

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT

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

March 19, 1998  
Date of Report (Date of earliest event reported)

DISCOVERY LABORATORIES, INC.  
(Exact name of Registrant as specified in its charter)

Delaware	000-26422	94-3171943
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

509 Madison Avenue, 14th Floor  
New York, New York 10022  
(Address of principal executive offices)

(212) 223-9504  
(Registrant's telephone number, including area code)

Item 6. Resignations of Registrant's Directors

On March 20, 1998, Vaughan Shalson resigned from the Board of Directors of Discovery Laboratories, Inc. (the "Registrant"). Pursuant to a resolution adopted by the Board of Directors on February 4, 1998, Mr. Shalson was not nominated to serve on the Board of Directors following the Registrant's proposed merger with its majority-owned subsidiary, Acute Therapeutics, Inc. (the "ATI Merger"). The Registrant expects to submit the ATI Merger to a stockholder vote during May 1998. Accordingly, Mr. Shalson's resignation has occurred approximately two months prior to the time the Registrant anticipated that Mr. Shalson would cease serving as a Board member. Mr. Shalson served as the Registrant's chief executive officer from February through November 1997. In a letter to the Registrant, Mr. Shalson stated that he was resigning from the Board as a result of his opposition to the terms of the compensation to be paid to the Registrant's new management team pursuant to the proposed ATI Merger, particularly the compensation to be paid to the new chief executive officer. Those compensation terms are described in the Registrant's Reports on Form 8-K dated February 9 and March 5, 1998.

The merger agreement relating to the ATI Merger contemplates that upon consummation of the ATI Merger, the present management team of Acute Therapeutics, Inc. ("ATI") will succeed to the management of the Registrant. In his letter to the Registrant, Mr. Shalson expressed concern that, in view of the Registrant's rate of use of its existing cash, the current level of such cash and the cash required to complete the ATI Merger, the proposed compensation arrangements would put a severe strain on the Registrant resources. Mr. Shalson reiterated his belief, which had previously been expressed to the Board, that he did not believe the ATI Merger to be in the best interests of the Registrant's stockholders.

The ATI Merger has been approved by a majority of the disinterested members of the Registrant's Board of Directors. The Registrant believes that the ATI Merger is in the best interests of the Registrant and its stockholders and represents an opportunity to (i) acquire 100% ownership of ATI's Surfaxin<sup>TM</sup> product, (ii) simplify the Registrant's corporate and financial structure, thereby increasing potential opportunities to obtain third party financing of the Registrant's research activities, and (iii) resolve management recruitment and succession issues. The Registrant believes that Mr. Shalson's opposition to the ATI Merger is based, at least in part, on an inadequate understanding of the Registrant's financial position and the proposed compensation terms of the Merger. The Registrant believes that it will have cash and cash-equivalents of

approximately \$7.7 million if the ATI Merger is consummated on June 30, 1998 -- approximately \$1.2 million more than the \$6.5 million projected by Mr. Shalson. Furthermore, the \$1.65 million in potential milestone compensation to which Mr. Shalson objected in his letter to the Registrant does not represent a use of cash at closing, as implied by Mr. Shalson, but rather represents potential payments that will be made to the ATI management team only if important corporate objectives have been attained. The Registrant believes that the attainment of these objectives would increase substantially its opportunities to complete one or more financings and that Mr. Shalson's concerns in this regard are therefore particularly misplaced.

To the extent that statements in this Form 8-K are not strictly historical, including statements as to future financial conditions, events conditioned on stockholder or other approval, or otherwise as to future events, such statements are forward-looking, and are made pursuant to the safe harbor provisions of the Securities Litigation Reform Act of 1995. The forward-looking statements contained in this Form 8-K are subject to certain risks and uncertainties that could cause actual results to differ materially from the statements made. Among the factors which could affect the Company's actual results and could cause results to differ from those contained in the forward-looking statements contained herein are the risk that financial conditions may change, risks relating to the progress of the Company's research and development and the development of competing therapies and/or technologies by other companies. Those associated risks and others are further described in the Company's filings with the Securities and Exchange Commission.

#### Item 7. Financial Statements, Pro Forma Financial Statements and Exhibits

##### (c) Exhibits:

17 Resignation letter of Vaughan Shalson dated March 19, 1998.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

DISCOVERY LABORATORIES, INC.

