

IMARX THERAPEUTICS INC
Form 10-K/A
December 30, 2009

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

**FORM 10-K/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, 2008**
- ☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the Transition Period from _____ to _____
Commission File Number 001-33043**

**ImaRx Therapeutics, Inc.
(Exact Name of Registrant as Specified in Its Charter)**

**Delaware
(State or Other Jurisdiction of
Incorporation or Organization)**

**86-0974730
(I.R.S. Employer
Identification No.)**

**ImaRx Therapeutics, Inc.
c/o Stoel Rives LLP
201 S. Main Street, Suite 1100
Salt Lake City, Utah
(Address of Principal Executive Offices)**

**84111
(Zip Code)**

**(801) 578-6962
(Registrant's Telephone Number, Including Area Code)
Securities registered pursuant to Section 12(b) of the Act:
None**

**Securities registered pursuant to Section 12(g) of the Act:
Common Stock, \$0.0001 par value
(Title of Each Class)**

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§

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232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☐ NO ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not 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-K or any amendment to this Form 10-K. ☐

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

Large Accelerated filer ☐ Accelerated ☐ Non-accelerated filer ☐ Smaller reporting company ☐
filer ☐ (Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

YES ☐ NO ☐

As of December 28, 2009, there were 11,665,733 shares of the Registrant's Common Stock outstanding. As of the last day of the most recently completed second fiscal quarter (June 30, 2009), the aggregate market value of the Common Stock of the Registrant held by non-affiliates was approximately \$1.38 million, based on the closing price per share of \$0.16 for the Registrant's Common Stock on such date. This amount excludes an aggregate of 3,016,847 shares of Common Stock held by officers and directors and each person known by the Registrant to own 10% or more of the outstanding Common Stock. Exclusion of shares held by any person should not be construed to indicate that such person possesses the power, directly or indirectly, to direct or cause the direction of the management or policies of the Registrant, or that the Registrant is controlled by or under common control with such person.

EXPLANATORY NOTE

The purpose of this Amendment No. 1 (this Form 10-K/A) to our Annual Report on Form 10-K for the fiscal year ended December 31, 2008, which was filed with the Securities and Exchange Commission (the SEC) on March 9, 2009 (the Annual Report), is to include revised versions of Exhibits 31.1 and 31.2. The versions of Exhibits 31.1 and 31.2 filed herewith have been revised in response to comments of the Staff of the SEC relating to the Staff's review of our Annual Report.

Except as described above, no other changes are made to the Annual Report, and this Form 10-K/A does not amend, update or change any other Item or the disclosures in the Annual Report in any way. This Form 10-K/A does not reflect events occurring after the filing of the Annual Report or modify or update those disclosures, including any exhibits to the Annual Report, affected by subsequent events.

PART IV**ITEM 15. Exhibits and Financial Statement Schedules**

a) The following documents are filed as a part of this report:

(1) *Financial Statements*: The financial statements required by this item were previously filed with the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008, as filed with the Securities and Exchange Commission on March 9, 2009.

(2) The information for financial statement schedules has been omitted since they are not applicable.

(b) Exhibits

| Exhibit No | Exhibit Title | Filed Herewith | Form | Incorporated by Reference | | |
|---------------|--|-------------------|------|---------------------------|------------|-------------|
| | | | | Exhibit No. | File No. | Filing Date |
| 3.1 | Fourth Amended and Restated Certificate of Incorporation of the registrant | | S-1 | 3.1 | 333-142646 | 5/4/2007 |
| 3.2 | Amendment to Certificate of Incorporation of the registrant to effect a six-for-ten reverse stock split | | S-1 | 3.2 | 333-142646 | 5/4/2007 |
| 3.3 | Second Amendment to Certificate of Incorporation of the registrant to effect a one-for-three reverse stock split | | S-1 | 3.3 | 333-142646 | 5/4/2007 |
| 3.4 | Amended and Restated Certificate of Incorporation of the registrant | | S-1 | 3.4 | 333-142646 | 5/4/2007 |
| 3.5 | Bylaws of the registrant, as amended | | S-1 | 3.5 | 333-142646 | 5/4/2007 |
| 3.6 | Amended and Restated Bylaws of the registrant | | S-1 | 3.6 | 333-142646 | 5/4/2007 |
| 4.1 | Specimen certificate evidencing shares of common stock | | S-1 | 4.1 | 333-142646 | 5/4/2007 |
| 10.1* | Form of Indemnification Agreement entered into between the registrant and each of its directors and officers | | S-1 | 10.1 | 333-142646 | 5/4/2007 |
| 10.2 | | | S-1 | 10.2 | 333-142646 | 5/4/2007 |

