

REC

05-23-2001

Attorney Docket Number  
177-010

101726256

MRD 5-18-01

TO THE HONORABLE COMMISSIONER OF PATENTS AND TRADEMARKS  
Box Assignments  
Washington, DC 20231

MAY 18 2001

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

VisionRx.com, Inc.

Additional name(s) of conveying party(ies)  
attached? ☐ Yes ☒ No2. Name and address of receiving  
party(ies):Name: VisionRx Inc.Address: 200 Clearbrook Road  
Elmsford, New York  
10523

3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement☒ Change of Name☐ Other \_\_\_\_\_

Execution Date: 11/29/2000

Country (if other than USA): \_\_\_\_\_

Additional name(s) & address(es) attached?  
☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the  
application is:

A. Patent Application No.(s)

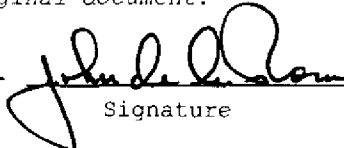
B. Patent No.(s) **6,045,227**Additional numbers attached? ☐ Yes ☒ No5. Name and address of party to whom  
correspondence concerning document  
should be mailed:John de la Rosa, Esq.  
67 Wall Street  
Suite 2211  
New York, NY 100056. Number of applications  
and patents involved: One (1)7. Total fee (37 CFR  
1.21): .....\$ 40.00☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit Account No.

(A copy of this page is attached)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and  
any attached copy is a true copy of the original document.John G. de la Rosa  
Name of Person Signing34,317  
Reg. No.  
Signature05/16/2001  
Date

05/23/2001 TDI A21 00000013 6045227

01 PC-581

40.00 DP

Total number of pages including cover sheet:

Fifteen (15)

PATENT  
REEL: 011821 FRAME: 0451

State of Delaware  
Office of the Secretary of State

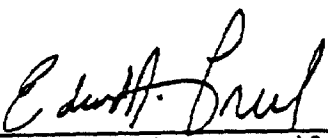
---

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "VISIONRX.COM INC.", CHANGING ITS NAME FROM "VISIONRX.COM INC." TO "VISIONRX INC.", FILED IN THIS OFFICE ON THE TWENTY-NINTH DAY OF NOVEMBER, A.D. 2000, AT 2 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



  
Edward J. Freel, Secretary of State

AUTHENTICATION: 0820178

DATE: 11-29-00

2693445 8100

001596137

PATENT  
REEL: 011821 FRAME: 0452

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION OF  
VISIONRX.COM INC.

The name of the Corporation is VisionRx.com Inc. The name under which the Corporation was originally incorporated was XEYEX CORPORATION. The date of filing of the Corporation's original certificate of incorporation with the Secretary of State was December 18, 1996. This Certificate has been duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law.

FIRST: The name of the Corporation is VisionRx Inc.

SECOND: The Registered Office of the Corporation is to be located at 1209 Orange Street in the City of Wilmington, State of Delaware, County of New Castle, The Registered Agent is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

FOURTH: A description of each class of stock of the Corporation and the voting rights, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof is as follows:

Section 1. Capital Stock.

1.1 General. The Corporation shall have two classes of capital stock ("Capital Stock"): common stock, \$0.002 par value ("Common Stock") and preferred stock, \$0.002 par value ("Preferred Stock"). The total authorized number of shares of each class of Capital Stock is 74,000,000 shares of Common Stock and 43,500,000 shares of Preferred Stock. Unless specifically otherwise provided in this Article, all shares of Capital Stock shall be identical and shall entitle the holders thereof to the same powers, rights and privileges.

