ZIOPHARM ONCOLOGY INC
Form 10QSB
August 13, 2007

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-QSB

x QUARTERLY REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended June 30, 2007

OR

o TRANSITION REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _______ to _______

Commission File Number 0-32353

ZIOPHARM Oncology, Inc.
(Exact Name of Small Business Issuer as Specified in Its Charter)

Delaware	**84-1475642**
(State or Other Jurisdiction of Incorporation or Organization)	(IRS Employer Identification No.)
1180 Avenue of the Americas, 19 th Floor, New York, NY	**10036**
(Address of Principal Executive Offices)	(Zip Code)

(646) 214-0700
(Issuer's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

Check whether the issuer (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 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 x No o

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

As of August 10, 2007, there were 21,182,948 shares of the issuer's common stock, $.001 par value per share, outstanding.

Traditional Small Business Disclosure Format (check one): Yes o No x

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Item 1. UNAUDITED FINANCIAL STATEMENTS
PART I - FINANCIAL INFORMATION

ZIOPHARM Oncology, Inc.
(A Development Stage Enterprise)
Balance Sheets

		June 30, 2007 (Unaudited)		December 31, 2006
ASSETS				
Current assets:				
Cash and cash equivalents	$	46,689,836	$	26,855,450
Short-term investments		-		1,555,164
Prepaid expenses and other current assets		817,814		462,789
Total current assets		**47,507,650**		**28,873,403**
Property and equipment, net		661,096		451,247
Deposits		50,779		9,367
Other non current assets		301,478		178,080
Total assets	**$**	**48,521,003**	**$**	**29,512,097**
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Accounts payable	$	1,488,815	$	776,128
Accrued expenses		2,334,807		2,161,914
Total current liabilities		**3,823,622**		**2,938,042**
Deferred rent		**43,625**		**41,078**
Commitments and contingencies				
Stockholders' equity:				
Common stock, $.001 par value; 280,000,000 shares authorized; 21,182,948 and 15,272,899 shares issued and outstanding at June 30, 2007 and December 31, 2006, respectively		21,183		15,273
Additional paid-in capital		68,935,841		44,667,878
Warrants issued		20,503,894		15,071,101
Deficit accumulated during the development stage		(44,807,162)		(33,221,275)
Total stockholders' equity		**44,653,756**		**26,532,977**
Total liabilities and stockholders' equity	**$**	**48,521,003**	**$**	**29,512,097**

ZIOPHARM Oncology, Inc.
(A Development Stage Enterprise)
Statements of Operations
For the three and six months ended June 30, 2007 and 2006 (unaudited) and for the period from inception (September 9, 2003) through June 30, 2007
(unaudited)

	For the three months ended June 30, 2007	**For the three months ended June 30, 2006**	**For the six months ended June 30, 2007**	**For the six months ended June 30, 2006**	**For the period from inception (September 9, 2003) through June 30, 2007**
Research contract revenue	$ —	$ —	$ —	$ —	$ —
Operating expenses and other income:					
Research and development including costs of research contracts	4,347,610	2,680,119	7,774,123	4,448,369	25,885,882
General and administrative	2,847,973	3,008,461	4,837,991	4,513,089	21,494,427
Total operating expenses	7,195,583	5,688,580	12,612,114	8,961,458	47,380,309
Loss from operations	(7,195,583)	(5,688,580)	(12,612,114)	(8,961,458)	(47,380,309)
Interest income	650,382	323,870	1,026,227	377,708	2,573,147
Net loss	(6,545,201)	(5,364,710)	(11,585,887)	(8,583,750)	(44,807,162)
Basic and diluted net loss per share	(0.31)	(0.43)	(0.60)	(0.87)	
Weighted average common shares outstanding used to compute basic and diluted net loss per share	21,182,948	12,423,033	19,419,729	9,832,051	

