PHARMANETICS INC
Form 424B3
July 07, 2004
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**PROSPECTUS**

FILED PURSUANT TO RULE 424(b)(3)

REGISTRATION NO. 333-106087

## 2,472,364 SHARES

# PHARMANETICS, INC.

# COMMON STOCK

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The shareholders of PharmaNetics, Inc. listed herein are offering and selling from time to time up to 2,472,364 shares of our common stock under this resale prospectus. We will not receive any proceeds from the sale of the shares.

Our common stock is traded on the OTC Bulletin Board under the symbol PHAR.OB. On June 25, 2004, the last sale price of our common stock on the OTC Bulletin Board was $0.48 per share.

The selling shareholders may offer the shares through public or private transactions, on or off the OTC Bulletin Board, at prevailing market prices or at privately negotiated prices. See Plan of Distribution.

**Investing in our common stock involves risks. See Risk Factors beginning on page 7.**

**Neither the SEC nor any state securities commission has approved or disapproved our securities or determined that this prospectus is truthful or complete. It is illegal for anyone to tell you otherwise.**

**The date of this prospectus is June 30, 2004.**

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## Prospectus Summary

### About PharmaNetics

Prior to ceasing substantially all of our operations in March 2004, we developed, manufactured and marketed rapid diagnostics to dose, manage and screen patients on drugs affecting coagulation. Our products are a proprietary analyzer and dry chemistry tests and controls, known as the Thrombolytic Assessment System, or TAS, that provide a physician, at the point of patient care, information that can affect therapy. Our tests were and can be used in the treatment of a variety of adverse conditions caused by abnormal blood clotting in different areas of the body, including angina, heart attack, stroke, deep vein thrombosis and pulmonary and arterial emboli.

TAS is a stat, or as soon as possible , point-of-care system capable of monitoring the formation and dissolution of blood clots. This monitoring provides information which is critical to health care providers in administering drugs that either prevent the formation of blood clots or dissolve them, both of which are used in the treatment of a variety of medical disorders. Blood clotting, or hemostatic, test results must be provided quickly because a majority of the drugs used to regulate clotting are cleared rapidly from the body, and certain drugs must be closely monitored to maintain drug levels within an effective treatment range. We believe that the TAS can provide critical information regarding the formation and dissolution of blood clots as well as drug monitoring on a timely basis, permitting quicker diagnosis and therapeutic intervention, which will improve therapy and the quality of patient care. We believe that this improvement may facilitate quicker transfers out of expensive critical care settings, reduce the overall length of hospital stays, reduce expenditures for laboratory equipment and its associated maintenance, and reduce the unnecessary use of drugs. In addition, point-of-care testing can reduce hospitals costs by reducing the numerous steps, paperwork and personnel used in collecting, transporting, documenting and processing blood samples.

Our products include the TAS analyzer and a menu of tests and controls. We currently have seven tests approved by the Food and Drug Administration, or FDA, that have been sold for commercial use. We have sold three other tests for investigational use only. In addition, we have obtained a special FDA approval for humanitarian devices for one of our test cards used in managing patients suffering from heparin induced thrombocytopenia, a condition characterized by persistent decrease in blood platelets resulting from the administration of the anti-clogging drug, heparin. This special approval is an expedited FDA authorization process to market devices used in rare disease states where no existing solution is available.

### Recent Developments

In November 2003, we filed a lawsuit in the eastern district of North Carolina against Aventis Pharmaceuticals, Inc. In cooperation with Aventis, we had developed a rapid bedside test, known as the Enox test, that we believe enhances the way Lovenox®, a popular anti-blood clotting drug marketed by Aventis, currently is managed. We believe the test has the potential to facilitate the drug s use in patients in the cardiac community who stand to benefit from its use. Aventis collaborated with us in a multi-million dollar project in which it made milestone payments to us to develop and co-promote the test together with Lovenox for targeted patient populations. The lawsuit alleges that Aventis has engaged in false and misleading advertising of

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Lovenox, which damaged our efforts to market and sell the Enox test card. The lawsuit also alleges that Aventis has failed to fulfill its obligation to promote the test and is systematically and falsely advising physicians that the test is not necessary through its claims that Lovenox requires no monitoring and is therapeutic from dose one. We are seeking injunctive relief against Aventis to stop these actions and demanding that Aventis promote the need for monitoring as required in Lovenox s labeling and as required by the development agreement we entered into with Aventis in August 2000.

In March 2004, the court hearing our case against Aventis held a hearing on our motion for a preliminary injunction against Aventis. In April 2004, the court issued an order denying our request for a preliminary injunction, but in denying our motion, the court made a judicial determination that two of Aventis advertising claims regarding Lovenox were literally false. First, the court found that Aventis claim that Lovenox reaches therapeutic levels with 1/2 hour of administration to be literally false. Second, the court found literally false Aventis claim that Lovenox was therapeutic from dose one. Although the court did not grant our request for a preliminary injunction, one of the reasons cited by the court for not enjoining these false advertising messages was that Aventis has discontinued using these false statements in its advertising. In particular, after we filed our false advertising lawsuit against Aventis in November 2003, almost immediately thereafter Aventis withdrew these statements from its advertising of Lovenox.

