FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2008-08-14** | Period of Report: **2008-06-30**
SEC Accession No. 0000950144-08-006502

(HTML Version on secdatabase.com)

FILER

BIOHEART, INC.

CIK:**1388319**| IRS No.: **650945967** | State of Incorp.:**FL** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **001-33718** | Film No.: **081019198**
SIC: **8731** Commercial physical & biological research

Mailing Address
13794 NW 4TH STREET
SUITE 212
SUNRISE FL 33325

Business Address
13794 NW 4TH STREET
SUITE 212
SUNRISE FL 33325
954-835-1500

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended June 30, 2008

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ **to** _____

Commission File Number: 001-33718

BIOHEART, INC.

(Exact name of registrant as specified in its charter)

Florida	**65-0945967**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

13794 NW 4th Street, Suite 212, Sunrise, Florida 33325
(Address of principal executive offices) (Zip Code)

(954) 835-1500
(Registrant' s telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☑

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

As of August 11, 2008, there were 14,447,138 outstanding shares of the registrant' s common stock, par value $0.001 per share.

BIOHEART, INC.

INDEX

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Consolidated Balance Sheets

	June 30, 2008 (Unaudited)	December 31, 2007
ASSETS		
Current assets		
Cash and cash equivalents	$ 1,879,995	$ 5,492,157
Receivables	53,870	52,642
Inventory	375,832	372,054
Prepaid expenses and other current assets	2,328,441	261,030
Total current assets	4,638,138	6,177,883
Property and equipment, net	370,517	444,506
Deferred offering costs	–	3,484,070
Deferred loan costs, net	662,928	1,146,716
Other assets	68,854	71,148
Total assets	$ 5,740,437	$ 11,324,323
LIABILITIES AND SHAREHOLDERS' DEFICIT		
Current liabilities		
Accounts payable	$ 1,878,359	$ 2,134,256
Accrued expenses	4,436,731	4,511,775
Deferred revenue	485,786	547,286
Notes payable – current	6,781,397	6,671,112
Total current liabilities	13,582,273	13,864,429
Deferred rent	16,284	21,426
Note payable – long term	2,024,281	2,943,432
Total liabilities	15,622,838	16,829,287
Commitments and contingencies		
Shareholders' deficit		
Preferred stock ($0.001 par value) 5,000,000 shares authorized; none issued and outstanding	–	–
Common stock ($0.001 par value) 50,000,000 shares authorized; 14,447,138 and 13,347,138 shares issued and outstanding as of June 30, 2008 and December 31, 2007, respectively	14,447	13,347
Additional paid-in capital	79,835,158	77,061,296
Deficit accumulated during the development stage	(89,732,006)	(82,579,607)
Total shareholders' deficit	(9,882,401)	(5,504,964)
Total liabilities and shareholders' deficit	$ 5,740,437	$ 11,324,323

The accompanying notes are an integral part of these consolidated financial statements

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Consolidated Statements of Operations

	For the Three-Month Period Ended June 30,		For the Six-Month Period Ended June 30,		Cumulative Period from August 12, 1999 (date of inception) to June 30, 2008
	2008	2007	2008	2007	
	(Unaudited)		(Unaudited)		(Unaudited)
Revenues	$16,786	$194,609	$42,781	$208,414	$ 770,603
Cost of sales	4,521	26,661	7,646	34,021	322,045
Gross profit	12,265	167,948	35,135	174,393	448,558
Development revenues	15,000	–	76,500	–	97,000
Expenses:					
Research and development	1,477,634	1,785,661	2,835,691	3,186,251	59,536,298
Marketing, general and administrative	1,876,442	873,300	2,948,711	1,750,676	25,809,599
Depreciation and amortization	45,921	45,780	91,549	92,226	526,226
Total expenses	3,399,997	2,704,741	5,875,951	5,029,153	85,872,123
Loss from operations	(3,372,732)	(2,536,793)	(5,764,316)	(4,854,760)	(85,326,565)
Interest income	8,256	75,157	42,202	115,781	758,722
Interest expense	(496,875)	(300,801)	(1,430,285)	(301,362)	(5,164,163)
Net interest expense	(488,619)	(225,644)	(1,388,083)	(185,581)	(4,405,441)
Loss before income taxes	(3,861,351)	(2,762,437)	(7,152,399)	(5,040,341)	(89,732,006)
Income taxes	–	–	–	–	–
Net loss	$(3,861,351)	$(2,762,437)	$(7,152,399)	$(5,040,341)	$ (89,732,006)
Loss per share – basic and diluted	$(0.27)	$(0.21)	$(0.51)	$(0.39)	
Weighted average shares outstanding – basic and diluted	14,447,138	13,235,738	14,150,984	13,012,328	

The accompanying notes are an integral part of these consolidated financial statements

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Consolidated Statement of Shareholders' Deficit
(Unaudited)

	Common Stock		Additional Paid-in Capital	Deficit Accumulated During the Development Stage	Total
	Shares	Amount			
Balance as of December 31, 2007	13,347,138	$13,347	$ 77,061,296	$ (82,579,607)	$(5,504,964)
Initial public offering of common stock (net of offering costs of $4,327,171)	1,100,000	1,100	1,446,729	–	1,447,829
Stock-based compensation	–	–	1,071,546	–	1,071,546
Warrants issued in connection with notes payable	–	–	168,387	–	168,387
Warrant issued in connection with settlement agreement	–	–	87,200	–	87,200
Net loss	–	–	–	(7,152,399)	(7,152,399)
Balance as of June 30, 2008	14,447,138	$14,447	$ 79,835,158	$ (89,732,006)	$(9,882,401)

The accompanying notes are an integral part of these consolidated financial statements

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Consolidated Statements of Cash Flows

	For the Six-Month Period Ended June 30,		Cumulative Period from August 12, 1999 (date of inception) to June 30, 2008
	2008	2007	
	(Unaudited)		(Unaudited)
Cash flows from operating activities			
Net loss	$(7,152,399)	$(5,040,341)	$ (89,732,006)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	91,549	92,226	526,226
Bad debt expense	–	–	165,000
Amortization of warrants granted in exchange for licenses and intellectual property	–	48,289	5,413,156
Amortization of warrants granted in connection with notes payable	561,757	155,856	2,969,434
Amortization of loan costs	257,919	50,404	744,458
Amortization of warrants granted in exchange for services	–	30,559	30,559
Equity instruments issued in connection with settlement agreement	87,200	–	3,381,629
Common stock issued in exchange for services	–	–	1,277,017
Common stock issued in exchange for distribution rights and intellectual property	–	–	99,997
Stock-based compensation	1,071,546	460,023	8,673,517
Changes in assets and liabilities			
Receivables	(1,228)	18,965	(53,870)
Inventory	(3,779)	(32,319)	(375,833)
Prepaid expenses and other current assets	(2,067,411)	(154,429)	(2,328,441)
Other assets	2,294	–	(68,854)
Accounts payable	(22,932)	212,650	1,850,827
Accrued expenses and deferred rent	401,814	125,906	4,830,802
Deferred revenue	(61,500)	(191,214)	485,787
Net cash used in operating activities	(6,835,170)	(4,223,425)	(62,110,595)
Cash flows from investing activities			
Acquisitions of property and equipment	(17,560)	(41,193)	(896,742)
Net cash used in investing activities	(17,560)	(41,193)	(896,742)
Cash flows from financing activities			
Proceeds from (payments for) initial public offering of common stock, net	4,236,653	(1,118,243)	1,447,829
Proceeds from private placements of common stock, net	–	4,019,242	55,675,088
Proceeds from notes payable	–	10,000,000	10,200,000
Repayment of notes payable	(808,866)	–	(1,394,322)
Payment of loan costs	(187,219)	(745,470)	(1,041,263)
Net cash provided by financing activities	3,240,568	12,155,529	64,887,332
Net (decrease) increase in cash and cash equivalents	(3,612,162)	7,890,911	1,879,995
Cash and cash equivalents, beginning of period	5,492,157	5,025,383	–
Cash and cash equivalents, end of period	$1,879,995	$12,916,294	$ 1,879,995

Disclosures of cash flow information:			
Interest paid	$ 282,799	$ 54,477	$ 628,594
Income taxes paid	$ –	$ –	$ –

The accompanying notes are an integral part of these consolidated financial statements

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements
(Unaudited)

1. Organization and Summary of Significant Accounting Policies

Organization and Business

Bioheart, Inc. (the "Company") is committed to delivering intelligent devices and biologics that help monitor, diagnose and treat heart failure and cardiovascular diseases. Its goals are to improve a patient' s quality of life and reduce health care costs and hospitalizations. Specific to biotechnology, the Company is focused on the discovery, development and, subject to regulatory approval, commercialization of autologous cell therapies for the treatment of chronic and acute heart damage. The Company' s lead product candidate is MyoCell®, an innovative clinical muscle-derived stem cell therapy designed to populate regions of scar tissue within a patient' s heart with new living cells for the purpose of improving cardiac function in chronic heart failure patients. The Company' s pipeline includes multiple product candidates for the treatment of heart damage, including Bioheart Acute Cell Therapy, an autologous, adipose tissue-derived stem cell treatment for acute heart damage, and MyoCell® SDF-1, a therapy utilizing autologous cells that are genetically modified to express additional potentially therapeutic growth proteins. The Company was incorporated in Florida on August 12, 1999.

Development Stage

The Company has operated as a development stage enterprise since its inception by devoting substantially all of its effort to raising capital, research and development of products noted above, and developing markets for its products. Accordingly, the financial statements of the Company have been prepared in accordance with the accounting and reporting principles prescribed by Statement of Financial Accounting Standards No. 7, *Accounting and Reporting by Development Stage Enterprises* ("SFAS No. 7"), issued by the Financial Accounting Standards Board ("FASB").

Prior to marketing its products in the United States, the Company' s products must undergo rigorous preclinical and clinical testing and an extensive regulatory approval process implemented by the Food and Drug Administration (the "FDA") and other regulatory authorities. There can be no assurance that the Company will not encounter problems in clinical trials that will cause the Company or the FDA to delay or suspend clinical trials. The Company' s success will depend in part on its ability to successfully complete clinical trials, obtain necessary regulatory approvals, obtain patents and product license rights, maintain trade secrets, and operate without infringing on the proprietary rights of others, both in the United States and other countries. There can be no assurance that patents issued to or licensed by the Company will not be challenged, invalidated, or circumvented, or that the rights granted thereunder will provide proprietary protection or competitive advantages to the Company. The Company will require substantial future capital in order to meet its objectives. The Company currently has no committed sources of capital. The Company will need to seek substantial additional financing through public and/or private financing and financing may not be available when the Company needs it or may not be available on acceptable terms.