Section 2. Preferred Stock

2.1 Designation of Series. There shall be two series of Preferred Stock to be known as Series A Preferred Stock, \$0.002 par value ("Series A Preferred Stock") of which there shall be 10,000,000 shares authorized, and Series B Preferred Stock, \$0.002 par value ("Series B Preferred Stock") of which there shall be 33,500,000 shares authorized, (hereinafter referred to collectively as "Preferred Stock"). The Series A Preferred Stock shall include all shares in the series designated "Convertible Preferred Stock" authorized immediately prior to the effective date of this Certificate. Unless specifically otherwise provided in this Article, all shares of Preferred Stock shall be identical and shall entitle the holders thereof to the same powers, rights and privileges.

2.2 Dividends. The holders of Preferred Stock shall not be entitled to receive dividends in any fixed amount, provided, however, that in the event that the Corporation shall at any time pay a dividend on the Common Stock it shall, at the same time, pay to each holder of Preferred Stock a dividend equal to the dividend that would have been payable to such holder if the shares of Preferred Stock held by such holder had been converted into Common Stock on the date of determination of holders of Common Stock entitled to receive such dividends.

2.3 Redemption. The shares of Preferred Stock shall not be redeemable except as follows:

2.3.1 Mandatory Redemption. The Corporation shall redeem on December 31, 2001 (the "Series A Redemption Date") (in the manner and with the effect provided in subsections 2.3.3 and 2.3.4) all shares of Series A Preferred Stock which shall then be outstanding. The Corporation shall redeem on

November 30, 2005 (the "Series B Redemption Date") (in the manner and with the effect provided in subsections 2.3.2 and 2.3.3) all shares of Series B Preferred Stock which shall then be outstanding. References to the "Redemption Date" shall mean the Series A Redemption Date or the Series B Redemption Date, as applicable.

**2.3.2 Optional Redemption.** In the event of the sale of a controlling interest in the Corporation, the Corporation shall redeem all, but not less than all, of the Series B Preferred Stock held by each Stockholder which elects to have such shares redeemed (in the manner and with the effect provided in subsections 2.3.3 and 2.3.4). A "sale of a controlling interest in the Corporation" shall be deemed to have occurred if a sale of shares of Capital Stock shall take place or if a consolidation or merger of the Corporation with another entity shall take place after which the Stockholders of the Corporation immediately preceding such event do not own at least 50% of the Capital Stock of the Corporation immediately after such event.

**2.3.3 Redemption Procedure.** The Series A Preferred Stock shall be redeemed by paying for each share the sum of \$0.20 (the "Series A Redemption Price"). The Series B Preferred Stock shall be redeemed by paying for each share the sum of \$0.20 (the "Series B Redemption Price"). References to the "Redemption Price" shall mean the Series A Redemption Price or the Series B Redemption Price, as applicable.

(a) In the case of a redemption pursuant to subsection 2.3.1 above, not less than 60 days before the Redemption Date, written notice shall be given by registered or certified first class mail, return receipt requested, by a nationally recognized courier service in each case, postage prepaid, or by personal delivery, addressed to the holders of record of the series of Preferred Stock to be redeemed, such notice to be addressed to each such stockholder at his post office address as shown by the records of the Corporation, specifying the number of shares to be redeemed, the section or sections of this Certificate of Incorporation pursuant to which such redemption shall be made, the Redemption Price and the place and date of such redemption, which date shall not be a day on which banks in New York City are required or authorized to close.

(b) In the case of a redemption pursuant to subsection 2.3.2 above, not less than 30 days following the sale of a controlling interest in the Corporation, each holder of Series B Preferred Stock electing to have his or its shares redeemed shall give written notice to the Corporation by registered or certified first class mail, return receipt requested, by a nationally recognized courier service in each case, postage prepaid, or by personal delivery, specifying the number of shares to be redeemed and the section or sections of this Certificate of Incorporation pursuant to which such redemption shall be made. Upon receipt of such notice, the Corporation shall, within 45 days following the sale of a controlling interest in the Corporation giving rise to the optional redemption, the Corporation shall give written notice to all holders exercising their options for redemption of the Redemption Price and the place and date of such redemption ("Optional Redemption Date"), which date shall be not more than 30 days following the giving of such notice and shall not be a day on which banks in New York City are required or authorized to close. Such notice shall be given by registered or certified first class mail, return receipt requested, by a nationally recognized courier service in each case, postage prepaid, or by personal delivery, addressed to the holders of record of the series of Preferred Stock to be redeemed, such notice to be addressed to each such stockholder at his post office address as shown by the records of the Corporation.