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Second Amended and
Restated Investors Rights
Agreement, dated April 14,
2006, by and among the
registrant and certain
stockholders

| | | | | | |
|-------|---|-----|------|------------|----------|
| 10.3* | 2000 Stock Plan and related agreements | S-1 | 10.3 | 333-142646 | 5/4/2007 |
| 10.4* | 2007 Performance Incentive Plan and related agreements | S-1 | 10.4 | 333-142646 | 5/4/2007 |
| 10.5* | Bonus Plan | S-1 | 10.5 | 333-142646 | 5/4/2007 |
| 10.6 | License Agreement, dated January 4, 2005, between the registrant and Dr. med. Reinhard Schlieff | S-1 | 10.6 | 333-142646 | 5/4/2007 |

| Exhibit No | Exhibit Title | Filed Herewith | Form | Incorporated by Reference | | |
|---------------|--|-------------------|------|---------------------------|------------|-------------|
| | | | | Exhibit No. | File No. | Filing Date |
| 10.7 | Exclusive Sublicense Agreement, dated October 10, 2003, between the registrant and UNEMED Corporation | | S-1 | 10.7 | 333-142646 | 5/4/2007 |
| 10.8 | Assignment, Assumption and License Agreement, dated October 7, 1999, between the registrant and Bristol-Myers Squibb Medical Imaging, Inc. (as successor to DuPont Contrast Imaging, Inc.) dated October 7, 1999, and amendments thereto | | S-1 | 10.8 | 333-142646 | 5/4/2007 |
| 10.9 | License Agreement, dated February 10, 2006, between the registrant and the University of Arkansas for Medical Sciences | | S-1 | 10.9 | 333-142646 | 5/4/2007 |
| 10.10 | Asset Purchase Agreement, dated April 10, 2006, between the registrant and Abbott Laboratories, and amendments thereto | | S-1 | 10.10 | 333-142646 | 5/4/2007 |
| 10.11 | Escrow Agreement, dated April 14, 2006, between the registrant and Abbott Laboratories | | S-1 | 10.11 | 333-142646 | 5/4/2007 |
| 10.12 | Inventory Trademark License Agreement, dated April 14, 2006, between the registrant and Abbott Laboratories | | S-1 | 10.12 | 333-142646 | 5/4/2007 |
| 10.13 | Security Agreement, dated April 14, 2006, between the registrant and Abbott Laboratories | | S-1 | 10.13 | 333-142646 | 5/4/2007 |

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| | | | | | |
|--------|--|-----|-------|------------|----------|
| 10.14 | Secured Promissory Note, dated April 14, 2006, between the registrant and Abbott Laboratories | S-1 | 10.14 | 333-142646 | 5/4/2007 |
| 10.15 | Second Amended Executive Employment Agreement, dated May 15, 2006, between the registrant and Evan C. Unger | S-1 | 10.15 | 333-142646 | 5/4/2007 |
| 10.16 | Consulting Agreement, dated October 20, 2006, between the registrant and Evan C. Unger | S-1 | 10.16 | 333-142646 | 5/4/2007 |
| 10.17 | Confidential Separation Agreement and Mutual General Release of All Claims, dated November 28, 2006, between the registrant and Evan C. Unger | S-1 | 10.17 | 333-142646 | 5/4/2007 |
| 10.18* | Consulting Agreement, dated April 11, 2005, between the registrant and Greg Cobb | S-1 | 10.18 | 333-142646 | 5/4/2007 |

