FORM S-3

Registration statement for specified transactions by certain issuers

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DEPOMED INC

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As filed with the Securities and Exchange Commission on August 3, 2001

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

DEPOMED, INC.

(Exact name of Registrant as specified in its charter)

California	**94-3229046**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

1360 O'Brien Drive, Menlo Park, California 94025 (650) 462-5900

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

John W. Fara, Ph.D.
Chairman, President and Chief Executive Officer
1360 O'Brien Drive, Menlo Park, California 94025 (650) 462-5900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:

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Approximate date of commencement of proposed sale to the public:
From time to time as soon as practicable after this Registration Statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. / /

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. /x/

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, please check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering: / /

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: / /

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box: / /

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, no par value	4,581,552	$5.515	$25,267,259.28	$6,316.82

(1)

In accordance with Rule 416 under the Securities Act of 1933, Common Stock offered hereby shall also be deemed to cover additional securities to be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2)

Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low prices of Registrant's Common Stock on the American Stock Exchange on July 31, 2001.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its Effective Date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

We will amend and complete the information in this prospectus. Although we are permitted by US federal securities law to offer these securities using this prospectus, we may not sell them or accept your offer to buy them until the documentation filed with the SEC relating to these securities has been declared effective by the SEC. This prospectus is not an offer to sell these securities or our solicitation of your offer to buy these securities in any jurisdiction where that would not be permitted or legal.

SUBJECT TO COMPLETION, DATED AUGUST 3, 2001

Prospectus

DEPOMED, INC.

2,908,922 Shares of Common Stock

1,672,630 Shares of Common Stock Issuable Upon Exercise of Warrants

This prospectus may be used only in connection with the resale, from time to time, of up to 4,581,552 shares of our common stock, no par value, by the selling shareholders. 1,672,630 of the shares are issuable upon exercise of warrants to purchase common stock. Information on the selling shareholders, and the times and manner in which they may offer and sell shares of our common stock under this prospectus, is provided under "Selling Shareholders" and "Plan of Distribution" in this prospectus. We will not receive any proceeds from the sale of these shares by the selling shareholders under this prospectus. We will receive proceeds upon cash exercise of the warrants to purchase common stock underlying some of the shares offered by the selling shareholders.

Our address is 1360 O'Brien Drive, Menlo Park, California 94025, and our telephone number is (650) 462-5900.

Our common stock trades on the American Stock Exchange under the symbol "DMI" and the common stock purchase warrants issued in connection with our initial public offering trade on the American Stock Exchange under the symbol "DMI/WS". On August 2, 2001, the closing price for our common stock, as reported on the American Stock Exchange, was $5.64 per share and the closing price for our common stock purchase warrants was $1.05.

Beginning on page 3, we have listed a number of "Risk Factors" which you should consider. You should read the entire prospectus carefully before you make your investment decision.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

In this prospectus, "DepoMed," the "company," the "Registrant," "we," "us" and "our" refer to DepoMed, Inc.

The date of this prospectus is , 2001

ABOUT THE COMPANY

Our Company

We are a development stage company engaged in the development of new and proprietary oral drug delivery technologies. We have developed two types of oral drug delivery systems, the Gastric Retention System (the "GR System") and the Reduced Irritation System (the "RI System" and together, the "DepoMed Systems"). The GR System is designed to be retained in the stomach for an extended period of time while it delivers the incorporated drug or drugs, and the RI System is designed to reduce the gastrointestinal irritation that is a side effect of many orally administered drugs. In addition, the DepoMed Systems are designed to provide continuous, controlled delivery of an incorporated drug.

Our Products

We intend to develop products utilizing the DepoMed Systems in collaboration with pharmaceutical and biotechnology companies from which we expect to receive license fees, research and development funding, milestone payments and royalties. We also intend to develop, either independently or jointly, proprietary products utilizing certain off-patent and over-the-counter ("OTC") drugs in the DepoMed Systems.

In November 1999, we entered into a joint venture with Elan Corporation, plc, Elan Pharma International, Ltd. and Elan International Services, Ltd. (together "Elan") to develop products using drug delivery technologies and the expertise of both companies. This joint venture, DepoMed Development, Ltd. ("DDL"), a Bermuda limited liability company, is initially owned 80.1% by DepoMed and 19.9% by Elan. DDL funds its research through capital contributions from its partners based on the partners' ownership percentage. DDL subcontracts research and development efforts to DepoMed, Elan and others. DepoMed began subcontract development work for DDL in January 2000 and an undisclosed product entered Phase I clinical trials in December 2000. DDL has selected several candidates for a second compound for product development, and is conducting feasibility studies. DDL expects to make a final selection later in 2001.

We also have in development Metformin GR™, a potential once-daily metformin product for the treatment of Type II diabetes. In January 2000, we completed a Phase I clinical trial of Metformin GR and, in July 2000, we completed a second Phase I clinical trial of Metformin GR. Both trials showed positive results, and in the third quarter of 2000 we initiated a Phase II clinical trial. Phase II clinical trial data indicated that our once-daily Metformin GR is bioequivalent to a twice-daily drug treatment program with Glucophage®, the Bristol-Myers Squibb ("BMS") immediate release metformin product. In June 2001, we commenced a Phase III clinical trial with Metformin GR. There can be no assurance that Phase III clinical trials will be successful or that regulatory approval for Metformin GR will be obtained. Our Metformin GR product will, if approved, be a competitor to BMS' Glucophage XR®, a once-daily dosage form of metformin that was approved for marketing in the United States in late 2000.

In June 2000, we announced the initiation of a collaboration with AVI Biopharma, Inc. ("AVI") to investigate the feasibility of controlled oral delivery of AVI's proprietary NEUGENE antisense agents. In January 2001, we announced the successful completion of a clinical trial with our potential once-daily antibiotic GR formulation, Ciprofloxacin GR™. Our formulation was found to have comparable bioavailability and had a significantly extended blood plasma concentration profile compared with CIPRO®, Bayer Corporation's currently marketed ciprofloxacin HC1 immediate release product that is taken twice per day. We are planning to begin a Phase II clinical trial with Ciprofloxacin GR in the third quarter of 2001. We are also developing additional product candidates expected to benefit from incorporation into the DepoMed Systems, including a GR System formulation of an undisclosed cardiovascular drug. We will ultimately seek marketing partners to commercialize these products.

RISK FACTORS

You should carefully consider the following risks and uncertainties before you invest in our common stock. Investing in our common stock involves risk. If any of the following risks or uncertainties actually occur, our business, financial condition or results of operations could be materially adversely affected. The following are not the only risks and uncertainties we face. Additional risks and uncertainties of which we are unaware or which we currently believe are immaterial could also materially adversely affect our business, financial condition or results of operations. In any case, the trading price of our common stock could decline, and you could lose all or part of your investment. See also, "Special Note Regarding Forward-Looking Statements."

We are at an early stage of development and we expect operating losses in the future

We are at an early stage of development. Accordingly, our business is subject to all of the business risks associated with a new enterprise, including:

- uncertainties regarding product development;
- risks related to collaborative partnering relationships;
- lack of revenue and uncertainty regarding future revenues;
- limited financial and personnel resources; and

lack of established credit facilities.

As we expand our research and development efforts, we anticipate that we will continue to incur substantial operating losses for at least the next several years. Therefore, we expect our cumulative losses to increase. To date, we have had no revenues from product sales and only limited revenues from our collaborative research and development arrangements and feasibility studies. Our success will depend on commercial sales of products that generate significant revenues for us. We cannot predict whether we will be able to achieve commercial sales of any revenue-generating products.

We may not be able to develop a successful product

Our research and development programs are at an early stage. In order for us to incorporate a pharmaceutical product into a DepoMed System, we would need to complete substantial additional research and development on an off-patent drug or a drug provided by a collaborative partner. Even if we are successful, the drug incorporated in the DepoMed System:

may not be offered for commercial sale; or

may prove to have undesirable or unintended side effects that prevent or limit its commercial use.

Before we or others make commercial sales of products using the DepoMed Systems, we or our collaborative partners would need to:

conduct clinical tests showing that these products are safe and effective; and

obtain regulatory approval.

Product development involves substantial financial investment. Successful commercial sales of any of these products require:

market acceptance;

cost-effective commercial scale production; and

reimbursement under private or governmental health plans.

We will have to curtail, redirect or eliminate our product development programs if we or our collaborative partners find that:

the DepoMed Systems prove to have unintended or undesirable side effects; or

products which appear promising in preclinical studies do not demonstrate efficacy in larger scale clinical trials.

These events could have a material adverse effect on the company.

Our quarterly operating results may fluctuate

The following factors will affect our quarterly operating results and may result in a material adverse effect on the company:

variations in revenues obtained from collaborative agreements, including milestone payments, royalties, license fees and other contract revenues;

our success or failure in entering into further collaborative relationships;

decisions by collaborative partners to proceed or not to proceed with subsequent phases of the relationship or program;

the timing of any future product introductions by us or our collaborative partners;

market acceptance of the DepoMed Systems;

regulatory actions;

adoption of new technologies;

the introduction of new products by our competitors;

manufacturing costs and capabilities;

changes in government policy or funding; and

third-party reimbursement policies.

Most of our revenue is derived from our relationship with Elan and our strategy is dependent upon entering into additional collaborative relationships

We have generated all of our revenues through collaborative arrangements with pharmaceutical and biotechnology companies. Currently, most of our revenues are derived from our joint venture with Elan. If our joint venture with Elan is terminated or fails to produce desired results, our revenues and results of operations will suffer.

Our strategy to continue the research, development, clinical testing, manufacturing and commercial sale of products using the DepoMed Systems requires that we enter into additional collaborative arrangements. We may not be able to enter into future collaborative arrangements on acceptable terms, which would have a material adverse effect us. The success of the Elan joint venture and any additional collaborative arrangements requires that our collaborative partners:

perform their obligations as expected; and

devote sufficient resources to the development, clinical testing and marketing of products developed under collaborations.

It is possible that Elan or our future collaborative partners may not:

continue to fund their particular projects;

perform their agreed-to obligations; or

choose to develop and make commercial sales of products using the DepoMed Systems.

Any of the following events could have a material adverse effect on the company:

any parallel development by a collaborative partner of competitive technologies or products;

arrangements with collaborative partners that limit or preclude us from developing products or technologies;

premature termination of an agreement; or

failure by a collaborative partner to devote sufficient resources to the development, and commercial sales of products using the DepoMed Systems.

Disputes may arise from collaborative arrangements

Collaborative agreements are generally complex and may contain provisions which give rise to disputes regarding the relative rights and obligations of the parties. Any such dispute could delay collaborative research, development or commercialization of potential products, or could lead to lengthy, expensive litigation or arbitration. In addition, the terms of our past and future collaborative partner agreements may limit or preclude us from developing products or technologies developed pursuant to such agreements.

In July 1996, the company and Bristol-Myers Squibb ("BMS") entered into a letter agreement regarding a joint research project relating to the development of a product consisting of formulations of a BMS drug incorporated in the GR System (the "BMS Agreement"). After we completed our research under the BMS Agreement, BMS decided in early 1999 not to exercise its option to license the resulting product and to proceed instead with its own internally-developed product. The BMS Agreement by its terms prohibits us from exploiting any formulations of the BMS drug developed pursuant to the BMS Agreement or any proprietary information or invention relating solely to the BMS drug developed under the BMS Agreement.

Independent of the BMS Agreement, we have developed a proprietary product, currently in clinical trials, incorporating the BMS drug (which is no longer covered by a U.S. patent) into the GR System. We believe that our development of this product does not contravene any of our obligations under the BMS Agreement. However, there can be no assurance that BMS will not assert that we have violated the terms of the BMS Agreement or dispute our sole ownership of any patent that relates to the product. If BMS were to make such an assertion, we could be subject to costly and time-consuming litigation, the outcome of which would be uncertain.

We may not be able to compete successfully in the pharmaceutical product and drug delivery system industries

Competition in pharmaceutical product and drug delivery system industries is intense. We expect competition to increase. Competing technologies or products developed in the future may prove superior either generally or in particular market segments to the DepoMed Systems or products using the DepoMed Systems. These developments would make the DepoMed Systems or products using them noncompetitive or obsolete.

All of our principal competitors have substantially greater financial, marketing, personnel and research and development resources than us. In addition, many of our potential collaborative partners have devoted, and continue to devote, significant resources to the development of their own drug delivery systems and technologies.

Failure to obtain regulatory approval could harm our business

Numerous governmental authorities in the United States and other countries regulate our research and development activities and those of our collaborative partners. Governmental approval is required for all potential pharmaceutical products using the DepoMed Systems and the manufacture and marketing of products using the DepoMed Systems prior to the commercial use of those products. The regulatory process will take several years and require substantial funds. In addition, various forms of regulatory exclusivity (including generic drug exclusivity and pediatric exclusivity), which extend beyond patent protection, may delay market approval for products using the DepoMed Systems. If

products using the DepoMed Systems do not receive the required regulatory approvals or if such approvals are delayed, our business would be materially adversely affected. There can be no assurance that the requisite regulatory approvals will be obtained without lengthy delays, if at all.

In the United States, the United States Food and Drug Administration (the "FDA") rigorously regulates pharmaceutical products, including any drugs using the DepoMed Systems. If a company fails to comply with applicable requirements, the FDA or the courts may impose sanctions. These sanctions may include civil penalties, criminal prosecution of the company or its officers and employees, injunctions, product seizure or detention, product recalls, total or partial suspension of production. The FDA may withdraw approved applications or refuse to approve pending new drug applications, premarket approval applications, or supplements to approved applications.

The company generally must conduct preclinical testing on laboratory animals of new pharmaceutical products prior to commencement of clinical studies involving human beings. These studies evaluate the potential efficacy and safety of the product. The company then submits the results of these studies to the FDA as part of an Investigational New Drug application ("IND"), which must become effective before beginning clinical testing in humans.

Typically, human clinical evaluation involves a time-consuming and costly three-phase process:

In Phase I, the company conducts clinical trials with a small number of subjects to determine a drug's early safety profile and its pharmacokinetic pattern.

In Phase II, the company conducts clinical trials with groups of patients afflicted with a specific disease in order to determine preliminary efficacy, optimal dosages and further evidence of safety.