(c) If such a notice of redemption shall have been duly given and if on or before the Series A Redemption Date, the Series B Redemption Date or the Optional Redemption Date, as applicable (each a "Redemption Date"), the funds necessary for redemption shall have been set aside so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares of Preferred Stock to be redeemed shall not have been surrendered for cancellation, after the close of business on such Redemption Date, the shares so called for redemption shall no longer be deemed outstanding, the dividends thereon shall cease to accrue, and all rights with respect to such shares shall forthwith after the close of business on such Redemption

Date cease, except only the right of the holders thereof to receive, upon presentation of the certificate representing shares so called for redemption, the Redemption Price therefor, without interest thereon.

2.3.4 Redeemed or Otherwise Acquired Shares to be Retired. Any shares of Preferred Stock redeemed pursuant to this section 2 or otherwise acquired by the Corporation in any manner whatsoever shall be permanently retired and shall not under any circumstances be reissued; and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce the number of authorized shares of Preferred Stock accordingly.

2.4 Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series B Preferred Stock, before any distribution or payment is made upon Series A Preferred Stock or Common Stock, shall be entitled to be paid \$0.20 per share (the "Series B Liquidation Payment"). Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Series A Preferred Stock, before any distribution or payment is made upon Common Stock, shall be entitled to be paid \$0.20 per share (the "Series A Liquidation Payment"). References to the "Liquidation Payment" shall mean the Series A Liquidation Payment or the Series B Liquidation Payment, as applicable. If, upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series B Preferred Stock shall be insufficient to permit payment to such holders of the preferential amounts to which they are entitled (such preferential amounts to include all declared but unpaid dividends), then the entire assets of the Corporation to be so distributed shall be distributed ratably among the holders of Series B Preferred Stock. If, upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets to be distributed among the holders of Series A Preferred Stock shall be insufficient to permit payment to such holders of the preferential amounts to which they are entitled (such preferential amounts to include all declared but unpaid dividends), then the entire assets of the Corporation remaining to be so distributed after distribution to the holders of Series B Preferred Stock of the preferential amounts to which they are entitled shall be distributed ratably among the holders of Series A Preferred Stock. Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Preferred Stock shall have been paid in full the amounts to which they shall be entitled, the remaining net assets of the Corporation available for distribution to its shareholders shall be distributed ratably to the holders of Common Stock. Written notice of such liquidation, dissolution or winding up, stating a payment date, the amount of the Liquidation Payments and the place where said Liquidation Payments shall be payable, shall be given by mail, postage prepaid, not less than 30 days prior to the payment date stated therein, to the holders of record of Preferred Stock, such notice to be addressed to each such holder at his post office address as shown by the records of the Corporation. Neither the consolidation or merger of the Corporation into or with any other corporation or corporations, nor the sale or transfer by the Corporation of all or substantially all its assets, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of the provisions of this section 2.4.

## 2.5 Conversion.

2.5.1 Right to Convert. Subject to the terms and conditions of this section 2.5, the holder of any share or shares of Series A Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series A Preferred Stock (except that upon any liquidation, dissolution or winding up of the Corporation the right of conversion shall terminate at the close of business on the last full business day next preceding the date fixed for payment of the amount distributable on the Preferred Stock), into such number of fully paid and nonassessable whole shares of Common Stock as could be purchased at \$0.20 per share (the "Series A Conversion Price") by deeming each share of Series A Preferred Stock to be valued at \$0.20 at the time of such conversion. Subject to the terms and conditions of this section 2.5, the holder of any share or shares of Series B Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series B Preferred Stock (except that upon any liquidation, dissolution or winding up of the Corporation the right of conversion shall terminate at the close of business on the last full business day next preceding the date

