

OPEXA THERAPEUTICS, INC.

FORM 10KSB/A

(Amended Annual Report (Small Business Issuers))

Filed 11/09/07 for the Period Ending 12/31/06

Address	2635 TECHNOLOGY FOREST BLVD. THE WOODLANDS, TX 77381
Telephone	(281) 272-9331
CIK	0001069308
Symbol	OPXA
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10KSB/A

(Amendment No. 1)

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

For the fiscal year ended December 31, 2006

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

Commission File Number: 001-33004



Opexa Therapeutics, Inc.

(Exact name of small business issuer as specified in its charter)

Texas

(State or other jurisdiction of incorporation or organization)

76-0333165

(IRS Employer Identification No.)

2635 N Crescent Ridge Drive, The Woodlands, Texas
(Address of principal executive offices)

77381
(Zip Code)

Registrant's telephone number, including area code: (281) 272-9331

Securities registered pursuant to Section 12(b) of the Act: None

Securities registered pursuant to Section 12(g) of the Act: Common Stock

Check whether the Issuer is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. ☐

Check whether the Issuer (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 ☐

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B is not contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB. ☒

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

Issuer's revenues for the fiscal year ended December 31, 2006: \$0.

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Issuer as of November 5, 2007 based upon the average bid and asked price as of such date, was \$13,389,953.

The Registrant's common stock outstanding as of November 5, 2007, was 6,696,784 shares.

Transitional Small Business Disclosure Format (Check One): Yes ☐ No ☒

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Explanatory Note

Opexa Therapeutics, Inc. is filing this Amendment No. 1 on Form 10-KSB/A (the "Form 10-KSB/A") to amend our Annual Report on Form 10-K for the fiscal year ended December 31, 2006 (the "Report") that was filed with the Securities and Exchange Commission (the "SEC") on March 16, 2007. This Form 10-KSB/A is being filed to replace Part I, Items 6 and 7.

On November 2, 2007, Opexa filed its quarterly report for the period ended September 30, 2007. As shown in its financial statements, Opexa has negative cash flows provided by its operating activities and has a cash balance of \$5.8 million as of September 30, 2007 which is not sufficient to fund its operations for the next twelve months. These conditions raise substantial doubt as to Opexa's ability to continue as a going concern. Our independent accountants have added a going concern paragraph to their report on the audited financial statements for the year ended December 31, 2006 and we have added a going concern footnote (See footnote 15) to the financial statements for the year ended December 31, 2006.

Pursuant to Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), this Amendment No. 1 amends Item 6 and 7 in its entirety and contains new certifications pursuant to Rules 13a-14 and 15d-14 under the Exchange Act and Section 302 of the Sarbanes-Oxley Act of 2002. Other than as set forth above and the inclusion of new certifications pursuant to Rules 13a-14 and 15d-14 under the Exchange Act and Section 302 of the Sarbanes-Oxley Act of 2002, no other changes or amendments to the Original Filing are being made.

This Amendment No. 1 contains only the sections and exhibits to the Original Filing that are being amended, and those unaffected parts or exhibits are not included herein. This Amendment No. 1 continues to speak as of the date of the Original Filing and the Company has not updated the disclosure contained herein to reflect events that have occurred since the date of the Original Filing. Accordingly, this Amendment No. 1 should be read in conjunction with the Company's other filings made with the Securities and Exchange Commission, and is subject to updating and supplementing as provided in the periodic reports that the Company has filed and will file after the date of the Original Filing with the Securities and Exchange Commission.

ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION

The following discussion of our financial condition and results of operations should be read in conjunction with the accompanying financial statements and the related footnotes thereto.

Organizational History

We were incorporated in Texas in 1991 and in May 2004, we entered the biopharmaceutical business by acquiring an entity that held rights to treatments using adult multipotent stem cells derived from adult human peripheral blood. From an accounting standpoint, the subsidiary is deemed the acquirer in a reverse merger whereby the parent is deemed the survivor of the reorganization. As such, our financial statements are those of the subsidiary. In November 2004, we acquired Opexa Pharmaceuticals, Inc. which holds rights to technology to an individualized T-cell therapeutic technology for treating MS.

Critical Accounting Policies

General

The Consolidated Financial Statements and Notes to Consolidated Financial Statements contain information that is pertinent to this management's discussion and analysis. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of any contingent assets and liabilities. Management believes these accounting policies involve judgment due to the sensitivity of the methods, assumptions and estimates necessary in determining the related asset and liability amounts. Management believes it has exercised proper judgment in determining these estimates based on the facts and circumstances available to it at the time the estimates were made. The significant accounting policies are described in the Company's financial statements.

Principles of Consolidation

The accompanying consolidated financial statements of the Company include the accounts of its wholly owned subsidiary. All significant intercompany accounts and transactions have been eliminated.

Long-Lived Assets

Long-lived assets (i.e., intangible assets) are reviewed for impairment whenever events or changes in circumstances indicate that the net book value of the asset may not be recoverable. An impairment loss is recognized if the sum of the expected future cash flows (undiscounted and before interest) from the use of the asset is less than the net book value of the asset. Generally, the amount of the impairment loss is measured as the difference between the net book value of the asset and the estimated fair value of the related asset. Management does not believe any assets were impaired at December 31, 2006.

Revenue

We did not receive any revenue in 2005 and 2006 and do not expect any revenue in 2007.

Intellectual Property

As of December 31, 2006, we had \$28,256,772 of intellectual property, \$23,991,128 of which resulted from the acquisition of Opexa, \$4,028,204 which pertained to the consideration paid to date to the University of Chicago for the worldwide license to technology developed at Argonne National Laboratory, \$112,440 stock payable to the University of Chicago accrued at September 30, 2006 for 21,623 shares of common stock, and \$125,000 paid to the Shanghai Institute for Biological Science, China Academy of Science of the People's Republic of China whereby it acquired an exclusive worldwide license for the intellectual property rights and research results of an autologous T cell vaccine for rheumatoid arthritis. Of the \$23,991,128 of acquired intangible assets, the full amount is assigned to an inseparable group of patents and licenses that cannot function independently by themselves. The weighted average useful life of the intangible group as of December 31, 2006 is approximately 17 years. The weighted average useful life of the University of Chicago license is approximately 17 years. Accumulated amortization for the Intellectual Property as of December 31, 2006 is \$3,533,569. In April 2005 the Company obtained a fairness opinion from an independent investment banking firm with respect to the Opexa acquisition and there was no impairment at that time. In accordance with FAS 144, the Board authorized an update to this impairment analysis as of December 31, 2006 and it was determined that no impairment existed.

Accounting for Derivative Instruments

Statement of Financial Accounting Standard ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, requires all derivatives to be recorded on the balance sheet at fair value. These derivatives are separately valued and accounted for on our balance sheet. Fair values for securities traded in the open market and derivatives are based on quoted market prices. Where market prices are not readily available, fair values are determined using market based pricing models incorporating readily observable market data and requiring judgment and estimates.

The pricing model we use for determining fair values of our derivatives is the Black Scholes Pricing Model. Valuations derived from this model are subject to ongoing internal and external verification and review. The model uses market-sourced inputs such as interest rates, exchange rates and stock price volatilities. Selection of these inputs involves management's judgment and may impact net income.

In September 2000, the Emerging Issues Task Force ("EITF") issued EITF 00-19, "Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in, a Company's Own Stock," ("EITF 00-19") which requires freestanding contracts that are settled in a company's own stock, including common stock warrants, to be designated as an equity instrument, asset or a liability. Under the provisions of EITF 00-19, a contract designated as an asset or a liability must be carried at fair value on a company's balance sheet, with any changes in fair value recorded in the company's results of operations. A contract designated as an equity instrument must be included within equity, and no fair value adjustments are required. In accordance with EITF 00-19, in June 2006, we determined that certain outstanding warrants to purchase our common stock should be separately accounted for as liabilities. We had not classified these derivative liabilities as such in our historical financial statements. In order to reflect these changes, we restated our financial statements for the year ended December 31, 2005 to record the fair value of these warrants on our balance sheet and record unrealized changes in the values of these derivatives in our consolidated statement of operations as "Gain (loss) on derivative liabilities."

