

ORE PHARMACEUTICAL HOLDINGS INC. (ORXE)

8-K

Current report filing

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): March 3, 2009 (February 25, 2009)

ORE PHARMACEUTICALS INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or other jurisdiction
of incorporation)

0-23317
(Commission File Number)

06-1411336
(IRS Employer
Identification No.)

610 Professional Drive, Suite 101, Gaithersburg, Maryland
(Address of principal executive office)

20879
(Zip Code)

Registrant's telephone number, including area code: **(240) 361-4400**

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligations of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On February 25, 2009, the Board of Directors of Ore Pharmaceuticals Inc. (the "Company") appointed Mark J. Gabrielson as its new Chief Executive Officer of the Company, effective as of March 2, 2009.

Mr. Gabrielson will replace Charles L. Dimmler, III, who was terminated by the Company without cause, effective March 1, 2009. In connection with his termination, Mr. Dimmler will resign as a member of the Board of Directors.

Mr. Gabrielson is 52 years old. Until his appointment as the Company's CEO, Mr. Gabrielson had been Managing General Partner and co-founder of p-Value Capital LLC, a specialty financial services firm focused on assembling and financing portfolios of clinical stage pharmaceutical and biopharmaceutical products. He is also a Director of Pulmatrix Inc., a privately held company he co-founded in 2003. Pulmatrix is developing inhalant technologies to help control respiratory infectious disease. He served as CEO of Pulmatrix from its founding through 2007. Mr. Gabrielson, who will continue to serve on the Board of Directors of the Company, has been a Director of the Company since April 2007 and has served as Chairman of the Audit Committee since August 2007.

In connection with his appointment as Chief Executive Officer, the Company entered into a letter agreement with Mr. Gabrielson, dated February 26, 2009 and effective as of March 2, 2009 (the "Agreement"). The Agreement provides for an initial annual base salary subject to adjustment upon the Company's achievement of certain specified targets, special incentive cash bonuses upon the Company's achievement of certain specified targets, and participation in all standard Company executive compensation and benefit programs as in effect from time to time and as determined by the Compensation Committee.

The Agreement also provides that Mr. Gabrielson will be granted an option to purchase 500,000 shares of the Common Stock of the Company, exercisable at the fair market value on the date of grant. Of these option shares, 300,000 option shares will vest in equal monthly increments over the two years immediately following March 2, 2009, and 200,000 option shares will vest only upon consummation of a specified target. The option will become immediately exercisable in full in the event of a Change of Control (as defined in the Agreement). The option will be subject to the other terms and conditions of the Company's 1997 Equity Incentive Plan and the option agreement thereunder.

Pursuant to the Agreement, Mr. Gabrielson has agreed to enter into the Company's standard confidentiality and intellectual property agreement and into a non-compete and non-solicitation agreement which would survive the termination of the Agreement for an appropriate period. The Agreement provides that Mr. Gabrielson is an "at-will" employee and that his employment can be terminated at any time with or without cause. Upon termination, Mr. Gabrielson must offer to resign from any other positions with the Company and/or its affiliates, including as a member of the Board of Directors.

The foregoing description of the Agreement is qualified in its entirety by reference to the complete terms of the Agreement, a copy of which is attached hereto as Exhibit 10.105 and incorporated herein by reference. A copy of the press release announcing the management change is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The Company also recently entered into a Consulting Agreement with F. Dudley Staples, its former General Counsel, pursuant to which he agreed to provide consulting services as requested the Company, through the end of June 2009 for a fixed hourly rate and the Company agreed to certain indemnification provisions.

On March 1, 2009, the Company notified Philip L. Rohrer, Jr. of his termination by the Company without cause as Chief Financial Officer of the Company effective March 31, 2009. Pursuant to his employment agreement, Mr. Rohrer will be entitled to an accelerated retention incentive payment following the termination of his employment.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit Number</u> | <u>Description</u> |
|------------------------------|---|
| 10.105 | Letter Agreement, dated February 26, 2009 from Ore Pharmaceuticals Inc. to Mark J. Gabrielson |
| 99.1 | Press release of Ore Pharmaceuticals Inc. dated March 3, 2009 |

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.

ORE PHARMACEUTICALS INC.

Date: March 3, 2009

By: /s/ Philip L. Rohrer, Jr.
Philip L. Rohrer Jr.
Chief Financial Officer

EXHIBIT INDEX

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**Ore Pharmaceuticals Inc.
610 Professional Drive, Suite 101
Gaithersburg, Maryland 20879**

February 26, 2009

Mr. Mark J. Gabrielson
343 Commercial Street, # 403
Boston, MA 02109

RE: Offer of Employment – Chief Executive Officer of Ore Pharmaceuticals Inc.

Dear Mark:

It is with pleasure that I offer you the position of Chief Executive Officer (“CEO”) of Ore Pharmaceuticals Inc. (the “Company”). This letter defines your role and the key terms and conditions of your employment.

Effective Date

Your appointment as CEO is effective as of March 2, 2009 (the “Employment Date”).

