

DEPOMED INC
Form 10-K/A
November 20, 2002

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

AMENDMENT NO. 2

(Mark one)

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

For the fiscal year ended: December 31, 2001

OR

Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

For the transition period from: _____ **to** _____

Commission File Number: 000-23267

DEPOMED, INC.

(Name of Small Business Issuer in its Charter)

California

(State or other jurisdiction of incorporation or organization)

94-3229046

(I.R.S. Employer Identification No.)

1360 O Brien Drive, Menlo Park, California

(Address of principal executive offices)

94025

(Zip Code)

Registrant's telephone number, including area code: **(650) 462-5900**

Securities registered pursuant to Section 12(b) of the Act:

Edgar Filing: DEPOMED INC - Form 10-K/A

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, no par value	American Stock Exchange
Common Stock Purchase Warrants, no par value	American Stock Exchange

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

None

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Check if disclosure of delinquent filers pursuant to Item 405 of Regulation S-X 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.

The issuer's revenues for its most recent fiscal year were \$3,673,326.

The aggregate market value of the voting stock held by non-affiliates of the registrant on November 1, 2002, based upon the closing price of the Common Stock on the American Stock Exchange for such date, was approximately \$23,599,000.

The number of outstanding shares of the registrant's Common Stock on November 1, 2002 was 16,439,187.

DEPOMED, INC.

2001 FORM 10-K/A REPORT

TABLE OF CONTENTS

Explanatory Note

This Annual Report on Form 10-K/A (Form 10-K/A) is being filed as Amendment No. 2 to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2001. This Form 10-K/A is filed with the Securities and Exchange Commission solely for the purpose of revising and restating the following items in their entirety:

PART IV

Item 14. EXHIBITS AND REPORTS ON FORM 8-K

PART IV

Item 14. Exhibits, Financial Statement Schedules, and Reports on Form 8-K

(a)3. Exhibits:

3.1	Third Amended and Restated Articles of Incorporation
3.2	Form of Amended and Restated Articles of Incorporation
3.3	Bylaws
3.4	Certificate of Amendment to the Third Amended and Restated Articles of Incorporation
4.1	Specimen Common Stock Certificate
4.2	Specimen Warrant Certificate (filed as Exhibit A to the Form of Warrant Agreement)
4.3	Form of Representative's Warrant Agreement including form of Representative's Warrant
4.4	Form of Warrant Agreement
10.1	1995 Stock Option Plan, as amended
10.9	Agreement re: Settlement of Lawsuit, Conveyance of Assets and Assumption of Liabilities dated August 28, 1995 by and among DepoMed Systems, Inc., Dr. John W. Shell and M6 Pharmaceuticals, Inc.
10.10	Form of Indemnification Agreement between the company and its directors and executive officers
10.12	Form of Agreement between the company and Burrill & Company
+ 10.15	Securities Purchase Agreement dated January 21, 2000 between the company and Elan International Services, Ltd.
10.16	Company Registration Rights Agreement dated January 21, 2000 between the company and Elan International Services, Ltd.
10.17	Newco Registration Rights Agreement dated January 21, 2000 among the company, Newco and Elan International Services, Ltd.
10.18	Funding Agreement dated January 21, 2000 among the company, Elan Corporation, plc, Elan Pharma International, Ltd. and Elan International Services, Ltd.
+ 10.19	Subscription, Joint Development Operating Agreement dated January 21, 2000 among the company, Newco, Elan Corporation, plc, Elan Pharma International, Ltd. and Elan International Services, Ltd.
10.20	Convertible Promissory Note dated January 21, 2000 issued by the company to Elan International Services, Ltd.
+ 10.21	Company License Agreement dated January 21, 2000 among the company, Newco and Elan Corporation, plc.
+ 10.22	Elan License Agreement dated January 21, 2000 among the company, Newco, Elan Corporation, plc and Elan Pharma International, Ltd.
10.23	Certificate of Determination of Rights and Preferences of Series A Preferred Stock filed with the State of California on January 14, 2000
10.24	Loan agreement dated March 29, 2001 between the company and GATX Ventures, Inc.

Edgar Filing: DEPOMED INC - Form 10-K/A

23.1	Consent of Ernst & Young LLP, Independent Auditors
*24.1	Power of Attorney
99.1	Certification of John W. Fara, Ph.D.
99.2	Certification of John F. Hamilton

Incorporated by reference to the company's registration statement on Form SB-2 (File No. 333-25445)
Incorporated by reference to Exhibit 10.1 of the company's registration statement on Form S-8 (File No. 333-54982)
Incorporated by reference to the company's Form 8-K filed on February 18, 2000
Incorporated by reference to the company's Form 10-Q filed on November 14, 2001

+ Confidential treatment granted.

* Previously filed.

(b) Reports on Form 8-K:

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the issuer, a corporation organized and existing under the laws of the State of California, has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized, in the City of Menlo Park, State of California, on the 20th day of November, 2002.

DEPOMED, INC.