In Phase III, the company conducts large-scale, multi-center, comparative trials with patients afflicted with a target disease in order to provide enough data to demonstrate the efficacy and safety vis-à-vis existing approved therapies, as required by the FDA prior to commercialization.

The FDA closely monitors the progress of each phase of clinical testing. The FDA may, at its discretion, re-evaluate, alter, suspend or terminate testing based upon the data accumulated to that point and the FDA's assessment of the risk/benefit ratio to patients.

The results of the preclinical and clinical testing are submitted to the FDA in the form of a New Drug application (an "NDA") for approval prior to commercialization. An NDA requires that our products are compliant with current Good Manufacturing Practice standards ("cGMP"). Failure to achieve or maintain cGMP standards for products using the DepoMed Systems would adversely impact their marketability. In responding to an NDA, the FDA may grant marketing approval, request additional information or deny the application. Failure to receive approval for any products using the DepoMed Systems would have a material adverse effect on the company.

The FDA regulates not only prescription and over-the-counter drugs approved by NDAs, but also over-the-counter products that comply with monographs issued by the FDA. These monograph regulations include:

cGMP requirements;

general and specific over-the-counter labeling requirements (including warning statements);

advertising restrictions; and

requirements regarding the safety and suitability of inactive ingredients.

In addition, the FDA may inspect over-the-counter products and manufacturing facilities. A failure to comply with applicable regulatory requirements may lead to administrative or judicially imposed penalties. If an over-the-counter product differs from the terms of a monograph, it will, in most cases, require FDA approval of an NDA for the product to be marketed.

Foreign regulatory approval of a product must also be obtained prior to marketing the product internationally. Foreign approval procedures vary from country to country. The time required for approval may delay or prevent marketing in certain countries. In certain instances the company or its collaborative partners may seek approval to market and sell certain products outside of the United States before submitting an application for United States approval to the FDA. The clinical testing requirements and the time required to obtain foreign regulatory approvals may differ from that required for FDA approval. Although there is now a centralized European Union ("EU") approval mechanism in place, each EU country may nonetheless impose its own procedures and requirements. Many of these procedures and requirements are time-consuming and expensive. Some EU countries require price approval as part of the regulatory process. These constraints can cause substantial delays in obtaining required approval from both the FDA and foreign regulatory authorities after the relevant applications are filed, and approval in any single country may not meaningfully indicate that another country will approve the product.

We will depend on third parties for manufacturing, marketing and sales of products using the DepoMed Systems

Although we are currently completing a pilot scale cGMP manufacturing facility which will enable us to manufacture products for clinical trials, we intend to use the facilities of our collaborative partners or those of contract manufacturers to manufacture commercial products using the DepoMed Systems. There may not be sufficient manufacturing capacity available to us when, if ever, we are ready to seek commercial sales of products using the DepoMed Systems. As a result, our dependence on third parties for the manufacture of products using the DepoMed Systems may adversely affect our ability to develop and deliver such products on a timely and competitive basis. In addition, we do not intend to establish sales and marketing capabilities but expect to rely on our collaborative partners or to enter into distributor arrangements to market and sell products using the DepoMed Systems. We may not be able to enter into manufacturing, marketing or sales agreements on reasonable commercial terms, or at all, with third parties. Failure to do so would have a material adverse effect on the company.

Applicable cGMP requirements and other rules and regulations prescribed by foreign regulatory authorities will apply to the manufacture of products using the DepoMed Systems. We will depend on the manufacturers of products using the DepoMed Systems to comply with cGMP and applicable foreign standards. Any failure by a manufacturer of products using the DepoMed Systems to maintain cGMP or comply with applicable foreign standards could delay or prevent their commercial sale. This could have a material adverse effect on the company.

We may be unable to protect our intellectual property and we may be liable for infringing the intellectual property of others

Our success will depend in part on our ability to obtain and maintain patent protection for our technologies and to preserve our trade secrets. Our policy is to file patent applications in the United States and foreign jurisdictions. We currently hold three issued United States patents and six United States patent applications are pending. Additionally, we are currently preparing a series of patent applications, representing our expanding technology, for filing in the United States. We have also applied for patents in numerous foreign countries. Some of those countries

have granted our applications and other applications are still pending. No assurance can be given that our patent applications will be approved, or that any issued patents will provide competitive advantages for the DepoMed Systems or our technologies.

With respect to already issued patents and any patents which may issue from our applications, there can be no assurance that claims allowed will be sufficient to protect our technologies. The United States maintains patent applications filed prior to November 29, 2000 in secrecy until a patent issues. As a result, we cannot be certain that others have not filed patent applications for technology covered by our pending applications or that we were the first to file patent applications for such technology. Competitors may have filed applications for, or may have received patents and may obtain additional patents and proprietary rights relating to, compounds or processes that may block our patent rights or permit the competitors to compete without infringing on our patent rights. In addition, there can be no assurance that:

any patents issued us will not be challenged, invalidated or circumvented; or

the rights granted under the patents issued to us will provide proprietary protection or commercial advantage to us.

We also rely on trade secrets and proprietary know-how. We seek to protect that information, in part, through entering into confidentiality agreements with employees, consultants, collaborative partners and others before such persons or entities have access to our proprietary trade secrets and

know-how. These confidentiality agreements may not be effective in certain cases, due to, among other things, the lack of an adequate remedy for breach of an agreement or a finding that an agreement is unenforceable. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

Our ability to develop our technologies and to make commercial sales of products using our technologies also depends on our not infringing others' patents. We are not aware of any claim of patent infringement against us. However, if claims concerning patents and proprietary technologies arise and are determined adversely to us, the claims could have a material adverse effect on us. Extensive litigation regarding patent and other intellectual property rights is common in the pharmaceutical industry. We may need to engage in litigation to enforce any patents issued or licensed to us or to determine the scope and validity of third-party proprietary rights. There can be no assurance that our issued or licensed patents would be held valid by a court of competent jurisdiction. Whether or not the outcome of litigation is favorable to us, the diversion of our financial and managerial resources to such litigation could have a material adverse effect on us. We may also be required to participate in interference proceedings declared by the United States Patent and Trademark Office for the purpose of determining the priority of inventions in connection with our patent applications or those of other parties. Adverse determinations in litigation or interference proceedings could require us to seek licenses, which may not be available on commercially reasonable terms, or subject us to significant liabilities to third parties. These events could have a material adverse effect on us.

Our advisors have relationships with other entities

Two groups (the Policy Advisory Board and Development Advisory Board) advise the company on business and scientific issues and future opportunities. Certain members of our Policy Advisory Board and Development Advisory Board work full-time for academic or research institutions. Others act as consultants to other companies. In addition, except for work performed specifically for and at the direction of the company, any inventions or processes discovered by such persons will be their own intellectual property or that of their institutions or other companies. Further, invention assignment agreements signed by such persons in connection with their relationships with the company may be subject to the rights of their primary employers or other third parties with whom they have consulting relationships. If we desire access to inventions which are not our property, we will have to obtain licenses to such inventions from these institutions or companies. We may not be able to obtain these licenses on commercially reasonable terms.

Reform of the healthcare industry may affect our business and the availability of healthcare reimbursement

The government, medical professionals, third-party payors and the pharmaceutical industry are seeking ways to contain or reduce the cost of health care. Changes in the healthcare industry could impact our business, particularly to the extent that the company develops the DepoMed Systems for use in prescription drug applications.

Certain foreign governments regulate pricing or profitability of prescription pharmaceuticals sold in their countries. There have been a number of federal and state proposals to implement similar government control in the United States, particularly with respect to Medicare payments. In addition, downward pressure on pharmaceutical pricing in the United States has increased due to an enhanced emphasis on managed care. We cannot predict whether any such legislative or regulatory proposals will be adopted or the effect such proposals or managed care efforts may have on our business. However, the announcement of such proposals or efforts could have a material adverse effect on our ability to raise capital. Further, the adoption of such proposals or efforts would have a material adverse effect on us and our partners.

Sales of any products developed using the DepoMed Systems in domestic and foreign markets will depend in part on the availability of reimbursement from third-party payors, such as government health administration authorities and private health insurers. Third-party payors are increasingly challenging the price and cost-effectiveness of prescription pharmaceutical products. Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. Accordingly, products using the DepoMed Systems may not be eligible for third-party reimbursement at price levels sufficient for us or our collaborative partners to realize appropriate returns on our investments in the DepoMed Systems.

We could become subject to product liability litigation

Our business involves exposure to potential product liability risks that are inherent in the production and manufacture of pharmaceutical products. Any such claims could have a material adverse effect on the company. We have obtained product liability insurance for clinical trials currently underway, but there can be no assurance that:

- we will be able to obtain product liability insurance for future trials;
- we will be able to maintain product liability insurance on acceptable terms;
- we will be able to secure increased coverage if the commercialization of products using the DepoMed Systems proceeds; or
- any insurance will provide adequate protection against potential liabilities.

We will need additional capital to support our operations, which may be unavailable or costly

We anticipate that our existing capital resources, including the proceeds from the private placement of our common stock and warrants to purchase our common stock completed in June 2001, will permit us to meet our capital and operational requirements until December 2002. However, we base this expectation on our current operating plan that may change as a result of many factors. Accordingly, we could require

additional funding sooner than anticipated. Our cash needs may also vary from our current expectations because of numerous factors, including:

- results of research and development;
- relationships with collaborative partners;
- changes in the focus and direction of our research and development programs;
- technological advances; and
- results of clinical testing and the regulatory requirements of the FDA and comparable foreign regulatory agencies.

We will need substantial funds to:

- conduct research and development programs;
- conduct preclinical and clinical testing; and
- manufacture (or have manufactured) and market (or have marketed) potential products using the DepoMed Systems.

Our existing capital resources may not be sufficient to fund our operations until such time as we are able to generate sufficient revenues to support our operations. We have limited credit facilities and no other committed source of capital. To the extent that our capital resources are insufficient to meet our future capital requirements, we will have to raise additional funds to continue our development programs. We may not be able to raise such additional capital on favorable terms, or at all. If we raise additional capital by selling our equity or convertible debt securities, the issuance of such securities

could result in dilution of our shareholders' equity positions. If adequate funds are not available, we may have to:

- curtail operations significantly; or
- obtain funds through entering into collaboration agreements on unattractive terms.

The inability to raise capital would have a material adverse effect on the company.

We are reliant on a continuous power supply to conduct business, and we are subject to disruption of operations and increase of expense from California's current energy crisis

California is in the midst of an energy crisis that could disrupt our operations and increase our expenses. In the event of an acute power shortage, California has on occasion implemented, and may in the future continue to implement, rolling blackouts throughout California. We currently do not have backup generators or alternate sources of power in the event of a blackout, and our current insurance does not provide coverage for any damages we may suffer as a result of any interruption in the company's power supply. If blackouts interrupt the company's power supply, we would be temporarily unable to continue operations at our facilities, which could substantially harm our business and results of operations.

Furthermore, the regulatory changes affecting the energy industry instituted in 1996 by the California government has caused power prices to increase. Under the revised regulatory scheme, utilities were encouraged to sell their plants, which traditionally had produced most of California's power, to independent energy companies that were expected to compete aggressively on price. Instead, due in part to a shortage of supply, wholesale prices have increased dramatically over the past year. If wholesale prices continue to increase, our operating expenses will likely increase.

Business interruptions could harm our business

Our operations are vulnerable to damage or interruption from computer viruses, human error, natural disasters, telecommunications failures, intentional acts of vandalism and similar events. In particular, our corporate headquarters are located in the San Francisco Bay area, which is known for seismic activity. We have not established a formal disaster recovery plan, and our back-up operations and our business interruption insurance may not be adequate to compensate us for losses that occur. A significant business interruption would result in losses or damages incurred by us and would harm our business.

We may not be able to attract and retain key employees

Our success is dependent in large part upon the continued services of John W. Fara, the Chairman, President and Chief Executive Officer of the company, and other members of our executive management, and on our ability to attract and retain key management and operating personnel. We maintain key man life insurance on the life of Dr. Fara in the amount of $1,000,000. Management, scientific and operating personnel are in high demand and are often subject to competing offers. The loss of the services of one or more members of management or key employees or the inability to hire additional personnel as needed may have a material adverse effect on the company.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus contains or incorporates by reference forward-looking statements that involve risks and uncertainties. The statements contained or incorporated by reference in this prospectus that are not purely historical are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "1933 Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "1934 Act"), including without limitation statements regarding DepoMed's

expectations, beliefs, intentions or strategies regarding the future. All forward-looking statements included in this document are based on information available to DepoMed on the date hereof, and all forward-looking statements in documents incorporated by reference are based on

information available to DepoMed as of the date of such documents. DepoMed assumes no obligation to update any such forward-looking statements. DepoMed's actual results may differ materially from those discussed in the forward-looking statements as a result of certain factors, including those set forth above under "Risk Factors" and elsewhere in this prospectus and in the documents incorporated by reference into this prospectus. In evaluating DepoMed's business, prospective investors should carefully consider the following factors in addition to the other information set forth in this prospectus and incorporated by reference herein.

USE OF PROCEEDS

DepoMed will not receive any of the proceeds from the sale of the shares offered by this prospectus. The selling shareholders will receive all of the proceeds. We will receive proceeds upon cash exercise of the warrants to purchase common stock underlying some of the shares offered by the selling shareholders.

SELLING SHAREHOLDERS

The following table sets forth the names of the selling shareholders, the number of shares of common stock owned beneficially by each selling shareholder as of July 27, 2001 and the number of shares that may be offered pursuant to this prospectus. This information is based upon information provided to us by the selling shareholders.

For purposes of this table, beneficial ownership is determined in accordance with SEC rules, and includes voting power and investment power with respect to shares. Under the SEC rules, shares issuable upon the exercise of currently exercisable warrants are considered outstanding for purposes of calculating the percentage owned by a person, but not for purposes of calculating the percentage owned by any other person.

As explained below under "Plan of Distribution," we have agreed to bear certain expenses (other than broker discounts and commissions, if any) in connection with the registration statement of which this prospectus is a part.