ZIOPHARM Oncology, Inc.
(A Development Stage Enterprise)
Statements of Cash Flows
For the six months ended June 30, 2007 and 2006 (unaudited) and for the period from inception (September 9, 2003) through June 30, 2007 (unaudited)

	For the six months ended June 30, 2007	For the six months ended June 30, 2006	For the Period from Inception (September 9, 2003) through June 30, 2007
Cash flows from operating activities:			
Net loss	$ (11,585,887)	$ (8,583,750)	$ (44,807,162)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	182,310	75,877	491,415
Non-cash stock-based compensation	735,751	2,199,973	4,420,280
Loss on disposal of fixed assets	-	(1,165)	(1,165)
Change in operating assets and liabilites:			
Increase in:			
Prepaid expenses and other current assets	(355,025)	(6,844)	(817,814)
Other noncurrent assets	(123,398)	(1,754)	(301,478)
Deposits	(41,412)	-	(50,779)
Increase (decrease) in:			
Accounts payable	712,687	(208,868)	1,488,815
Accrued expenses	172,893	593,951	2,334,807
Deferred rent	2,547	1,758	43,625
Net cash used in operating activities	**(10,299,534)**	**(5,930,822)**	**(37,199,456)**
Cash flows from investing activities:			
Purchases of property and equipment	(392,159)	(100,093)	(1,151,346)
Decrease (increase) in short-term investments	1,555,164	(4,552,726)	-
Net cash provided by (used in) investing activities	**1,163,005**	**(4,652,819)**	**(1,151,346)**
Cash flows from financing activities:			
Proceeds from the exercise of stock options	-	-	30,007
Stockholders' capital contribution	-	-	500,000
Proceeds from issuance of common stock, net	28,970,915	34,280,120	67,751,035
Proceeds from issuance of preferred stock, net	-	-	16,759,596
Net cash provided by financing activities	**28,970,915**	**34,280,120**	**85,040,638**
Net increase in cash and cash equivalents	19,834,386	23,696,479	46,689,836
Cash and cash equivalents, beginning of period	26,855,450	8,880,717	-
Cash and cash equivalents, end of period	**$ 46,689,836**	**$ 32,577,196**	**$ 46,689,836**
Supplementary disclosure of cash flow information:			
Cash paid for interest	—	—	—

Cash paid for income taxes		—		—		—
Supplementary disclosure of noncash investing and financing activities:						
Warrants issued to placement agents and investors, in connection with private placement	$	5,432,793	$	13,092,561	$	18,525,354
Warrants issued to placement agent, in connection with preferred stock issuance		—		—	$	1,682,863
Preferred stock conversion to common stock		—		—	$	16,759,596
Warrants converted to common shares		—		—	$	17,844

ZIOPHARM Oncology, Inc.
(A Development Stage Enterprise)
Statement of Changes in Convertible Prefered Stock and Stockholders' Equity (Deficit)
For the six months ended June 30, 2007 (unaudited), for the years ended December 31, 2006, 2005 and 2004, and for the period from inception (September 9, 2003) to December 31, 2003

	Convertible Preferred Stock and Warrants			**Stockholder's Equity (Deficit)**					
	Series A Convertible Preferred Stock		**Warrants to Purchase Series A Convertible Preferred Stock**	**Common Stock**					
	Shares	**Amount**	**Warrants**	**Shares**	**Amount**	**Additional Paid-in Capital**	**Warrants**	**Deficit Accumulated During The Development Stage**	**Stock**
Stockholders' contribution, September 9, 2003	-	$ -	$ -	$ 250,487	$ 250	$ 499,750	-	-	$
Net loss	-	-	-	-	-	-	-	(160,136)	
Balance at December 31, 2003	-	-	-	250,487	250	499,750	-	(160,136)	
Issuance of common stock	-	-	-	2,254,389	2,254	4,497,746	-	-	
Issuance of common stock for services	-	-	-	256,749	257	438,582	-	-	
Fair value of options/warrants issued for nonemployee services	-	-	-	-	-	13,240	251,037	-	
Net loss	-	-	-	-	-	-	-	(5,687,297)	
Balance at December 31, 2004	-	-	-	2,761,625	2,761	5,449,318	251,037	(5,847,433)	
Issuance of Series A convertible preferred stock (net of expenses of $1,340,263 and warrant cost of $1,682,863)	4,197,946	15,076,733	-	-	-	-	-	-	
Fair value of warrants to purchase Series A convertible preferred stock	-	-	1,682,863	-	-	-	-	-	