In addition, the court found that certain disparaging statements made by Aventis representatives concerning our Enox test card were also literally false. However, rather than issue a preliminary injunction, the court ultimately left this issue for the jury to decide. The court also ruled on Aventis motion for summary judgment in which Aventis essentially sought dismissal of our false advertising claims. In denying Aventis motion, the court noted that we had raised genuine issues of material fact concerning our claims against Aventis and, accordingly, the court ruled that the merits of this case should ultimately be evaluated by a jury. In order to prevail in a jury trial, we must prove a variety of factual issues as well as substantiate our calculation of damages. We intend to aggressively pursue the lawsuit to enforce our rights, and we expect the lawsuit could take a year or more to complete and consume significant time and expense.

In December 2003, we announced that, as a result primarily of the Aventis litigation and its impact on our business and prospects, we are seeking a variety of strategic alternatives, including the sale of our manufacturing operations. In March 2004, because a willing and able buyer for our operations had not by then been identified, we terminated our distribution agreement with our distribution partner, Bayer Diagnostics. In addition, we terminated the sales and technical service personnel formerly engaged by us through PDI, the contractor and provider of the Enox sales and technical support teams. Since filing the lawsuit, we have implemented personnel reductions and have engaged Davenport & Company LLC, an investment banking firm, as our financial advisor. Davenport & Company is currently assisting us in pursuing a sale of our manufacturing operations and intellectual property. We believe these steps were and are necessary in order to reduce overhead costs and to conserve cash for the proposed license or sale of assets and the intellectual property as well as to finance our lawsuit against Aventis. We are shifting our corporate strategy from a manufacturing/distribution model to that of a biotech model, whereby revenues, if any, would be tied to royalty streams from any future product sales. We are actively seeking a buyer for our operating assets and to sell or license our intellectual

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property with a significant portion of the potential valuation tied to royalties. In essence, under this new model we would be in a position to receive royalties on tests developed and would not be responsible for manufacturing and distribution.

By the end of March 2004, we have ceased developing, producing and selling all of our products and plan to terminate substantially all remaining employees except our chief executive officer. We plan to retain the chief executive officer to manage the Aventis litigation until it is completed or settled and to continue to seek a buyer of our operations, manufacturing assets and intellectual property. We expect to engage other personnel to conduct business for us on a contract basis as necessary during the course of these efforts. If we were to receive any proceeds in connection with the Aventis litigation, after payment of litigation and remaining operating expenses, we would consider distributing such remaining proceeds, if any, to our shareholders or using them to restart operations. Such determination would depend on a variety of factors, including the size and timing of any payments, the expenses of completing the litigation, management s assessment of the viability of restarting the business and availability of necessary personnel. However, there can be no assurance that we will prevail in the litigation against Aventis or that if we do prevail, the proceeds would be sufficient to provide significant shareholder value. At this time, we believe as a result of these cost-cutting actions, that we have the financial ability to fund the lawsuit to its conclusion.

Due to our failure to comply with the requirements for continued listing of our shares of common stock on the Nasdaq SmallCap Market, we were delisted from the Nasdaq SmallCap Market on May 13, 2004. Our common stock is quoted and trades on the OTC Bulletin Board.

**Products**

The following summarizes our products and test cards, all of which we have ceased manufacturing, developing and marketing as a result of the Recent Developments described above.

The TAS analyzer weighs approximately four pounds and is about the size of a typical office telephone. The analyzer and test cards are designed to work effectively in a decentralized testing environment where they are used by healthcare personnel who do not need formal central laboratory training. Typically within three minutes of inserting a test card with a single drop of blood or plasma into the analyzer, the screen on the TAS analyzer displays a numerical test result, which is comparable to the result which would be achieved in a central laboratory using traditional testing procedures.

Our Accent product is a microprocessor-based hardware accessory to the TAS analyzer. It connects to the TAS analyzer and automatically calculates the information required by physicians to manage the anticoagulation of patients on heparin during cardiopulmonary bypass procedures. It can be used in conjunction with three of our test cards.

The following describes our test cards that have been cleared by the FDA:

Our enoxaparin test, or Enox test, detects the anticoagulant effect of enoxaparin, a low molecular weight heparin drug used for the treatment and prevention of blood-clotting diseases. Enoxaparin is the world s top-selling low molecular weight heparin and is marketed by Aventis Pharmaceuticals in the United States under the brand name Lovenox® and outside of the United States under the brand name Clexane®.