Interim Financial Statements

The accompanying unaudited consolidated interim financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC") for reporting of interim financial information. Pursuant to such rules and regulations, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

In the opinion of management, the accompanying unaudited consolidated interim financial statements of the Company contain all adjustments (consisting of only normal recurring adjustments) necessary to present fairly the financial position of the Company as of June 30, 2008, the results of its operations for the three and six-month periods ended June 30, 2008 and 2007 and its cash flows for the six-month periods ended June 30, 2008 and 2007. The results of operations for the three and six-month periods ended June 30, 2008 and cash flows for the six-month period ended June 30, 2008 are not necessarily indicative of the results of operations or cash flows which may be reported for future periods or for the year ending December 31, 2008.

Basis of Presentation

The accompanying unaudited consolidated interim financial statements include the accounts of Bioheart, Inc. and its wholly-owned subsidiaries. All intercompany transactions are eliminated in consolidation.

The accompanying unaudited consolidated interim financial statements and notes thereto should be read in conjunction with Management' s Discussion and Analysis of Financial Condition and Results of Operations contained in this report and the audited financial statements for the year ended December 31, 2007 and the notes thereto included in the Company' s Annual Report on Form 10-K for the year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A, which was filed with the SEC.

Reverse Stock Split

On August 31, 2007, the Company' s Board of Directors approved a 1-for-1.6187 reverse stock split of the Company' s capital stock, which became effective on September 27, 2007. All share numbers and per share amounts contained in the consolidated financial statements have been retroactively adjusted to reflect the reverse stock split. In lieu of issuing fractional shares of stock resulting from the reverse stock split, the number of shares held by each shareholder following the reverse stock split was rounded up to the nearest whole share.

Initial Public Offering

On February 22, 2008 (the "Closing Date") the Company completed its initial public offering of common stock (the "IPO") pursuant to which it sold 1,100,000 shares of common stock at a price per share of $5.25, for net proceeds of approximately $1.45 million after deducting underwriter discounts of approximately $400,000 and offering costs of approximately $3.92 million. The Company' s common stock commenced trading on February 19, 2008 on the NASDAQ Global Market under the symbol "BHRT" and subsequently transferred to the NASDAQ Capital Market in June 2008.

The Consolidated Statement of Cash Flows for the six-months ended June 30, 2008 reflects the Company' s receipt of approximately $4.24 million of "Proceeds from (payments for) initial public offering of common stock, net". The $4.24 million cash proceeds figure is approximately $2.79 million higher than the $1.45 million IPO net proceeds figure identified above due to our payment of $2.79 million of various offering expenses prior to January 1, 2008.

The net cash proceeds from the IPO have been and are expected to continue to be primarily used for commencement of full-scale enrollment in a planned clinical trial of MyoCell, milestone payments due under licensing agreements, repayment of a portion of certain debt obligations and general corporate purposes. Prior to the completion of the IPO, costs related to the offering were recognized as a deferred asset when incurred and totaled approximately $3.48 million as of December 31, 2007. All such costs, including costs incurred subsequent to December 31, 2007 through completion of the IPO, were charged to paid-in capital upon completion of the IPO in February 2008.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

On the Closing Date, the Company issued to Dawson James Securities, Inc. a warrant to purchase 77,000 shares of its common stock with an exercise price of $6.5625 per share. Dawson James Securities, Inc. acted as the representative of the several underwriters of the IPO. The warrant, which is not exercisable until the first anniversary of the date of issuance, expires on October 2, 2012.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and the disclosure of contingent assets and liabilities as of the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets primarily consist of upfront payments under an agreement with the contract research organization that the Company is utilizing for its MARVEL clinical trial and payments on corporate insurance policies. At June 30, 2008, prepaid expenses included approximately $1.9 million in upfront payments to the contract research organization, of which $1.3 million had been paid and the remainder is included in accounts payable. These upfront payments will be applied as payment toward the final invoices from the contract research organization at which time the amounts will be expensed. Any unused amount will be refunded to the Company upon completion of the services. There were no such upfront payments included in prepaid expenses at December 31, 2007.

Deferred Loan Costs

Deferred loan costs consist principally of legal and loan origination fees incurred to obtain $10 million in loans in June 2007 and the fair value of warrants issued in connection with the loans. These deferred loan costs are being amortized to interest expense over the terms of the respective loans using the effective interest rate method. At June 30, 2008 and December 31, 2007, the Company had net deferred loan costs of $662,928 and $1,146,716, respectively. For the three months ended June 30, 2008 and 2007, the Company recorded $203,655 and $206,260, respectively, of interest expense related to the amortization of deferred loan costs, which included $105,217 and $155,856, respectively, related to the fair value of warrants issued in connection with the loans. For the six months ended June 30, 2008 and 2007, the Company recorded $819,676 and $206,260, respectively, of interest expense related to the amortization of deferred loan costs, which included $561,757 and $155,856, respectively, related to the fair value of warrants issued in connection with the loans.

Stock Options and Warrants

On January 1, 2006, the Company adopted the provisions of Statement of Financial Accounting Standards No. 123R, *Share-Based Payment* ("SFAS No. 123R") using the modified prospective transition method. SFAS No. 123R requires the Company to measure all share-based payment awards granted after January 1, 2006, including those with employees, at fair value. Under SFAS No. 123R, the fair value of stock options and other equity-based compensation must be recognized as expense in the statements of operations over the requisite service period of each award.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

Share-based awards granted subsequent to January 1, 2006 are valued using the fair value method and compensation expense is recognized on a straight-line basis over the vesting period of the awards. Beginning January 1, 2006, the Company also began recognizing compensation expense under SFAS No. 123R for the unvested portions of outstanding share-based awards previously granted under its stock option plans, over the periods these awards continue to vest.

The Company accounts for certain share-based awards, including warrants, with non-employees in accordance with SFAS No. 123R and related guidance, including EITF Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods or Services*. The Company estimates the fair value of such awards using the Black-Scholes valuation model at each reporting period and expenses the fair value over the vesting period of the share-based award, which is generally the period in which services are provided.

Loss Per Share

Loss per share has been computed based on the weighted average number of shares outstanding during each period, in accordance with SFAS No. 128, *Earnings per Share*. The effect of outstanding stock options and warrants, which could result in the issuance of 4,906,532 and 4,152,932 shares of common stock at June 30, 2008 and 2007, respectively, is antidilutive. As a result, diluted loss per share data does not include the assumed exercise of outstanding stock options and warrants and has been presented jointly with basic loss per share.

Recent Accounting Pronouncements

Recently Adopted Accounting Standards

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS No. 157"). SFAS No. 157 defines fair value, establishes a framework for measuring fair value, and expands disclosures about fair value measurements. SFAS No. 157 does not impose fair value measurements on items not already accounted for at fair value; rather it applies, with certain exceptions, to other accounting pronouncements that either require or permit fair value measurements. Under SFAS No. 157, fair value refers to the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants in the principal or most advantageous market. The standard clarifies that fair value should be based on the assumptions market participants would use when pricing the asset or liability. In February 2008, the FASB issued FASB Staff Position (FSP) No. 157-2, *Effective Date of FASB Statement No. 157*, which delays the effective date of SFAS No. 157 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at fair value in the consolidated financial statements on a recurring basis (that is, at least annually), until fiscal years beginning after November 15, 2008. These non-financial items include assets and liabilities such as non-financial assets and liabilities assumed in a business combination, reporting units measured at fair value in a goodwill impairment test and asset retirement obligations initially measured at fair value.

SFAS No. 157 requires that a Company measure its financial assets and liabilities using inputs from the three levels of the fair value hierarchy. A financial asset or liability classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement. The three levels are as follows:

Level 1 – Inputs are unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements − (Continued)
(Unaudited)

Level 2 − Inputs include quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability and inputs that are derived principally from or corroborated by observable market data by correlation or other means (market corroborated inputs).

Level 3 − Unobservable inputs reflect the Company' s judgments about the assumptions market participants would use in pricing the asset or liability since limited market data exists. The Company develops these inputs based on the best information available, including the Company' s own data.

The adoption of the applicable provisions of SFAS No. 157 did not have an effect on the Company' s consolidated financial statements. The Company does not expect the adoption of the remaining provisions of SFAS No. 157 to have a material effect on its consolidated financial statements.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS No. 159"). SFAS No. 159 allows an entity the irrevocable option to elect fair value for the initial and subsequent measurement for certain financial assets and liabilities on a contract-by-contract basis. Subsequent changes in fair value of these financial assets and liabilities would be recognized in earnings when they occur. The Company adopted SFAS No. 159 effective January 1, 2008. The adoption of SFAS No. 159 did not have an effect on the Company' s consolidated financial statements.

In June 2007, the FASB ratified a consensus opinion reached by the Emerging Issues Task Force ("EITF") on EITF Issue No. 07-3, *Accounting for Nonrefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities*. The guidance in EITF Issue No. 07-3 requires the Company to defer and capitalize nonrefundable advance payments made for goods or services to be used in research and development activities until the goods have been delivered or the related services have been performed. If the goods are no longer expected to be delivered nor the services expected to be performed, the Company would be required to expense the related capitalized advance payments. The Company adopted EITF Issue No. 07-3 effective January 1, 2008. The effect of applying this consensus will depend on the terms of the Company' s future research and development contractual arrangements entered into on or after January 1, 2008.

In December 2007, the SEC staff issued Staff Accounting Bulletin (SAB) 110, *Share-Based Payment*, which amends SAB 107, *Share-Based Payment*, to permit public companies, under certain circumstances, to use the simplified method in SAB 107 for employee option grants after December 31, 2007. Use of the simplified method after December 2007 is permitted only for companies whose historical data about their employees' exercise behavior does not provide a reasonable basis for estimating the expected term of the options. The Company adopted SAB 110 effective January 1, 2008 and will apply the simplified method until enough historical experience is readily available to provide a reasonable estimate of the expected term for employee option grants. The Company does not feel it has adequate historical data about its employees' exercise behavior as the number of exercises has been insignificant relative to the number of grants and total options outstanding. The adoption of SAB 110 did not have a material effect on the Company' s consolidated financial statements.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

Future Accounting Standards

On December 4, 2007, the FASB issued SFAS No. 141R (revised 2007) *Business Combinations*, which will change the accounting for business combinations. Under SFAS No. 141R, an acquiring entity will be required to recognize all the assets acquired and liabilities assumed in a transaction at the acquisition-date fair value with limited exceptions. SFAS No. 141R retains the purchase method of accounting for acquisitions, but requires a number of changes, including expensing acquisition costs as incurred, capitalization of in-process research and development at fair value, recording noncontrolling interests at fair value and recording acquired contingent liabilities at fair value. SFAS No. 141R will apply prospectively to business combinations with an acquisition date on or after the beginning of the first annual reporting period beginning after December 15, 2008. Both early adoption and retrospective application are prohibited. SFAS No. 141R will have an impact on the accounting for the Company' s business combinations once adopted, but the effect depends on the terms of the Company' s business combinations subsequent to January 1, 2009, if any.