	Shares Beneficially Owned Prior to Offering (1)		Shares Subject to Currently Exercisable Warrants		Shares Beneficially Owned After the Offering (3)	
Selling Shareholder:	Number	Percent (2)	Number	Shares Offered	Number	Percent (2)
Joan F. Albrecht	17,802	*	5,934	17,802	–	–
Robert M. Alper	17,802	*	5,934	17,802	–	–
Banque Syz and Co.	10,680	*	3,560	10,680	–	–
Stephen Bragin	17,802	*	5,934	17,802	–	–
Yvonne Briggs	8,130	*	8,130	8,130	–	–
Caduceus Private Investments, LP	2,239,387	18.6	513,108	489,450	1,749,937	14.7
Frank Kee Colen	49,064	*	31,260	49,064	–	–
Charles Conroy	17,802	*	5,934	17,802	–	–
Crimson Biomedical Fund, L.P.	212,431	1.8	47,477	142,431	70,000	*
Davin Capital, L.P.	178,041	1.5	59,347	178,041	–	–
DeAM Health Sciences Fund I, LTD	75,000	*	25,000	75,000	–	–
Easton Hunt Capital Partners, L.P.	890,205	7.5	296,735	890,205	–	–
Roger D. Elsas C/F Chauncey D. Elsas UND NJ UNIF GTMA	3,000	*	1,000	3,000	–	–

Patricia S. Elsas	9,000	*	3,000	9,000	–	–
Roger D. Elsas	10,000	*	4,000	10,000	–	–
Burton I. Epstein	8,901	*	2,967	8,901	–	–
Kenneth Epstein	2,700	*	900	2,700	–	–
S. Jerome Epstein	17,802	*	5,934	17,802	–	–
Fahnestock & Co. Inc.	171,554	1.5	171,554	171,554	–	–
Fahnestock & Co., Inc. Custodian FBO Dr. Edward R. Falkner IRA	17,802	*	5,934	17,802	–	–
David Gerstenhaber	44,508	*	14,836	44,508	–	–
Dennis A. Gleicher	5,340	*	1,780	5,340	–	–
Morton E. Goulder Revocable Trust	17,802	*	5,934	17,802	–	–
Richard Grobman	8,901	*	2,967	8,901	–	–
M. Kingdon Offshore, NV	544,176	4.6	181,392	544,176	–	–

Hartzmark Investment Co. LLC Dolores Hartzmark	17,802	*	5,934	17,802	–	–
Jennifer Hoben-Williams	14,250	*	4,750	14,250	–	–
Hull Capital Corp. P.S. FBO J. Mitchell Hull	17,802	*	5,934	17,802	–	–
J.M. Hull Associates, L.P.	35,607	*	11,869	35,607	–	–
Jo-Bar Enterprises, L.L.C.	17,802	*	5,934	17,802	–	–
Larry Kadis	17,802	*	5,934	17,802	–	–
Kingdon Associates	157,986	1.4	52,662	157,986	–	–
Muriel Kogod	17,802	*	5,934	17,802	–	–
Leaf Investment Partners, LP	391,689	3.4	130,563	391,689	–	–
Albert G. Lowenthal	26,706	*	8,902	26,706	–	–
Daryl Lowenthal	8,901	*	2,967	8,901	–	–
Robert Lowenthal	8,901	*	2,967	8,901	–	–
Lachlan W. McLean	9,000	*	3,000	9,000	–	–
Cherie Mintz	8,901	*	2,967	8,901	–	–
Robert M. Neuhoff	17,802	*	5,934	17,802	–	–
NME Investments Limited	17,802	*	5,934	17,802	–	–
OrbiMed Associates LLC	45,901	*	10,538	10,188	35,713	*
Fahnestock & Co., Inc. Custodian FBO Joseph C. Pignotti IRA	17,802	*	5,934	17,802	–	–
ProMed Partners, L.P.	94,500	*	31,500	94,500	–	–
ProMed Partners II, L.P.	9,000	*	3,000	9,000	–	–
Lisa Pruzan	8,901	*	2,967	8,901	–	–
PW Juniper Crossover Fund, L.L.C.	212,526	1.8	70,842	212,526	–	–
Mark A. Radzik	12,462	*	4,154	12,462	–	–
Kenneth M. Reichle, Jr.	8,901	*	2,967	8,901	–	–
Francine W. Rodin	17,802	*	5,934	17,802	–	–
Victor J. Scaravilli	17,802	*	5,934	17,802	–	–
Mark Schwartz	17,802	*	5,934	17,802	–	–
Eric J. Shames	17,802	*	5,934	17,802	–	–
Special Situations Private Equity Fund, L.P.	360,000	3.1	120,000	360,000	–	–
William A. Stewart III	17,802	*	5,934	17,802	–	–
Howard J. Synenberg	17,802	*	5,934	17,802	–	–
Josh Werber	8,901	*	2,967	8,901	–	–

Henry Williams	10,163	*	10,163	10,163	–	–
Kathleen Wilson	3,450	*	1,550	3,450	–	–
Yale University	142,431	1.2	47,477	142,431	–	–
Neal Zung	13,265	*	7,331	13,265	–	–

*

Less than one percent

1

Includes shares issuable upon exercise of warrants.

2

Based upon 11,526,835 shares of common stock outstanding on July 27, 2001. This registration statement shall also cover any additional shares of common stock which become issuable in connection with the shares registered for sale 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 number of DepoMed's outstanding shares of common stock.

3

Assumes only shares offered hereby are sold, and that the selling shareholders do not sell any other shares that they currently hold.

PLAN OF DISTRIBUTION

We will receive no proceeds from this offering, with the exception of proceeds received upon cash exercise of the warrants to purchase common stock underlying some of the shares offered by the selling shareholders. The shares offered hereby may be sold by the selling shareholders from time to time in transactions in the over-the-counter market, on the American Stock Exchange, in privately negotiated transactions, or by a combination of such methods of sale, at fixed prices which may be changed, at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. The selling shareholders may effect such transactions by selling the shares to or through broker-dealers, and such broker-dealers may receive compensation in the form of discounts, concessions or commissions from the selling stockholder and/or the purchasers of the shares for whom such broker-dealers may act as agents or to whom they sell as principals, or both (which compensation as to a particular broker-dealer might be in excess of customary commissions).

In order to comply with the securities laws of certain states, if applicable, the shares will be sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, in certain states the shares may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

The selling shareholders and any broker-dealers or agents that participate with the selling shareholders in the distribution of the shares may under certain circumstances be deemed to be "underwriters" within the meaning of the 1933 Act, and any commissions received by them and any profit realized on the resale of the shares purchased by them may be deemed to be underwriting commissions or discounts under the 1933 Act. The selling shareholders may agree to indemnify such broker-dealers against certain liabilities, including liabilities under 1933 Act.

Any broker-dealer participating in such transactions as agent may receive commissions from the selling shareholders (and, if it acts as agent for the purchase of such shares, from such purchaser). Broker-dealers may agree with the selling shareholders to sell a specified number of shares at a stipulated price per share, and, to the extent such a broker-dealer is unable to do so acting as agent for the selling stockholder, to purchase as principal any unsold shares. Brokers-dealers who acquire shares as principal may thereafter resell such shares from time to time in transactions (which may involve crosses and block transactions and which may involve sales to and through other broker-dealers, including transactions of the nature described above) in the over-the-counter market, on the American Stock Exchange, in privately negotiated

transactions, or by a combination of such methods of sale, at fixed prices that may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices, and in connection with such resales may pay to or receive from the purchasers of such shares commissions computed as described above.

Under applicable rules and regulations under the 1934 Act, any person engaged in the distribution of the shares may not simultaneously engage in market making activities with respect to our common stock for a period of two business days prior to the commencement of such distribution. In addition and without limiting the foregoing, the selling shareholders will be subject to applicable provisions of the 1934 Act and the rules and regulations thereunder, including, without limitation, Rules 10b-6 and 10b-7, which provisions may limit the timing of purchases and sales of shares of our common stock by the selling shareholders.

The selling shareholders will pay all commissions and other expenses associated with the sale of shares by them. The shares offered hereby are being registered pursuant to contractual obligations of DepoMed, and DepoMed has agreed to bear certain expenses in connection with the registration and sale of the shares being offered by the selling shareholders. DepoMed has not made any underwriting arrangements with respect to the sale of shares offered hereby.

LEGAL MATTERS

The legality of the issuance of the securities being offered hereby is being passed upon us by Heller Ehrman White & McAuliffe LLP, La Jolla, California. Julian N. Stern, the sole shareholder of a professional corporation which is a partner of Heller Ehrman, is a director and Secretary of DepoMed. Mr. Stern beneficially owns 83,333 shares of our common stock.

EXPERTS

The financial statements of DepoMed, Inc. appearing in DepoMed, Inc.'s Annual Report (Form 10-K) for the year ended December 31, 2000 have been audited by Ernst & Young LLP, independent auditors, as set forth in their report thereon included therein and incorporated herein by reference. Such financial statements are incorporated herein by reference in reliance on such report given upon the authority of such firm as experts in accounting and auditing.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The following documents previously filed by DepoMed with the SEC pursuant to the 1934 Act are hereby incorporated by reference in this prospectus and made a part hereof:

1. Our Annual Report on Form 10-K for the year ended December 31, 2000;

2. Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001; and

3. The description of our common stock contained in our registration statement on Form 8-A filed on October 27, 1997 under the 1934 Act, including any amendment or report filed for the purpose of updating such description.

All documents filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this prospectus and prior to the termination of the offering shall be deemed to be incorporated by reference into this prospectus and to be a part hereof from the date of filing of such documents. Any statement contained in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as modified or superseded, to constitute a part of this prospectus.

Upon written or oral request, DepoMed will provide without charge to each person to whom a copy of the prospectus is delivered a copy of the documents incorporated by reference herein (other than exhibits to such documents unless such exhibits are specifically incorporated by reference herein). You may request a copy of these filings, at no cost, by writing or telephoning us at the following address: DepoMed, Inc., 1360 O'Brien Drive, Menlo Park, California 94025, Attention: John F. Hamilton, Chief Financial Officer, telephone: (650) 462-5900.

DepoMed is subject to the informational requirements of the 1934 Act and in accordance therewith files reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information filed by DepoMed may be inspected and copied at the public reference facilities maintained by the SEC at Room 1024, 450 Fifth Street, N.W., Judiciary Plaza, Washington, D.C. 20549, and at the SEC's following Regional Offices: Chicago Regional Office, Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661; and New York Regional Office, 7 World Trade Center, New York, New York 10048. Copies of such material can also be obtained at prescribed rates from the Public Reference Section of the SEC at 450 Fifth Street, N.W., Judiciary Plaza, Washington, D.C. 20549-1004. Reports, proxy and information statements and other

information filed electronically by DepoMed with the SEC are available at the SEC's world wide web site at http://www.sec.gov.

DepoMed has authorized no one to provide you with any information that differs from that contained in this prospectus. Accordingly, you should not rely on any information that is not contained in this prospectus. You should not assume that the information in this prospectus is accurate as of any date other than the date of the front cover of this prospectus.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth various expenses in connection with the sale and distribution of the securities being registered. All of the amounts shown are estimates except for the Securities and Exchange Commission Registration Fee.

Securities and Exchange Commission Registration Fee	$ 6,317
Accounting Fees	9,000
Legal Fees and Disbursements	20,000
Printing and Engraving	4,000
Miscellaneous	683
Total:	$ 40,000

Item 15. Indemnification of Officers and Directors.

Pursuant to Section 204(a) and 317 of the California Corporations Code, as amended, the Registrant has included in its articles of incorporation and bylaws provisions regarding the indemnification of officers and directors of the Registrant. Article IV of Registrant's Amended and Restated Articles of Incorporation provides as follows:

"The liability of the directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law. This corporation is also authorized, to the fullest extent permissible under California law, to indemnify its agents (as defined in Section 317 of the California Corporations Code), whether by bylaw, agreement or otherwise, for breach of duty to this corporation and its shareholder in excess of the indemnification expressly permitted by Section 317 and to advance defense expenses to its agents in connection with such matters as they are incurred, subject to the limits on such excess indemnification set forth in Section 204 of the California Corporations Code. If, after the effective date of this Article, California law is amended in a manner which permits a corporation to limit the monetary or other liability of its directors or to authorize indemnification of, or advancement of such defense expense to, its directors or other persons, in any such case to a greater extent than is permitted on such effective date, the references in this Article to "California law" shall to that extent be deemed to refer to California law as so amended."

Section 29 of the Registrant's bylaws, as amended, provides as follows:

"29. Indemnification of Directors and Officers.

(a) Indemnification. To the fullest extent permissible under California law, the corporation shall indemnify its directors and officers against all expenses, judgment, fines, settlement and other amounts actually and reasonably incurred by them in connection with any proceeding, including an action by or in the right of the corporation, by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, trustee, employee or agent of another corporation, or of a partnership, joint venture, trust or other enterprise (including service with respect to employee benefit plans). To the fullest extent permissible under California law, expenses incurred by a director or officer seeking indemnification under this bylaw in defending any proceeding shall be advanced by the corporation as they are incurred upon receipt by the corporation of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that the director or officer is not entitled to be indemnified by the corporation for those expenses. If, after the effective date of this bylaw, California law is amended in a manner which permits the corporation

to authorize indemnification of or advancement of expenses to its directors or officers, in any such case to a greater extent than is permitted on such effective date, the references in this bylaw to "California law" shall to that extent be deemed to refer to California law as so amended. The rights granted by this bylaw are contractual in nature and, as such, may not be altered with respect to any present or former director or officer without the written consent of that person.

(b) Procedure. Upon written request to the Board of Directors by a person seeking indemnification under this bylaw, the Board shall promptly determine in accordance with Section 317(e) of the California Corporations Code whether the applicable standard of conduct has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not parties to the proceeding, then, upon written request by the person seeking indemnification, independent legal counsel (by means of a written opinion obtained at the corporation's expense) or the corporation's shareholders shall determine whether the applicable standard of conduct has been met and, if so, shall authorize indemnification.

(c) Definitions. The term "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative. The term "expenses" includes, without limitation, attorney's fees and any expenses of establishing a right to indemnification." The Registrant has entered into indemnification agreements with each of its current directors and officers pursuant to the foregoing provisions."

Item 16. Exhibits.

The following documents are filed herewith (unless otherwise indicated) and made a part of this registration statement.

Exhibit Number	Description of Exhibit
5.1	Opinion of Heller Ehrman White & McAuliffe LLP
10.1	Form of Subscription Agreement
10.2	Supplement to Form of Subscription Agreement
10.3	Form of Warrant (filed as part of Exhibit 10.1)
23.1	Consent of Heller Ehrman White & McAuliffe LLP (filed as part of Exhibit 5.1)
23.2	Consent of Ernst & Young LLP, Independent Auditors
24.1	Power of Attorney (included on page II-4)

Item 17. Undertakings.