Employment as CEO

The Company will employ you as the Chief Executive Officer (“CEO”) of the Company. In your capacity as CEO, you shall perform such executive and management duties and assume such other responsibilities as may be assigned to you from time to time by the Board of Directors and that are appropriate to your role as CEO.

Reporting Relationships

You will report to the Board of Directors. All Company employees will directly or indirectly report to you.

Conditions for Your Employment

You accept employment as CEO of the Company and will perform your duties faithfully and to the best of your abilities. You shall devote your full working time and creative energies to the performance of your duties hereunder and you will at all times devote such time and efforts as are reasonably required to fulfill the significant responsibilities entrusted to you.

You will immediately terminate all work not related to the Company and its operations and you will not undertake any work or serve as an officer, Director, employee or advisor of any other entity not related to the Company, without the prior approval of the Board of Directors.

The Board understands that you currently serve on the Board of Directors of Pulmatrix Inc. and that that obligation will continue, provided that this obligation does not materially interfere with your performance of your duties as CEO of the Company.

Prior to your Employment Date, you agree to enter into the Company's standard confidentiality and intellectual property agreement(s) and into a non-compete and non-solicitation agreement which would survive the termination of this agreement for an appropriate period.

The Chairman will consult with you over the next 90 days regarding the composition of the Board of Directors of the Company.

Compensation

Salary: Your initial base salary shall be paid at the rate of \$200,000 per annum, subject to such deductions as are required by tax and other applicable laws, and such other deductions as are authorized by you. Your salary rate shall immediately be increased to \$300,000 per annum (the "Adjustment") in the event that the Company, directly, or indirectly through an entity in which the Company retains a significant economic interest (as determined in the opinion of the Board of Directors of the Company), consummates one or more related debt or equity capital raising transactions as a result of which the Company or such related entity shall have received at least \$10 million in net working capital proceeds (a "Financing"). If the net working capital proceeds from the Financing are greater than \$10 million, the base salary Adjustment shall equal \$300,000 plus \$10,000 per annum for each \$1 million raised in excess of \$10 million up to a maximum of \$400,000 per annum.

In addition to the foregoing Adjustment, your compensation shall be subject to annual review by the Board and may be modified from time to time based on performance and the compensation policies of the Company in effect from time to time.

Special Incentive Stock Award:

The Board of Directors has approved the granting to you of an option to purchase 500,000 shares of Common Stock of the Company under the terms and conditions of the Company's 1997 Equity Incentive Plan (the "Plan") and the option agreement and subject to the following further terms and conditions. The option will be granted to you on your Employment Date or, if no closing sale price for ORXE Common Stock is reported on February 27, 2009, on the first business day thereafter for which a closing sale price has been reported on the immediately preceding business day. The exercise price of the option will be the Fair Market Value on the grant date, as provided for in the plan (the "Option").

This option will become exercisable as follows:

- 300,000 option shares will vest in equal monthly increments over the two years immediately following your Employment Date;
- 200,000 option shares will vest upon consummation of a Financing, provided that such Financing occurs within two years of your Employment Date.
- The option shall immediately become exercisable immediately in full in the event of a Change of Control. A Change of Control, for this purpose shall mean the occurrence of one or more of the following events: (1) a sale of all or substantially all of the assets of the Company to an unrelated third party (excluding, for example, a transfer of compounds or other related assets in connection with a financing plan); (2) a merger or consolidation in which the Company is not the surviving corporation and the stockholders of the Company immediately prior to such merger or consolidation fail to acquire at least fifty percent (50%) of the beneficial ownership of the securities of the surviving corporation (or an entity controlling the surviving corporation); (3) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common shares outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise and the stockholders of the Company immediately prior to such merger fail to acquire at least fifty percent (50%) of the beneficial ownership of the securities of the Company (or an entity controlling the Company); or (4) the acquisition in a single transaction or series of related transactions by any person, entity or group of persons or entities (excluding any employee benefit plan, or related trust, sponsored or maintained by the Company) of the beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act, or comparable successor rule) of securities of the Company representing at least fifty percent (50%) of the combined voting power entitled to vote in the election of directors.

The option will have a 10-year term. The stock option will be an incentive stock option under Section 422 of the Internal Revenue Code of 1986, as amended, ("Code") to the maximum extent permitted by the law and the Plan; any remaining portion of the stock option will be treated as a Non-Statutory Stock Option.

Special Incentive Cash Bonus:

If, at any time during the two years following your Employment Date, the Company consummates (i) a Financing or (ii) any subsequent financing in which the Company, directly, or indirectly through a related entity in which the Company retains a significant economic interest, consummates one or more related transactions in which the Company or such affiliate receives net working capital proceeds, you will be paid a bonus. Such bonus shall be paid in cash immediately following the Company's or its related entity's receipt of the net working capital proceeds of such Financing or financing. Such bonus shall be in an amount equal to one half of one percent of such net working capital proceeds.