We have evaluated the provisions of the registration rights agreement that require us to pay registration delay payments in combination with the financial instrument and concluded that the combined instrument meets the definition of a derivative under SFAS 133.

In December 2006, the FASB issued FASB Staff Position No. EITF 00-19-2, Accounting for Registration Payment Arrangements (EITF 00-19-2). EITF 00-19-2 addresses an issuer's accounting for registration payment arrangements. It specifies that the contingent obligation to make future payments or otherwise transfer consideration under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument or other agreement, should be separately recognized and measured in accordance with FASB Statement No. 5, Accounting for Contingencies. The guidance in EITF 00-19-2 amends FASB Statements No. 133, Accounting for Derivative Instruments and Hedging Activities, and No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity, and FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, to include scope exceptions for registration payment arrangements. EITF 00-19-2 also requires additional disclosure regarding the nature of any registration payment arrangements, alternative settlement methods, the maximum potential amount of consideration and the current carrying amount of the liability, if any. This EITF is effective immediately for registration payment arrangements and the financial instruments subject to those arrangements that are entered into or modified subsequent to the date of issue of this EITF. For registration payment arrangements and financial instruments subject to those arrangements that were entered into prior to the issuance of this EITF, this is effective for financial statements issued for fiscal years beginning after December 15, 2006, and interim periods within those fiscal years. The impact of implementing EITF 00-19-2 in the fiscal year 2007 will result in a cumulative effect of a change in accounting principle with a credit to beginning retained earnings of \$6,656,677 and a reversal of the same amount to the derivative liability account.

Results of Operations and Financial Condition

Net Sales.

We recorded no sales for the twelve months ended December 31, 2006 and 2005.

General and Administrative Expenses

Our general and administrative expenses during the twelve months ended December 31, 2006, was \$5,461,047 as compared to \$6,259,075 for the twelve months ended December 31, 2005. The decrease in expenses is due to a combination of factors including a decrease in stock compensation expenses, professional service fees and overhead expenses in 2006. General and administrative expenses consist primarily of salaries and benefits, stock compensation expense, office expense, professional services fees, and other corporate overhead costs. We anticipate increases in general and administrative expenses as we continue to develop and prepare for commercialization of our technology.

Research and Development Expense

Research and development expense was \$7,612,932 for the twelve months ended December 31, 2006, as compared to \$4,183,356 the twelve months ended December 31, 2005. The increase in expenses was primarily due to the costs of the Phase I/II and Phase IIb clinical trials for Tovaxin™ and research and development in support of pre-clinical diabetes stem cell therapies. We have made and expect to continue to make substantial investments in research and development in order to develop and market our technology. We expense research and development costs as incurred. Property, plant and equipment for research and development that has an alternative future use is capitalized and the related depreciation is expensed as research and development costs. We expect our research and development expense to increase as we continue to invest in the development of our technology.

Interest Expense

Interest expense was \$984 for the twelve months ended December 31, 2006 compared to \$7,323,851 for the twelve months ended December 31, 2005. Interest expense during 2005 was due to notes payable that were outstanding during the second quarter of 2005 which were subsequently converted into equity in June 2005, resulting in acceleration of the amortization of the discount related to the notes.

Interest Income

Interest income was \$688,299 for the twelve months ended December 31, 2006 compared to \$81,930 for the twelve months ended December 31, 2005. The increase was due to the investment of the cash proceeds from a 2006 equity financing in short term and cash equivalent investments.

Gain (Loss) on Derivative Instruments Liabilities, net.

The Company recognized a gain on derivative instruments of \$104,978 for the twelve months ended December 31, 2006 compared to \$3,896,841 for the twelve months ended December 31, 2005. The decrease is a result of the net unrealized (non-cash) change in the fair value of our derivative instrument liabilities.

Net Loss

We had net loss for the year ended December 31, 2006, of \$14,056,407 or (\$2.61) per share (basic and diluted), compared with a net loss of \$15,517,356 or (\$9.90) per share (basic and diluted), for the twelve months ended December 31, 2005.

Liquidity and Capital Resources

Historically, the Company has financed its operations primarily from the sale of its debt and equity securities. As of December 31, 2006, the Company had cash, cash equivalents and marketable securities of approximately \$15 million.

We used approximately \$11.0 million of cash for operating activities for the year ended December 31, 2006 compared to approximately \$6.2 million for the same period of 2005. The increase in use of cash is primarily due to an increase in research and development expenditures related to the clinical trials for our Tovaxin therapy for MS and the purchase of marketable securities.

Capital expenditures were approximately \$0.6 million in 2006 and consisted primarily of laboratory equipment and leasehold improvements related to the construction of manufacturing facilities.

Our financing activities generated approximately \$21.3 million for the year ended December 31, 2006 as compared to approximately \$8.2 million for the same period of 2005. In both periods, the cash generated from financing activities resulted from the sale of Common Stock in equity financings.

Our current burn rate is approximately \$1 million per month excluding capital expenditures. Without the proceeds of this offering, we would need to raise additional capital to fund our working capital needs beyond the first quarter of 2008. Currently, we have determined that if we do not raise additional funds, there is a concern about our ability to continue our operations and our independent accountants have added a going concern paragraph to their report on the audit financial statements for the year ended December 31, 2006.

Contractual Commitments

A tabular disclosure of contractual obligations at December 31, 2006, is as follows:

	<u>Total</u>	<u>Payments Due by Period</u>			
		<u>Less than 1 year</u>	<u>1 - 3 years</u>	<u>3 - 5 years</u>	<u>More than 5 years</u>
Operating Leases	\$ 1,274,175	\$ 117,774	\$ 276,978	\$ 295,080	\$ 584,343
Consulting and Research Agreements	\$ 142,646.5	\$ 142,147	\$ 500	\$ -	\$ -
Total	<u>\$ 1,416,822</u>	<u>\$ 259,921</u>	<u>\$ 277,478</u>	<u>\$ 295,080</u>	<u>\$ 584,343</u>

Off-Balance Sheet Arrangements

As of December 31, 2006, the Company had no off-balance sheet arrangements.

Recent Accounting Pronouncements

Effective January 1, 2006, we adopted the provisions of Statement of Financial Accounting Standards No. 123R, "Share-Based Payment" which establishes accounting for equity instruments exchanged for employee service. We utilize the Black-Scholes option pricing model to estimate the fair value of employee stock based compensation at the date of grant, which requires the input of highly subjective assumptions, including expected volatility and expected life. Further, as required under SFAS 123R, we now estimate forfeitures for options granted, which are not expected to vest. Changes in these inputs and assumptions can materially affect the measure of estimated fair value of our share-based compensation. These assumptions are subjective and generally require significant analysis and judgment to develop. When estimating fair value, some of the assumptions will be based on, or determined from, external data and other assumptions may be derived from our historical experience with stock-based payment arrangements. The appropriate weight to place on historical experience is a matter of judgment, based on relevant facts and circumstances.

