

INDEVUS PHARMACEUTICALS INC
Form PRE 14A
January 18, 2005
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SCHEDULE 14A

INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(A) OF
THE SECURITIES EXCHANGE ACT OF 1934**

(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement Confidential, for Use of the Commission Only
(as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Section 240.14a-12

INDEVUS PHARMACEUTICALS, INC.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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- (1) Amount Previously Paid: N/A
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- (3) Filing Party: N/A
- (4) Date Filed: N/A

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INDEVUS PHARMACEUTICALS, INC.

One Ledgemont Center

99 Hayden Avenue

Lexington, Massachusetts 02421-7966

Notice of Annual Meeting of Stockholders

To be held March 9, 2005

TO THE STOCKHOLDERS:

Notice is hereby given that the Annual Meeting of the Stockholders of Indevus Pharmaceuticals, Inc. (the Company) will be held on March 9, 2005, at 10:00 a.m. local time at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, Massachusetts 02451. The Annual Meeting is called for the following purposes:

1. To elect a board of seven directors;
2. To approve the amendment of the Company's Restated Certificate of Incorporation, as amended, to increase the number of authorized shares thereunder;
3. To approve the amendment of the Company's 1995 Stock Purchase Plan, as amended to increase the number of shares available for purchase thereunder;
4. To approve and ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of the Company; and
5. To consider and take action upon such other matters as may properly come before the meeting or any adjournment or adjournments thereof.

The close of business on January 21, 2005 has been fixed as the record date for the determination of stockholders entitled to notice of, and to vote at, the Annual Meeting.

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All stockholders are cordially invited to attend the Annual Meeting. Whether or not you expect to attend, you are respectfully requested by the Board of Directors to sign, date and return the enclosed proxy promptly. Stockholders who execute proxies retain the right to revoke them at any time prior to the voting thereof. A return envelope which requires no postage if mailed in the United States is enclosed for your convenience.

By Order of the Board of Directors,

Glenn L. Cooper, M.D.

President, Chief Executive

Officer and Chairman

Dated: January , 2005

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INDEVUS PHARMACEUTICALS, INC.

One Ledgemont Center

99 Hayden Avenue

Lexington, Massachusetts 02421-7966

(781) 861-8444

PROXY STATEMENT

ANNUAL MEETING OF STOCKHOLDERS

This Proxy Statement is furnished in connection with the solicitation of proxies by the Board of Directors of Indevus Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for the Annual Meeting of Stockholders to be held at The Conference Center at Waltham Woods, 860 Winter Street, Waltham, Massachusetts 02451 on March 9, 2005, at 10:00 a.m. local time and for any adjournment or adjournments thereof, for the purposes set forth in the accompanying Notice of Annual Meeting of Stockholders. Any stockholder giving such a proxy has the power to revoke it at any time before it is voted. Written notice of such revocation should be forwarded directly to the Executive Vice President, Chief Financial Officer and Treasurer of the Company, at the Company's above stated address. Attendance at the Annual Meeting will not have the effect of revoking the proxy unless such written notice is given or the stockholder votes by ballot at the Annual Meeting.

All shares that have been properly voted and not revoked will be voted at the Annual Meeting. If you sign and return your proxy card but do not give any voting instructions for a matter to be voted on, including without limitation, a vote for, against, withheld, or abstain, the shares represented by that proxy will be voted with respect to that matter by the Board of Directors in favor of the actions described in this Proxy Statement, including the election of the nominees set forth under the caption "Election of Directors," to approve the amendment of the Company's Restated Certificate of Incorporation, as amended, to increase the number of authorized shares thereunder (the "Charter Amendment"), to approve the amendment of the Company's 1995 Employee Stock Purchase Plan, as amended, to increase the number of shares available for purchase thereunder (the "1995 Plan Amendment"), and the approval and ratification of the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of the Company.