Benefits: As of your Employment Date you shall participate fully in all standard Company executive compensation and benefit programs as in effect from time to time, including but not limited to incentive stock option grants and performance cash incentive plans to the extent determined by the Compensation Committee, and family health insurance, retirement plans, vacation, etc. You understand that it is the intention of the Board of Directors that the Company's current Executive Severance Plan be terminated as to any future participants and you hereby waive any rights under that Plan that you otherwise would have as a result of your being employed by the Company prior to the formal termination of the Plan.

At Will Employment: You understand and agree that this letter agreement and documents specifically referenced herein constitute the entire agreement of employment between you and the Company. Under this letter you are an "at will" employee, and serve in your role at the pleasure of the Board. As such you understand that your employment can be terminated at any time with or without cause. In the event that your employment with the Company is terminated, you will immediately offer to the Board of Directors your resignation from any other positions with the Company and/or its affiliates, including as a member of the Board of Directors.

We look forward to your leadership.

Sincerely;

/s/ J. Stark Thompson
J. Stark Thompson
Chairman of the Board
Ore Pharmaceuticals Inc.

Accepted and Agreed:

/s/ Mark J. Gabrielson Date: February 26, 2009
Mark J. Gabrielson

Mark J. Gabrielson Named Chief Executive Officer of Ore Pharmaceuticals

GAITHERSBURG, Md.—(BUSINESS WIRE)—March 3, 2009—Ore Pharmaceuticals Inc. (NASDAQ: ORXE) Chairman of the Board of Directors J. Stark Thompson announced today that the Company has elected Mark J. Gabrielson, to serve as President and Chief Executive Officer, replacing Charles Dimmler, III. Mr. Gabrielson has over 30 years of experience in the pharmaceutical industry. He presently serves on the Company's Board of Directors and, most recently, was Managing General Partner of p-Value Capital LLC, a specialty financial services firm focused on assembling and financing portfolios of clinical stage pharmaceutical and biopharmaceutical products. Mr. Gabrielson also serves on the Board of Directors of Pulmatrix Inc., a private pharmaceutical company that he co-founded in 2003 and where he was CEO from its founding through 2007. Mr. Gabrielson also was a General Partner of Prince Ventures, a healthcare venture capital firm. He began his career at GlaxoSmithKline.

Ore Pharmaceuticals Overview

Ore Pharmaceuticals is a commercial drug development company. We have applied our proprietary know-how in integrative pharmacology to identify potential new uses for drug candidates. We are now focused on developing certain compounds for which we have found new uses. Ore Pharmaceuticals currently has three compounds in its development pipeline: romazarit (beginning development for metabolic disorders), tiapamil (beginning development for treatment of diseases of the central nervous system), and GL1001 (in development for inflammatory bowel disease). In 2008, we cleared FDA review of the Investigational New Drug Application for GL1001, and began clinical trials on that compound in late September 2008. Visit us at orepharma.com.

Safe Harbor Statement

This press release contains "forward-looking statements," as such term is used in the Securities Exchange Act of 1934, as amended. Forward-looking statements typically include the words "expect," "anticipate," "believe," "estimate," "intend," "may," "will," and similar expressions as they relate to Ore Pharmaceuticals or its management. Forward-looking statements are based on our current expectations and assumptions, which are subject to risks and uncertainties. They are not guarantees of our future performance or results. Our actual performance and results could differ materially from what we project in forward-looking statements for a variety of reasons and circumstances, including particularly risks and uncertainties that may affect the Company's operations, financial condition and financial results and that are discussed in detail in the our Annual Report on Form 10-K and our other subsequent filings with the Securities and Exchange Commission. They include, but are not limited to: whether the Company experiences difficulties or delays in the initiation, progress or completion of clinical trials for its compounds, including the GL 1001 trial, whether caused by competition, adverse events, investigative site initiation rates, patient enrollment rates, regulatory issues or other factors; that clinical trials may not demonstrate that GL 1001 is effective as a treatment for diseases of commercial interest, whether the safety and/or efficacy results of the GL1001 trial support an application for marketing approval in the United States or any other country; whether an application for marketing approval is accepted by the FDA or any other regulatory authority; whether there will be valid claims for indemnification from the buyers of our Genomics Assets; whether there will be claims from the landlords of the leased properties we have assigned to buyers of our Genomics Assets or our Preclinical Division that we would be required to pay as guarantors of such leases; whether we will be able to collect amounts due under the terms of promissory notes from the buyers of our Genomics Assets and molecular diagnostic business; whether we will be able to manage our existing cash adequately and whether we will begin to generate sufficient new revenue from licensing and/or be able to obtain financing on sufficiently favorable terms to maintain our business and effect our strategies, including continuing compound development; whether we will be able to maintain our NASDAQ listing; whether we will be able to retain qualified personnel for our commercial drug development business; and potential negative effects on our operations and financial results from workforce reductions. Ore Pharmaceuticals Inc. undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

CONTACT:

Ore Pharmaceuticals Inc.

Philip L. Rohrer, Jr.
Chief Financial Officer
301-361-4400
prohrer@orepharma.com