On December 4, 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51*. SFAS No. 160 establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS No. 160 requires the recognition of a noncontrolling interest (minority interest) as equity in the consolidated financial statements and separate from the parent' s equity. The amount of earnings attributable to the noncontrolling interest will be included in consolidated net income on the face of the income statement. SFAS No. 160 clarifies that changes in a parent' s ownership interest in a subsidiary that do not result in deconsolidation are equity transactions if the parent retains its controlling financial interest. In addition, SFAS No. 160 requires that a parent recognize a gain or loss in net income when a subsidiary is deconsolidated. Such gain or loss will be measured using the fair value of the noncontrolling equity investment on the deconsolidation date. SFAS No. 160 also includes expanded disclosure requirements regarding the interests of the parent and its noncontrolling interests. SFAS No. 160 is effective for fiscal years, and interim periods in those fiscal years, beginning on or after December 15, 2008. Early adoption is prohibited. The Company does not expect the adoption of SFAS No. 160 to have a material effect on its consolidated financial statements.

On April 25, 2008, the FASB issued FSP No. 142-3, *Determination of the Useful Life of Intangible Assets*. FSP No. 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, *Goodwill and Other Intangible Assets*. The intent of FSP No. 142-3 is to improve the consistency between the useful life of a recognized intangible asset under SFAS No. 142 and the period of expected cash flows used to measure the fair value of the asset under SFAS No. 141 (revised 2007), *Business Combinations,* and other U.S. generally accepted accounting principles. FSP No. 142-3 is effective for fiscal years, and interim periods in those fiscal years, beginning after December 15, 2008. The guidance for determining the useful life of a recognized intangible asset in FSP No. 142-3 shall be applied prospectively to intangible assets acquired after the effective date. The disclosure requirements in FSP No. 142-3 are to be applied prospectively to all intangible assets recognized as of, and subsequent to, the effective date. Early adoption is prohibited. The Company does not expect the adoption of FSP No. 142-3 to have a material effect on its consolidated financial statements.

A variety of proposed or otherwise potential accounting standards are currently under study by standard-setting organizations and various regulatory agencies. Because of the tentative and preliminary nature of these proposed standards, management has not determined whether implementation of such proposed standards would be material to the Company' s consolidated financial statements.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

Reclassifications

Beginning in 2008, the Company is presenting development revenues, primarily from paid registry trials, as a separate line item in its statement of operations. The Company has reclassified amounts in the cumulative statement of operations to conform to the current year presentation.

2. Going Concern

The accompanying consolidated financial statements have been prepared and are presented assuming the Company' s ability to continue as a going concern. The Company has incurred significant operating losses over the past several years and has a deficit accumulated during the development stage of $89.7 million as of June 30, 2008. In addition, as of June 30, 2008, the Company' s current liabilities exceed its current assets by $8.9 million. Current liabilities include notes payable of $6.8 million. During the six months ended June 30, 2008, the Company generated approximately $4.2 million of cash on a net basis as a result of its IPO. However, the IPO proceeds are not expected to provide sufficient cash to support the Company' s operations through December 2008. The Company will need to secure additional sources of capital by the end of August 2008 to develop its business and product candidates as planned.

The Company currently has no commitments or arrangements from third parties for any additional financing to fund research and development and/or other operations. The Company is seeking substantial additional financing through public and/or private financing, which may include equity and/or debt financings, and through other arrangements, including collaborative arrangements. As part of such efforts, the Company may seek loans from certain of our executive officers, directors and/or current shareholders. However, financing may not be available to the Company or on terms acceptable to the Company. The Company' s inability to obtain additional financing would have a material adverse effect on its financial condition and ability to continue operations. Accordingly, the Company could be forced to significantly curtail or suspend operations, default on its debt obligations, file for bankruptcy or seek to sell some or all of its assets. As such, the Company' s continuation as a going concern is uncertain.

Due to the Company' s financial condition, the report of the Company' s independent registered public accounting firm on the Company' s December 31, 2007 consolidated financial statements includes an explanatory paragraph indicating that these conditions raise substantial doubt about the Company' s ability to continue as a going concern. The accompanying consolidated financial statements do not include any adjustments relating to the recoverability and classification of asset carrying amounts or the amount and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

3. Collaborative License and Research/Development Agreements

The Company has entered into a number of contractual relationships for technology licenses and research and development projects. The following provides a summary of the Company' s significant contractual relationships:

During February 2000, the Company entered into a license agreement (the "Original Law License Agreement") with Peter K. Law, Ph.D. and Cell Transplants International, pursuant to which Dr. Law and Cell Transplants International granted the Company a license to certain patents, including the patent that the Company relies upon to protect its MyoCell product candidate (the "Law IP"). In July 2000, the parties executed an addendum to the Original Law License Agreement (the "License Addendum"), the provisions of which amended a number of terms of the Original License Agreement.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

More specifically, the License Addendum provided, among other things:

The parties agreed that the Company would issue, and the Company did issue, to Cell Transplants International a five-year warrant exercisable for 1.2 million shares of the Company' s common stock at an exercise price of $8.00 per share instead of, as originally contemplated under the Original Law License Agreement, issuing to Cell Transplants International or Dr. Law 600,000 shares of the Company' s common stock and options to purchase 600,000 shares of the Company' s common stock at an exercise price of $1.80 per share. These share amounts and exercise prices do not take into account any subsequent recapitalizations or reverse stock splits.

The parties agreed that the Company' s obligation to pay Cell Transplants International a $3 million milestone payment would be triggered upon the Company' s commencement of a bona fide U.S. Phase II human clinical trial that utilizes technology claimed under the Law IP instead of, as originally contemplated under the Original Law License Agreement, upon initiation of an FDA approved human clinical trial study of such technology in the United States. This $3 million payment is included in accrued expenses as of June 30, 2008 and December 31, 2007.

In addition, if the Company obtains FDA approval of a method of heart muscle regeneration utilizing the patented technology contemplated under the Original Law License Agreement, the Company will be required to pay additional consideration of $5 million. Further, if the Company produces successful commercial products that result directly from the patents contemplated under the Original Law License Agreement, the Company will be required to pay royalties of 5% from specific sales as determined in the Original Law License Agreement over the period of the patents' useful lives.

In February 2006, the Company entered into an exclusive license agreement with The Cleveland Clinic Foundation for various patents to be used in connection with the MyoCell SDF-1 product candidate. In exchange for the license, the Company 1) paid $250,000 upon the closing of the agreement; 2) paid $1,250,000 in 2006; 3) will pay a maintenance fee of $150,000 per year for the duration of the license starting in the second year; 4) will be required to make various milestone payments including $200,000 upon the approval of an Investigational New Drug application for a licensed product by the FDA and $1,000,000 upon the first commercial sale of an FDA approved licensed product, 50% of which may be paid in the form of common stock; and 5) will pay a 5% royalty on the net sales of products and services that directly rely upon the claims of the patents for the first $300,000,000 of annual net sales and a 3% royalty for any annual net sales over $300,000,000. The royalty percentage shall be reduced by 0.5% for each 1.0% of license fees paid to any other entity. However, the royalty percentage shall not be reduced to less than 2.5%.

In April 2006, the Company entered into an agreement to license from TriCardia, LLC various patents to be used in connection with the MyoCath® II product candidate. In exchange for the license, the Company agreed to do the following: 1) pay $100,000 upon the closing of the agreement; and 2) issue a warrant exercisable for 32,515 shares of the Company' s common stock at an exercise price of $7.69 per share. The warrant vested on a straight line basis over a 12 month period and expires on February 28, 2016. The fair value of this warrant of approximately $193,000, as determined using the Black-Scholes pricing model, was amortized to research and development expense on a straight line basis over the twelve month vesting period. The Company recorded $144,867 of expense in 2006 and the remaining $48,289 of expense in 2007.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

In December 2006, the Company entered into an agreement with Tissue Genesis, Inc. ("Tissue Genesis") for exclusive distribution rights to Tissue Genesis' products and a license for various patents to be used in connection with the Bioheart Acute Cell Therapy and TGI 1200™ product candidates. In exchange for the license, the Company agreed to do the following: 1) issue 13,006 shares of the Company' s common stock at a price of $7.69 per share; and 2) issue a warrant exercisable for 1,544,450 shares of the Company' s common stock to Tissue Genesis at an exercise price of $7.69 per share, which warrant expires on December 31, 2026. This warrant shall vest in three parts as follows: i) 617,780 shares vesting only upon the Company' s successful completion of human safety testing of the licensed technology, ii) 463,335 shares vesting only upon the Company exceeding net sales of $10 million or net profit of $2 million from the licensed technology, and iii) 463,335 shares vesting only upon the Company exceeding net sales of $100 million or net profit of $20 million from the licensed technology. Since the vesting of this warrant is contingent upon the achievement of the specific milestones, the fair value of this warrant at the time the milestones are met will be expensed to research and development. In the event of an acquisition (or merger) of the Company by a third party, all unvested shares of common stock subject to the warrant shall immediately vest prior to such event. In addition, the Company will pay a 2% royalty of net sales of licensed products.

4. Notes Payable

The Company' s notes payable are comprised of the following:

	June 30, 2008	December 31, 2007
Bank of America note payable. Monthly payments of principal and interest as described below.	$5,000,000	$ 5,000,000
BlueCrest Capital Finance note payable. Monthly payments of principal and interest as described below.	3,805,678	4,614,544
	8,805,678	9,614,544
Less current portion	(6,781,397)	(6,671,112)
Notes payable – long term	$2,024,281	$ 2,943,432

Bank of America note payable

On June 1, 2007, the Company entered into a loan agreement with Bank of America, N.A. for an eight-month, $5.0 million term loan, to be used for working capital purposes. The loan bears interest at the prime rate plus 1.5%. The prime rate was 5.00% and 7.25% at June 30, 2008 and December 31, 2007, respectively. As consideration for the loan, the Company paid Bank of America a fee of $100,000. Effective as of January 31, 2008, the maturity date of the loan was extended until June 1, 2008. On June 1, 2008, Bank of America agreed to extend the maturity date of the loan until January 5, 2009 provided that one of the Guarantors who has not yet signed the extension documents execute such documents by September 15, 2008. As consideration for the first extension of the loan, the Company paid Bank of America a fee of $50,000. As consideration for the second extension of the loan, the Company paid Bank of America a fee of $75,000. Under the terms of the loan, Bank of America is entitled to receive a semi-annual payment of interest and all outstanding principal and accrued interest by the maturity date.

