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

FORM 10-K

(Mark One)

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

For the year ended December 31, 2005

OR

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

Commission file number 1-10615

EMISPHERE TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware	**13-3306985**
(State or jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
765 Old Saw Mill River Road **Tarrytown, New York**	**10591**
(Address of principal executive offices)	**(Zip Code)**

(914) 347-2220
(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—$.01 par value
Preferred Stock Purchase Rights

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 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 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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) 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, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. Large accelerated filer ☐ Accelerated filer ☒ Non-accelerated filer ☐

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b02 of the Act). Yes ☐ No ☒

As of June 30, 2005 (the last business day of the registrant's most recently completed second quarter), the aggregate market value of the common stock held by non-affiliates of the Registrant (i.e. excluding shares held by executive officers, directors, and control persons) was $92,363,193 computed at the closing price on that date.

The number of shares of the Registrant's common stock, $.01 par value, outstanding as of March 7, 2006 was 23,737,277.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of this 10-K incorporates information by reference from the registrant's definitive proxy statement which will be filed no later than 120 days after December 31, 2005.

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Part I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements made under the captions "Business" (Item 1) and "Management's Discussion and Analysis of Financial Condition and Results of Operations" (Item 7), the notes to our audited financial statements (Item 8) and elsewhere in this Annual Report on Form 10-K, as well as statements made from time to time by our representatives may constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, without limitation, statements regarding planned or expected studies and trials of oral formulations that utilize our *e*lig*e*n® technology; the timing of the development and commercialization of our product candidates or potential products that may be developed using our *e*lig*e*n® technology; the potential market size, advantages or therapeutic uses of our potential products; variation in actual savings and operating improvements resulting from restructurings; and the sufficiency of our available capital resources to meet our funding needs. We do not undertake any obligation to publicly update any forward-looking statement, whether as a result of new information, future events, or otherwise, except as required by law. Such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results or achievements to be materially different from any future results or achievements expressed or implied by such forward-looking statements. Such factors include the factors described under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Risk Factors" and the other factors discussed in connection with any forward-looking statements.

ITEM 1. BUSINESS

Overview of Emisphere

Introduction

Emisphere Technologies, Inc. ("Emisphere", "our", "us" or "we") is seeking to overcome one of the most challenging technical hurdles in the pharmaceutical industry – the oral delivery of medicines not currently available in oral form. We have product candidates in development across a broad range of therapeutic areas, including cardiovascular disease, diabetes, osteoporosis, and growth disorders, among others. We have not yet obtained regulatory approval for sales of any of our product candidates. Further information can be found on our website: www.emisphere.com. The contents of that website are not incorporated herein by reference thereto. Investor related questions should be directed to info@emisphere.com.

History

Emisphere was originally founded as Clinical Technologies Associates, Inc. in 1986. We conducted an initial public offering in 1989, and were listed on NASDAQ under the ticker symbol "CTAI". In 1990 we decided to focus on our oral drug delivery technology, now known as the *e*lig*e*n® technology. In 1991, we changed our name to Emisphere Technologies, Inc., and we continued to be listed on NASDAQ, under the new ticker symbol, "EMIS".

*The e*lig*e*n® *Technology*

The *e*lig*e*n® technology is a broadly applicable proprietary oral drug delivery technology based on the use of proprietary, synthetic chemical compounds known as EMISPHERE® delivery agents, or "carriers." These delivery agents facilitate and/or enable the transport of therapeutic macromolecules and poorly absorbed small molecules (such as proteins, peptides, and polysaccharides) across biological membranes such as the small intestine. We believe that our *e*lig*e*n® technology makes it possible to orally deliver a therapeutic macromolecule or a poorly absorbed small molecule without altering its chemical composition or compromising the integrity of biological membranes.

Business Strategy

Our core business strategy is to develop oral forms of drugs that are not currently available or have poor bioavailability in oral form, either alone or with corporate partners, by applying the *e*lig*e*n® technology to those drugs. Typically, the drugs that we target have received regulatory approval, have demonstrated safety and efficacy, and are currently available on the market. We believe that focusing on the oral delivery of these types of product candidates increases our probability of successfully executing our business strategy.

As part of our business strategy, we collaborate with pharmaceutical companies in pre-clinical and Phase I studies to determine if one or more of our carriers will facilitate the oral delivery of a particular drug candidate. Our direct costs of such studies are often reimbursed to us by our collaborative partner. Occasionally we conduct such studies on our own with the expectation that we will secure a partner upon successful completion of such studies. Since our inception, we have progressed nine different drug candidates through such Phase I clinical studies. Later stage clinical trials may not support the findings of these early stage studies. The amount of additional time and money required to obtain regulatory approval for sale of these drug candidates is difficult to determine but is often at least several years, and millions of dollars.

Product Candidates in Development

The following table sets forth the therapeutic areas for which we are developing product candidates, either alone or with corporate partners, the candidates currently in development, the present stage of clinical development, and the identity of our corporate partner for partnered programs, as previously reported by Emisphere or the partner.

THERAPEUTIC AREA	DRUG CANDIDATES	STAGE OF DEVELOPMENT	PARTNER
Cardiovascular	Oral Unfractionated Heparin	Phase III (1)	Self-developed
Osteoporosis & Osteoarthritis	Oral Salmon Calcitonin ("sCT")	Phase II	Novartis Pharma AG
Osteoporosis	Oral Recombinant Parathyroid Hormone (teriparatide; "PTH 1-34")	Phase I	Novartis Pharma AG (2)
Bone-related diseases	Partner proprietary small molecule compounds	Phase I	Roche
Growth Disorders	Oral Recombinant Human Growth Hormone (somatropin; "rhGH")	Phase I	Novartis Pharma AG
Diabetes	Oral Insulin	Phase II	Self-developed
	Oral Glucagon-Like Peptides ("GLPs")	Pre-clinical (3)	Self-developed
Antiviral	Acyclovir	Pre-clinical (3)	Undisclosed

(1) We previously developed a liquid form of oral heparin and in 2000 initiated a Phase III clinical trial that was completed in early 2002. The trial did not meet its endpoint of superiority to LOVENOX®, a leading low molecular weight heparin. Current development involves solid forms of oral heparin.

(2) As noted elsewhere in this annual report, we had previously partnered this program with Eli Lilly and Company ("Lilly"). We are currently in litigation with Lilly and have given Lilly a notice of termination of our agreements with them. Following receipt of the notice, Lilly filed a complaint seeking a declaratory judgment declaring that Lilly is not in breach of its agreements with us concerning oral formulations of PTH 1-34, and an order preliminarily and permanently enjoining us from terminating those agreements. The case went to trial on January 31, 2005. On January 6, 2006, the district court ruled in our favor, finding that Lilly had breached the agreements on all counts tried and that our termination was proper. For information concerning our pending litigation with Lilly related to the agreement for the oral PTH 1-34 program and our termination of those agreements, see *"Risk Factors – We are currently in litigation with one of our previous collaborative partners, and an adverse determination of our claim in that case could limit our future ability to realize on the potential future value of our PTH 1-34 assets."*

On December 1, 2004, we entered into a new arrangement with Novartis Pharma AG to develop this product candidate.

(3) "Pre-clinical" is defined as investigating safety of a product candidate in a controlled laboratory environment and establishing activity in standard animal models. We have not filed an IND with the U.S. Food and Drug Administration ("FDA") for product candidates described as "Pre-clinical".

Recent Developments

We anticipate that our existing capital resources will not enable us to continue operations past mid-May of 2006, or earlier if unforeseen events or circumstances arise that negatively affect our liquidity. These circumstances may adversely affect our ability to raise additional capital. If we fail to raise additional capital or obtain substantial cash inflows from existing partners prior to May 2006, we will be forced to cease operations. If additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders.

We have limited capital resources and operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments. These conditions raise substantial doubt about our ability to continue as a going concern. The audit report prepared by our independent registered public accounting firm relating to our consolidated financial statements for the year ended December 31, 2005 includes an explanatory paragraph expressing the substantial doubt about our ability to continue as a going concern.

In September 2005, we executed a Senior Secured Loan Agreement (the "Loan Agreement") with MHR Institutional Partners IIA LP (together with certain affiliated funds, "MHR"). The Loan Agreement provides for a seven year, $15 million secured loan from MHR to us at an interest rate of 11%. Net proceeds from the loan were approximately $12.9 million. We are in discussions with investment bankers concerning our future financing options. We cannot assure you that financing will be available on favorable terms or at all.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. As of December 31, 2005, our accumulated deficit was approximately $351 million. Our net loss was $18.1 million, $37.5 million and $44.9 million for the years ended December 31, 2005, 2004 and 2003, respectively. The significant decrease in net loss is a result of the $14.7 million gain on the extinguishment of the Elan note payable. Our cash outlays from operations and capital expenditures were $30.4 million for 2005. Our stockholders' equity decreased from $22.8 million as of December 31, 2003 to a stockholders' deficit of $11.3 million and $14.9 million as of December 31, 2004 and 2005, respectively.

Overview of Drug Delivery Industry

The drug delivery industry develops technologies for the improved administration of therapeutic macromolecules with the goal of expanding markets for existing products and extending drug franchises. Drug delivery companies also seek to develop products on their own that would be patent protected by applying proprietary technologies to off-patent pharmaceutical products. Primarily, drug delivery technologies are focused on improving safety, efficacy, ease of patient use and patient compliance. Pharmaceutical and biotechnology companies consider improved drug delivery as a means of gaining competitive advantage over their peers.

Therapeutic macromolecules, of which proteins are the largest sub-class, are prime targets for the drug delivery industry for two reasons. First, therapeutic macromolecules address large markets for which there is an established medical need. These drugs are widely used, as physicians are familiar with them and are accustomed to prescribing them. Second, therapeutic macromolecules are significantly enhanced through alternative delivery. These medicines are comprised of proteins and other large or highly charged molecules that, if orally administered under traditional oral delivery methods, would degrade in the stomach or intestine before they are absorbed into the bloodstream. Therefore, they are administered parenterally. Parenteral administration is undesirable, however, for many reasons, including patient discomfort, inconvenience and risk of infection. Poor patient acceptance of parenteral therapies, and poor compliance with such therapies, can lead to medical complications. In addition, parenteral therapies can often require incremental costs associated with administration in hospitals or doctors' offices.

Previously published research indicates that patient acceptance of and adherence to a dosing regimen is higher for orally delivered medications than it is for non-orally delivered medications. Our business strategy is based upon our belief that the development of an efficient and safe oral delivery system for therapeutic macromolecules represents a significant commercial opportunity. We believe that more patients will take orally delivered drugs more often, spurring market expansion.

Leading Current Approaches to Drug Delivery

Transdermal (via the skin) and "Needleless" Injection

The size of most macromolecules makes penetration of the skin inefficient or ineffective. Some peptides and proteins can be transported across the skin barrier into the bloodstream using high-pressure "needleless" injection devices. The devices, which inject proteins through the skin into the body, have been available for many years. We believe these devices have not been well accepted due to patient discomfort, relatively high cost, and the inconvenience of placing the drugs into the device.

Nasal (via the nose)

The nasal route (through the membranes of the nasal passage) of drug administration has been limited by low and variable bioavailability for proteins and peptides. As a result, penetration enhancers often are used with nasal delivery to increase bioavailability. These enhancers may cause local irritation to the nasal tissue and may result in safety concerns with long-term use. A limited number of peptides using nasal delivery have been approved for marketing in the United States including MIACALCIN®, developed by Novartis as an osteoporosis therapy, a therapeutic area we have targeted.

Pulmonary (via the lung)

Pulmonary delivery (through the membranes of the lungs) of drugs is emerging as a delivery route for large molecules. Although local delivery of respiratory drugs to the lungs is common, the systemic delivery (i.e., delivery of the drugs to the peripheral vasculature) of macromolecule drugs is less common because it requires new formulations and delivery technologies to achieve efficient, safe and reproducible dosing. A limited number of proteins using pulmonary delivery have been approved for marketing in the United States including EXUBERA®, developed by Pfizer and Nektar, as a diabetes therapy, a therapeutic area we have targeted.

Intraoral (via the membranes in the mouth)

Intraoral delivery is also emerging as a delivery route for large molecules. Buccal delivery (through the membrane of the cheek) and sublingual delivery (through the membrane under the tongue) are forms of intraoral delivery.

Oral (via the mouth)

We believe that the oral method of administration is the most "patient-friendly" option, in that it offers convenience, is a familiar method of administration that enables increased compliance and, for some therapies, is considered the most physiologically appropriate. We and other drug delivery and pharmaceutical companies have developed or are developing technologies for oral delivery of drugs. We believe that our *e*lig*e*n® technology, however, provides an important competitive advantage in the oral drug delivery route of administration because it does not alter the chemical composition of the therapeutic macromolecules. We have conducted over 100,000 human dosings and have witnessed no serious adverse events that can be attributed to the EMISPHERE® delivery agents dosed or the mechanism of the *e*lig*e*n® technology.

In general, we believe that oral administration will be preferred to other methods of administration. However, such preference may be offset by possible negative attributes of orally administered drugs such as the quantity or frequency of the dosage, the physical size of the capsule or tablet being swallowed or the taste. For example, in our previous Phase III Trial for liquid oral heparin, patient compliance was hindered by patients' distaste for the liquid being administered.

The *e*lig*e*n® Technology

Our oral drug delivery technology, the *e*lig*e*n® technology, is based upon proprietary, synthetic chemical compounds known as EMISPHERE® delivery agents (or "carriers") that facilitate or enable the transport of therapeutic macromolecules and poorly absorbed small molecules across biological membranes, such as the membranes of the small intestine. We have demonstrated oral delivery in humans of the following therapeutic macromolecules and poorly absorbed small molecules: unfractionated heparin, low molecular weight heparin, insulin, PTH 1-34, rhGH, cromolyn, salmon calcitonin and a small molecule for the treatment of bone disease. We have also demonstrated oral delivery of over 50 other compounds in laboratory animals. In addition, we have demonstrated oral delivery in humans of other compounds that are not macromolecules but are poorly absorbed, such as cromolyn sodium. We have not successfully completed a Phase III trial with respect to any of our product candidates nor have we received any regulatory approvals for sales of any of our product candidates.

We believe based on our testing to date, including animal studies and early-stage clinical trials, that the EMISPHERE® delivery agents use a natural transport process in the body (passive transcellular transport) that enables therapeutic macromolecules to cross membranes. Also, we believe that the *e*lig*e*n® technology transiently changes only the shape of the therapeutic macromolecule and not its chemical composition. Under physiological conditions, protein molecules naturally exist in many different shapes, or conformations. Some of these conformations can be transported across the cell membranes. Our hypothesis is that once the therapeutic macromolecule crosses the membrane, the delivery agent separates from the macromolecule and the drug reestablishes its natural shape, thereby allowing it to remain therapeutically active.

We have designed and synthesized a library of approximately 3,400 delivery agents and continue to evaluate our delivery agents for their ability to facilitate the delivery of therapeutic macromolecules across biological membranes.

Key Characteristics of the *e*lig*e*n® Technology

Based on our testing to date, including animal studies and early-stage clinical trials, we believe that our oral drug delivery technology has competitive advantages, including:

- EMISPHERE® delivery agents are applicable across a diverse group of molecules such as proteins, peptides, carbohydrates, polar organics, and other compounds;
- Oral drug delivery using the *e*lig*e*n® technology does not rely upon the addition of other agents that can have adverse effects on the intestinal membranes or digestion;
- We have created various types of oral formulations, including solutions, suspensions, tablets and capsules;
- We believe our *e*lig*e*n® technology is applicable to controlled release dosage forms; and

- We believe that the technology and manufacturing equipment required to produce EMISPHERE® delivery agent material in commercial quantities is readily available based on discussions with multiple manufacturers and based on such manufacturers' current capacities to produce similar material.

Therapeutic Indications

Cardiovascular (Anti-thrombosis)

Unfractionated heparin ("UFH") and low molecular weight heparin ("LMWH") are widely used anti-thrombotics/anti-coagulants. These agents are primarily indicated for treating and preventing post-surgical deep vein thrombosis (blood clots following major surgery) ("DVT") and more severe sequelae, e.g., pulmonary embolism. Also, these drugs are frequently prescribed for acute myocardial infarction, graft surgery, stroke and unstable angina. The most common indications for heparin therapy are the prevention of venous thrombosis (blood clots) following surgical procedures lasting longer than 30 minutes (especially orthopedic, pelvic, abdominal, trauma, angioplastic or heart surgery). According to the website www.dvt.org (maintained by the University of Massachusetts Medical School), the risk of developing DVT following major surgery can range as high as seventy percent. DVT treatment generally includes about five to ten days of heparin treatment, continued by months of orally administered warfarin. Currently, all forms of heparin are administered as either a continuous intravenous infusion or a subcutaneous injection.

According to published reports in *The Lancet* and the *Journal of Bone and Joint Surgery*, recent studies indicate that a longer prophylaxis regimen (extending the duration of heparin preventative therapy from the current standard of practice) would benefit patients following major surgery. We believe that compliance would be improved if a commercially viable oral form of UFH or LMWH was available because patients could be more inclined to comply with this type of dosage compared to parenteral forms. Preventative therapy is typically recommended for at least 10 to 14 days post-surgery. However, several studies indicate that longer heparin prophylaxis (preferably for 30 days) is optimal because the risk of DVT remains high throughout this period. We believe our oral heparin product candidate would be a desirable therapy in this 30-day period. Without DVT prophylaxis, the incidence of DVT in certain post surgical states is often greater than 50%. Heparin is often considered the anti-coagulant of choice for the prevention and treatment of cardiovascular complications, such as DVT or blood clots and pulmonary embolism in high-risk, hospitalized patients. Typically, heparin is favored by clinicians over warfarin because heparin is more effective, produces a rapid onset of anti-coagulation activity, has a shorter physiological half-life, and is indicated in fewer drug-drug interactions than many FDA approved drugs. In addition, warfarin requires frequent patient monitoring. A major disadvantage of heparin therapy is the requirement for subcutaneous administration.

We believe that our solid oral heparin candidate could penetrate and expand existing heparin markets. We anticipate that new markets for the heparins will be created based on recently reported studies published by the American Heart Association and the *New England Journal of Medicine* indicating that UFH may have utility for indications other than anti-coagulation and anti-thrombosis. These indications include: unstable angina, arterial fibrillation, acute myocardial infarction, angioplasty, stent placement, coronary artery bypass graft, pulmonary embolism and stroke. In addition, a growing body of pre-clinical and clinical data indicates that heparin has potent anti-inflammatory and anti-cancer properties and the studies mentioned above indicate that heparin has been shown to be beneficial as a treatment for inflammatory bowel disease, rheumatoid arthritis, asthma, psoriasis, transplant rejection and proteinurias.

We believe that oral heparin could be considered a more convenient and "patient-friendly" therapy than injectable heparin by both patients and physicians, and could open the at-home market to heparin by replacing warfarin and injectable LMWH use. Also, we believe that our oral heparin product candidates ultimately could enable an extended dosing regimen and be applicable for a wide range of anti-coagulant/anti-thrombotic uses.

Our Oral Heparin Program

We are evaluating solid oral heparin prototypes, including capsule and tablet forms of UFH, using our delivery agent, SNAC. SNAC was administered as Heparin/SNAC oral solution in a Phase III study of over 2,000 patients that we refer to as the "PROTECT" (PRophylaxis with Oral SNAC/heparin against ThromboEmbolic Complications following Total hip replacement surgery) trial. On May 14, 2002, we announced initial results from the PROTECT trial which did not demonstrate the superiority of oral liquid heparin, when dosed in a 30-day treatment regimen, compared to enoxaparin administered by injection in a 10-day dosing regimen in preventing DVTs. However, the data from the study suggested that the lower than expected efficacy net result may have been due to the poor taste of the liquid dosage form, and that a more tolerable dosage form (e.g., capsule or tablet) would result in higher patient acceptability.

Heparin, a polysaccharide, represents a significant formulation challenge for our *e*lig*e*n® technology because the potency of heparin is significantly lower than most existing macromolecule drugs, requiring a large dose of heparin, which combined with the carrier SNAC, results in both a large solid dosage form and a large number of tablets or capsules per dose. Since 2002, we have significantly reduced the necessary dose by using both traditional formulation techniques and *e*lig*e*n® technology-specific techniques. We believe that reducing the size of the dosage form and the number of tablets or capsules per dose would provide the most patient-preferred and commercially viable solid dosage form. We are continuing our efforts to optimize a solid oral UFH dosage form and have produced improved solid formulations with additional performance enhancements.

In the first quarter of 2004, we selected prototype formulations in the forms of a tablet and capsule for production and Phase I clinical testing in the United States. That testing was completed in June 2004, and in August 2004, we announced that we selected a soft gelatin capsule formulation of UFH. This formulation was chosen after the evaluation of results from a Phase I clinical trial comparing various oral dosage formulations of EMISPHERE® Heparin/SNAC to our liquid UFH formulation that was previously tested in the PROTECT trial.

The randomized, open label, cross-over study, conducted in 15 healthy volunteers, evaluated anti-coagulant activity before and after the administration of four new oral dosage forms of UFH. The new formulations consisted of tablets and soft-gel capsules. Each subject was also administered our liquid UFH formulation and SNAC (Emisphere's proprietary delivery agent) alone, as a control arm.

Following each dose, subjects were evaluated for anticoagulation activity, by measurement of anti-Factors Xa and IIa and activated partial thromboplastin time that represent the pharmacodynamic activity of heparin in blood. Three of the four new formulations delivered heparin as well or better than the liquid formulation. Subjects treated with SNAC alone showed no change from baseline in anti-coagulant activity. No serious adverse events were reported in the study.

Both soft gelatin capsule formulations contained less UFH and SNAC per dose than the previously tested liquid formulation yet consistently demonstrated improvements over the liquid dose in delivering UFH.

During the third quarter of 2005, we completed a multi-arm, cross-over, clinical trial with sixteen normal subjects designed to compare heparin delivered by different injection routes to heparin delivered orally. We conducted this trial to support our contention that heparin's molecular configuration, when given orally using our *e*lig*e*n® technology, is unaltered as compared to heparin delivered by injection. The results from the trial should be available during the first half of 2006. Once available, we expect to discuss the data with the FDA to determine if these data can assist our product registration.

In November 2005, we announced that we received written guidance from the FDA regarding a number of aspects of a Phase III trial design for oral heparin. The planned trial is designed to determine the safety and efficacy of oral heparin versus Coumadin® (sodium warfarin) for the prevention of venous thromboembolism ("VTE") following elective total hip replacement.

The trial designed is a randomized double blind, non-inferiority, multi-center study with the primary endpoint to prevent VTE, which consists of DVT, objectively confirmed by ultrasound, pulmonary embolism and death. The two arm study will compare 30 days of dosing, three times per day, of two Emisphere oral heparin capsules, to 30 days of dosing, once per day, of oral Coumadin®. The estimated enrollment for the trial currently is approximately 2,100 patients (including an allowance for non-evaluable patients), with 1,050 patients per arm. An independent Data and Safety Monitoring Committee will be charged with periodically reviewing the trial for safety. We plan to discuss with the FDA modifications to the proposed protocol based on the results of the cross-over trial that we completed during the third quarter of 2005 described above.

Diabetes

According to statistics provided by the World Health Organization and the American Diabetes Association, approximately 177 million people worldwide are afflicted by diabetes, with approximately 18 million of those afflicted residing in the United States. Nearly one-third of all individuals in the United States suffering from diabetes are unaware that they have this chronic disease. There are two principal types of diabetes:

Type 1 - An autoimmune disease in which the body does not produce any insulin. Type 1 diabetes typically appears initially in children and young adults. Type 1 diabetics must receive multiple daily insulin injections to stay alive. Type 1 diabetes accounts for approximately 5-10% of total diabetes cases.

Type 2 - A metabolic disorder resulting from the body's inability to properly utilize or produce adequate amounts of insulin. Type 2 diabetics account for approximately 90-95% of diabetes cases. Reportedly, the incidence of Type 2 diabetes is rising rapidly as a result of an aging population, greater prevalence of obesity, and a more sedentary lifestyle. Type 2 diabetes is also being diagnosed in younger patients as compared to historical observations.

According to the publicly filed annual reports of leading insulin manufacturers, worldwide sales of insulin were approximately $5.6 billion in 2004. Although diet, exercise and non-insulin medications are often used to control the disease, approximately 40% of all Type 2 diabetics use insulin to control the disease, accounting for approximately 50% of total insulin use. Although many more Type 2 diabetics could benefit from insulin therapy, use of the drug has been limited because it is administered by injection. We believe that a successful oral insulin therapy could, depending on factors such as the quantity and frequency of the dosage, the physical size of the tablet or capsule being swallowed or the taste, facilitate compliance for diabetic patients who are not diligent with their prescribed injection regimens, and enable those patients adverse to injections to adopt insulin therapy at an earlier stage of the disease.

Based on previously published research, we believe that oral insulin delivery is consistent with the physiology of natural secretion of insulin from the pancreas, which travels to the liver prior to being distributed to the peripheral circulation. We believe that our orally delivered insulin likewise travels to the liver prior to being distributed to the peripheral circulation. In comparison, also based on previously published research, we believe that injected insulin, like other non-oral insulin therapies, is administered into the general (systemic) circulatory system first and then to the liver. We believe that as a result, injectable insulin results in higher circulating insulin levels than oral insulin. Chronic excess insulin in the general circulation (known as hyperinsulinemia) is thought to contribute to certain diabetic patient complications.

Furthermore, we believe that the pharmacological profile of our oral insulin to date, namely, the onset and duration of action, has been consistent with the physiological profile of naturally secreted insulin from the pancreas, especially under fed conditions. For the foregoing reasons, we believe that, aside from the convenience benefits, orally delivered insulin, with the appropriate clinical attributes, may provide an alternative therapy with fewer complications when compared to existing medical diabetes treatments.

Our Oral Insulin Program

In March 2003, we announced completion of a Phase I study in early-stage Type 2 diabetic patients designed to demonstrate the pharmacokinetics and absorption of oral insulin, and subsequent effects on blood glucose of this product candidate following a standardized meal. The placebo controlled, crossover study evaluated two oral doses of insulin. Patients received one capsule containing 5.6 mg (150 units) of insulin and 200 mg of EMISPHERE® delivery agent or two capsules containing a total of 11 mg (300 units) of insulin and 400 mg of EMISPHERE® delivery agent. The study compared the two oral unformulated dosages to a fast-acting injectable insulin in fourteen patients with Type 2 diabetes who had received a standardized solid meal (722 kcal). The study also included a placebo group. For the 11 mg dose, the data demonstrated that unformulated oral insulin dosages, when administered 30 minutes prior to the standardized meal, reduced post-prandial glucose excursion (the rise in blood sugar following a meal) and produced a marked increase in systemic insulin levels and a concomitant reduction in C-peptide (a marker of endogenous insulin production) as compared to the placebo. In addition, plasma insulin concentrations peaked faster using our oral unformulated dosage as compared to fast acting injectable insulin (30 minutes with oral versus approximately 45 minutes typically seen with injectable formulations). Similar results were observed in certain patients given the 5.6 mg dose, who received the same standardized meal. The study produced evidence that one or two capsules could impact post-prandial blood glucose in certain early-stage Type 2 diabetic patients and demonstrated favorable pharmacokinetics. No serious adverse events were reported. All study treatments were safe and well tolerated with few hypoglycemic episodes occurring mainly after subcutaneous injection of 12 unit fast-acting insulin.

In June 2004, at the 64th Scientific Sessions of the American Diabetes Association, we presented results from our first multiple dosing with the EMISPHERE® oral insulin tablet prototype when dosed in Type 2 diabetics. The 13-patient Phase I clinical study, consisting of seven treated patients and six control patients, evaluated the safety, effect and tolerability of the oral insulin tablets when administered four times daily over a two-week period. The results were presented in a late-breaker session (abstract #8-LB) by lead investigator, Tim Heise, M.D. of PROFIL Institute. The study's results indicated that treatment with Emisphere® oral insulin over 14 days was well-tolerated, led to improvements in post-prandial blood glucose concentrations both under oral glucose tolerance test ("OGTT") and standardized meal conditions, and tended to improve fasting blood glucose concentrations and insulin resistance. Safety and tolerability findings among patients receiving treatment with the EMISPHERE® oral insulin indicated that the study drug was well tolerated with no serious adverse events. Only two adverse events occurred in the oral insulin group (one patient reported moderate joint pain, another patient suffered from mild headaches that were of short duration). Six adverse events occurred in the control group. Despite the tight diabetes control and the frequent blood glucose self-monitoring of the subjects, no hypoglycemic episodes were observed in this study.

In November 2005, we commenced a Phase II trial in India for our oral insulin product. The trial is a 90-day, multi-center, double-blind, randomized clinical trial. The four arm study will evaluate the safety and efficacy of low and high doses of oral insulin tablets versus placebo in 120 subjects with Type 2 Diabetes Mellitus who have inadequate glycemic control with their existing oral antidiabetic monotherapy. The primary efficacy endpoint of the study is related to the change in hemoglobin A1c, the standard for evaluating glucose control in Type II diabetics. We also will focus on the safety of oral insulin, specifically incidents of hypoglycemia as well as the occurrence of insulin antibodies. Later stage clinical trials may not support the findings of our early stage trials.

We intend to partner this program and do not anticipate incurring significant costs associated with this program after the completion of this Phase II trial. We are continuing Phase I studies related to dosage form development designed to optimize efficiency of delivery.