Issuance of Common stock to EasyWeb Shareholders	-	-	-	189,922	190	(190)	-	-
Conversion of Series A convertible preferred stock @ $0.001 into $0.001 common stock on September 13, 2005 at an exchange ratio of .500974	(4,197,946)	(15,076,733)	(1,682,863)	4,197,823	4,198	15,072,535	1,682,863	-
Issuance of common stock for options	-	-	-	98,622	99	4,716		-
Fair value of options/warrants issued for nonemployee services	-	-	-	-	-	54,115	44,640	-
Net loss	-	-	-	-	-	-	-	(9,516,923)
Balance at December 31, 2005	-	-	-	7,247,992	7,248	20,580,494	1,978,540	(15,364,356)
Issuance of common stock in private placement, net of expenses $2,719,395	-	-	-	7,991,256	7,991	21,179,568	-	-
Issuance of warrants	-	-	-	-	-	-	13,092,561	-
Issuance of common stock for services rendered	-	-	-	25,000	25	106,225	-	-
Stock based compensation for employees	-	-	-	-	-	2,776,408	-	-
Issuance of common stock due to exercise of stock options	-	-	-	5,845	6	25,186	-	-
	-	-	-	2,806	3	(3)	-	-

Issuance of common stock due to exercise of stock warrants								
Net loss	-	-	-	-	-	-	-	(17,856,919)
Balance at December 31, 2006	-	-	-	15,272,899	15,273	44,667,878	15,071,101	(33,221,275)
Issuance of common stock in private	-	-	-					
placement, net of expenses $1,909,090	-	-	-	5,910,049	5,910	23,532,212	-	-
Issuance of warrants	-	-	-	-	-	-	5,432,793	-
Stock based compensation for employees	-	-	-	-	-	735,751	-	-
Net Loss	-	-	-	-	-	-	-	(11,585,887)
Balance at June 30, 2007 (unaudited)	$ -	$ -	$ -	$ 21,182,948	$ 21,183	$ 68,935,841	$ 20,503,894	$ (44,807,162) $

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ZIOPHARM Oncology, Inc.
Notes to Unaudited Financial Statements

1. BASIS OF PRESENTATION AND OPERATIONS

The financial statements included herein have been prepared by ZIOPHARM Oncology, Inc. ("ZIOPHARM" or the "Company") without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the accompanying unaudited financial statements include all adjustments (consisting of normal recurring adjustments) necessary to present fairly the financial position, results of operations and cash flows of the Company at the dates and for the periods indicated. The unaudited financial statements included herein should be read in conjunction with the audited financial statements and the notes thereto included in ZIOPHARM Oncology, Inc.'s Form 10-KSB filed on February 13, 2007 for the fiscal year ended December 31, 2006.

ZIOPHARM is a development stage biopharmaceutical company that seeks to acquire, develop and commercialize, on its own or with other commercial partners, products for the treatment of important unmet medical needs in cancer.

The Company has operated at a loss since its inception in 2003 and has no revenues. The Company anticipates that losses will continue for the foreseeable future. At June 30, 2007, the Company's accumulated deficit was approximately $44.8 million. The Company's ability to continue operations after its current cash resources are exhausted depends on its ability to obtain additional financing and achieve profitable operations, as to which no assurances can be given. Cash requirements may vary materially from those now planned because of changes in the focus and direction of our research and development programs, competitive and technical advances, patent developments or other developments. Additional financing(s) will be required to continue operations as we exhaust our current cash resources and to continue our long-term plans for clinical trials and new product development.