The Company has provided no collateral for the loan. On June 1, 2007, for the Company' s benefit, the Company' s Chairman and Chief Executive Officer and his spouse, certain other members of the Company' s Board of Directors and one of the Company' s shareholders (the "Guarantors") provided collateral to guarantee the loan. Except for a $1.1 million personal guaranty (backed by collateral) provided by the Company' s Chairman and Chief Executive Officer and his spouse, these guarantees are limited to the collateral each provided to the lender.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

The Company and Bank of America have agreed with BlueCrest Capital Finance, L.P., the lender of the BlueCrest Loan (defined below), that the Company will not individually make any payments due under the Bank of America loan while the BlueCrest Loan is outstanding. For the Company' s benefit, the Guarantors have agreed to provide Bank of America in the aggregate up to $5.5 million of funds and/or securities to make these payments.

The Company has agreed to reimburse the Guarantors with interest at an annual rate of the prime rate plus 5.0% for any and all payments made by them under the Bank of America Loan as well as to pay them certain cash fees in connection with their provision of security for the loan. Upon entering into the loan agreement, the Company issued to each Guarantor warrants to purchase 3,250 shares of common stock at an exercise price of $7.69 per share for each $100,000 of principal amount of the loan guaranteed by such guarantor. The warrants have a ten-year term and became exercisable one year following the date the warrants were issued. Warrants to purchase an aggregate of 216,095 shares of common stock were issued to the Guarantors. These warrants had an aggregate fair value of $1,437,637, which amount was accounted for as additional paid in capital and reflected as a component of deferred loan costs and amortized as interest expense over the initial term of the loan using the effective interest method. As discussed below, certain of these Guarantors were replaced in September 2007. The unamortized fair value of the warrants issued to the guarantors that were replaced, which was previously reflected as a component of deferred loan costs, was expensed to interest expense in September 2007.

In September 2007, a member of the Company' s Board of Directors and two of the Company' s shareholders agreed to provide collateral valued at $750,000, $600,000 and $500,000, respectively, to secure the loan. The collateral provided by these new Guarantors fully replaced the collateral originally provided by one of the members of the Company' s Board of Directors and partially replaced the collateral originally provided by another member of the Company' s Board of Directors whose collateral now secures $400,000 of the loan. In consideration for providing the collateral, the Company issued to the new Guarantors warrants to purchase 3,250 shares of common stock at an exercise price of $7.69 per share for each $100,000 of principal amount of the loan guaranteed by such new Guarantor. The warrants have a ten-year term and are not exercisable until the date that is one year following the date the warrants were issued. Warrants to purchase an aggregate of 60,118 shares of the Company' s common stock were issued to the new Guarantors. These warrants had an aggregate fair value of $380,482, which was accounted for as additional paid in capital and reflected as a component of deferred loan costs to be amortized as interest expense over the initial term of the loan using the effective interest method.

In accordance with the provisions of the warrants issued to the Guarantors, the aggregate number of shares of common stock underlying such warrants increased on September 30, 2007 as the Bank of America loan remained outstanding at that date. The additional 38,861 warrant shares had an aggregate fair value of $244,463. The portion of this amount attributed to the Guarantors that were replaced in September 2007 was accounted for as additional paid in capital and immediately recorded to interest expense with the remainder accounted for as additional paid in capital and reflected as a component of deferred loan costs to be amortized as interest expense over the initial term of the loan using the effective interest method.

In October 2007, the Company' s Chairman and Chief Executive Officer and his spouse agreed to provide an additional $2.2 million limited personal guarantee of the loan and have pledged securities accounts to backup this limited personal guarantee. The additional collateral provided by the Company' s Chairman and Chief Executive Officer and his spouse fully replaced the collateral originally provided by one of the original Guarantors.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

The Company' s Chairman and Chief Executive Officer and his spouse have now personally guaranteed an aggregate of $3.3 million of the loan. The Company' s agreement with the Company' s Chairman and Chief Executive Officer and his spouse with respect to the additional collateral is substantially similar to the Company' s agreement with them in connection with the $1.1 million personal guarantee they originally provided in June 2007. In consideration for providing the collateral, the Company issued to the Company' s Chairman and Chief Executive Officer and his spouse, warrants to purchase 81,547 shares of the Company' s common stock at an exercise price of $7.69 per share. The warrant has a ten-year term and is not exercisable until the date that is one year following the date the warrant was issued. The fair value of the warrant was determined to be $516,193, which was accounted for as additional paid in capital and reflected as a component of deferred loan costs to be amortized as interest expense over the initial term of the loan using the effective interest method.

As a result of this replacement of the collateral originally provided by one of the original Guarantors in October 2007, the unamortized fair value of the warrant to purchase 81,548 shares of the Company' s common stock at an exercise price of $7.69 per share issued to that Guarantor was expensed to interest expense in October 2007. In October 2007, the Company cancelled the warrant previously issued to such original Guarantor, which warrant included the adjustment provisions discussed above, and, in exchange, issued to them a warrant to purchase 101,934 shares of the Company' s common stock at an exercise price of $7.69 per share, which new warrant does not contain the adjustment provisions discussed above. The additional 20,386 warrant shares had an aggregate fair value of $128,228, which was accounted for as additional paid in capital and immediately recorded to interest expense.

In accordance with the provisions of the warrants issued to the Guarantors, the aggregate number of shares of common stock underlying such warrants increased on June 1, 2008 as the Bank of America loan remained outstanding at that date. The additional 78,773 warrant shares had an aggregate fair value of $168,387. The portion of this amount attributed to the Guarantors that were replaced in September 2007 was accounted for as additional paid in capital and immediately recorded to interest expense with the remainder accounted for as additional paid in capital and reflected as a component of deferred loan costs to be amortized as interest expense over the term of the loan using the effective interest method. In the event that as of the second anniversary and third anniversary of the closing date of the loan, the Company has not reimbursed the Guarantors in full for payments made by them in connection with the loan, the number of shares subject to the warrants will further increase.

The amount of interest expense on the principal amount of the loan for the three months ended June 30, 2008 and 2007 totaled approximately $83,000 and $41,000, respectively. The amount of interest expense on the principal amount of the loan for the six months ended June 30, 2008 and 2007 totaled approximately $181,000 and $41,000, respectively. Fees and interest payable to the Guarantors, which are recorded to interest expense, for the three months ended June 30, 2008 and 2007 totaled approximately $77,000 and $23,000, respectively. Fees and interest payable to the Guarantors for the six months ended June 30, 2008 and 2007 totaled approximately $155,000 and $23,000, respectively.

BlueCrest Capital Finance note payable

On June 1, 2007, the Company closed on a $5.0 million senior loan from BlueCrest Capital Finance, L.P. with a term of 36 months which bears interest at an annual rate of 12.85% (the "BlueCrest Loan"). The first three months required payment of interest only with equal principal and interest payments over the remaining 33 months. As consideration for the loan, the Company issued to BlueCrest Capital a warrant to purchase 65,030 shares of common stock at an exercise price of $7.69 per share. The warrant, which is not exercisable until one year following the date the warrant was issued, has a ten-year term. This warrant had a fair value of $432,635, which was accounted for as additional paid in capital and reflected as a component of deferred loan costs and is being amortized as interest expense over the term of the loan using the effective interest method. The Company also paid the lender a fee of $100,000 to cover diligence and other costs and expenses incurred in connection with the loan.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements − (Continued)
(Unaudited)

The loan may be prepaid in whole but not in part. However, the Company is subject to a prepayment penalty equal to 2% of the outstanding principal if prepaid during the second year of the loan and 1% of the outstanding principal if prepaid during the third year of the loan. As collateral to secure its repayment obligations under the loan, the Company granted BlueCrest Capital a first priority security interest in all of the Company' s assets, excluding intellectual property but including the proceeds from any sale of any of the Company' s intellectual property. The loan has certain restrictive terms and covenants including among others, restrictions on the Company' s ability to incur additional senior or pari-passu indebtedness or make interest or principal payments on other subordinate loans.

In the event of an uncured event of default under the loan, all amounts owed to BlueCrest Capital are immediately due and payable and BlueCrest Capital has the right to enforce its security interest in the assets securing the loan. Events of default include, among others, the Company' s failure to timely make payments of principal when due, the Company' s uncured failure to timely pay any other amounts owing to the lender under the loan, the Company' s material breach of the representations and warranties contained in the loan agreement and the Company' s default in the payment of any debt to any of its other lenders in excess of $100,000 or any other default or breach under any agreement relating to such debt, which gives the holders of such debt the right to accelerate the debt.

The amount of interest expense on the principal amount of the loan for the three months ended June 30, 2008 and 2007 totaled approximately $127,000 and $54,000, respectively. The amount of interest expense on the principal amount of the loan for the six months ended June 30, 2008 and 2007 totaled approximately $266,000 and $54,000, respectively.

5. Related Party Transactions

Pursuant to a clinical registry supply agreement entered into in August 2007 with BHK, Inc., the Company received an upfront payment of $103,000. As of December 31, 2007, the Company had not completed all of the cell-culturing services required by the agreement. Based on the amount of cell-culturing services completed as of December 31, 2007, the Company recorded $82,000 of the upfront payment as deferred revenue at December 31, 2007. Of this amount, $61,500 was recognized in the six months ended June 30, 2008 upon completion of additional cell-culturing services. In February 2005, the Company entered into a joint venture agreement with Bioheart Korea, Inc., BHK' s predecessor entity, pursuant to which the Company and BHK agreed to create a joint venture company now known as Bioheart Manufacturing, Inc. The Company owns an 18% equity interest in Bioheart Manufacturing, Inc.

The son of one of the Company' s directors was an officer of the Company as of June 30, 2008. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2008 were $32,500 and $65,000, respectively. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2007 was $32,500 and $65,000, respectively. This individual' s employment with the Company terminated in July 2008.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

A cousin of the Company' s Chairman of the Board, Chief Executive Officer and Chief Technology Officer is an officer of the Company. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2008 were $32,500 and $65,000, respectively. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2007 were $32,500 and $65,000, respectively. In addition, the Company utilized a printing entity controlled by this individual and paid this entity $625 and $3,405 for the three and six-month periods ended June 30, 2008, respectively, and $3,600 and $7,084 for the three and six-month periods ended June 30, 2007, respectively.

The sister-in-law of the Company' s Chairman of the Board, Chief Executive Officer and Chief Technology Officer is an officer of the Company. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2008 were $21,500 and $43,000, respectively. The amounts paid to this individual as salary for the three and six-month periods ended June 30, 2007 were $21,500 and $43,000, respectively.

6. Shareholders' Equity

In September 2007, by way of a written consent, the Company' s shareholders holding a majority of its outstanding shares of common stock approved an amendment to Bioheart' s Articles of Incorporation, increasing the number of authorized shares of capital stock so that, following the reverse stock split that was effectuated on September 27, 2007, the Company had 50 million shares of common stock authorized with a par value of $0.001 per share and five million shares of preferred stock authorized with a par value of $0.001 per share.