fixed for payment of the amount distributable on the Preferred Stock), into such number of fully paid and nonassessable whole shares of Common Stock as could be purchased at \$0.20 per share (the "Series B Conversion Price") by deeming each share of Series B Preferred Stock to be valued at \$0.20 at the time of such conversion. References to the "Conversion Price" shall mean the Series A Conversion Price or the Series B Conversion Price, as is applicable. The rights of conversion contained in this subsection 2.5.1 shall be exercised by the holder of shares of Preferred Stock by giving written notice that such holder elects to convert a stated number of shares of Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holder or holders of the Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued.

**2.5.2 Issuance of Certificates: Time Conversion Effected.** Promptly after the receipt of the written notice referred to in subsection 2.5.1 and surrender of the certificate or certificates for the share or series of Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected, and the Conversion Price shall be determined, as of the close of business on the date on which such written notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or Persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

**2.5.3 Fractional Shares: Dividends: Partial Conversion.** No fractional shares may be issued upon conversion of the Preferred Stock into Common Stock and no payment or adjustment shall be made upon any conversion on account of any cash dividends on the Common Stock issued upon such conversion. At the time of each conversion, the Corporation shall pay in cash an amount equal to all dividends, if any, declared and unpaid on the shares surrendered for conversion to the date upon which such conversion is deemed to take place as provided in subsection 2.5.2. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to subsection 2.5.1 exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder thereof, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional interest in a share of Common Stock would, except for the provisions of the first sentence of this subsection 2.5.3, be deliverable upon any such conversion, the Corporation, in lieu of delivery of the fractional share thereof, shall pay to the holder surrendering the Preferred Stock for conversion an amount in cash equal to the fair market value of such fractional interest as determined in good faith by the Board of Directors of the Corporation.

**2.5.4 Adjustment of Price Upon Issuance of Common Stock.** Except as provided in subsection 2.5.6 hereof, if and whenever the Corporation shall issue or sell, or is in accordance with subsections 2.5.4(a) through 2.5.4(g) deemed to have issued or sold, any shares of its Common Stock for a consideration per share less than the Conversion Price in effect immediately prior to the time of such issue or sale, then, forthwith upon such issue or sale, the Conversion Price shall be determined by dividing (i) an amount equal to the sum of (a) the number of shares of Common Stock outstanding immediately prior to such issue or sale (including as outstanding all shares of Common Stock issuable upon conversion of outstanding Preferred Stock) multiplied by the then existing Conversion Price, and (b) the consideration, if any, received by the Corporation upon such issue or sale, by (ii) the total number of shares of Common Stock outstanding immediately after such issue or sale (including as outstanding all shares of Common Stock issuable upon conversion of outstanding Preferred

Stock).

For purposes of this subsection 2.5.4, the following subsections 2.5.4(a) to 2.5.4(g) shall also be applicable:

(a) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or securities convertible into or exchangeable for Common Stock (such rights or options being herein called "Options" and such convertible or exchangeable stock or securities being herein called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting such Options and thereafter shall be deemed to be outstanding. Except as otherwise provided in subsection 2.5.4(c), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

(b) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert thereunder are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in subsection 2.5.4(c) below, no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities, and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Option to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this subsection 2.5.4, no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(c) Change in Option Price or Conversion Price. If (i) the purchase price provided for in any Option referred to in subsection 2.5.4(a), (ii) the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in subsection 2.5.4(a) or 2.5.4(b) or (iii) the rate at which any Convertible Securities referred to in subsection 2.5.4(a) or 2.5.4(b) are convertible into or exchangeable for Common Stock shall change at any time (in each case other than under or by reason of provisions designed to