On February 23, 2007, pursuant to subscription agreements between the Company and certain institutional and other accredited investors, the Company completed the sale of an aggregate of 5,910,049 shares of the Company's common stock at a price of $5.225 per share in a private placement (the "2007 Offering"). In addition to these shares sold in the 2007 Offering, the Company also issued to each investor a five-year warrant to purchase, at an exercise price of $5.75 per share, an additional number of shares of common stock equal to 20 percent of the shares purchased by such investor in the 2007 Offering. In the aggregate, these warrants entitle investors to purchase an additional 1,182,015 shares of common stock. The Company estimated the fair value of these warrants at $4,724,169 using the Black-Scholes model, using an assumed risk-free rate of 4.71% and an expected life of 5 years, volatility of 93% and a dividend yield of 0%. The total gross proceeds resulting from the 2007 Offering was approximately $30.9 million, before deducting selling commissions and expenses.

The Company engaged Paramount BioCapital, Inc. ("Paramount"), Oppenheimer & Co. Inc., and Griffin Securities, Inc. (together, the "2007 Placement Agents") as placement agents in connection with the 2007 Offering. In consideration for their services, the Company paid the 2007 Placement Agents aggregate cash commissions of $1,630,800 (of which $1,019,250 was paid to Paramount; see Note 4 - Related Party Transactions) and issued 5-year warrants to the 2007 Placement Agents and their designees to purchase an aggregate of 156,058 shares of the Company's common stock at an exercise price of $5.75 per share. In connection with the 2007 Offering, the Company also made cash payments of $222,000 and issued 5-year warrants to purchase 21,244 shares of the Company's common stock, at an exercise price of $5.75 per share, to a financial consultant pursuant to the non-circumvention provision of a prior agency agreement. The Company estimated the fair value of these 177,302 warrants at $708,624 using the Black-Scholes model, using an assumed risk-free rate of 4.71% and an expected life of 5 years, volatility of 93% and a dividend yield of 0%.

Pursuant to the 2007 Offering, the Company agreed to use its best efforts to (i) file a registration statement covering the resale of the shares sold in the 2007 Offering and the common stock issuable upon exercise of the investor warrants and placement agent warrants issued in the 2007 Offering within 45 days following the closing date of the 2007 Offering, and (ii) use its reasonable commercial efforts to cause the registration statement to be effective within 120 days after such final closing date. Effective January 1, 2007, the Company adopted FASB Staff Position No. EITF 00-19-2 *"Accounting for Registration Payment Arrangements"* " FSP EITF 00-19-2". In accordance with FSP EITF 00-19-2, the Company accounts for obligations under registration payment arrangements in accordance with SFAS No. 5, "Accounting for Contingencies". Instruments subject to registration payments are accounted for without regard to the contingent obligation to make registration payments. As a result, the Company has determined that no contingent loss exists based on its history of timely annual, quarterly and registration filings. The Company intends to continue the timely compliance with all SEC filing requirements, which will keep the Company current and the shares registered.

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1. BASIS OF PRESENTATION AND OPERATIONS …CONTINUED

With respect to each investor in the 2007 Offering, the Company also agreed to use its reasonable commercial efforts to cause the registration statement to remain effective until the earliest of (i) the date on which the investor may sell all of the shares and shares issuable upon exercise of the warrants then held by the investor pursuant to Rule 144(k) of the Securities Act of 1933 without regard to volume restrictions; and (ii) such time as all of the securities held by the investor and registered under the registration statement have been sold pursuant to a registration statement, or in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act of 1933 under Section 4(1) thereof so that all transfer restrictions and restrictive legends are removed upon the consummation of such sale. The 2007 Placement Agents have been afforded equivalent registration rights as the investors in the 2007 Offering with respect to the shares issuable upon exercise of the placement agent warrants. Warrants issued in the 2007 Offering are classified as equity based on the determination that the penalty for failure to register is not uneconomic. On March 1, 2007, the Company filed a registration statement on Form S-3 with the Securities and Exchange Commission. The registration statement was declared effective on March 26, 2007, rendering the resale of the shares issued in the 2007 Offering registered under the Securities Exchange Act of 1933.