ITEM 7. FINANCIAL STATEMENTS

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Audited Financial Statements for years ended December 31, 2006 and 2005 and the period from January 22, 2003 (Inception) through December 31, 2006

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
Opexa Therapeutics, Inc.
(formerly PharmaFrontiers Corp.)
(a development stage company)
The Woodlands, Texas

We have audited the accompanying consolidated balance sheet of Opexa Therapeutics, Inc. (a development stage company), as of December 31, 2006 and the related consolidated statements of expenses, changes in stockholders' equity and cash flows for the years ended December 31, 2006 and 2005 and the period from January 22, 2003 (Inception) through December 31, 2006. These consolidated financial statements are the responsibility of Opexa's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatements. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Opexa as of December 31, 2006 and the consolidated results of its operations and its cash flows for the periods described in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 15 to the consolidated financial statements, the accompanying consolidated financial statements have been prepared assuming that Opexa will continue as a going concern. Opexa requires significant amount of cash in its operations and does not have sufficient cash to fund its operations for the next twelve months, which raises substantial doubt about its ability to continue as a going concern. Management's plans regarding those matters are also described in Note 15. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

MALONE & BAILEY, PC
www.malone-bailey.com
Houston, Texas

March 14, 2007
Except for Note 15 which is dated November 2, 2007

OPEXA THERAPEUTICS, INC.
(a development stage company)
(formerly PharmaFrontiers Corp.)
CONSOLIDATED BALANCE SHEET

	December 31, 2006
Assets	
Current assets:	
Cash and cash equivalents	\$ 12,019,914
Investment in marketable securities	2,952,096
Other current assets	<u>472,881</u>
Total current assets	15,444,891
Intangible assets, net accumulated amortization of \$3,533,569	24,723,203
Property & equipment, net accumulated amortization of \$395,284	<u>1,361,377</u>
Total assets	<u><u>\$ 41,529,471</u></u>
Liabilities and Stockholders' Equity	
Current liabilities:	
Accounts payable	\$ 868,862
Stock payable	112,440
Accrued expenses	135,069
Note payable	1,500,000
Current maturity of long term debt	14,080
Derivative liability	<u>6,656,677</u>
Total current liabilities	9,287,128
Long term liabilities:	
Loan payable	<u>96,242</u>
Total liabilities	<u>9,383,370</u>
Commitments and contingencies	-
Stockholders' equity:	
Convertible preferred stock, no par value, 10,000,000 shares authorized, none issued and outstanding	-
Common stock, \$0.50 par value, 100,000,000 shares authorized, 6,696,784 shares issued and outstanding	3,348,351
Additional paid in capital	63,118,180
Deficit accumulated during the development stage	<u>(34,320,430)</u>
Total stockholders' equity	32,146,101
Total liabilities and stockholders' equity	<u><u>\$ 41,529,471</u></u>

See accompanying summary of accounting policies and
notes to consolidated financial statements

OPEXA THERAPEUTICS, INC.
(a development stage company)
(formerly PharmaFrontiers Corp.)
CONSOLIDATED STATEMENTS OF EXPENSES
Years ended December 31, 2006 and 2005 and the
Period from January 22, 2003 (Inception) to December 31, 2006

	2006	2005	Inception through 2006
Research and development	\$ 7,612,932	\$ 4,183,356	\$ 12,428,909
General and administrative	5,461,047	6,259,075	14,206,469
Depreciation and amortization	1,818,795	1,735,209	3,818,823
Loss on disposal of assets	2,376	22,810	482,309
Operating loss	(14,895,150)	(12,200,450)	(30,936,510)
Interest income	688,299	81,930	776,221
Other income	46,450	28,174	77,003
Gain on derivative liability	104,978	3,896,841	4,001,819
Interest expense	(984)	(7,323,851)	(8,238,963)
Net loss	\$ (14,056,407)	\$ (15,517,356)	\$ (34,320,430)
Basic and diluted loss per share	\$ (2.61)	\$ (9.90)	N/A
Weighted average shares outstanding	5,390,910	1,564,837	N/A

See accompanying summary of accounting policies and
notes to consolidated financial statements

OPEXA THERAPEUTICS, INC.
(a development stage company)
(formerly PharmaFrontiers Corp.)
CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY
Period from January 22, 2003 (Inception) through December 31, 2006

	Common Stock		Additional Paid in Capital	Accumulated Deficit	Total
	Shares	Par			
Shares issued for cash	525,000	\$ 262,500	\$ (261,500)	\$ -	\$ 1,000
Shares repurchased and cancelled	(170,625)	(85,313)	84,988	-	(325)
Discount related to:					
beneficial conversion feature	-	-	28,180	-	28,180
warrants attached to debt	-	-	28,180	-	28,180
Net loss	-	-	-	(126,003)	(126,003)
Balances at December 31, 2003	354,375	177,187	(120,152)	(126,003)	(68,968)
Shares issued for:					
cash	2,250	1,125	7,875	-	9,000
services	206,500	103,250	745,750	-	849,000
license	24,269	12,135	414,940	-	427,075
reverse merger with Sportan	99,740	49,870	(197,603)	-	(147,733)
acquisition of Opexa	250,000	125,000	23,625,000	-	23,750,000
additional shares attached to					
convertible debt	16,100	8,050	280,316	-	288,366
conversion of convertible notes	60,750	30,375	217,995	-	248,370
Shares cancelled	(8,000)	(4,000)	4,000	-	-
Discount related to:					
beneficial conversion feature	-	-	855,849	-	855,849
warrants attached to debt	-	-	1,848,502	-	1,848,502
Option expense	-	-	123,333	-	123,333
Net loss	-	-	-	(4,620,664)	(4,620,664)
Balances at December 31, 2004	1,005,984	502,992	27,805,805	(4,746,667)	23,562,130
Shares issued for:					
cash, net of offering costs	389,451	194,725	5,151,492	-	5,346,217
convertible debt	611,026	305,513	7,343,933	-	7,649,446
debt	2,300	1,150	159,850	-	161,000
license	29,194	14,597	1,853,787	-	1,868,384
services	24,000	12,000	1,000,400	-	1,012,400
Discount related to:					
beneficial conversion feature	-	-	831,944	-	831,944
warrants attached to debt	-	-	1,433,108	-	1,433,108
Option expense	-	-	2,487,741	-	2,487,741
Warrant expense	-	-	2,373,888	-	2,373,888
Transition of warrants from equity instruments to liability instruments	-	-	(10,658,496)	-	(10,658,496)
Net loss	-	-	-	(15,517,356)	(15,517,356)
Balances at December 31, 2005	2,061,955	1,030,977	39,783,452	(20,264,023)	20,550,406
Shares issued for:					
cash, net of offering costs	4,600,000	2,300,000	18,853,519	-	21,153,519
debt	34,829	17,374	162,626	-	180,000
Option expense	-	-	2,749,617	-	2,749,617
Warrant expense	-	-	1,568,966	-	1,568,966
Net loss	-	-	-	(14,056,407)	(14,056,407)
Balances at December 31, 2006	<u>6,696,864</u>	<u>\$ 3,348,351</u>	<u>\$ 63,118,180</u>	<u>\$ (34,320,430)</u>	<u>\$ 32,146,101</u>

See accompanying summary of accounting policies and
notes to consolidated financial statements

OPEXA THERAPEUTICS, INC.
(a development stage company)
(formerly PharmaFrontiers Corp.)
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years ended December 31, 2006 and 2005 and the
Period from January 22, 2003 (Inception) to December 31, 2006