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Our PT, or Prothrombin Time, test is a general screening test that is used to assess a patient s baseline blood-clotting function or to monitor the use of oral anticoagulants, such as warfarin. Warfarin is widely used in the United States for long-term treatment in patients who have previously developed clots, including after heart attacks, to inhibit clot formation and reduce the risk of developing additional clots. Physicians use our PT test to monitor and maintain drug levels within a safe treatment range.

Our aPTT, or Activated Partial Thromboplastin Time, test is a coagulation-screening test which may be used in conjunction with our PT test to provide a global assessment of a patient s ability to form a blood clot. In addition, our aPTT test is used to monitor heparin, an injectable anticoagulant. Hospitals routinely use heparin as the initial treatment for patients with a blood clot, including patients suffering from heart attacks or strokes. Heparin also prevents blood clots from forming in patients undergoing procedures involving particular risks of clotting, such as angiography, open heart surgery, dialysis and several other surgeries. Heparin must be closely monitored to assure adequate anticoagulation without increasing the risk of developing a bleeding complication.

Because aPTT tests are generally incapable of monitoring high levels of heparin, we formerly developed and marketed our HMT, or Heparin Management Test, card for monitoring patients requiring high dose heparin therapy during procedures such as open heart surgery or dialysis. In addition, we have two more test cards that can be combined with our HMT test to provide a system for individualized heparin management during cardiac surgery.

Our LHMT, or Low-range Heparin Management Test, card is used principally in cardiac catheterization and interventional cardiology procedures. It is designed to monitor the effects of concentrations of heparin above the range measured by our aPTT card but below that of our HMT card.

Our ECT, or Ecarin Clotting Time, card is used to manage patients suffering from heparin-induced thrombocytopenia. The FDA s approval for this test only allows the use of the test for managing patients who receive Refludan®, an anticoagulant drug marketed by Pharmion and Berlex for patients undergoing cardiopulmonary bypass surgery.

**Company Information**

PharmaNetics, Inc. is a holding company incorporated in North Carolina in 1998 as the parent company of Cardiovascular Diagnostics, Inc. Cardiovascular Diagnostics, Inc. was incorporated in 1985 and was our sole operating subsidiary until we ceased substantially all of our operations in March 2004. Our principal executive offices are located at 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina 27560. Our telephone number at that location is (919) 582-2600. Information contained on our website, www.pharmanetics.com, is not a part of this prospectus.

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**The Offering**

| | |
|---|---|
| Shares of common stock offered by us | None |
| Shares of common stock which may be sold by the selling shareholders | 2,472,364(1) |
| Use of proceeds | We will not receive any proceeds from the resale of shares offered hereby, all of which proceeds will be paid to the selling shareholders |
| Risk factors | The purchase of our common stock involves a high degree of risk. You should carefully review and consider Risk Factors beginning on page 7. |
| OTC Bulletin Board Symbol | PHAR.OB |

(1) Consists of: (a) 1,725,168 shares of common stock issuable upon conversion of currently outstanding shares of Series B preferred stock; (b) 542,865 shares of common stock issuable upon exercise of warrants; and (c) 204,331 shares of common stock issuable upon the exercise of Series B Preferred Stock that we are required to issue in payment of the remaining in-kind dividends on our Series B preferred stock from the date of this prospectus through September 2005.

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## Risk Factors

You should be aware that there are various risks to an investment in our common stock, including those described below. You should carefully consider these risk factors, together with all of the other information included in this prospectus, before you decide to invest in shares of our common stock.

**We expect continued losses, which could have an adverse impact on your investment.**

We anticipate that we will continue to incur losses and negative cash flows for the foreseeable future. Since our inception as a public company, we have reported operating losses and operating cash flow deficits as we organized and launched our business operations. During this period, we incurred significant operating expenses and made significant investments in our business without an established source of revenue. Although we ceased substantially all operations in March 2004, we will continue to be required to spend substantial funds to continue our litigation efforts against Aventis and satisfy our continuing SEC reporting obligations. There can be no assurance that we will receive any proceeds from the Aventis litigation, or that if we ever re-start operations, that we will generate sufficient revenue to make us profitable. As of March 31, 2004, we had incurred cumulative losses since inception of approximately $81.5 million.

**Our products have not achieved and might not achieve market acceptance in an essentially new market, which could limit the marketability of our assets.**

The commercial success of our products, whether marketed by us or an acquiror, will depend upon their acceptance by the medical community as being useful and cost-effective. Market acceptance will depend upon several factors, including the establishment of the utility and cost-effectiveness of our tests and the receipt of regulatory clearances in the United States and elsewhere. The availability of point-of-care hemostasis test systems has been limited to date, so our point-of-care hemostasis test products are targeting an essentially new market. Diagnostic tests similar to those developed by us are generally performed by a central laboratory at a hospital or clinic. The approval of the purchase of diagnostic equipment by a hospital is generally controlled by its central laboratory. We expect there will be resistance by central laboratories to yield control of tests they have previously performed. We, or an acquiror, will also have to demonstrate to physicians that our diagnostic products perform as intended, meaning that the level of accuracy and precision attained by our products must be comparable to test results achieved by central laboratory systems. Failure of our products to achieve broader market acceptance could have a material adverse effect on us and our ability to sell our assets to a purchaser.