protect against dilution), then the Conversion Price in effect at the time of such event shall, as required, forthwith be readjusted to such Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Conversion Price then in effect hereunder shall, as required, forthwith be increased to the Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued, and the Common Stock issuable hereunder shall no longer be deemed to be outstanding. If the purchase price provided for in any such Option referred to in subsection 2.5.4(a) or the rate at which any Convertible Securities referred to in subsection 2.5.4(a) or 2.5.4(h) are convertible into or exchangeable for Common Stock shall be reduced at any time under or by reason of provisions with respect thereto designed to protect against dilution, then, in case of the delivery of Common Stock upon the exercise of any such Option or upon conversion or exchange of any such Convertible Securities, the Conversion Price then in effect hereunder shall, as required, forthwith be adjusted to such respective amount as would have been obtained had such Option or Convertible Securities never been issued as to such Common Stock and had adjustments been made upon the issuance, of the shares of Common Stock delivered as aforesaid.

(d) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subsection 2.5.5 hereof.

(e) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the Corporation, such Options shall be deemed to have been issued without consideration, and the Conversion Price shall be reduced as if the Corporation had subdivided its outstanding shares of Common Stock into a greater number of shares, as provided in subsection 2.5.5 hereof.

(f) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities, or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be, provided that such shares of Common Stock shall in fact have been issued or sold.

(g) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purposes of this subsection 2.5.4.



2.5.5 Subdivision or Combination of Stock. In case the Corporation shall at any time subdivide its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and conversely, in case the outstanding shares of Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased.

2.5.6 Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price after the issuance of Common Stock upon the occurrence of any of the following events: (i) conversion of all of the outstanding shares of Preferred Stock; or (ii) the issuance either directly, or upon exercise of options to purchase, of up to an aggregate of 15,000,000 shares of Common Stock (A) to employees, officers or directors of the Corporation or consultants to the Corporation in connection with any stock option or stock option plan approved and adopted by the Corporation or by the Compensation Committee of the Board of Directors of the Corporation or (B) in connection with acquisitions of assets or other property in furtherance of the business or affairs of the Corporation in transactions approved by the Board of Directors of the Corporation.

2.5.7 Reorganization, Reclassification, Consolidation Merger or Sale. If any capital reorganization or reclassification of the capital stock of the Corporation or any consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way (including, without limitation, by way of consolidation or merger) that holders of Common Stock shall be entitled to receive stock, securities, or assets with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provisions (in form reasonably satisfactory to the holders of at least 50% of the outstanding shares of Preferred Stock) shall be made whereby each holder of a share or shares of Preferred Stock shall thereafter have the right to receive, upon the basis and upon the terms and conditions specified herein and in lieu of the shares of Common Stock of the Corporation immediately theretofore receivable upon the conversion of such shares or shares of the Preferred Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding shares of such Common Stock equal to the number of shares of such stock immediately therefore so receivable had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of such holder to the end that the provisions hereof (including, without limitation, provisions for adjustment of the Conversion Price) shall thereafter be applicable, as nearly practicable, in relation to any share of stock, securities or assets thereafter deliverable upon the exercise of such conversion rights (including, if necessary to effect the adjustments contemplated herein, an immediate adjustment, by reason of such reorganization, reclassification, consolidation, merger or sale, of the Conversion Price to the value for the Common Stock reflected by the terms of such reorganization, reclassification, consolidation, merger or sale if the value so reflected is less than the Conversion Price in effect immediately prior to such reorganization, reclassification, consolidation, merger or sale).

2.5.8 Automatic Conversion. In the event that, at any time while any of the Preferred Stock shall be outstanding the Corporation shall complete an underwritten public offering involving the sale by the Corporation of shares of Common Stock (i) at a per share price to the public of not less than \$0.60 and (ii) in which the gross proceeds paid by the public are at least \$7,500,000, then all outstanding shares of Series A Preferred Stock shall automatically and without further action on the part of the holders of the Series A Preferred Stock, be converted into shares of the Common Stock in accordance with the terms of this section 2.5 with the same effect as if the certificates evidencing such shares had been surrendered for conversion, such conversion to be effective simultaneously with the closing of such public offering. The foregoing notwithstanding, certificates evidencing the shares of Common Stock issuable upon either such conversion shall not be issued except on surrender of the certificates for the shares of the Preferred Stock so converted.