On July 30, 2008, the Company' s shareholders approved an amendment to Bioheart' s Articles of Incorporation to increase the number of authorized shares of common stock to 75 million.

Commencing in 2006, the Company initiated capital raising activities through the use of a private placement. During the six-month period ended June 30, 2007, the Company raised net proceeds of approximately $3.9 million through the sale of 529,432 shares of common stock at a price of $7.69 per share to various investors.

7. Stock Options and Warrants

In December 1999, the Company adopted two stock option plans; an employee stock option plan and a directors and consultants stock option plan (collectively referred to as the "Stock Option Plans"), under which a total of 1,235,559 shares of common stock were reserved for issuance upon exercise of options granted by the Company. In 2001, the Company amended the Stock Option Plans to increase the total shares of common stock reserved for issuance to 1,698,894. In 2003, the Company approved an increase of 308,890 shares, making the total 2,007,784 shares available for issuance under the Stock Option Plans. In 2006, the Company approved an increase of 1,081,114 shares, making the total 3,088,898 shares available for issuance under the Stock Option Plans. The Stock Option Plans provide for the granting of incentive and non-qualified options. The terms of stock options granted under the plans are determined by the Compensation Committee of the Board of Directors at the time of grant, including the exercise price, term and any restrictions on the exercisability of such options. The exercise price of incentive stock options must equal at least the fair value of the common stock on the date of grant, and the exercise price of non-qualified stock options may be no less than the per share par value. The options have terms of up to ten years after the date of grant and become exercisable as determined upon grant, typically over either three or four-year periods from the date of grant. Certain outstanding options vested over a one-year period and some vested immediately.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

The following information applies to options outstanding and exercisable at June 30, 2008:

	Shares Under Option	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Options outstanding at January 1, 2008	2,160,199	$5.34		
Granted	300,500	$5.25		
Exercised	–	–		
Forfeited	(1,776)	$7.69		
Options outstanding at June 30, 2008	2,458,923	$5.33	6.3	$546,244
Options exercisable at June 30, 2008	2,000,720	$4.92	5.8	$546,244
Available for grant at June 30, 2008	596,807			

The weighted average fair value of options granted during the six month period ended June 30, 2008 was $2.38 per share.

For the three-month period ended June 30, 2008, the Company recognized $859,131 in stock-based compensation costs of which $44,725 represented research and development expense and the remaining amount was marketing, general and administrative expense. For the six-month period ended June 30, 2008, the Company recognized $1,071,546 in stock-based compensation costs of which $91,619 represented research and development expense and the remaining amount was marketing, general and administrative expense. No tax benefits were attributed to the stock-based compensation expense because a valuation allowance was maintained for all net deferred tax assets. The Company elected to adopt the alternative method of calculating the historical pool of windfall tax benefits as permitted by FASB Staff Position No. SFAS 123R-c, *Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards.* This is a simplified method to determine the pool of windfall tax benefits that is used in determining the tax effects of stock compensation in the results of operations and cash flow reporting for awards that were outstanding as of the adoption of SFAS No. 123R. As of June 30, 2008, the Company had approximately $1.9 million of unrecognized compensation costs related to non-vested stock option awards that is expected to be recognized over the next four years.

The following information applies to options outstanding and exercisable at June 30, 2008:

	Options Outstanding			Options Exercisable	
	Shares	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Shares	Weighted-Average Exercise Price
$1.28	347,196	1.5	$1.28	347,196	$1.28
$2.83	41,701	1.6	$2.83	41,701	$2.83
$5.25 - $5.67	1,716,563	6.9	$5.59	1,504,229	$5.59
$7.69	72,889	8.2	$7.69	56,290	$7.69
$8.47	280,574	8.8	$8.47	51,304	$8.47
	2,458,923	6.3	$5.33	2,000,720	$4.92

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

The Company uses the Black-Scholes valuation model to determine the fair value of stock options on the date of grant. This model derives the fair value of stock options based on certain assumptions related to expected stock price volatility, expected option life, risk-free interest rate and dividend yield. The Company' s expected volatility is based on the historical volatility of other publicly traded development stage companies in the same industry. Prior to January 1, 2008, the Company estimated the expected term for stock option grants by review of similar data from a peer group of companies. The Company adopted SAB 110 effective January 1, 2008 and will apply the simplified method in SAB 107 until enough historical experience is readily available to provide a reasonable estimate of the expected term for stock option grants. The risk-free interest rate assumption is based upon the U.S. Treasury yield curve appropriate for the term of the expected life of the options.

For the three and six-month periods ended June 30, 2008 and 2007, the fair value of each stock option grant was estimated on the date of grant using the following weighted-average assumptions.

	For the three-month periods ended June 30,		For the six-month periods ended June 30,	
	2008	2007	2008	2007
Expected dividend yield	00.0 %	00.0 %	00.0 %	00.0 %
Expected price volatility	75.0 %	100.0 %	75.0 %	100.0 %
Risk free interest rate	3.3 %	6.0 %	3.3 %	6.0 %
Expected life of options in years	5.1	5.0	5.1	5.0

The Company does not have a formal plan in place for the issuance of stock warrants. However, at times, the Company will issue warrants to both employees and non-employees or in connection with financing transactions. The exercise price, vesting period, and term of these warrants is determined by the Company' s Board of Directors at the time of issuance. As of June 30, 2008 and December 31, 2007, the Company had warrants outstanding for the purchase of shares of the Company' s common stock of 2,447,609 and 2,251,836, respectively. During the six months ended June 30, 2008, the Company issued a warrant to purchase 77,000 shares of its common stock to the representative of the several underwriters of the Company' s IPO, as discussed in Note 1 and a warrant to purchase 40,000 shares of its common stock at an exercise price of $6.00 per share in settlement of pending litigation. The warrant issued in settlement of pending litigation vested immediately upon issuance and expires on the fifth anniversary of the issuance date. In addition, as discussed in Note 4, pursuant to the terms of the agreements evidencing the warrants issued to the Guarantors of the Bank of America Loan, the number of shares of common stock subject to such warrants was increased by an aggregate of 78,773 shares as of June 1, 2008. The following information applies to warrants outstanding and exercisable at June 30, 2008:

	Warrants Outstanding			Warrants Exercisable	
	Shares	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Shares	Weighted-Average Exercise Price
$5.67 - $6.56	309,834	6.7	$5.93	232,834	$5.72
$7.69	2,137,775	15.8	$7.69	385,283	$7.69
	2,447,609	14.6	$7.47	618,117	$6.95

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

The Company uses the Black-Scholes valuation model to determine the fair value of warrants on the date of issuance. The Company' s expected volatility is based on the historical volatility of other publicly traded development stage companies in the same industry. The expected life of the warrants is based primarily on the contractual life of the warrants. The risk-free interest rate assumption is based upon the U.S. Treasury yield curve appropriate for the term of the expected life of the warrants.

For the three and six-month periods ended June 30, 2008 and 2007, the fair value of each warrant issued, excluding the warrant to purchase 77,000 shares of the Company' s common stock issued to the representative of the several underwriters of the Company' s IPO, was estimated on the date of issuance using the following weighted-average assumptions.

	For the three-month periods ended June 30,		For the six-month periods ended June 30,	
	2008	2007	2008	2007
Expected dividend yield	00.0%	00.0 %	00.0%	00.0 %
Expected price volatility	75.0%	100.0%	75.0%	100.0%
Risk free interest rate	3.7 %	6.0 %	3.7 %	6.0 %
Expected life of warrants in years	7.8	5.0	7.8	5.0

The weighted average fair value of warrants granted during the six month period ended June 30, 2008 was $2.15 per share.

In July 2008, the Board of Directors approved, subject to shareholder approval, the establishment of the Bioheart Omnibus Equity Compensation Plan (the "Omnibus Plan"). The establishment of the Omnibus Plan was approved by the Company' s shareholders at the annual meeting of shareholders held on July 30, 2008. Pursuant to the Omnibus Plan, the Company may grant restricted stock, incentive stock options, non-statutory stock options, stock appreciation rights, deferred stock, stock awards, performance shares, and other stock-based awards consisting of cash, restricted stock or unrestricted stock in various combinations to the Company' s employees, directors and consultants. 5,000,000 shares of common stock has been reserved for issuance under the Omnibus Plan.

8. Legal Proceedings

On March 9, 2007, Peter K. Law, Ph.D. and Cell Transplants Asia, Limited (the "Plaintiffs") filed a complaint against the Company and Howard J. Leonhardt, the Company' s Chairman of the Board, Chief Executive Officer and Chief Technology Officer, individually, in the United States District Court, Western District of Tennessee. On February 7, 2000, the Company entered a license agreement (the "Original Law License Agreement") with Dr. Law and Cell Transplants International, LLC, pursuant to which Dr. Law and Cell Transplants International granted the Company a license to certain patents, including the patent the Company relies upon to protect its MyoCell product candidate (the "Law IP"). The parties executed an addendum to the Original Law License Agreement (the "License Addendum") in July 2000, the provisions of which amended a number of terms of the Original License Agreement.

The Plaintiffs are alleging and seeking, among other things, a declaratory judgment that the License Addendum fails for lack of consideration. Based upon this argument, the Plaintiffs allege that the Company is in breach of the terms of the Original Law License Agreement.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

In addition to seeking a declaratory judgment that the License Addendum is not enforceable, the Plaintiffs are also seeking an accounting of all revenues, remunerations or benefits derived by the Company or Mr. Leonhardt from sales, provision and/or distribution of products and services that read directly on the Law IP, compensatory and punitive monetary damages and preliminary and permanent injunctive relief to prohibit the Company from sublicensing its license rights to third parties.

The Company believes this lawsuit is without merit and intends to defend the action vigorously. The Company filed a motion to dismiss the proceeding against both the Company and Mr. Leonhardt. On July 26, 2007, the court granted the Company' s motion to dismiss Mr. Leonhardt in his individual capacity and one count of the complaint alleging a civil conspiracy. The court denied the Company' s motion to dismiss all other claims. The Company has filed and served its answer to the Plaintiff' s complaint. The Company has also asserted counterclaims against the Plaintiffs for declaratory judgment that the License Addendum is a valid and subsisting agreement, and for breach of contract with respect to various obligations undertaken by the Plaintiffs in the Original License Agreement, as amended by the License Addendum. Trial of the action is currently scheduled for September 22, 2008.