	<u>2006</u>	<u>2005</u>	<u>Inception through 2006</u>
Cash flows from operating activities			
Net loss	\$ (14,056,407)	\$ (15,517,356)	\$ (34,320,430)
Adjustments to reconcile net loss to net cash used in operating activities			
Stock issued for services	-	1,012,400	1,861,400
Stock issued for debt in excess of principal	-	109,070	109,070
Amortization of discount on notes payable due to warrants and beneficial conversion feature	-	5,516,638	6,313,205
Unrealized gain on marketable securities	(25,912)	-	(25,912)
Amortization of intangible assets	1,644,678	1,637,129	3,533,569
(Gain) on derivative liability	(104,978)	(3,896,841)	(4,001,819)
Depreciation	174,117	98,080	285,254
Debt financing costs	-	365,910	365,910
Option and warrant expense	4,318,583	4,861,629	9,303,545
Loss on disposition of fixed assets	2,376	22,810	482,309
Changes in:			
Accounts payable	359,396	26,360	444,562
Marketable securities	(2,926,184)	-	(2,926,184)
Prepaid expenses	(340,876)	(88,185)	(468,011)
Accrued expenses	(105,240)	23,655	(50,259)
Other assets	-	(388,210)	(388,210)
Net cash used in operating activities	<u>(11,060,447)</u>	<u>(6,216,911)</u>	<u>(19,482,001)</u>
Cash flows from investing activities			
Purchase of licenses	(125,000)	-	(357,742)
Purchase of property & equipment	(619,147)	(258,903)	(1,051,054)
Net cash used in investing activities	<u>(744,147)</u>	<u>(258,903)</u>	<u>(1,408,796)</u>
Cash flows from financing activities			
Common stock sold for cash, net of offering costs	21,153,520	5,346,217	26,509,737
Common stock repurchased and canceled	-	-	(325)
Proceeds from debt	110,322	2,896,885	6,464,913
Repayments on notes payable	-	(58,614)	(63,614)
Net cash provided by financing activities	<u>21,263,842</u>	<u>8,184,488</u>	<u>32,910,711</u>
Net change in cash and cash equivalents	9,459,248	1,708,674	12,019,914
Cash and cash equivalents at beginning of period	2,560,666	851,992	-
Cash and cash equivalents at end of period	<u>\$ 12,019,914</u>	<u>\$ 2,560,666</u>	<u>\$ 12,019,914</u>
Cash paid for:			
Income tax	\$ -	\$ -	\$ -
Interest	-	-	429
NON-CASH TRANSACTIONS			
Issuance of common stock for purchase of Opexa	\$ -	\$ -	\$ 23,750,000
Issuance of common stock to Sportan shareholders	-	-	147,733
Issuance of common stock for University of Chicago license	-	1,868,384	2,295,459
Issuance of common stock for accrued interest	-	525,513	525,513
Conversion of notes payable to common stock	-	6,159,610	6,407,980
Conversion of accrued liabilities to common stock	180,000	17,176	197,176
Conversion of accounts payable to note payable	-	-	93,364
Discount on convertible notes relating to:			
- warrants	-	1,433,108	3,309,790
- beneficial conversion feature	-	831,944	1,715,973
- stock attached to notes	-	999,074	1,287,440
Fair value of derivative instrument	-	6,761,655	6,761,655
Stock payable	112,440	-	112,440

See accompanying summary of accounting policies and
notes to consolidated financial statements

OPEXA THERAPEUTICS, INC.
(a development stage company)
(formerly PharmaFrontiers Corp.)
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 – SUMMARY OF ACCOUNTING POLICIES

Opexa Therapeutics, Inc. (“Opexa”), was incorporated in Texas in March, 1991 as a bio-pharmaceutical company engaged in developing autologous personalized cell therapies. During the development stage, Opexa acquired the worldwide license to technology developed at Argonne National Laboratory, a U.S. Department of Energy Laboratory Operated by the University of Chicago (“Argonne”). This is an exclusive license to a stem cell technology in which adult multi-potent stem cells are derived from monocytes obtained from the patient’s own blood (the “License”). A patent application was filed in November 2003, with the United States Patent and Trade Office regarding the technology involved in the License.

On October 7, 2004, Opexa acquired all of the outstanding stock of Opexa Pharmaceuticals, Inc., an entity that has the exclusive worldwide license from Baylor College of Medicine to an individualized T-cell therapeutic vaccine, Tovaxin™, which is in U.S. FDA Phase IIb human clinical trials to evaluate its safety and effectiveness in treating multiple sclerosis.

Development Stage Company. The Company is considered to be in the Development stage as defined in Statement of Financial Accounting Standards No. 7. The Company has no revenues to date.

Basis of Presentation. In June 2006, the Company (i) changed its name to Opexa Therapeutics, Inc. from PharmaFrontiers Corp. and (ii) effected a one-for-ten reverse common stock split. All references to number of shares and per share amounts reflect such split as if it occurred on the first day of the first period presented. The consolidated financial statements include the accounts of Opexa Therapeutics, Inc. and its wholly-owned subsidiary, Opexa Pharmaceuticals, Inc. Significant inter-company accounts and transactions have been eliminated.

Reclassifications. Certain prior year amounts have been reclassified to conform with the current year presentation .

Use of Estimates in Financial Statement Preparation. The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash, Cash Equivalents and Marketable Securities. For purposes of the statements of cash flows, cash equivalents include all highly liquid investments with original maturities of three months or less. Marketable securities include investments with maturities greater than three months but less than one year. The primary objectives for the fixed income investment portfolio are liquidity and safety of principal. Investments are made with the objective of achieving the highest rate of return consistent with these two objectives. Opexa’s investment policy limits investments to certain types of instruments issued by institutions primarily with investment grade credit ratings and places restrictions on maturities and concentration by type and issuer.

Long-lived Assets. Property and equipment are stated on the basis of historical cost less accumulated depreciation. Depreciation is provided using the straight-line method over the estimated useful lives of the assets. Major renewals and improvements are capitalized, while minor replacements, maintenance and repairs are charged to current operations. Impairment losses are recorded on long-lived assets used in operations when indicators of impairment are present and the undiscounted cash flows estimated to be generated by those assets are less than the assets’ carrying amount.

Income Taxes. Income tax expense is based on reported earnings before income taxes. Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for consolidated financial reporting purposes and such amounts recognized for tax purposes, and are measured by applying enacted tax rates in effect in years in which the differences are expected to reverse.

Stock-Based Compensation. On January 1, 2006, Opexa began recording compensation expense associated with stock options and other forms of equity compensation in accordance with Statement of Financial Accounting Standards No. 123R, *Share-Based Payment*, as interpreted by SEC Staff Accounting Bulletin No. 107. Prior to January 1, 2006, Opexa had accounted for stock options according to the provisions of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and related interpretations, and therefore no related compensation expense was recorded for awards granted with no intrinsic value. Opexa adopted the modified prospective transition method provided for under SFAS No. 123R, and, consequently, have not retroactively adjusted results from prior periods. Under this transition method, compensation cost associated with stock options recognized in the first quarter of fiscal 2006 includes the quarterly amortization related to the remaining unvested portion of all stock option awards granted prior to January 1, 2006, based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123.

The following table illustrates the effect on net loss and net loss per share if Opexa had applied the fair value provisions of FASB Statement No. 123 to stock-based employee compensation prior to January 1, 2006:

		2005	Inception through 2006
Net loss as reported		\$ (15,517,356)	\$ (34,320,430)
Add:	stock based compensation determined under intrinsic value based method	2,487,741	2,611,074
Less:	stock based compensation determined under fair value based method	(4,264,013)	(4,417,377)
Pro forma net loss		\$ (17,293,628)	\$ (36,126,733)
Basic and diluted			
	Net loss per common share	\$ (9.90)	N/A
	As reported	\$ (11.10)	N/A

Research and Development. Research and development expenses include salaries, related employee expenses, clinical trial expenses, research expenses, consulting fees, and laboratory costs. All costs for research and development activities are expensed as incurred. Opexa expenses the costs of licenses of patents and the prosecution of patents until the issuance of such patents and the commercialization of related products is reasonably assured. Research and development expense for the year ended December 31, 2006 was \$7,612,932, as compared to \$4,183,356 for the year ended December 31, 2005.

Accounting for Derivative Instruments. Statement of Financial Accounting Standard ("SFAS") No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended, requires all derivatives to be recorded on the balance sheet at fair value. Opexa's derivatives are separately valued and accounted for on our balance sheet. Fair values for securities traded in the open market and derivatives are based on quoted market prices. Where market prices are not readily available, fair values are determined using market based pricing models incorporating readily observable market data and requiring judgment and estimates.

The pricing model Opexa used for determining fair values of its derivatives is the Black Scholes Pricing Model. Valuations derived from this model are subject to ongoing internal and external verification and review. The model uses market-sourced inputs such as interest rates, exchange rates and option volatilities. Selection of these inputs involves management's judgment and may impact net income.