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by section 10(a)(3) of the 1933 Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

Provided, however, that paragraphs (i) and (ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to section 13 or section 15(d) of the 1934 Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the 1933 Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. That, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the 1934 Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the 1934 Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offering therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the provisions described under Item 14 above, or otherwise, Registrant has been advised that in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses

incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted against the Registrant by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

D. To deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the 1934 Act; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

SIGNATURES

Pursuant to the requirements of the 1933 Act, as amended, Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized in Menlo Park, California, on August 3, 2001.

DEPOMED, INC.

By /s/ John W. Fara, Ph.D.
John W. Fara, Ph.D.
Chairman, President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John W. Fara, Ph.D. and John F. Hamilton, jointly and severally, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this Registration Statement on Form S-3 and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the 1933 Act, this Registration Statement on Form S-3 has been signed by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Signature	Title	Date
/s/ John W. Fara, Ph.D. John W. Fara, Ph.D.	Chairman, President and Chief Executive Officer (Principal Executive Officer)	August 3, 2001
/s/ John N. Shell John N. Shell	Vice President, Operations and Director	August 3, 2001
/s/ John F. Hamilton John F. Hamilton	Vice President, Finance and Chief Financial	August 3, 2001

	Officer (Principal Accounting and Financial Officer)	
/s/ G. Steven Burrill G. Steven Burrill	Director	August 3, 2001
/s/ John W. Shell, Ph.D. John W. Shell, Ph.D.	Director	August 3, 2001
Julian N. Stern	Director	
/s/ W. Leigh Thompson, M.D., Ph.D. W. Leigh Thompson, M.D., Ph.D.	Director	August 3, 2001

DEPOMED, INC.

EXHIBIT INDEX

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QuickLinks

Exhibit 5.1

August 3, 2001

22038-0016

DepoMed, Inc.
1360 O'Brien Drive
Menlo Park, CA 94025

Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to DepoMed, Inc., a California corporation (the "Company"), in connection with the Registration Statement on Form S-3 (the "Registration Statement") to be filed with the Securities and Exchange Commission on or about August 3, 2001, for the purpose of registering under the Securities Act of 1933, as amended, 4,581,552 shares of its Common Stock, no par value (the "Shares") issued in connection with subscription agreements (the "Subscription Agreements") dated as of June 11, 2001 and June 12, 2001. 1,672,630 of the Shares (the "Warrant Shares") are issuable pursuant to warrants (the "Warrants") to purchase Common Stock.

We have assumed the authenticity of all records, documents and instruments submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all records, documents and instruments submitted to us as copies.

In rendering our opinion, we have examined the following records, documents and instruments:

(a)

The Articles of Incorporation of the Company, as amended, certified by the California Secretary of State as of August 1, 2001, and certified to us by an officer of the Company as being complete and in full force as of the date of this opinion;

(b)

The Bylaws of the Company certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;

(c)

A Certificate of an officer of the Company (i) attaching records certified to us as constituting all records of proceedings and actions of the Board of Directors, including any committee thereof, and stockholders of the Company relating to the Shares, the Warrants, the Warrant Shares and the Registration Statement, and (ii) certifying as to certain factual matters;

(d)

A certificate of Good Standing relating to the Company issued by the Secretary of State of the state of California as of August 1, 2001.

(e)

The Registration Statement;

(f)

The Subscription Agreements;

(g)

A letter from Continental Stock Transfer & Trust Company, the Company's transfer agent, dated August 2, 2001, as to the number of shares of the Company's Common Stock that were outstanding on August 1, 2001; and

(h)

The Warrants.

This opinion is limited to the federal law of the United States of America and the General Corporation Law of the State of California, and we disclaim any opinion as to the laws of any other jurisdiction. We further disclaim any opinion as to any other statute, rule, regulation, ordinance, order or other promulgation of any other jurisdiction or any regional or local governmental body or as to any related judicial or administrative opinion.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate for the purpose of this opinion, and assuming that (i) the Registration

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Statement becomes and remains effective during the period when the Shares are offered and sold, (ii) the full consideration stated in the subscription agreements pursuant to which the issued and outstanding Shares were purchased was paid for each Share and that such consideration in respect of each Share includes payment of cash or other lawful consideration, (iii) the Warrant Shares will be issued in accordance with the terms of the Warrants and the resolutions authorizing the issuance of the Warrants, (iv) appropriate stock certificates evidencing the Warrant Shares will be executed and delivered upon their issuance, (v) appropriate certificates evidencing the issued and outstanding Shares were executed and delivered by the Company, and (vi) all applicable securities laws are complied with, it is our opinion that the issued and outstanding Shares were legally issued, and are fully paid and nonassessable and the Warrant Shares, when issued and sold by the Company after payment therefor in the manner provided in the Warrants, will be legally issued, and will be fully paid and nonassessable.

This opinion is rendered to you in connection with the Registration Statement and we disclaim any obligation to advise you of any change of law that occurs, or any facts of which we may become aware, after the date of this opinion.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the caption "Legal Matters" in the Registration Statement.

Very truly yours,

/s/ Heller Ehrman White & McAuliffe LLP

Exhibit 5.1

Registration Statement on Form S-3

Exhibit 10.1

SUBSCRIPTION AGREEMENT

DEPOMED, INC.

$10,000,000
COMMON STOCK UNITS

To: DepoMed, Inc.

This Subscription Agreement (this "***Agreement***") is made between DepoMed, Inc., a California corporation (the "***Company***"), and the undersigned prospective purchaser who is subscribing hereby for units of the Company's securities (the "***Units***"), each Unit consisting of two shares of the Company's common stock, no par value (the "***Common Stock***"), and one warrant (each a "***Warrant***" and collectively the "***Warrants***") to purchase one share of Common Stock in the form of *Exhibit A* attached hereto with an exercise price equal to the Stock Purchase Price (as defined below) plus $0.125. The Company desires to offer and sell (the "***Offering***") Ten Million Dollars ($10,000,000.00) of Units (the "***Offering Amount***"), with each Unit having a purchase price per Unit equal to the sum of (i) $0.125 and (ii) two times the Stock Purchase Price, such sum being referred to herein as the "***Offering Price***"; provided, however, that the Company may, in its sole discretion, increase the Offering Amount to an amount not to exceed Fifteen Million Dollars ($15,000,000.00). For purposes of this Agreement, "***Stock Purchase Price***" means the average closing price of the Common Stock as reported by the American Stock Exchange ("***AMEX***") for the one-to-five trading day period immediately preceding the closing of the purchase and sale of the Units subscribed for pursuant to this Agreement, as mutually agreed by the Company and Fahnestock & Co. Inc., the placement agent for this Offering (the "***Placement Agent***"). The shares of Common Stock, the Warrants and the shares of Common Stock issuable upon exercise of the Warrants (the "***Warrant Shares***") are sometimes herein collectively referred to as the "***Securities***".

The undersigned agrees and represents as follows:

A. Subscription

(1) The undersigned hereby irrevocably subscribes for and agrees to purchase Units in the amount indicated on the signature page hereto (the "***Subscription Amount***"). The undersigned shall deliver the Subscription Amount within five (5) business days of the date of this Agreement by check payable to "DepoMed, Inc." or by wire transfer to counsel to the Company as set forth in Paragraph (2) below. The undersigned hereby acknowledges that the actual number of Units which the undersigned will receive will be equal to the Subscription Amount divided by the Offering Price, rounded down to the nearest whole number of Units.

(2) The undersigned understands that all payments of the Subscription Amount shall be delivered to Heller Ehrman White & McAuliffe LLP ("***HEWM***") at 275 Middlefield Road, Menlo Park, California 94025, Attn: Michael Scimeca, or by wire transfer in accordance with the wire transfer instructions set forth on *Exhibit B* attached hereto. Such payment will be deposited as soon as practicable for the undersigned's benefit in a non-interest bearing escrow account. The payment will be returned promptly, without interest or deduction, if the undersigned's subscription is rejected. The Company may hold a closing of the Offering (the "***First Closing***") at any time during the period beginning after one or more subscriptions have been accepted and ending on or before July 1, 2001 (the "***Termination Date***"); provided, however, that the Termination Date may be extended to a date not later than July 31, 2001 upon the mutual agreement of the Company and the Placement Agent. Subsequent closings may be held at any time after the First Closing and on or before the Termination Date (each, a "***Subsequent Closing***") without regard to the aggregate amount of subscriptions for Units received by the Company. The Company may, in its discretion, terminate the Offering if a minimum of $5,000,000 in Units is not subscribed for by June 30, 2001, or if the Company and the Placement Agent

agree, by July 30, 2001; provided, however, that the Company may, in its discretion, accept subscriptions for an aggregate amount of less than $5,000,000.

(3) Upon receipt by the Company of the requisite payment for all Units to be purchased by the subscribers whose subscriptions are accepted (each, a "***Purchaser***" and, collectively, the "***Purchasers***") at the First Closing or any Subsequent Closing, the Company shall: (i) issue to each Purchaser stock certificates representing the shares of Common Stock and the Warrants contained in the Units purchased; (ii) deliver to each Purchaser a certificate stating that the representations and warranties made by the Company in Section C hereof were true and correct in all material respects when made and are true and correct in all material respects on the date of the First Closing or Subsequent Closing relating to the Units subscribed for pursuant to this Agreement; and (iii) cause to be delivered to each Purchaser an opinion of HEWM in the form of *Exhibit D* attached hereto.

(4) The undersigned hereby agrees to be bound hereby upon the (i) execution and delivery to the Company, in care of HEWM, of the signature page to this Agreement, and (ii) acceptance at the First Closing or any Subsequent Closing by the Company of the undersigned's subscription.

(5) The undersigned agrees that the Company may, in its sole and absolute discretion, reduce the undersigned's subscription to any amount of Units that in the aggregate does not exceed the amount of Units hereby applied for without any prior notice to or further consent by the undersigned. If such a reduction occurs, the part of the Subscription Amount attributable to the reduction shall be returned, without interest or deduction.

B. Representations and Warranties of the Purchaser

The Purchaser hereby represents and warrants to the Company and the Placement Agent, and agrees with the Company as follows:

(1) The Purchaser has been furnished with and has carefully read the Company's Confidential Private Placement Memorandum dated May 2, 2001 and the supplements and exhibits thereto (the "***Memorandum***"), this Agreement and the Warrant (collectively referred to herein as the "***Offering Documents***"), and is familiar with and understands the terms of the Offering. The Purchaser has carefully considered and has, to the extent the Purchaser believes such discussion necessary, discussed with the Purchaser's professional legal, tax, accounting and financial advisors the suitability of an investment in the Units for the Purchaser's particular tax and financial situation and has determined that the Units being subscribed for by the Purchaser are a suitable investment for the Purchaser.

(2) The Purchaser acknowledges that (i) the Purchaser has had the right to request copies of any documents, records, and books pertaining to this investment and (ii) any such documents, records and books which the Purchaser requested have been made available for inspection by the Purchaser, the Purchaser's attorney, accountant or advisor(s).

(3) The Purchaser and/or the Purchaser's advisor(s) has/have had a reasonable opportunity to ask questions of and receive answers from a person or persons acting on behalf of the Company concerning the Offering and all such questions have been answered to the full satisfaction of the Purchaser.

(4) The Purchaser is not subscribing for Units as a result of or subsequent to any advertisement, article, notice or other communication published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or meeting.

(5) If the Purchaser is a natural person, the Purchaser has reached the age of majority in the state in which the Purchaser resides, has adequate means of providing for the Purchaser's current financial needs and contingencies, is able to bear the substantial economic risks of an investment in the Units for an indefinite period of time, has no need for liquidity in such investment and, at the present time, could afford a complete loss of such investment.

(6) The Purchaser has had such knowledge and experience in financial, tax and business matters so as to enable the Purchaser to utilize the information made available to the Purchaser in connection with the Offering to evaluate the merits and risks of an investment in the Units and to make an informed investment decision with respect thereto.

(7) The Purchaser will not sell or otherwise transfer the Units without registration under the Securities Act of 1933, as amended (the "***Securities Act***"), or applicable state securities laws or an exemption therefrom. None of the Securities contained in the Units have been registered under the Securities Act or under the securities laws of any state. The Purchaser represents that the Purchaser is purchasing the Units for the Purchaser's own account, for investment and not with a view toward resale or distribution. The Purchaser has not offered or sold the Units being acquired nor does the Purchaser have any present intention of selling, distributing or otherwise disposing of such Units either currently or after the passage of a fixed or determinable period of time or upon the occurrence or non-occurrence of any predetermined event or circumstances in violation of the Securities Act. The Purchaser is aware that there is currently no market for the Units. The Purchaser is aware that an exemption from the registration requirements of the Securities Act pursuant to Rule 144 promulgated thereunder is not presently available; and the Company has no obligation to register the Securities contained in the Units subscribed for hereunder, except as provided in Section E hereof, or to make available an exemption from the registration requirements pursuant to such Rule 144 or any successor rule for resale of the Units.

(8) The Purchaser recognizes that an investment in the Units involves substantial risks, including loss of the entire amount of such investment. Further, the Purchaser has carefully read and considered the Company's financial statements included in the Company's annual report on Form 10-K for the fiscal year ended December 31, 2000 (the "***2000 Form 10-K***"), the subsection of the 2000 Form 10-K entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations−Liquidity and Capital Resources", the section of the 2000 Form 10-K entitled "Item 1. Business," the unaudited financial statements included in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001, and the section entitled "Risk Factors" in the Memorandum, and has taken full cognizance of and understands all of the risks related to the purchase of the Units.

(9) The Purchaser acknowledges that the certificate representing the Securities contained in the Units shall be stamped or otherwise imprinted with a legend substantially in the following form: "**The securities represented hereby have not been registered under the Securities Act of 1933, as amended, or any state securities laws and neither the securities nor any interest therein may be offered, sold, transferred, pledged or otherwise disposed of except pursuant to an effective registration under such act or an exemption therefrom, which, in the opinion of counsel for the holder, which counsel and opinion are reasonably satisfactory to counsel for this corporation, is available.**"

(10) If this Agreement is executed and delivered on behalf of a partnership, corporation, trust or estate: (i) such partnership, corporation, trust or estate has the full legal right and power and all authority and approval required (a) to execute and deliver, or authorize execution and delivery of, this Agreement and all other instruments executed and delivered by or on behalf of such partnership, corporation, trust or estate in connection with the purchase of its Units, and (b) to purchase and hold such Units; (ii) the signature of the party signing on behalf of such partnership, corporation, trust or estate is binding upon such partnership, corporation, trust or estate; and (iii) such partnership, corporation or trust has not been formed for the specific purpose of acquiring such Units, unless each beneficial owner of such entity is qualified as an accredited investor within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act and has submitted information substantiating such individual qualification.