On July 11, 2008, the Plaintiffs filed a motion for partial summary judgment with respect to one claim of its complaint asserting that there is no material issue of fact regarding the Company' s obligation to pay the Plaintiffs $3.0 million pursuant to the provisions of the Original License Agreement, as amended by the License Addendum, which calls for such payment upon commencement of a bona fide Phase II clinical trial that utilizes the technology claimed under the Law IP with FDA approval in the United States. On October 24, 2007, the Company completed the MyoCell implantation procedure on the first patient in its MARVEL Trial. The Company has not yet made the $3 million payment, however the amount is included in accrued expenses as of June 30, 2008 and December 31, 2007. As discussed above, the Company has asserted various defenses and counterclaims to the Plaintiff' s claims, including the Plaintiff' s failure to honor certain contractual obligations to the Company. The Company intends to vigorously oppose the motion for partial summary judgment and demand a plenary trial of all of the claims and counterclaims asserted in the action. The Company' s response to the motion was filed on August 13, 2008. There is a risk that the Court may grant the motion, and direct entry of judgment against the Company requiring payment of the $3.0 million, plus any applicable interest. As in the past, the Company remains open to reaching a negotiated settlement of all of its disputes with the Plaintiffs. Absent such a resolution, however, the Company' s current cash reserves are not sufficient to satisfy a $3.0 million judgment. The entry of such a judgment would also likely constitute a default under the BlueCrest Loan and Bank of America Loan and have a significant adverse impact on the Company' s financial condition, results of operations and MyoCell commercialization efforts.

Due to the uncertainty related to these proceedings, any potential loss cannot presently be determined.

Other

The Company is subject to other legal proceedings that arise in the ordinary course of business. In the opinion of management, as of June 30, 2008, the amount of ultimate liability with respect to such matters, if any, in excess of applicable insurance coverage, is not likely to have a material impact on the Company' s business, financial position, consolidated results of operations or liquidity. However, as the outcome of litigation and other claims is difficult to predict significant changes in the estimated exposures could exist.

Bioheart, Inc. and Subsidiaries
(A development stage enterprise)

Notes to Consolidated Interim Financial Statements – (Continued)
(Unaudited)

9. Contingency

The Company believes that it may have issued options to purchase common stock to certain of its employees, directors and consultants in California in violation of the registration or qualification provisions of applicable California securities laws. As a result, the Company intends to make a rescission offer to these persons. The Company will make this offer to all persons who have a continuing right to rescission, which it believes to include two persons. In the rescission offer, in accordance with California law, the Company will offer to repurchase all unexercised options issued to these persons at 77% of the option exercise price multiplied by the number of option shares, plus interest at the rate of 7% from the date the options were granted. Based upon the number of options that were subject to rescission as of June 30, 2008, assuming that all such options are tendered in the rescission offer, the Company estimated that its total rescission liability would be up to approximately $361,000. However, as the Company believes there is only a remote likelihood the rescission offer will be accepted by any of these persons in an amount that would result in a material expenditure by the Company, no liability was recorded as of June 30, 2008 or December 31, 2007.

10. Supplemental Disclosure of Cash Flow Information

As of June 30, 2007, the Company had accrued costs incurred in connection with its IPO of $174,910.

Costs related to the Company' s IPO had been deferred when incurred and totaled approximately $3.5 million as of December 31, 2007. Such deferred costs were reflected as an asset on the December 31, 2007 consolidated balance sheet. All such costs, including costs incurred subsequent to December 31, 2007 through the completion of the IPO, were charged to paid-in capital in 2008. As of December 31, 2007, approximately $695,000 of costs incurred in connection with the IPO were included in accounts payable and accrued expenses and were paid in 2008.

11. Subsequent Event

In July 2008, the Company announced it entered into a non-binding letter of intent to acquire Medicalgorithmics, Ltd. and the worldwide rights to the POCKET ECG, a real-time wireless beat-to-beat, intelligent heart monitor and diagnostic system, designed for long-term, fully-automated electrocardiogram (ECG) arrhythmia analysis. Under the terms of the non-binding letter of intent, both companies are expected to conduct their due diligence review within 60-90 days of executing the letter of intent.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Unless otherwise indicated, references in this quarterly report to "we," "us" and "our" are to the Company. The following discussion and analysis by our management of our financial condition and results of operations should be read in conjunction with our unaudited consolidated interim financial statements and the accompanying related notes included in this quarterly report and our audited consolidated financial statements and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations included in our annual report on Form 10-K for the year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A filed with the Securities and Exchange Commission.

Cautionary Statement Regarding Forward-Looking Statements

This report may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and we intend that such forward-looking statements be subject to the safe harbors created thereby. These forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. Any such forward-looking statements would be contained principally in "Management's Discussion and Analysis of Financial Condition and Results of Operations" and Part II, Item 1A. "Risk Factors." Forward-looking statements include information concerning our possible or assumed future results of operations, business strategies, financing plans, competitive position, industry environment, potential growth opportunities and the effects of regulation. Forward-looking statements include all statements that are not historical facts and can be identified by terms such as "anticipates," "believes," "could," "estimates," "expects," "hopes," "intends," "may," "plans," "potential," "predicts," "projects," "should," "will," "would" or similar expressions.

The forward-looking statements in this report may include, among other things, statements about:

our ability to obtain additional financing;

our ability to meet our obligations on our outstanding indebtedness, certain of which indebtedness imposes restrictions on how we conduct our business and is secured by all of our assets except our intellectual property;

our ability to timely and successfully initiate and complete our clinical trials;

the announcement of data concerning the results of clinical trials for MyoCell®;

our estimates regarding future revenues and timing thereof, expenses, capital requirements and needs

for additional financing;

our ongoing and planned discovery programs, preclinical studies and additional clinical trials;

the timing of and our ability to obtain and maintain regulatory approvals for our product candidates;

the rate and degree of market acceptance and clinical utility of our products;

our ability to quickly and efficiently identify and develop product candidates;

our commercialization, marketing and manufacturing capabilities and strategy; and

our intellectual property position.

Forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements. We discuss certain of these risks in greater detail in Part II, Item 1A. "Risk Factors." Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, forward-looking statements represent our management's beliefs and assumptions only as of the date of this report. You should read this report and the documents that we reference in this report and have filed as exhibits to the report completely and with the understanding that our actual future results may be materially different from what we expect. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

Additional information concerning these and other risks and uncertainties is contained in our filings with the Securities and Exchange Commission, including the section entitled "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A.

Our Ability To Continue as a Going Concern

Our independent registered public accounting firm issued its report dated March 19, 2008 in connection with the audit of our financial statements as of December 31, 2007 that included an explanatory paragraph describing the existence of conditions that raise substantial doubt about our ability to continue as a going concern. Our consolidated financial statements as of June 30, 2008 were prepared under the assumption that we will continue as a going concern. If we are not able to continue as a going concern, it is likely that holders of our common stock will lose all of their investment. Our financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As of July 31, 2008, we had cash and cash equivalents of approximately $620,000. If we continue to defer approximately $1.0 million of payables and continue to defer our payment of $3.0 million to Cell Transplants International, we project that our existing cash resources will be sufficient to finance our operations through the end of August 2008. See "- *Existing Capital Resources and Future Capital Requirements"* and Item 1A. *"Risk Factors − We will need to secure additional financing by the end of August 2008...*"

Overview

We are committed to delivering intelligent devices and biologics that help monitor, diagnose and treat heart failure and cardiovascular diseases. Our goals are to improve a patient' s quality of life and reduce health care costs and hospitalizations. Specific to biotechnology, we are focused on the discovery, development and, subject to regulatory approval, commercialization of autologous cell therapies for the treatment of chronic and acute heart damage. Our lead product candidate is MyoCell, an innovative clinical muscle-derived stem cell therapy designed to populate regions of scar tissue within a patient' s heart with new living cells for the purpose of improving cardiac function in chronic heart failure patients. Our most recent clinical trials of MyoCell include the SEISMIC Trial, a completed 40-patient, randomized, multicenter, controlled, Phase II-a study conducted in Europe and the MYOHEART Trial, a completed 20-patient, multicenter, Phase I dose-escalation trial conducted in the United States. We have been cleared by the U.S. Food and Drug Administration (the "FDA") to proceed with a 330-patient, multicenter Phase II/III trial of MyoCell in North America and Europe (the "MARVEL Trial"). We completed the MyoCell implantation procedure on the first patient in the MARVEL Trial on October 24, 2007. If the results of the MARVEL Trial demonstrate statistically significant evidence of the safety and efficacy of MyoCell, we anticipate having a basis to ask the FDA to consider the MARVEL Trial a pivotal trial. The SEISMIC, MYOHEART and MARVEL Trials have been designed to test the safety and efficacy of MyoCell in treating patients with severe, chronic damage to the heart. Upon regulatory approval of MyoCell, we intend to generate revenue from the sale of MyoCell cell-culturing services for treatment of patients by interventional cardiologists.

In July 2008, we announced that we secured worldwide non-exclusive distribution rights to the Bioheart 3370 Heart Failure Monitor, an interactive and simple-to-use at-home intelligent device designed specifically to improve available healthcare to patients outside hospitals who are suffering from heart failure. The device, manufactured by RTX Healthcare A/S (Denmark), has 510(k) market clearance from the U.S. Food and Drug Administration for marketing in the United States and CE mark approval for marketing in Europe and other countries that follow this mark. The compact Bioheart 3370 Heart Failure Monitor engages patients through personalized daily interactions and questions, while collecting vital signs and transmitting the information directly into a database. The data are regularly monitored by a remotely located medical professional, who watches for any abnormal readings that may signal a change in the patient' s health status. These changes are reported back to the treating physician.

In July 2008, we announced that we entered into a non-binding letter of intent to acquire Medicalgorithmics, Ltd. and the worldwide rights to the POCKET® ECG, a real-time wireless beat-to-beat, intelligent heart monitor and diagnostic system, designed for long-term, fully-automated electrocardiogram (ECG) arrhythmia analysis. The device, manufactured by Medicalgorithmics, recently received CE mark approval for marketing throughout Europe. Under the terms of the non-binding letter of intent, both companies are expected to conduct their due diligence review within 60-90 days of entering into the letter of intent.

In our pipeline, we have multiple product candidates for the treatment of heart damage, including Bioheart Acute Cell Therapy, an autologous, adipose cell treatment for acute heart damage designed to be used in connection with TGI 1200™ tissue processing system, and MyoCell® SDF-1, a therapy utilizing autologous cells genetically modified to express additional potentially therapeutic growth proteins. Tissue Genesis, Inc., the entity from whom we have obtained the worldwide right to sell or lease the TGI 1200™, had been seeking 510(k) approval of the TGI 1200™ for laboratory use from the FDA. Tissue Genesis was recently informed by the FDA that it does not believe the use of the TGI 1200™ as a laboratory device is eligible for the 510(k) regulatory pathway. We understand that Tissue Genesis is in the process of evaluating the regulatory pathway that should be pursued for the TGI 1200™ device. We hope to demonstrate that our various product candidates are safe and effective complements to existing therapies for chronic and acute heart damage.