Prior to ceasing substantially all operations in March 2004, we were substantially dependent upon Bayer Diagnostics as our principal distributor for marketing and distribution of our products. If we were to restart operations or sell our assets to a third party, there can be no assurance that Bayer Diagnostics, or any other distributors will be successful in marketing or selling our products or that we, or an acquiror, could build a cost-effective and adequate sales and marketing staff. The substantial dependence on distribution partners could have a material adverse effect on us and our ability to sell our assets to a purchaser.

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**Intense competition and the risk of technological obsolescence might render our products noncompetitive.**

The medical diagnostic testing industry is characterized by rapidly evolving technology and intense competition. The current TAS menu would compete in the coagulation and hematology testing market with manufacturers that provide testing equipment to central and stat laboratories of hospitals. These laboratories currently perform a substantial portion of such testing. The TAS menu would also compete with other point-of-care coagulation and hematology test system manufacturers. Laboratories provide some of the same tests capable of being performed by TAS; however, these laboratory tests generally require the use of skilled technicians and complex, expensive equipment. We believe that TAS offers several advantages over these laboratory-based instruments, including faster results, ease-of-use, reduced opportunity for error and cost-effectiveness.

Prior to ceasing substantially all operations in March 2004, we had several competitors, including Roche Diagnostics, International Technidyne Corporation and Medtronic, that manufacture and market point-of-care coagulation and hematology test systems. International Technidyne Corporation, in particular, has a large installed base of systems, which it has been selling for over 20 years. Despite the fact that we believe that TAS is capable of competing favorably with these systems, International Technidyne Corporation s installed base could give it a competitive advantage. We believe that potential customers will base their purchasing decisions upon a combination of factors, including accuracy and precision, speed, cost-effectiveness, data management, ease-of-use, compliance with CLIA guidelines, and availability of a comprehensive test menu. Other manufacturers and academic institutions may be conducting research and development with respect to blood testing technologies and other companies may in the future engage in research and development activities regarding products that compete with our products. Many of the companies in the medical technology industry, including those listed above, have substantially greater capital resources, research and development staffs, sales and manufacturing capabilities and manufacturing facilities than us. Even if we attain sufficient financial resources to restart operations, there can be no assurance that we can rebuild our sales and marketing team and operational workforce in order to be competitive. Such entities may be developing or could in the future attempt to develop additional products competitive with TAS. Many of these companies also have substantially greater experience than we do in research and development, obtaining regulatory clearances, manufacturing and marketing, and may therefore represent significant competition for us. There can be no assurance that our competitors will not succeed in developing or marketing technologies and products that will be more effective or less expensive than those formerly marketed by us or that would render our technology and products obsolete or noncompetitive. Even if we attain sufficient financial resources to restart operations, there can be no assurance that we can rebuild our sales and marketing team and operational workforce in order to be competitive.

**Our heavy dependence on patents and proprietary technology could be costly to us.**

Our success, or the success of an acquiror of our assets, will depend in part on the ability to enforce our patents, to preserve our trade secrets and to operate without infringing the proprietary rights of third parties. The scope of any patent protection might not exclude competitors or provide competitive advantages to us or an acquiror. Any of our patents could be held invalid if subsequently challenged and others might claim rights in or ownership to the

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patents and other proprietary rights held by us. Furthermore, others might have developed or will develop similar products, duplicate our products or design around our patents. If any relevant claims of third-party patents are upheld as valid and enforceable, we or an acquiror could be prevented from practicing the subject matter claimed in such patents or could be required to obtain licenses from the patent owners of each of such patents or to redesign our products or processes to avoid infringement. Such licenses might not be available or, if available, could be on unacceptable terms.

We also rely upon unpatented trade secrets to protect our proprietary technology. In particular, we believe that our custom-designed automated test card production line embodies proprietary process technology. Others may independently develop or otherwise acquire equivalent technology or otherwise gain access to our proprietary technology and we might not ultimately be able to protect meaningful rights to such unpatented proprietary technology. There has been substantial litigation regarding patent and other intellectual property rights in the medical device industry. These factors could hinder our efforts to sell our intellectual property and other assets.

**The sale of the shares registered in this offering could cause our stock price to decline.**

All shares registered in this offering will be freely tradable upon effectiveness of this registration statement. The sale of a significant amount of shares registered in this offering, or the prospect of such a sale, at any given time could cause the trading price of our common stock to decline and to be highly volatile.