Bone-related Disease

Osteoporosis is a disease characterized by low bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures. It is a common condition among the elderly – both men and women. The most common consequence of osteoporosis is greatly increased risk of broken bones, especially in the hip region. According to the website www.emedicine.com, osteoporosis is estimated to affect over 10 million Americans, and it is predicted that 1 in 2 women and 1 in 8 men older than 50 years will have an osteoporosis-related fracture in their lifetimes. Several medicines are available to either delay the onset of, or reverse, bone loss.

Osteoarthritis ("OA") is a joint disease that mostly affects cartilage. Cartilage is the slippery tissue that covers the ends of bones in a joint. Healthy cartilage allows bones to glide over each other. It also helps absorb shock of movement. In OA, the top layer of cartilage breaks down and wears away. This allows bones under the cartilage to rub together. The rubbing causes pain, swelling, and loss of motion of the joint. Over time, the joint may lose its normal shape. Also, bone spurs may grow on the edges of the joint. Bits of bone or cartilage can break off and float inside the joint space, which causes more pain and damage. People with OA often have joint pain and reduced motion. Unlike some other forms of arthritis, OA affects only joints and not internal organs. Rheumatoid arthritis -- the second most common form of arthritis -- affects other parts of the body besides the joints. OA is the most common type of arthritis.

Novartis, Lilly and Roche Relationships

Novartis and Lilly are seeking to commercialize oral forms of their existing nasal and injectable therapies for osteoporosis. Roche is seeking to commercialize various treatments in the field as well. We believe that oral forms of therapy or improved oral forms of therapy would be considered more patient-friendly and would ensure better compliance, especially among the elderly, for the treatment and prevention of osteoporosis. Novartis is seeking to commercialize an oral form of therapy for osteoarthritis. For information on our product candidates addressing the osteoporosis and OA patient population, see "*Ongoing Collaborative Agreements*" below.

Growth Disorders

Growth hormone is necessary to stimulate growth in children by promoting the growth of muscle and bone. In adults, growth hormone maintains muscle and bone quality. Children that suffer from growth hormone deficiency fail to grow normally without supplemental growth hormone.

Recombinant human growth hormone has been available for many years. rhGH must be administered by injection, and therefore compliance is particularly difficult in pediatric patients. rhGH therapy requires a long-term commitment by the patient and his or her family to achieve the best results. The prescribed dosing ranges between three and seven injections per week. Treatment continues for several years until the child has completed puberty or has stopped responding. rhGH is approved for pediatric growth hormone deficiency, adult growth hormone deficiency, pre-kidney transplantation, and short stature due to chronic kidney disease and Turner's syndrome.

Our Oral Recombinant Human Growth Hormone Program

From 1998 through August 2003, we developed oral rhGH in collaboration with Lilly. As of August 2003, Lilly returned to us all rights to the oral rhGH program pursuant to the terms of our license agreement. On September 23, 2004 we announced a new partnership with Novartis to develop our oral rhGH program. Under this collaboration, we will work with Novartis to initiate clinical trials of a convenient oral human growth hormone product using the eligen® technology. Novartis will fully fund the program including all clinical studies. For further information on our oral rhGH program, see *"Ongoing Collaborative Agreements"* below.

Viral Diseases

Genital herpes is an infection caused by the herpes simplex virus ("HSV"). There are two types of HSV, and both can cause genital herpes. HSV type 1 most commonly infects the lips, causing sores known as fever blisters or cold sores, but it also can infect the genital area and produce sores. HSV type 2 is the usual cause of genital herpes, but it also can infect the mouth. A person who has genital herpes infection can easily pass or transmit the virus to an uninfected person during sex.

Both HSV 1 and 2 can produce sores (also called lesions) in and around the vaginal area, on the penis, around the anal opening, and on the buttocks or thighs. Occasionally, sores also appear on other parts of the body where the virus has entered through broken skin.

Unfortunately, HSV is a lifelong infection that is incurable. Many patients suffer from recurrent outbreaks provoked by various environmental and patient specific factors. Acyclovir, one of the most common treatments, is an orally available synthetic nucleoside analogue used to treat herpes viruses. Acyclovir alone is poorly and unreproducibly absorbed when dosed orally. The published bioavailability is between 10 and 20%. Prodrug forms of acyclovir such as Valacyclovir (GlaxoSmithKline's ("GSK") Valtrex®) have bioavailabilities that are improved by a factor of three to five-fold.

Our Acyclovir Program

We have generated preclinical data which show that our *e*lig*e*n® technology can increase the bioavailability of acyclovir by a factor of approximately five. We have entered into a research collaboration with a pharmaceutical company based outside the United States. This company is funding a clinical study to support product development of an improved oral acyclovir using our *e*lig*e*n® technology. We are responsible for preclinical studies necessary to support the human trials. These studies have been completed and the partner is preparing to initiate clinical studies during 2006. As part of a pre-IND discussion held with FDA, we inquired as to the possibility of using a 505(b)(2) pathway for registration of an acyclovir product using our technology. FDA agreed that the 505(b)(2) registration strategy for acyclovir using our *e*lig*e*n® technology may be acceptable. For further information on our oral acyclovir program, see *"Ongoing Collaborative Agreements"* below.

Ongoing Collaborative Agreements

We are a party to collaborative agreements with corporate partners to provide development and commercialization services relating to the products under collaboration. These agreements are in the form of research and development collaborations and licensing agreements. Under these agreements, we have granted licenses or the rights to obtain licenses to our oral drug delivery technology. In return, we are entitled to receive certain payments upon the achievement of milestones and royalties on the sales of the products should a product ultimately be commercialized. We also are entitled to be reimbursed for research and development costs that we incur.

All of our collaborative agreements are subject to termination by our corporate partners, but not by us, without significant financial penalty to them. Under the terms of these agreements, upon a termination we are entitled to reacquire all rights in our technology at no cost and are free to re-license the technology to other collaborative partners.

Novartis Pharma AG – Oral Salmon Calcitonin ("sCT") Program

In December 1997, we entered into a collaboration agreement with Novartis to develop an oral form of sCT, currently used to treat osteoporosis. sCT is a hormone that inhibits the bone-tissue resorbing activity of specialized bone cells called osteoclasts, enabling the bone to retain more of its mass and functionality. sCT has demonstrated efficacy in increasing lumbar spine bone mineral density and in reducing vertebral fractures. sCT is estimated to be about 30 times more potent than the human version. Synthetic sCT, which is identical to the naturally occurring one, currently is available only as a nasal spray or injectable therapy. Novartis markets synthetic sCT in the United States as MIACALCIN® nasal spray, which is indicated for the treatment of post-menopausal osteoporosis in women greater than five years post menopause with low bone mass.

Treatment with sCT has been shown to increase bone mineral density in the spine and reduce the risk of new vertebral fractures in post-menopausal women with osteoporosis. It is also used to treat Paget's disease, a disease that results in, among other things, bone pain and breakdown. In its nasal spray forms, it is believed that sCT's major advantages are its efficacy resulting from a lack of serious side effects, excellent long-term safety profile and ease of administration. Some studies even suggest that sCT produces an analgesic effect. Annual worldwide sales of sCT exceeded $365 million in 2004, of which U.S. sales account for an estimated $230 million.

In February 2003, we announced favorable results of a Phase IIa study conducted by Novartis evaluating the performance in post-menopausal women of an oral tablet form of sCT. The purpose of the study was to assess the efficacy and safety of various doses of an oral tablet of sCT in post-menopausal women and to confirm the activity of sCT when given orally, as reflected by changes in markers of bone formation or resorption. Oral sCT was dosed for 90 days in the study, the longest time period that the *e*lig*e*n® technology has been dosed in human testing. The study demonstrated activity on bone markers over a three month dosing period when the peptide was delivered in combination with the EMISPHERE® delivery agent. Only two serious adverse events were reported, neither of which were related to the EMISPHERE® delivery agent or to sCT. The side effects (mainly gastrointestinal in nature) seen with the highest doses of sCT were consistent with those normally seen with high plasma levels of sCT when administered by injection. These results were presented by Novartis at the American Society of Bone and Mineral Research in September of 2003.

In Decmber 2005, we announced that positive clinical data generated by Drs. Daniel Manicourt and Jean-Pierre Devogelaer from the Department of Rheumatology at the University Hospital St-Luc, Universite Catholique de Louvain, Brussels, Belgium evaluating oral salmon calcitonin supplied by Novartis using our *eligen*® technology in treating osteoarthritis ("OA") were presented at the 10th World Congress of the Osteoarthritis Research Society International in Boston. Results of this study strongly suggest that oral sCT (enabled by our proprietary *eligen*® technology licensed to Novartis for use with sCT) exhibits not only clinical efficacy but also reduces markedly the levels of several biochemical markers of joint metabolism, which all have been shown to have a pejorative prognostic value of the OA disease process in longitudinal studies including large cohorts of patients.

The randomized, double-blind, placebo-controlled, parallel study was conducted for 3 months in OA patients to assess the efficacy of this novel form of sCT in patients suffering from knee OA. Patients received daily either a placebo (n=16), 0.5 mg of oral sCT (n=17) or 1 mg of oral sCT (n=18).

We are entitled to receive an additional milestone payment (the amount of which is confidential) for oral sCT upon the initiation of Phase III studies by Novartis. Further development of the oral program will be guided by Novartis.

Under the sCT agreements, Novartis has an option to an exclusive worldwide license to develop in conjunction with us, make, have made, use and sell products developed under this program. Novartis also has the right to exercise an option to commence a research collaboration with us on a second compound under this agreement. Novartis' rights to certain specified financial terms concerning a license of a second compound have since expired. We have no payment obligations with respect to this program; we are, however, obligated to collaborate with Novartis by providing access to our technology that is relevant to this program. We are also obligated to help to manage this program through a joint "steering committee" with Novartis.

To date, we have received $9.7 million in payments from Novartis under this program. Under the terms of the agreement, we may receive up to $7 million in additional milestone payments and approximately $0.5 million in direct reimbursements for related costs.

Novartis Pharma AG – Oral Recombinant Human Growth Hormone Program

From 1998 through August 2003, we developed oral rhGH in collaboration with Lilly. As of August 2003, Lilly returned to us all rights to the oral rhGH program pursuant to the terms of our license agreement. On September 23, 2004 we announced a new partnership with Novartis to develop our oral rhGH program. Under this collaboration, we will work with Novartis to initiate clinical trials of a convenient oral human growth hormone product using the *eligen*® technology.

Under this agreement, Novartis has an exclusive worldwide license to develop, make, have made, use and sell products developed under this program. We have no payment obligations with respect to this program; we are, however, obligated to collaborate with Novartis by providing access to our technology that is relevant to this program. We are also obligated to help to manage this program through a joint "steering committee" with Novartis.

To date, we have received $1 million in non-refundable payments from Novartis under this program. Under the terms of the new agreement, Novartis was granted a 12 month license to utilize our *eligen*® technology. At the end of the initial 12 month license period, Novartis had the right to elect to commence development or to terminate the agreement. Effective November 4, 2005, we amended the License Agreement to extend the license period through March 31, 2006 and provide Novartis with 30 business days after March 31, 2006 in which to elect to commence development or to terminate the agreement. If they elect to commence development, we may receive up to $33 million in additional milestone payments during the course of product development, and royalties based on sales.

Roche – Small Molecules for Bone-Related Diseases

On November 17, 2004, we entered into a licensing agreement with Hoffmann-La Roche Inc. and F. Hoffmann-La Roche LTD (collectively, "Roche") to develop oral formulations of undisclosed small molecule compounds approved for use in the field of bone-related diseases. The agreement follows successful pre-clinical studies and a human feasibility study incorporating our *eligen*® technology.

On February 15, 2006, we announced that Roche had initiated a clinical study utilizing Emisphere's *eligen*® delivery technology in a formulation for a second product, entitling us to an additional milestone payment from Roche which was received in February 2006.

To date, we have received $4.4 million in payments from Roche under this program. Roche may pay us future milestones of up to $17 million for the first two products and up to $18.5 million for each additional product developed using our *eligen*® technology. We may also receive royalties based on product sales. Roche will fund all necessary preclinical, clinical and manufacturing costs for all products. We have no payment obligations with respect to this program; we are, however, obligated to collaborate with Roche by providing access to our technology that is relevant to this program. We are also obligated to help manage this program through a joint "steering committee" with Roche.

Eli Lilly and Company; Novartis Pharma AG – Oral PTH 1-34 Program

In February 1997, we formed a collaboration with Lilly for the development of an oral form of PTH 1-34 for the treatment of osteoporosis and a second product candidate, rhGH, for treatment of growth disorders. PTH 1-34 is a bone anabolic/formation compound currently marketed by Lilly as a once daily injectable for the treatment of osteoporosis. In contrast to sCT that reduces bone loss, PTH 1-34 stimulates new bone formation.

In March 1998, Lilly and Emisphere entered into license agreements for PTH 1-34 and rhGH and Lilly paid us a $4 million milestone payment. In June 2000, the parties executed a follow-on agreement for both proteins and Lilly paid Emisphere a $2 million milestone payment in connection with the selection of the EMISPHERE® delivery agent to be used with PTH 1-34. In August 2001, Emisphere and Lilly issued a joint publication on the oral delivery of PTH 1-34 in the American Association of Pharmaceutical Scientists' July issue of *Pharmaceutical Research* (Vol. 18, No. 7, 2001), setting forth the first reproducible, oral delivery of biologically active PTH 1-34 in a preclinical model of osteoporosis. In late 2001, Emisphere and Lilly entered an oral unformulated solid dosage of PTH 1-34 into the clinic.

The oral PTH 1-34 program has undergone Phase I testing. For information concerning our pending litigation with Lilly related to the agreement for the oral PTH 1-34 program and our termination of those agreements, see *"Risk Factors – We are currently in litigation with one of our previous collaborative partners, and an adverse determination of our patent infringement claims in that case could limit our future ability to realize on the potential future value of our PTH 1-34 assets."*

To date we have received $13.1 million in payments from Lilly under these programs. We do not expect to receive any additional milestone payments under these programs.

On December 1, 2004, we entered into a Research Collaboration Option and License Agreement with Novartis whereby Novartis obtained an option to license our existing technology to develop oral forms of PTH 1-34 should we be successful in fully reacquiring our rights from Lilly pertaining to PTH 1-34. Contemporaneously with the entering of this new agreement, Novartis purchased from us a $10 million convertible note maturing December 1, 2009 that we may repay, at our option, in either stock or cash. On March 7, 2006, Novartis exercised its option to the license. Based on the terms of the agreement, we may receive milestone payments totaling up to a maximum of $30 million, plus royalties on sales of product developed using our *eligen*® technology. Novartis will fund all necessary preclinical, clinical and manufacturing costs for all products.

Undisclosed Company – Oral Acyclovir Program

We have entered into a research collaboration with a pharmaceutical company based outside the United States. This company is funding a clinical study to support product development of an improved oral acyclovir using our *eligen*® technology. We are responsible for preclinical studies necessary to support the human trials. These studies have been completed and the partner is preparing to initiate clinical studies during 2006. We are currently in discussions with this company regarding a contractual license agreement.

Previous Collaborations

U.S. Army Medical Research Institute of Infectious Diseases ("USAMRIID") – Oral Vaccines against Anthrax and Other Biological Pathogens

In June 2003, we announced that we entered into a cooperative research and development agreement ("CRADA") with the USAMRIID, the U.S. Department of Defense's lead medical research laboratory for the U.S. Biological Defense Research Program. USAMRIID was evaluating the use of our *eligen*® technology to create oral vaccines against anthrax and other biological pathogens using a new recombinant protein antigen. The agreement expired in February 2006. USAMRIID has indicated that it will not extend the CRADA because of program prioritization and funding considerations.

Revenue Recognized From Collaborators Since 2003 (in thousands)

Collaborator	2005	2004	2003
Novartis Pharma AG (rhGH)	$ 574	$ 208	—
Roche	2,846	1,619	—
Eli Lilly and Company (rhGH and PTH 1-34)	—	—	$ 237

Research and Development Costs

We have devoted substantially all of our efforts and resources to research and development conducted on our own behalf (self-funded) and in collaborations with corporate partners (partnered). Generally, research and development expenditures are allocated to specific research projects. Due to various uncertainties and risks, including those described in **"Risk Factors"** below, relating to the progress of our product candidates through development stages, clinical trials, regulatory approval, commercialization and market acceptance, it is not possible to accurately predict future spending or time to completion by project or project category.

The following table summarizes research and development spending to date by project category:

	Year Ended December 31,			Cumulative Spending to date 2005 [1]
	2005	2004	2003	
	(in thousands)			
Research [2]	$ 2,387	$ 2,853	$ 3,314	$ 46,505
Feasibility projects				
Self-funded	318	448	496	7,336
Partnered	339	453	422	3,241
Development projects				
Oral heparin (self-funded)	2,470	1,231	1,722	92,889
Oral insulin (self-funded)	2,897	2,289	2,940	18,064
Partnered	226	104	315	11,184
All other (self-funded)	—	—	—	141
Other [3]	10,278	10,084	11,817	67,863
Total all projects	$ 18,915	$ 17,462	$ 21,026	$ 247,223

(1) Cumulative spending from August 1, 1995 through December 31, 2005.
(2) Research is classified as resources expended to expand the ability to create new carriers, to ascertain the mechanisms of action of carriers, and to establish computer based modeling capabilities, prototype formulations, animal models, and *in vitro* testing capabilities.
(3) Other includes indirect costs such as rent, utilities, training, standard supplies and management salaries and benefits

Patents and Other Forms of Intellectual Property

Our patent strategy is designed to maximize our patent portfolio, proprietary rights and any future licensing opportunities we might pursue. We seek patent protection on various aspects of our proprietary chemical and pharmaceutical delivery technologies, including, but not limited to, the delivery agent compounds themselves, the combination of our compounds with a pharmaceutical or chemical agent and for generic structures that encompass EMISPHERE® delivery agents. We also seek to patent the processes utilized in manufacturing EMISPHERE® delivery agents and the methods of use of EMISPHERE® delivery agents. We concentrate our efforts in the key pharmaceutical markets of the United States, Europe, and Japan, and file in additional countries on a case-by-case basis.

We have patents, or patent applications pending, for delivery agents that we currently use in conjunction with insulin, heparin, LMWH, sCT, PTH 1-34, rhGH and numerous other compounds. As of December 31, 2005, we had 80 granted patents in the United States and had other patents issued or applications pending in various countries around the world. Of our 80 U.S. granted patents, five were issued by the U.S. Patent and Trademark Office in 2005. Of our patents granted in the United States, one will expire in 2009, and the others, including those which cover our product candidates, will begin to expire in 2012. The disclosed patent expiration dates do not include any potential patent term restoration under 35 USC §156 that might be sought in the future. As of December 31, 2005, we had 53 patent applications relating to our drug delivery technology pending in the United States. We have pursued strategic international protection with approximately 101 patents and 249 patent applications pending internationally in a total of 41 different countries. The majority of the filings are made in Australia, Canada, the European Patent Office, Japan and Mexico.

We have U.S. issued patents and/or pending patent applications with claims to the potential products listed in the table under "*Product Candidates in Development"* above. Our U.S. issued patents that claim such products begin to expire in the year 2012. Currently pending applications, should they mature into patents, will expire 20 years from the filing date of the earliest U.S. utility or national patent application, subject to potential shortening of patent term due to terminal disclaimers, and subject to possible patent term extension under 35 USC §154 and /or patent term restoration under 35 USC §156 if such is sought.

Manufacturing

The primary raw materials used in making the delivery agents for our product candidates are readily available in large quantities from multiple sources. We internally manufacture delivery agents on a small scale for research purposes and for early stage clinical supplies. We believe that our manufacturing capabilities comply with the FDA's current Good Manufacturing Practice ("GMP"). In 2004 and 2005, we manufactured early stage clinical supplies under GMP conditions for our oral insulin program and heparin multiple arm studies.

Currently, EMISPHERE® delivery agents are manufactured by third parties in accordance with GMP regulations for batch sizes greater than 10 kilograms. We have identified other commercial manufacturers meeting the FDA's GMP regulations that have the capability of producing EMISPHERE® delivery agents and do not rely on any particular manufacturer to supply us with needed quantities of our EMISPHERE® delivery agent.

Competition

Our success depends in part upon maintaining a competitive position in the development of product candidates and technologies in an evolving field in which developments are expected to continue at a rapid pace. We compete with other drug delivery, biotechnology and pharmaceutical companies, research organizations, individual scientists and non-profit organizations engaged in the development of alternative drug delivery technologies or new drug research and testing, and with entities developing new drugs that may be orally active. Our product candidates compete against alternative therapies or alternative delivery systems for each of the medical conditions our product candidates address, independent of the means of delivery. Many of our competitors have substantially greater research and development capabilities, experience, and marketing, financial and managerial resources than we have.

Oral Heparin Competition

ARIXTRA®, an injectable form of a synthetic anti-clotting agent, is currently marketed by GlaxoSmithKline. A number of other companies reportedly are currently testing direct thrombin or Xa inhibitors, some of which may eventually be indicated for the prevention of DVT in patients undergoing surgery for hip fracture, hip replacement or knee replacement.

Other technologies use micro-encapsulation to orally deliver heparin. We believe our oral heparin delivery technology is distinguished from other announced technologies because we believe that it preserves the chemical integrity of the drug and the integrity of the intestinal membrane.

Oral Insulin Competition

Other private and public companies, as well as academic institutions, are developing oral insulin analogues. One such company is Nobex Corp, which together with BIOCON Ltd have been co-developing a tablet-form of oral insulin for both Type 1 and Type 2 diabetics. We believe these analogues differ from our product, in that insulin is chemically modified, creating a new chemical entity. In December 2005, BIOCON Ltd announced that it will seek to acquire the intellectual property of Nobex Corporation, which has applied for cover under Chapter 11 of US bankruptcy laws. Other alternative insulin delivery systems include Pfizer/Nektar's EXUBERA®, a pulmonary treatment that has has been approved for marketing in the European Union and the United States. We believe our oral insulin delivery technology is distinguished from other announced technologies as it demonstrates the preservation of both the biological effects of the drug and the integrity of the intestinal membrane.

Oral Osteoporosis Competition

An injectable form of PTH 1-34 is manufactured and sold by Lilly, as FORTEO®. Unigene Laboratories, Inc. ("Unigene") has reported that, in collaboration with GSK, it is developing an oral form of PTH 1-34. Unigene also reported that it is developing an oral form of sCT. Both candidates are in early stage clinical testing.

Novartis currently offers a nasal dosage form of sCT, MIACALCIN®. Other companies are currently developing pulmonary forms of PTH 1-34. Other osteoporosis therapies include estrogen replacement therapy, selective estrogen receptor modulators, bisphosphonates and several new biologics that are under development.

Oral Acyclovir Competition

Acyclovir is available orally, but is poorly and unreproducibly absorbed. The published bioavailability is between 10 and 20%. Acyclovir is available in generic form, and also as a topical ointment. Prodrug forms of acyclovir such as Valacyclovir (GSK's Valtrex®) have bioavailabilities that are improved by a factor of three to five-fold.

Competition Summary

Although we believe that our oral formulations, if successful, will likely compete with well established injectable versions of the same drugs, we believe that we will enjoy a competitive advantage because physicians and patients prefer orally delivered forms of products over injectable forms, oral forms of products enable improved compliance, and for many programs, the oral form of products enable improved therapeutic regimens.

Government Regulation

Our operations and product candidates under development are subject to extensive regulation by the FDA, other governmental authorities in the United States and governmental authorities in other countries.

The duration of the governmental approval process for marketing new pharmaceutical substances, from the commencement of preclinical testing to receipt of governmental approval for marketing a new product, varies with the nature of the product and with the country in which such approval is sought. For new chemical entities, the approval process could take eight to ten years or more. For reformulations of existing drugs, typically the process is shorter. In either case, the procedures required to obtain governmental approval to market new drug products will be costly and time-consuming to us, requiring rigorous testing of the new drug product. Even after such time and effort, regulatory approval may not be obtained for our products.

The steps required before we can market or ship a new human pharmaceutical product commercially in the United States include, in part, preclinical testing, the filing of an Investigational New Drug Application ("IND"), the conduct of clinical trials and the filing with the FDA of either a New Drug Application ("NDA") for drugs or a Biologic License Application ("BLA") for biologics.

In order to conduct the clinical investigations necessary to obtain regulatory approval in the U.S., we must file an IND with the FDA to permit the shipment and use of the drug for investigational purposes. The IND sets forth, in part, the results of preclinical (laboratory and animal) toxicology testing and the applicant's initial Phase I plans for clinical (human) testing. Unless notified that testing may not begin, the clinical testing may commence 30 days after filing an IND. As indicated on the table above in the section entitled "*Product Candidates in Development*," many of our product candidates have passed this initial stage.

Under FDA regulations, the clinical testing program required for marketing approval of a new drug typically involves three clinical phases. In Phase I, safety studies are generally conducted on normal, healthy human volunteers to determine the maximum dosages and side effects associated with increasing doses of the substance being tested. In Phase II, studies are conducted on small groups of patients afflicted with a specific disease to gain preliminary evidence of efficacy and to determine the common short-term side effects and risks associated with the substance being tested. Phase III involves large-scale trials conducted on disease-afflicted patients to provide statistical evidence of efficacy and safety and to provide an adequate basis for product labeling. Frequent reports are required in each phase, and if unwarranted hazards to patients are found, the FDA may request modification or discontinuance of clinical testing until further studies have been conducted. Phase IV testing is sometimes conducted, either to meet FDA requirements for additional information as a condition of approval, or to gain post-approval market acceptance of the pharmaceutical product. Our product candidates are and will be subjected to each step of this lengthy process from conception to market and many of those candidates are still in the early phases of testing.

Once clinical testing has been completed pursuant to an IND, the applicant files an NDA or BLA with the FDA seeking approval for marketing the drug product. The FDA reviews the NDA or BLA to determine whether the drug is safe and effective, and adequately labeled, and whether the applicant can demonstrate proper and consistent manufacture of the drug. The time required for FDA action on an NDA or BLA varies considerably, depending on the characteristics of the drug, whether the FDA needs more information than is originally provided in the NDA or BLA and whether the FDA has concerns with the evidence submitted. Once our product candidates reach this stage, we will be subjected to these additional costs of time and money.

The facilities of each company involved in the commercial manufacturing, processing, testing, control and labeling of pharmaceutical products must be registered with and approved by the FDA. Continued registration requires compliance with GMP regulations and the FDA conducts periodic establishment inspections to confirm continued compliance with its regulations. We are subject to various federal, state and local laws, regulations and recommendations relating to such matters as laboratory and manufacturing practices and the use, handling and disposal of hazardous or potentially hazardous substances used in connection with our research and development work. We believe that we are in compliance with these laws and regulations in all material respects.

While we do not currently manufacture any commercial products ourselves, if we did, we would bear additional cost of FDA compliance.

Employees

As of December 31, 2005, we had 118 employees, 86 of whom are engaged in scientific research and technical functions and 32 of whom are performing information technology, engineering, facilities maintenance and administrative functions. Of the 118 employees, 29 hold Ph.D. or M.D. degrees. We believe our relations with our employees are good.

Available Information

Emisphere files annual, quarterly, and current reports, proxy statements, and other documents with the Securities and Exchange Commission, (the "SEC"), under the Securities Exchange Act of 1934 (the "Exchange Act"). The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including Emisphere, that file electronically with the SEC. The public can obtain any documents that Emisphere files with the SEC at www.sec.gov.

We also make available free of charge on or through our Internet website (www.emisphere.com) our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, Section 16 filings, and, if applicable, amendments to those reports filed or furnished pursuant to Section 13(a) or Section 16 of the Exchange Act as soon as reasonably practicable after we or the reporting person electronically files such material with, or furnishes it to, the SEC. Our Internet website and the information contained therein or connected thereto are not intended to be incorporated into the Annual Report or this Form 10-K.

Our Board of Directors has adopted a Code of Business Conduct and Ethics which is posted on our website at www.emisphere.com/ovr_cgcoe.asp.

ITEM 1A. RISK FACTORS

The following risk factors should be read carefully in connection with evaluating our business and the forward-looking statements that we make in this Report and elsewhere (including oral statements) from time to time. Any of the following risks could materially adversely affect our business, our operating results, our financial condition and the actual outcome of matters as to which forward-looking statements are made in this Report.

If we fail to raise additional capital or receive substantial cash inflows from our partners by May of 2006, we will be forced to cease operations

As of December 31, 2005, we had cash, cash equivalents and investments of $9.2 million. We anticipate that our existing capital resources will not enable us to continue operations past mid-May of 2006, or earlier if unforeseen events or circumstances arise that negatively affect our liquidity. These circumstances may adversely affect our ability to raise additional capital. If we fail to raise additional capital or obtain substantial cash inflows from existing partners prior to May 2006, we will be forced to cease operations. We are in discussions with investment bankers concerning our financing options. We cannot assure you that financing will be available on favorable terms or at all. If additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders.

We have limited capital resources and operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments. These conditions raise substantial doubt about our ability to continue as a going concern. The audit report prepared by our independent registered public accounting firm relating to our consolidated financial statements for the year ended December 31, 2005 includes an explanatory paragraph expressing the substantial doubt about our ability to continue as a going concern.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. As of December 31, 2005, our accumulated deficit was approximately $351 million. Our net loss was $18.1 million, $37.5 million and $44.9 million for the years ended December 31, 2005, 2004 and 2003, respectively. The significant decrease in net loss is a result of the $14.7 million gain on the extinguishment of the Elan note payable. Our cash outlays from operations and capital expenditures were $30.4 million for 2005. Our stockholders' equity decreased from $22.8 million as of December 31, 2003 to a stockholders' deficit of $11.3 million and $14.9 million as of December 31, 2004 and 2005, respectively.