In September 2000, the Emerging Issues Task Force ("EITF") issued EITF 00-19, "Accounting for Derivative Financial Instruments Indexed to and Potentially Settled in, a Company's Own Stock," ("EITF 00-19") which requires freestanding contracts that are settled in a company's own stock, including common stock warrants, to be designated as an equity instrument, asset or a liability. Under the provisions of EITF 00-19, a contract designated as an asset or a liability must be carried at fair value on a company's balance sheet, with any changes in fair value recorded in the company's results of operations. A contract designated as an equity instrument must be included within equity, and no fair value adjustments are required.

In December 2006, the FASB issued FASB Staff Position No. EITF 00-19-2, Accounting for Registration Payment Arrangements (EITF 00-19-2). EITF 00-19-2 addresses an issuer's accounting for registration payment arrangements. It specifies that the contingent obligation to make future payments or otherwise transfer consideration under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument or other agreement, should be separately recognized and measured in accordance with FASB Statement No. 5, Accounting for Contingencies. The guidance in EITF 00-19-2 amends FASB Statements No. 133, Accounting for Derivative Instruments and Hedging Activities, and No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity, and FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, to include scope exceptions for registration payment arrangements. EITF 00-19-2 also requires additional disclosure regarding the nature of any registration payment arrangements, alternative settlement methods, the maximum potential amount of consideration and the current carrying amount of the liability, if any. This EITF is effective immediately for registration payment arrangements and the financial instruments subject to those arrangements that are entered into or modified subsequent to the date of issue of this EITF. For registration payment arrangements and financial instruments subject to those arrangements that were entered into prior to the issuance of this EITF, this is effective for financial statements issued for fiscal years beginning after December 15, 2006, and interim periods within those fiscal years. The impact of implementing EITF 00-19-2 in the fiscal year 2007 will result in a cumulative effect of a change in accounting principle with a credit to beginning retained earnings of \$6,656,677 and a reversal of the same amount to the derivative liability account.

Recently Issued Accounting Pronouncements.

In February 2006, the FASB issued SFAS 155, "Accounting for Certain Hybrid Financial Instruments," which amends SFAS 133, "Accounting for Derivative Instruments and Hedging Activities" and SFAS 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." SFAS 155 simplifies the accounting for certain derivatives embedded in other financial instruments by allowing them to be accounted for as a whole if the holder elects to account for the whole instrument on a fair value basis. SFA 155 also clarifies and amends certain other provisions of SFAS 133 and SFAS 140. SFAS 155 is effective for all financial instruments acquired, issued or subject to a remeasurement event occurring in fiscal years beginning after September 15, 2006 and is therefore required to be adopted by the Company as of October 1, 2006. Management is still evaluating what effect this will have on the Company's financial statements.

In July 2006, the FASB issued Interpretation No. 48 (FIN No. 48), "Accounting for Uncertainty in Income Taxes." This interpretation requires recognition and measurement of uncertain income tax positions using a "more-likely-than-not" approach. FIN No. 48 is effective for fiscal years beginning after December 15, 2006. Management is still evaluating what effect this will have on the Company's financial statements.

In September 2006, the FASB issued SFAS 157, "Fair Value Measurements." This standard defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles, and expands disclosure about fair value measurements. This statement is effective for financial statements issued for fiscal years beginning after November 15, 2007. Early adoption is encouraged. The adoption of SFAS 157 is not expected to have a material impact on the financial statements.

There were various other accounting standards and interpretations issued during 2006 and 2005, none of which are expected to have a material impact on the Company's consolidated financial position, operations or cash flows.

NOTE 2 – MARKETABLE SECURITIES

At December 31, 2006, Opexa invested \$10.9 million in in A-1/P-1 commercial paper, of which \$2.9 million is invested in marketable securities, and \$3.9 million is invested in a money market account with an average market yield of 5.33% and average time to maturity of 1.32 months. Interest income of \$688,299 was recognized for the twelve months ended December 31, 2006 in the consolidated statements of expenses.

NOTE 3 – LICENSE AGREEMENTS

University of Chicago License Agreement

In 2004 Opexa entered into an agreement with the University of Chicago (“University”) for the worldwide license to technology developed at Argonne National Laboratory, a U.S. Department of Energy Laboratory Operated by the University. In consideration for the license, Opexa paid the University \$57,742 and issued 237,188 shares valued at \$1,199,706. In December 2004, the License Agreement was amended granting Opexa an exclusive, non-transferable worldwide license to the University’s stem cell technology. In consideration for the amendment, Opexa paid the University an additional \$175,000, issued the University 5,500 shares of common stock valued at \$352,000, agreed to pay the University \$1,500,000 on October 30, 2005 and agreed to issue the University shares of Opexa common stock, including the shares already issued, equal to 2.6% of the total outstanding number of shares after conversion of the 15% exchangeable convertible subordinated promissory notes. In June 2005, 27,484 shares of common stock were issued to the University of Chicago per the terms of a license agreement. These shares were recorded at \$867,064. In August 2005, 1,710 shares of common stock were issued to the University of Chicago per the terms of a license agreement. These shares were recorded at \$109,434. In October 2006, the \$1,500,000 cash payment obligation was extended until April 30, 2007 and (ii) the obligation to issue 21,623 shares of Opexa’s common stock issuable was extended until April 30, 2007, with \$112,440 accrued at December 31, 2006.

Shanghai Institute for Biological Science License Agreement

In January 2006, Opexa acquired an exclusive worldwide license for the intellectual property rights and research results of an autologous T cell vaccine for rheumatoid arthritis from the Shanghai Institute for Biological Science, China Academy of Science of the People’s Republic of China. In exchange for a payment of \$125,000 and an agreed running royalty from the sale of commercialized products, Opexa receives all information and data related to all clinical trials on all patient controls and patients with rheumatoid arthritis with the T cell vaccine. This includes all clinical, cell procurement and manufacturing protocols, complete patient data sheets, all laboratory materials, methods and results and manufacturing records and documents and any other data related to the intellectual property. The first payment under the license occurred in April 2006 upon the delivery of materials pursuant to the terms of the licensing agreement. Opexa amortizes this intangible asset over its life of 19 years and as of December 31, 2006 the intangible asset had an unamortized balance of \$120,311.

NOTE 4 – INTANGIBLE ASSETS

Intangible assets consisted of the following at December 31, 2006:

Description	Life	Amount
University of Chicago license (see Note 2)	17 years	\$ 4,140,644
Opexa intangible group (see Note 11)	15 years	23,991,128
Rheumatoid arthritis license (see Note 2)	19 years	125,000
Subtotal		28,256,772
Less: accumulated amortization		(3,533,569)
Intangible assets, net		\$ 24,723,203

The Company believes that patent rights form one of its most valuable assets. Patents and patent applications are a key currency of intellectual property, especially in the early stage of product development, as their purchase and maintenance gives the Company access to key product development rights from Opexa’s academic partners. The company amortizes its patent and license costs over a period of 15 to 19 years. These intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. If the sum of the expected undiscounted cash flows is less than the carrying value of the related asset or group of assets, a loss is recognized for the difference between the fair value and the carrying value of the related asset or group of assets. The Company expenses payments made to legal firms that are engaged in filing and protecting rights to intellectual property and rights for our current products in both the domestic and international markets. Amortization expense totaled \$1,644,678 and \$1,637,129 in fiscal 2006 and 2005, respectively.