We were incorporated in the state of Florida in August 1999. Our principal executive offices are located at 13794 NW 4th Street, Suite 212, Sunrise, Florida 33325 and our telephone number is (954) 835-1500. Information about us is available on our corporate web site at www.bioheartinc.com. Information contained on the web site does not constitute part of, and is not incorporated by reference in, this report.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. We believe the following policies are important to understanding and evaluating our reported financial results:

Share-Based Compensation

On January 1, 2006, we adopted the provisions of Statement of Financial Accounting Standards No. 123R, *Share-Based Payment* ("SFAS No. 123R") using the modified prospective transition method. SFAS No. 123R requires us to measure all share-based payment awards granted after January 1, 2006, including those with employees, at fair value. Under SFAS No. 123R, the fair value of stock options and other share-based compensation must be recognized as expense in the statements of operations over the requisite service period of each award.

The fair value of share-based awards granted subsequent to January 1, 2006 is determined using the Black-Scholes valuation model and compensation expense is recognized on a straight-line basis over the vesting period of the awards. Beginning January 1, 2006, we also began recognizing compensation expense under SFAS No. 123R for the unvested portions of outstanding share-based awards previously granted under our stock option plans, over the periods these awards continue to vest. Our future share-based compensation expense will depend on the number of equity instruments granted and the estimated value of the underlying common stock at the date of grant.

We account for certain share-based awards, including warrants, with non-employees in accordance with SFAS No. 123R and related guidance, including EITF Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling Goods or Services*. We estimate the fair value of such awards using the Black-Scholes valuation model at each reporting period and expense the fair value over the vesting period of the share-based award, which is generally the period in which services are provided.

Revenue Recognition

Since inception, we have not generated any material revenues from our lead product candidate. In accordance with Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, as amended by SEC Staff Accounting Bulletin No. 104, *Revenue Recognition*, our revenue policy is to recognize revenues from product sales and service transactions generally when persuasive evidence of an arrangement exists, the price is fixed or determined, collection is reasonably assured and delivery of product or service has occurred.

We initially recorded payments received by us pursuant to our agreements with Advanced Cardiovascular Systems, Inc. (“ACS”), originally a subsidiary of Guidant Corporation and now d/b/a Abbott Vascular, a division of Abbott Laboratories, as deferred revenue. Revenues are recognized on a pro rata basis as the catheters are delivered pursuant to those agreements.

We initially recorded payments received by us pursuant to a clinical supply agreement entered into in August 2007 with BHK, Inc. (“BHK”) as deferred revenue. Revenues are recognized on a pro rata basis as the cell-culturing services are provided and are shown in development revenues. The costs associated with earning these revenues are expensed as incurred and are included in research and development expenses in our statements of operations. In February 2005, we entered into a joint venture agreement with Bioheart Korea, Inc., BHK’ s predecessor entity, pursuant to which we and BHK agreed to create a joint venture company now known as Bioheart Manufacturing, Inc. The Company owns an 18% equity interest in Bioheart Manufacturing, Inc.

Research and Development Activities

Research and development expenditures, including payments to collaborative research partners, are charged to expense as incurred. We expense amounts paid to obtain patents or acquire licenses as the ultimate recoverability of the amounts paid is uncertain.

Results of Operations

Revenues

We recognized revenues of $17,000 in the three months ended June 30, 2008 compared to revenues of $195,000 in the three months ended June 30, 2007. Our revenue in the three months ended June 30, 2008 was generated from the sale of MyoCath catheters to parties other than ACS. In the three months ended June 30, 2007, we delivered 30 MyoCath catheters to ACS pursuant to our agreement with them. In connection with these shipments, we recognized $191,000 of revenue.

We recognized revenues of $43,000 in the six months ended June 30, 2008 compared to revenues of $208,000 in the six months ended June 30, 2007. Our revenue in the six months ended June 30, 2008 was generated from the sale of MyoCath catheters to parties other than ACS. In the six months ended June 30, 2007, we delivered 30 MyoCath catheters to ACS pursuant to our agreement with them. In connection with these shipments, we recognized $191,000 of revenue. In the 2007 period, we also recognized revenue of $17,000 from the shipment of MyoCath catheters to parties other than ACS.

Development revenues

We recognized development revenues of $15,000 in the three months ended June 30, 2008 from a paid registry trial in Switzerland. We did not recognize any development revenues in the three months ended June 30, 2007.

During the six months ended June 30, 2008, we recognized development revenues of $76,500. During 2007, we received an upfront payment of $103,000 pursuant to our clinical registry supply agreement with BHK. At December 31, 2007, we had not completed all of the cell-culturing services required by the agreement. Based on the amount of cell-culturing services completed as of December 31, 2007, $82,000 of the upfront payment was recorded as deferred revenue. Of this amount, $61,500 was recognized as revenues in the six-months ended June 30, 2008 upon completion of additional cell-culturing services. During the six months ended June 30, 2008, we also generated $15,000 from a paid registry trial in Switzerland. We did not recognize any development revenues in the six months ended June 30, 2007.

Cost of Sales

Cost of sales was $5,000 in the three months ended June 30, 2008 as compared to $27,000 in the three months ended June 30, 2007. Cost of sales was $8,000 in the six months ended June 30, 2008 as compared to $34,000 in the six months ended June 30, 2007. The cost per catheter delivered to parties other than ACS in the three and six months ended June 30, 2008 was less than the cost per catheter delivered in the three and six months ended June 30, 2007. In addition, a portion of the catheters sold in the six months ended June 30, 2008 had no inventory cost as they had been written off in prior years.

Research and Development

Research and development expenses were $1.5 million in the three months ended June 30, 2008, a decrease of $300,000 from research and development expenses of $1.8 million in the three months ended June 30, 2007. The decrease is primarily attributable to a reduction in costs related to our SEISMIC and MYOHEART Trials, which was partially offset by an increase in costs related to our MARVEL Trial and advanced research and business development. Of the expenses incurred in the three months ended June 30, 2008, approximately $719,000 related to our MARVEL Trial and approximately $129,000 related to our SEISMIC and MYOHEART Trials.

Research and development expenses were $2.8 million in the six months ended June 30, 2008, a decrease of $400,000 from research and development expenses of $3.2 million in the six months ended June 30, 2007. The decrease is primarily attributable to a reduction in the amount of sponsored research and a reduction in costs related to our SEISMIC and MYOHEART Trials, which were partially offset by an increase in costs related to our MARVEL Trial. Of the expenses incurred in the six months ended June 30, 2008, approximately $1.1 million related to our MARVEL Trial and approximately $316,000 related to our SEISMIC and MYOHEART Trials.

We expect research and development expenses to increase during 2008 as we move forward with enrollment in the MARVEL Trial. However, the timing and amount of our planned research and development expenditures is dependent on our ability to obtain additional financing. See "- *Existing Capital Resources and Future Capital Requirements"* and Item 1A. *"Risk Factors − We will need to secure additional financing by the end of August 2008...*"

Marketing, General and Administrative

Marketing, general and administrative expenses were $1.9 million in the three months ended June 30, 2008, an increase of $1.0 million from marketing, general and administrative expenses of $873,000 in the three months ended June 30, 2007. The increase in marketing, general and administrative expenses is primarily attributable to an increase in stock-based compensation of approximately $670,000. During the three months ended June 30, 2008, we also experienced an increase in legal, insurance and consulting fees subsequent to the completion of our IPO in February 2008.

Marketing, general and administrative expenses were $2.9 million in the six months ended June 30, 2008, an increase of $1.1 million from marketing, general and administrative expenses of $1.8 million in the six months ended June 30, 2007. The increase in marketing, general and administrative expenses is primarily attributable to an increase in stock-based compensation of approximately $740,000. During the six months ended June 30, 2008, we also experienced an increase in legal, insurance and consulting fees subsequent to the completion of our IPO in February 2008.

Interest Income

Interest income consists of interest earned on our cash and cash equivalents. Interest income was $8,000 and $42,000 in the three and six months ended June 30, 2008, respectively, compared to interest income of $75,000 and $116,000 in the three and six months ended June 30, 2007, respectively. The decrease in interest income for the periods was primarily attributable to lower cash balances and lower interest rates earned in the three and six months ended June 30, 2008 as compared to the corresponding periods of 2007.

Interest Expense

On June 1, 2007, we entered into the BlueCrest Loan and the Bank of America Loan, both in the principal amount of $5.0 million, with interest rates of 12.85% and 6.50% (prime plus 1.5%), respectively, at June 30, 2008. Interest expense primarily consists of interest incurred on the principal amount of these loans, accrued fees payable to the guarantors of the Bank of America Loan, the amortization of related deferred loan costs and the amortization of the fair value of warrants issued in connection with the loans. The fair value of the warrants originally issued in connection with the Bank of America Loan was amortized by the end of January 2008.

Interest expense was $497,000 and $1.4 million in the three and six months ended June 30, 2008, respectively, compared to interest expense of $301,000 in the three and six months ended June 30, 2007. The increase in interest expense between these periods is primarily attributable to the length of time that the BlueCrest Loan and Bank of America Loan were outstanding during such periods.

Interest incurred on the principal amount of the loans and accrued fees payable to the guarantors totaled $288,000 in the three months ended June 30, 2008. Amortization of deferred loan costs and amortization of the fair value of warrants issued in connection with the loans totaled $204,000 in the three months ended June 30, 2008.

Interest incurred on the principal amount of the loans and accrued fees payable to the guarantors totaled $603,000 in the six months ended June 30, 2008. Amortization of deferred loan costs and amortization of the fair value of warrants issued in connection with the loans totaled $820,000 in the six months ended June 30, 2008.

Liquidity and Capital Resources

In 2008, we continued to finance our considerable operational cash needs with cash generated from financing activities.

Net cash used in operating activities was $6.8 million in the six months ended June 30, 2008 as compared to $4.2 million of cash used in the six months ended June 30, 2007.

Our use of operating cash in the six months ended June 30, 2008 reflected a net loss generated during the period of $7.2 million, adjusted for non-cash items such as share-based compensation of $1.2 million, amortization of the fair value of warrants granted in connection with the BlueCrest Loan and Bank of America Loan of $562,000 and amortization of loan costs incurred in connection with the BlueCrest Loan and Bank of America Loan of $258,000. An increase in prepaid and other current assets of $2.1 million also contributed to our use of operating cash during the six months ended June 30, 2008. The significant increase in prepaid expenses and other current assets was due to upfront payments under an agreement with the contract research organization that we are utilizing for the MARVEL Trial. Partially offsetting these uses of cash was an increase in accrued expenses of $402,000.

Our use of cash for operations in the six months ended June 30, 2007 was primarily attributable to net losses of $5.0 million, adjusted for non-cash items such as share-based compensation of $491,000 and amortization of the fair value of warrants issued in connection with the BlueCrest Loan and Bank of America Loan of $156,000. A decrease in deferred revenue of $191,000 and an increase in prepaid expenses and other current assets of $154,000 also contributed to our use of operating cash during the six months. Partially offsetting these uses of cash were an increase in accounts payable of $213,000 and an increase in accrued expenses of $126,000.