2.5.9. Notice of Adjustment. Upon any adjustment of the Conversion Price, then and in each

such case the Corporation shall give written notice thereof, by registered or certified first class mail, return receipt requested, by a nationally recognized courier service, in each case postage prepaid, or by personal delivery addressed to each holder of shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, at the address of such holder as shown on the books of the Corporation, which notice shall state the Conversion Price resulting from such adjustment, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

**2.5.10 Other Notices.** In case at any time:

(a) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(b) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(c) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with, or a sale of all or substantially all its assets to, another corporation;

(d) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation; or

(e) the Corporation shall take any action or there shall be any event which would result in any automatic conversion of shares of Preferred Stock pursuant to subsection 2.5.8,

then in any one or more of said cases, the Corporation shall give, by registered or certified first class mail, return receipt requested, by a nationally recognized courier service, in each case, postage prepaid, or by personal delivery, addressed to each holder of shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 30 days' prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 30 days' prior written notice of the date when the same shall take place, and (c) in the case of any event which would result in an automatic conversion of shares of Preferred Stock pursuant to subsection 2.5.8, at least 30 days' prior written notice of the date on which the same is expected to be completed. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend, distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto, and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

**2.5.11 Stock to be Reserved.** The Corporation will at all times reserve and keep available out of its authorized Common Stock or its treasury shares, solely for the purpose of issue upon the conversion of the Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof and, without limiting the generality of the foregoing, the Corporation covenants that it will from time to time take all such action as may be requisite to assure that the par value per share of the Common Stock is at all times equal to or less than the lower of the effective Conversion Prices. The Corporation will take all such action as may be necessary to assure that all such shares

of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirements of any national securities exchange upon which the Common Stock of the Corporation may be listed. The Corporation will not take any action which results in any adjustment of the Conversion Price if the total number of shares of Common Stock issued and issuable after such action upon conversion of the Preferred Stock would exceed the total number of shares of Common Stock authorized by this Corporation's Certificate of Incorporation.

**2.5.12 No Reissuance of Preferred Stock.** Shares of Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

**2.5.13 Issue Tax.** The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the holder surrendering the certificates shall be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

**2.5.14 Closing of Books.** The Corporation will at no time close its transfer books against the transfer of any Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock in any manner which interferes with the timely conversion of such Preferred Stock.

**2.5.15 Definition of Common Stock.** As used in this section 2.5, the term "Common Stock" shall mean and include the Corporation's authorized common stock, \$0.002 par value, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall not be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends or in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided, however, that the shares of Common Stock receivable upon conversion of shares of the Preferred Stock of the Corporation, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in subsection 2.5.7, shall include only shares of the class designated as Common Stock of the Corporation on the effective date of this Certificate.

**2.6 Voting.** Except as otherwise required by law or this Certificate of Incorporation, the holders of Preferred Stock and the holders of Common Stock shall be entitled to notice of any stockholders meeting in accordance with the By-laws of the Corporation and to vote upon any matter submitted to the stockholders for a vote as follows: (i) the holders of Preferred Stock shall have one vote for each full share of Common Stock into which their respective shares of Preferred Stock are convertible on the record date for the vote and (ii) the holders of Common Stock shall have one vote per share of Common Stock.