Date: March 20, 1998

By: /s/ Robert J. Capetola

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Name: Robert J. Capetola, Ph.D.

Title: Acting Chief Executive Officer

Exhibit Index

Exhibit Number  
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Description  
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17

Resignation letter of Vaughan Shalson dated  
March 19, 1998.

## Fax Message

Date: March 19, 1998

Time: 8:44 PM

To: Steve Kanzer  
Paramount CapitalPhone: (212) 554-4330  
Fax: (212) 554-4490

From: Vaughan Shalson

Phone: (510) 661-9062  
Fax: (510) 661-9062cc: Ken Alberstadt  
Roberts, Sheridan & KotelPhone: (212) 299-8600  
Fax: (212) 299-8686

Re: Resignation from Discovery Board

Number of pages including cover sheet: 2

## Message

Dear Steve:

As you are aware from our telephonic board conference calls on January 30 and February 4, I am strongly opposed to the terms of the merger agreement outlined in the draft letter of intent dated January 28, 1998.

In summary, I have serious reservations about the judgement of Dr. Capetola and feel deeply that the compensation proposed for the management team, and in particular for Dr. Capetola, involves an excessive use of cash. As I have stated repeatedly in our conference calls, I do not believe this to be in our shareholders best interests.

On the subject of Dr. Capetola's judgement, at our Board Meeting on December 5 we discussed a merger proposal from Dr. Capetola dated August 28, 1997. The compensation package included in this proposal was characterized by one of the other board members present at that meeting as egregious. I and others agreed with this sentiment.

My own evaluation was that Capetola's proposal went so far beyond the pale of what could be considered negotiation posturing, as to lead any reasonable person to conclude that he exhibited either lack of experience or extremely poor judgement-neither of which should be acceptable qualities in the proposed CEO of the combined company.

Under the current proposal, Dr. Capetola's minimum guaranteed cash compensation (base salary plus guaranteed minimum year-end bonus) will be increase 26% from \$225,000 to \$283,500 a year (or more, if Dr. Capetola's salary has been increased above \$225,000 since he joined ATI in October 1996), and he is thereafter guaranteed a minimum annual increase of 5%. In addition, he will receive a joining bonus of \$100,000; a increase in his partnering bonus from a "once-only" to a "for-each" payout of \$50,000; sufficient stock options to give him a beneficial ownership of 6.8% (the largest of any individual shareholder of the company); and an increase in his severance provision from 12 months with Set-Off to 18 months without Set-Off.

If this were all, I would consider him more than generously compensated. However, the current proposal also includes milestones payments for the management group totaling \$1,650,000 which, it is clear from our board discussion, Dr. Capetola expects to be paid in cash. While this is a "pool" to be shared by the whole management team, some insight as to Dr. Capetola's likely expectations as to his personal share of this cash may be gleaned from the stock option pool in Schedule A of the letter of intent, wherein Dr. Capetola has proposed that he receive 34% of all the stock options to be issued. On the same proportional basis, he would personally receive milestone payouts totalling in excess of \$560,000.

To put this in perspective, from our board discussion on January 30, it appears that, at the current combined Discovery/ATI burn-rate of approximately \$600,000 per month, and allowing for another \$500,000 of legal, accounting and severance costs associated with consummating this merger, if it takes until the Date of Termination in the current proposal (June 30, 1998) to conclude this transaction, the merged company would have barely \$6.5 million in cash post-merger to pursue its programs. Absent a crystal ball to know the condition of the financial markets facing the merged company, which would then need to raise cash, it seems entirely inappropriate to me to include milestone compensation to management amounting to \$1,650,000, or 25% of the company's projected cash atclosing.

I regard this proposal as further evidence of Capetola's lack of judgement, by even proposing to expose the company to cash payments of such magnitude that they could severely strain the company's resources, and that are excessive by any reasonable standard for a development-stage company in such fragile financial condition.

In light of the foregoing, I hereby resign from the board of directors effective immediately.

Please file a report on Form 8-K including a copy of this letter as an exhibit, and ensure that this is fully disclosed in any information sent to shareholders in connection with the proposed merger.

Yours truly,

/s/ Vaughan Shalson

Vaughan Shalson