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| Exhibit No | Exhibit Title | Filed Herewith | Form | Incorporated by Reference | | |
|---------------|--|-------------------|------|---------------------------|------------|-------------|
| | | | | Exhibit No. | File No. | Filing Date |
| 10.19* | Amended Executive Employment Agreement, dated February 1, 2007, between the registrant and Greg Cobb | | S-1 | 10.19 | 333-142646 | 5/4/2007 |
| 10.20* | Amended Executive Employment Agreement, dated February 1, 2007, between the registrant and Bradford A. Zakes | | S-1 | 10.20 | 333-142646 | 5/4/2007 |
| 10.21 | Agreement, dated March 31, 2006, by and among the registrant, John A. Moore and Edson Moore Healthcare Ventures | | S-1 | 10.21 | 333-142646 | 5/4/2007 |
| 10.22 | Subscription Agreement and Investor Questionnaire, dated March 2004, between the registrant and each of the signatory investors, offering price \$2.00 per share | | S-1 | 10.22 | 333-142646 | 5/4/2007 |
| 10.23 | Subscription Agreement and Investor Questionnaire, dated December 2004, between the registrant and each of the signatory investors, offering price \$3.00 per share | | S-1 | 10.23 | 333-142646 | 5/4/2007 |
| 10.24 | Subscription Agreement and Investor Questionnaire, dated September and October 2004, between the registrant and each of the signatory investors, offering price \$4.00 per share | | S-1 | 10.24 | 333-142646 | 5/4/2007 |
| 10.25 | Commercial Lease Triple Net, dated November 1, 2002, between the registrant | | S-1 | 10.25 | 333-142646 | 5/4/2007 |

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and ImaRx Investments
L.L.C.

| | | | | | |
|--------|--|-----|-------|------------|------------|
| 10.26 | Standard Commercial Industrial Lease, dated December 30, 1997, between the registrant and Tucson Tech Park and addenda thereto | S-1 | 10.26 | 333-142646 | 5/4/2007 |
| 10.27 | Note Extension and Amendment Agreement, dated October 25, 2007, between the registrant and Abbott Laboratories | 8-K | 10.1 | 001-33043 | 10/26/2007 |
| 10.28* | Amendment No. 2 to Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Bradford A. Zakes | 8-K | 10.1 | 001-33043 | 2/7/2008 |
| 10.29* | Amendment No. 2 to Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Greg Cobb | 8-K | 10.2 | 001-33043 | 2/7/2008 |

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| Exhibit No | Exhibit Title | Filed Herewith | Form | Incorporated by Reference | | |
|---------------|---|-------------------|------|---------------------------|-----------|-------------|
| | | | | Exhibit No. | File No. | Filing Date |
| 10.30* | Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Garen Manvelian | | 8-K | 10.3 | 001-33043 | 2/7/2008 |
| 10.31* | Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Kevin Ontiveros | | 8-K | 10.4 | 001-33043 | 2/7/2008 |
| 10.32 | Separation and Release of Claims Agreement with Greg Cobb | | 8-K | 10.2 | 001-33043 | 6/10/2008 |
| 10.33 | Separation and Release of Claims Agreement with Kevin Ontiveros | | 8-K | 10.4 | 001-33043 | 6/10/2008 |
| 10.33 | Consulting Agreement with Greg Cobb | | 8-K | 10.3 | 001-33043 | 6/10/2008 |
| 10.34 | Amended Executive Employment Agreement with Brad Zakes | | 8-K | 10.1 | 001-33043 | 6/27/2008 |
| 10.35 | Commercial Lease dated December 10, 2007, between the registrant and Cambric Partners | | 10-K | 10.32 | 001-33043 | 8/31/2008 |
| 10.36 | Sublease Agreement dated December 29, 2008 between the Registrant and Koronis Pharmaceuticals, Inc | | 10-K | 10.36 | 001-33043 | 3/09/2009 |
| 23.1 | Consent of Independent Registered Public Accounting Firm McKennon, Wilson & Morgan, LLP | | 10-K | 23.1 | 001-33043 | 3/09/2009 |
| 23.2 | | | 10-K | 23.2 | 001-33043 | 3/09/2009 |

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Consent of Independent
Registered Public
Accounting Firm Ernst &
Young, LLP

| | | | | | |
|------|--|------|------|-----------|-----------|
| 24.1 | Power of Attorney (included in the signature page hereto) | 10-K | 24.1 | 001-33043 | 3/09/2009 |
|------|--|------|------|-----------|-----------|

| | | |
|------|--|---|
| 31.1 | Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 | X |
|------|--|---|

| | | |
|------|--|---|
| 31.2 | Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 | X |
|------|--|---|

| | | | | | |
|----|--|------|----|-----------|-----------|
| 32 | 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 | 10-K | 32 | 001-33043 | 3/09/2009 |
|----|--|------|----|-----------|-----------|

c) Financial Statements and Schedules See Item 15(a)(1) and 15(a)(2) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

IMARX THERAPEUTICS, INC.