Even if we obtain additional financing, our business will require substantial additional investment that we have not yet secured. We cannot be sure how much we will need to spend in order to develop, market and manufacture new products and technologies in the future. We expect to continue to spend substantial amounts on research and development, including amounts spent on conducting clinical trials for our product candidates. Further, we will not have sufficient resources to develop fully any new products or technologies unless we are able to raise substantial additional financing on acceptable terms or secure funds from new or existing partners. Our failure to raise capital when needed would adversely affect our business, financial condition and results of operations, and could force us to reduce or discontinue our operations at some time in the future, even if we obtain financing in the near term.

We may not be able to make the payments we owe to MHR, which could result in a foreclosure on substantially all of our assets, including our intellectual property.

On September 26, 2005, we executed a Senior Secured Loan Agreement (the "Loan Agreement") with MHR. The Loan Agreement was amended on November 11, 2005 to clarify certain terms. The Loan Agreement provides for a seven year, $15 million secured loan from MHR to us at an interest rate of 11% (the "Loan"). The Loan is secured by a first priority lien in favor of MHR on substantially all of our assets. The proceeds from the Loan were disbursed to a restricted account and our right to have such funds disbursed to an operating account is conditioned upon the requested amounts for any period not being in excess of 103% of amounts in our budget for such period (then in effect under the terms of the Loan Agreement), and provided that we certify to MHR that no event of default has occurred under the Loan Agreement (or the Convertible Note described below, as applicable), no material adverse change has occurred and our representations and warranties under the Loan Agreement continue to be true and correct. The Loan Agreement requires us to hold a special stockholder meeting for the purpose of obtaining stockholder approval of (i) the exchange of the Loan for an 11% senior secured convertible note (the "Convertible Note") with substantially the same terms as the Loan Agreement, except that the Convertible Note will be convertible, at the sole discretion of MHR or any assignee thereof, into shares of our common stock at a price per share of $3.78, interest will be payable in kind rather than in cash and we will have the right to call the Convertible Note after September 26, 2010 if certain conditions are satisfied and (ii) the amendment and restatement of our Restated Certificate of Incorporation. On December 8, 2005, we filed with the Securities and Exchange Commission a definitive proxy statement relating to this special meeting of our stockholders. On January 17, 2006, the special meeting of stockholders was held and both proposals were approved by our stockholders.

The Loan Agreement provides that an event of default shall be deemed to have occurred if we default on the payment of any obligation or indebtedness when due, including any payment of interest, any of the liens in favor of MHR created by the transaction fails to constitute a perfected lien, we suffer a bankruptcy or similar insolvency event or proceeding, we materially breach a representation or warranty or fail to observe any covenant or agreement, we suffer and do not discharge in a timely manner a final judgment for the payment of a sum in excess of a certain materiality threshold, our common stock has been delisted or trading has been suspended, we sell a substantial portion of our assets, we merge with another entity without the prior consent of MHR, or any governmental action renders us unable to honor or perform our obligations under the Loan Agreement or results in a material adverse effect on our operations. If an event of default occurs, the Loan Agreement provides for the immediate repayment of the Loan and certain additional amounts described above and as set forth in the Loan Agreement. At such time, we may not be able to make the required payment, and if we are unable to pay the amount due under the Loan, the resulting default would enable MHR to foreclose on all of our assets. Any of the foregoing events would have a material adverse effect on our business and on the value of our stockholders' investments in our common stock.

We may not be able to make the payments we owe to Novartis.

On December 1, 2004 we issued a $10 million convertible note (the "Novartis Note") to Novartis in connection with a new research collaboration option relating to the development of PTH 1-34. The Novartis Note bears interest at a rate of 3% prior to December 1, 2006, 5% from December 1, 2006 through December 1, 2008, and 7% from that point until maturity on December 1, 2009. We have the option to pay interest in cash on a current basis or accrue the periodic interest as an addition to the principal amount of the Novartis Note. In the event that interest accrues on the Novartis Note, the accretion to principal will cause future interest payments to rise. We may convert the Novartis Note at any time prior to maturity into a number of shares of our common stock equal to the principal and accrued and unpaid interest to be converted divided by the then market price of our common stock, provided certain conditions are met, including that the number of shares issued to Novartis, when issued, does not exceed

19.9% of the total shares of Company common stock outstanding, that at the time of such conversion no event of default under the Note has occurred and is continuing, and that there is either an effective shelf registration statement in effect covering the resale of the shares issued in connection with such conversion or the shares may be resold by Novartis pursuant to SEC Rule 144(k). These conditions may not be met and we may be unable to convert the Novartis Note, in which case we would be required to continue to make interest payments and the rates of such interest payments will increase over time. Under the Novartis Note, an event of default shall be deemed to have occurred if we default on the payment of the principal amount of, and accrued and unpaid interest on, the Novartis Note upon maturity, we suffer a bankruptcy or similar insolvency event or proceeding, we materially breach a representation or warranty, we fail to timely cure a default in the payment of any other indebtedness in excess of a certain material threshold, or there occurs an acceleration of indebtedness in excess of that threshold, we suffer and do not discharge in a timely manner a final judgment for the payment of a sum in excess of a certain material threshold, we become entitled to terminate the registration of our securities or the filing of reports under the Securities Exchange Act of 1934, our common stock will be delisted from Nasdaq, we experience a change of control (including by, among other things, a change in the composition of a majority of our board (other than as approved by the board) in any one-year period, a merger which results in our stockholders holding shares that represent less than a majority of the voting power of the merged entity, and any other acquisition by a third party of shares that represent a majority of the voting power of the company), we sell substantially all of our assets, or we are effectively unable to honor or perform our obligations under the new research collaboration option relating to the development of PTH 1-34. Upon the occurrence of any such event of default prior to conversion, any unpaid principal and accrued interest on the Novartis Note would become immediately due and payable. At such time, we may not be able to make the required payment, and if we are unable to pay the amount due under the Novartis Note, the resulting default would have a material adverse effect on our business and on the value of our stockholders' investments in our common stock. If the Novartis Note is converted into our common stock, Novartis would have the right to require us to repurchase the shares of common stock within six months after an event of default under the Novartis Note, for an aggregate purchase price equal to the principal and interest that was converted, plus interest from the date of conversion, as if no conversion had occurred. If we are unable to make the repurchase, the resulting default would have a material adverse effect on our business and on the value of our stockholders' investments in our common stock.

We are highly dependent on the clinical success of our oral heparin and insulin product candidates.

Oral heparin and oral insulin are our two lead programs and are among our most advanced programs. To date, we have invested $93 million and $18 million, in oral heparin and oral insulin, respectively. We believe that, based on market size, these two products, if approved, could represent our largest sources of revenue. If we fail to obtain regulatory approval for either of these products, either solely through our own efforts or through collaborations with one or more major pharmaceutical companies, our ability to fund future operations from operating revenue or issuance of additional equity is likely to be adversely affected. We are not dependent on successful culmination of clinical trials or regulatory approval of any particular one of our other product candidate programs because our investment in each such program and reward upon successful completion of each such program is substantially less signi ficant to our long-term viability.

Oral Heparin

Heparin delivery is a highly competitive area. Other companies currently are developing spray (buccal) or alternate forms of heparin and other anti-thrombotics. We are developing solid dosage forms of oral heparin and have commenced Phase III testing for the SNAC/heparin molecule combination.

We previously developed a liquid form of oral heparin and in 2000 conducted a Phase III clinical trial that was completed in early 2002. The trial did not meet its endpoint of superiority to LOVENOX®, a leading low molecular weight heparin. We believe that the trial failed to meet its endpoint of superiority possibly due in part to the poor taste of the liquid formulation. We subsequently restructured our operations, which included the discontinuation of our liquid oral heparin program and related initiatives, and a reduction of associated infrastructure. The resulting restructuring charge to earnings in 2002 was approximately $1.5 million. In accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," in connection with the restructuring, we performed an evaluation of certain intangible and fixed assets to determine if their carrying amount exceeded their fair value. In 2002, we recorded an impairment charge of $4.5 million. In 2003, we recorded an additional impairment charge of $5.4 million. In 2004 and 2005, we have not recorded any impairment charges related to developments in our oral heparin program.

We cannot assure you that competitive heparin products will not have an adverse effect on our heparin product development efforts or that future clinical trials related to our solid form of oral heparin will meet targeted endpoints. If future clinical trials related to oral heparin fail to meet the targeted endpoints, we likely would discontinue our oral heparin program and write off any remaining oral heparin investment.

In 1996, we formed a joint venture with Elan to develop oral forms of heparin. In July 1999, we reacquired all product, marketing and technology rights for our heparin products from Elan. In accordance with the termination agreement with Elan, we will be required to pay Elan royalties on our sales of oral heparin, subject to an annual cap of $10 million.

Oral Insulin

Insulin delivery is a highly competitive area. Other companies currently are developing and/or have received regulatory approval for buccal or aerosol (pulmonary) forms of insulin (e.g., Pfizer/Nektar's EXUBERA®). Our oral insulin product candidate has demonstrated favorable data in early patient studies in both Type 1 and Type 2 diabetics. However, we cannot assure you that future clinical trials related to our oral insulin will meet targeted endpoints, with the result that we may fail to obtain the necessary regulatory approval for sale of oral insulin, either alone or in collaboration with a major pharmaceutical company. If such circumstances were to occur, we likely would discontinue our oral insulin program and write off any remaining oral insulin investment.

We are highly dependent upon collaborative partners to develop and commercialize compounds using our delivery agents.

A key part of our strategy is to form collaborations with pharmaceutical companies that will assist us in developing, testing, obtaining government approval for and commercializing oral forms of therapeutic macromolecules using the *e*lig*e*n® technology. We have collaborative agreements for candidates in clinical development with Novartis and Roche.

We negotiate specific ownership rights with respect to the intellectual property developed as a result of the collaboration with each partner. While ownership rights vary from program to program, in general we retain ownership rights to developments relating to our carrier and the collaborator retains rights related to the drug product developed.

Despite our existing agreements, we cannot assure you that:

- we will be able to enter into additional collaborative arrangements to develop products utilizing our drug delivery technology;
- any existing or future collaborative arrangements will be sustainable or successful;
- the product candidates in collaborative arrangements will be further developed by partners in a timely fashion;
- any collaborative partner will not infringe upon our intellectual property position in violation of the terms of the collaboration contract; or
- milestones in collaborative agreements will be met and milestone payments will be received.

If we are unable to obtain development assistance and funds from other pharmaceutical companies to fund a portion of our product development costs and to commercialize our product candidates, we may be unable to issue equity upon favorable terms to allow us to raise sufficient capital to fund clinical development of our product candidates. Lack of funding would cause us to delay, scale back or curtail clinical development of one or more of our projects. The determination of the specific project to curtail would depend upon the relative future economic value to us of each program.

Our collaborative partners control the clinical development of the drug candidates and may terminate their efforts at will.

Novartis controls the clinical development of oral salmon calcitonin and oral rhGH. Novartis also has an option to control the clinical development of oral PTH. Roche controls the clinical development of the small molecule compound for which they have licensed our technology. Although we influence the clinical program through participation on a Steering Committee for each product, Novartis and Roche control the decision-making for the design and timing of their respective clinical studies. As noted below, we are in litigation and have terminated our agreements with Lilly.

Moreover, the agreements with Novartis and Roche provide that each may terminate its programs at will for any reason and without any financial penalty or requirement to fund any further clinical studies. We cannot assure you that Novartis or Roche will continue to advance the clinical development of the drug candidates subject to collaboration.

Our collaborative partners are free to develop competing products.

Aside from provisions preventing the unauthorized use of our intellectual property by our collaborative partners, there is nothing in our collaborative agreements that prevents our partners from developing competing products. If one of our partners were to develop a competing product, our collaboration could be substantially jeopardized.

We are currently in litigation with one of our previous collaborative partners, and an adverse determination of our patent infringement claims in that case could limit our future ability to realize on the potential value of our PTH 1-34 assets.

There is currently pending in the United States District Court for the Southern District of Indiana, Indianapolis Division, a lawsuit with Eli Lilly and Company. The suit results from a notice that we delivered to Lilly declaring that Lilly was in material breach of certain research and collaboration agreements entered into with Lilly with respect to the development of oral formulations of PTH 1-34. Following receipt of the notice, Lilly filed a complaint seeking a declaratory judgment declaring that Lilly is not in breach of its agreements with us concerning oral formulations of PTH 1-34, and an order preliminarily and permanently enjoining us from terminating those agreements. On February 12, 2004, we served Lilly with an amended counterclaim, alleging that Lilly filed certain patent applications relating to the use of our proprietary technology in combination with another drug, in violation of our agreements with Lilly, and that the activities disclosed in such applications infringe upon our patents. We are also alleging that Lilly has breached the agreements by failing to make a milestone payment of $3 million, as required upon the completion of oral PTH 1-34 product Phase I studies. Lilly has denied that the $3 million currently is due on the basis that the requisite Phase I studies have not been completed and that the patent applications that it filed relating to the use of our proprietary technology in combination with another drug is not in violation of our agreements with Lilly, and that the activities disclosed in such applications do not infringe upon our patents. On February 13, 2004, the court entered a case management plan and the parties commenced the exchange of discovery materials in March 2004. By notice dated August 23, 2004, we notified Lilly that in light of Lilly's ongoing, repeated and uncured violations of its PTH 1-34 license agreement, both its agreements with us were terminated. Thereafter, Lilly amended its complaint to seek a declaration that we are not entitled to terminate those agreements and also to seek declarations that Lilly has not infringed our patents. The case went to trial on January 31, 2005. The trial lasted 4 days and closing arguments were heard on February 9, 2005. On January 6, 2006, the district court ruled in our favor, finding that Lilly had breached the agreements on all counts tried and that our termination was proper. On January 20, 2006, Lilly filed a motion seeking to amend the district court's decision. We opposed that motion and it is awaiting decision. There are still several issues pending in the case, including the question of damages we suffered as a result of Lilly's breaches and our previously asserted claims that Lilly's conduct also infringed our patents. Although the district court's January 6, 2006 ruling was interlocutory and not immediately appealable by Lilly, it is possible that at some point Lilly will be permitted to appeal that decision. A reversal of the decision in this litigation concerning our claim and subsequent court decision that Lilly breached our agreements could limit our future ability to realize the potential value of our oral PTH 1-34 assets. Although the costs of litigating this matter to its ultimate resolution may be material, we anticipate that near-term costs will be minimal and we do not anticipate any significant impact on our ability to develop our product candidates. Through December 31, 2005, we have incurred approximately $2.3 million in expenses relating to this litigation.

Although we are not currently involved in litigation with any of our other collaborative partners and have no reason to believe that such litigation will arise, it is possible that in the future this may not be the case. Were we to become involved in litigation with another of our collaborative partners, we would bear the additional expense of the litigation and we would likely suffer an adverse impact on both the program covered by the collaborative agreement and our relationship with the particular collaborative partner.

Our product candidates are in various stages of development, and we cannot be certain that any will be suitable for commercial purposes.

To be profitable, we must successfully research, develop, obtain regulatory approval for, manufacture, introduce, market and distribute our products under development, or secure a partner to provide financial and other assistance with these steps. The time necessary to achieve these goals for any individual product is long and uncertain. Before we or a potential partner can sell any of our products under development, we must demonstrate through preclinical (animal) studies and clinical (human) trials that each product is safe and effective for human use for each targeted indication. We have never successfully commercialized a drug candidate and we cannot be certain that we or our current or future partners will be able to begin, or continue, planned clinical trials for our product candidates, or if we are able, that the product candidates will prove to be safe and will produce their intended effects.

Even if safe and effective, the size of the solid dosage form, taste and frequency of dosage may impede their acceptance by patients.

A number of companies in the drug delivery, biotechnology and pharmaceutical industries have suffered significant setbacks in clinical trials, even after showing promising results in earlier studies or trials. We cannot assure you that favorable results in any preclinical study or early clinical trial will mean that favorable results will ultimately be obtained in future clinical trials. Nor can we assure you that results of limited animal and human studies are indicative of results that would be achieved in future animal studies or human clinical studies, all or some of which will be required in order to have our product candidates obtain regulatory approval. Similarly, we cannot assure you that any of our product candidates will be approved by the FDA.

Our future business success depends heavily upon regulatory approvals, which can be difficult to obtain for a variety of reasons, including cost.

Our preclinical studies and clinical trials, as well as the manufacturing and marketing of our product candidates, are subject to extensive, costly and rigorous regulation by various governmental authorities in the United States and other countries. The process of obtaining required approvals from the FDA and other regulatory authorities often takes many years, is expensive and can vary significantly based on the type, complexity and novelty of the product candidates. We cannot assure you that we, either independently or in collaboration with others, will meet the applicable regulatory criteria in order to receive the required approvals for manufacturing and marketing. Delays in obtaining United States or foreign approvals for our self-developed projects could result in substantial additional costs to us, and, therefore, could adversely affect our ability to compete with other companies. Additionally, delays in obtaining regulatory approvals encountered by others with whom we collaborate also could adversely affect our business and prospects. Even if regulatory approval of a product is obtained, the approval may place limitations on the intended uses of the product, and may restrict the way in which we or our partner may market the product.

The regulatory approval process presents several risks to us:

- In general, preclinical tests and clinical trials can take many years, and require the expenditure of substantial resources. The data obtained from these tests and trials can be susceptible to varying interpretation that could delay, limit or prevent regulatory approval.
- Delays or rejections may be encountered during any stage of the regulatory process based upon the failure of the clinical or other data to demonstrate compliance with, or upon the failure of the product to meet, a regulatory agency's requirements for safety, efficacy and quality or, in the case of a product seeking an orphan drug indication, because another designee received approval first.
- Requirements for approval may become more stringent due to changes in regulatory agency policy, or the adoption of new regulations or legislation.
- The scope of any regulatory approval, when obtained, may significantly limit the indicated uses for which a product may be marketed and may impose significant limitations in the nature of warnings, precautions and contraindications that could materially affect the profitability of the drug.
- Approved drugs, as well as their manufacturers, are subject to continuing and on-going review, and discovery of previously unknown problems with these products or the failure to adhere to manufacturing or quality control requirements may result in restrictions on their manufacture, sale or use or in their withdrawal from the market.
- Regulatory authorities and agencies may promulgate additional regulations restricting the sale of our existing and proposed products.
- Once a product receives marketing approval, the FDA may not permit us to market that product for broader or different applications, or may not grant us clearance with respect to separate product applications that represent extensions of our basic technology. In addition, the FDA may withdraw or modify existing clearances in a significant manner or promulgate additional regulations restricting the sale of our present or proposed products.

Additionally, we face the risk that our competitors may gain FDA approval for a product before us. Having a competitor reach the market before us would impede the future commercial success for our competing product because we believe that the FDA uses heightened standards of approval for products once approval has been granted to a competing product in a particular product area. We believe that this standard generally limits new approvals to only those products that meet or exceed the standards set by the previously approved product.

Our business will suffer if we cannot adequately protect our patent and proprietary rights.

Although we have patents for some of our product candidates and have applied for additional patents, there can be no assurance that patents applied for will be granted, that patents granted to or acquired by us now or in the future will be valid and enforceable and provide us with meaningful protection from competition or that we will possess the financial resources necessary to enforce any of our patents. Also, we cannot be certain that any products that we (or a licensee) develop will not infringe upon any patent or other intellectual property right of a third party.

We also rely upon trade secrets, know-how and continuing technological advances to develop and maintain our competitive position. We maintain a policy of requiring employees, scientific advisors, consultants and collaborators to execute confidentiality and invention assignment agreements upon commencement of a relationship with us. We cannot assure you that these agreements will provide meaningful protection for our trade secrets in the event of unauthorized use or disclosure of such information.

Part of our strategy involves collaborative arrangements with other pharmaceutical companies for the development of new formulations of drugs developed by others and, ultimately, the receipt of royalties on sales of the new formulations of those drugs. These drugs are generally the property of the pharmaceutical companies and may be the subject of patents or patent applications and other rights of protection owned by the pharmaceutical companies. To the extent those patents or other forms of rights expire, become invalid or otherwise ineffective, or to the extent those drugs are covered by patents or other forms of protection owned by third parties, sales of those drugs by the collaborating pharmaceutical company may be restricted, limited, enjoined, or may cease. Accordingly, the potential for royalty revenues to us may be adversely affected.

We may be at risk of having to obtain a license from third parties making proprietary improvements to our technology.

There is a possibility that third parties may make improvements or innovations to our technology in a more expeditious manner than we do. Although we are not aware of any such circumstance related to our product portfolio, should such circumstances arise, we may need to obtain a license from such third party to obtain the benefit of the improvement or innovation. Royalties payable under such a license would reduce our share of total revenue. Such a license may not be available to us at all or on commercially reasonable terms. Although we currently do not know of any circumstances related to our product portfolio which would lead us to believe that a third party has developed any improvements or innovation with respect to our technology, we cannot assure you that such circumstances will not arise in the future. We cannot reasonably determine the cost to us of the effect of being unable to obtain any such license.

We are dependent on third parties to manufacture and, in some cases, test our products.

We have a facility to manufacture a limited quantity of clinical supplies containing EMISPHERE® delivery agents. Currently, we have no manufacturing facilities for production of any therapeutic compounds under consideration as products. We have no facilities for clinical testing. The success of our self-developed programs is dependent upon securing manufacturing capabilities and contracting with clinical service providers.

The availability of manufacturers is limited by both the capacity of such manufacturers and their regulatory compliance. Among the conditions for NDA approval is the requirement that the prospective manufacturer's quality control and manufacturing procedures continually conform with the FDA's current GMP (GMP are regulations established by the FDA that govern the manufacture, processing, packing, storage and testing of drugs intended for human use). In complying with GMP, manufacturers must devote extensive time, money and effort in the area of production and quality control and quality assurance to maintain full technical compliance. Manufacturing facilities and company records are subject to periodic inspections by the FDA to ensure compliance. If a manufacturing facility is not in substantial compliance with these requirements, regulatory enforcement action may be taken by the FDA, which may include seeking an injunction against shipment of products from the facility and recall of products previously shipped from the facility. Such actions could severely delay our ability to obtain product from that particular source.

The success of our clinical trials and our partnerships is dependent on the proposed or current partner's capacity and ability to adequately manufacture drug products to meet the proposed demand of each respective market. Any significant delay in obtaining a supply source (which could result from, for example, an FDA determination that such manufacturer does not comply with current GMP) could harm our potential for success. Additionally, if a current manufacturer were to lose its ability to meet our supply demands during a clinical trial, the trial may be delayed or may even need to be abandoned.

We may face product liability claims related to participation in clinical trials or future products.

We have product liability insurance with a policy limit of $5 million per occurrence and in the aggregate. The testing, manufacture and marketing of products for humans utilizing our drug delivery technology may expose us to potential product liability and other claims. These may be claims directly by consumers or by pharmaceutical companies or others selling our future products. We seek to structure development programs with pharmaceutical companies that would complete the development, manufacturing and marketing of the finished product in a manner that would protect us from such liability, but the indemnity undertakings for product liability claims that we secure from the pharmaceutical companies may prove to be insufficient.

We are subject to environmental, health and safety laws and regulations for which we incur costs to comply.

We use some hazardous materials in our research and development activities and are subject to environmental, health and safety laws and regulations governing the use of such materials. For example, our operations involve the controlled use of

chemicals, biologicals and radioactive materials and we bear the costs of complying with the various regulations governing the use of such materials. Costs of compliance have not been material to date. While we believe we are currently in compliance with the federal, state and local laws governing the use of such materials, we cannot be certain that accidental injury or contamination will not occur. Should we be held liable or face regulatory actions regarding an accident involving personal injury or an environmental release, we potentially could incur costs in excess of our resources or insurance coverage, although, to date, we have not had to deal with any such actions. During each of 2003, 2004 and 2005, we incurred costs of approximately $200 thousand in our compliance with environmental, health and safety laws and regulations.

We face rapid technological change and intense competition.

Our success depends, in part, upon maintaining a competitive position in the development of products and technologies in an evolving field in which developments are expected to continue at a rapid pace. We compete with other drug delivery, biotechnology and pharmaceutical companies, research organizations, individual scientists and non-profit organizations engaged in the development of alternative drug delivery technologies or new drug research and testing, as well as with entities developing new drugs that may be orally active. Many of these competitors have greater research and development capabilities, experience, and marketing, financial and managerial resources than we have, and, therefore, represent significant competition.

Our products, when developed and marketed, may compete with existing parenteral or other versions of the same drug, some of which are well established in the marketplace and manufactured by formidable competitors, as well as other existing drugs. For example, our oral heparin product candidate, if successful, would compete with intravenous heparin, injectable low molecular weight heparin and oral warfarin, as well as the recently approved injectable pentasaccharide product. These products are marketed throughout the world by leading pharmaceutical companies such as Aventis Pharma SA, Pfizer, Inc. and Bristol Myers Squibb Company. Similarly, our salmon calcitonin product candidate, if developed and marketed, would compete with a wide array of existing osteoporosis therapies, including a nasal dosage form of salmon calcitonin, estrogen replacement therapy, selective estrogen receptor modulators, bisphosphonates and other compounds in development.

Our competitors may succeed in developing competing technologies or obtaining government approval for products before we do. Developments by others may render our product candidates, or the therapeutic macromolecules used in combination with our product candidates, noncompetitive or obsolete. For example, Nobex Corporation has an oral insulin formulation being developed and at least one competitor has notified the FDA that it is developing a competing formulation of salmon calcitonin. We cannot assure you that, if our products are marketed, they will be preferred to existing drugs or that they will be preferred to or available before other products in development.

If a competitor announces a successful clinical study involving a product that may be competitive with one of our product candidates or an approval by a regulatory agency of the marketing of a competitive product, such announcement may have a material adverse effect on our operations or future prospects resulting from reduced sales of future products that we may wish to bring to market or from an adverse impact on the price of our common stock or our ability to obtain regulatory approval for our product candidates.

We are dependent on our key personnel and if we cannot recruit and retain leaders in our research, development, manufacturing, and commercial organizations, our business will be harmed.

We are highly dependent on our executive officers. Our Chairman and CEO, Michael Goldberg, M.D., has been with Emisphere for fifteen years. We would be significantly disadvantaged if Dr. Goldberg were to leave Emisphere. The loss of other officers could have an adverse effect as well, given their specific knowledge related to our proprietary technology and personal relationships with our pharmaceutical company partners. If we are not able to retain our executive officers, our business may suffer. None of our key officers are nearing retirement age or have announced any intention to leave Emisphere. We have an employment contract with Dr. Goldberg that extends through August of 2007. We do not maintain “key-man” life insurance policies for any of our executive officers.

There is intense competition in the biotechnology industry for qualified scientists and managerial personnel in the development, manufacture, and commercialization of drugs. We may not be able to continue to attract and retain the qualified personnel necessary for developing our business. Additionally, because of the knowledge and experience of our scientific personnel and their specific knowledge with respect to our drug carriers the continued development of our product candidates could be adversely affected by the loss of any significant number of such personnel.

Provisions of our corporate charter documents, Delaware law and our stockholder rights plan may dissuade potential acquirors, prevent the replacement or removal of our current management and may thereby affect the price of our common stock.

Our Board of Directors has the authority to issue up to 1,000,000 shares of preferred stock and to determine the rights, preferences and privileges of those shares without any further vote or action by our stockholders. Of these 1,000,000 shares, 200,000 are currently designated Series A Junior Participating Cumulative Preferred Stock ("A Preferred Stock") in connection with our stockholder rights plan, and the remaining 800,000 shares remain available for future issuance. Rights of holders of common stock may be adversely affected by the rights of the holders of any preferred stock that may be issued in the future.

We also have a stockholder rights plan, commonly referred to as a "poison pill," in which Preferred Stock Purchase Rights (the "Rights") have been granted at the rate of one one-hundredth of a share of A Preferred Stock at an exercise price of $80 for each share of our common stock. The Rights are not exercisable or transferable apart from the common stock, until the earlier of (i) ten days following a public announcement that a person or group of affiliated or associated persons have acquired beneficial ownership of 20% or more of our outstanding common stock or (ii) ten business days (or such later date, as defined) following the commencement of, or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in the beneficial ownership by a person, or group, of 20% or more of our outstanding common stock. If we enter into consolidation, merger, or other business combinations, as defined, each Right would entitle the holder upon exercise to receive, in lieu of shares of A Preferred Stock, a number of shares of common stock of the acquiring company having a value of two times the exercise price of the Right, as defined. By potentially diluting the ownership of the acquiring company, our rights plan may dissuade prospective acquirors of our company. An amendment to the stockholder rights plan was approved in September 2005 that specifically excludes MHR from the provisions of the plan.

The A Preferred Stockholders will be entitled to a preferential cumulative quarterly dividend of the greater of $1.00 per share or 100 times the per-share dividend declared on our stock and are also entitled to a liquidation preference, thereby hindering an acquiror's ability to freely pay dividends or to liquidate the company following an acquisition. Each A Preferred Stock share will have 100 votes and will vote together with the common shares, effectively preventing an acquiror from removing existing management. The Rights contain anti-dilutive provisions and are redeemable at our option, subject to certain defined restrictions for $.01 per Right. The Rights expired on February 23, 2006, however our Board of Directors has authorized management to immediately commence the process leading to the establishment of a new rights plan with the same terms as the original plan.