The approximate date on which this Proxy Statement and the accompanying form of proxy will first be mailed or given to the Company's stockholders is February 4, 2005. In addition, this Proxy Statement will be available on the Company's website at www.indevus.com beginning on or about February 4, 2005. The Annual Report to Stockholders for the fiscal year ended September 30, 2004 is being mailed to the Stockholders and will also be made available on the Company's website with this Proxy Statement, but does not constitute a part hereof.

Your vote is important. Accordingly, you are urged to sign and return the accompanying proxy card whether or not you plan to attend the Annual Meeting. If you do attend, you may vote by ballot at the Annual Meeting, thereby canceling any proxy previously given.

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VOTING SECURITIES AND VOTING RIGHTS

Holders of shares of the Company's common stock, par value \$.001 per share (the "Shares"), and holders of shares of the Company's Series B and Series C Preferred Stock, par value \$.001 per share (the "Preferred Shares"), of record as of the close of business on January 21, 2005, are entitled to notice of, and to vote at, the Annual Meeting on all matters except that the holders of the Preferred Shares are not entitled to vote for the election of directors. Except as set forth in the preceding sentence, each outstanding Share is entitled to one vote upon all matters to be acted upon at the Annual Meeting. For purposes of voting at the Annual Meeting on all matters except the election of directors, the Preferred Shares are treated as converted into Shares.

Accordingly, on the record date there were issued and outstanding an aggregate of (i) 46,962,061 Shares, excluding 863,835 Shares held in the Company's treasury, entitled to vote for the election of directors, and (ii) 47,584,283 Shares, giving effect to the right to vote 622,222 Shares held by the holder of the 244,425 Preferred Shares, voting as one class after conversion of such Preferred Shares, entitled to vote on all other matters (the "Post Conversion Shares").

A majority of the outstanding Shares entitled to vote on any proposal and represented at the Annual Meeting in person or by proxy shall constitute a quorum. Assuming a quorum is present, (i) the affirmative vote of a plurality of votes cast by the holders of Shares represented at the Annual Meeting and entitled to vote is necessary to elect the directors; and (ii) the affirmative vote of a majority of the Post Conversion Shares represented at the Annual Meeting and entitled to vote is necessary to approve the Charter Amendment, the 1995 Plan Amendment, and the ratification of the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of the Company.

Abstentions and broker "non-votes" are counted as present and entitled to vote for purposes of determining a quorum. A broker "non-vote" occurs when a broker holding Shares for a beneficial owner does not vote on a particular proposal because the broker does not have discretionary voting power for that particular item and has not received instructions from the beneficial owner. Broker "non-votes" are not counted for any purpose in determining whether a proposal has been approved, but abstentions are counted for the purpose of determining whether a proposal has been approved. Accordingly, an abstention from voting on the approval of the Charter Amendment, the 1995 Plan Amendment, or the ratification of the appointment of the independent registered public accounting firm has the same legal effect as a vote "against" such proposals.

Delaware law does not afford our stockholders the opportunity to dissent from the actions described in the proposals herein and receive value for their Shares.

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Set forth below is information concerning stock ownership of all persons known by the Company to own beneficially 5% or more of the Shares or Preferred Shares, each director, each executive officer named under Executive Compensation and all directors and executive officers of the Company as a group based upon the number of outstanding Shares and Preferred Shares as of January 21, 2005.

<u>Beneficial Holder</u>	<u>Amount and Nature of Beneficial Ownership(1)</u>	<u>Percent of Outstanding Class of Stock Owned(16)</u>
		<u>Common</u>
Glenn L. Cooper, M.D.	2,755,782 (2)	5.6%
Mark S. Butler	1,111,363 (3)	2.3%
Michael W. Rogers	1,498,147 (4)	3.1%
Bobby W. Sandage, Jr., Ph.D	1,376,369 (5)	2.9%
Noah Beerman	254,116 (6)	*
Harry J. Gray	196,188 (7)	*
Michael E. Hanson		*
Stephen C. McCluski	16,250 (8)	*
Cheryl P. Morley	16,250 (9)	*
Malcolm Morville, Ph.D.	115,188 (10)	*
David B. Sharrock	184,750 (11)	*
John H. Tucker	139,008 (12)	*
All directors and executive officers as a group (12 persons)	7,663,411 (13)	14.1%
AXA Financial, Inc.	2,549,820 (14)	5.4%
1290 Avenue of the Americas New York, New York 10104		
		<u>Preferred</u>
Wyeth	244,425 (15)	100%
Five Giralda Farms Madison, New Jersey 07940		

* Less than one percent.