**A significant number of our shares are eligible for future sale and the sale of our shares into the market might negatively affect our stock price.**

As of May 31, 2004, we had outstanding:

- warrants to purchase an aggregate of approximately 793,865 shares of our common stock; and
- preferred stock that is convertible into an aggregate of approximately 2,367,668 shares of common stock.

We have also reserved for issuance 1,639,187 shares of our common stock pursuant to stock plans, under which options to purchase 563,972 shares of common stock were outstanding as of May 31, 2004.

The existence of these securities may adversely affect us or our shareholders for many reasons, including:

- the market price of our common stock might be adversely affected;
- if any of these securities are exercised, the value of the common stock held by shareholders will be diluted if the value of the common stock immediately prior to the exercise of these securities exceeds the exercise price;

some of these securities give the holders of them the opportunity, at nominal cost, to profit from a rise in the market price of our common stock; and

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the terms upon which we could issue additional shares of common stock or obtain other sources of financing may be adversely affected.

Holders of warrants and options are also likely to exercise them when, in all likelihood, we could obtain additional financing from other sources on terms more favorable than those provided by the warrants and options.

**If third-party payors do not provide coverage or reimburse patients for our products and related treatment, our ability to sell our assets and technology could suffer.**

Our ability to sell our assets and technology successfully or execute on our new business model may depend in part on the extent to which reimbursement for the cost of our products and related treatment will be available from government health administration authorities (such as the Health Care Financing Administration, or HCFA), which determines Medicare reimbursement levels, private health insurers and other organizations, collectively known as Payors. Payors are increasingly challenging the prices of medical products and services. Payors may deny reimbursement if they determine that a prescribed device has not received appropriate FDA or other governmental regulatory clearances, is not used in accordance with cost-effective treatment methods, or is experimental, unnecessary or inappropriate. In addition, under current HCFA regulations, equipment costs generally are not reimbursed separately, but rather are included in a single, fixed-rate, per-patient reimbursement. Also, the trend towards managed healthcare in the United States and the concurrent growth of organizations such as HMOs, which could control or significantly influence the purchase of healthcare services and products, as well as legislative proposals to reform healthcare or reduce government insurance programs, might diminish the marketability and value of our TAS products. The cost containment measures that healthcare providers are instituting and the impact of any healthcare reform could have an adverse effect on our ability to sell our assets and may have a material adverse effect on us.

There can be no assurance that reimbursement in the United States or foreign countries will be available for any of our products, or that if available it will not be decreased in the future, or that any reduction in reimbursement amounts will not reduce the demand for or the price of our products. The unavailability of third-party reimbursement or the inadequacy of the reimbursement for medical procedures using our tests would have a material adverse effect on us.

**We have issued preferred stock and could issue additional preferred stock and take other actions that might discourage third parties from acquiring us in a transaction that you might consider to be in your best interest.**

Our board of directors has the authority, without further action by the shareholders, to issue up to 1,000,000 shares of preferred stock, 65,000 of which are outstanding as Series A preferred stock and 103,508 are outstanding as Series B preferred stock, and to fix the rights, preferences, privileges and restrictions, including voting rights, of such shares. Holders of our Series A and Series B preferred stock have rights to have their shares redeemed by us in connection with a change of control. The rights of the holders of the common stock are subject to the rights of the holders of our outstanding preferred stock, and will be subject to, and may be

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adversely affected by, the rights of the holders of any preferred stock that we may issue in the future. Issuing preferred stock could have the effect of making it more difficult for a third party to acquire a majority of our outstanding voting stock, thereby delaying, deferring or preventing a change in control of our company. Furthermore, the preferred stock may have other rights, including economic rights, senior to our common stock, and as a result, issuing preferred stock could have a material adverse effect on the market value of our common stock and the price that investors might be willing to pay for your shares.

Certain provisions of our articles of incorporation and our bylaws could make it more difficult for a third party to acquire, and could discourage a third party from attempting to acquire, control of our company. Some of them eliminate the right of shareholders to act by written consent and impose various procedural and other requirements which could make it more difficult for shareholders to undertake certain corporate actions. These provisions could limit the price that certain investors might be willing to pay in the future for shares of our common stock and may have the effect of delaying or preventing a change in control of us. We may in the future adopt other measures that may have the effect of delaying, deferring or preventing a change in control of the company. Certain of these measures may be adopted without any further vote or action by the shareholders, although we have no present plans to adopt any such measures.

**We could be exposed to product liability claims that could prevent or interfere with our efforts to sell our assets or businesses.**

We face an inherent business risk of exposure to product liability claims in the event that the use of our previously-sold products is alleged to have resulted in adverse effects. We maintain product liability insurance with coverage of up to $15 million per claim, with an annual aggregate policy limit of $16 million. Liability claims could exceed the coverage limits of such policies and such insurance might not continue to be available on commercially acceptable terms, or at all. We might elect or be forced to drop our insurance coverage in connection with our efforts to focus our limited remaining resources to pursue litigation against Aventis. Consequently, product liability claims could have a material adverse effect on our business, financial condition and results of operations.