Provisions of our corporate charter documents, Delaware law and financing agreements may prevent the replacement or removal of our current management and members of our Board of Directors and may thereby affect the price of our common stock.

In connection with the MHR financing transaction, and after approval by our Board of Directors, as constituted on September 26, 2005, Dr. Mark H. Rachesky was appointed to the Board of Directors by MHR (the "MHR Nominee") and Dr. Michael Weiser was appointed to the Board of Directors by both the majority of our Board of Directors and MHR (the "Mutual Director"), as contemplated by our recently amended by-laws that also require the consent of the MHR Nominee to increase the size of the Board. Our certificate of incorporation provides that the MHR Nominee and the Mutual Director may be removed only by the affirmative vote of at least 85% of the shares of common stock outstanding and entitled to vote at an election of directors. Our certificate of incorporation also provides that the MHR Nominee may be replaced only by an individual designated by MHR, unless the MHR Nominee has been removed for cause, in which case the MHR Nominee may be replaced only by an individual approved by both a majority of our Board of Directors and MHR. Furthermore, the amendments to the by-laws and the certificate of incorporation provide that the rights granted to MHR by these amendments may not be amended or repealed without the unanimous vote or unanimous written consent of the Board of Directors or the affirmative vote of the holders of at least 85% of the shares of Common Stock outstanding and entitled to vote at the election of directors. The amendments to the by-laws and the certificate of incorporation will remain in effect as long as MHR holds at least 2% of the shares of fully diluted Common Stock. The amendments to the by-laws and the certificate of incorporation will have the effect of making it more difficult for a third party to gain control of our Board of Directors.

Additional provisions of our certificate of incorporation and by-laws could have the effect of making it more difficult for a third party to acquire a majority of our outstanding voting common stock. These include provisions that classify our Board of Directors, limit the ability of stockholders to take action by written consent, call special meetings, remove a director for cause, amend the by-laws or approve a merger with another company.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law which prohibits a publicly-held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. For purposes of Section 203, a "business combination" includes a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholder, and an "interested stockholder" is a person who, either alone or together with affiliates and associates, owns (or within the past three years, did own) 15% or more of the corporation's voting stock.

Our stock price has been and may continue to be volatile.

The trading price for our common stock has been and is likely to continue to be highly volatile. The market prices for securities of drug delivery, biotechnology and pharmaceutical companies have historically been highly volatile. Factors that could adversely affect our stock price include:

- fluctuations in our operating results; announcements of partnerships or technological collaborations,
- innovations or new products by us or our competitors;
- governmental regulation;
- developments in patent or other proprietary rights;
- public concern as to the safety of drugs developed by us or others;
- the results of preclinical testing and clinical studies or trials by us, our partners or our competitors;
- litigation;
- general stock market and economic conditions;
- number of shares available for trading (float);
- inclusion in or dropping from stock indexes.

As of December 31, 2005, our 52-week high and low closing market price for our common stock was $5.92 and $2.78, respectively.

Future sales of common stock or warrants, or the prospect of future sales, may depress our stock price.

Sales of a substantial number of shares of common stock or warrants, or the perception that sales could occur, could adversely affect the market price of our common stock. As of December 31, 2005, there were outstanding options to purchase up to 3,109,425 shares of our common stock that are currently exercisable, and additional outstanding options to purchase up to 980,088 shares of common stock that are exercisable over the next several years. As of December 31, 2005, the Novartis Note is convertible into 2,418,362 shares of common stock. If the MHR Loan is exchanged for the Convertible Note, the Convertible Note will be convertible, at the sole discretion of MHR, into shares of common stock. At December 31, 2005, the Convertible Note would be convertible into approximately 4 million shares. The holders of these options have an opportunity to profit from a rise in the market price of our common stock with a resulting dilution in the interests of the other. The existence of these options may adversely affect the terms on which we may be able to obtain additional financing.

Finally, in connection with the consummation of the financing transactions with MHR, we entered into a Registration Rights Agreement with MHR (together with any of MHR's respective assignees that join the Registration Rights Agreement, the "Holders"). The Registration Rights Agreement obligates us to file a registration statement on Form S-3 within 30 days following the date of the exchange of the Loan into the Convertible Note in order to register the resale of (a) the Convertible Note, (b) shares of our common stock issued upon conversion of the Convertible Note, and (c) any other securities that may be issued, distributed or distributable with respect thereto. The Registration Rights Agreement also obligates us to provide certain additional registration rights to the Holders, including, among others, the right to demand that we file a registration statement in order to permit the Holders to sell registrable securities held by the Holders, piggyback rights and the right to participate in any other registered offering of registrable securities by us, and the right to make an unlimited number of requests upon us to register the resale of our registrable securities held by the Holders on Form S-3.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We currently lease approximately 86,000 square feet of office space at 765 Old Saw Mill River Road, Tarrytown, New York for use as executive and administrative offices and laboratories. The current lease expires in September 2007 and has options for two five-year extensions at then-current rates.

ITEM 3. LEGAL PROCEEDINGS

There is currently pending in the United States District Court for the Southern District of Indiana, Indianapolis Division, a lawsuit with Eli Lilly and Company. The suit results from a notice that we delivered to Lilly declaring that Lilly was in material breach of certain research and collaboration agreements entered into with Lilly with respect to the development of oral formulations of PTH 1-34. Following receipt of the notice, Lilly filed a complaint seeking a declaratory judgment declaring that Lilly is not in breach of its agreements with us concerning oral formulations of PTH 1-34, and an order preliminarily and permanently enjoining us from terminating those agreements. On February 12, 2004, we served Lilly with an amended counterclaim, alleging that Lilly filed certain patent applications relating to the use of our proprietary technology in combination with another drug, in violation of our agreements with Lilly, and that the activities disclosed in such applications infringe upon our patents. We are also alleging that Lilly has breached the agreements by failing to make a milestone payment of $3 million, as required upon the completion of oral PTH 1-34 product Phase I studies. Lilly has denied that the $3 million currently is due on the basis that the requisite Phase I studies have not been completed and that the patent applications that it filed relating to the use of our proprietary technology in combination with another drug is not in violation of our agreements with Lilly, and that the activities disclosed in such applications do not infringe upon our patents. On February 13, 2004, the court entered a case management plan and the parties commenced the exchange of discovery materials in March 2004. By notice dated August 23, 2004, we notified Lilly that in light of Lilly's ongoing, repeated and uncured violations of its PTH 1-34 license agreement, both its agreements with us were terminated. Thereafter, Lilly amended its complaint to seek a declaration that we are not entitled to terminate those agreements and also to seek declarations that Lilly has not infringed our patents. The case went to trial on January 31, 2005. The trial lasted 4 days and closing arguments were heard on February 9, 2005. On January 6, 2006, the district court ruled in our favor, finding that Lilly had breached the agreements on all counts tried and that our termination was proper. On January 20, 2006, Lilly filed a motion seeking to amend the district court's decision. We opposed that motion and it is awaiting decision. There are still several issues pending in the case, including the question of damages we suffered as a result of Lilly's breaches and our previously asserted claims that Lilly's conduct also infringed our patents. Although the district court's January 6, 2006 ruling was interlocutory and not immediately appealable by Lilly, it is possible that at some point Lilly will be permitted to appeal that decision. A reversal of the decision in this litigation concerning our claim and subsequent court decision that Lilly breached our agreements could limit our future ability to realize the potential value of our oral PTH 1-34 assets. Although the costs of litigating this matter to its ultimate resolution may be material, we anticipate that near-term costs will be minimal and we do not anticipate any significant impact on our ability to develop our product candidates. Through December 31, 2005, we have incurred approximately $2.3 million in expenses relating to this litigation.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

On January 17, 2006, we held a Special Meeting of Stockholders. The matters voted upon at the meeting were (i) approval of the exchange of the MHR loan for a convertible note and the conversion shares to be issued thereunder, and (ii) approval and adoption of the amended and restated certificate of incorporation. The number of votes cast for and against or withheld with respect to each matter voted upon at the meeting and the number of abstentions and broker nonvotes are as follows:

	Votes For	Votes Against	Abstentions
Approval of the exchange of the MHR loan for a convertible note and the conversion shares to be issued thereunder	12,788,172	949,668	9,014
Approval and adoption of the amended and restated Certificate of Incorporation	12,517,470	1,221,728	7,656

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Emisphere common stock is traded on The Nasdaq Stock Market under the symbol "EMIS".

The following table sets forth the range of high and low intra-day sale prices as reported by The Nasdaq Stock Market for each period indicated.

	High	Low
2004		
First quarter	$ 8.66	$ 5.43
Second quarter	6.82	3.62
Third quarter	4.42	2.86
Fourth quarter	4.13	2.75
2005		
First quarter	6.02	3.14
Second quarter	4.58	2.50
Third quarter	4.94	3.04
Fourth quarter	4.86	3.90
2006		
First quarter (through March 7, 2006)	7.00	4.33

As of March 7, 2006 there were approximately 241 stockholders of record, including record owners holding shares on behalf of an indeterminate number of beneficial owners, and 23,737,277 shares of common stock outstanding. The closing price of our common stock on March 7, 2006 was $6.02.

We have never paid cash dividends and do not intend to pay cash dividends in the foreseeable future. We intend to retain earnings, if any, to finance the growth of our business.

Equity Compensation Plan Information

The following table provides information as of December 31, 2005 about the common stock that may be issued upon the exercise of options granted to employees, consultants or members of our board of directors under all of our existing equity compensation plans, including the 1991 Stock Option Plan, 1995 Stock Option Plan, 2000 Stock Option Plan, the 2002 Broad Based Plan, (collectively "the Plans") the 1997 Directors' Option Plan, and the 1994 Qualified and Non-Qualified Employee Stock Purchase Plans ("ESPP").

Plan Category	(a) Number of securities to be issued upon exercise of outstanding options	(b) Weighted average exercise price of outstanding options	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)
The Plans			
Equity compensation plans approved by security holders:			
The Plans	3,799,513	$ 16.65	1,848,536
1997 Directors' Option Plan	240,000	11.21	426,530
1994 Qualified and Non-Qualified ESPP	92,298	3.58	385,865
Equity compensation plans not approved by security holders [1]	50,000	8.86	—
Total	4,181,811	$ 15.96	2,660,931

(1) Our Board of Directors has granted options which are currently outstanding for an executive officer, a former executive officer, and two consultants. The Board of Directors determines the number and terms of each grant (option exercise price, vesting, and expiration date).

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data for the years ended December 31, 2005, 2004, 2003, 2002 and 2001 have been derived from the financial statements of Emisphere and notes thereto, which have been audited by our independent accountants.

	Year Ended December 31,				
	2005	2004	2003	2002	2001
	(in thousands, except per share data)				
Statement of Operations Data:					
Revenue	$ 3,540	$ 1,953	$ 400	$ 3,378	$ 4,728
Costs and expenses:					
Research and development	18,915	17,462	21,026	49,719	53,301
General and administrative	13,165	11,765	9,727	11,242	9,692
Restructuring [1]	—	—	(79)	1,417	—
Loss on impairment of intangible and fixed assets[2]	166	—	5,439	4,507	—
(Gain)/loss on sale of fixed assets	(563)	1	67	—	—
Depreciation and amortization	4,312	4,941	5,806	6,185	4,014
Total costs and expenses	35,995	34,169	41,986	73,070	67,007
Operating loss	(32,455)	(32,216)	(41,586)	(69,692)	(62,279)
Other (expense) and income	14,404	(5,306)	(3,283)	(1,650)	5,745
Net loss	$ (18,051)	$ (37,522)	$ (44,869)	$ (71,342)	$ (56,534)
Net loss per share—Basic and diluted	$ (0.81)	$ (2.04)	$ (2.48)	$ (3.98)	$ (3.18)

	December 31,				
	2005	2004	2003	2002	2001
	(in thousands)				
Balance Sheet Data:					
Cash, cash equivalents, restricted cash and investments	$ 9,218	$ 17,550	$ 43,008	$ 73,701	$ 139,278
Total assets	18,988	36,292	66,049	107,966	182,083
Long-term liabilities	23,121	40,238	39,871	34,690	30,637
Accumulated deficit	(350,606)	(332,555)	(295,033)	(250,164)	(178,822)
Stockholders' (deficit) equity	(14,895)	(11,274)	22,807	67,540	137,642

(1) In the second quarter of 2002, we announced a plan to restructure our operations, which included the discontinuation of our liquid oral heparin program and related initiatives, and a scale back of associated infrastructure. In the third quarter of 2002, we announced plans to further restructure operations by closing our Connecticut research facility and consolidating operations in Tarrytown. Total restructuring charges in 2002 were $1.4 million of which $0.1 million of accrued restructuring charges were reversed during 2003.

(2) In accordance with Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", in connection with the restructurings, we performed an evaluation of certain intangible and fixed assets to determine if their carrying amount exceeded their fair value. In 2002, we recorded an impairment charge of $4.5 million. In 2003, we recorded an additional impairment charge of $5.4 million. No further impairment charges were incurred in 2004. In 2005, we recorded an additional impairment of $27 thousand related to equipment that had been classified as held for sale as of December 31, 2003 and we recorded an impairment charge of $139 thousand arising from a full physical inventory of laboratory equipment.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

General

Emisphere Technologies, Inc. is a biopharmaceutical company specializing in the oral delivery of therapeutic macromolecules and other compounds that are not currently deliverable by oral means. Since our inception in 1986, we have devoted substantially all of our efforts and resources to research and development conducted on our own behalf and in collaborations with corporate partners and academic research institutions. Our product pipeline includes product candidates for the treatment of cardiovascular diseases, osteoporosis, growth disorders, diabetes, asthma/allergies, obesity and infectious diseases. Development and commercialization of these product candidates entails risk and significant expense. Since inception, we have had no product sales from these product candidates.

Oral heparin and oral insulin are our two lead unpartnered programs. During 2006, we will continue to develop plans for advancing these two programs. Our strategy for the heparin program includes plans for a pivotal, Phase III trial designed to determine the safety and efficacy of oral heparin versus Coumadin® (sodium warfarin) for the prevention of venous thromboembolism following elective total hip replacement. In further support of the heparin program, we are collecting data to demonstrate to the FDA that the *eligen*® technology does not change the heparin in any measurable way. In this regard, during the third quarter of 2005 we conducted a multi-arm, cross-over, clinical trial with sixteen subjects to compare heparin delivered by different injection routes to heparin delivered orally in normal subjects. Our strategy for the insulin program includes a 90 day Phase II trial to evaluate the safety and efficacy of low and high doses of oral insulin tablets versus placebo in subjects with Type 2 diabetes who have inadequate glycemic control with Metformin monotherapy. We began dosing patients in that trial in December 2005 and expect to complete dosing in June 2006.

We will also continue to advance our collaborations with Roche on small molecule compounds for bone related diseases, with Novartis on salmon calcitonin and recombinant human growth hormone, and with a pharmaceutical company based outside the United States to develop an improved oral formulation of the antiviral compound acyclovir.

Liquidity and Capital Resources

As of December 31, 2005, total cash, cash equivalents, restricted cash and investments were $9.2 million, which includes the $4.3 million in restricted cash related to the MHR note. We anticipate that our existing capital resources will not enable us to continue operations past mid-May of 2006, or earlier if unforeseen events or circumstances arise that negatively affect our liquidity. These circumstances may adversely affect our ability to raise additional capital. If we fail to raise additional capital or obtain substantial cash inflows from existing partners prior to May 2006, we will be forced to cease operations. If additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders. We are in discussions with investment bankers concerning our financing options. We cannot assure you that financing will be available on favorable terms or at all.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. As of December 31, 2005, our accumulated deficit was approximately $351 million. Our net loss was $18.1 million, $37.5 million and $44.9 million for the years ended December 31, 2005, 2004 and 2003, respectively. The significant decrease in net loss is a result of the $14.7 million gain on the extinguishment of the Elan note payable. Our cash outlays from operations and capital expenditures were $30.4 million for 2005. Our stockholders' equity decreased from $22.8 million as of December 31, 2003 to a stockholders' deficit of $11.3 million and $14.9 million as of December 31, 2004 and 2005, respectively. We have limited capital resources and operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments. These conditions raise substantial doubt about our ability to continue as a going concern. The audit report prepared by our independent registered public accounting firm relating to our consolidated financial statements for the year ended December 31, 2005 includes an explanatory paragraph expressing the substantial doubt about our ability to continue as a going concern.

Cash Sources and Uses

Cash inflows during 2005 include the equity financing completed in March 2005, the MHR note payable issued in September 2005, the sale of the Farmington, Connecticut facility, milestone payments and other research revenue received from partners. The primary uses of cash have been repayment of debt obligations and funding current operations.

The following table summarizes cash flow activity for the year ended December 31, 2005 and 2004:

	Year ended December 31,	
	2005	2004
	(in thousands)	
Cash Sources		
Proceeds from issuance of equity securities	$ 15,713	$ 1,199
Proceeds from issuance of note payable	12,866	10,000
Proceeds from collection of CEO note receivable	1,883	—
Net proceeds from sales and purchases of investments	8,593	1,270
Proceeds from sales of fixed assets	4,142	24
Total cash sources	$ 43,197	$ 12,493
Cash Uses		
Cash used in operating activities	$ 30,282	$ 22,743
Repayment of debt obligations	13,517	13,312
Increase in restricted cash	4,294	—
Capital expenditures	121	758
Total cash uses	$ 48,214	$ 36,813
Decrease in cash	$ (5,017)	$ (24,320)

The $7.5 million increase in cash used in operating activities as compared to the prior year is primarily due to a $2.8 million increase in professional fees paid related to the Lilly litigation and the implementation of section 404 of the Sarbanes-Oxley Act, a $1.6 million decrease in cash received from partners and a $1.4 million increase in net clinical trial expenses paid.

On August 1, 2005, Dr. Goldberg repaid his outstanding note receivable to Emisphere in full. We received $1.9 million in cash and 46,132 shares of Emisphere common stock that had been held as collateral. These shares were valued using the closing price on July 29, 2005 of $3.56 and have been included in treasury stock.

As of December 31, 2005, we had $4.3 million in restricted cash, which represents the remaining proceeds from the MHR Note available for future drawdowns. These amounts have been classified as restricted cash because the restricted cash account is controlled by MHR, and our right to draw down any of the funds in this account is conditioned upon the requested amounts being no more than 103% of the budgeted cash requirements for the applicable period and our certification that no event of default or material adverse change, as defined in the Loan Agreement, has occurred and our representations and warranties under the Loan Agreement continue to be true and correct. We have the right and the intent to use these funds to support current operations.

Financing Activities

On September 26, 2005, we executed the Loan Agreement with MHR. The Loan Agreement provides for a seven year, $15 million secured loan from MHR to us at an interest rate of 11% (the "Loan"). The Loan Agreement was amended on November 11, 2005 to clarify certain terms. Net proceeds from the Loan were approximately $12.9 million, net of all transactional costs. The Loan is secured by a first priority lien in favor of MHR on substantially all of our assets. The proceeds from the Loan were disbursed to a restricted account and our right to have such funds disbursed to an operating account is conditioned upon the requested amounts for any period not being in excess of 103% of amounts in our budget for such period (then in effect under the terms of the Loan Agreement), and provided that we certify to MHR that no event of default has occurred under the Loan Agreement (or the Convertible Note described below, as applicable), no material adverse change has occurred and our representations and warranties under the Loan Agreement continue to be true and correct. The Loan Agreement requires us to hold a special stockholder meeting for the purpose of obtaining stockholder approval of (i) the exchange of the Loan for an 11% senior secured convertible note (the "Convertible Note") with substantially the same terms as the Loan Agreement, except that the Convertible Note will be convertible, at the sole discretion of MHR or any assignee thereof, into shares of our common stock (the "Conversion Shares") at a price per share of $3.78, interest will be payable in kind rather than in cash and we will have the right to call the Convertible Note after September 26, 2010 if certain conditions are satisfied and (ii) the amendment and restatement of our Restated Certificate of Incorporation. On December 8, 2005, we filed with the Securities and Exchange Commission a definitive proxy statement relating to this special meeting of our stockholders. On January 17, 2006, the special meeting of stockholders was held and both proposals were approved by our stockholders.

The Loan Agreement also provides that an event of default shall be deemed to have occurred if we default on the payment of any obligation or indebtedness when due, any of the liens in favor of MHR created by the transaction fails to constitute a perfected lien, we suffer a bankruptcy or similar insolvency event or proceeding, we materially breach a representation or warranty or fail to observe any covenant or agreement, we suffer and do not discharge in a timely manner a final judgment for the payment of a sum in excess of a certain materiality threshold, our common stock has been delisted or trading has been suspended,

we sell a substantial portion of our assets, we merge with another entity without the prior consent of MHR, or any governmental action renders us unable to honor or perform our obligations under the Loan Agreement or results in a material adverse effect on our operations. If an event of default occurs, the Loan Agreement provides for the immediate repayment of the Loan and certain additional amounts described above and as set forth in the Loan Agreement. In connection with the financing transaction, we amended MHR's existing warrants to purchase 387,374 shares of common stock to provide for additional anti-dilution protection.

As of March 31, 2005, we completed the sale of 4 million registered shares of common stock and warrants to purchase up to 1.5 million shares of common stock. The stock and warrants were sold as units, each unit consisting of one share of common stock and a warrant to purchase 0.375 shares of common stock, at a price of $3.935 per unit. Gross proceeds from the sale were $15.7 million. The net proceeds from this offering were $15.1 million, net of total issuance costs of $0.6 million. $13 million of the proceeds were used on April 1, 2005 for the extinguishment of the Elan note.

In 1996, we entered into a joint venture with Elan to develop oral heparin. In connection with the re-purchase of Elan's joint venture interest in 1999, we issued a zero coupon note (the "Original Elan Note") to Elan. The Original Elan Note had an issue price of $20 million and an original issue discount at maturity of $35 million and a maturity date of July 2, 2006. On December 27, 2004, we entered into a Security Purchase Agreement with Elan, providing for our purchase of our indebtedness to Elan under the Original Elan Note. The value of the Original Elan Note plus accrued interest on December 27, 2004 was approximately $44 million. Pursuant to the Security Purchase Agreement, we paid Elan $13 million and issued to Elan 600,000 shares of our common stock with a market value of approximately $2 million. Also, we issued to Elan a new zero coupon note with an issue price of approximately $29 million (the "Modified Elan Note"), representing the accrued value of the Original Elan Note minus the sum of the cash payment and the value of the 600,000 shares. In 2005, we issued to Elan a warrant to purchase up to 600,000 shares of our common stock at an exercise price of $3.88 and made a $13 million payment to Elan, which completed our repurchase of our indebtedness to Elan.

Overview of Operations

Revenue – Revenue increased during 2005 due in large part to the achievement of a milestone in the Roche collaboration.

Research and Development – Research and development costs increased during 2005 as we increased efforts to prepare for a Phase III pivotal trial for heparin and began our Phase II trial for insulin.

Financing – We raised $15 million through an equity offering in March 2005 and $13 million by issuing a senior secured note to MHR in September 2005. The note is exchangeable for a senior secured convertible note at MHR's option.

Prepayment of Elan note payable – We completed the repurchase of our note payable to Elan in March 2005, resulting in a non-cash gain of $14.7 million.

Sale of Farmington, Connecticut facility – We completed the sale of our Farmington, Connecticut research facility in June 2005, resulting in net proceeds of $4.1 million and a gain on sale of fixed assets of $0.6 million.

Results of Operations

Year Ended December 31, 2005 Compared to Year Ended December 31, 2004

	Year Ended December 31,			
	2005	2004	Change	% Change
	(in thousands)			
Revenue	$ 3,540	$ 1,953	$ 1,587	81%
Research and development	18,915	17,462	1,453	8%
General and administrative expenses	13,165	11,765	1,400	12%
Loss on impairment of fixed assets	166	—	166	n/m
Gain on sale of fixed assets	(563)	1	(564)	n/m
Depreciation and amortization	4,312	4,941	(629)	(13)%
Operating expenses	35,995	34,169	1,826	5%
Operating loss	(32,455)	(32,216)	(239)	1%
Other income (expense)	14,404	(5,306)	19,710	n/m
Net loss	(18,051)	(37,522)	19,471	52%

Revenue increased significantly as compared to 2004 as a result of the new collaborations signed with Novartis and Roche in the second half of 2004. Under the Novartis agreement, the original one year license period was extended through March 31, 2006 at no cost to Novartis. We cannot predict whether Novartis will elect to commence the development phase of the project at that time. The product being developed under the Roche agreement entered Phase I clinical trials in the second quarter of 2005, triggering a milestone payment under the agreement. The receipt of this milestone payment resulted in recognition of additional revenue, in accordance with our revenue recognition policy which limits revenue recognition to total non-refundable cash received. An additional milestone was reached under the Roche agreement in February 2006. Additional milestone payments under this agreement may not be earned in the short-term or at all.

Research and development costs increased by $1.5 million compared to 2004. This increase is partly the result of an increase of $0.9 million in clinical trial activity; specifically, completion of the "heparin is heparin" trial and the initiation of the Phase II insulin trial in India. Additionally, 2004 expenses were lowered by the receipt of a $0.5 million credit upon completion of the final reconciliation of payments related to the PROTECT liquid oral heparin trials. The final cause of the increase is a rise in utility costs of $0.4 million. These increases were partially offset by a decrease in outside laboratory analysis fees, which reflects a progression from pre-clinical to clinical activities.

General and administrative expenses increased by $1.4 million compared to the prior year. The increase reflects an overall increase in professional fees, including $1.3 million in consulting and accounting fees associated with implementing the requirements of section 404 of the Sarbanes-Oxley Act.

The $0.6 million gain on sale of fixed assets relates to the sale of the Farmington, Connecticut research facility.

Depreciation and amortization costs decreased by $0.6 million as compared to 2004. This decrease in depreciation results from a decrease in capital expenditures over the last several years.

Other expense and income was $14.4 million of income in 2005 as compared to $5.3 million of expense for 2004. Several transactions affected this fluctuation. First, 2004 includes $5.9 million in interest expense related to the note payable to Elan, which was repaid in the first quarter of 2005. Interest expense for 2005 includes $0.5 million related to the Novartis note and $0.6 million related to the MHR note. Also included in other income and expense in 2005 is the net increase in the fair value of derivative instruments of $0.6 million. In addition, 2005 includes a $14.7 million gain on the extinguishment of debt related to the repurchase of our indebtedness to Elan and a $1.0 million gain related to the sale of certain investments. These gains were partially offset by decreases in investment and other income.

As a result of the above factors, we sustained a net loss of $18.1 million for the year ended December 31, 2005, compared to a net loss of $37.5 million for the year ended December 31, 2004. These results include a number of non-recurring transactions – the increase in revenue, the gain on the extinguishment of the note payable to Elan, and the gains on the sales of fixed assets and investments – and are therefore not necessarily indicative of future results.

Year Ended December 31, 2004 Compared to Year Ended December 31, 2003

	Year Ended December 31,			
	2004	2003	Change	% Change
	(in thousands)			
Revenue	$ 1,953	$ 400	$ 1,553	388%
Research and development	17,462	21,026	(3,564)	(17)%
General and administrative expenses	11,766	9,715	2,051	21%
Loss on impairment of fixed assets	—	5,439	(5,439)	(100)%
Depreciation and amortization	4,941	5,806	(865)	(15)%
Operating expenses	34,169	41,986	(7,817)	(19)%
Operating loss	(32,216)	(41,586)	9,370	23%
Other expense	(5,306)	(3,283)	(2,023)	(62)%
Net loss	(37,522)	(44,869)	7,347	16%

Revenue increased significantly as compared to 2003 as a result of the new collaborations signed with Novartis and Roche in the second half of 2004.

Research and development costs decreased by $3.6 million compared to 2003. This decrease is comprised of a decrease in occupancy costs of $1.1 million due to the surrender of a portion of the leased space at the Tarrytown facility in late 2003, a decrease in clinical trial expenses of $0.8 million related to the final reconciliation of payments related to the PROTECT liquid oral heparin trials and a $1.7 million decrease in all other research costs. The decrease in all other research costs of $1.7 million consisted of $0.4 million in reduced compensation and related expenses, $0.8 million in reduced lab/clinical supply costs, and $0.5 million in lower consulting and other miscellaneous costs, which reflect an overall effort to reduce spending.

General and administrative expenses increased by $2.0 million. The increase is primarily the result of increased professional fees associated with the litigation with Lilly.

The 2003 loss on impairment of fixed assets arose from the surrender to the landlord of approximately 27% of our leased space at the Tarrytown facility and from the impairment of equipment held for sale at the Farmington, Connecticut research facility.

Depreciation and amortization costs decreased by $0.9 million as compared to 2003. This decrease is primarily due to the surrender of the leased space at the Tarrytown facility at the end of 2003.

Other expense and income increased by $2.0 million compared to the prior year. The increase is primarily the result of a decrease in investment income of $1.2 million and an increase in interest expense of $1.0 million related to the note payable to Elan. See **"Liquidity and Capital Resources**" for further discussion concerning the Elan note. The decrease in investment income resulted from lower cash and investment balances.

Based on the above, we sustained a net loss of $37.5 million for the year ended December 31, 2004, compared to a net loss of $44.9 million for the year ended December 31, 2003.

Critical Accounting Estimates and New Accounting Pronouncements

Critical Accounting Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect reported amounts and related disclosures in the financial statements. Management considers an accounting estimate to be critical if:

- It requires assumptions to be made that were uncertain at the time the estimate was made, and
- Changes in the estimate or different estimates that could have been selected could have a material impact on our consolidated results of operations or financial condition.