(1) Beneficial ownership is defined in accordance with the rules of the Securities and Exchange Commission (S.E.C.) and generally means the power to vote and/or to dispose of the securities regardless of any economic interest therein. Share amounts include options which are exercisable within sixty (60) days.

(2) Includes (i) 175,000 Shares and (ii) 2,580,782 Shares issuable upon exercise of options exercisable within 60 days.

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- (3) Includes (i) 3,547 Shares, (ii) 7,986 Shares owned by Mr. Butler's children, and (iii) 1,099,830 Shares issuable upon exercise of options exercisable within 60 days.
- (4) Includes (i) 122,317 Shares and (ii) 1,375,830 Shares issuable upon exercise of options exercisable within 60 days.
- (5) Includes (i) 58,039 Shares and (ii) 1,318,330 Shares issuable upon exercise of options exercisable within 60 days.
- (6) Includes (i) 2,299 Shares and (ii) 251,817 Shares issuable upon exercise of options exercisable within 60 days.
- (7) Consists of 196,188 Shares issuable upon exercise of options exercisable within 60 days.

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- (8) Consists of 16,250 Shares issuable upon exercise of options exercisable within 60 days.
- (9) Consists of 16,250 Shares issuable upon exercise of options exercisable within 60 days.
- (10) Includes (i) 13,000 Shares and (ii) 102,188 Shares issuable upon exercise of options exercisable within 60 days.
- (11) Includes (i) 5,000 Shares and (ii) 179,750 Shares issuable upon exercise of options exercisable within 60 days.
- (12) Includes (i) 988 Shares and (ii) 138,020 Shares issuable upon exercise of options exercisable within 60 days.
- (13) Includes (i) 388,176 Shares and (ii) 7,275,235 Shares issuable upon options exercisable within 60 days.
- (14) Based on information provided to the Company by AXA Financial, Inc. Alliance Capital Management L.P. and Advest, Inc. are subsidiaries of AXA Financial, Inc. Alliance Capital Management L.P. has sole voting power and sole dispositive power with respect to 2,548,620 Shares, while Advest, Inc. has shared voting power and shared dispositive power with respect to 1,200 Shares.
- (15) Represents Preferred Shares, which constitute all of the outstanding Preferred Shares, and which are convertible into 622,222 Shares, each entitled to one vote per Share, on a converted basis, on all matters except the election of directors.
- (16) All beneficial owners own Shares, with the exception of Wyeth which also owns 244,425 Preferred Shares (convertible into 622,222 Shares). The percent of class in this column is calculated as follows:
 - (a) for beneficial owners of Shares, on the basis of 46,962,061 Shares outstanding, excluding 622,222 Shares issuable upon conversion of the Preferred Shares, representing the number of Shares outstanding and entitled to vote for the election of directors of the Company.
 - (b) for beneficial owners of Preferred Shares, the percent of class is calculated on the basis of 244,425 Preferred Shares outstanding.

Table of Contents**BOARD OF DIRECTORS STRUCTURE AND COMPENSATION****THE BOARD OF DIRECTORS**

The Board of Directors has seven current members. Directors are elected by the Company's stockholders at each annual meeting or, in the case of a vacancy, are appointed by the directors then in office, to serve until the next annual meeting or until their successors are elected and qualified. Officers of the Company are appointed by and serve at the discretion of the Board. The current members of the Board and the function of each committee of the Board are described below:

<u>NAME</u>	<u>AGE</u>	<u>POSITIONS AND TENURE</u>
Glenn L. Cooper, M.D.	52	President, Chief Executive Officer and Director since May 1993 and Chairman since January 2000
Harry J. Gray	85	Director since May 1993
Michael E. Hanson	57	Director since December 2004
Stephen C. McCluski	52	Director since June 2003
Cheryl P. Morley	50	Director since June 2003, Presiding
		Director since December 2004
Malcolm Morville, Ph.D.	59	Director since February 1993
David B. Sharrock	68	Director since February 1995

MEETINGS OF THE BOARD OF DIRECTORS

The Board of Directors of the Company held nine meetings during the fiscal year ended September 30, 2004 (fiscal 2004). During fiscal 2004, other than Mr. Hanson, who became a director in December 2004, each incumbent director attended at least 75% of the aggregate number of meetings of the Board of Directors and the committees thereof on which such director serves. All directors are requested to attend each annual meeting of the Company's stockholders and all directors attended the 2004 Annual Meeting of Stockholders. The Board has determined that each of its non-employee members is independent within the meaning of the Nasdaq Stock Market, Inc. (Nasdaq) listing standards.

BOARD COMMITTEES**AUDIT**

The Audit Committee consists of Mr. McCluski, the Chairman of the Committee, Ms. Morley and Mr. Hanson. Mr McCluski and Ms. Morley are financial experts. The Board has determined that the members of the Audit Committee are independent as defined by the current listing standards of the Nasdaq. The Audit Committee met five times during fiscal 2004.

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The Audit Committee assists the Board by overseeing the performance of the independent registered public accounting firm and the quality and integrity of the Company's internal accounting, auditing and financial reporting practices. The Audit Committee's other primary duties and responsibilities are to: (1) serve as an independent and objective party to monitor the Company's financial reporting process and internal control system; (2) be directly responsible for the selection of the Company's independent registered public accounting firm and their compensation; (3) review and appraise the audit efforts of the Company's independent registered public accounting firm; and (4) provide an open avenue of communication among the independent registered public accounting firm, the Company's financial and senior management and the Board of Directors. The Audit Committee also pre-approves all audit services and permitted non-audit services performed or proposed to be undertaken by the auditors and meets quarterly with representatives of management and the Company's

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independent auditors to review financial statements prior to release of quarterly financial results. The Board has adopted a written charter for the Audit Committee which was filed as Appendix A to the Company's Definitive Proxy Statement filed with the S.E.C. on January 28, 2003, and which also may be accessed and reviewed through the Company's website: <http://www.indevus.com>.

COMPENSATION

The Compensation Committee consists of Mr. Sharrock, the Chairman of the Committee, Mr. Gray and Dr. Morville. The Compensation Committee met two times during fiscal 2004. The Board has determined that the members of the Compensation Committee are independent as defined by the current listing standards of the Nasdaq.

The Compensation Committee reviews and determines the compensation of all executive officers of the Company. The Compensation Committee's other primary duties and responsibilities are to: (1) review general policy matters relating to compensation and benefits of employees of the Company; (2) administer the Company's stock option and other employee compensation plans; and (3) consult with management on matters concerning compensation and make recommendations to the Board of Directors on compensation matters where approval of the Board of Directors is required. The Board has adopted a written charter for the Compensation Committee which may be accessed and reviewed through the Company's website: <http://www.indevus.com>.

NOMINATING AND GOVERNANCE

The Nominating and Governance Committee consists of Ms. Morley, the Chairperson of the Committee, Dr. Morville and Mr. Hanson. The Board has determined that the members of the Nominating and Governance Committee are independent as defined by the current listing standards of the Nasdaq. The Nominating and Governance Committee met two times during the period from its establishment on January 26, 2004 and the end of fiscal 2004.