**We might not be able to use net operating loss carryforwards.**

As of December 31, 2003, we had net operating loss carryforwards for federal income tax purposes of approximately $58.3 million, which will expire at various dates beginning in 2004 if not utilized. Our ability to use these net operating loss and credit carryforwards to offset future tax obligations, if any, may be limited by changes in ownership. In addition, our decision to cease substantially all of our operations in March 2004 makes it less likely that we would be in a position to use net operating loss carryforwards before they expire. Any limitation on the use of net operating loss carryforwards, to the extent it increases the amount of federal income tax that we must actually pay, may have an adverse impact on our financial condition.

**We do not presently anticipate paying cash dividends on our common stock.**

We are not currently generating any significant revenues. Even if we are successful in our litigation against Aventis, we can provide no assurance that the proceeds derived therefrom,

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if any, will be sufficient to pay cash dividends on our common stock or to make any distribution at all. In addition, our outstanding preferred stock contains restrictions on our ability to declare and pay dividends on our common stock. Consequently, we do not anticipate paying any cash dividends on our common stock for the foreseeable future.

**Because we are no longer listed on the Nasdaq National Market or the Nasdaq SmallCap Market, the value and liquidity of your shares could be impaired.**

Our common stock is currently traded on the Over-the-Counter Bulletin Board. As such, our stock could be subject to what are known as the penny stock rules. The penny stock rules place additional requirements on broker-dealers who sell or make a market in such securities. Consequently, if we become subject to those rules, the ability or willingness of broker-dealers to sell or make a market in our common stock could decline. In addition, the Over-the-Counter Bulletin Board is generally a significantly less active market than the Nasdaq National Market or the Nasdaq SmallCap Market. As a result, your ability to resell your shares of our common stock, and the market price of those shares, could be adversely affected.

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## Special Note Regarding Forward-Looking Statements

Some of the statements contained in this prospectus discuss our plans and strategies for our business and are forward-looking statements as that term is defined in the Private Securities Litigation Reform Act. The words anticipates, believes, estimates, expects, plans, intends and sim expressions are meant to identify these statements as forward-looking statements, but they are not the exclusive means of identifying them. The forward-looking statements in this prospectus reflect the current views of our management; however, various risks, uncertainties and contingencies could cause our actual results, performance or achievements to differ materially from those expressed or implied by these statements, including:

- The success or failure of our efforts to prevail in our litigation against Aventis or to sell portions of our assets and technology;
- Our history of losses and negative operating cash flows;
- Our future capital needs and the uncertainty of additional funding; and
- The other factors discussed in the Risk Factors section and elsewhere in this prospectus.

We assume no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. For a discussion of important risks of an investment in our common stock, including factors that could cause actual results to differ materially from results referred to in the forward-looking statements, see the Risk Factors section of this prospectus. In light of the risks and uncertainties discussed in Risk Factors and elsewhere in this prospectus, events referred to in forward-looking statements in this prospectus might not occur.

## Use of Proceeds

We will not receive any of the proceeds from the sale of shares of the common stock offered by the selling shareholders. We are registering the shares for sale to provide the holders thereof with freely tradable securities, but the registration of such shares does not necessarily mean that any of such shares will be offered or sold by the holders thereof.

## Selling Shareholders

The shares offered under this prospectus may be sold from time to time for the account of the selling shareholders named in the following table. The table also contains information regarding each selling shareholder s beneficial ownership of shares of our common stock as of June 1, 2004, and as adjusted to give effect to the sale of the shares. As of June 1, 2004, we had 10,094,290 shares of common stock outstanding.

| | Beneficial Ownership Prior To Offering (as of June 1, 2004) | Beneficial Ownership After Offering (1) |
|---|---|---|

| Name | Number of Shares(2) | Number of Shares To Be Sold(3) | Number of Shares | Percent of Class |
|---|---|---|---|---|
| Camden Partners Strategic Fund II-A, L.P.(4) | 1,142,166 | 1,226,434 | | |
| Camden Partners Strategic Fund II-B, L.P.(4) | 67,756 | 72,755 | | |
| AIG DKR SoundShore Private Investors Holding Fund Ltd.(5) | 130,482 | 140,107 | | |
| BayStar Capital II, LP(6) | 237,240 | 254,741 | | |
| Capital Ventures International(7) | 142,344 | 152,846 | | |
| Crestview Capital Fund I, LP(8) | 130,429 | 140,160 | | |
| Crestview Capital Fund II, LP(8) | 35,586 | 38,211 | | |
| Crestview Capital Offshore Fund, Inc.(8) | 11,815 | 12,686 | | |
| Mainfield Enterprises Inc.(9) | 113,875 | 122,277 | 5,000 | * |
| Omicron Master Trust(10) | 118,620 | 127,368 | | |
| Smithfield Fiduciary LLC(11) | 142,344 | 152,846 | | |
| SG Cowen Securities Corporation(12) | 31,933 | 31,933 | | |
| Totals: | 2,304,690 | 2,472,364 | 5,000 | *% |

* Less than one percent

(1) Assumes the sale of all the shares offered hereby. This registration statement also shall cover any additional shares of common stock which become issuable in connection with the shares registered for resale hereby by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the outstanding shares of our common stock.