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(11) If the Purchaser is a retirement plan or is investing on behalf of a retirement plan, the Purchaser acknowledges that an investment in the Units poses additional risks including the inability to use losses generated by an investment in the Units to offset taxable income.

(12) The information contained in the questionnaire in the form of *Exhibit C* attached hereto delivered by the Purchaser in connection with this Agreement (the "***Questionnaire***") is complete and accurate in all respects. The Purchaser shall indemnify and hold harmless the Company and each officer, director or control person of any such entity, who is or may be a party or is or may be threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of or arising from any actual or alleged misrepresentation or misstatement of facts or omission to represent or state facts made or alleged to have been

made by the Purchaser to the Company or omitted or alleged to have been omitted by the Purchaser, concerning the Purchaser or the Purchaser's authority to invest or financial position in connection with the Offering, including, without limitation, any such misrepresentation, misstatement of omission contained in the Agreement or any other document submitted by the Purchaser, against losses, liabilities and expenses for which the Company or any officer, director or control person of any such entity has not otherwise been reimbursed (including attorney's fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by the Company or such officer, director or control person in connection with such action, suit or proceeding.

C. Representations and Warranties of the Company

The Company hereby represents and warrants to the Purchaser and the Placement Agent that:

(1) *Organization, Good Standing and Qualification*. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has full corporate power and authority to conduct its business as currently conducted. The Company is duly qualified to do business as a foreign corporation and is in good standing in all jurisdictions in which the character of the property owned or leased or the nature of the business transacted by it makes qualification necessary except where the failure to be so qualified would not have a material adverse effect on the business, properties, prospects, financial condition or results of operations of the Company (a "***Material Adverse Effect***").

(2) *Capitalization*. The authorized capital stock of the Company consists of 25,000,000 shares of Common Stock, no par value, of which there were 8,617,913 shares issued and outstanding as of May 23, 2001, 5,000,000 shares of Preferred Stock, no par value, of which, 25,000 are designated as Series A Convertible Exchangeable Preferred Stock and 12,015 shares were issued and outstanding as of May 23, 2001 and 4,975,000 shares of undesignated preferred stock, none of which shares were issued and outstanding. The outstanding Series A Convertible Exchangeable Preferred Stock is convertible into 1,001,250 shares of Common Stock after January 21, 2002. All outstanding shares of Common Stock and Series A Convertible Exchangeable Preferred Stock are duly authorized, validly issued, fully paid and non-assessable, free of any liens or encumbrances and are not subject to preemptive rights. As of May 23, 2001, the Company had reserved 2,400,000 shares of Common Stock for issuance to employees, directors and consultants pursuant to the Company's 1995 Stock Option Plan, of which 1,855,651 shares of Common Stock are subject to outstanding, unexercised options. As of May 23, 2001, the Company had reserved 1,919,935 shares of Common Stock subject to outstanding warrants, of which 1,200,000 shares were subject to warrants issued under the Company's 1997 initial public offering. As of May 23, 2001, the Company had reserved 228,053 shares of Common Stock subject to conversion of outstanding principal plus interest under a convertible promissory note issued in favor of Elan International Services, Ltd. As of May 23, 2001, the Company had reserved 1,097,833 shares of Common Stock subject to conversion of Series A Convertible Exchangeable Preferred and dividends accrued thereon. In addition, the Company has agreed to issue to the Placement Agent a warrant (the "***Placement Agent Warrant***") to purchase an amount of shares of Common Stock equal to

5% of the number of as converted shares of Common Stock underlying the Units sold in the Offering pursuant to the Placement Agent Agreement, dated as of April 17, 2001, between the Company and the Placement Agent. Other than as set forth above or as contemplated in this Agreement, there are no other options, warrants, calls, rights, commitments or agreements of any character to which the Company is a party or by which either the Company is bound or obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend or enter into any such option, warrant, call, right, commitment or agreement.

(3) *Issuance*. The Units, the Common Stock included in the Units, the Warrants and the Warrant Shares, have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, or, in the case of the Warrant Shares, pursuant to the terms of the Warrants, will be validly issued, fully paid and nonassessable.

(4) *Authorization; Enforceability*. The Company has all corporate right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary

for the authorization, execution, delivery and performance of this Agreement by the Company, the authorization, sale, issuance and delivery of the Units contemplated herein and the performance of the Company's obligations hereunder has been taken. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. The issuance and sale of the Units contemplated hereby will not give rise to any preemptive rights or rights of first refusal on behalf of any person, with the exception of a preemptive right granted to Elan International Services, Ltd., a wholly owned subsidiary of Elan Corporation, plc, to maintain its pro rata interest in the Company, which rights may or may not be exercised.

(5) *No Conflict; Governmental and Other Consents*.

(a) The execution and delivery by the Company of this Agreement and the consummation of the transactions contemplated hereby will not result in the violation of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company is bound, or of any provision of the Certificate of Incorporation or Bylaws of the Company, and will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Company is a party or by which it is bound or to which any of its properties or assets is subject, nor result in the creation or imposition of any lien upon any of the properties or assets of the Company.

(b) No consent, approval, authorization or other order of any governmental authority or other third-party is required to be obtained by the Company in connection with the authorization, execution and delivery of this Agreement or with the authorization, issue and sale of the Units, except such filings as may be required to be made with the Securities and Exchange Commission (the "***SEC***"), AMEX and with any state or foreign blue sky or securities regulatory authority.

(6) *Litigation*. There are no pending, or to the Company's knowledge threatened, legal or governmental proceedings against the Company which could have a Material Adverse Effect on the Company.

(7) *Accuracy of Reports*. All material reports required to be filed by the Company within the two years prior to the date of this Agreement (the "***SEC Reports***") under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), have been duly filed with the SEC, complied at the time of

filing in all material respects with the requirements of their respective forms and, except to the extent updated or superseded by any subsequently filed report, to the best of the Company's knowledge, were complete and correct in all material respects as of the dates at which the information was furnished, and contained (as of such dates) no untrue statements of a material fact nor omitted to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(8) *Financial Information*. The Company's financial statements that appear in the SEC Reports have been prepared in all material respects in accordance with United States generally accepted accounting principles (except that the financial statements that are not audited do not have notes thereto) applied on a consistent basis throughout the periods indicated and with each other and that such financial statements fairly present, in all material respects, the financial condition and operating results of the Company as of the dates, and for the periods, indicated therein.

(9) *Absence of Certain Changes*. Since the date of the Company's financial statements in the 2000 Form 10-K, there has not been any Material Adverse Effect on the assets, liabilities, condition (financial or otherwise) or results of operations of the Company or any occurrence, circumstance or combination thereof that reasonably could be expected to result in such material adverse effect.

(10) *Investment Company*. The Company is not an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

(11) *Indemnification*. The Company shall indemnify and hold harmless the Purchaser, and each officer, director or control person of such entity (each, an "***Indemnified Party***"), from any and all, liability and expense (including, without limitation, reasonable fees and disbursements of counsel as incurred in connection with any action, suit or proceeding) incurred or suffered by any Indemnified Party arising out of any misrepresentation or breach of warranty, covenant or agreement made or to be performed by the Company pursuant to this Agreement or the Warrants.

(12) *Subsidiaries*. The SEC Reports set forth each subsidiary of the Company, showing the jurisdiction of its incorporation or organization and showing the percentage of each person's ownership of the outstanding stock or other interests of such subsidiary. For the purposes of this Agreement, "subsidiary" shall mean any company or other entity of which at least 50% of the securities or other ownership interest having ordinary voting power (absolutely or contingently) for the election of directors or other persons performing similar functions are at the time owned directly or indirectly by the Company and/or any of its other subsidiaries. Except as set forth in the SEC Reports, none of such subsidiaries is a "significant subsidiary" as defined in Regulation S-X.

(13) *Indebtedness*. The SEC Reports set forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any subsidiary, or for which the Company or any subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" shall mean (a) any liabilities for borrowed money or amounts owed in excess of $25,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of Indebtedness of others, whether or not the same are or should be reflected in the Company's balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of $25,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any subsidiary is in default with respect to any Indebtedness.

(14) *Certain Fees*. Except as disclosed in the Memorandum, no brokers', finders' or financial advisory fees or commissions will be payable by the Company or any subsidiary with respect to the transactions contemplated by this Agreement.

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(15) *Material Agreements*. Except as set forth in the SEC Reports, neither the Company nor any subsidiary is a party to any written or oral contract, instrument, agreement, commitment, obligation, plan or arrangement, a copy of which would be required to be filed with the SEC as an exhibit to Form 10-K (each, a "***Material Agreement***"). The Company and each of its subsidiaries has in all material respects performed all the obligations required to be performed by them to date under the foregoing agreements, have received no notice of default and, to the best of the Company's knowledge are not in default under any Material Agreement now in effect, the result of which could reasonably be expected to cause a Material Adverse Effect.

(16) *Transactions with Affiliates*. Except as set forth in the SEC Reports, there are no loans, leases, agreements, contracts, royalty agreements, management contracts or arrangements or other continuing transactions with aggregate obligations of any party exceeding $25,000 between (a) the Company, any subsidiary or any of their respective customers or suppliers on the one hand, and (b) on the other hand, any officer, employee, consultant or director of the Company, or any of its subsidiaries, or any person who would be covered by Item 404(a) of Regulation S-K or any Company or other entity controlled by such officer, employee, consultant, director or person.

(17) *Taxes*. The Company and each of the subsidiaries has accurately prepared and filed all federal, state, local, foreign and other tax returns for income, gross receipts, sales, use and other taxes and custom duties ("***Taxes***") required by law to be filed by it, has paid or made provisions for the payment of all Taxes shown to be due and all additional assessments, and adequate provisions have been and are reflected in the financial statements of the Company and the subsidiaries for all current Taxes and other charges to which the Company or any subsidiary is subject and which are not currently due and payable, except for Taxes which, if unpaid, individually or in the aggregate, do not and would not have a Material Adverse Effect on the Company or its subsidiaries. None of the federal income tax returns of the Company or any subsidiary for the past six years has been audited by the Internal Revenue Service. The Company has no knowledge of any additional assessments, adjustments or contingent tax liability (whether federal, state, local or foreign) pending or threatened against the Company or any subsidiary for any period, nor of any basis for any such assessment, adjustment or contingency.

(18) *Stabilization*. Neither the Company nor any subsidiary has taken, and each of the Company and the subsidiaries will use their respective reasonable best efforts to cause each of their respective officers, directors and affiliates not to take, directly or indirectly, any action designed to or which has constituted or which would reasonably be expected to cause or result in, stabilization or manipulation under the Exchange Act of the price of any capital stock of the Company.

(19) *Environmental Matters*. (a) Except as disclosed in the SEC Reports, all real property owned, leased or otherwise operated by Company and its subsidiaries is free of contamination from any substance, waste or material currently identified to be toxic or hazardous pursuant to, within the definition of a substance which is toxic or hazardous under, or which may result in liability under, any Environmental Law, including, without limitation, any asbestos, polychlorinated biphenyls, radioactive substance, methane, volatile hydrocarbons, industrial solvents, oil or petroleum or chemical liquids or solids, liquid or gaseous products, or any other material or substance ("***Hazardous Substance***") which has or could reasonably be expected to cause or constitute a health, safety, or environmental hazard to any Person or property or result in any environmental liabilities and costs in excess of $100,000. Neither the Company nor any of its subsidiaries has caused or suffered to occur any release, spill, migration, leakage, discharge, disposal, uncontrolled loss, seepage, or filtration of Hazardous Substances which could reasonably be expected to result in environmental liabilities and costs in excess of $100,000. The Company and each subsidiary has generated, treated, stored and disposed of any Hazardous Substances in full compliance with applicable Environmental Laws, except for such non-compliances which could not reasonably be expected to have a Material Adverse Effect. The Company and each subsidiary has obtained, or has applied for, and is in full compliance with and in good standing under all permits required under Environmental Laws (except for such failures which could not reasonably be expected

to have a Material Adverse Effect) and neither Company nor any of its subsidiaries has any knowledge of any proceedings to substantially modify or to revoke any such permit. There are no investigations, proceedings or litigation pending or, to Company's or its subsidiaries' knowledge, threatened, affecting or against Company, any of its subsidiaries or any of Company's or subsidiaries' facilities relating to Environmental Laws or Hazardous Substances. "Environmental Laws" shall mean all federal, national, state, regional and local laws, statutes, ordinances and regulations, in each case as amended or supplemented from time to time, and any judicial or administrative interpretation thereof, including orders, consent decrees or judgments relating to the regulation and protection of human health, safety, the environment and natural resources.

(20) *Intellectual Property Rights and Licenses*. The Company and its subsidiaries own or have the right to use any and all information, know-how, trade secrets, patents, copyrights, trademarks, tradenames, software, formulae, methods, processes and other intangible properties that are necessary or customarily used by them in their business ("***Intangible Rights***"). The Company (including its subsidiaries) has not received any notice that it is in conflict with or infringing upon the asserted intellectual property rights of others in connection with the Intangible Rights, and, to the Company's and its subsidiaries' knowledge, neither the use of the Intangible Rights nor the operation of the Company's businesses is infringing or has infringed upon any intellectual property rights of others. All payments have been duly made that are necessary to maintain the Intangible Rights in force. No claims have been made, and to the Company's and its subsidiaries knowledge, no claims are threatened, that challenge the validity or scope of any material Intangible Right of the Company or any of its subsidiaries. The Company and each of its subsidiaries have taken reasonable steps to obtain and maintain in force all licenses and other permissions under Intangible Rights of third parties necessary to conduct their businesses as heretofore conducted by them, and now being conducted by them, and as expected to be conducted, and neither the Company nor any of its subsidiaries is or has been in material breach of any such license or other permission. The Company and each of its subsidiaries have obtained and maintained all necessary agreements providing for assignment to them of all patentable inventions made by and copyright interest in works created by non-employees and employees for the Company and its subsidiaries. The Company and each of its subsidiaries have used all commercially reasonable efforts to maintain the confidentiality of all trade secrets and other confidential information owned by them or in their possession and have no knowledge of any misappropriation of any such trade secrets or other confidential information by any third party.