The Nominating and Governance Committee develops and maintains criteria and procedures for the identification and recruitment of candidates for election to serve as directors of the Company, recommends director nominees to the Board, and as appropriate, to the stockholders of the Company. The Nominating and Governance Committee's other primary duties and responsibilities are to: (1) review and reassess the adequacy of the corporate governance guidelines of the Company and recommend any proposed changes to the Board for approval; (2) study and review with the Board the overall effectiveness of the Board and its committees and establish director orientation guidelines; (3) review and recommend to the Board from time to time the creation of new Board committees, the directors to be selected for membership on the Board committees, and the responsibilities, organization and membership of existing Board committees; (4) review and report to the Board on management succession planning; (5) oversee jointly with the Compensation Committee the annual Chief Executive Officer evaluation process and report the results of the evaluation to the Board and its Compensation Committee; and (6) review with management any proposed major organizational changes to the Company. The Board has adopted a revised written charter for the Nominating and Governance Committee which is attached hereto as Appendix D and may be accessed and reviewed through the Company's website: <http://www.indevus.com>.

The Nominating and Governance Committee and the Board will consider director candidates recommended by stockholders. The Nominating and Governance Committee and the Board do not have a written policy for how they will consider such recommendations due to the limited number of such recommendations to date, the need to evaluate such recommendations on a case-by-case basis, and the expectation that recommendations from stockholders probably would be considered generally in the same manner as recommendations by a director or an officer of the Company.

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The Nominating and Governance Committee and the Board have not established minimum qualifications that must be met by a board-recommended nominee. However, the directors do:

- consider whether a current board member wishes to be re-elected;
- determine if a new nominee is needed and the skills and experience desired in a new director, such as marketing or sales experience, financial expertise, business experience, technological knowledge, business development expertise or community involvement;
- identify potential nominees who have such skills and experience;
- determine whether the potential nominees are stockholders of the Company;
- develop a consensus of the directors with respect to which potential nominee would be best suited for the position;
- investigate the potential nominee's background and develop personal knowledge about the candidate; and
- determine whether the candidate is interested.

A stockholder who wishes to make a nomination for consideration by the Nominating and Governance Committee must submit a written nomination to the Company. Each such written nomination must state the name, age, business or residence address of the nominee, the principal occupation or employment of the nominee, the number of Shares and Preferred Shares owned either beneficially or of record by each such nominee and the length of time such Shares and Preferred Shares have been so owned. Written nominations received by September 30 will be considered for the next annual meeting of stockholders held thereafter, while nominations received after such date will be considered for the annual meeting following the next annual meeting held thereafter unless the Board, in its sole discretion, decides otherwise.

The Company entered into a one-year consulting agreement, effective as of December 7, 2004, with Lee J. Schroeder, a former director of the Company who resigned effective December 31, 2004. Under this agreement Mr. Schroeder will assist in identifying potential candidates for the Nominating and Governance Committee to consider for recommendation as nominees to the Company's Board of Directors.

The Nominating and Governance Committee recommended the nomination, and the Board approved the election, of Michael E. Hanson to the Board of Directors and the inclusion of Mr. Hanson on the Company's proxy card. Mr. Hanson was recommended to the Nominating and Governance Committee and the Board by Mr. Schroeder, who did not receive compensation for this recommendation.

COMMUNICATIONS WITH DIRECTORS

The Board of Directors maintains a process for stockholders to communicate with the Board. Stockholders wishing to communicate with the Board or any individual director must mail a communication addressed to the Board or the individual director to the Board of Directors, c/o Indevus Pharmaceuticals, Inc. at One Ledgemont Center, 99 Hayden Avenue, Lexington, Massachusetts 02421-7966. Any such communication

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must state the number of Shares and Preferred Shares beneficially owned by the stockholder making the communication. All of such communications will be forwarded to the full Board of Directors or to any individual director or directors to whom the communication is directed unless the communication is clearly of a marketing nature or is unduly hostile, threatening, illegal, or similarly inappropriate, in which case the Company has the authority to discard the communication or take appropriate legal action regarding the communication.

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DIRECTOR COMPENSATION

During each of fiscal 2003 and 2004, as part of an overall review of our executive officer and director compensation, the Compensation Committee retained an independent compensation consultant to review whether our non-employee Director compensation practices were competitive with those of other biotechnology, pharmaceutical, and comparable peer companies. Based on the consultant's analyses and recommendations, the Compensation Committee recommended and the Board approved certain increases in the total value of the compensation package in order to remain competitive with our peer companies. Therefore, the discussion below reflects the changes in our non-employee Director compensation policies that were approved by the Compensation Committee and the Board in April 2003 and March 2004.

