

SECURITIES AND EXCHANGE COMMISSION

FORM S-3

Registration statement for specified transactions by certain issuers

Filing Date: **2000-03-10**
SEC Accession No. **0000912057-00-010938**

([HTML Version](#) on secdatabase.com)

FILER

LIFECORE BIOMEDICAL INC

CIK: **28626** | IRS No.: **410948334** | State of Incorporation: **MN** | Fiscal Year End: **0630**
Type: **S-3** | Act: **33** | File No.: **333-32144** | Film No.: **566261**
SIC: **2836** Biological products, (no diagnostic substances)

Business Address
3515 LYMAN BLVD
CHASKA MN 55318-3051
6123684300

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QuickLinks
 -- Click here to rapidly navigate through this document
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<P ALIGN="RIGHT">Registration No. 333-</P>
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<P ALIGN="CENTER">FORM S-3</P>
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<P ALIGN="CENTER">Under</P>
<P ALIGN="CENTER">The Securities Act of 1933</P>
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<P ALIGN="CENTER">(Exact name of registrant as specified in its charter)</P>
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<P>Chaska, Minnesota 55318</P>
<P>(952) 368-4300</P>
<P ALIGN="CENTER">(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)</P>
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<TD WIDTH="46%" ALIGN="CENTER">Amy E. Ayotte</TD>
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<P ALIGN="CENTER">(Name, address, including zip code, and telephone number, including area code, of agent for service)</P>
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<P ALIGN="CENTER">Approximate date of commencement of proposed sale to the public:</P>
<P>From time to time after the effective date of this Registration Statement.</P>
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<P>If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.</P>
<P>If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.</P>
<P>If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.</P>
<P>If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.</P>
<P>If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.</P>
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business, financial condition, and results of operations.</P>

<>Our products under development have not yet received regulatory approval and our existing products are subject to regulation</P>

<P>Our products under development are considered to be medical devices and, therefore, they require clearance or approval by the FDA before commercial sales can be made in the United States. The products also require approvals of foreign government agencies before sales may be made in many other countries. The process of obtaining these clearances or approvals varies according to the nature and use of the product. It can involve lengthy and detailed laboratory and clinical testing, sampling activities and other costly and time-consuming procedures. We may not receive all of the required clearances or approvals.</P>

<P>In addition, most of our existing products and our customers are subject to continued regulation by the FDA, various state agencies and foreign regulatory agencies which regulate manufacturing, labeling and record keeping procedures for our products. Marketing clearances or approvals by these agencies can be withdrawn due to failure to comply with regulatory standards or the occurrence of unforeseen problems following initial clearance or approval. These agencies can also limit or prevent the manufacture or distribution of our products. A determination that we are in violation of these regulations could lead to the imposition of civil penalties, including fines, product recalls or product seizures, injunctions, and, in extreme cases, criminal sanctions.</P>

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<P>We may not be able to meet future demand for our products</P>

<P>We have designed our modular facility to permit the production of hyaluronan at levels exceeding current levels of production. However, in the event of a sudden increase in demand for any of our hyaluronan products, we will be required to scale-up operations, including the acquisition and validation of additional equipment and training of additional personnel. We may not be able to adequately meet any such demands in a timely basis.</P>

<P>Unforeseen events may interrupt manufacturing of our products</P>

<P>Our manufacturing requires extensive specialized equipment. In addition, we manufacture our hyaluronan products at one facility. Although we have contingency plans in effect for certain natural disasters, as well as other unforeseen events that could damage our facilities or equipment, any of these events could materially interrupt our business. We have business interruption insurance to cover lost revenues and profits under certain of these circumstances. However, this insurance would not compensate us for the loss of opportunity and potential adverse impact on relations with our existing customers created by an inability to produce our products.</P>

<P>We depend on the continued service of our management team</P>

<P>Our success depends in large part upon the services of our executive officers. The executive officers consist of Dr. James W. Bracke, President and Chief Executive Officer; Dennis J. Allingham, Executive Vice President and Chief Financial Officer; Brian J. Kane, Vice President of New Business Development and Marketing; and Colleen M. Olson, Vice President of Corporate Administrative Operations. The loss of any one of these individuals may have a material adverse effect on our business and operations. Dr. Bracke has an employment agreement that extends through November 2000, with automatic renewal options for successive one year periods. Although we own a life insurance policy covering Dr. Bracke, the proceeds of such policy may not be sufficient to compensate us for the loss of his services. We do not have employment agreements with or life insurance on the other officers.</P>

<P>We may be subject to product liability claims if our products fail to perform properly</P>

<P>The manufacture and sale of our products entails a risk of product liability claims. In addition to product liability exposure for our own products, we may be subject to claims for products of our customers which incorporate our materials. We maintain product liability insurance coverage in amounts we believe are adequate. However, we may not have sufficient resources if claims exceed available insurance coverage. While we have not experienced any product liability claims to date, a product liability claim, or other claim with respect to uninsured liabilities or in excess of insured liabilities, could have a material adverse effect on the business, financial condition and results of operations. In addition, adequate insurance may not continue to be available to us and, if available, the insurance may not continue to be on commercially acceptable terms.</P>