NOTE 5 – PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31, 2006:

Description	Life	Amount
Computer equipment	3 years	\$ 134,023
Office furniture and equipment	3-10 years	220,113
Software	3-5 years	46,089
Laboratory equipment	3-10 years	912,709
Leasehold improvements	10 years	443,727
Subtotal		1,756,661
Less: accumulated depreciation		(395,284)
Property and equipment, net		<u>\$ 1,361,377</u>

Property and equipment is carried at cost less accumulated depreciation. Depreciation is calculated by the straight-line method over the estimated useful life of three to ten years, depending upon the type of equipment, except for leasehold improvements which are amortized using the straight-line method over the remaining lease term or the life of the asset, whichever is shorter. The cost of repairs and maintenance is charged as an expense as incurred. Depreciation expense totaled \$174,117 and \$98,080 in fiscal 2006 and 2005, respectively.

NOTE 6 – INCOME TAXES

Opexa uses the liability method, where deferred tax assets and liabilities are determined based on the expected future tax consequences of temporary differences between the carrying amounts of assets and liabilities for financial and income tax reporting purposes.

At December 31, 2006, for federal income tax and alternative minimum tax reporting purposes, the Company had approximately \$31,383,048 of unused net operating losses available for carryforward to future years. The benefit from carryforward of such net operating losses will expire in various years through 2026. Under the provisions of Section 382 of the Internal Revenue Code, the benefit from utilization of approximately \$5,650,429 of net operating losses incurred prior to October 7, 2004 was significantly limited as a result of the change of control that occurred in connection with the Company's acquisition of Opexa. The benefit could be subject to further limitations if significant future ownership changes occur in the Company.

At December 31, 2006, deferred tax assets consisted of the following:

NOL @ 12/31/05	\$ (21,540,246)
Net loss - 2006	<u>\$ (14,056,407)</u>
Subtotal	(35,596,653)
Derivative (gain) loss	(104,978)
Option expense	2,749,617
Warrant expense	<u>1,568,966</u>
NOL @ 12/31/06	(31,383,048)
Estimated tax rate	<u>X 34%</u>
Deferred tax asset	(10,670,236)
Valuation allowance	<u>10,670,236</u>
Net deferred tax asset	<u>\$ -</u>

NOTE 7 – THIRD PARTY CONVERTIBLE NOTES

Between September 2004 and February 2005, Opexa issued convertible notes to investors totaling \$6,124,859. In March 2005, 45,169 shares of common stock with a relative fair value of \$999,074 were issued to note holders as their additional shares for their subscription investment in Opexa. In June 2005, a total of \$6,650,372 comprised of the principal of the notes of \$6,124,859 and accumulated interest of \$525,513, which accrued at a rate of 15% per annum, was exchanged for 443,360 shares of common stock, Class A and Class B warrants that expired in 2006, and Class C warrants to purchase 1,110,548 shares at an exercise price of \$30 per share.

Opexa analyzed the convertible notes and the warrants for derivative accounting consideration under SFAS 133 and EITF 00-19. Opexa determined the embedded conversion option in the convertible notes met the criteria for classification in stockholders equity under SFAS 133 and EITF 00-19. Therefore, derivative accounting was not applicable for these convertible notes payable. See Note 13 for a discussion of the accounting for the warrants.

NOTE 8 – NOTE PAYABLE

Note payable consists of a note in the amount of \$1,500,000 payable to the University of Chicago, secured by license, no interest and due April 30, 2007. See Note 3 for details.

Loan payable consists of an equipment line of up to \$250,000 with Wells Fargo of which \$110,322 was outstanding as of December 31, 2006. This loan has an interest rate of 7.61% per annum, matures in May 2011 and is secured by Opexa's furniture and equipment purchased with the loan proceeds.

NOTE 9 – COMMITMENTS AND CONTINGENCIES

Office Lease

In October 2005, Opexa entered into a ten-year lease for its office and research facilities. There is 2,500 sq. ft. of space still available for future build-out. The facility including the property is leased for a term of ten years with two options for an additional five years each at the then prevailing market rate. Future minimum lease payments under the non-cancellable operating lease are \$117,774 for 2007, \$137,196 for 2008, \$139,782 for 2009, \$147,540 for 2010, \$147,540 for 2011 and \$584,343 for years 2012 to 2015. Rent expense for 2006 was \$136,153 and \$178,963 for 2005.

Contract Research Organization Agreement

In September 2006, Opexa engaged PharmaNet, LLC, a contract research organization focused on managing central nervous system trials to provide it with services in connection with its Phase IIb clinical trial. An initial pre-payment of \$400,000 was made to PharmaNet, LLC in April 2006, of which \$133,334 remains as a prepaid balance as of December 31, 2006. An additional \$235,000 payment was made in October representing an advance for investigator grant expenses, of which \$191,329 remains a prepaid balance as of December 31, 2006.

NOTE 10 – EQUITY

During 2003, equity related transactions were as follows:

- 525,000 shares of common stock were sold for \$1,000.
- 170,625 shares were reacquired for \$325 and canceled.
- Additional contributions to capital of \$56,360 resulted from the discounted value to notes payable due to warrants and beneficial conversion features attached to convertible notes was issued in 2003.

During 2004, equity related transactions were as follows:

- 2,250 shares of common stock were sold for \$9,000.
- 206,500 shares of common stock valued at their then fair value of \$849,000 were issued to employees and consultants for their services.
- 24,269 shares of common stock valued at their then fair value of \$427,075 were issued to the University of Chicago per the terms of a license agreement. See Note 2 for details.
- 99,740 shares of common stock were issued for net liabilities of \$147,733 pursuant to the 2004 reorganization.
- 250,000 shares of common stock valued at their then fair value of \$23,750,000 were issued to Opexa Pharmaceuticals, Inc., shareholders. See Note 12 for details.

- 16,100 shares of common stock with a relative fair value of \$288,366 were issued to note holders as their additional shares for their subscription investment.
- 60,750 shares of common stock were issued to note holders for the conversion of \$248,370 of principal and interest from convertible notes.
- 8,000 shares of common stock were cancelled pursuant to the terms of an employment separation agreement.
- Additional contributions to capital of \$2,704,351 resulted from the discounted value to notes payable from warrants, beneficial conversion features attached to convertible notes.
- Employee stock option expense was \$123,333 for 2004.

During 2005, equity related transactions were as follows:

- 389,451 shares of common stock with warrants to purchase 1,070,993 shares were sold for \$5,841,769. The relative fair value of the common stock is \$1,103,714 and the relative fair value of the warrants is \$4,748,055. Offering costs of \$495,552 related to shares issued were charged to additional paid in capital.
- 45,168 shares of common stock with a relative fair value of \$999,074 were issued to note holders as their additional shares for their subscription investment.
- 565,858 shares of common stock were issued to note holders for the conversion of \$6,124,859 of principal and \$525,513 interest from convertible notes.
- 2,300 shares of common stock valued at their fair value of \$161,000 were issued to note holders for the conversion of \$51,930 of principal and interest from the notes.
- 29,194 shares of common stock were issued to the University of Chicago per the terms of a license agreement. These shares were recorded at \$1,868,384.
- 24,000 shares of common stock valued at their fair value of \$1,012,400 were issued to consultants for their services.
- Additional contributions to capital of \$2,265,052 relating to the discounted value to notes payable from warrants, beneficial conversion features attached to convertible notes.
- Employee stock option expense was \$2,487,741 for 2005.
- Warrant expense was \$2,373,888 for 2005.
- Transition of warrants from equity instruments to liability instruments in the amount of \$10,658,496 was recorded. See Note 13 for details.

During 2006, equity related transactions were as follows:

- In March 2006, 34,829 shares of common stock were issued to settle an outstanding accounts payable in the amount of \$180,000.
- In April 2006, Opexa sold 4,600,000 shares of its common stock and warrants to purchase 2,300,000 shares of Opexa's common stock for \$23,000,000. Opexa paid \$1,846,481 for the commissions and fees related to this offering and granted to its brokers warrants to purchase 213,720 shares of common stock at an exercise price of \$5.00 per share. These warrants are not callable and have a cashless exercise option.
- Employee stock option expense was \$2,749,617 for 2006.
- Warrant expense was \$1,568,966 for 2006.