Cash Compensation

With regard to each meeting of the Board of Directors, non-employee directors of the Company receive a fee of \$2,000 per in-person meeting attended and meetings conducted telephonically which last more than thirty minutes. Each non-employee director is reimbursed for expenses actually incurred in attending Board meetings. In addition, each non-employee director of the Company, other than the Presiding Director, receives an annual retainer fee of \$15,000 payable on October 1 of each year. The Presiding Director is entitled to receive an annual retainer fee of \$30,000. Ms. Morley is currently the Presiding Director. We do not compensate Directors who are also our employees for their service as Directors.

With regard to each meeting of a Committee of the Board of Directors members of such Committees receive a fee of \$1,000 per in-person meeting attended and meetings conducted telephonically which last more than thirty minutes. In addition, the Chairman of the Audit Committee receives an annual retainer of \$10,000 and the Chairman of each of the Compensation Committee and the Nominating and Governance Committee receives an annual retainer of \$5,000. Committee fees are paid in addition to Board meeting fees even if Committee meetings occur on the same day as a Board Meeting. Each non-employee director is reimbursed for expenses actually incurred in attending Committee meetings.

In September 2004, the Board of Directors approved a program under the 2004 Equity Incentive Plan to allow directors to elect to defer the annual retainers payable to Board members and Committee Chairman, into deferred stock units.

Options

On the date following each annual meeting of the stockholders, each director of the Company (except Dr. Cooper) is entitled to receive automatic grants of options to purchase 15,000 Shares under the Company's benefit plans, which options will be exercisable at a price equal to the fair market value of Shares as determined on the date of grant. During fiscal 2004 each director (except Dr. Cooper) received an option to purchase 15,000 Shares as an automatic grant, under the Company's 2004 Equity Incentive Plan (the 2004 Plan). Such options are exercisable as follows: 25% of the option shares vest on March 10, 2005 and the balance of the option shares vest in twelve equal installments over the following successive twelve three-month periods commencing on June 10, 2005. In addition, upon becoming a director, each new director of the Company is entitled to receive a one time initial grant of an option to purchase 50,000 Shares exercisable at a price equal to the fair market value of the Company's Common Stock as determined on the date of grant. We did not make any initial option grants in fiscal 2004.

In September 2004, the Board of Directors of the Company approved the extension of the expiration dates of certain options, including options held by directors, that were then scheduled to expire prior to December 31, 2005. These extensions are discussed in further detail in The

Compensation Committee Report on Executive Compensation.

Consulting Agreements

In fiscal 2004, the Company paid or accrued to Mr. Sharrock consulting fees of \$40,000 for consulting services rendered by Mr. Sharrock to the Company pursuant to a Consulting and Non-Competition Agreement with Mr. Sharrock. Effective October 1, 2004, the Company and Mr. Sharrock agreed to terminate this Consulting and Non-Competition Agreement.

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The following summary compensation table sets forth the aggregate compensation paid or accrued by the Company to the Chief Executive Officer and the five other executive officers of the Company whose annual compensation exceeded \$100,000 for fiscal 2004 (collectively, the named executive officers) for services during the fiscal years ended September 30, 2004, 2003 and 2002.