The results disclosed in the Statements of Operations for the three and six months ended June 30, 2007 are not necessarily indicative of the results to be expected for the full year.

2. RECENT ACCOUNTING PRONOUNCEMENTS

In July 2006, the Financial Accounting Standards Board issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. This Interpretation sets forth a recognition threshold and valuation method to recognize and measure an income tax position taken, or expected to be taken, in a tax return. The evaluation is based on a two-step approach. The first step requires an entity to evaluate whether the tax position would “more likely than not,” based upon its technical merits, be sustained upon examination by the appropriate taxing authority. The second step requires the tax position to be measured at the largest amount of tax benefit that is greater than 50 percent likely of being realized upon ultimate settlement. In addition, previously recognized benefits from tax positions that no longer meet the new criteria would no longer be recognized. The application of this Interpretation will be considered a change in accounting principle with the cumulative effect of the change recorded to the opening balance of retained earnings in the period of adoption. This Interpretation was effective for the Company on January 1, 2007. Adoption of this new Standard did not have a material impact on our financial position, results of operations or cash flows.

3. STOCK-BASED COMPENSATION

On January 1, 2006, the Company adopted Statement of Financial Accounting Standards No. 123(R) (“SFAS 123R”) Share-Based Payment, using the modified prospective method, which results in the provision of SFAS 123R only being applied to the consolidated financial statements on a going-forward basis (that is, the prior period results have not been restated). Under the fair value recognition provisions of SFAS 123R, stock-based compensation cost is measured at the grant date based on the value of the award using the Black Scholes Model and is recognized as expense over the service period. Previously, the Company had followed Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock Issued to Employee*, and related interpretations which resulted in account for employee share options at their intrinsic value in the financial statements.

The Company recognized the full impact of its share-based payment plans in the statements of operations for the three and six months ended June 30, 2007 and 2006 under SFAS 123R and did not capitalize any such costs on the balance sheets. The following table presents share-based compensation expense included in the Company’s statement of operations:

	Three months	Three months	Six months	Six months

	ended June 30, 2007	ended June 30, 2006	ended June 30, 2007	ended June 30, 2006
Research and development, including costs of research contracts	$ 229,048	$ 101,035	$ 372,258	$ 164,244
General and administrative	183,009	1,763,021	363,493	1,929,479
Share based compensation expense before tax	412,057	1,864,056	735,751	2,093,723
Income tax benefit	-	-	-	-
Net compensation expense	$ 412,057	$ 1,864,056	$ 735,751	$ 2,093,723

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4. STOCKHOLDERS' EQUITY

On February 23, 2007, pursuant to subscription agreements between the Company and certain institutional and other accredited investors, the Company completed the 2007 Offering in which the Company's sold an aggregate of 5,910,049 shares of the Company's common stock at a price of $5.225 per share. The total gross proceeds resulting from the 2007 Offering was approximately $30.9 million, before deducting selling commissions and expenses. Following the completion of the 2007 Offering, the Company has 21,182,948 shares of common stock outstanding.

5. RELATED PARTY TRANSACTIONS

In connection with the 2007 Offering, on February 23, 2007, the Company paid Paramount cash commissions equal to 6% of the gross proceeds from the sale of the shares sold by Paramount in the 2007 Offering, resulting in a cash payment of approximately $1,019,250. In addition, the Company issued 5-year warrants to the placement agents in the 2007 Offering and their designees to purchase an aggregate of 177,302 shares (3% of the shares sold in the 2007 Offering) of the Company's common stock at an exercise price of $5.75 per share, of which 97,536 were issued to Paramount.