NOTE 11 – STOCK OPTIONS AND WARRANTS

In 2004, Opexa adopted the 2004 Stock Option Plan ("the Plan") for the granting of stock options to employees and consultants of Opexa. Options granted under the Plan may be either incentive stock options or nonqualified stock options. The Board of Directors has discretion to determine the number, term, exercise price and vesting of all grants.

Employee Stock Options:

During 2004, options to purchase 96,500 shares were granted to employees at exercise prices ranging from \$30.00 to \$50.00. These options have terms of five years and vest from one to three years. Fair value of \$5,623,186 was recorded using the Black-Scholes method of calculation with a volatility of 75.05% and a discount rate of 2%.

During 2005, options to purchase 63,050 shares were granted to employees, at exercise prices of \$7.00. These options have terms of ten years and vest in four years. Fair value of \$261,879 was recorded using the Black-Scholes method of calculation with a volatility range of 175.4% and a discount rate of 2%.

During 2005, options to purchase 4,167 shares were forfeited and cancelled.

During 2006, options to purchase 389,160 shares of common stock were granted by Opexa to its employees at exercise prices ranging from \$5.00 to \$9.40. These options have terms from five to ten years, vest from one to three years and have a fair value of \$3,126,168. Using the Black-Scholes method, stock compensation for 2006 was \$1,066,451 with a volatility range of 401.34% to 429.86% and a discount rate range of 4.72% - 5.22%.

Opexa recorded \$2,749,617 stock-based compensation expense to the management and employees during 2006.

During 2006, options to purchase 14,133 shares were forfeited.

Consultant Warrants:

During 2004, warrants to purchase 20,000 shares were granted to consultants at exercise prices ranging from \$30.00 to \$50.00. These options have terms of five years and vest from one to three years. Fair value of \$1,011,770 was recorded using the Black-Scholes method with a volatility range of 75.05% and a discount rate of 2%.

During 2005, warrants to purchase 71,060 shares were granted to consultants. Using the Black-Scholes method, fair value for 2005 was \$1,552,936 with a volatility range of 175.4% and a discount rate of 2%.

During 2005, warrants to purchase 46,085 shares of Common Stock were issued to several brokerage firms as the offering costs and commissions for Opexa's financing activities at an exercise price of \$1.50 per share. These warrants have a fair value of \$2,197,162 and vest immediately.

During 2005, warrants to purchase 9,914 shares were forfeited and cancelled.

In April 2006, warrants to purchase 213,720 shares of common stock were granted by Opexa to the brokers in connection with the \$23,000,000 equity financing, at an exercise price of \$5.20. These warrants have a term of three years, vest immediately and have a fair value of \$1,077,778.

During 2006, warrants to purchase 156,500 shares of common stock were granted by Opexa to its consultants, directors and exiting directors at the exercise prices ranging from \$5.20 to \$9.80. These warrants have a term of ten years, vest from one to three years and have a fair value of \$1,496,375. Using the Black-Scholes method, stock compensation for 2006 was \$931,597 with a volatility range of 401.34% to 429.86% and a discount rate range of 4.72% - 5.22%.

Opexa recorded \$1,568,966 stock-based compensation expense to the consultants, directors and exiting directors during 2006.

During 2006, warrants to purchase 5,000 shares were expired.

Investor Warrants:

During 2003, warrants to purchase 15,000 shares were granted to investors related to the convertible notes.

During 2004, warrants to purchase 142,800 shares were granted to investors related to the convertible notes.

During 2005, warrants to purchase 2,386,984 shares were granted to investors related to the convertible notes and warrants to purchase 254,363 shares were forfeited and cancelled.

During 2006, warrants to purchase 2,765,043 shares were granted to investors related to the Aril 2006 financing and warrants to purchase 1,645,002 shares were forfeited and cancelled.

Summary information regarding options and warrants is as follows:

	Options	Weighted Average Exercise Price	Warrants	Weighted Average Exercise Price
Year ended December 31, 2003:				
Granted	-	\$ -	15,000	\$ 1.00
Outstanding at December 31, 2003	-	-	15,000	1.00
Year ended December 31, 2004:				
Granted	96,500	31.70	162,800	22.30
Outstanding at December 31, 2004	96,500	31.70	177,800	22.40
Year ended December 31, 2005:				
Granted	63,050	15.70	2,504,129	28.60
Forfeited and canceled	(4,167)	42.80	(264,277)	24.50
Outstanding at December 31, 2005	155,383	24.90	2,417,652	23.51
Year ended December 31, 2006:				
Granted	389,160	5.48	3,135,264	9.28
Forfeited and canceled	(14,133)	34.79	(1,649,995)	12.77
Outstanding at December 31, 2006	<u>530,410</u>	<u>\$ 10.38</u>	<u>3,902,921</u>	<u>\$ 13.52</u>

Summary of options and warrants outstanding and exercisable as of December 31, 2006 is as follows:

Exercise Price	Remaining Life	Options Outstanding	Options Exercisable	Warrants Outstanding	Warrants Exercisable
\$ 40.00	3 - 4 years	-	-	17,500	8,375
\$ 30.00	2 - 3 years	84,500	58,667	5,000	3,333
\$ 30.00	3 - 4 years	18,850	8,950	1,125,056	1,116,389
\$ 15.00	3 - 4 years	-	-	46,895	46,895
\$ 11.90	3 - 4 years	-	-	21,500	3,000
\$ 11.50	2 - 3 years	-	-	16,750	-
\$ 11.40	2 - 3 years	2,000	-	-	-
\$ 9.80	9 - 10 years	-	-	37,000	17,500
\$ 9.40	9 - 10 years	30,900	-	4,500	500
\$ 8.25	9 - 10 years	12,500	-	1,500	-
\$ 7.09	9 - 10 years	3,300	-	-	-
\$ 7.00	9 - 10 years	37,000	9,250	-	-
\$ 6.50	4 - 5 years	-	-	2,300,000	2,300,000
\$ 5.20	2 - 3 years	-	-	8,500	-
\$ 5.20	9 - 10 years	-	-	105,000	52,500
\$ 5.00	3 - 4 years	-	-	213,720	213,720
\$ 5.00	4 - 5 years	75,000	32,100	-	-
\$ 5.00	9 - 10 years	266,360	-	-	-
		<u>530,410</u>	<u>108,967</u>	<u>3,902,921</u>	<u>3,762,213</u>

NOTE 12 – PURCHASE OF OPEXA PHARMACEUTICALS

In October 2004, Opexa acquired all of the outstanding stock of Opexa Pharmaceuticals, Inc. The acquisition was accounted for under the purchase method, where all of Opexa Pharmaceuticals, Inc.'s assets are restated to their fair market value on the acquisition date. The 250,000 shares of Opexa were valued at their then fair value of \$23,750,000 or \$95.00 per share. The results of operations for Opexa from November 6, 2004 through December 31, 2005 are included in the Statements of Operations and the Statements of Cash Flows.

The following table summarizes the estimated fair values of the assets acquired and the liabilities assumed at the date of acquisition:

Current assets	\$	55,387
Property, plant and equipment, net		639,160
Intangible assets		<u>23,991,128</u>
Total assets, net		24,685,675
Current liabilities		<u>935,675</u>
Total liabilities assumed		<u>935,675</u>
Net assets acquired	\$	23,750,000

Of the \$23,991,128 of acquired intangible assets, the full amount is assigned to an inseparable group of patents and licenses that cannot function independently by themselves. The weighted average useful life of the intangible group as of December 31, 2006 is approximately 15 years.