<P>The price of our common stock may fluctuate</P>

<P>Market prices in the United States for securities of medical technology companies can be highly volatile, and the trading price of our common stock could be subject to significant fluctuations in response to the results, announcements of the status or results of governmental approvals, development projects or technological innovations by us or our competitors, government regulation and other events or factors. The volatility in market prices may be unrelated to the operating performance of particular companies. These market fluctuations have in the past materially adversely affected the market price of our common stock, and may do so in the future.</P>

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<P>Certain provisions of our articles of incorporation and Minnesota law make a takeover of our company difficult and may deprive our shareholders of opportunities to sell shares at above-market prices</P>

<P>Our Board of Directors has the authority, without any action by the shareholders, to fix the rights and preferences of any shares of our preferred stock to be issued from time to time. Pursuant to our articles of incorporation, our Board of Directors is divided into three classes of directors, with each director serving a three-year term. Each year only one class of directors is subject to a shareholder vote, and approximately one-third of the directors belongs to each class. A shareholder desiring to control our Board of Directors must participate in the elections of directors to obtain majority representation on our Board of Directors. In addition, as a Minnesota corporation, we are subject to certain anti-takeover provisions of the Minnesota Business Corporation Act. All of these factors could have the effect of delaying, deferring or preventing a change in control, may discourage bids for our common stock at a premium over the prevailing market price of the common stock, and may adversely affect the market price of, and the voting and other rights of the holders of, common stock.</P>

<P>No Dividends</P>

<P>We have never paid or declared a dividend on our capital stock and do not anticipate doing so for the foreseeable future.</P>

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<P ALIGN="CENTER">THE COMPANY</P>

<P>We develop, manufacture and market surgical devices through two divisions, the hyaluronan division and the oral restorative division. You may obtain information about us from our internet website at www.lifecore.com.</P>

<P>Our hyaluronan division is principally involved in the development and manufacture of products utilizing hyaluronan, a naturally occurring carbohydrate that moisturizes or lubricates the soft tissues of the body. Our hyaluronan division's primary development project involves a version of our patented ferric hyaluronan technology, INTERGELreg; Adhesion Prevention Solution. INTERGELreg; Solution is intended to reduce the incidence of fibrous tissue adhesions, which commonly form as part of the body's natural healing process when tissues or organs are subject to accidental or surgical trauma. Particularly with respect to abdominal, cardiovascular, orthopedic, reproductive, and thoracic surgeries, these adhesions may cause internal complications that often require costly postsurgical intervention. Government sources recently estimated the annual cost of treatment of adhesion complications in the female lower abdomen alone, a common site for the occurrence of adhesions, at \$2.0 billion in the United States. Since June 1998, our exclusive worldwide marketing partner, the Gynecare Division of Ethicon, Inc., a Johnson Johnson Company, has been marketing INTERGELreg; Solution in Europe.</P>

<P>We produce hyaluronan through a proprietary fermentation process. Currently, the primary commercial use for our hyaluronan is as a component in ophthalmic surgical solutions for cataract surgery. We are pursuing the development of several other applications of hyaluronan through our strategic alliances with a number of corporate partners for a variety of veterinary, drug delivery and wound care applications. We also are leveraging our specialized hyaluronan manufacturing skills to develop and manufacture non-hyaluronan products for medical applications.</P>

<P>Our oral restorative division markets a comprehensive line of titanium-based dental implants for the replacement of lost or extracted teeth. In May 1992, we acquired the Sustain Dental Implant System from Bio-Interfaces, Inc. and, in July 1993, acquired Implant Support Systems, Inc., the manufacturer of the Restore Dental Implant System and its line of compatible components. We have enhanced and expanded these product lines since their acquisition. We introduced our STAGE-1 153; Single Stage Implant System in September 1999. Our oral restorative division also manufactures and markets tissue regeneration products for the restoration of bone deterioration resulting from periodontal disease and tooth loss. In May 1997, we acquired the TefGen 153; product line from Bridger Biomed, Inc. The acquisition expanded and complemented the growing line of tissue regenerative products by adding a nonresorbable membrane to address the current clinical practice referred to as guided tissue regeneration. In June 1997, we further expanded our tissue regeneration business to include soft tissue applications with the addition of AlloDerm 153; Dermal Graft, which we distribute on an exclusive basis to the U.S. dental market for LifeCell Corporation. Our oral restorative division's products are marketed in the United States through our direct sales force; in Italy through our subsidiary, Lifecore Biomedical SpA; and in other countries through distributors.</P>