**2.7 Restrictions.** Except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by this Certificate of Incorporation, and in addition to any other vote required by law:

**2.7.1 (a)** Without the prior consent of the holders of greater than 50% of the outstanding shares of either series of Preferred Stock, if any, given in person or by proxy, either in writing or at a special meeting called for that purpose, in which the holders of the shares of such series of Preferred Stock shall vote together as a class, the Corporation will not (i) create or authorize the creation of any additional class or series of shares that is senior or pari passu to such series of Preferred Stock, (ii) increase the authorized amount of such series of Preferred Stock or the authorized amount of any additional class or series of shares if the same is senior or pari passu to such series of Preferred Stock, (iii) create or authorize any obligation or security convertible into shares of Common Stock or into shares of any other class or series if the same is senior or pari passu to such series of Preferred Stock, or (iv) amend, alter or repeal the Corporation's Certificate of Incorporation or By-laws in any manner, or file any directors' resolutions pursuant to Section 151(g) of the General Corporation Law of the State

of Delaware containing any provision, in either case, which adversely affects the respective preferences, qualifications, special or relative rights or privileges of such series or which in any manner adversely affects such series or the holders thereof.

(b) Without the prior consent of the holders of greater than 50% of the outstanding shares of Preferred Stock, if any, given in person or by proxy, either in writing or at a special meeting called for that purpose, in which the holders of Preferred Stock shall vote together as a class:

(i) the Corporation will not (A) issue any debt in excess of the net worth of the Corporation, or (B) engage in any transaction that constitutes a deemed dividend according to U.S. tax laws; and

(ii) the Corporation will not consolidate or merge with or into any other corporation (other than a merger in which the Corporation is the surviving corporation and which will not result in more than 50% of the capital stock of the Corporation being owned of record or beneficially by persons other than the holders of such capital stock immediately prior to such merger) or sell or otherwise dispose of all or substantially all of the properties and assets of the Corporation as an entirety to any other person (a "Fundamental Transaction") for a price below \$0.20 per share.

2.7.2 Without the prior written consent of the holders of greater than 50% of each of the Common Stock and Preferred Stock, if any, given in person or by proxy, either in writing or at a special meeting called for that purpose, in which the holders of the shares of each Common Stock and Preferred Stock shall each vote as a class, the Corporation shall not allow a Fundamental Transaction to take place if the consideration per share is between \$0.20 and \$0.40.

2.7.3 Without the prior consent of the holders of greater than 50% of the outstanding Capital Stock of the Corporation, with the holders of Preferred Stock, if any, voting on a converted to Common Stock basis, given in person or by proxy, either in writing or at a special meeting called for that purpose, in which the holders of the Corporation's Capital Stock shall vote (with each share to receive one vote), the Corporation shall not allow a Fundamental Transaction to take place if the consideration per share is in excess of \$0.40.

2.7.4 Without the prior consent of the holders of greater than 50% of the outstanding shares of Common Stock, given in person or by proxy, either in writing or at a special meeting called for that purpose, in which the holders of Common Stock shall vote together as a class, the Corporation shall not: declare or pay, in money, property or shares of any class of the Corporation's capital stock, a dividend payable to holders of one or more series of Preferred Stock, without providing for a dividend payable to holders of Common Stock on the same basis as if the holders of Preferred Stock had converted such shares into shares of Common Stock or approve or enter into any transaction with any holder of, or with an affiliate of any holder of, Preferred Stock other than a transaction as to which the provisions of Section 2.8 below provide for pre-emptive rights; create or increase the authorized shares of a class of capital stock with rights superior to those of Common Stock; or approve or enter into any transaction or series of transactions which are materially adverse to the interests of holders of Common Stock.

2.8 Preemptive Rights. Each holder of Preferred Stock and Common Stock (referred to in this Section 2.8 collectively as the "Stockholders") shall have the right to purchase such stockholder's Proportionate Percentage (as hereafter defined) of any future Eligible Offering (as hereafter defined). For the purposes of this Section 2.8, the following terms shall have the meaning set forth below:

"Proportionate Percentage" means, with respect to any Stockholder as of any date, the result (expressed as a percentage) obtained by dividing (i) the number of shares of Common Stock (treating, for purposes of such calculation, each share of Preferred Stock as the number of shares of Common Stock issuable upon conversion thereof) owned by such Stockholder as of such date, by (ii) the total number of shares of

Common Stock (treating, for purposes of such calculation, each share of Preferred Stock as the number of shares of Common Stock issuable upon conversion thereof) outstanding as of such date.