Revenue Recognition – Revenue includes amounts earned from collaborative agreements and feasibility studies and is recognized using the lower of the percentage complete applied to expected contractual payments or the total non-refundable cash received to date. Changes in the projected hours to complete the project could significantly change the amount of revenue recognized. During the year ended December 31, 2005, we do not believe that reasonable changes in the projections would have had a material effect on recorded revenue.

Purchased Technology – Purchased technology represents the value assigned to patents and the rights to use, sell or license certain technology in conjunction with heparin. These assets underlie our research and development projects related to solid oral heparin, and if the projects prove unsuccessful, the assets have no alternative future use. Cash flow projections for our potential heparin product greatly exceed the $2 million book value of purchased technology. However, if a competitor were to gain FDA approval for an oral heparin product before us or future clinical trials related to oral heparin failed to meet the targeted endpoints, we would likely record an impairment related to these assets.

Warrants and the MHR warrant purchase option – Warrants issued in connection with the Kingsbridge Common Stock Purchase Agreement and the equity financing completed in March 2005 have been classified as liabilities due to certain provisions that may require cash settlement in certain circumstances. The warrant purchase option contained in the MHR Note is accounted for separately from the underlying debt and recorded as a derivative instrument. This embedded derivative instrument was classified as a liability at issuance. At each balance sheet date, we adjust the warrants and the warrant purchase option to reflect their current fair value. We estimate the fair value of these instruments using the Black-Scholes option pricing model which takes into account a variety of factors, including historical stock price volatility, risk-free interest rates, remaining maturity and the closing price of our common stock. Changes in the assumptions used to estimate the fair value of these derivative instruments could result in a material change in the fair value of the instruments. Although we believe the assumptions used to estimate the fair values of the warrants and warrant purchase option are reasonable, we cannot assure the accuracy of the assumptions or estimates. See Item 7A. Quantitative and Qualitative Disclosures about Market Risk for additional information on the volatility in market value of derivative instruments.

*Equipment and Leasehold Improvements.*Equipment and leasehold improvements are stated at cost. Depreciation and amortization are provided for on a straight-line basis over the estimated useful life of the asset. Leasehold improvements are amortized over the life of the lease or of the improvements, whichever is shorter. Expenditures for maintenance and repairs that do not materially extend the useful lives of the respective assets are charged to expense as incurred. The cost and accumulated depreciation or amortization of assets retired or sold are removed from the respective accounts and any gain or loss is recognized in operations.

Impairment of Long-Lived Assets. In accordance with Statement of Financial Accounting Standards ("SFAS") 144, we review our long-lived assets for impairment whenever events and circumstances indicate that the carrying value of an asset might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is triggered if the carrying amount exceeds estimated undiscounted future cash flows. We recognized an impairment on long-lived assets of $5.4 million during the year ended December 31, 2003. This impairment was based on estimates of future cash flows, including potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by us. Actual results could differ significantly from these estimates, which would result in additional impairment losses or losses on disposal of the assets. During 2005, we conducted a full physical inventory of all laboratory equipment. This inventory identified equipment with a net book value of $139 thousand that could not be located within our facilities. This equipment was removed from our books, and the loss of $139 thousand was recorded in loss on impairment of fixed assets on the consolidated statement of operations.

Clinical Trial Accrual Methodology. Clinical trial expenses represent obligations resulting from our contracts with various research organizations in connection with conducting clinical trials for our product candidates. We account for those expenses on an accrual basis according to the progress of the trial as measured by patient enrollment and the timing of the various aspects of the trial. Accruals are recorded in accordance with the following methodology: (i) the costs for period expenses, such as investigator meetings and initial start-up costs, are expensed as incurred based on management's estimates, which are impacted by any change in the number of sites, number of patients and patient start dates; (ii) direct service costs, which are primarily on-going monitoring costs, are recognized on a straight-line basis over the life of the contract; and (iii) principal investigator expenses that are directly associated with recruitment are recognized based on actual patient recruitment. All changes to the contract amounts due to change orders are analyzed and recognized in accordance with the above methodology. Change orders are triggered by changes in the scope, time to completion and the number of sites. During the course of a trial, we adjust our rate of clinical expense recognition if actual results differ from our estimates.

New Accounting Pronouncements

In December 2004, the Financial Accounting Standards Board ("FASB") issued a revision of SFAS 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). The revised statement, SFAS 123(R), "Share-Based Payment", establishes standards for share-based transactions in which an entity receives employee's services for (a) equity instruments of the entity, such as stock options, or (b) liabilities that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of such equity instruments. SFAS 123(R) eliminates the option of accounting for share-based compensation transactions using APB Opinion No. 25, "Accounting for Stock Issued to Employees", and requires that companies expense the fair value of stock options and similar awards, as measured on the awards' grant date. For public companies, SFAS 123(R) is effective at the beginning of the first interim or annual reporting period that begins after December 15, 2005. We plan to adopt SFAS 123(R) on January 1, 2006. SFAS 123(R) applies to all awards granted after the date of adoption, and to awards modified, repurchased or cancelled after that date. We have elected to apply SFAS 123(R) using a modified version of prospective application, under which compensation cost is recognized only for the portion of awards outstanding for which the requisite service has not been rendered as of the adoption date, based on the grant date fair value of those awards calculated under SFAS 123 for pro forma disclosures. We have also elected to continue to use the Black-Scholes model to value our share-based payments. We are currently evaluating the other requirements of SFAS 123(R). We expect the adoption of SFAS 123(R) will have a significant impact on our financial statements, but have not determined the extent of the impact. We believe the impact of adopting SFAS 123(R), based on our unvested options outstanding at December 31, 2005, will be to increase our stock-based employee compensation expense in 2006 by $1.0 million to $1.2 million. The preceding excludes the effect of our Employee Stock Purchase Plan, which has not been determined.

In May 2005, the FASB issued SFAS 154, "Accounting Changes and Error Corrections". SFAS 154 replaces APB 20, "Accounting Changes", and SFAS 3, "Reporting Accounting Changes in Interim Financial Statements", and requires retrospective application to prior-period financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of a change. SFAS 154 also redefines "restatement" as the revising of previously issued financial statements to reflect the correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We are required to adopt the provisions of SFAS 154, as applicable, beginning January 1, 2006.

Off-Balance Sheet Arrangements

As of December 31, 2005, we had no material off-balance sheet arrangements, other than operating leases.

In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions which, in our judgment, are normal and customary for companies in our industry sector. These agreements are typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or incurred by the indemnified parties with respect to our product candidates, use of such product candidates, or other actions taken or omitted by us. The maximum potential amount of future payments we could be required to make under these indemnification provisions is unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we have no liabilities recorded for these provisions as of December 31, 2005.

In the normal course of business, we may be confronted with issues or events that may result in a contingent liability. These generally relate to lawsuits, claims, environmental actions or the actions of various regulatory agencies. We consult with counsel and other appropriate experts to assess the claim. If, in our opinion, we have incurred a probable loss as set forth by accounting principles generally accepted in the United States, an estimate is made of the loss and the appropriate accounting entries are reflected in our consolidated financial statements. After consultation with legal counsel, we do not anticipate that liabilities arising out of currently pending or threatened lawsuits and claims, including the pending litigation described in Part I, Item 3 **"Legal Proceedings",** will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Significant contractual obligations as of December 31, 2005 are as follows:

		Amount Due in			
Type of Obligation	**Total Obligation**	**Less than 1 year**	**1 to 3 years**	**4 to 5 years**	**More than 5 years**
			(in thousands)		
Long-term debt [1] [2]	$ 43,879	$ —	$ —	$ 12,515	$ 31,364
Derivative liabilities [3]	6,528	6,528	—	—	—
Capital lease obligations [1]	235	235	—	—	—
Operating lease obligations	2,932	1,759	1,173	—	—
Clinical research organizations [4]	143	143	—	—	—
Total	$ 53,717	$ 8,665	$ 1,173	$ 12,515	$ 31,364

(1) Amounts include both principal and related interest payments.

(2) In December 2004, we issued a $10 million convertible note payable to Novartis (the "Novartis Note") due December 2009. Interest may be paid annually or accreted as additional principal. We may convert the Novartis Note at any time prior to maturity into a number of shares of our common stock equal to the principal and accrued and unpaid interest to be converted divided by the then market price of our common stock, provided certain conditions are met, including that the number of shares issued to Novartis, when issued, does not exceed 19.9% of the total shares of Company common stock outstanding, that at the time of such conversion no event of default under the Note has occurred and is continuing, and that there is either an effective shelf registration statement in effect covering the resale of the shares issued in connection with such conversion or the shares may be resold by Novartis pursuant to SEC Rule 144(k). Upon the occurrence of an event of default prior to conversion, any unpaid principal and accrued interest on the Novartis Note would become immediately due and payable. If the Novartis Note is converted into our common stock, Novartis would have the right to require us to repurchase the shares of common stock within six months after an event of default under the Novartis Note, for an aggregate purchase price equal to the principal and interest that was converted, plus interest from the date of conversion, as if no conversion had occurred. At December 31, 2005, the balance on the Novartis Note was $10.5 million.

In September 2005, we issued a $15 million note to MHR due September 2012. Interest at 11% is compounded monthly and payable quarterly until such time that MHR, at its sole discretion and after receiving the requisite stockholder approval, exchanges the Loan for the Convertible Note. If such an exchange occurs, the interest will then be accreted as additional principal. See **"Liquidity and Capital Resources"** above for further information concerning the MHR Note. At December 31, 2005, the balance on the MHR Note was $15 million. The amount shown above assumes that the Loan is exchanged for the Convertible Note in the first quarter of 2006.

(3) We have issued warrants to purchase shares of our common stock which contain provisions requiring us to make a cash payment to the holders of the warrant for any gain that could have been realized if the holders exercise the warrants and we subsequently fail to deliver a certificate representing the shares to be issued upon such exercise by the third trading day after such warrants have been exercised. As a result, these warrants have been classified as liabilities. Additionally, in conjunction with the MHR Note, we issued options to purchase warrants containing the same cash payment provisions discussed above. The warrants and warrant purchase option have been recorded at their fair value and are classified as current liabilities. The value and timing of the actual cash payments related to these derivative instruments could differ materially from the amounts and periods shown.

(4) We are obligated to make payments under certain contracts with third parties who provide clinical research services to support our ongoing research and development.

Transactions with Related Parties

During 2003, two former members of the Board of Directors resigned their Board positions and became consultants to Emisphere. The consulting agreements terminated in accordance with their original terms in November 2005.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Fair Value of Warrants and Derivative Liabilities. At December 31, 2005, the value of derivative instruments was $6.5 million. We estimate the fair values of these instruments using the Black-Scholes option pricing model which takes into account a variety of factors, including historical stock price volatility, risk-free interest rates, remaining maturity and the closing price of our common stock. We believe that the assumption that has the greatest impact on the determination of fair value is the closing price of our common stock. The following table illustrates the potential effect on the fair value of derivative instruments of changes in certain of the assumptions made:

	Increase/(decrease)
	(in thousands)
10% increase in stock price	$ 887
20% increase in stock price	1,785
5% increase in assumed volatility	241
10% decrease in stock price	(874)
20% decrease in stock price	(1,734)
5% decrease in assumed volatility	(253)

Investments. Our primary investment objective is to preserve principal while maximizing yield without significantly increasing risk. Our investments may consist of U.S. mortgage-backed securities, commercial paper, corporate notes and corporate equities. Our fixed rate interest-bearing investments totaled $3 million at December 31, 2005. These investments mature in less than one year. We have classified all investments as short-term based on our intent to liquidate the investments to fund operations over the upcoming twelve month period.

Due to the conservative nature of our short-term fixed interest rate investments (maturities in less than one year), we do not believe that they have a material exposure to interest rate risk.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and financial statement schedules begin on page F-1 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We conducted an evaluation of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this Annual Report on Form 10-K. The evaluation was conducted under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer. Based upon this evaluation, each concluded that, as of the end of such period, our disclosure controls and procedures were effective in ensuring that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported on a timely basis, and is accumulated and communicated to our management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

On September 29, 2005, Arthur Dubroff resigned from the Board of Directors. Mr. Dubroff held the position of Chairman of the audit committee of the Board of Directors and qualified as the "audit committee financial expert," within the meaning of Item 401(h) of Regulation S-K. Due to Mr. Dubroff's resignation, these positions are currently vacant. We are working to identify a person to fill these positions and expect to do so in the time period as required by the listing requirements of the Nasdaq National Market.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework established in *Internal Control — Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on that evaluation, our management has concluded that our internal control over financial reporting was effective as of December 31, 2005. PricewaterhouseCoopers LLP, our independent registered public accounting firm, has issued a report on management's assessment and on the effectiveness of our internal control over financial reporting as of December 31, 2005, which report is included herein at page F-2.

Because of its inherent limitations, internal contorl over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended December 31, 2005 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Our management, including our chief executive officer and chief financial officer, does not expect that our disclosure controls and procedures or internal controls over financial reporting will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the system are met and cannot detect all deviations. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or deviations, if any, within the company have been detected. Projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders. We have adopted a code of ethics applicable to our directors, chief executive officer, chief financial officer, controller and senior financial management. Our code of ethics is filed as Exhibit 14.1 and is available on our website at www.emisphere.com/ovr_cgcoe.asp.

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item is incorporated by reference to the Proxy Statement to be distributed in connection with our next annual meeting of stockholders.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) Financial Statements

A list of the financial statements filed as a part of this report appears on page F-1.

(2) Financial Statement Schedules

Schedules have been omitted because the information required is not applicable or is shown in the Financial Statements or the corresponding Notes to the Consolidated Financial Statements.

(3) Exhibits

A list of the exhibits filed as a part of this report appears on pages E-1 and E-2, which follow immediately after the financial statements.

(b) See Exhibits listed under the heading "Exhibit Index" set forth on page E-1.

(c) Schedules have been omitted because the information required is not applicable or is shown in the Financial Statements or the corresponding Notes to the Consolidated Financial Statements.

SIGNATURES

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

Date: March 16, 2006

EMISPHERE TECHNOLOGIES, INC.

By: /s/ MICHAEL M. GOLDBERG

Michael M. Goldberg, M.D.
Chairman of the Board and Chief Executive Officer

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

Name and Signature	Title	Date
/s/ MICHAEL M. GOLDBERG **Michael M. Goldberg, M.D.**	Director, Chairman of the Board and Chief Executive Officer (principal executive officer)	March 16, 2006
/s/ HOWARD M. PACK **Howard M. Pack**	Director	March 16, 2006
/s/ MARK H. RACHESKY **Mark H. Rachesky, M.D.**	Director	March 16, 2006
/s/ MICHAEL WEISER **Michael Weiser, M.D.**	Director	March 16, 2006
/s/ STEPHEN K. CARTER **Stephen K. Carter, M.D.**	Director	March 16, 2006
/s/ ELLIOT M. MAZA **Elliot M. Maza, J.D., C.P.A.**	Chief Financial Officer (principal financial officer)	March 16, 2006

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED FINANCIAL STATEMENTS

Index

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Emisphere Technologies, Inc.:

We have completed an integrated audit of Emisphere Technologies, Inc.'s 2005 consolidated financial statements and of its internal control over financial reporting as of December 31, 2005 and audits of its 2004 and 2003 consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Our opinions, based on our audits, are presented below.

Consolidated financial statements

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Emisphere Technologies, Inc. and its subsidiary, at December 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2005, in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company has experienced sustained operating losses, has limited capital resources and has significant future commitments that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Internal control over financial reporting

Also, in our opinion, management's assessment, included in Management's Report on Internal Controls over Financial Reporting appearing under Item 9A, that the Company maintained effective internal control over financial reporting as of December 31, 2005, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), is fairly stated, in all material respects, based on those criteria. Furthermore, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2005, based on the criteria established in *Internal Control – Integrated Framework* issued by the COSO. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express opinions on management's assessment and on the effectiveness of the Company's internal control over financial reporting based on our audit. We conducted our audit of internal control over financial reporting in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. An audit of internal control over financial reporting includes obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we consider necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

PricewaterhouseCoopers LLP

New York, New York
March 16, 2006

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	December 31, 2005	December 31, 2004
ASSETS		
Current assets:		
Cash and cash equivalents	$ 1,950	$ 6,967
Restricted cash	4,294	—
Short-term investments	2,974	10,583
Accounts receivable	71	120
Prepaid expenses and other current assets	951	2,516
Total current assets	10,240	20,186
Equipment and leasehold improvements, net	5,899	10,007
Land, building and equipment held for sale, net	—	3,589
Purchased technology, net	2,034	2,273
Other assets	815	237
Total assets	$ 18,988	$ 36,292
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable and accrued expenses	$ 3,316	$ 3,823
Deferred revenue	290	1,839
Current portion of capital lease obligation	225	207
Current portion of deferred lease liability	397	397
Derivative instruments	6,528	762
Other current liabilities	6	300
Total current liabilities	10,762	7,328
Notes payable, including accrued interest and net of related discount	22,857	39,332
Capital lease obligation, net of current portion	—	245
Deferred lease liability, net of current portion	264	661
Total liabilities	33,883	47,566
Commitments and contingencies (Note 12)		
Stockholders' deficit:		
Preferred stock, $.01 par value; authorized 1,000,000 shares; issued and outstanding-none	—	—
Common stock, $.01 par value; authorized 50,000,000 shares; issued 23,673,299 shares (23,383,567 outstanding) in 2005 and 19,354,349 shares (19,110,749 outstanding) in 2004	237	193
Additional paid-in capital	339,452	325,721
Note receivable from officer and director	—	(804)
Accumulated deficit	(350,606)	(332,555)
Accumulated other comprehensive loss	(26)	(42)
Common stock held in treasury, at cost; 289,732 as of December 31, 2005 and 243,600 shares as of December 31, 2004	(3,952)	(3,787)
Total stockholders' deficit	(14,895)	(11,274)
Total liabilities and stockholders' deficit	$ 18,988	$ 36,292

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

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	Year Ended December 31,		
	2005	2004	2003
Revenue	$ 3,540	$ 1,953	$ 400
Costs and expenses:			
Research and development	18,915	17,462	21,026
General and administrative	13,165	11,765	9,648
(Gain)/loss on sale of fixed assets	(563)	1	67
Loss on impairment of fixed assets	166	—	5,439
Depreciation and amortization	4,312	4,941	5,806
Total costs and expenses	35,995	34,169	41,986
Operating loss	(32,455)	(32,216)	(41,586)
Other income and (expense):			
Gain on extinguishment of note payable	14,663	—	—
Investment and other income	526	846	1,882
Gain on sale of investment	980	—	—
Change in fair value of derivative instruments	(624)	(136)	—
Interest expense	(1,141)	(6,016)	(5,165)
Total other income and (expense)	14,404	(5,306)	(3,283)
Net loss	$ (18,051)	$ (37,522)	$ (44,869)
Net loss per share, basic and diluted	$ (0.81)	$ (2.04)	$ (2.48)
Weighted average shares outstanding, basic	22,300,646	18,411,240	18,077,402
Weighted average shares outstanding, diluted	22,311,881	18,411,240	18,077,402

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

EMISPHERE TECHNOLOGIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2005	2004	2003
Cash flows from operating activities:			
Net loss	$ (18,051)	$ (37,522)	$ (44,869)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	4,073	4,702	5,567
Amortization of purchased technology	239	239	239
Non-cash interest expense	667	6,103	5,165
Changes in the fair value of derivative instruments	624	—	—
Gain on extinguishment of note payable	(14,663)	—	—
Impairment of intangible and fixed assets	166	—	5,439
Non-cash compensation	167	919	415
Net realized (gain) loss on sale of investment	(980)	—	(493)
(Gain) loss on sale of fixed assets	(563)	1	67
Other	150	(235)	(112)
Changes in assets and liabilities excluding non-cash charges:			
Decrease in accounts receivable	49	206	509
Decrease in prepaid expenses and other current assets	357	87	443
Increase in other assets	(64)	—	(5)
(Decrease) increase in accounts payable and accrued expenses	(507)	1,439	(2,686)
(Decrease) increase in deferred revenue	(1,549)	1,714	125
Decrease in deferred lease liability	(397)	(396)	(467)
Total adjustments	(12,231)	14,779	14,206
Net cash used in operating activities	(30,282)	(22,743)	(30,663)
Cash flows from investing activities:			
Proceeds from sale and maturity of investments	8,593	7,227	56,193
Purchases of investments	—	(5,957)	(17,243)
Increase in restricted cash	(4,294)	—	—
Proceeds from collection of CEO note receivable	1,883	—	—
Proceeds from sale of fixed assets	4,142	24	152
Capital expenditures	(121)	(758)	(1,168)
Net cash provided by investing activities	10,203	536	37,934
Cash flows from financing activities:			
Proceeds from exercise of stock options	655	1,199	551
Net proceeds from issuance of common stock	11,321	—	—
Net proceeds from issuance of warrants	3,737	—	—
Repayment of Elan note payable	(13,000)	(13,000)	—
Net proceeds from issuance of note payable	12,866	10,000	—
Repayment of notes payable and capital lease obligation	(517)	(312)	—
Proceeds from capital lease obligation	—	—	681
Net cash provided by (used in) financing activities	15,062	(2,113)	1,232
Net (decrease) increase in cash and cash equivalents	(5,017)	(24,320)	8,503
Cash and cash equivalents, beginning of year	6,967	31,287	22,784
Cash and cash equivalents, end of year	$ 1,950	$ 6,967	$ 31,287
Supplemental disclosure of cash flow information:			
Tax refund		$ 79	$ 119
Interest paid	$ 474	$ 49	
Non-cash investing and financing activities:			
Issuance of stock options to consultants	$ 117	$ 198	$ 536
Financing of insurance premium		$ 373	
Issuance of common stock in connection with paydown of Elan note		$ 1,980	
Issuance of warrants	$ 1,632	$ 626	
Treasury stock received as partial settlement of CEO note receivable	$ 164		
Fair value of stock-based compensation under employee stock purchase plan		$ 672	

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

EMISPHERE TECHNOLOGIES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY
For the years ended December 31, 2005, 2004 and 2003
(in thousands, except share data)

	Common Stock		Additional Paid-in Capital	Note Receivable	Accumulated Deficit	Accumulated Other Comprehensive (Loss) Income	Common Stock Held in Treasury		Total
	Shares	Amount					Shares	Amount	
Balance, December 31, 2002	18,253,131	182	321,292	(804)	(250,164)	821	243,600	(3,787)	67,540
Net loss					(44,869)				(44,869)
Unrealized loss on investments						(831)			(831)
Comprehensive loss									(45,700)
Sale of common stock under employee stock purchase plans and exercise of options	193,957	2	549						551
Issuance of stock options for services rendered			416						416
Balance, December 31, 2003	18,447,088	184	322,257	(804)	(295,033)	(10)	243,600	(3,787)	22,807
Net loss					(37,522)				(37,522)
Unrealized loss on investments						(32)			(32)
Comprehensive loss									(37,554)
Issuance of common stock in connection with paydown of Elan note	600,000	6	1,974						1,980
Sale of common stock under employee stock purchase plans and exercise of options	297,641	3	1,868						1,871
Issuance of warrants in connection with financing agreement			(626)						(626)
Issuance of stock to directors	9,620		50						50
Issuance of stock options for services rendered			198						198
Balance, December 31, 2004	19,354,349	193	325,721	(804)	(332,555)	(42)	243,600	(3,787)	(11,274)
Net loss					(18,051)				(18,051)
Unrealized gain on investments						16			16
Comprehensive loss									(18,035)
Issuance of warrants in connection with paydown of Elan note			1,632						1,632
Issuance of common stock	4,000,000	40	11,281						11,321
Sale of common stock under employee stock purchase plans and exercise of options	305,100	4	651						655
Collection of CEO note receivable				804			46,132	(165)	639
Issuance of stock to directors	13,850		50						50
Issuance of stock options for consulting services			117						1172
Balance, December 31, 2005	23,673,299	$ 237	$ 339,452	—	$ (350,606)	$ (26)	289,732	$ (3,952)	$ (14,895)

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

EMISPHERE TECHNOLOGIES, INC.

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

1. Nature of Operations and Liquidity

Nature of Operations. Emisphere Technologies, Inc. ("Emisphere", "our", "us" or "we") is a biopharmaceutical company specializing in the oral delivery of therapeutic macromolecules and other compounds that are not currently deliverable by oral means. Since our inception in 1986, we have devoted substantially all of our efforts and resources to research and development conducted on our own behalf as well as through collaborations with corporate partners and academic research institutions. We have no product sales to date. We operate under a single segment.

Our core business strategy is to develop oral forms of drugs that are not currently available or have poor bioavailability in oral form, either alone or with partners, by applying the *eligen*® technology to those drugs. Typically, we conduct proof-of-concept Phase I and II clinical trials with the objective of attracting a partner to commercialize our product candidates without significant further funding. We also pursue development of certain product candidates on our own. We expect to continue to incur operating losses.

Risks and Uncertainties. We have no products approved for sale by the U.S. Food and Drug Administration. There can be no assurance that our research and development will be successfully completed, that any products developed will obtain necessary government regulatory approval or that any approved products will be commercially viable. In addition, we operate in an environment of rapid change in technology and are dependent upon the continued services of our current employees, consultants and subcontractors.

Liquidity. We anticipate that our existing capital resources will not enable us to continue operations past mid-May of 2006, or earlier if unforeseen events or circumstances arise that negatively affect our liquidity. These circumstances may adversely affect our ability to raise additional capital. If we fail to raise additional capital or obtain substantial cash inflows from existing partners prior to May 2006, we will be forced to cease operations. If additional capital is raised through the sale of equity or convertible debt securities, the issuance of such securities would result in dilution to our existing stockholders. We are in discussions with investment bankers concerning our financing options. We cannot assure you that financing will be available on favorable terms or at all.

We have limited capital resources and operations to date have been funded with the proceeds from collaborative research agreements, public and private equity and debt financings and income earned on investments. These conditions raise substantial doubt about our ability to continue as a going concern. The audit report prepared by our independent registered public accounting firm relating to our consolidated financial statements for the year ended December 31, 2005 includes an explanatory paragraph expressing the substantial doubt about our ability to continue as a going concern.

Since our inception in 1986, we have generated significant losses from operations and we anticipate that we will continue to generate significant losses from operations for the foreseeable future. As of December 31, 2005, our accumulated deficit was approximately $351 million. Our net loss was $18.1 million, $37.5 million and $44.9 million for the years ended December 31, 2005, 2004 and 2003, respectively. The significant decrease in net loss is a result of the $14.7 million gain on the extinguishment of the Elan note payable. Our cash outlays from operations and capital expenditures were $30.4 million for 2005. Our stockholders' equity decreased from $22.8 million as of December 31, 2003 to a stockholders' deficit of $11.3 million and $14.9 million as of December 31, 2004 and 2005, respectively.

2. Summary of Significant Accounting Policies

Use of Estimates. The preparation of consolidated financial statements in accordance with accounting principles generally accepted in the United States involves the use of estimates and assumptions that affect the recorded amounts of assets and liabilities as of the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results may differ substantially from these estimates. Significant estimates include the fair value and recoverability of the carrying value of purchased technology, the fair value and recoverability of the Farmington research facility, recognition of on-going clinical trial costs, estimated costs to complete research collaboration projects and deferred taxes.

Principles of Consolidation. The consolidated financial statements include the accounts of one subsidiary. All inter-company transactions have been eliminated in consolidation.

Concentration of Credit Risk. Financial instruments, which potentially subject us to concentrations of credit risk, consist of cash, cash equivalents and investments. We invest excess funds in accordance with a policy objective seeking to preserve both liquidity and safety of principal. We generally invest our excess funds in obligations of the U.S. government and its agencies, bank deposits, money market funds, mortgage-backed securities, and investment grade debt securities issued by corporations and financial institutions. We hold no collateral for these financial instruments.

Cash, Cash Equivalents, and Investments. We consider all highly liquid, interest-bearing instruments with maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents may include demand deposits held in banks and interest bearing money market funds.

We consider our investments to be available for sale. Investments are carried at fair value, with unrealized holding gains and losses reported in stockholders' deficit. The fair value of the investments has been estimated based on quoted market prices.

Realized gains and losses are included as a component of investment income. In computing realized gains and losses, we determine the cost of our investments on a specific identification basis. Such cost includes the direct costs to acquire the investments, adjusted for the amortization of any discount or premium. The following is a summary of sales of investments:

			Realized	
Year ended December 31,	Amortized Cost Basis	Proceeds	Gains	Losses	Net
			(in thousands)		
2005	$ 1,088	$ 2,068	$ 989	$ (9)	$ 980
2004	—	—	—	—	—
2003	2,169	2,662	493	—	493

The following is a summary of the fair value of available for sale investments:

	Less than 12 Months		12 Months or Greater		Total	
	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
			(in thousands)			
At December 31, 2005:						
Maturities less than one year:						
Mortgage-backed securities	—	—	$ 2,974	$ (26)	$ 2,974	$ (26)
At December 31, 2004:						
Equity securities	$ 88	—	—	—	$ 88	—
Maturities less than one year:						
Mortgage-backed securities	6,527	$ (10)	—	—	6,527	$ (10)
Maturities between one and three years:						
Mortgage-backed securities	1,982	(18)	$ 1,986	$ (14)	3,968	(32)
	$ 8,597	$ (28)	$ 1,986	$ (14)	$ 10,583	$ (42)

The unrealized losses on our investments were primarily caused by interest rate increases, which generally resulted in a decrease in the market value of our portfolio. Changes in fair value due to interest rate changes typically diminish as the securities approach maturity. We intend to hold these securities for most, if not all, of their remaining term. As a result, we do not consider these marketable securities at December 31, 2005 and 2004 to be other-than-temporarily impaired.