By: /s/ Richard Love
Richard Love
Chairman of the Board

December 29, 2009
Date

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

| Signature | Title | Date |
|---------------------------|---------------------------|-------------------|
| /s/ Richard Love | Chairman of the Board and | December 29, 2009 |
| Richard Love | Director | |
| * /s/ Richard Otto | Director | December 29, 2009 |
| Richard Otto | | |
| * /s/ Thomas W. Pew | Director | December 29, 2009 |
| Thomas W. Pew | | |
| * /s/ Philip Ranker | Director | December 29, 2009 |
| Philip Ranker | | |
| * /s/ James M. Strickland | Director | December 29, 2009 |
| James M. Strickland | | |
| * By: /s/ Richard Love | | |

ATTORNEY-IN-FACT

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| 3.4 | Amended and Restated Certificate of Incorporation of the registrant | | S-1 | 3.4 | 333-142646 | 5/4/2007 |
| 3.5 | Bylaws of the registrant, as amended | | S-1 | 3.5 | 333-142646 | 5/4/2007 |
| 3.6 | Amended and Restated Bylaws of the registrant | | S-1 | 3.6 | 333-142646 | 5/4/2007 |
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| 10.1* | Form of Indemnification Agreement entered into between the registrant and each of its directors and officers | | S-1 | 10.1 | 333-142646 | 5/4/2007 |
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| 10.4* | 2007 Performance Incentive Plan and related agreements | S-1 | 10.4 | 333-142646 | 5/4/2007 |
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| 10.9 | License Agreement, dated February 10, 2006, between the registrant and the University of Arkansas for Medical Sciences | | S-1 | 10.9 | 333-142646 | 5/4/2007 |
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| 10.19* | Amended Executive Employment Agreement, dated February 1, 2007, between the registrant and Greg Cobb | S-1 | 10.19 | 333-142646 | 5/4/2007 |
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| 10.24 | Subscription Agreement and Investor Questionnaire, dated September and October 2004, between the registrant and each of the signatory investors, offering price \$4.00 per share | | S-1 | 10.24 | 333-142646 | 5/4/2007 |
| 10.25 | Commercial Lease Triple Net, dated November 1, 2002, between the registrant and ImaRx Investments L.L.C. | | S-1 | 10.25 | 333-142646 | 5/4/2007 |
| 10.26 | Standard Commercial Industrial Lease, dated December 30, 1997, between the registrant and Tucson Tech Park and addenda thereto | | S-1 | 10.26 | 333-142646 | 5/4/2007 |
| 10.27 | Note Extension and Amendment Agreement, dated October 25, 2007, between the registrant and Abbott Laboratories | | 8-K | 10.1 | 001-33043 | 10/26/2007 |
| 10.28* | Amendment No. 2 to Executive Employment | | 8-K | 10.1 | 001-33043 | 2/7/2008 |

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Agreement dated as of
January 1, 2008 by and
between the Company and
Bradford A. Zakes

| | | | | | |
|--------|---|-----|------|-----------|-----------|
| 10.2*9 | Amendment No. 2 to Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Greg Cobb | 8-K | 10.2 | 001-33043 | 2/7/2008 |
| 10.30* | Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Garen Manvelian | 8-K | 10.3 | 001-33043 | 2/7/2008 |
| 10.31* | Executive Employment Agreement dated as of January 1, 2008 by and between the Company and Kevin Ontiveros | 8-K | 10.4 | 001-33043 | 2/7/2008 |
| 10.32 | Separation and Release of Claims Agreement with Greg Cobb | 8-K | 10.2 | 001-33043 | 6/10/2008 |
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| 23.1 | Consent of Independent Registered Public Accounting Firm McKennon, Wilson & Morgan, LLP | | 10-K | 23.1 | 001-33043 | 3/09/2009 |
| 23.2 | Consent of Independent Registered Public Accounting Firm Ernst & Young, LLP | | 10-K | 23.2 | 001-33043 | 3/09/2009 |
| 24.1 | Power of Attorney (included in the signature page hereto) | | 10-K | 24.1 | 001-33043 | 3/09/2009 |
| 31.1 | Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 | X | | | | |
| 31.2 | Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14(a) and | X | | | | |

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15d-14(a), as adopted
pursuant to Section 302 of
the Sarbanes-Oxley Act of
2002

| | | | | | |
|----|--|------|----|-----------|-----------|
| 32 | 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 | 10-K | 32 | 001-33043 | 3/09/2009 |
|----|--|------|----|-----------|-----------|