(21) *Labor, Employment and Benefit Matters*.

(a) There are no strikes or other labor disputes against Company or any of its subsidiaries pending or, to the Company's or its subsidiaries' knowledge, threatened. Hours worked by and payment made to employees of the Company and its subsidiaries have

been in compliance with the Fair Labor Standards Act or any other applicable labor or employment law (except such non-compliance as could not reasonably be expected to have a Material Adverse Effect). There is no organizing activity involving employees of the Company or any of its subsidiaries pending or, to the Company's or its subsidiaries' knowledge, threatened by any labor union or group of employees. There are no representation proceedings pending or, to the Company's or its subsidiaries' knowledge, threatened with the National Labor Relations Board, and no labor organization or group of employees of the Company or its subsidiaries has made a pending demand for recognition. There are no complaints or charges against the Company or any of its subsidiaries pending or, to the Company's or its subsidiaries' knowledge, threatened, to be filed with any Governmental Authority or arbitrator based on, arising out of or in connection with, or otherwise relating to, the employment or termination of employment by the Company or any of its subsidiaries of any individual.

(b) Neither the Company nor any of its subsidiaries is, or during the five years preceding the date of this Agreement was, a party to any labor or collective bargaining agreement and there are

no labor or collective bargaining agreements which pertain to employees of the Company or its subsidiaries.

(c) Each employee benefit plan is in compliance with all applicable law, except for such noncompliance which could not reasonably be expected to have a Material Adverse Effect.

(d) Neither the Company nor any of its subsidiaries has any liabilities, contingent or otherwise, including without limitation, liabilities for retiree health, retiree life, severance or retirement benefits, which are not fully reflected on the Balance Sheet or fully funded. The term "liabilities" used in the preceding sentence shall be calculated in accordance with reasonable actuarial assumptions. Such term shall also include any obligation owed to a governmental authority for the purpose of providing retiree health, retiree life, severance, retirement or other benefits.

(e) None of the Company nor any of its subsidiaries has terminated any "employee pension benefit plan "as defined in Section 3(2) of ERISA (as defined below) or has incurred or expects to incur any outstanding liability under Title IV of the Employee Retirement Income Security Act of 1974, as amended and all rules and regulations promulgated thereunder ("ERISA").

(22) *Compliance with Law*.

(a) The Company is in compliance in all material respects with all Applicable Laws, except for such non-compliance which could not reasonably be expected to have a Material Adverse Effect. The term "Applicable Laws" shall include, without limitation, all applicable laws relating to health care, the health care industry and the provision of health care services, third party reimbursement (including Medicare and Medicaid), public health and safety and wrongful death and medical malpractice. The Company has not received any notice of, nor does the Company have any knowledge of, any violation (or of any investigation, inspection, audit or other proceeding by any governmental entity involving allegations of any violation) of any Applicable Law involving or related to the Company which has not been dismissed or otherwise disposed of. The Company has not received notice or otherwise has any knowledge that the Company is charged with, threatened with or under investigation with respect to, any violation of any Applicable Law, or has any knowledge of any proposed change in any Applicable Law that would have a material adverse effect on the Company. The Company has not received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any liability, including without limitation any liability under any of the Material Agreements, which may be material to its business, prospects, financial condition, operations, property or affairs. There is no existing law, rule, regulation or order, and the Company is not aware of any proposed law, rule, regulation or order, whether federal, state, county or local, which would prohibit the Company from, or otherwise materially adversely affect the Company in conducting its business in any jurisdiction in which it proposes to conduct business.

(b) The Company has, and, to the Company's knowledge, all professional employees or agents of the Company who are performing health care or health care related functions on behalf of the Company have, all licenses, franchises, permits, accreditations, provider numbers, authorizations, including certificates of need, consents or orders of, or filings with, or other

approvals from all Governmental Authorities ("***Approvals***") necessary for the conduct of, or relating to the operation of, the business of the Company and the occupancy and operation, for its present uses, of the real and personal property which the Company owns or leases, except for such Approvals which could not reasonably be expected to have a Material Adverse Effect. Neither the Company nor, to the Company's knowledge, its professional employees or agents (acting in such capacities) is in violation of any such Approval in any material respect or any terms or conditions thereof. All such Approvals are in full force and effect, have been issued to and fully paid for by the holder thereof and no notice or warning from any Governmental Authority with respect to the

suspension, revocation or termination of any Approval has been, to the knowledge of the Company, threatened by any Governmental Authority or issued or given to the Company. No such Approvals will in any way be affected by, terminate or lapse by reason of the consummation of all or any portion of the transactions contemplated by this Agreement.

(23) *Certain Regulatory Matters*. The Company has not since inception received notice that the Company has been, or to the Company's knowledge will be, the subject of any investigative proceeding before any federal or state regulatory authority or the agent of any such authority, including, without limitation, federal and state health authorities which could reasonably be expected to result in a Material Adverse Effect.

(24) *Ownership of Property*. Each of Company and its subsidiaries has (i) good and marketable and insurable fee simple title to its owned real property, free and clear of all liens, (ii) a valid and marketable leasehold interest in all leased real property, and each of such leases is valid and enforceable in accordance with its terms and is in full force and effect, and, (iii) good and marketable title to, or valid leasehold interests in, all of its other properties and assets free and clear of all liens.

(25) *Registration Rights*. Except as set forth in the Offering Documents or as provided in this Agreement, neither the Company nor any of its subsidiaries is under any obligation to register, under the Securities Act, any of its presently outstanding securities or any securities which may hereafter be issued.

(26) *Insurance*. The Company and its subsidiaries maintain insurance policies which are in full force and effect and are in amounts and for coverage customary for the industry in which Company or such subsidiary operates.

D. Understandings

The Purchaser understands, acknowledges and agrees with the Company as follows:

(1) The Company may terminate this Offering at any time in its sole discretion. The execution of this Agreement by the Purchaser or solicitation of the investment contemplated hereby shall create no obligation of the Company to accept any subscription or complete the Offering.

(2) Except as set forth in Section D(1) above, the Purchaser hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Purchaser, that, except as required by law, the Purchaser is not entitled to cancel, terminate or revoke this Agreement or any agreements of the Purchaser hereunder and that this Agreement and such other agreements shall survive the death or disability of the Purchaser and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns. If the Purchaser is more than one person, the obligations of the Purchaser hereunder shall be joint and several and the agreements, representations, warranties and acknowledgments herein contained shall be deemed to be made by and be binding upon each such person and his/her heirs, executors, administrators, successors, legal representatives and permitted assigns.

(3) No federal or state agency has made any finding or determination as to the accuracy or adequacy of the Offering Documents or as to the fairness of the terms of this offering for investment nor any recommendation or endorsement of the Units.

(4) The Offering is intended to be exempt from registration under the Securities Act by virtue of Section 4(2) of the Securities Act and the provisions of Regulation D thereunder, which is in part dependent upon the truth, completeness and accuracy of the statements made by the Purchaser herein and in the Questionnaire.

(5) There can be no assurance that the Purchaser will be able to sell or dispose of the Units. It is understood that in order not to jeopardize the Offering's exempt status under Section 4(2) of the

Securities Act and Regulation D, any transferee may, at a minimum, be required to fulfill the investor suitability requirements thereunder.

(6) The Purchaser acknowledges that the information contained in this Agreement is confidential and non-public and agrees that all such information shall be kept in confidence by the Purchaser and neither used for the Purchaser's personal benefit (other than in connection with this subscription) nor disclosed to any third party for any reason; provided, however, that this confidentiality obligation shall not apply to any such information that (i) is part of the public knowledge or literature and readily accessible at the date hereof, (ii) becomes part of the public knowledge or literature and readily accessible by publication (except as a result of a breach of this provision) or (iii) is received from third parties (except third parties who disclose such information in violation of any confidentiality agreements or obligations, including, without limitation, any Agreement entered into with the Company).

(7) The Purchaser acknowledges that the foregoing restrictions on the Purchaser's use and disclosure of any such confidential, non-public information contained in the above-described documents restricts the Purchaser from trading in the Company's securities to the extent such trading is based on such confidential, non-public information.

(8) The representations, warranties and agreements of the Purchaser contained herein and in any other writing delivered in connection with the transactions contemplated hereby shall be true and correct in all respects on and as of the sale of the Units as if made on and as of such date and shall survive the execution and delivery of this agreement and the purchase of the Units.

(9) Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, officers or controlling persons of the Company, the Company has been informed that in the opinion of the SEC such indemnification is against public policy as expressed in such Act and therefore may be unenforceable to such extent.

(10) IN MAKING AN INVESTMENT DECISION PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE UNITS OFFERED HEREBY HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THE OFFERING DOCUMENTS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(11) THE SECURITIES OFFERED HEREBY MAY NOT BE TRANSFERRED, RESOLD OR OTHERWISE DISPOSED OF EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

E. Registration Rights

(1) *Registration of Securities*. The Company shall use its reasonable best efforts to prepare for filing with the SEC, and cause to be filed, a "shelf" registration statement on Form S-3 or other appropriate form (the "***Shelf Registration***") pursuant to Rule 415 under the Securities Act providing for the sale by the Purchasers of the shares of Common Stock, the Warrant Shares and the shares of Common Stock issuable upon exercise of the Placement Agent Warrant (collectively, the "***Registrable Securities***") within the later to occur of (a) 60 days after the date of the First Closing, or (b) 30 days after the date of the final Subsequent Closing, if any (the "***Required Filing Date***"). The Company shall

use its reasonable best efforts to cause the registration statement to be declared effective as soon as practicable after it has been filed with the SEC, and in any event within 60 days of the Required Filing Date. The Company agrees to use its reasonable best efforts to keep such Shelf Registration continuously effective for a period ending on the earliest of (a) the fifth anniversary of the effective date of such Shelf Registration, (b) the date on which all such Registrable Securities have been sold thereunder, (c) such time as all of the Registrable Securities may be sold within a given three-month period pursuant to Rule 144 under the Securities Act, or (d) the date upon which all such Registrable Securities are freely transferable without restriction under the Securities Act. For the purpose of this Agreement, "reasonable best efforts" shall mean the best efforts of the Company consistent with sound and reasonable business practices and judgment.

(2) *Payments by the Company*.

(a) If the Registration Statement covering the Registrable Securities is not filed in appropriate form with the SEC on or before the Required Filing Date, the Company will make payment to the undersigned in such amounts and at such times as shall be determined pursuant to this Section E(2).

(b) The amount (the "***Periodic Amount***") to be paid by the Company to the undersigned shall be determined as of each Computation Date (as defined below) and such amount shall be equal to (A) one percent (1.0%) of the Purchase Price paid by the undersigned for all Units then purchased and outstanding pursuant to this Agreement for the period from the date following the Required Filing Date to the first relevant Computation Date and (B) one and one-half percent (1.5%) to each Computation Date thereafter. By way of illustration and not in limitation of the foregoing, if the Registration Statement is not filed with the SEC until one hundred (100) days after the Required Filing Date, the Periodic Amount will aggregate two and one-half percent (2.5%) of the Purchase Price of the Units (1.0% for days 60-90 plus 1.5% for days 90-100).

(c) Each Periodic Amount will be payable by the Company in cash or other immediately available funds to each of the undersigned within ten days of each Computation Date.

(d) The parties acknowledge that the damages which may be incurred by the Purchaser if the Registration Statement has not been filed by the Required Filing Date may be difficult to ascertain. Therefore, the parties agree that the Periodic Amount represents a reasonable estimate on the part of the parties, as of the date of this Agreement, of the amount of such damages and that the payment by Company of the Periodic Amount shall be deemed in complete and total satisfaction of all claims of undersigned against the Company for failure of Company to comply with Section E(2)(a) above.

(e) Notwithstanding the foregoing, the amounts payable by the Company pursuant to this provision shall not be payable to the extent any delay in the effectiveness of the Registration Statement occurs because of an act of, or a failure to act or to act timely by the undersigned or the undersigned's counsel, or in the event all of the Registrable Securities may be sold pursuant to Rule 144 or another available exemption under the Act.

(f) "Computation Date" means (i) the date which is the earlier of (A) thirty (30) days after the Required Filing Date or (B) the date after the Required Filing Date on which the Registration Statement is filed and (ii) each date which is the earlier of (A) thirty (30) days after the previous Computation Date or (B) the date after the previous Computation Date on which the Registration Statement is filed.