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(2) Represents shares of common stock issuable upon conversion of currently outstanding shares of Series B preferred stock and upon the exercise of currently exercisable warrants.

(3) Includes 332,840 total shares representing our obligation to issue 2.125% cumulative quarterly dividends on the Series B preferred stock through September 2005. Through June 30, 2004, 165,122 of these dividend shares have been issued to the selling shareholders, but the remaining 167,718 dividend shares have not yet been earned or issued. The number of dividend shares we have registered hereunder will be sufficient to cover all of the dividends we would be required to pay to the selling shareholders through September 2005, assuming no prior conversions or redemptions of the preferred shares. Any dividends we might elect to pay in shares of common stock, in lieu of cash, after September 2005 are not registered for resale hereunder and are not required to be so registered.

(4) Richard M. Johnston has been appointed to our Board of Directors as the designee of the Series B preferred shareholders. Mr. Johnston, David L. Warnock, Donald W. Hughes and Richard M. Berkeley are the managing members of Camden Partners Strategic II, LLC which serves as the general partner to Camden Partners Strategic Fund II-A, L.P. and Camden Partners Strategic Fund II-B, L.P. As such, each of these individuals may be deemed indirect beneficial owners of these shares to the extent of his pecuniary interest therein. Each of these individuals disclaims beneficial ownership of these shares, except to the extent of his indirect pecuniary interest therein.

(5) Howard Fischer, as the President of the portfolio manager of AIG DKR SoundShore Private Investors Holding Fund Ltd., has the power to vote and dispose of these shares. As such, he may be deemed the beneficial owner of these shares, which ownership he disclaims except to the extent of his pecuniary interest therein.

(6) Steve Darby, Steven M. Lamar and Lawrence Goldfarb are the managing members of the general partner of BayStar Capital II, LP, each having the power to vote and/or dispose of these shares. As such, each of these individuals may be deemed beneficial owners of these shares, which ownership each of them disclaims except to the extent of his pecuniary interest therein.

(7) Heights Capital Management, Inc., a Delaware corporation, has the power to vote and dispose of these shares.

(8) Stewart Flink and Richard Levy may be deemed the beneficial owners of these shares by virtue of their power to vote and dispose of the shares. Each of them disclaims beneficial ownership of these shares except to the extent of his pecuniary interest therein.

(9) Avi Vigder, as the President of the sub-manager of Mainfield Enterprises, Inc., has the power to vote and dispose of these shares. As such, he may be deemed the beneficial owner of these shares, which ownership he disclaims except to the extent of his pecuniary interest therein.

(10) Omicron Capital, L.P., a Delaware limited partnership ( Omicron Capital ), serves as investment manager to Omicron Master Trust, a trust formed under the laws of Bermuda ( Omicron ), Omicron Capital, Inc., a Delaware corporation ( OCI ), serves as general partner of Omicron Capital, and Winchester Global Trust Company Limited ( Winchester ) serves as the trustee of Omicron. By reason of such relationships, Omicron Capital and OCI may be deemed to share dispositive power over the shares of our common stock owned by Omicron, and Winchester may be deemed to share voting and dispositive power over the shares of our common stock owned by Omicron. Omicron Capital, OCI and Winchester disclaim beneficial ownership of such shares of our common stock. Omicron Capital has delegated authority from the board of directors of Winchester regarding the portfolio management decisions with respect to the shares of common stock owned by Omicron and, as of April 21, 2003, Mr. Olivier H. Morali and Mr. Bruce T. Bernstein, officers of OCI, have delegated authority from the board of directors of OCI regarding the portfolio management decisions of Omicron Capital with respect to the shares of common stock owned by Omicron. By reason of such delegated authority, Messrs. Morali and Bernstein may be deemed to share dispositive power over the shares of our common stock owned by Omicron. Messrs. Morali and Bernstein disclaim beneficial ownership of such shares of our common stock and neither of such persons has any legal right to maintain such delegated authority. No other person has sole or shared voting or dispositive power with respect to the shares of our common stock being offered by Omicron, as those terms are used for purposes under Regulation 13D-G of the Securities Exchange Act of 1934, as amended. Omicron and Winchester are not affiliates of one another, as that term is used for purposes of the Securities Exchange Act of 1934, as amended, or of any other person named in this prospectus as a selling stockholder. No person or group (as that term is used in Section 13(d) of the Securities Exchange Act of 1934, as amended, or the SEC s Regulation 13D-G) controls Omicron and Winchester.