Interest income, which is included in investment income, is recognized as earned.

Equipment and Leasehold Improvements. Equipment and leasehold improvements are stated at cost. Depreciation and amortization are provided for on a straight-line basis over the estimated useful life of the asset. Leasehold improvements are amortized over the life of the lease or of the improvements, whichever is shorter. Expenditures for maintenance and repairs that do not materially extend the useful lives of the respective assets are charged to expense as incurred. The cost and accumulated depreciation or amortization of assets retired or sold are removed from the respective accounts and any gain or loss is recognized in operations.

Purchased Technology. Purchased technology represents the value assigned to patents and the right to use, sell or license certain technology in conjunction with solid oral heparin that were acquired from Ebbisham Ltd. These assets underlie our research and development projects related to solid oral heparin and, if the projects prove unsuccessful, the assets have no alternative future use. In accordance with SFAS 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", the fair value of purchased technology is reviewed for impairment whenever events and circumstances indicate that the carrying value might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is triggered if the carrying amount exceeds estimated undiscounted future cash flows. See Note 5 for a further discussion of purchased technology.

Impairment of Long-Lived Assets. In accordance with SFAS 144, we review our long-lived assets for impairment whenever events and circumstances indicate that the carrying value of an asset might not be recoverable. An impairment loss, measured as the amount by which the carrying value exceeds the fair value, is recognized if the carrying amount exceeds estimated undiscounted future cash flows. See Note 4 for further discussion of impairments recognized under SFAS 144.

Deferred Lease Liability. Various leases entered into by us provide for rental holidays and escalations of the minimum rent during the lease term, as well as additional rent based upon increases in real estate taxes and common maintenance charges. We record rent expense from leases with rental holidays and escalations using the straight-line method, thereby prorating the total rental commitment over the term of the lease. Under this method, the deferred lease liability represents the difference between the minimum cash rental payments and the rent expense computed on a straight-line basis.

Repurchase of Common Stock. In the past, we have repurchased shares of our common stock. Such stock, which is deemed to be treasury stock, is recorded at cost.

Revenue Recognition. We recognize revenue in accordance with Staff Accounting Bulletin No. 104, "Revenue Recognition" ("SAB 104"), and Financial Accounting Standards Board ("FASB") Emerging Issues Task Force No. 00-21 "Accounting for Revenue Arrangements with Multiple Deliverables" ("EITF 00-21"). Revenue includes amounts earned from collaborative agreements and feasibility studies and is comprised of reimbursed research and development costs, as well as upfront and research and development milestone payments. Deferred revenue represents payments received which are related to future performance. Non-refundable upfront and research and development milestone payments and payments for services are recognized as revenue as the related services are performed over the term of the collaboration. Revenue recognized is the lower of the percentage complete, measured by incurred costs, applied to expected contractual payments or the total non-refundable cash received to date. With regards to revenue from non-refundable fees, changes in assumptions of estimated costs to complete could have a material impact on the revenue recognized.

Research and Development and Clinical Trial Expenses. Research and development expenses include costs directly attributable to the conduct of research and development programs, including the cost of salaries, payroll taxes, employee benefits, materials, supplies, maintenance of research equipment, costs related to research collaboration and licensing agreements, the cost of services provided by outside contractors, including services related to our clinical trials, clinical trial expenses, the full cost of manufacturing drug for use in research, preclinical development, and clinical trials. All costs associated with research and development are expensed as incurred.

Clinical research expenses represent obligations resulting from our contracts with various research organizations in connection with conducting clinical trials for our product candidates. We account for those expenses on an accrual basis according to the progress of the trial as measured by patient enrollment and the timing of the various aspects of the trial. Accruals are recorded in accordance with the following methodology: (i) the costs for period expenses, such as investigator meetings and initial start-up costs, are expensed as incurred based on management's estimates, which are impacted by any change in the number of sites, number of patients and patient start dates; (ii) direct service costs, which are primarily on-going monitoring costs, are recognized on a straight-line basis over the life of the contract; and (iii) principal investigator expenses that are directly associated with recruitment are recognized based on actual patient recruitment. All changes to the contract amounts due to change orders are analyzed and recognized in accordance with the above methodology. Change orders are triggered by changes in the scope, time to completion and the number of sites. During the course of a trial, we adjust our rate of clinical expense recognition if actual results differ from our estimates.

Income Taxes. Deferred tax liabilities and assets are recognized for the expected future tax consequences of events that have been included in the financial statements or tax returns. These liabilities and assets are determined based on differences between the financial reporting and tax basis of assets and liabilities measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is recognized to reduce deferred tax assets to the amount that is more likely than not to be realized. In assessing the likelihood of realization, management considered estimates of future taxable income.

Stock-Based Employee Compensation. The accompanying financial position and results of operations of Emisphere have been prepared in accordance with APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB No. 25"). Under APB No. 25, compensation expense is generally not recognized in connection with the awarding of stock option grants to employees, provided that, as of the grant date, all terms associated with the award are fixed and the quoted market price of our stock as of the grant date is equal to or less than the option exercise price.

We have several stock-based compensation plans, which are described in Note 11. In accordance with Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation Transition and Disclosure, an amendment of SFAS 123" ("SFAS 148"), pro forma operating results have been determined as if we had prepared our financial statements in

accordance with the fair value based method. The following table illustrates the effect on net loss and net loss per share based upon the fair value based method of accounting for stock based compensation. Since option grants awarded during 2005, 2004, and 2003 vest over several years and additional awards are expected to be issued in the future, the pro forma results shown below are not likely to be representative of the effects on future years of the application of the fair value based method. During the year ended December 31, 2004, we recorded a compensation expense charge of $671 thousand related to our Employee Stock Purchase Plan. This charge was the result of variable stock award accounting.

	Year Ended December 31,		
	2005	2004	2003
		(in thousands)	
Net loss, as reported	$ (18,051)	$ (37,522)	$ (44,869)
Add: Stock-based employee compensation expense included in reported net loss	50	824	211
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards	(2,690)	(7,968)	(8,551)
Pro forma net loss	$ (20,691)	$ (44,667)	$ (53,209)
Net loss per share amounts, basic and diluted:			
As reported	$ (0.81)	$ (2.04)	$ (2.48)
Pro forma	$ (0.93)	$ (2.43)	$ (2.94)

For the purpose of the above pro forma calculation, the fair value of each option granted was estimated on the date of grant using the Black-Scholes option pricing model. The following weighted-average assumptions were used in computing the fair value of options granted: expected volatility of 86% in 2005, 94% in 2004 and 96% in 2003, expected lives of five years, zero dividend yield, and risk-free interest rate of 3.9% in 2005, 3.9% in 2004 and 2.8% in 2003. For the Employee Stock Purchase Plans, it is not practicable to reasonably estimate the fair value of an award at the grant date. Therefore, the final measure of compensation cost for these awards has been determined on the date at which the number of shares to which an employee is entitled and the exercise price are determinable, which is the exercise date. We calculate estimates of compensation cost as of balance sheet dates subsequent to the grant date and prior to the exercise date based on the current intrinsic value of the award, determined in accordance with the terms that would apply if the award had been exercised on those balance sheet dates. Those amounts are included in the pro forma compensation expense for the three and nine months ended September 30, 2005 and 2004, respectively.

The fair value of options granted to non-employees for goods or services is expensed as the goods are utilized or the services performed.

Other disclosures required by SFAS 123 have been included in Note 11.

Net Loss Per Share. The following table sets forth the information needed to compute basic and diluted earnings per share for the years ended December 31, 2005 and 2004:

	Year Ended December 31,	
	2005	2004
	(in thousands, except share amounts)	
Basic net loss	$ (18,051)	$ (37,522)
Dilutive securities:		
Warrants	(19)	—
Diluted net loss	$ (18,070)	$ (37,522)
Weighted average common shares outstanding	22,300,646	18,411,240
Dilutive securities:		
Warrants	11,235	—
Diluted average common stock equivalents outstanding	22,311,881	18,411,240
Basic and diluted net loss per share	$ (0.81)	$ (2.04)

The following table sets forth the number of potential shares of common stock that have been excluded from diluted net loss per share because their effect was anti-dilutive:

	Year Ended December 31,		
	2005	2004	2003
Options to purchase common shares	4,302,142	5,759,042	5,529,507
Outstanding warrants and options to purchase warrants	2,717,211	250,000	—
Novartis convertible note payable	2,418,362	2,925,095	—
	9,437,715	8,934,137	5,529,507

The table above does not include any shares that would be issuable if the MHR Note is exchanged for the Convertible Note. At December 31, 2005, the Convertible Note would be convertible into 3,968,254 shares.

Fair Value of Financial Instruments. The carrying amounts for cash, cash equivalents, accounts payable, and accrued expenses approximate fair value because of their short-term nature. We have determined that it is not practical to estimate the fair value of our notes payable because of their unique nature and the costs that would be incurred to obtain an independent valuation. We do not have comparable outstanding debt on which to base an estimated current borrowing rate or other discount rate for purposes of estimating the fair value of the notes payable and we have not yet obtained or developed a valuation model.

Additionally, we are engaged in research and development activities and have not yet developed products for sale. Accordingly, at this stage of our development, a credit risk assessment is highly judgmental. These factors all contribute to the impracticability of estimating the fair value of the notes payable. At December 31, 2005, the carrying value of the notes payable and accrued interest was $22.9 million. See Note 7 for further discussion of the notes payable.

Derivative Instruments. Derivative instruments consist of common stock warrants, options to purchase common stock warrants, and certain instruments embedded in the MHR Note and related agreements. These financial instruments are recorded in the consolidated balance sheets at fair value as liabilities. Changes in fair value are recognized in earnings in the period of change.

Comprehensive Loss. Comprehensive loss represents the change in net assets of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. Comprehensive loss includes net loss adjusted for the change in net unrealized gain or loss on marketable securities. The disclosures required by Statement of Financial Accounting Standards No. 130, "Reporting Comprehensive Income" for the years ended December 31, 2005, 2004 and 2003 have been included in the consolidated statements of stockholders' equity.

Reclassification of Prior Year Balances. Certain balances in prior years' consolidated financial statements have been reclassified to conform with current year presentation.

Future Impact of Recently Issued Accounting Standards. In December 2004, the FASB issued a revision of SFAS 123, "Accounting for Stock-Based Compensation" ("SFAS 123"). The revised statement, SFAS 123(R), "Share-Based Payment", establishes standards for share-based transactions in which an entity receives employee's services for (a) equity instruments of the entity, such as stock options, or (b) liabilities that are based on the fair value of the entity's equity instruments or that may be settled by the issuance of such equity instruments. SFAS 123(R) eliminates the option of accounting for share-based compensation transactions using APB No. 25, "Accounting for Stock Issued to Employees", and requires that companies expense the fair value of employee stock options and similar awards, as measured on the awards' grant date. For public companies, SFAS 123(R) is effective at the beginning of the first interim or annual reporting period that begins after June 15, 2005. We plan to adopt SFAS 123(R) in our fiscal quarter ending September 30, 2005. SFAS 123(R) applies to all awards granted after the date of adoption, and to awards modified, repurchased or cancelled after that date. We have elected to apply SFAS 123(R) using a modified version of prospective application, under which compensation cost is recognized only for the portion of awards outstanding for which the requisite service has not been rendered as of the adoption date, based on the grant date fair value of those awards calculated under SFAS 123 for pro forma disclosures. We have also elected to continue to use the Black-Scholes model to value our share-based payments. We are currently evaluating the other requirements of SFAS 123(R). We believe the impact of adopting SFAS 123(R), based on our unvested options outstanding at December 31, 2005, will be to increase our stock-based employee compensation expense in 2006 by $1.0 million to $1.2 million. The preceding excludes the effect of our Employee Stock Purchase Plan, which has not been determined.

In May 2005, the FASB issued SFAS 154, "Accounting Changes and Error Corrections". SFAS 154 replaces APB 20, "Accounting Changes", and SFAS 3, "Reporting Accounting Changes in Interim Financial Statements", and requires retrospective application to prior-period financial statements of changes in accounting principle, unless it is impracticable to determine either the period-specific effects or the cumulative effect of a change. SFAS 154 also redefines "restatement" as the revising of previously issued financial statements to reflect the correction of an error. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We are required to adopt the provisions of SFAS 154, as applicable, beginning January 1, 2006.

3. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following:

	December 31,	
	2005	2004
	(in thousands)	
Prepaid expenses	$ 880	$ 1,186
Note receivable from officer and director	—	1,233
Other	71	97
	$ 951	$ 2,516

The note receivable from officer and director resulted from the July 31, 2000 exercise of stock options by our Chairman and Chief Executive Officer, Dr. Michael Goldberg. The loan was in the form of a full recourse promissory note bearing a variable interest rate based upon LIBOR plus 1% (3.4% at December 31, 2004), and collateralized by 100,543 shares of common stock issued upon exercise of the stock options. Interest was payable monthly and principal was due the earlier of July 31, 2005 or upon the sale of stock held as collateral. At December 31, 2004, the balance of the note receivable is $2.0 million, of which $1.2 million, relating to the income taxes resulting from the exercise, is included in prepaid expenses and other current assets and $0.8 million, relating to the exercise price, has been deducted from stockholders' deficit on the consolidated balance sheets. The loan was repaid in full in the third quarter of 2005 (see Note 10).

4. Fixed Assets

Tarrytown Facility Transaction. During 2003, in order to streamline operations and reduce expenditures, we entered into a transaction to surrender to the landlord approximately 27% of the leased space (the "surrendered space") at our Tarrytown facility. The surrendered space primarily consists of office space, which was subsequently leased to another tenant (the "subsequent tenant") at the Tarrytown facility. Annual cost savings from the transaction are expected to be approximately $1.5 million for the remainder of the lease term, which extends through August 2007. Completion of the lease amendment and related agreements took place in October 2003.

In connection with this transaction, we agreed to sell most of the furniture and equipment in the surrendered space to the subsequent tenant. Through a contractual agreement with us, the subsequent tenant has agreed to make certain payments ("furniture payments") which will be made directly to the landlord on a monthly basis. A rental credit equal to each furniture payment will be applied against our rent payment to the landlord on a monthly basis. Total payments under the agreement are $1.0 million and extend through August 2012. The transaction between the subsequent tenant and us has been accounted for as an operating lease, with all furniture payments recorded as rental income. We retain a security interest in the furniture and equipment until all required payments have been made.

We compared the net book value of the furniture and equipment to be leased to the fair value, which was determined to be the net present value of the furniture payments, or $0.7 million, and determined that the assets were impaired. Based on this evaluation, we recorded an impairment charge of $4.3 million during the year ended December 31, 2003, which has been included in loss on impairment of fixed assets on the consolidated statements of operations. The lease of these assets will result in a reduction of depreciation expense of $1.2 million in 2006, and $0.4 million in years 2007 through 2009.

In connection with this transaction, we identified equipment that had no future use. This equipment was segregated and classified as available for sale as of December 31, 2003. This equipment was evaluated for potential impairment based on quotes from scientific equipment resellers. These evaluations resulted in an impairment charge of $69 thousand for the year ended December 31, 2003, which has been included in loss on impairment of fixed assets on the consolidated statements of operations. At June 30, 2005, we evaluated this equipment for potential impairment. Although the equipment was still being marketed, the fact that we had been unable to sell it in the eighteen months since it had been classified as available for sale cast a significant doubt on our ability to recover any of the cost of the equipment. Accordingly, this equipment was written down to zero, resulting in an impairment charge of $27 thousand, which is included in loss on impairment of fixed assets on the consolidated statements of operations for the year ended December 31, 2005.

Farmington Facility Transaction. In June 2005, we completed the sale of our Farmington, Connecticut research facility to Winstanley Enterprises LLC for net proceeds of $4.1 million. These assets are included in land, building and equipment held for sale, net on the consolidated balance sheet as of December 31, 2004. A gain of $0.6 million was recorded in connection with the sale. The litigation commenced by the Farmington Avenue Baptist Church (the "Church"), including the filing of a notice of pendency, was settled, and a withdrawal of the Church's action was filed with the Superior Court of the State of Connecticut on August 5, 2005.

Subsequent to the decision to sell the Farmington facility, equipment with a net book value of $0.4 million was transferred for use at the Tarrytown facility and equipment with a net book value of $0.3 million was sold. The remaining items of equipment were then evaluated for potential impairment. The evaluations were based on the age and condition of the equipment, potential offers from third parties, quotes from scientific equipment resellers, and recent sales of similar equipment at auction or by us. Based on this evaluation, we recorded an impairment charge of $1.0 million during the year ended December 31, 2003, which has been included in loss on impairment of fixed assets on the consolidated statement of operations. At December 31, 2004, we performed an evaluation of the remaining equipment and determined that no further impairment loss had been incurred.

Equipment Impairment. Impairment charges primarily relate to the Tarrytown facility transaction and the Farmington facility transaction, as discussed above.

Fixed Assets. Equipment and leasehold improvements, net, including assets held under capital lease, consists of the following:

	Useful Lives in Years	December 31, 2005	December 31, 2004
		(in thousands)	
Equipment	3-7	$ 9,611	$ 14,126
Leasehold improvements	Life of lease	19,209	19,094
		28,820	33,220
Less, accumulated depreciation and amortization		22,921	23,213
		$ 5,899	$ 10,007

Depreciation expense for the years ended December 31, 2005, 2004 and 2003, was $4.1 million, $4.7 million and $5.6 million, respectively. Included in equipment are assets which were acquired under capital leases with a cost of $0.7 million and a net book value of $0.3 million at December 31, 2005 and $0.5 million at December 31, 2004 (see Note 14).

Land, building and equipment held for sale, net consists of the following:

	Useful Lives in Years	December 31, 2004
		(in thousands)
Land	—	$ 1,170
Building	13	1,983
Equipment	3-7	1,004
		4,157
Less, accumulated depreciation and amortization		568
		$ 3,589

Land, building and equipment held for sale were classified as such on December 31, 2002 and therefore no depreciation was recorded for those assets during 2003, 2004 and 2005.

5. Purchased Technology

Purchased technology represents the value assigned to patents and the rights to use, sell or license certain technology in conjunction with solid oral heparin. These assets underlie our research and development projects related to solid oral heparin, and if the projects prove unsuccessful, the assets have no alternative future use. Purchased technology is amortized over a period of 15 years, which represents the average life of the patents.

At December 31, 2005 and 2004, we performed an evaluation of the recoverability of the remaining purchased technology related to the solid forms of oral heparin. We are proceeding with planned studies related to this formulation and we estimate that future undiscounted cash flows from programs related to the solid forms of oral heparin are sufficient to realize the carrying value of the asset and, therefore, no impairment of the remaining purchased technology has been recorded.

The carrying value of the purchased technology is comprised as follows:

	December 31, 2005	December 31, 2004
	(in thousands)	
Gross carrying amount	$ 4,533	$ 4,533
Accumulated amortization	2,499	2,260
Net book value	$ 2,034	$ 2,273

Amortization of purchased technology was $239 thousand for 2003, 2004 and 2005. Estimated amortization expense for the purchased technology is $239 thousand for each of the next five years.

6. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following:

	December 31,	
	2005	2004
	(in thousands)	
Accounts payable	$ 1,577	$ 1,349
Clinical trial expenses and contract research	143	143
Accrued vacation	477	522
Legal and other professional fees	1,119	1,809
	$ 3,316	$ 3,823

7. Notes Payable and Restructuring of Debt

Notes payable consist of the following:

	December 31,	
	2005	2004
	(in thousands)	
Elan Note	—	$ 29,295
Novartis Note	$ 10,498	10,037
MHR Note	12,359	—
	$ 22,857	$ 39,332

Elan Note. Ebbisham was an Irish corporation owned jointly by Elan and us. Ebbisham was formed to develop and market heparin products using technologies contributed by Elan and us. On February 28, 2002 Ebbisham was voluntarily liquidated.

In July 1999, we acquired from Elan its ownership interest in Ebbisham in exchange for a seven year, $20 million zero coupon note due July 2006 carrying a 15% interest rate, compounding semi-annually (the "Original Elan Note"), plus royalties on oral heparin product sales, subject to an annual maximum and certain milestone payments. On December 27, 2004, we entered into a Security Purchase Agreement with Elan, providing for our purchase of our indebtedness to Elan under the Original Elan Note. The value of the Original Elan Note plus accrued interest on December 27, 2004 was $44.2 million. Pursuant to the Security Purchase Agreement, we paid Elan $13 million and issued to Elan 600,000 shares of our common stock with a market value of $2 million. Also, we issued to Elan a new zero coupon note with an issue price of $29.2 million (the "Modified Elan Note"), representing the accrued value of the Original Elan Note minus the sum of the cash payment and the value of the 600,000 shares. As of March 31, 2005, we issued to Elan a warrant to purchase up to 600,000 shares of our common stock at an exercise price of $3.88. The warrants provide for adjustments to the exercise price upon the occurrence of certain events, including the issuance by Emisphere of common stock or common stock equivalents that have an effective price that is less than the exercise price of the warrants. On April 1, 2005, we made a $13 million payment to Elan, which completed our repurchase of our indebtedness to Elan.

This transaction was accounted for as a troubled debt restructuring. The carrying amount of the debt was reduced to an amount equal to the total future cash payments, or $13 million. The fair value of the warrant issued, estimated using the Black-Scholes option pricing model, was $1.6 million at the date of issuance. A gain of $14.7 million, calculated as the difference between the carrying value of approximately $29 million and the fair value of cash paid and warrants issued, was recognized in our consolidated statement of operations for 2005. Under the accounting for a restructuring of debt, no interest expense was recorded during 2005.

Novartis Note. On December 1, 2004 we issued a $10 million convertible note to Novartis in connection with a new research collaboration option relating to the development of PTH 1-34. The Novartis Note bears interest at a rate of 3% prior to December 1, 2006, 5% from December 1, 2006 through December 1, 2008, and 7% from that point until maturity on December 1, 2009. We have the option to pay interest in cash on a current basis or accrue the periodic interest as an addition to the principal amount of the Novartis Note. We are recording interest using the effective interest rate method, which results in an interest rate of 4.5%. We may convert the Novartis Note at any time prior to maturity into a number of shares of our common stock equal to the principal and accrued and unpaid interest to be converted divided by the then market price of our common stock, provided certain conditions are met, including that the number of shares issued to Novartis, when issued, does not exceed 19.9% of the total shares of our common stock outstanding, that at the time of such conversion no event of default under the Note has occurred and is continuing, and that there is either an effective shelf registration statement in effect covering the resale of the shares issued in connection with such conversion or the shares may be resold by Novartis pursuant to SEC Rule 144(k).

Under the Novartis Note, an event of default shall be deemed to have occurred if we default on the payment of the principal amount of, and accrued and unpaid interest on, the Novartis Note upon maturity, we suffer a bankruptcy or similar insolvency event or proceeding, we materially breach a representation or warranty, we fail to timely cure a default in the payment of any other indebtedness in excess of a certain material threshold, or there occurs an acceleration of indebtedness in excess of that threshold, we suffer and do not discharge in a timely manner a final judgment for the payment of a sum in excess of a certain material threshold, we become entitled to terminate the registration of our securities or the filing of reports under the Securities Exchange Act of 1934, our common stock is delisted from Nasdaq, we experience a change of control (including by, among other things, a change in the composition of a majority of our board (other than as approved by the board) in any one-year period, a merger which results in our stockholders holding shares that represent less than a majority of the voting power of the merged entity, and any other acquisition by a third party of shares that represent a majority of the voting power of the company), we sell substantially all of our assets, or we are effectively unable to honor or perform our obligations under the new research collaboration option relating to the development of PTH 1-34. Upon the occurrence of an event of default prior to conversion, any unpaid principal and accrued interest on the Novartis Note would become immediately due and payable. If the Novartis Note is converted into our common stock, Novartis would have the right to require us to repurchase the shares of common stock within six months after an event of default under the Novartis Note, for an aggregate purchase price equal to the principal and interest that was converted, plus interest from the date of conversion, as if no conversion had occurred. At December 31, 2005, the Novartis Note was convertible into 2,418,362 shares of our common stock. As long as the Novartis Note is outstanding, we may not pay cash dividends on our common stock.

MHR Note. On September 26, 2005, we executed the Loan Agreement with MHR. The Loan Agreement provides for a seven year, $15 million secured loan from MHR to us at an interest rate of 11% (the "Loan"). The Loan Agreement was amended on November 11, 2005 to clarify certain terms. Net proceeds from the Loan were approximately $12.9 million. We are recording interest using the effective interest method, which results in an effective interest rate of 14.3%. The Loan is secured by a first priority lien in favor of MHR on substantially all of our assets. The proceeds from the Loan were disbursed to a restricted account and our right to have such funds disbursed to our operating account is conditioned upon the requested amounts for any period not being in excess of 103% of amounts in our budget for such period (then in effect under the terms of the Loan Agreement), and provided that we certify to MHR that no event of default has occurred under the Loan Agreement (or the Convertible Note described below, as applicable), no material adverse change has occurred and our representations and warranties under the Loan Agreement continue to be true and correct. The Loan Agreement requires us to hold a special stockholder meeting for the purpose of obtaining stockholder approval of (i) the exchange of the Loan for an 11% senior secured convertible note (the "Convertible Note") with substantially the same terms as the Loan Agreement, except that the Convertible Note will be convertible, at the sole discretion of MHR or any assignee thereof, into shares of our common stock (the "Conversion Shares") at a price per share of $3.78, interest will be payable in kind rather than in cash and we will have the right to call the Convertible Note after September 26, 2010 if certain conditions are satisfied and (ii) the amendment and restatement of our Restated Certificate of Incorporation. On December 8, 2005, we filed with the Securities and Exchange Commission a definitive proxy statement relating to this special meeting of our stockholders. On January 17, 2006, the special meeting of stockholders was held and both proposals were approved by our stockholders.

The Loan Agreement provides that an event of default shall be deemed to have occurred if we default on the payment of any obligation or indebtedness when due, any of the liens in favor of MHR created by the transaction fails to constitute a perfected lien, we suffer a bankruptcy or similar insolvency event or proceeding, we materially breach a representation or warranty or fail to observe any covenant or agreement, we suffer and do not discharge in a timely manner a final judgment for the payment of a sum in excess of a certain materiality threshold, our common stock has been delisted or trading has been suspended, we sell a substantial portion of our assets, we merge with another entity without the prior consent of MHR, or any governmental action renders us unable to honor or perform our obligations under the Loan Agreement or results in a material adverse effect on our operations. If an event of default occurs, the Loan Agreement provides for the immediate repayment of the Loan and certain additional amounts as set forth in the Loan Agreement. In connection with the financing transaction, we amended MHR's existing warrants to purchase 387,374 shares of common stock to provide for additional anti-dilution protection.

MHR was also granted the option to purchase warrants for up to an additional 617,211 shares of our common stock (the "warrant purchase option") at a price per warrant equal to $0.01 per warrant for each of the first 67,084 warrants and $1.00 per warrant for each additional warrant. These warrants will have an exercise price of $4.00, subject to anti-dilution protection. The fair value of the warrant purchase option at issuance was $1.3 million, which has been recorded as a separate liability and as a discount from the face value of the note. See Note 8 for a further discussion of the liability related to this warrant purchase option.

The Loan Agreement with MHR provides MHR with the right to require us to redeem the Loan in the event of a change in control, as defined in the Loan Agreement. The Loan Agreement provides for redemption at 104% of the then outstanding principal and accrued interest. If the Loan is exchanged for the Convertible Note, the Convertible Note will provide for a redemption penalty equal to 104% through September 26, 2006, 103% through September 26, 2007, 102% through September 26, 2008 and 101% through September 26, 2009. After September 26, 2009, the change in control redemption feature in the Convertible Note will expire. The fair value of the change in control redemption feature at issuance was de minimis. See Note 8 for a further discussion of the change in control redemption feature.

Total issuance costs associated with the Loan Agreement were $2.1 million, of which $1.9 million have been allocated to the MHR Note and $0.2 million have been allocated to the related derivative instruments. Of the $1.9 million allocated to the MHR Note, $1.4 million represents reimbursement of MHR's legal fees and $0.5 million represents our legal and other transaction costs. The $1.4 million paid on behalf of the lender has been recorded as a reduction of the face value of the note, while the $0.5 million of our costs has been recorded as deferred financing costs, the current portion of which is included in prepaid expenses and other current assets and the long term portion of which is included in other assets on the consolidated balance sheet as of December 31, 2005. Both amounts will be amortized to interest expense over the life of the MHR Note.