(3) *Registration Procedures*. In connection with the Company's obligations with respect to the Shelf Registration, the Company shall use its reasonable best efforts to effect the registration in furtherance of the sale of the Registrable Securities by the holders thereof in accordance with the intended method

or methods of distribution thereof described in the Shelf Registration. In connection therewith, the Company shall, as promptly as may be practicable:

(a) prepare and file with the SEC a registration statement with respect to the Registrable Securities on any form for which the Company then qualifies or which counsel for the Company shall deem appropriate and which form shall be available for the disposition of the Registrable Securities in accordance with the intended method or methods of disposition thereof;

(b) prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for the applicable period specified in Paragraph (1) above;

(c) furnish to each Purchaser (the Placement Agent being considered a "Purchaser" for purposes of this Section E) who is selling Registrable Securities a copy of such registration statement, each amendment and supplement thereto (in each case including all exhibits thereto but excluding all documents incorporated by reference therein unless specifically so requested by such Purchaser) and such reasonable number of copies of the prospectus included in such registration statement (including each preliminary prospectus) as such Purchaser may reasonably request;

(d) use its reasonable best efforts to register or qualify the Registrable Securities under such other securities laws or blue sky laws of such jurisdictions as the Purchasers shall reasonably request, and take any and all such actions as may be reasonably necessary or advisable to enable the Purchasers to consummate the disposition in such jurisdictions of such Registrable Securities;

(e) notify each Purchaser, at any time when a prospectus relating thereto is required to be delivered under the Securities Act within the period that the Company is required to keep the registration statement effective, of the happening of any event as a result of which the prospectus included in such registration statement (as then in effect) contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading. As promptly as practicable following any such occurrence, the Company shall prepare and furnish to each Purchaser a reasonable number of copies of a supplement or an amendment of such prospectus as may be necessary so that, as thereafter delivered to subsequent purchasers of the Registrable Securities, such prospectus shall meet the requirements of the Securities Act and relevant state securities laws, provided that such obligation on the part of the Company shall be suspended for such period of time as the Company considers reasonably necessary and in its best interest due to circumstances then existing (but not more than 30 days in any 180-day period). Each Purchaser shall furnish to the Company such information regarding each such Purchaser and its proposed method of distribution of the Registrable Securities as the Company may from time to time request and as shall be required by law to effect and maintain the registration of such Securities under the Securities Act and any state securities laws;

(f) advise each Purchaser, promptly after receiving notice thereof, of any stop order issued or threatened by the SEC and use its reasonable best efforts to take all actions required to prevent the entry of such stop order, or to remove it if entered;

(g) use its reasonable best efforts to cause all Registrable Securities included in such registration statement to be listed, by the date of the first sale of Registrable Securities pursuant to such registration statement, on each securities exchange (or Nasdaq) on which the Common Stock of the Company is then listed or proposed to be listed; and

(h) otherwise use its reasonable best efforts to comply with the provisions of the Securities Act with respect to the disposition of all of the Registrable Securities in accordance with the intended methods of disposition by the Purchasers thereof set forth in such registration statement and to make generally available to its security holders, as soon as reasonably practicable, an

earnings statement satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(4) *Expenses*. All expenses incident to the Company's performance of or compliance with the provisions of this Section E (including, without limitation, all registration and filing fees, fees and expenses of compliance with securities or blue sky laws, fees and expenses incurred

in connection with the listing of the Registrable Securities to be registered on each securities exchange (or Nasdaq) on which similar securities issued by the Company are then listed, printing expenses, fees and disbursements of separate counsels for each of the Company and the Purchaser, and fees and disbursements of all independent certified public accountants and other persons retained by the Company) will be borne by the Company. Notwithstanding the foregoing, the Purchasers shall pay any and all underwriting fees, discounts or commissions attributable to the sale of Registrable Securities.

(5) *Indemnification*.

(a) Upon the registration of Registrable Securities pursuant to Section E(1) of this Agreement, and in consideration of the agreements of the Purchasers contained herein, the Company shall, and it hereby agrees to, indemnify and hold harmless, to the extent permitted by law, each of the Purchasers which holds Registrable Securities, its officers and directors, each underwriter of such Registrable Securities, if any, and each person who controls such person (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses) to which such Purchaser, its officers, directors, each underwriter, or such controlling persons may become subject, insofar as such losses, claims, damages, liabilities and expenses (or actions in respect thereof) arise out of or are based upon a breach of a representation, warranty or covenant in this Agreement or any untrue statement or alleged untrue statement of material fact contained in any such registration statement, any prospectus or preliminary prospectus contained therein or any amendment or supplement thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each such Purchaser, each such underwriter and each such controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; except (i) insofar as the same arise out of or are based upon an untrue statement or omission or alleged omission so made based upon information furnished by such Purchaser, underwriter or controlling person in writing specifically for use in such registration statement or prospectus or (ii) insofar the same are caused by such Purchaser's or such underwriter's failure to deliver a copy of such registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Purchaser or such underwriter with a sufficient number of copies of the same.

(b) In connection with any registration statement under which Registrable Securities are registered under the Securities Act and pursuant to which a Purchaser offers and sells Registrable Securities, each such Purchaser shall, and it hereby agrees to, indemnify and hold harmless, to the extent permitted by law, each of the Company, its officers and directors, and each person who controls the Company (within the meaning of the Securities Act) and, if the offering is an underwritten offering, the underwriters, against all losses, claims, damages, liabilities and expenses (including reasonable attorneys' fees and expenses) to which the Company, its officers and directors, underwriters, or controlling persons may become subject, insofar as such losses, claims, damages, liabilities and expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of material fact contained in any such registration statement, any prospectus or preliminary prospectus contained therein or any amendment or supplement thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading and will reimburse the Company and each such officer, director, underwriter and controlling person for any legal or

other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action, insofar as (i) the same arise out of or are based upon any untrue statement or omission or alleged omission so made based upon information furnished by such Purchaser or controlling person of such Purchaser, in writing specifically for use in such registration statement or prospectus or (ii) the same are caused by such Purchaser's failure to deliver a copy of such registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Purchaser with a sufficient number of copies of the same and provided, further, that the liability of each Purchaser under this Paragraph 4(b) shall be limited to the proportion of any such loss, claim, damage, liability or expense which is equal to the proportion that the public offering price of Common Stock sold by such Purchaser under such registration statement bears to the total public offering price of all securities sold thereunder, but not to exceed the amount of the proceeds received by such Purchaser from the sale of the Registrable Securities covered by such registration statement.

(c) Any person entitled to indemnification hereunder will (i) give prompt notice to the indemnifying party of any claim with respect to which it seeks indemnification (but the failure to give such notice will not affect the right to indemnification hereunder, unless the indemnifying party is materially prejudiced by such failure) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest may exist between such indemnified and indemnifying parties with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel selected by the indemnifying party and reasonably satisfactory to the indemnified party. If such defense is not assumed by the indemnifying party or if the indemnifying party is not permitted to assume such defense then (x) the indemnified party shall select counsel, which counsel must be reasonably satisfactory to the indemnifying party and (y) the indemnifying party will not be subject to any liability for any settlement made without its consent (which consent will not be unreasonably withheld). No indemnifying party will consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which case the indemnifying party shall be obligated to pay the fees and expenses of one additional counsel, who must be reasonably satisfactory to the indemnifying party.

(d) Each party hereto agrees that, if for any reason the indemnification provisions contemplated by Paragraph 4(a) or Paragraph 4(b) are unavailable or are insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Paragraph 4(d) were determined by pro rata allocation (even if the Purchasers or any underwriters or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take into account the equitable considerations referred to in this

Paragraph 4(d). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The indemnification and contribution obligations and each other provision set forth in this Paragraph 4 shall remain in full force and effect regardless of any investigation made by or on behalf of the Company, any Purchaser, any officer or employee of the Company or such Purchaser, any underwriter, any officer or employee of such underwriter, or any controlling person of any of the foregoing and shall survive the transfer and registration of Registrable Securities by such Purchaser.

(6) *Rule 144 Reporting*. With a view to making available to Purchasers the benefits of Rule 144 promulgated by the SEC under the Securities Act, the Company agrees to use its reasonable best efforts to:

(a) make and keep adequate current public information with respect to the Company available, as those terms are used in Rule 144 under the Securities Act, at all times after the First Closing and any Subsequent Closings;

(b) file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(c) furnish to Purchasers promptly upon request a written statement by the Company as to its compliance with the reporting requirements of Rule 144 and the Exchange Act, a copy of the most recent annual or quarterly report of the Company, and such

other reports and documents of the Company as any Purchaser may reasonably request in order to permit such Purchaser to avail itself of any rule or regulation of the SEC allowing such Purchaser to sell its Registrable Securities without registration.

(7) *Amendments and Waivers*. Any provision of this Section E may be amended or waived if, but only if, in the case of an amendment, such amendment is in writing and is signed by the Company and the Purchasers who are the holders of a two-thirds majority of the Registrable Securities or, in the case of a waiver, such waiver is in writing and is signed by the party to be charged with having granted such waiver. No failure or delay by the Company or any Purchaser in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

F. Covenants of the Company

(1) The Company hereby agrees that, for a period of 120 days after the First Closing, it shall not issue or sell any Common Stock of the Company, any warrants or other rights to acquire Common Stock or any other securities that are convertible into Common Stock, for a purchase or exercise price less than the prevailing market price of the Common Stock, with the exception of securities issued in connection with strategic alliances, product licensing transactions or pursuant to the Company's 1995 Stock Option Plan.

G. Miscellaneous

(1) All pronouns and any variations thereof used herein shall be deemed to refer to the masculine, feminine, singular or plural, as identity of the person or persons may require.

(2) Except as set forth in Section A(4) herein, neither this Agreement nor any provision hereof shall be waived, modified, changed, discharged, terminated, revoked or canceled except by an instrument in writing signed by the party effecting the same against whom any change, discharge or termination is sought.

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(3) Any notice or other document required or permitted to be given or delivered to the Purchaser shall be in writing and sent (i) by fax if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid) or (c) by a recognized overnight delivery service (with charges prepaid).

(a) if to the Company, at DepoMed, Inc., 1360 O'Brien Drive, Menlo Park, California 94025, Fax No.: (650) 462-9993 Attention: Chief Financial Officer, or such other address as it shall have specified to the Purchaser in writing, with a copy (which shall not constitute notice) to Heller Ehrman White & McAuliffe LLP, 4250 Executive Square, 7th Floor, La Jolla, California 92037, Fax. No.: (858) 450-8499, Attn: Stephen C. Ferruolo; or

(b) if to the Purchaser, at its address set forth on the signature page to this Agreement, or such other address as it shall have specified to the Company in writing.

Notices given under this Section G shall be deemed given only when actually received.

(4) Failure of the Company to exercise any right or remedy under this Agreement or any other agreement between the Company and the Purchaser, or otherwise, or delay by the Company in exercising such right or remedy, will not operate as a waiver thereof. No waiver by the Company will be effective unless and until it is in writing and signed by the Company.

(5) This Agreement shall be enforced, governed and construed in all respects in accordance with the laws of the State of New York, as such laws are applied by the New York courts to agreements entered into and to be performed in New York by and between residents of New York, and shall be binding upon the Purchaser, the Purchaser's heirs, estate, legal representatives, successors and assigns and shall inure to the

benefit of the Company, its successors and assigns. If any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, then such provision shall be deemed modified to conform with such statute or rule of law. Any provision hereof that may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provisions hereof.

(6) The parties understand and agree that money damages would not be a sufficient remedy for any breach of the Agreement by the Company or the Purchaser and that the party against which such breach is committed shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach by either party of the Agreement but shall be in addition to all other remedies available at law or equity to the party against which such breach is committed.

(7) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by writing executed by both parties hereto.

(8) Each party hereto has had the opportunity to review this Agreement with its separate legal counsel.

H. Signature

The signature page of this Agreement is contained as part of the applicable subscription package, entitled "Signature Page".

DEPOMED, INC.
SIGNATURE PAGE

The Purchaser hereby subscribes such the number of Units as shall equal the subscription amount as set forth below.

PURCHASER

1. Dated: _____

2. Subscription Amount: $ _____

Signature of Subscriber (and title, if applicable)	Taxpayer Identification or Social Security Number
Signature of Joint Purchaser (if any)	Taxpayer Identification or Social Security Number
Name (please print as name will appear on certificate)	Name of Joint Purchaser (please print if any)
Number and Street	Number and Street
City State Zip Code	City State Zip Code

ACCEPTED BY:

DEPOMED, INC.	**FAHNESTOCK & CO. INC.**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Dated: _____	Dated: _____

Exhibit A to DepoMed, Inc. Subscription Agreement
Form of Warrant

DepoMed, Inc.

WARRANT

No. W- 2001− **Shares**

This certifies that, for value received, or registered assigns (the "holder"), upon due exercise of this Warrant, is entitled to purchase from DepoMed, Inc., a California corporation (the "Company"), at any time on or after **[ ]**, 2001 (the "Initial Exercise Date"), and before the close of business on **[ ]**, 2005, or if not a business day in San Francisco, California (a "Business Day"), the next following Business Day (the "Expiration Date"), all or any part of fully paid and nonassessable Shares (the "Warrant Shares") of the Common Stock, no par value, of the Company ("Common Stock"), at a purchase price of $**[ ]** per share (the "Purchase Price"), both the Purchase Price and the number of Warrant Shares issuable upon exercise of this Warrant being subject to possible adjustment as provided below.

This Warrant is hereinafter called the "Warrant." The holder hereof and all subsequent holders of this Warrant shall be entitled to all rights and benefits provided to the holder or holders hereof pursuant to the terms of this Warrant.

SECTION 1. Exercise of Warrant.

(a) The holder of this Warrant may, at any time on or after the Initial Exercise Date and on or before the Expiration Date, exercise this Warrant in whole at any time or in part (but not less than 1,000 Warrant Shares so long as this Warrant is exercisable for 1,000 or more Warrant Shares) from time to time for the purchase of the Warrant Shares or other securities which such holder is then entitled to purchase hereunder ("Warrant Securities") at the Purchase Price (as hereinafter defined). In order to exercise this Warrant

in whole or in part, the holder hereof shall deliver to the Company (i) a written notice of such holder's election to exercise this Warrant, which notice shall specify the number of Warrant Shares to be purchased, (ii) payment of the aggregate purchase price of the Warrant Shares being purchased by certified or bank cashier's check, and (iii) this Warrant, provided that, if such Warrant Shares or other Warrant Securities have not then been registered under the Securities Act or applicable state securities laws, the Company may require that such holder furnish to the Company a written statement that such holder is purchasing such Warrant Shares or other Warrant Securities for such holder's own account for investment and not with a view to the distribution thereof, that none of such shares will be offered or sold in violation of the provisions of the Securities Act and applicable state securities laws and as to such other matters relating to the holder as the Company may reasonably request to permit the issuance of such Warrant Shares or other Warrant Securities without registration under the Securities Act and applicable state securities laws. Upon receipt thereof, the Company shall, as promptly as practicable, but in no event later than three (3) business days, execute or cause to be executed and deliver to such holder a certificate or certificates representing the aggregate number of Warrant Shares (or if applicable, other Warrant Securities) specified in said notice. The stock certificate or certificates so delivered shall be in the denomination of 100 shares each or such other denominations as may be specified in said notice and shall be registered in the name of such holder or such other name as shall be designated in said notice.

No fractional Warrant Shares are to be issued upon the exercise of this Warrant, but the Company shall pay a cash adjustment in respect of any fraction of a share which would otherwise be issuable in an amount equal to the same fraction of the fair market value per share of the Warrant Shares on the day of exercise, as reasonably determined by the Company consistent with the determination of "Current Price" below. If this Warrant shall have been exercised only in part, the Company shall, at the time of delivery of said certificate or certificates, deliver to such holder a new Warrant evidencing the rights of such holder to purchase the remaining Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant, or, at the request of such holder, appropriate notation may be made on this Warrant and same returned to such holder. The Company shall pay all expenses, taxes and other charges payable in connection with the preparation, execution and delivery of share certificates under this Section, except that, if such share certificates are requested to be registered in a name or names other than the name of the holder of this Warrant, funds sufficient to pay all stock transfer taxes which shall be payable upon the execution and delivery of such share certificates shall be paid by the holder hereof at the time of delivering the notice of exercise mentioned above.