Timothy McInerney, who is a member of the Board of Directors of the Company, was a full-time employee of Paramount from 1992 through March 2007. In addition, Michael Weiser, a current member of the Board of Directors of the Company, was a full-time employee of Paramount from 1998 through November 2006.

6. STOCK OPTION PLAN

The Company has adopted the 2003 Stock Option Plan (the "Plan"), under which the Company had initially reserved for the issuance of 1,252,436 shares of its Common Stock. The Plan was approved by the Company's stockholders on December 21, 2004. On April 25, 2007 and April 26, 2006, the date of the Company's annual stockholders meetings, the Company's stockholders approved amendments to the Plan increasing the total shares reserved by 2,000,000 and 750,000 shares, respectively, for a total of 4,002,436 shares.

As of June 30, 2007, there were 2,254,044 shares that are issuable under its 2003 Stock Option Plan upon exercise of outstanding options to purchase common stock. As of June 30, 2007, the Company had issued to our employees outstanding options to purchase up to 1,893,620 shares of the Company's common stock. In addition, the Company has issued to our directors options to purchase up to 360,174 shares of the Company's common stock, as well as options to a consultant in connection with services rendered to purchase up to 250 shares of the Company's common stock.

6. STOCK OPTION PLAN ...CONTINUED

Currently, stock options are granted with an exercise price equal to the closing market price of the Company's common stock on the day before the date of grant. Stock options to employees generally vest ratably in annual installments over three years and have contractual terms of ten years. Stock options to directors generally vest ratably in annual installments over two or three years and have contractual terms of ten years. Stock options are valued using the Black-Scholes option valuation method and compensation is recognized based on such fair value over the period of vesting on a straight-line basis. The Company has also reserved an aggregate of 70,934 additional shares for issuance under options granted outside of the 2003 Stock Option Plan. As of June 30, 2007, there are 70,934 options outstanding and 25,111 options exercisable that are outside of the 2003 Stock Option Plan. During the six months ended June 30, 2007, the Company recorded a $120,492 stock compensation expense in connection with the Company achieving a predetermined development milestone, which triggered the vesting of 25,111 of the options granted outside of the 2003 Stock Option Plan.

During the three and six months ended June 30, 2007, the Company granted 410,750 and 429,250 options. Also during the three and six months ended June 30, 2007, the Company cancelled 10,000 and 88,241 options, while no options were exercised, under the 2003 Stock Option plan, in this period. During the three and six months ended June 30, 2006, 637,180 options were granted, none were cancelled and no options were exercised. During the six months June 30, 2007, the Company entered into a termination agreement with an employee which accelerated the vesting of an employee's previously granted options. The Company recorded a charge of $41,663 in the six months ended June 30, 2007 as a result of the acceleration. These accelerated options have expired without exercise and the Company cancelled the options in the six month period ending June 30, 2007.

The fair value of each option award is estimated on the date of grant using the Black-Scholes option-pricing model. Assumptions regarding volatility, expected term, dividend yield and risk-free interest rate are required for the Black-Scholes model. Volatility and expected term assumptions are based on comparable Company's historical experience. The risk-free interest rate is based on a U.S. treasury note with a maturity similar to the option award's expected life. The assumptions used at June 30, 2007 are as follows, volatility of 91 - 93%, expected life of approximately 5 years, a dividend yield of 0% and a risk-free interest rate of 4.39 - 5.03%.

Stock option activity under the Company's stock plan for the six month period ended June 30, 2007 was as follows:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding, January 1, 2007	1,913,035	$ 3.95		
Granted	429,250	4.89		
Exercised	—	—		
Cancelled	88,241	3.60		
Outstanding, June 30, 2007	2,254,044	$ 4.14	8.55	$ 2,636,843
Options exercisable, June 30, 2007	1,216,243	$ 3.41	7.90	$ 2,143,380