The book value of the MHR Note is comprised of the following:

	December 31,	
	2005	2004
	(in thousands)	
Face value of the note	$ 15,000	—
Discount (related to the warrant purchase option)	(1,238)	—
Lender's financing costs	(1,403)	—
	$ 12,359	—

The scheduled repayments of all debt outstanding, net of unamortized discount, including capital leases as of December 31, 2005 are as follows:

	Debt
	(in thousands)
2006	—
2009	$ 10,498
Thereafter	12,359
	$ 22,857

8. Derivative Instruments

Derivative instruments consist of the following:

	December 31,	
	2005	2004
	(in thousands)	
Stock warrant issued to Kingsbridge	$ 743	$ 762
Stock warrants issued in equity financing	4,330	—
Warrant purchase option	1,455	—
	$ 6,528	$ 762

Kingsbridge Warrant. On December 27, 2004, we entered into a Common Stock Purchase Agreement (the "Common Stock Purchase Agreement") with Kingsbridge, providing for the commitment of Kingsbridge to purchase up to $20 million of our common stock until December 27, 2006. In return for the commitment, we issued to Kingsbridge a warrant to purchase 250,000 shares of our common stock at an exercise price of $3.811 (representing a premium to the market price of shares of our common stock on the date of issuance of the warrant). The exercise period for the warrant begins on June 27, 2005 and expires on June 27, 2010. On September 21, 2005, the Common Stock Purchase Agreement was terminated as a condition of closing the Loan Agreement with MHR. The termination of the agreement did not affect the warrants or the related registration rights agreement. Under the provisions of the related registration rights agreement, if we fail to maintain an effective registration statement with the SEC while Kingsbridge is holding the warrant or shares of our common stock, we have an obligation to make a cash payment to Kingsbridge for any gain that could have been realized. Accordingly, the warrant has been accounted for as a liability. The fair value of the warrants is estimated using the Black-Scholes option pricing model. The assumptions used in computing the fair value as of December 31, 2005 are a closing stock price of $4.34, expected volatility of 84% over the remaining term of four and a half years and a risk-free rate of 4.26%. The fair value of the warrant decreased by $19 thousand during the year ended December 31, 2005 and increased by $136 thousand during the year ended December 31, 2004, and the fluctuations have been recorded in the statement of operations. The warrant will be marked to market for each future period it remains outstanding.

Equity Financing Warrants. As of March 31, 2005, we completed the sale of 4 million shares of common stock and warrants to purchase up to 1.5 million shares of common stock (see Note 10). The stock and warrants were sold as units, each unit consisting of one share of common stock and a warrant to purchase 0.375 shares of common stock. The warrants have an exercise

price of $4.00 and an exercise period that begins on March 31, 2005 and expires on March 31, 2010. The warrants provide for adjustments to the exercise price upon the occurrence of certain events, including the issuance by Emisphere of common stock or common stock equivalents that have an effective price that is less than the then current market price or the exercise price of the warrants. Warrants to purchase up to 1,112,626 shares of common stock provide that under no circumstances will the adjusted exercise price be less than $3.81. The remaining warrants do not limit adjustments to the exercise price. Under the terms of the warrant, we have an obligation to make a cash payment to the holders of the warrant for any gain that could have been realized if the holders exercise the warrants and we subsequently fail to deliver a certificate representing the shares to be issued upon such exercise by the third trading day after such warrants have been exercised. Accordingly, the warrant has been accounted for as a liability. The fair value of the warrants is estimated using the Black-Scholes option pricing model. The assumptions used in computing the fair value as of December 31, 2005 are a closing stock price of $4.34, expected volatility of 84% over the remaining term of four years and three months and a risk-free rate of 4.26%. The fair value of the warrants increased by $435 thousand during the period between issuance and December 31, 2005, and the fluctuation has been recorded in the statement of operations. The warrants will be marked to market for each future period it remains outstanding.

Warrant Purchase Option. In connection with the Loan Agreement with MHR, Emisphere agreed to sell warrants for up to 617,211 shares to MHR at any date more than 45 days after the closing date. The first 67,084 warrants have a purchase price of $0.01 per share, and the remaining 550,127 warrants have a purchase price of $1.00 per share. The warrants will have an exercise price of $4.00 and are exercisable through September 26, 2011. The warrants will have the same terms as the equity financing warrants, with no limit upon adjustments to the exercise price. Based on the provisions of SFAS 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), the warrant purchase option has been determined to be an embedded derivative instrument which must be separated from the host contract. The warrants will contain the same potential cash settlement provisions as the equity financing warrants and therefore the warrant purchase option has been accounted for as a separate liability. The fair value of the warrant purchase option was $1.3 million at issuance, which was estimated using the Black-Scholes option pricing model. The assumptions used in computing the fair value as of December 31, 2005 are a closing stock price of $4.34, expected volatility of 87% over the remaining term of five years and nine months and a risk-free rate of 4.25%. $49 thousand of the deferred financing costs related to the Loan Agreement and $128 thousand representing reimbursement of MHR's legal fees have been allocated to the warrant purchase option. Both amounts were expensed at issuance. The fair value of the warrant purchase option increased by $208 thousand during the period between issuance and December 31, 2005 and the fluctuation has been recorded in the statement of operations. The warrant purchase option will be marked to market for each future period it remains outstanding. See Note 7 for a further discussion of the warrant purchase option and the MHR Note.

Stockholder Approval Default Penalty. The Loan Agreement with MHR provides MHR with the right to receive supplemental cash payments in the event of a Stockholder Approval Default. One payment compensates MHR or its assignees for not being able to own more of our common stock. The other payment reimburses MHR or its assignees for any additional taxes they may owe for receiving cash payments instead of owning, and then selling, our common stock. The stock-based payment is the dollar value equivalent of the shares of our common stock, calculated as if MHR or its assignees had been able to convert the full loan principal amount (plus accrued and unpaid interest) into shares of our common stock at $3.78 per share and then receive any appreciation in the value of those shares of common stock until three days before MHR elects to receive a portion or all of the supplemental cash payments described herein. The tax reimbursement payment obligates us to reimburse MHR or its assignees for any additional taxes MHR or its assignees may owe as a result of receiving these cash payments instead of owning, then selling, our common stock. Based on the provisions of SFAS 133, the stockholder approval default penalty has been determined to be an embedded derivative instrument which must be separated from the host contract. Accordingly, the stockholder approval default penalty has been accounted for as a separate liability. The fair value of the stockholder approval default penalty was $1.9 million at issuance, which was estimated using the Black-Scholes option pricing model. As of December 31, 2005 the assumed probability of a Stockholder Approval Default occurring was 0%. Accordingly, the fair value of the stockholder approval default penalty as of December 31, 2005 is zero. See Note 7 for a further discussion of the stockholder approval default penalty and the MHR Note.

Change in Control Redemption Feature. The Loan Agreement provides MHR with the right to require us to redeem the Loan in the event of a change in control, as defined in the Loan Agreement. The Loan Agreement provides for redemption at 104% of the then outstanding principal and accrued interest. If the Loan is exchanged for the Convertible Note, the Convertible Note will provide for a redemption penalty equal to 104% through September 26, 2006, 103% through September 26, 2007, 102% through September 26, 2008 and 101% through September 26, 2009. After September 26, 2009, the change in control redemption feature in the Convertible Note will expire. Based on the provisions of SFAS 133, the change in control redemption feature has been determined to be an embedded derivative instrument which must be separated from the host contract. The fair value of the change in control redemption feature was estimated using a combination of a put option model for the penalties and the Black-Scholes option pricing model for the conversion option that would exist under the Convertible Note. The estimate resulted in a value that was de minimis and therefore, no separate liability was recorded. Changes in the assumptions used to estimate the fair value of this derivative instrument, in particular the probability that a change in control will occur, could result in a material change to the fair value of the instrument. See Note 7 for a further discussion of the change in control redemption feature and the MHR Note.

9. Income Taxes

As of December 31, 2005, we have available unused net operating loss carry-forwards of $305.1 million. If not utilized, $6.0 million, $6.0 million and $7.0 million of the net operating loss carry-forwards will expire in 2006, 2007 and 2008, respectively, with the remainder expiring in various years from 2009 to 2025. Our research and experimental tax credit carry-forwards expire in various years from 2006 to 2025. Future ownership changes may limit the future utilization of these net operating loss and research and development tax credit carry-forwards as defined by the Internal Revenue Code. The amount of any potential limitation is unknown. The net deferred tax asset has been fully offset by a valuation allowance due to our history of taxable losses and uncertainty regarding our ability to generate sufficient taxable income in the future to utilize these deferred tax assets. There is no provision for income taxes because we have incurred losses. The tax effect of temporary differences, net operating loss carry-forwards, and research and experimental tax credit carry-forwards as of December 31, 2005 and 2004 is as follows:

	December 31,	
	2005	2004
	(in thousands)	
Deferred tax assets and valuation allowance:		
Accrued liabilities	$ 771	$ 731
Fixed and intangible assets	5,015	3,169
Fixed asset impairments	66	401
Net operating loss carry-forwards	121,430	117,592
Research and experimental tax credit carry-forwards	12,473	12,026
Valuation allowance	(139,755)	(133,919)
Net deferred tax asset	$ —	$ —

10. Stockholders' Equity

Our certificate of incorporation provides for the issuance of 1,000,000 shares of preferred stock with the rights, preferences, qualifications, and terms to be determined by our Board of Directors. As of December 31, 2005 and 2004, there were no shares of preferred stock outstanding.

We have a stockholder rights plan in which Preferred Stock Purchase Rights (the "Rights") have been granted at the rate of one one-hundredth of a share of Series A Junior Participating Cumulative Preferred Stock ("A Preferred Stock") at an exercise price of $80 for each share of our common stock.

The Rights are not exercisable, or transferable apart from the common stock, until the earlier of (i) ten days following a public announcement that a person or group of affiliated or associated persons have acquired beneficial ownership of 20% or more of our outstanding common stock or (ii) ten business days (or such later date, as defined) following the commencement of, or announcement of an intention to make a tender offer or exchange offer, the consummation of which would result in the beneficial ownership by a person, or group, of 20% or more of our outstanding common stock.

Furthermore, if we enter into consolidation, merger, or other business combinations, as defined, each Right would entitle the holder upon exercise to receive, in lieu of shares of A Preferred Stock, a number of shares of common stock of the acquiring company having a value of two times the exercise price of the Right, as defined. The Rights contain antidilutive provisions and are redeemable at our option, subject to certain defined restrictions for $.01 per Right. The Rights expired on February 23, 2006, however our Board of Directors has authorized management to immediately commence the process leading to the establishment of a new rights plan with the same terms as the original plan.

As a result of the Rights dividend, the Board of Directors designated 200,000 shares of preferred stock as A Preferred Stock. A Preferred Stockholders will be entitled to a preferential cumulative quarterly dividend of the greater of $1.00 per share or 100 times the per share dividend declared on our common stock. Shares of A Preferred Stock have a liquidation preference, as defined, and each share will have 100 votes and will vote together with the common shares.

We have purchased 243,600 shares of our common stock for a total of $3.8 million. Additionally, on August 1, 2005, our Chairman and Chief Executive Officer repaid a note receivable with $1.9 million in cash and 46,132 shares of Emisphere common stock, valued at $0.2 million, that had been held as collateral. All such repurchased stock is held by us as treasury stock.

11. Stock Plans

Stock Option Plans. Under our 1991 and 2000 Stock Option Plans, the 2002 Broad Based Plan and the 1995 Non-Qualified Stock Option Plan (individually, the "91 Plan", "00 Plan", "02 Plan" and "95 Plan," respectively, or collectively, the "Plans") a maximum of 2,500,000, 2,319,500, 160,000 and 2,550,000 shares of our common stock, respectively, are available for issuance under the Plans. The 91 Plan is available to employees and consultants; the 00 Plan is available to employees, directors and consultants; and the 02 Plan is available to employees only. The 91 Plan, 00 Plan and 02 Plan provide for the grant of either incentive stock options ("ISOs"), as defined by the Internal Revenue Code, or non-qualified stock options, which do not qualify as ISOs. The 95 Plan provides for grants of non-qualified stock options to officers and key employees. Generally, the options vest at the rate of 20% per year and expire within a five- to ten-year period, as determined by the compensation committee of the Board of Directors and as defined by the Plans. As of December 31, 2005, shares available for future grants under the Plans amounted to 1,848,536.

The following table summarizes stock option information for the Plans as of December 31, 2005:

	Options Outstanding			Options Exercisable	
Range of Exercise Price	Number Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$ 1.50-$4.81	789,171	8.0	$ 3.48	232,669	$ 3.18
$ 4.81-$9.61	595,484	6.8	$ 5.90	319,860	$ 6.38
$ 9.61-$14.42	1,393,629	3.5	$ 12.74	1,295,860	$ 12.66
$ 14.42-$19.22	257,625	3.1	$ 16.65	236,628	$ 16.53
$ 19.22-$24.03	29,220	3.7	$ 21.34	28,780	$ 21.33
$ 24.03-$28.84	8,884	5.3	$ 27.10	8,128	$ 27.25
$ 38.45-$43.26	80,000	4.5	$ 38.59	80,000	$ 38.59
$ 43.26-$48.06	645,500	4.4	$ 48.06	645,500	$ 48.06
$ 1.50-$48.06	3,799,513	5.1	$ 16.65	2,847,425	$ 20.38

Transactions involving stock options awarded under the Plans during the years ended December 31, 2003, 2004 and 2005 are summarized as follows:

	Number Outstanding	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
Balance outstanding December 31, 2002	4,527,714	$ 16.86	2,927,003	$ 14.28
2003				
Granted	648,635	$ 4.78		
Canceled	(160,627)	$ 12.48		
Exercised	(18,160)	$ 4.27		
Balance outstanding December 31, 2003	4,997,562	$ 15.43	3,392,679	$ 15.12
2004				
Granted	140,180	$ 5.11		
Canceled	(144,066)	$ 8.30		
Exercised	(122,700)	$ 5.19		
Balance outstanding December 31, 2004	4,870,976	$ 15.47	3,848,409	$ 16.07
2005				
Granted	455,962	$ 4.16		
Canceled	(1,514,058)	$ 9.20		
Exercised	(13,367)	$ 2.07		
Balance outstanding December 31, 2005	3,799,513	$ 16.65	2,847,425	$ 20.38

Outside Directors' Plan. We have adopted a stock option plan for outside directors (the "Outside Directors' Plan"). As amended, a maximum of 725,000 shares of our common stock is available for issuance under the Outside Directors' Plan. Directors who are neither officers nor employees of Emisphere nor holders of more than 5% of our common stock are granted options (i) to purchase 35,000 shares of our common stock on the date of initial election or appointment to the Board of Directors and (ii) to purchase 21,000 shares on the fifth anniversary thereof and every three years thereafter. The options have an exercise price equal to the fair market value of our common stock on the date of grant, vest at the rate of 7,000 shares per year, and expire ten years after the date of grant. During 2004, we amended the Outside Directors Plan to provide for the ability to grant nondiscretionary awards of restricted stock. Under the revised plan, each outside director will receive an award of restricted stock on the date of each regular annual stockholders' meeting equivalent to 50% of the director's annual cash board retainer fee.

These restricted shares vest on the six month anniversary of the grant date, provided that the director continuously serves as a director from the grant date through the vesting date. For the years ended December 31, 2004 and 2005, we have recorded stock-based compensation related to this restricted stock grant of $50 thousand, which is included in general and administrative expenses on the consolidated statements of operations. As of December 31, 2005 shares available for future grants under the plan amounted to 426,530.

The following table summarizes stock option information for the Outside Directors' Plan as of December 31, 2005:

	Options Outstanding			Options Exercisable	
Range of Exercise Price	Number Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$ 2.89	21,000	7.3	$ 2.89	14,000	$ 2.89
$ 4.81-$9.61	119,000	2.5	$ 5.92	98,000	$ 5.95
$ 9.61-$14.42	79,000	4.7	$ 13.46	79,000	$ 13.46
$41.06	21,000	4.3	$ 41.06	21,000	$ 41.06
$ 2.89-$41.06	240,000	3.8	$ 11.21	212,000	$ 12.03

Transactions involving stock options awarded under the Outside Directors' Plan during the years ended December 31, 2003, 2004 and 2005 are summarized as follows:

	Number Outstanding	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
Balance outstanding December 31, 2002	373,000	$ 16.36	317,000	$ 15.19
2003				
Granted	168,000	$ 5.13		
Exercised	(35,000)	$ 10.75		
Balance outstanding December 31, 2003	506,000	$ 13.02	352,000	$ 16.16
2004				
Granted	9,620	—		
Canceled	(154,000)	$ 19.75		
Exercised	(9,620)	—		
Balance outstanding December 31, 2004	352,000	$ 10.07	240,000	$ 12.20
2005				
Granted	13,850	—		
Canceled	(112,000)	$ 7.63		
Exercised	(13,850)	—		
Balance outstanding December 31, 2005	240,000	$ 11.21	212,000	$ 12.03

Directors' Deferred Compensation Stock Plan. The Directors' Deferred Compensation Stock Plan (the "Directors' Deferred Plan") ceased as of May 2004 and was replaced by a new compensation package, as approved at the annual stockholders' meeting in May 2004. Under the Directors' Deferred Plan, directors who were neither officers nor employees of Emisphere had the option to elect to receive one half of his annual Board of Directors' retainer compensation, paid for his services as a Director, in deferred common stock. An aggregate of 25,000 shares of our common stock has been reserved for issuance under the Directors' Deferred Plan. During the years ended December 31, 2004 and 2003, the outside directors earned the rights to receive an aggregate of 1,775 shares and 2,144 shares, respectively. Under the terms of the Directors' Deferred Plan, shares are to be issued to a director within six months after he or she ceases to serve on the Board of Directors. In accordance with the Directors' Deferred Plan, we issued 923 shares of common stock to Mr. Hutt in January 2003. In December 2003, we issued 1,602 shares to Dr. Goyan and 2,024 shares to Mr. Robinson. In September 2005, we issued 2,651 shares to Mr. Levenson and 355 shares to Mr. Black. We record as an expense the fair market value of the common stock issuable under the plan.

Non-Plan Options. Our Board of Directors has granted options ("Non-Plan Options") which are currently outstanding for the accounts of an executive officer, a former executive officer, and two consultants. The Board of Directors determines the number and terms of each grant (option exercise price, vesting, and expiration date).

The following table summarizes stock option information for the Non-Plan Options as of December 31, 2005:

	Options Outstanding			Options Exercisable	
Range of Exercise Price	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$ 3.15-$ 4.12	10,000	7.0	$ 3.64	10,000	$ 3.64
$ 4.80-$ 9.61	30,000	1.9	$ 4.88	30,000	$ 4.88
$ 26.05	10,000	5.5	$ 26.05	10,000	$ 26.05
$ 3.15-$ 26.05	50,000	3.7	$ 8.86	50,000	$ 8.86

Transactions involving awards of Non-Plan Options during the years ended December 31, 2003, 2004 and 2005 are summarized as follows:

	Number Outstanding	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
Balance December 31, 2002	296,554	$ 9.45	296,554	$ 9.45
2003				
Granted	50,000	$ 4.62		
Canceled	(14,275)	$ 9.75		
Balance outstanding December 31, 2003	332,279	$ 8.71	332,279	$ 8.71
2004				
Exercised	(10,000)	$ 4.87		
Balance outstanding December 31, 2004	322,279	$ 8.83	322,279	$ 8.83
2005				
Canceled	(272,279)	$ 8.83		
Balance outstanding December 31, 2005	50,000	$ 8.86	50,000	$ 8.86

Summary Information for all Plans.

The weighted-average fair values and exercise prices for the options granted during the years ended December 31, 2005, 2004 and 2003 are presented in the table below.

	Year Ended December 31,		
	2005	2004	2003
Stock options granted in which the exercise price is equal to the market price of the stock on the grant date:			
Weighted average grant date fair market value	$ 2.91	$ 3.72	$ 3.55
Number of options granted	469,812	149,800	826,635
Weighted average exercise price	$ 4.03	$ 4.78	$ 4.84
Stock options granted in which the exercise price is more than the market price of the stock on the grant date:			
Weighted average grant date fair market value	—	—	$ 3.58
Number of options granted	—	—	40,000
Weighted average exercise price	—	—	$ 4.88

Employee Stock Purchase Plans. We have adopted two employee stock purchase plans (the "Purchase Plans")—the 1994 Employee Stock Purchase Plan (the "Qualified Plan") and the 1994 Non-Qualified Employee Stock Purchase Plan (the "Non-Qualified Plan"). The Purchase Plans provide for the grant to qualified employees of options to purchase our common stock. These options are granted for dollar amounts of up to 15% of an employee's quarterly compensation. The exercise price per share is equal to the lesser of the fair market value of our common stock on the date of grant or 85% of the fair market value on the date of exercise. Options are granted automatically on February 1, May 1, August 1, and November 1 and expire six months after the date of grant. The Qualified Plan is not available for employees owning more than 5% of our common stock and imposes certain other quarterly limitations on the option grants. Options under the Non-Qualified Plan are granted to the extent that the option grants are restricted under the Qualified Plan. The Purchase Plans provide for the issuance of up to 1,500,000 shares of our common stock under the Qualified Plan and 200,000 shares under the Non-Qualified Plan.

Purchases of common stock under the Purchase Plans during the year ended December 31, 2005, 2004 and 2003 are summarized as follows:

	Qualified Plan		Non-Qualified Plan	
	Shares Purchased	Price Range	Shares Purchased	Price Range
2003	140,764	$1.99-$4.38	30,484	$1.99-$4.38
2004	151,167	$2.53-$6.04	13,774	$2.56-$5.14
2005	271,156	$2.76-$3.58	15,611	$2.86-$3.31

As of December 31, 2005, there are 317,291 shares reserved for future purchases under the Qualified Plan and 68,574 shares reserved under the Non-Qualified Plan.

12. Commitments and Contingencies

Commitments. We lease office and laboratory space under non-cancelable operating leases expiring in 2007. As of December 31, 2005, future minimum rental payments are as follows:

Years Ending December 31,	(in thousands)
2006	$ 1,759
2007	1,173
	$ 2,932

Future minimum lease payments under capital leases (see Note 5) are as follows:

Years Ending December 31,	(in thousands)
2006	$ 235
Less: Amount representing interest at 8.5%	10
Present value of minimum lease payments	225
Less: Current portion	225
Long-term obligations	$ —

Rent expense for the years ended December 31, 2005, 2004 and 2003 was $1.4 million, $1.3 million and $1.8 million, respectively. Additional charges under this lease for real estate taxes and common maintenance charges for the years ended December 31, 2005, 2004 and 2003, were $1.2 million, $1.1 million and $1.1 million, respectively.

Contingencies. In the ordinary course of business, we enter into agreements with third parties that include indemnification provisions which, in our judgment, are normal and customary for companies in our industry sector. These agreements are typically with business partners, clinical sites, and suppliers. Pursuant to these agreements, we generally agree to indemnify, hold harmless, and reimburse indemnified parties for losses suffered or incurred by the indemnified parties with respect to our product candidates, use of such product candidates, or other actions taken or omitted by us. The maximum potential amount of future payments we could be required to make under these indemnification provisions is unlimited. We have not incurred material costs to defend lawsuits or settle claims related to these indemnification provisions. As a result, the estimated fair value of liabilities relating to these provisions is minimal. Accordingly, we have no liabilities recorded for these provisions as of December 31, 2005.

In the normal course of business, we may be confronted with issues or events that may result in a contingent liability. These generally relate to lawsuits, claims, environmental actions or the action of various regulatory agencies. We consult with counsel and other appropriate experts to assess the claim. If, in our opinion, we have incurred a probable loss as set forth by accounting principles generally accepted in the United States, an estimate is made of the loss and the appropriate accounting entries are reflected in our consolidated financial statements. Based upon consultation with legal counsel, we do not anticipate that liabilities arising out of currently pending or threatened lawsuits and claims will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

13. Retirement Plan

We have a defined contribution retirement plan (the "Retirement Plan"), the terms of which, as amended, allow eligible employees who have met certain age and service requirements to participate by electing to contribute a percentage of their compensation to be set aside to pay their future retirement benefits, as defined by the Retirement Plan. We have agreed to make discretionary contributions to the Retirement Plan. For the years ended December 31, 2005, 2004 and 2003, we made contributions to the Retirement Plan totaling approximately $351 thousand, $350 thousand and $318 thousand, respectively.

14. Collaborative Research Agreements

We are a party to collaborative agreements with corporate partners to provide development and commercialization services relating to the collaborative products. These agreements are in the form of research and development collaboration and licensing agreements. In connection with these agreements, we have granted licenses or the rights to obtain licenses to our oral drug delivery technology. In return, we will receive certain payments upon the achievement of milestones and will receive royalties on sales of products should they be commercialized. Under these agreements, we will also be reimbursed for research and development costs. We also have the right to manufacture and supply delivery agents developed under these agreements to our corporate partners.

We also perform research and development for others pursuant to feasibility agreements, which are of short duration and are designed to evaluate the applicability of our drug delivery agents to specific drugs. Under the feasibility agreements, we are generally reimbursed for the cost of work performed.

All of our collaborative agreements are retractable by our corporate partners without significant financial penalty to them.

Revenue recognized in connection with these agreements was $3.4 million, $1.8 million and $0.4 million in the years ended December 31, 2005, 2004 and 2003, respectively. Expenses incurred in connection with these agreements and included in research and development were $0.2 million, $0.2 million and $0.6 million in the years ended December 31, 2005, 2004 and 2003, respectively. Significant agreements are described below.

Novartis Pharma AG. In September 2004, we entered into a licensing agreement with Novartis to develop our oral recombinant human growth hormone ("rhGH") program. Under this collaboration, we will work with Novartis to initiate clinical trials of a convenient oral human growth hormone product using the *e*lig*e*n® technology. In November 2004, we received a non-refundable upfront payment of $1 million. At the end of the license period, which has been extended through March 31, 2006, Novartis may elect to commence development or to terminate the agreement. If Novartis elects to commence development, we may receive up to $33 million in additional milestone payments during the course of product development, and royalties based on sales.

In December 2004, we entered into an agreement with Novartis whereby Novartis obtained an option to license our existing technology to develop oral forms of parathyroid hormone ("PTH 1-34"). On March 7, 2006, Novartis excercised its option to the license. Based on the terms of the agreement, we are eligible for milestone payments totaling up to a maximum of $30 million, plus royalties on sales of product developed using our *e*lig*e*n® technology.

In December 1997, we entered into a collaboration agreement with Novartis to develop an oral salmon calcitonin ("sCT"), currently used to treat osteoporosis. In February 2000, Novartis agreed to execute its option to acquire an exclusive license to develop and commercialize oral sCT and as a result, Novartis made a $2 million milestone payment to us. In March 2000, Novartis paid us $2.5 million to obtain the license to our technology for sCT, and to obtain an option to use the *e*lig*e*n® technology for a second compound. Novartis' rights to certain financial terms concerning the second compound have since expired. In February 2003, we announced favorable results of a Phase IIa study conducted by Novartis evaluating the performance in post-menopausal women of an oral tablet form of salmon calcitonin. Based on the data from that study, Novartis has initiated a parallel program to develop oral salmon calcitonin for the treatment of osteoarthritis. We are entitled to receive an additional milestone payment for oral calcitonin upon the initiation of Phase III studies by Novartis. Under the terms of the agreement, we may receive up to $7 million in additional milestone payments and approximately $0.5 million in direct reimbursements for related costs.

Roche. In November 2004, we entered into a licensing agreement with Hoffmann-La Roche Inc. and F. Hoffman-LaRoche LTD (collectively, "Roche") to develop oral formulations of undisclosed small molecule compounds approved for use in the field of bone-related diseases. In December 2004, Roche paid us a non-refundable initial up-front fee of $2.5 million and in June 2005, Roche paid us a milestone payment of $1.5 million. In February 2006, Roche paid us a milestone payment of $1.5 million for a second product. Under the terms of the agreement, Roche may pay us additional milestones of up to $17 million on each of these two products, and $18.5 million for each additional product developed using our *e*lig*e*n® technology. We may also receive royalties based on product sales.