The Company represents, warrants and agrees that it shall at all times prior to the exercise of this Warrant reserve sufficient shares of Common Stock for issuance upon the exercise hereof, and all Warrant Shares issuable upon any exercise of this Warrant in accordance herewith shall be validly authorized and issued, fully paid and nonassessable.

This Warrant shall not entitle the holder hereof to any of the rights of a stockholder of the Company prior to exercise in the manner herein provided.

(b) This Warrant may be redeemed at the option of the Company, at a redemption price of $0.10 per share of Common Stock subject to the Warrant, at any time after one year provided that the closing sale price for the Common Stock, as reported by the American Stock Exchange ("AMEX"), or other similar organization if AMEX is no longer reporting such information, shall have equaled or exceeded 200% of the then Warrant exercise price per share for any 20 trading days in any 30 trading day period (a "Qualifying Date"), provided that the average daily trading volume during the 30 trading day period is greater than 75,000 shares per day. Notice of redemption (the "Notice of Redemption") shall be given to holders not later than 10 days after any Qualifying Date. Holders shall be given the Notice of Redemption no less than 30 days before the date fixed for redemption of the Warrant. On and after the date fixed for redemption, the Holder shall have no rights with respect to the Warrants except to receive the $0.10 per share of Common Stock subject to the Warrant upon surrender of this Warrant.

SECTION 2. Transfer, Division and Combination.

The Company shall maintain at its principal executive office a register for the registration of, and registration of transfers of, the Warrants. The name and address of each holder of one or more Warrants, each transfer thereof and the name and address of each transferee of one or more Warrants shall be registered in such register. Prior to due presentment for registration of transfer, the person in whose name any Warrants shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Company shall not be affected by any notice or knowledge to the contrary. The Company shall give to any holder of a Warrant promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Warrants.

Subject to the provisions of Section 3, upon surrender of any Warrant at the principal executive office of the Company for registration of transfer or exchange (and in the case of a surrender for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Warrant or his attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Warrant or part thereof), the Company shall execute

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and deliver, at the Company's expense, one or more new Warrants (as requested by the holder thereof) in exchange therefor, exercisable for an aggregate number of Warrant Shares equal to the number of shares for which the surrendered Warrant is exercisable and issued to such person or persons as such holder may request, which Warrant or Warrants shall in all other respects be identical with this Warrant.

Upon receipt by the Company of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Warrant, and (a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it (provided that if the holder of such Warrant is, or is a nominee for, an original holder, such person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or (b) in the case of mutilation, upon surrender and cancellation thereof, the Company at its own expense shall execute and deliver, in lieu thereof, a new Warrant identical in all respects to such lost, stolen, destroyed or mutilated Warrant.

SECTION 3. Compliance with Securities Act; Restrictions on Transfer and Sale.

(a) Each certificate for Warrant Shares (or other Warrant Securities) initially issued upon the exercise of this Warrant and each certificate for Warrant Shares (or other Warrant Securities) issued to subsequent transferees of any such certificate shall (unless otherwise permitted by this Section 3) be stamped or otherwise imprinted with legend in substantially the following form:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR THE SECURITIES LAWS OF ANY STATE. SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE DISPOSED OF UNLESS PURSUANT TO A REGISTERED OFFERING OR BY TRANSFER EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS."

(b) The holder understands that Warrant Shares (or other Warrant Securities) which may be acquired by it upon exercise of this Warrant shall be entitled to certain registration rights provided for in the Subscription Agreement relating to the purchase and issuance of the Shares and this Warrant between the Company and the holder.

SECTION 4. Adjustment of Purchase Price.

(a) The Purchase Price and the number of Warrant Shares and the number or amount of any other securities and property as hereinafter provided for which this Warrant may be exercisable shall be subject to adjustment from time to time effective upon each occurrence of any of the following events.

(i) If the Company shall declare or pay any dividend with respect to its Common Stock payable in shares of Common Stock, subdivide the outstanding Common Stock into a greater number of shares of Common Stock, or reduce the number of shares of Common Stock outstanding (by stock split, reverse stock split, reclassification or otherwise than by repurchase of its Common Stock) (any of such events being hereinafter called a "Stock Split"), the Purchase Price and number of Warrant Shares issuable upon

exercise of this Warrant shall be appropriately adjusted so as to entitle the holder hereof to receive upon exercise of this Warrant, for the same aggregate consideration provided herein, the same number of shares of Common Stock (plus cash in lieu of fractional shares) as the holder would have received as a result of such Stock Split had such holder exercised this Warrant in full immediately prior to such Stock Split.

(ii) If the Company shall merge or consolidate with or into one or more corporations or partnerships and the Company is the sole surviving corporation, or the Company shall adopt a plan of recapitalization or reorganization in which the Common Stock is exchanged for or changed into another class of stock or other security or property of the Company, the holder of this

Warrant shall, for the same aggregate consideration provided herein, be entitled upon exercise of this Warrant to receive in lieu of the number of shares of Common Stock as to which this Warrant would otherwise be exercisable, the number of shares of Common Stock or other securities (plus cash in lieu of fractional shares) or property to which such holder would have been entitled pursuant to the terms of the agreement or plan of merger, consolidation, recapitalization or reorganization had such holder exercised this Warrant in full immediately prior to such merger, consolidation, recapitalization or reorganization.

(iii) If the Company is merged or consolidated with or into one or more corporations or partnerships under circumstances in which the Company is not the sole surviving corporation, or if the Company sells or otherwise disposes of substantially all its assets, and in connection with any such merger, consolidation or sale the holders of Common Stock receive cash, stock or other securities convertible into equity of the surviving or acquiring corporations or entities, or other securities or property after the effective date of such merger, consolidation or sale, as the case may be, the holder of this Warrant shall, for the same aggregate consideration provided herein, be entitled upon exercise of this Warrant to receive, in lieu of the shares of Common Stock as to which this Warrant would otherwise be exercisable, shares of such stock or other securities (plus cash in lieu of fractional shares), cash or property as the holder of this Warrant would have received pursuant to the terms of the merger, consolidation or sale had such holder exercised this Warrant in full immediately prior to such merger, consolidation or sale. In the event of any consolidation, merger or sale as described in this Section 4(a)(iii), provision shall be made in connection therewith for the surviving or acquiring corporations or partnerships to assume all obligations and duties of the Company hereunder or to issue substitute warrants in lieu of this Warrant with all such changes and adjustments in the number or kind of shares of stock or securities or property thereafter subject to this Warrant or in the Purchase Price as shall be required in connection with this Section 4(a)(iii).

(iv) If the Company (other than in connection with a sale described in Section 4(a)(iii)) proposes to liquidate and dissolve, the Company shall give notice thereof as provided in Section 5(b) hereof and shall permit the holder of this Warrant to exercise any unexercised portion hereof at any time within the 10 day period following delivery of such notice, if such holder should elect to do so, and participate as a stockholder of the Company in connection with such dissolution.

(b) Whenever any adjustment is made as provided in any provision of this Section 4:

(i) the Company shall compute the adjustments in accordance with this Section 4 and shall prepare a certificate signed by an officer of the Company setting forth the adjusted number of shares or other securities or property and Purchase Price, as applicable, and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Company or its designee; and

(ii) a notice setting forth the adjusted number of shares or other securities or property and the Purchase Price, as applicable, shall forthwith be required, and as soon as practicable after it is prepared, such notice shall be delivered by the Company to the holder of record of each Warrant.

(c) If at any time, as a result of any adjustment made pursuant to this Section 4, the holder of this Warrant shall become entitled, upon exercise hereof, to receive any shares other than shares of Common Stock or to receive any other securities, the number of such other shares or securities so receivable upon exercise of this Warrant shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions contained in this Section 4 with respect to the Common Stock.

SECTION 5. Special Agreements of the Company.

(a) The Company covenants and agrees that it will reserve and set apart and have at all times a number of shares of authorized but unissued Common Stock (and, if applicable, other Warrant Securities) then deliverable upon the exercise of the Warrants or any other rights or privileges provided for therein sufficient to enable it at any time to fulfill all its obligations thereunder; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the exercise of this Warrant at the Purchase Price then in effect, the Company will take such corporate action as may, in the reasonable opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock (and, if applicable, other Warrant Securities) to such number of shares as shall be sufficient for such purposes.

(b) In case the Company proposes

(i)

to pay any dividend upon the Common Stock or make any distribution or offer any subscription or other rights to the holders of Common Stock, or

(ii)

to effect any capital reorganization or reclassification of capital stock of the Company, or

(iii)

to effect the consolidation, merger, sale of all or substantially all of the assets, liquidation, dissolution or winding up of the Company, then the Company shall cause notice of any such intended action to be given to each holder of the Warrants not less than 15 nor more than 60 days prior to the date on which the transfer books of the Company shall close or a record be taken for such dividend or distribution, or the date when such capital reorganization, reclassification, consolidation, merger, sale, liquidation, dissolution or winding up shall be effected, or the date of such other event, as the case may be.

SECTION 6. Notices.

Any notice or other document required or permitted to be given or delivered to holders of Warrants and holders of Common Stock (or other Warrant Securities) shall be in writing and sent (a) by fax if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid) or (c) by a recognized overnight delivery service (with charges prepaid).

(i)

if to the Company, at DepoMed, Inc., 1360 O'Brien Drive, Menlo Park, CA 94025, Fax No.: (650) 462-9993 Attention: Chief Financial Officer, or such other address as it shall have specified to the holders of Warrants in writing; or

(ii)

if to a holder, at its address set forth below, or such other address as it shall have specified to the Company in writing.

(iii)

to Fahnestock Co. Inc., 125 Broad Street, 16th Floor, New York, NY 10004, Attention: Kee Colen.

Notices given under this Section 6 shall be deemed given only when actually received.

SECTION 7. Amendment.

This Warrant may not be amended, modified or otherwise altered in any respect except by the written consent of the registered holder of this Warrant and the Company.

SECTION 8. Successors and Assigns.

This Warrant shall be binding upon and inure to the benefit of the Company and the holder of this Warrant and their respective successors and permitted assigns.

SECTION 9. Governing Law.

This Warrant shall be governed by and construed in accordance with the laws of the State of New York, without reference to the conflicts of law principles thereof.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Warrant to be signed in its name by its duly authorized officers and accepted by the holder of this Warrant this **[ ]** day of **[ ]**, 2001.

ATTEST:

By: _____

Name:

Title:

Address for
Notices:

_____

_____

_____

DepoMed, Inc.

By: _____

Name:

Title:

SUBSCRIPTION

The undersigned, , pursuant to the provisions of the foregoing Warrant, hereby agrees to subscribe for and purchase shares of the Common Stock, no par value, of DepoMed, Inc. covered by said Warrant, and makes payment therefor in full at the price per share provided by said Warrant.

Dated: _____

Signature: _____

Signature Guarantee: _____

Address: _____

_____

_____

Social Security No.

_____

ASSIGNMENT

FOR VALUE RECEIVED hereby sells, assigns and transfers unto (SS#) the foregoing Warrant and all rights evidenced thereby, and does irrevocably constitute and appoint , attorney, to transfer said Warrant on the books of DepoMed, Inc.

Dated: _____

Signature: _____

Signature Guarantee: _____

Address: _____

_____

_____

PARTIAL ASSIGNMENT

FOR VALUE RECEIVED hereby assigns and transfers unto (SS#) the right to purchase shares of the Common Stock, no par value, of DepoMed, Inc. covered by the foregoing Warrant, and a proportionate part of said Warrant and the rights evidenced thereby, and does irrevocably constitute and appoint , attorney, to transfer that part of said Warrant on the books of DepoMed, Inc.

Dated: _____ Signature: _____

Signature Guarantee: _____ Address: _____

_____

_____

QuickLinks

[on DepoMed letterhead]

Exhibit 10.2

Notice to Investors in DepoMed, Inc.
Private Placement of Common Stock Units

June 8, 2001

Ladies and Gentlemen:

Reference is made to the Subscription Agreement (the "***Subscription Agreement***") to purchase Common Stock Units ("***Units***") of DepoMed, Inc. (the "***Company***") distributed to potential investors in the pending private placement of Units (the "***Private Placement***").

Please be advised that the Company has agreed to the following modifications to the Subscription Agreement at the request of Fahnestock & Co. Inc., the placement agent in the Private Placement ("***Fahnestock***"):

1. All Subscription Agreements must be executed and delivered to Fahnestock no later than Monday, June 11, 2001.

2. The Stock Purchase Price (as defined in the Subscription Agreement) applicable to the First Closing will be based on the one-to-ten trading day period which immediately precedes the date all Subscription Agreements are accepted by the Company and which is mutually agreed to by the Company and Fahnestock.

3. The Warrant will be revised to extend the Expiration Date (as defined in the Warrant) to five (5) years from the date of issuance, rather than four (4) years, and to include a cashless exercise feature.

4. Section C(7) of the Subscription Agreement is hereby supplemented to include the following representation and warranty on the part of the Company:

> "The Memorandum and any of the documents or instruments attached thereto as Exhibits or incorporated therein by reference, when taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading."

The Company's acceptance of any and all Subscription Agreements is subject to the terms set forth above.

In addition, the Company has agreed to appoint to the Board of Directors of the Company a nominee designated by OrbiMed Advisors LLC, an investor in the Private Placement and the Company's largest shareholder, and to grant Board observer rights to another significant investor in the Private Placement.

DEPOMED, INC.

/s/ John F. Hamilton

By: John F. Hamilton
Chief Financial Officer

QuickLinks

Exhibit 23.2

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-3) and related Prospectus of DepoMed, Inc. for the registration of 2,908,922 shares of its common stock and 1,672,630 shares of its common stock issuable upon exercise of warrants and to the incorporation by reference therein of our report dated February 23, 2001, except for Note 10 as to which the date is March 29, 2001, with respect to the financial statements of DepoMed, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2000, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Palo Alto, California
August 3, 2001
