy making functions for the Company.

- j. **“Financial Reporting Measures”** mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, any measures that are derived wholly or in part from such measures (including, for example, a non-GAAP financial measure), and stock price and total shareholder return.
- k. **“Incentive-Based Compensation”** means any compensation provided, directly or indirectly, by the Company or any of its subsidiaries that is granted, earned, or vested based, in whole or in part, upon the attainment of a Financial Reporting Measure. Incentive-Based Compensation is deemed received, earned or vested when the Financial Reporting Measure is attained, not when the actual payment, grant or vesting occurs.
- l. A **“Material Financial Restatement”** means an accounting restatement of previously issued financial statements of the Company due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously-issued financial statements that is material to the previously-issued financial statements or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period. Such accounting restatements include revisions to previously issued financial statements that are disclosed in the footnotes to the financial statements.
- m. **“Restatement Date”** means, with respect to a Material Financial Restatement, the earlier to occur of: (i) the date the Board or the Audit Committee of the Board concludes, or reasonably should have concluded, that the Company is required to prepare the Material Financial Restatement or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare the Material Financial Restatement.

#### **4. Exception to Compensation Recovery Requirement**

The Company may elect not to recover Erroneously Awarded Compensation pursuant to this Policy if the Committee determines that recovery would be impracticable, and one or more of the following conditions, together with any further requirements set forth in the Applicable Rules, are met: (i) the direct expense paid to a third party to assist in enforcing this Policy would exceed the amount to be recovered, and the Company has made a reasonable attempt to recover such Erroneously Awarded Compensation; or (ii) recovery would likely cause an otherwise tax-qualified retirement plan to fail to be so qualified under applicable regulations.

## 5. Tax Considerations

To the extent that, pursuant to this Policy, the Company is entitled to recover any Erroneously Awarded Compensation that is received by a Covered Person, the gross amount received (i.e., the amount the Covered Person received, or was entitled to receive, before any deductions for tax withholding or other payments) shall be returned by the Covered Person.

## 6. Method of Compensation Recovery

The Committee shall determine, in its sole discretion, the method for recovering Erroneously Awarded Compensation hereunder, which may include, without limitation, any one or more of the following:

- a. requiring reimbursement of cash Incentive-Based Compensation previously paid;
- b. seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards;
- c. cancelling or rescinding some or all outstanding vested or unvested equity-based awards;
- d. adjusting or withholding from unpaid compensation or other set-off;
- e. cancelling or setting-off against planned future grants of equity-based awards; and/or
- f. any other method permitted by applicable law or contract.

Notwithstanding the foregoing, a Covered Person will be deemed to have satisfied such person's obligation to return Erroneously Awarded Compensation to the Company if such Erroneously Awarded Compensation is returned in the exact same form in which it was received; provided that equity withheld to satisfy tax obligations will be deemed to have been received in cash in an amount equal to the tax withholding payment made.

## 8. Policy Interpretation

This Policy shall be interpreted in a manner that is consistent with the Applicable Rules and any other applicable law and shall otherwise be interpreted (including in the determination of amounts recoverable) in the business judgment of the Committee. The Committee shall take into consideration any applicable interpretations and guidance of the SEC in interpreting this Policy, including, for example, in determining whether a financial restatement qualifies as a Material Financial Restatement hereunder. To the extent the Applicable Rules require recovery of Incentive-Based Compensation in additional circumstances besides those specified above, nothing in this Policy shall be deemed to limit or restrict the right or obligation of the Company

to recover Incentive-Based Compensation to the fullest extent required by the Applicable Rules. This Policy shall be deemed to be automatically amended, as of the date the Applicable Rules become effective with respect to the Company, to the extent required for this Policy to comply with the Applicable Rules.

## **9. Policy Administration**

This Policy shall be administered by the Committee. The Committee shall have such powers and authorities related to the administration of this Policy as are consistent with the governing documents of the Company and applicable law. The Committee shall have full power and authority to take, or direct the taking of, all actions and to make all determinations required or provided for under this Policy and shall have full power and authority to take, or direct the taking of, all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of this Policy that the Committee deems to be necessary or appropriate to the administration of this Policy. The interpretation and construction by the Committee of any provision of this Policy and all determinations made by the Committee under this policy shall be final, binding and conclusive.

## **10. Compensation Recovery Repayments not Subject to Indemnification**

Notwithstanding anything to the contrary set forth in any agreement with, or the organizational documents of, the Company or any of its subsidiaries, Covered Persons are not entitled to indemnification for Erroneously Awarded Compensation recovered under this Policy and, to the extent any such agreement or organizational document purports to provide otherwise, Covered Persons hereby irrevocably agree to forego such indemnification.

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