(11) Glen Dubin and Henry Swieca may be deemed the beneficial owners of these shares by virtue of their control of the trading manager of Smithfield Fiduciary, LLC, which has voting control and investment discretion with respect to these shares. Each of the trading manager and Messrs. Dubin and Swieca disclaim beneficial ownership of these shares, except to the extent of their pecuniary interest therein.

(12) Consists of a warrant to purchase shares of our common stock at $7.20 per share issued in consideration for placement agent services provided to us in connection with the Series B preferred private placement. We also paid SG Cowen Securities Corporation cash commissions of $622,700 for their services, representing 6.5% of the gross proceeds raised.

We issued an aggregate of 95,800 shares of Series B preferred stock, convertible 16.6667-for-1 into a total of 1,596,665 of our common stock, to the selling shareholders in connection with our $9,579,990 private placement in May 2003. We also issued warrants to the

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investors to purchase a total of 510,932 shares of common stock at $7.20 per share, along with a warrant to the placement agent to purchase 31,933 shares of common stock at $7.20 per share, in connection with this private placement. We agreed to register for resale all of these shares, along with common stock issuable upon conversion of Series B preferred stock which we are required to issue as dividends on the Series B preferred stock through September 2005, and to pay substantially all of the expenses of offering them under this prospectus.

## Dividend Policy

We have never paid a cash dividend on our common stock. We anticipate that for the foreseeable future any earnings will be retained for use in our business or to fund the litigation against Aventis and, accordingly, do not anticipate the payment of cash dividends on our common stock.

## Market For Securities

Due to our failure to comply with the requirements for continued listing of our shares of common stock on the Nasdaq SmallCap Market, we were delisted from the Nasdaq SmallCap Market on May 13, 2004. Our common stock is currently listed on the OTC Bulletin Board under the symbol PHAR.OB. For each full fiscal quarter since the beginning of 2002, the high and low closing sales prices for our common stock, as reported by Nasdaq and the OTC Bulletin Board, were as set forth below. These prices are based on quotations between dealers, which do not reflect retail mark-up, mark-down or commissions, and may not necessarily represent actual transactions.

| | High | Low |
|---|---|---|
| **2002** | | |
| First quarter | $ 9.88 | $ 6.50 |
| Second quarter | $ 8.15 | $ 4.96 |
| Third quarter | $ 6.99 | $ 3.50 |
| Fourth quarter | $ 7.04 | $ 4.89 |
| **2003** | | |
| First quarter | $ 10.35 | $ 6.93 |
| Second quarter | $ 9.60 | $ 5.55 |
| Third quarter | $ 5.93 | $ 3.80 |
| Fourth quarter | $ 4.99 | $ 1.40 |
| **2004** | | |
| First quarter | $ 2.90 | $ 1.45 |
| Second quarter (through June 25) | $ 2.34 | $ 0.35 |

On June 25, 2004, the high and low sales prices of our common stock, as reported by the OTC Bulletin Board, were $0.48 and $0.47, respectively. As of March 25, 2004, the number of record holders of our common stock was approximately 99 and we believe that the number of beneficial owners was approximately 3,500.

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**Selected Consolidated Financial Data**

You should read the selected consolidated financial data set forth below in conjunction with Management s Discussion and Analysis of Financial Condition and Results of Operations, Business and our financial statements and the related notes included elsewhere in this prospectus. The historical results are not necessarily indicative of the operating results to be expected in the future.

**PHARMANETICS, INC. AND SUBSIDIARIES**

**Selected Consolidated Financial Data (in thousands, except per share data)**

| | Three Months Ended March 31 | | Year Ended December 31, | | | | |
|---|---|---|---|---|---|---|---|
| | 2004 | 2003 | 2003 | 2002 | 2001 | 2000 | 1999 |
| **RESULTS OF OPERATIONS** | | | | | | | |
| Net product sales to related party | 1,688 | 1,147 | $ 5,388 | $ 3,863 | $ 2,895 | $ 3,322 | $ 1,957 |
| Net product sales to third parties | 175 | 15 | 126 | 227 | 1,644 | 947 | 1,952 |
| Grant/royalty income | | | 38 | 44 | 24 | 46 | 90 |
| Development income | 261 | 261 | 1,042 | 587 | 264 | 492 | 100 |
| Total Revenue | 2,124 | 1,423 | 6,594 | 4,721 | 4,827 | 4,807 | 4,099 |
| Operating expenses: | | | | | | | |
| Cost of goods sold | 1,107 | 683 | 3,922 | 3,495 | 4,046 | 3,590 | 3,179 |
| General and administrative | 2,390 | 1,062 | 4,099 | 4,899 | 4,525 | 3,330 | 2,715 |
| Sales and marketing | | | | | | | |