<P>We were incorporated in Minnesota in 1965. Our executive offices are located at 3515 Lyman Boulevard, Chaska, Minnesota 55318 and our telephone number is (952) 368-4300. For further information, see the documents incorporated by reference herein as described under "Incorporation of Certain Documents by Reference."</P>

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<P ALIGN="CENTER">SELLING SHAREHOLDERS</P>

<P>On May 12, 1997, in connection with the acquisition of the TefGen 153; product line of Bridger Biomed, Inc., we issued a Promissory Note in favor of Bridger Biomed, Inc. for an aggregate amount of \$1,200,000. Payments due under the note could be made in the form of our common stock. On February 28, 2000, we paid the remaining principal and interest due on the promissory note in the form of 60,590 shares of unregistered common stock to Bridger Biomed, Inc., 34,589 shares of unregistered common stock to Barry Barbee and 23,059 shares of unregistered common stock to James Killian. The number of shares issued to the Selling Shareholders was determined using a formula based on the quoted market value of our common stock as determined on the Nasdaq National Market.</P>

<P>The following table sets forth certain information, as of March 6, 2000, as to the maximum number of shares that may be sold by each of the selling shareholders pursuant to this prospectus.</P>

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<TH WIDTH="16%" ALIGN="CENTER">Maximum Number of Shares to be Sold Pursuant to this Prospectus<HR NOSHADE</TH>
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<DT>(1)<DT>Assumes the sale of all shares covered by this prospectus.</DT></DL>

<P ALIGN="CENTER"> PLAN OF DISTRIBUTION </P>
<P>The shares will be offered and sold by the selling shareholders for their own account. We will not receive any proceeds from the sale of the shares pursuant to this prospectus. We have agreed to pay the expenses of registration of the shares, including legal and accounting fees.</P>
<P>The shares offered hereby may be sold by the selling shareholders, from time to time in transactions on the Nasdaq National Market, in brokerage transactions at prevailing market prices or in transactions at negotiated prices. Sales may be made to or through brokers or dealers who may receive compensation in the form of discounts, concessions or commissions from the selling shareholders or the purchasers of shares for whom such brokers or dealers may act as agent or to whom they may sell as principal, or both. As of the date of this prospectus, we are not aware of any agreement, arrangement or understanding between any broker or dealer and the selling shareholders.</P>
<P>The selling shareholders and any brokers or agents that participate with the selling shareholders in the distribution of the shares may be deemed to be "underwriters" within the meaning of Section 2(11) of the Securities Act of 1933, and any commissions received by them and any profit on the resale of the Shares purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act of 1933.</P>

<P ALIGN="CENTER"> EXPERTS </P>
<P>Our audited financial statements and schedule as of June 30, 1999 and 1998 and for each of the three years in the period ended June 30, 1999 incorporated herein and in the registration statement by reference to our Annual Report on Form 10-K have been audited by Grant Thornton LLP, independent certified public accountants, to the extent set forth in their report included therein and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance upon such report given upon the authority of such firm as experts in accounting and auditing.</P>

<P ALIGN="CENTER"> LEGAL MATTERS </P>
<P>The validity of the shares offered hereby has been passed upon for us by Dorsey & Whitney LLP, 220 South Sixth Street, Minneapolis, Minnesota 55402.</P>
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<P>All fees and expenses other than the Securities and Exchange Commission registration fee are estimated. The expenses listed above will be paid by Lifecore Biomedical, Inc.</P>
<P>Item 15. Indemnification of Directors and Officers</P>
<P>The Bylaws of Lifecore Biomedical, Inc. provide that it may indemnify each director or officer, whether or not then in office (and such person's heirs, executors, and administrators), against reasonable costs and expenses incurred in connection with any action, suit or proceeding to which such person may be made a party by reason of such person's being or having been a director or officer, except in relation to any actions, suits, or proceedings in which such person has been adjudged liable because of willful malfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such person's office. The bylaws further provide that such rights and indemnification shall not be exclusive of any other rights to which the officers and directors may be entitled according to law.</P>
<P>Section 302A.521 of the Minnesota Business Corporation Act provides that a corporation shall indemnify any person who was or is made or is threatened to be made a party to any proceeding, by reason of the former or present official capacity (as defined) of such person, against judgments, penalties, fines, settlements and reasonable expenses, including attorneys' fees and disbursements, incurred by such person in connection with the proceeding if certain statutory standards are met. "Proceeding" means a threatened, pending or complete civil, criminal, administrative, arbitration or investigative proceeding, including one by or in the right of the corporation. Section 302A.521 contains detailed terms regarding such right of indemnification and reference is made thereto for a complete statement of such indemnification rights.</P>
<P>In addition, Lifecore Biomedical, Inc. has entered into indemnification agreements with each of its directors and officers, which agreements provide for indemnification to the full extent permitted by Minnesota law.</P>
<P>Lifecore Biomedical, Inc. maintains a standard policy of officers' and directors' insurance.</P>


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