"Eligible Offering" means an offer by the Corporation to sell to investors (including any of the Stockholders) for cash shares of capital stock of the Corporation, or any security convertible into or exchangeable for, or carrying rights or options to purchase, capital stock of the Corporation, other than an offering of securities by the Corporation:

- (1) in connection with any merger of, or acquisition by, the Corporation;
- (2) registered in a Qualified Public Offering (as defined below); or
- (3) pursuant to options granted to employees, officers or directors of, or consultants to, the Corporation.

"Qualified Public Offering" shall mean a public offering of shares of Common Stock in which (a) the aggregate net proceeds to the Corporation and/or selling stockholders (after deduction of underwriting discounts and commissions and expenses of the offering) shall be at least \$7,500,000 and (b) the price to the public shall be at least \$0.60 per share (appropriately adjusted to reflect stock splits and dividends and stock combinations).

The Corporation shall, before issuing any securities pursuant to an Eligible Offering, give written notice thereof to each Stockholder in accordance with Section 2.3.2. Such notice shall specify the security or securities the Corporation proposes to issue and the consideration that the Corporation intends to receive therefor. For a period of ten (10) days following the date of such notice, each Stockholder shall be entitled, by written notice to the Corporation given in accordance with Section 2.3.2, to elect to purchase all or any part of such Stockholder's Proportionate Percentage of the securities being sold in the Eligible Offering, provided, however, that if two or more securities shall be proposed to be sold as a "unit" in an Eligible Offering, any such election must relate to such unit of securities. In the event that elections pursuant to this paragraph shall not be made with respect to any securities included in an Eligible Offering within such ten (10) day period, then the Corporation may issue such securities to investors, but only for a consideration payable in cash not less than, and otherwise on no more favorable terms to the investors than, that set forth in the Corporation's notice and only within ninety (90) days after the end of such ten (10) day period. In the event that any such offer is so accepted by a Stockholder or Stockholders, the Corporation shall sell to such Stockholder or Stockholders, and such Stockholder or Stockholders shall purchase from the Corporation, for the consideration and on the terms set forth in the notice as aforesaid, the securities that such Stockholder or Stockholders shall have elected to purchase.

At such time as the Corporation sells shares in a Qualified Public Offering, all pre-emptive rights under this Certificate shall cease and be of no further force or effect.

FIFTH: The Board of Directors is authorized to make, alter or repeal the By-laws of the Corporation in accordance with this Certificate of Incorporation. Election of directors need not be by written ballot.

SIXTH: A member of the Corporation's Board of Directors shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except for liability of the director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, relating to the payment of unlawful dividends or unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended to authorize

corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Any repeal or modification of this Paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**SEVENTH: Indemnification.**

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or officer of the Corporation or that he or she is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnities"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to any indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators; provided, however, that, except as provided in subparagraph (b) hereof with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred in this Paragraph shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition (hereafter an "advancement of expenses"); provided, however, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Paragraph or otherwise.

(b) Right of Indemnitee to Bring Suit. If a claim under subparagraph (a) of this Paragraph is not paid in full by the Corporation within sixty days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. In any suit by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met the applicable standard of conduct set forth in the Delaware General Corporation Law. Neither the failure of the Corporation (including its Board of

Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Paragraph or otherwise shall be on the Corporation.


(c) Non-Exclusivity of Rights. The rights of indemnification and to the advancement of expenses conferred in this Paragraph shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, this Certificate of Incorporation, By-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

(e) Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Paragraph with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its Chairman this 29<sup>th</sup> day of November, 2000.

VisionRx.com Inc.

  
Jeffrey L. Stewart, Chairman