By */s/ John W. Fara, Ph.D.*
John W. Fara, Ph.D.
 Chairman, President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report on Form 10-K/A has been signed by the following persons in the capacities and on the dates indicated.

Signature		
<i>/s/ John W. Fara, Ph.D.</i> John W. Fara, Ph.D.	Chairman, President and Chief Executive Officer (Principal Executive Officer)	November 20, 2002
<i>/s/ John F. Hamilton</i> John F. Hamilton	Vice President, Finance and Chief Financial Officer (Principal Financial Officer)	November 20, 2002
<i>/s/ John N. Shell*</i> John N. Shell	Vice President, Operations and Director	November 20, 2002
<i>/s/ G. Steven Burrill*</i> G. Steven Burrill	Director	November 20, 2002
<i>/s/ John W. Shell, Ph.D.*</i> John W. Shell, Ph.D.	Director	November 20, 2002
<i>/s/ Julian N. Stern*</i> Julian N. Stern	Director and Secretary	November 20, 2002
<i>/s/ W. Leigh Thompson, M.D., Ph.D.*</i> W. Leigh Thompson, M. D., Ph.D.	Director	November 20, 2002

/s/ John W. Fara, Ph.D.

November 20, 2002

John W. Fara, Ph.D.

* (Attorney-in-Fact)

**CERTIFICATION PURSUANT TO RULE 15d-14
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, John W. Fara, Chief Executive Officer, certify that:

1. I have reviewed this annual report on Form 10-K/A of DepoMed, Inc.;

2. Based on my knowledge, this quarterly 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 annual report; and

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report.

November 20, 2002

By: /s/ John W. Fara, Ph.D.
John W. Fara, Ph.D.
Chief Executive Officer

**CERTIFICATION PURSUANT TO RULE 15d-14
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, John F. Hamilton, Chief Financial Officer, certify that:

1. I have reviewed this annual report on Form 10-K/A of DepoMed, Inc.;

2. Based on my knowledge, this annual 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 annual report; and

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual report.

November 20, 2002

By: /s/ John F. Hamilton
John F. Hamilton
Chief Financial Officer

INDEX TO EXHIBITS

- 3.1 Third Amended and Restated Articles of Incorporation
- 3.2 Form of Amended and Restated Articles of Incorporation
- 3.3 Bylaws
- 3.4 Certificate of Amendment to the Third Amended and Restated Articles of Incorporation
- 4.1 Specimen Common Stock Certificate
- 4.2 Specimen Warrant Certificate (filed as Exhibit A to the Form of Warrant Agreement)
- 4.3 Form of Representative s Warrant Agreement including form of Representative s Warrant
- 4.4 Form of Warrant Agreement
- 10.1 1995 Stock Option Plan, as amended
- 10.9 Agreement re: Settlement of Lawsuit, Conveyance of Assets and Assumption of Liabilities dated August 28, 1995 by and among DepoMed Systems, Inc., Dr. John W. Shell and M6 Pharmaceuticals, Inc.
- 10.10 Form of Indemnification Agreement between the company and its directors and executive officers
- 10.12 Form of Agreement between the company and Burrill & Company
- + 10.15 Securities Purchase Agreement dated January 21, 2000 between the company and Elan International Services, Ltd.
- 10.16 Company Registration Rights Agreement dated January 21, 2000 between the company and Elan International Services, Ltd.
- 10.17 Newco Registration Rights Agreement dated January 21, 2000 among the company, Newco and Elan International Services, Ltd.
- 10.18 Funding Agreement dated January 21, 2000 among the company, Elan Corporation, plc, Elan Pharma International, Ltd. and Elan International Services, Ltd.
- + 10.19 Subscription, Joint Development Operating Agreement dated January 21, 2000 among the company, Newco, Elan Corporation, plc, Elan Pharma International, Ltd. and Elan International Services, Ltd.
- 10.20 Convertible Promissory Note dated January 21, 2000 issued by the company to Elan International Services, Ltd.
- + 10.21 Company License Agreement dated January 21, 2000 among the company, Newco and Elan Corporation, plc.
- + 10.22 Elan License Agreement dated January 21, 2000 among the company, Newco, Elan Corporation, plc and Elan Pharma International, Ltd.
- 10.23 Certificate of Determination of Rights and Preferences of Series A Preferred Stock filed with the State of California on January 14, 2000
- 10.24 Loan agreement dated March 29, 2001 between the company and GATX Ventures, Inc.
- 23.1 Consent of Ernst & Young LLP, Independent Auditors
- *24.1 Power of Attorney
- 99.1 Certification of John W. Fara, Ph.D.
- 99.2 Certification of John F. Hamilton

Incorporated by reference to the company s registration statement on Form SB-2 (File No. 333-25445)

Incorporated by reference to Exhibit 10.1 of the company s registration statement on Form S-8 (File No. 333-54982)

Incorporated by reference to the company s Form 8-K filed on February 18, 2000

Incorporated by reference to the company s Form 10-Q filed on November 14, 2001

+ Confidential treatment granted.

* Previously filed.