Summary Compensation Table

Name and Principal Position	Fiscal Year	Annual Compensation		Long-Term Compensation	All Other Compensation
		Salary (\$)	Bonus (\$ (1))	Awards Securities Underlying Options (#) (2)	
Glenn L. Cooper, M.D. President, Chief Executive Officer and Chairman	2004	450,000	270,000	150,000	5,760
	2003	450,000	148,500	575,000	11,853
	2002	448,077	185,625		5,595
Mark S. Butler Executive Vice President, Chief Administrative Officer and General Counsel	2004	315,000	141,750	60,000	7,808
	2003	315,000	86,625	100,000	11,792
	2002	314,038	108,281		7,352
Michael W. Rogers Executive Vice President, Chief Financial Officer and Treasurer	2004	315,000	141,750	60,000	3,572
	2003	315,000	86,625	100,000	3,563
	2002	314,038	108,281		1,667
Bobby W. Sandage, Jr., Ph.D. Executive Vice President, Research and Development, Chief Scientific Officer	2004	315,000	189,000	60,000	2,720
	2003	315,000	86,625	100,000	4,016
	2002	314,038	108,281		1,974
Noah D. Beerman (4)					

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Executive Vice President,	2004	236,024	114,660	200,000	1,421
	2003				
Chief Business Officer	2002				
John H. Tucker (5)	2004	207,345	114,660	225,000	1,135
	2003				
Executive Vice President,	2002				
Chief Marketing Officer					

- (1) Amounts in this column include compensation paid or accrued in the specified fiscal year. Portions may have been paid in a subsequent fiscal year.
- (2) Consists of stock options granted by the Company. Excludes options that were granted in prior periods, the expiration dates of which were extended in September 2004. These extensions are discussed in further detail in The Compensation Committee Report on Executive Compensation.
- (3) Amounts in this column include the following for fiscal 2004:
- (a) disability insurance premiums, paid on behalf of the named executive officers, in the following amounts: \$1,717 for Dr. Cooper, \$1,202 for each of Mr. Butler, Mr. Rogers and Dr. Sandage, \$901 for Mr. Beerman, and \$724 for Mr. Tucker.
 - (b) group term life insurance premiums, paid on behalf of the named executive officers, in the following amounts: \$1,518 for Dr. Cooper, \$2,865 for Mr. Butler, \$660 for Mr. Rogers, \$1,518 for Dr. Sandage, \$520 for Mr. Beerman, and \$411 for Mr. Tucker.

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- (c) term life insurance premiums paid to or on behalf of the named executive officers as follows: \$2,525 for Dr. Cooper, \$3,741 for Mr. Butler, and \$1,710 for Mr. Rogers.
- (4) On September 14, 2004, Noah D. Beerman became Executive Vice President, Chief Business Officer and a named executive officer of the Company. Mr. Beerman had been employed as the Company's Senior Vice President, Business Development prior to this and during fiscal 2004. The Company has included Mr. Beerman's compensation in the above table for the full fiscal year during which he became a named executive officer. Upon becoming an Executive Vice President, Mr. Beerman's annual salary was increased to \$310,000.
- (5) On September 14, 2004, John H. Tucker became Executive Vice President, Chief Marketing Officer and a named executive officer of the Company. Mr. Tucker had been employed as the Company's Senior Vice President of Sales and Marketing prior to this and during fiscal 2004. The Company has included Mr. Tucker's compensation in the above table for the full fiscal year during which he became a named executive officer. Upon becoming an Executive Vice President, Mr. Tucker's annual salary was increased to \$300,000.

Option Grants In Last Fiscal Year

The following table sets forth certain information with respect to each grant of stock options during fiscal 2004 to named executive officers.

Name	Individual grants				Potential realizable value at	
	Number of securities underlying options granted (1) (2)	Percent of total options granted to employees in fiscal year (3)	Exercise price (\$/Sh)	Expiration date	assumed annual rates of	
					stock price appreciation	
					for option term (4)	
				5% (\$)	10% (\$)	
Glenn L. Cooper, M.D.	150,000	9.5	5.92	3/10/14	558,458	1,415,243
Mark S. Butler	60,000	3.8	5.92	3/10/14	223,383	566,097
Michael W. Rogers	60,000	3.8	5.92	3/10/14	223,383	566,097
Bobby W. Sandage, Jr., Ph.D	60,000	3.8	5.92	3/10/14	223,383	566,097
Noah D. Beerman	200,000	12.7	6.93	9/14/14	871,648	2,208,927
John H. Tucker	200,000	12.7				