NOTE 13 – DERIVATIVE INSTRUMENTS

For the years ended December 31, 2006 and 2005, Opexa evaluated the application of SFAS 133 and EITF 00-19 for all of its financial instruments and identified the following financial instruments as derivatives:

- (1) Series A Warrants issued in conjunction with the bridge note exchange and private placement offerings in June and July 2005, which expired on February 17, 2006;
- (2) Series B Warrants issued in conjunction with the bridge note exchange and private placement offerings in June and July 2005, which expired on October 17, 2006; and
- (3) Series C Warrants issued in conjunction with the bridge note exchange and private placement offerings in June and July 2005.

These three series of warrants are derivatives because the liquidated damage provision in the registration rights agreement covering each warrant resulted in the conclusion that it was more economic to issue registered shares than to issue unregistered shares and pay the penalty. Because issuing registered shares is outside of Opexa's control, Opexa concluded the warrants should be accounted for as derivative liabilities under SFAS 133 and EITF 00-19.

As a result, Opexa reports the value of these derivatives as current liabilities in its balance sheet and report changes in the value of these derivatives as non-operating gains or losses in its statements of operations. The value of the derivatives is required to be remeasured on a quarterly basis, and is based on the Black Scholes Pricing Model.

Variables used in the Black-Scholes option-pricing model include (1) risk free interest rate, (2) expected warrant life is the actual remaining life of the warrants as of each period end, (3) expected volatility and (4) zero expected dividends as further detailed in the table as follows:

	<u>As of 12/31/2005</u>	<u>As of 12/31/2006</u>
Risk-free rate for term		
A Warrant	4.08%	-
B Warrant	4.37%	-
C Warrant	4.35%	501%
Expected volatility		
A Warrant	30%	-
B Warrant	112%	-
C Warrant	475%	487%

The impact of the application of SFAS 133 and EITF 00-19 on the balance sheets as of December 31, 2006 and 2005 and the statements of operations and for the years ended December 31, 2006 and 2005 and the period from inception through December 31, 2006 is as follows:

	<u>As of 12/31/2005</u>	<u>As of 12/31/2006</u>	<u>Gain(Loss) Year Ended 12/31/2005</u>	<u>Gain(Loss) Year Ended 12/31/2006</u>	<u>Gain(Loss) Inception Through 12/31/2006</u>
Series A Warrants	\$ -	\$ -	\$ 332,440	\$ -	\$ 332,440
Series B Warrants	264,957	-	640,882	264,957	\$ 905,839
Series C Warrants	6,496,698	6,656,677	2,923,519	(159,979)	\$ 2,763,540
Totals	\$ 6,761,655	\$ 6,656,677	\$ 3,896,841	\$ 104,978	\$ 4,001,819

The warrants granted during the April 2006 financing were determined to qualify as for equity treatment under SFAS 133 and EITF 00-19. Nothing in the warrant agreements required cash settlement or allowed for the possibility of cash settlement including the impact of the liquidated damages penalty under the registration rights agreement. It was determined on the date of grant and at December 31, 2006 that it was more economic to issue unregistered shares and pay the penalty than to issue registered shares.

In December 2006, the FASB issued FASB Staff Position No. EITF 00-19-2, Accounting for Registration Payment Arrangements (EITF 00-19-2). EITF 00-19-2 addresses an issuer's accounting for registration payment arrangements. It specifies that the contingent obligation to make future payments or otherwise transfer consideration under a registration payment arrangement, whether issued as a separate agreement or included as a provision of a financial instrument or other agreement, should be separately recognized and measured in accordance with FASB Statement No. 5, Accounting for Contingencies. The guidance in EITF 00-19-2 amends FASB Statements No. 133, Accounting for Derivative Instruments and Hedging Activities, and No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity, and FASB Interpretation No. 45, Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others, to include scope exceptions for registration payment arrangements. EITF 00-19-2 also requires additional disclosure regarding the nature of any registration payment arrangements, alternative settlement methods, the maximum potential amount of consideration and the current carrying amount of the liability, if any. This EITF is effective immediately for registration payment arrangements and the financial instruments subject to those arrangements that are entered into or modified subsequent to the date of issue of this EITF. For registration payment arrangements and financial instruments subject to those arrangements that were entered into prior to the issuance of this EITF, this is effective for financial statements issued for fiscal years beginning after December 15, 2006, and interim periods within those fiscal years. The impact of implementing EITF 00-19-2 in the fiscal year 2007 will result in a cumulative effect of a change in accounting principle with a credit to beginning retained earnings of \$6,656,677 and a reversal of the same amount to the derivative liability account.

NOTE 14 – STOCK PURCHASE AGREEMENT

In June 2004, Pharma was acquired by Sportan United Industries, Inc. in a transaction accounted for as a reverse acquisition. Pharma’s shareholders were issued 6,386,439 Sportan shares in exchange for 100 percent of the outstanding common shares of Pharma. Immediately following this transaction, Sportan changed its name to Pharma and 7,383,838 shares were outstanding.

NOTE 15 - GOING CONCERN

On November 2, 2007, Opexa filed its quarterly report for the period ended September 30, 2007. As shown in its financial statements, Opexa has negative cash flows provided by its operating activities and has a cash balance of \$5.8 million as of September 30, 2007 which is not sufficient to fund its operations for the next twelve months. These conditions raise substantial doubt as to Opexa’s ability to continue as a going concern. Management will seek to raise additional capital through sales of convertible debt and/or equity. The financial statements do not include any adjustments that might be necessary if Opexa is unable to continue as a going concern.

ITEM 13. EXHIBITS

(a) Exhibits. The following exhibits of the Company are included herein.

<u>Exhibit No.</u>	<u>Description</u>
Exhibit 31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
Exhibit 31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
Exhibit 32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
Exhibit 32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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.

SIGNATURES

OPEXA THERAPEUTICS, INC.

By: /s/ DAVID B. MCWILLIAMS

David B. McWilliams,
President and Chief Executive Officer

Date: November 9, 2007

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

By: /s/ LYNNE HOHLFELD

Lynne Hohlfeld,
Chief Financial Officer and Principal Accounting Officer

Date: November 9, 2007

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT**

I, David B. McWilliams, certify that:

1. I have reviewed this annual report on Form 10-KSB of Opexa Therapeutics, Inc. (the "small business issuer");
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 small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer 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 small business issuer, 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 small business issuer'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 small business issuer's internal control over financial reporting that occurred during the small business issuer's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer'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 small business issuer'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 small business issuer's internal control over financial reporting.

/s/ DAVID B. MCWILLIAMS

David B. McWilliams
President and Chief Executive Officer

Date: November 9, 2007

**CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT**

I, Lynne Hohlfeld, certify that:

1. I have reviewed this annual report on Form 10-KSB of Opexa Therapeutics, Inc. (the "small business issuer");
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 small business issuer as of, and for, the periods presented in this report;
4. The small business issuer's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the small business issuer 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 small business issuer, 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 small business issuer'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 small business issuer's internal control over financial reporting that occurred during the small business issuer's fourth fiscal quarter that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting; and
5. The small business issuer's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the small business issuer's auditors and the audit committee of the small business issuer'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 small business issuer'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 small business issuer's internal control over financial reporting.

/s/ LYNNE HOHLFELD

Lynne Hohlfeld

Chief Financial Officer and Principal Accounting Officer

Date: November 9, 2007

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

Pursuant to 18 U.S.C. Section 1350, the undersigned Officer of Opexa Therapeutics, Inc.(the “Company”), hereby certifies, to such officer’s knowledge, that the Company’s Annual Report on Form 10-KSB for the year ended December 31, 2006 (the “Report”) fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DAVID B. MCWILLIAMS

David B. McWilliams

President and Chief Executive Officer

Date: November 9, 2007

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

Pursuant to 18 U.S.C. Section 1350, the undersigned Officer of Opexa Therapeutics, Inc. (the "Company"), hereby certifies, to such officer's knowledge, that the Company's Annual Report on Form 10-KSB for the year ended December 31, 2006 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ LYNNE HOHLFELD

Lynne Hohlfeld

Chief Financial Officer and Principal Accounting Officer

Date: November 9, 2007