15. Summarized Quarterly Financial Data (Unaudited)

Following are summarized quarterly financial data (unaudited) for the years ended December 31, 2005 and 2004:

	2005			
	March 31	June 30	September 30	December 31
	(in thousands)			
Total revenue	$ 993	$ 1,961	$ 431	$ 155
Operating loss	(8,195)	(6,463)	(8,111)	(9,686)
Net income (loss)	6,529	(5,784)	(9,640)	(9,156)
Net income (loss) per share, basic	$ 0.34	$ (0.25)	$ (0.41)	$ (0.39)
Net income (loss) per share, diluted	$ 0.29	$ (0.25)	$ (0.41)	$ (0.41)

	2004			
	March 31	June 30	September 30	December 31
	(in thousands)			
Total revenue	$ 0	$ 147	$ 33	$ 1,773
Operating loss	(8,693)	(7,599)	(8,733)	(7,191)
Net loss	(9,861)	(8,835)	(10,120)	(8,706)
Net loss per share, basic and diluted	$ (0.54)	$ (0.48)	$ (0.55)	$ (0.47)

EXHIBIT INDEX

Exhibit		Incorporated by Reference(1)	
3.1	— Amended and restated Certificate of Incorporation of the Company dated January 27, 2006.	*	
3.2	— By-Laws of Emisphere, as amended December 7, 1998 and September 26, 2005.	A, M	
4.1	— Restated Rights Agreement dated as of February 23, 1996 between Emisphere and Mellon Investor Services, LLC, as amended September 26, 2005.	B, M	
10.1	— 1991 Stock Option Plan, as amended.	G	(2)
10.2	— Stock Incentive Plan for Outside Directors, as amended.	E	(2)
10.3	— Employee Stock Purchase Plan, as amended.	D	(2)
10.4	— Non-Qualified Employee Stock Purchase Plan.	D	(2)
10.5	— 1995 Non-Qualified Stock Option Plan, as amended.	G	(2)
10.6	— Amended and Restated Employment Agreement, dated April 28, 2005, between Michael M. Goldberg and Emisphere.	H	(2)
10.7	— Stock Option Agreements, dated January 1, 1991, February 15, 1991, December 1, 1991, August 1, 1992 and October 6, 1995 between Michael M. Goldberg and Emisphere.	D	(2)(3)
10.8	— Stock Option Agreement, dated July 31, 2000, between Michael M.Goldberg and Emisphere.	H	(2)
10.9	— Termination Agreement, dated July 2, 1999, among Emisphere, Elan Corporation, plc and Ebbisham Limited, now a wholly owned Subsidiary of Emisphere.	C	
10.10	— Patent License Agreement, dated July 2, 1999, between Emisphere and Elan Corporation, plc.	C	
10.11	— Subscription Agreement, dated July 2, 1999 between Emisphere and Elan International Management, Ltd.	C	
10.12	— Registration Rights Agreement, dated July 2, 1999 between Emisphere and Elan International Management, Ltd.	C	
10.13	— Research Collaboration and Option Agreement dated as of December 3, 1997 between Emisphere and Novartis Pharma AG.	F	(3)
10.14	— Research Collaboration and Option Agreement dated as of June 8, 2000 between Emisphere and Eli Lilly and Company.	H	(3)
10.15(a)	— License Agreement dated as of April 7, 1998 between Emisphere and Eli Lilly and Company.	H	(3)
10.15(b)	— License Agreement, dated as of April 7, 1998, between Emisphere and Eli Lilly and Company.	H	(3)
10.16(a)	— Amendment to Lease Agreement, dated as of March 31, 2000, between Emisphere and Eastview Holdings, LLC.	H	
10.16(b)	— Amendment to Lease Agreement, dated as of March 31, 2000, between Emisphere and Eastview Holdings, LLC.	H	
10.18	— Emisphere Technologies, Inc. 2000 Stock Option Plan	H	(2)
10.19	— Amendment to Emisphere Technologies, Inc. Qualified Employee Stock Purchase Plan	I	(2)
10.20	— Amendment to Lease Agreement, dated as of September 23, 2003, between Emisphere and Eastview Holdings, LLC.	J	
10.21	— Agreement, dated September 23, 2003, between Emisphere and Progenics Pharmaceuticals, Inc.	J	
10.22(a)	— Consulting Agreement, dated November 13, 2003, between Emisphere and Dr. Jere Goyan	J	
10.22(b)	— Consulting Agreement, dated November 13, 2003, between Emisphere and Mr. Joseph R. Robinson	J	
10.23	— License Agreement dated as of September 23, 2004 between Emisphere and Novartis Pharma AG, as amended on November 4, 2005.	K	(3)
10.24	— Development and License Agreement, dated and effective as of November 17, 2004 among Hoffmann-La Roche Inc., F. Hoffmann-La Roche LTD and Emisphere	K	(3)

10.25(a)	— Research Collaboration Option and License Agreement dated December 1, 2004 by and between Emisphere and Novartis Pharma AG	K	(3)
10.25(b)	— Convertible Promissory Note due December 1, 2009 issued to Novartis Pharma AG	K	(3)
10.25(c)	— Registration Rights Agreement dated as of December 1, 2004 between Emisphere and Novartis Pharma AG	K	

Exhibit		Incorporated by Reference(1)
10.26(a)	— Common Stock Purchase Agreement dated as of December 27, 2004 by and between Kingsbridge Capital Limited and Emisphere	K
10.26(b)	— Registration Rights Agreement dated as of December 27, 2004 by and between Kingsbridge Capital Limited and Emisphere	K
10.26(c)	— Warrant dated December 27, 2004 issued by Emisphere to Kingsbridge Capital Limited	K
10.27	— Security Purchase Agreement dated as of December 27, 2004 by and between Elan International Services, Ltd. and Emisphere	K
10.28 (a)	— Senior Secured Loan Agreement between Emisphere and MHR, dated September 26, 2005, as amended on Novemer 11, 2005	M, N
10.28 (b)	— Investment and Exchange Agreement between Emisphere and MHR, dated September 26, 2005	M
10.28 (c)	— Amendment to Warrant A3 by and between Emisphere and MHR Capital Partners (100) LP, as assignee for MHR Capital Partners LP, dated March 31, 2005, filed as Exhibit 10.5 to the Quarterly Report on Form 10-Q as filed with the SEC on May 12, 2005	M
10.28 (d)	— Amendment to Warrant A4 by and between Emisphere and MHR Capital Partners (500) LP, as assignee for MHR Capital Partners LP, dated March 31, 2005, filed as Exhibit 10.2 to the Quarterly Report on Form 10-Q as filed with the SEC on May 12, 2005	M
10.28 (e)	— Pledge and Security Agreement between Emisphere and MHR, dated September 26, 2005	M
10.28 (f)	— Registration Rights Agreement between Emisphere and MHR, dated September 26, 2005	M
14.1	— Emisphere Technologies, Inc. Code of Business Conduct and Ethics	J
23.1	— Consent of Independent Registered Public Accounting Firm	*
31.1	— Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002	*
31.2	— Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as adopted pursuant to section 302 of the Sarbanes-Oxley Act of 2002	*
32.1	— Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	*

* Filed herewith.

(1) If not filed herewith, filed as an exhibit to the document referred to by letter as follows:
- A. Quarterly Report on Form 10-Q for the quarterly period ended January 31, 1999.
- B. Registration Statement on Form 8-A12G/A dated and filed June 7, 2001.
- C. Current Report on Form 8-K dated July 2, 1999.
- D. Annual Report on Form 10-K for the fiscal year ended July 31, 1995.
- E. Annual Report on Form 10-K for the fiscal year ended July 31, 1997.
- F. Quarterly Report on Form 10-Q for the quarterly period ended October 31, 1997.
- G. Annual Report on Form 10-K for the fiscal year ended July 31, 1999.
- H. Annual Report on Form 10-K for the fiscal year ended July 31, 2000.
- I. Registration statement on Form S-8 dated and filed on November 27, 2002.
- J. Annual Report on Form 10-K for the year ended December 31, 2003.
- K. Registration on Form S-3/A dated and filed February 1, 2005.
- L. Current Report on Form 8-K filed May 4, 2005.
- M. Current Report on Form 8-K, filed September 30, 2005.
- N. Current Report on Form 8-K, filed November 14, 2005.

(2) Management contract or compensatory plan or arrangement.

(3) Portions of this exhibit have been omitted based on a request for confidential treatment filed separately with the Securities and Exchange Commission.

EXHIBIT 3.1

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

EMISPHERE TECHNOLOGIES, INC.

(Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware)

The undersigned Chief Executive Officer of Emisphere Technologies, Inc. (the "Corporation"), a corporation that was originally incorporated under the name Clinical Technologies Associates, Inc., that had its original certificate of incorporation filed with the Secretary of State of the State of Delaware on July 21, 1986 and that is currently existing under and by virtue of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"), DOES HEREBY CERTIFY that the Restated Certificate of Incorporation of Emisphere Technologies, Inc., as amended, has been further amended and restated, in the manner prescribed by Sections 242 and 245 of the Delaware General Corporation Law, in the form of this Amended and Restated Certificate of Incorporation by resolutions adopted by the Board of Directors and the stockholders of the Corporation. The text of the Certificate of Incorporation of the Corporation, as amended and restated herein, is as follows:

FIRST: The name of the corporation (hereinafter sometimes called the "Corporation") is Emisphere Technologies, Inc.

SECOND: The address of the Corporation's registered office in the State of Delaware is 1013 Centre Road, Wilmington, County of New Castle, Delaware 19805. The name of its registered agent at such address is United States Corporation Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware Corporation Law.

FOURTH: The total number of shares of stock which the Corporation shall have the authority to issue is Fifty-One Million (51,000,000), consisting of 50,000,000 shares of common stock, $.01 par value per share (the "Common Stock"), and 1,000,000 shares of Preferred stock, $.01 par value per share (the "Preferred Stock").

FIFTH: The Board of Directors is hereby authorized to issue the Preferred Stock in series, and to fix and determine the voting powers, designate preferences, rights, qualifications and other terms of the Preferred Stock pursuant to Section 151 of the Delaware General Corporation Law.

SIXTH: By resolution adopted by the Board of Directors of the Corporation (hereinafter called the "Board of Directors" or the "Board") at a Meeting of the Board duly held on February 23, 1996, the Board of Directors has created a series of Preferred Stock with the designation and number of shares and the relative rights, preferences, and limitations thereof as follows:

Series A Junior Participating Cumulative Preferred Stock:

> Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Participating Cumulative Preferred Stock" (the "Series A Preferred Stock"). The number of shares initially constituting the Series A Preferred Stock shall be 200,000; provided, however, that if more than a total of 200,000 shares of Series A Preferred Stock shall be issuable upon the exercise of Rights (the "Right") issued pursuant to the Rights Agreement dated as of February 23, 1996, between the Corporation and Continental Stock Transfer & Trust Company, as Rights Agent, as amended and restated on June 7, 2001 and as further amended on September 26, 2005, (the "Rights Agreement"), the Board of Directors of the Corporation, pursuant to Section 151(g) of the General Corporation Law of the State of Delaware, shall direct by resolution or resolutions that a certificate be properly executed, acknowledged, filed and recorded, in accordance with the

provisions of Section 103 thereof, providing for the total number of shares of Series A Preferred Stock authorized to be issued to be increased (to the extent that the Certificate of Incorporation then permits) to the largest number of whole shares (rounded up to the nearest whole number) issuable upon exercise of such Rights. Such number of shares may be decreased by resolution of the Board of Directors; provided, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred stock, in preference to the holders of Common Stock, of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $1.00 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the Outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares at Common Stock outstanding immediately after each event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in paragraph (A) of this Section immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared as the Common Stock during the period between any Quarterly Dividend Payment Data and the next subsequent Quarterly Dividend Payment Date, a dividend of $1.00 per shares on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record data shall be not more than 60 days prior to the date fixed for the payment thereof, and shall be the same as the record date for any corresponding dividend or distribution on the Common Stock.

(D) So long as any shares of the Series A Preferred Stock are outstanding, no dividends or other distributions shall be declared, paid or distributed, or set aside for payment or distribution, on the Common Stock unless, in each case, the dividend required by this Section 2 to be declared on the Series A Preferred Stock shall have been declared.

(E) The holders of the Shares of Series A Preferred Stock shall not be entitled to receive any dividends or other distributions except as provided herein.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a Subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in Shares of Common Stock into a greater or lesser number of shares of Common Stock), then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of Shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) If, at the time of any annual meeting of stockholders for the election of directors, the equivalent of six quarterly dividends (whether or not consecutive) payable on any share or shares of Series A Preferred Stock are in default, the number of directors constituting the Board of Directors of the Corporation shall be increased by two. In addition to voting together with the holders of Common Stock for the election of other directors of the Corporation, the holders of record of the Series A Preferred Stock, voting separately as a class to the exclusion of the holders of Common Stock, shall be entitled at said meeting of stockholders (and at each subsequent annual meeting of stockholders), unless all dividends in arrears have been paid or declared and set apart for payment prior thereto, to vote for the election of two directors of the Corporation, the holders of any Series A Preferred Stock being entitled to cast that number of votes per share of Series A Preferred Stock as specified in clause (A) of this Section 3. Until the default in payments of all dividends which permitted the election of said directors shall cease to exist, any director who shall have been so elected pursuant to the next preceding sentence may be removed at any time, either with or without cause, only by the affirmative vote of the holders of the shares of Series A Preferred Stock at the time entitled to cast a majority of the votes entitled to be cast for the election of any such director at a special meeting of such holders called for that purpose, and any vacancy thereby created may be filled by the vote of such holders. If and when such default shall cease to exist, the holders of the Series A Preferred Stock shall be divested of the foregoing special voting rights, subject to revesting in the went of each and every subsequent like default in payments of dividends. Upon the termination of the foregoing special voting rights, the terms of office of all persons who may have been elected directors pursuant to said special voting rights shall forthwith terminate, and the number of directors constituting the Board of Directors shall be reduced by two. The voting rights granted by this Section 3(C) shall be in addition to any other voting rights granted to the holders of the Series A Preferred Stock in this Section 3.

(D) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received $100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shores are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount of stock, securities, cash and/or any property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding

shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. In the event both this Section 7 and Section 9 appear to apply to a transaction, this Section 7 shall control.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable; provided, however, that the Corporation may purchase or otherwise acquire outstanding shares of Series A Preferred Stock in the open market or by offer to any holder or holders of shares of Series A Preferred Stock.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock, unless the Board of Directors shall specifically determine otherwise in fixing the powers, preferences and relative, participating, optional and other special rights of the shares of such series and the qualifications, limitations and restrictions thereof.

Section 10. Fractional Shares. The Series A Preferred Stock shall be issuable upon exercise of the Rights issued pursuant to the Rights Agreement in whole shares or in any fraction of a share that is one one-hundredths (1/100ths) of a share at any integral multiple of such fraction which shall entitle the holder, in proportion to such holder's fractional shares, to receive dividends, exercise voting rights, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock. In lieu of fractional shares, the Corporation, prior to the first issuance of a share or a fraction of a share of Series A Preferred Stock, may elect (1) to make a cash payment as provided in the Rights Agreement for fractions of a share other than one one-hundredths (1/100ths) of a share or any integral multiple thereof or (2) to issue depository receipts evidencing such authorized fraction of a share of Series A Preferred Stock pursuant to an appropriate agreement between the Corporation and a depository selected by the Corporation; provided that such agreement shall provide that the holders of such depository receipts shall have all the rights, privileges and preferences to which they are entitled as holders of the Series A Preferred Stock.

Section 11. Amendment. The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Preferred Stock, voting together as a single class.

SEVENTH: Except as set forth in the next sentence, no holder of any of the shares of the stock of the Corporation, whether now or hereafter authorized and issued, shall be entitled as of right to purchase or subscribe for (i) any unissued stock of any class, or (ii) any additional shares of any class to be issued by reason of any increase in the authorized capital stock of the Corporation of any class, or (iii) bonds, certificate of indebtedness, debentures or other securities convertible into stock of the Corporation, or carrying any right to purchase stock of any class, but any such unissued stock or such additional authorized issue of any stock or of other securities convertible into stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such person, firms corporation or associations and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its discretion. Notwithstanding the foregoing, the Corporation hereby grants to MHR Capital Partners (500) LP, a Delaware limited liability partnership, (ii) MHR Capital Partners (100) LP, a Delaware limited partnership, (iii) MHR Institutional Partners II LP, a Delaware limited partnership and (iv) MHR Institutional Partners IIA LP, a Delaware limited partnership (collectively, and including any of their respective affiliates, the "Investor"), the right to purchase up to the Investor's Percentage Interest of any future Eligible Offering. The Corporation shall, before any securities are issued pursuant to an Eligible Offering, give written notice (a "Preemptive Notice") thereof to the Investor. Such Preemptive Notice shall specify the amount of securities proposed to be offered, sold or issued, the proposed date of such offer, sale or issuance, the consideration that the Corporation intends to receive therefore and all other material terms and conditions of such proposed issuance. For a period of ten (10) days following the date of receipt of the Preemptive Notice, the Investor shall be entitled, by written notice to the Corporation, to elect to purchase all or any portion of its Percentage Interest of the securities to be offered or sold in the Eligible Offering. To the extent that the Investor does not elect to purchase such securities pursuant to the right contained in this Article Seventh, then the Corporation may issue such securities, but only for consideration not less than, and otherwise on no less favorable terms to the Corporation

than those set forth in the Preemptive Notice and only within ninety (90) days after the end of such ten (10) day period. In the event that the Investor elects to purchase securities pursuant to the right contained in this Article Seventh, subject to the closing of the Eligible Offering, the Corporation shall issue to the Investor, and the Investor shall purchase from the Corporation for the consideration and on the terms set forth in the Preemptive Notice, the securities that the Investor shall have elected to purchase within ten (10) days of the Corporation's receipt of the Investor's election to purchase such Percentage Interest. As used herein, the term "Eligible Offering" means an offer by the Corporation to issue to any stockholder or any affiliate of such stockholder for cash any shares of Common Stock, or any security convertible into or exchangeable for, or carrying rights or options to purchase, shares of Common Stock, other than an offering by the Corporation of Common Stock: (i) in an underwritten public offering registered under the Securities Act of 1933, as amended (the "Securities Act") pursuant to a Rule 144A offering under the Securities Act; (ii) or of options to purchase shares of Common Stock in connection with or pursuant to any stock option, stock purchase plan or agreement or other benefit plans approved by the Board of Directors to employees, officers, directors, consultants and/or advisors to the Company or its Subsidiaries; (iii) pursuant to the exercise of any warrant or the conversion of any security convertible into shares of Common Stock, in each case outstanding as of the date hereof; (iv) pursuant to any stock split or dividend; or (v) that is issued in connection with the Company's consolidation, merger or other similar business combination transaction. As used herein, the term "Percentage Interest" means, as of any date of determination, the quotient of (i) the sum of (A) the number of shares of outstanding Common Stock directly or indirectly held by the Investor, (B) the number of shares of Common Stock into which the aggregate amount of any securities then held by the Investor, may be converted, divided by (ii) the sum of (A) the total number of shares of outstanding Common Stock directly or indirectly held by all stockholders of the Corporation, and (B) the total number of shares of Common Stock issuable by the Corporation upon the exercise or conversion of any outstanding options, warrants, or other securities or rights to subscribe for or to purchase shares of Common Stock or any shares of stock or other securities or rights convertible into or exchangeable for shares of Common Stock (collectively, "Convertible Securities"), including any Convertible Securities held by the Investor. For the purposes of this definition, the securities held by the Investor shall be the aggregate number of securities held by all entities comprising the Investor.

EIGHTH: The Corporation is to have perpetual existence.

NINTH: Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or the stockholders or class of stockholders of the Corporation, as the case may be to be summoned in such manner as the said court directs. If a majority in number representing three-fourth in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of the Corporation, as the case may be, and also on the Corporation.

TENTH: For the management of the business and for the Conduct of the affairs of the corporation, and in further definition, limitation and regulation of the powers of the corporation and of its directors and of its stockholders or any Class thereof, as the case may be, it is further provided:

(a) Number, Quorum, Election and Terms of Office of Board of Directors. The business of the Corporation shall be managed by a Board of Directors consisting of not less than three nor more than twelve members, the exact number of directors within such minimum and maximum limitations to be fixed from time to time by resolution adopted by a majority of the entire Board of Directors then in office, whether or not present at a meeting; provided, however, that the number of directors and the maximum limitation thereof may not be increased without the unanimous vote or unanimous written consent of the Board of Directors. A majority of the whole Board of Directors shall constitute a quorum for the transaction of business; provided, however; that a quorum for the transaction of business must include (i) the director elected to the Board of Directors after being nominated solely by MHR Fund Management LLC or any of its affiliates (collectively, "MHR" and such nominee the "MHR Nominee") and (ii) the independent director nominated and approved in writing by both a majority of the Board of Directors and MHR (the "Mutual Director") while in office, but in the absence of a quorum a majority of those present (or if only

one be present, then that one) may adjourn the meeting, without notice other than announcement at the meeting, until such time as a quorum is present. Directors need not be stockholders of the Corporation. The directors shall be divided into three classes with the term of office of the first class to expire at the first annual meeting of stockholders of the Corporation next following the end of the Corporation's fiscal year ending July 31, 1999, the term of office of the second class to expire at the first annual meeting of stockholders of the Corporation next following the end of the Corporation's fiscal year ending July 31, 2000 and the term of office of the third class to expire at the annual meeting of stockholders of the Corporation next following the end of the Corporation's fiscal year ending July 31, 2001. At each annual meeting of stockholders following such initial election as specified above, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election.

(b) Adoption, Amendment and Repeal of By-Laws. The power to adopt, amend or repeal by-laws of the Corporation shall be vested in the Board of Directors; provided, however, that the stockholders of the Corporation may adopt, amend or repeal by-laws of the Corporation upon the affirmative vote of a majority of the stock outstanding and entitled to vote thereon. Notwithstanding anything contained herein to the contrary, none of the rights of MHR in the By-Laws, including the provisions contained in Sections 2.1 through 2.5, 2.7, 2.10, 2.12 or 6.1 of the By-Laws, or any other provisions of the By-Laws that may affect the rights of MHR, may be altered, amended or repealed in any way without the unanimous vote or unanimous written consent of the Board of Directors or the affirmative vote of the holders of at least 85% of the shares of common stock outstanding and entitled to vote at the election of directors; provided, however, that the foregoing stockholder vote requirement shall be of no further force and effect on or after the date that MHR's aggregate shares of Common Stock, warrants to purchase shares of Common Stock, or any other equity securities convertible into, or exchangeable for, any Common Stock, shall be less than two (2) percent of the outstanding Common Stock of the Corporation, which outstanding Common Stock shall include all shares of Common Stock, warrants to purchase shares of Common Stock whose exercise price is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation, or any other equity securities convertible into, or exchangeable for, any Common Stock at a conversion price or exchange rate, respectively, that is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation. In addition, the Board of Directors shall not adopt any resolution setting forth, or call any meeting of stockholders for the purpose of approving, an amendment to the By-Laws that would affect the rights of MHR in the By-Laws, including the provisions contained in Sections 2.1 through 2.5, 2.7, 2.10, 2.12 or 6.1 of the By-Laws, or any other provisions of the By-Laws that may affect the rights of MHR, without a vote in favor of such resolution by the MHR Nominee; provided, however, that the foregoing requirement shall be of no further force and effect on or after the date that MHR's aggregate shares of Common Stock, warrants to purchase shares of Common Stock, or any other equity securities convertible into, or exchangeable for, any Common Stock, shall be less than two (2) percent of the outstanding Common Stock of the Corporation, which outstanding Common Stock shall include all shares of Common Stock, warrants to purchase shares of Common Stock whose exercise price is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation, or any other equity securities convertible into, or exchangeable for, any Common Stock at a conversion price or exchange rate, respectively, that is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation.

(c) Newly Created Directorships and Vacancies. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the remaining directors then in office, although less than a quorum, or by a sole remaining director and any director so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the class to which he or she has been elected expires or, in each case, until his or her successor is duly elected and qualified; provided, however, that the MHR Nominee shall be replaced by an individual who shall have been (i) designated by the MHR Nominee prior to the effectiveness of such vacancy, other than in the case of removal of the MHR Nominee for cause, or (ii) nominated or approved in writing by both a majority of the Board of Directors and MHR, in the case of removal of the MHR Nominee for cause; provided, further, that the Mutual Director shall only be replaced by an individual who shall have been nominated or approved in writing by both the majority of the Board of Directors and MHR. Except as may otherwise be specified in the designations of rights of any series of Preferred Stock then outstanding, no decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(d) Removal of Directors. The removal of a director may be effected only for cause and only upon the affirmative vote of a majority of the stock outstanding and entitled to vote for the election of directors; provided, however, that the MHR Nominee may only be removed, with or without cause, by the affirmative vote of the holders of at least 85% of the shares of common stock outstanding and entitled to vote at the election of directors; provided, further, that the foregoing proviso shall be of no further force and effect on or after the date that MHR's aggregate shares of Common Stock, warrants to purchase shares of Common Stock, or any other equity securities convertible into, or exchangeable for, any Common Stock, shall be less than two (2) percent of the outstanding Common Stock of the Corporation, which outstanding Common Stock shall include all shares of Common Stock, warrants to purchase shares of Common Stock whose exercise price is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation, or any other equity securities convertible into, or exchangeable for, any Common Stock at a conversion price or exchange rate, respectively, that is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation.

(e) Action by Stockholders. Notwithstanding the provisions of Section 228 of the General Corporation Law of the State of Delaware (or any successor statute), any action required or permitted by such General Corporation Law to be taken at any annual or special meeting of stockholders of the Corporation shall be taken only at such an annual or special meeting of stockholders and may not be taken by written consent without a meeting. At any annual meeting or special meeting of stockholders of the Corporation, only such business as has been brought before such meeting in the manner provided by the by-laws of the Corporation shall be conducted.

(f) Special Meetings of Stockholders. Special meetings of stockholders of the Corporation may be called only by the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer of the Corporation and shall be held at such place or places within or without the State of Delaware as may be designated by the Board of Directors or the person calling such meeting and stated in the notice thereof.

(g) Amendments to this Article TENTH. Notwithstanding anything in this Restated Certificate of Incorporation to the contrary, the amendment of this Article TENTH shall require either (i) the affirmative vote of a two-thirds majority of the stock outstanding and entitled to vote or (ii) the unanimous approval of the Board of Directors of the Corporation and a majority of the stock outstanding and entitled to vote; provided, however, that none of the rights of MHR, including the provisions contained in Article TENTH, Sections (a), (c), (d) or (g), or any other provisions of this Amended and Restated Certificate of Incorporation that may affect the rights of MHR, may be altered, amended or repealed in any way without the affirmative vote of the holders of at least 85% of the shares of common stock outstanding and entitled to vote at the election of directors; provided, further, that the foregoing proviso shall be of no further force and effect on or after the date that MHR's aggregate shares of Common Stock, warrants to purchase shares of Common Stock, or any other equity securities convertible into, or exchangeable for, any Common Stock, shall be less than two (2) percent of the outstanding Common Stock of the Corporation, which outstanding Common Stock shall include all shares of Common Stock, warrants to purchase shares of Common Stock whose exercise price is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation, or any other equity securities convertible into, or exchangeable for, any Common Stock at a conversion price or exchange rate, respectively, that is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation. In addition, the Board of Directors shall not adopt any resolution setting forth, or call any meeting of stockholders for the purpose of approving, an amendment to this Amended and Restated Certificate of Incorporation that would affect the rights of MHR, including the provisions contained in Article TENTH Sections (a), (c), (d) or (g), or any other provisions contained in this Amended and Restated Certificate of Incorporation that may affect the rights of MHR, without a vote in favor of such resolution by the MHR Nominee. Notwithstanding anything contained herein to the contrary, the rights granted to MHR in Article TENTH Sections (a), (b), (c), (d) and (g) shall be of no further force and effect on or after the date that MHR's aggregate shares of Common Stock, warrants to purchase shares of Common Stock, or any other equity securities convertible into, or exchangeable for, any Common Stock, shall be less than two (2) percent of the outstanding Common Stock of the Corporation, which outstanding Common Stock shall include all shares of Common Stock, warrants to purchase shares of Common Stock whose exercise price is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation, or any other equity securities convertible into, or exchangeable for, any Common Stock at a conversion price or exchange rate, respectively, that is equal to or less than the closing price per share of Common Stock on the trading date immediately prior to such calculation.

ELEVENTH: No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void solely for this reason, or solely because the director or officer is present at, or participates in, the meeting of the Board of Directors or a committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

(i) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board or committee in good faith authorizes the contract or transaction by a vote sufficient for such purpose without counting the vote of the interested director or directors; or

(ii) The material facts as to his interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or

(iii) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

TWELFTH: (a) the Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasombly believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall have power to indemnify any person who was or is party or is threatened to be made a party to any threatened pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless, and only to the extent that, the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such motion, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Article.

(f) The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any By-Law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article.

(h) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by paragraph 7 of subsection (b) of Section 102 of the General Corporation Law of the state of Delaware, as same may be amended and supplemented.

THIRTEENTH: To the fullest extent permitted by the Delaware General Corporation Law as the same exists or may hereafter be amended, a director of the Corporation shall not be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

FOURTEENTH: From time to time any of the provisions of this Certificate of Incorporation may be amended, altered or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said law, and all rights at any time conferred upon the stockholders of the Corporation by this Certificate of Incorporation are granted subject to the provisions of this Article FOURTEENTH.

IN WITNESS WHEREOF, the undersigned does hereby execute, acknowledge, file and record this Amended and Restated Certificate of Incorporation and does acknowledge, affirm, attest and certify that the facts herein stated are true, under the penalties of perjury, and, accordingly, the undersigned has hereunto set his hand on this 27th day of January, 2006.

/s/Michael M. Goldberg, M.D.

Michael Goldberg M.D.
Chief Executive Officer

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (File Nos. 33-44516, 33-46026, 33-62226, 33-88598, 333-02751, 333-29981, 333-52547, 333-75065, 333-34188, 333-54200, 333-101525 and 333-127582) and on Form S-3 (File Nos. 333-117230, 333-125180, 333-129889 and 333-129891) of Emisphere Technologies, Inc., of our report dated March 16, 2006 relating to the financial statements, management's assessment of the effectiveness of internal control over financial reporting and the effectiveness of internal control over financial reporting which appear in this Form 10-K. We also consent to the reference to us under the heading "Selected Financial Data" in this Form 10-K.

PricewaterhouseCoopers LLP

New York, New York
March 16, 2006

EXHIBIT 31.1

CERTIFICATION PURSUANT TO
RULE 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael Goldberg, certify that:

1. I have reviewed this Annual Report on Form 10-K of Emisphere Technologies, Inc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2006

/s/Michael M. Goldberg, M.D.

Michael M. Goldberg, M.D.
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION PURSUANT TO
RULE 13a-14(a) AND 15d-14(a),
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Elliot M. Maza, certify that:

1. I have reviewed this Annual Report on Form 10-K of Emisphere Technologies, Inc;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financia reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiary, is made known to us by others within that entity, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2006

/s/Elliot M. Maza

Elliot M. Maza
Chief Financial Officer

EXHIBIT 32.1

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

In connection with the Annual Report of Emisphere Technologies, Inc. (the "Company") on Form 10-K for the year ending December 31, 2005 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we, Michael M. Goldberg, as Chief Executive Officer, and Elliot M. Maza, Chief Financial Officer, of the Company certify, pursuant to and for the purpose of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 16, 2006

/s/ Michael M. Goldberg, M.D.

Michael M. Goldberg, M.D.
Chief Executive Officer

/s/ Elliot M. Maza

Elliot M. Maza
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Emisphere Technologies, Inc. and will be retained by Emisphere Technologies, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.