Net cash used in investing activities was $18,000 in the six months ended June 30, 2008 as compared to $41,000 in the six months ended June 30, 2007. All of the cash utilized in investing activities for the six months ended June 30, 2008 and 2007 related to our acquisition of property and equipment.

Net cash provided by financing activities was $3.2 million in the six months ended June 30, 2008. On February 22, 2008 we completed our IPO of common stock pursuant to which we sold 1,100,000 shares of common stock at a price per share of $5.25 for net proceeds of $1.45 million. The Consolidated Statement of Cash Flows for the six months ended June 30, 2008 reflects our receipt of approximately $4.24 million of “Proceeds from initial public offering of common stock, net”. The $4.24 million cash proceeds figure is approximately $2.79 million higher than the $1.45 million IPO net proceeds figure identified above due to our payment of $2.79 million of various offering expenses prior to January 1, 2008.

During the six months ended June 30, 2008, we repaid $809,000 of principal on the BlueCrest Loan and paid $187,000 of costs incurred in connection with the extensions of the maturity date of the Bank of America Loan.

Net cash provided by financing activities was $12.2 million in the six months ended June 30, 2007. In June 2007, we borrowed funds pursuant to both the BlueCrest Loan and the Bank of America Loan, each in the principal amount of $5.0 million. We also generated $4.0 million from our issuance of common stock. These sources of cash were partially offset by $1.1 million related to the payment of offering costs related to our IPO and $745,000 related to the payment of costs incurred in connection with obtaining the BlueCrest Loan and Bank of America Loan.

Existing Capital Resources and Future Capital Requirements

Our lead product candidate has not received regulatory approval or generated any material revenues. We do not expect to generate any material revenues or cash from sales of our lead product candidate until 2009, if ever. We have generated substantial net losses and negative cash flow from operations since inception and anticipate incurring significant and increasing net losses and negative cash flows from operations for the foreseeable future. Historically, we have relied on proceeds from the private placement of our common stock, our incurrence of debt and our IPO of our common stock in February 2008 to provide the funds necessary to conduct our research and development activities and to meet our other cash needs.

At June 30, 2008, we had cash and cash equivalents totaling $1.9 million; however, our working capital deficit as of such date was $8.9 million. The report of our independent registered public accounting firm dated March 19, 2008 in connection with the audit of our financial statements as of December 31, 2007 included an explanatory paragraph describing the existence of conditions that raise substantial doubt about our ability to continue as a going concern.

As of July 31, 2008, we had cash and cash equivalents of approximately $620,000. If we continue to defer approximately $1.0 million of payables and continue to defer our payment of $3.0 million to Cell Transplants International (see Part II., Item 1A. “Legal Proceedings”), we project that our existing cash resources will be sufficient to finance our operations through the end of August 2008.

We currently have no commitments or arrangements from third parties for any additional financing to fund our research and development and/or other operations. We are seeking substantial additional financing through public and/or private financing, which may include equity and/or debt financings, and through other arrangements, including collaborative arrangements. As part of such efforts, we may seek loans from certain of our executive officers, directors and/or current shareholders. We may also seek to satisfy some of our obligations to the Guarantors through the issuance of various forms of securities or debt on negotiated terms. However, financing and/or alternative arrangements with the Guarantors may not be available when we need it, or may not be available on acceptable terms.

If we are unable to defer the payments discussed above and secure additional financing by the end of August 2008, we may be forced to:

curtail or abandon our existing business plan,

reduce our headcount;

default on our debt obligations under the BlueCrest Loan;

file for bankruptcy;

seek to sell some or all of our assets; and/or

cease our operations.

Our ability to continue to enroll patients in the MARVEL Trial in accordance with our current trial schedule is contingent on our ability to secure $5.0 million of additional capital by the end of August 2008. If we do not secure $5.0 million of additional capital by the end of August 2008, we anticipate that we will be required to suspend the MARVEL Trial or more significantly defer the enrollment and treatment of patients in the MARVEL Trial. Such actions will, at a minimum, delay our projected date for completing the MARVEL Trial. Since our inception, we have invested a significant portion of our efforts and financial resources in MyoCell, and depend heavily on its success. The MARVEL Trial is our only ongoing clinical trial of MyoCell and a suspension of this trial will delay, potentially significantly, our proposed timeline for seeking regulatory approval of and commercializing MyoCell. If the MARVEL Trial is terminated for any reason, we believe we will be able to recover a significant portion of the $1.3 million in downpayments made under the agreement with the contract research organization that we are utilizing for the MARVEL Trial.

In the event of an uncured default of the BlueCrest Loan, the agreement provides that all amounts owed to BlueCrest Capital are immediately due and payable and that BlueCrest Capital has the right to enforce its security interest in the assets securing the BlueCrest Loan. In such event, BlueCrest Capital could take possession of any or all of our assets in which they hold a security interest, and dispose of those assets to the extent necessary to pay off our debts, which would materially harm our business. In the event we are forced to file for bankruptcy protection, among other things, our license agreement with the Cleveland Clinic with respect to the intellectual property related to our MyoCell with SDF-1 product candidate indicates that it will automatically terminate.

Pursuant to our underwriting agreement, dated February 19, 2008, or the Underwriting Agreement Date, with Dawson James Securities, Inc., as representative for the underwriters, we have agreed that we will not, without the consent of Dawson James Securities, Inc. issue any securities (except for shares issuable upon exercise of outstanding stock options) for 180 days following the Underwriting Agreement Date, subject to certain customary extension periods. Accordingly, our ability to obtain additional equity financing during this period is potentially subject to our obtaining the prior agreement of Dawson James Securities, Inc.

In addition, our ability to obtain additional debt financing and/or alternative arrangements with the Guarantors may be limited by the amount of, terms and restrictions of our then current debt. For instance, we do not anticipate repaying the BlueCrest Loan until its scheduled maturity in May 2010. Accordingly, until such time, we will generally be restricted from, among other things, incurring additional indebtedness or liens, with limited exceptions. Additional debt financing, if available, may involve restrictive covenants that limit or further limit our operating and financial flexibility and prohibit us from making distributions to shareholders.

If we enter into loan agreements with our executive officers, directors, and/or shareholders, although our Audit Committee will be required to approve the terms of any such transaction, there can be no assurances that these arrangements will be advantageous to us, that conflicts of interest will not arise with respect to such transactions, or that if such conflicts arise, they will be resolved in a manner favorable to us.

If we raise additional capital and/or secure alternative arrangements with the Guarantors by issuing equity, equity-related or convertible securities, the economic, voting and other rights of our existing shareholders may be diluted, and those newly issued securities may be issued at prices that are a significant discount to current and/or then prevailing market prices. In addition, any such newly issued securities may have rights superior to those of our common stock. If we obtain additional capital through collaborative arrangements, we may be required to relinquish greater rights to our technologies or product candidates than we might otherwise have or become subject to restrictive covenants that may affect our business.

BlueCrest Loan

On May 31, 2007, we entered into a Loan and Security Agreement with BlueCrest Capital Finance, L.P. pursuant to which they agreed to provide us a three-year, $5.0 million term loan. The transaction closed on June 1, 2007. The first three months of the BlueCrest Loan required payment of interest only with equal principal and interest payments over the remaining 33 months. Interest accrues at an annual rate of 12.85%. As consideration for the loan, we issued to BlueCrest Capital a warrant to purchase 65,030 shares of our common stock at an exercise price of $7.69 per share. The warrant, which is not exercisable until one year following the date the warrant was issued, has a ten-year term. This warrant had a fair value of $432,635, which amount was accounted for as additional paid in capital and reflected as a component of deferred loan costs to be amortized as interest expense over the term of the BlueCrest Loan using the effective interest method. We also paid BlueCrest Capital a fee of $100,000 to cover diligence and other costs and expenses incurred in connection with the loan.

We may voluntarily prepay the BlueCrest Loan in whole but not in part. However, we are subject to a prepayment penalty equal to 2% of the outstanding principal if prepaid during the second year of the loan and 1% of the outstanding principal if prepaid during the third year of the loan. As collateral to secure our repayment obligations to BlueCrest Capital, we have granted them a first priority security interest in all of our assets, excluding our intellectual property but including the proceeds from any sale of any of our intellectual property.

Pursuant to the agreement, we may not, among other things:

- incur additional indebtedness, except for certain permitted indebtedness. Permitted indebtedness is defined to include accounts payable incurred in the ordinary course of business, leases of equipment or property incurred in the ordinary course of business not to exceed, in the aggregate, $250,000, any unsecured debt less than $20,000 or any debt not secured by the collateral pledged to BlueCrest that is subordinated to the rights of BlueCrest pursuant to a subordination agreement satisfactory to BlueCrest in its sole discretion;
- make any principal, interest or other payments arising under or in connection with our loan from Bank of America or any other debt subordinate to the BlueCrest Loan;
- incur additional liens on any of our assets, including any liens on our intellectual property, except for certain permitted liens including but not limited to non-exclusive licenses or sub-licenses of our intellectual property in the ordinary course of business and licenses or sub-licenses of intellectual property in connection with joint ventures and corporate collaborations (provided that any proceeds from such licenses be used to pay down the BlueCrest Loan);
- voluntarily prepay any debt prior to maturity, except for accounts payable incurred in the ordinary course of business, leases of equipment or property incurred in the ordinary course of business not to exceed, in the aggregate, $250,000 and any unsecured debt less than $20,000;
- convey, sell, transfer or otherwise dispose of property, except for sales of inventory in the ordinary course of business, sales of obsolete or unneeded equipment and transfers of our intellectual property related to product candidates other than MyoCell or MyoCell SDF-1 to a currently operating or newly formed wholly owned subsidiary;
- merge with or acquire any other entity if we would not be the surviving person following such transaction;
- pay dividends (other than stock dividends) to our shareholders;
- redeem any outstanding shares of our common stock or any outstanding options or warrants to purchase shares of our common stock except in connection with a share repurchase pursuant to which we offer to pay our then existing shareholders not more than $250,000;
- enter into transactions with affiliates other than on arms-length terms; and
- make any change in any of our business objectives, purposes and operations which has or could be reasonably expected to have a material adverse effect on our business.

We also are subject to certain affirmative covenants, including but not limited to, maintaining the collateral in good operating condition and providing BlueCrest with certain financial information on a periodic basis.

In the event of an uncured event of default under the BlueCrest Loan, all amounts owed to BlueCrest Capital are immediately due and payable and BlueCrest Capital has the right to enforce its security interest in the assets securing the BlueCrest Loan. Events of default include, among others, our failure to timely make payments of principal when due, our uncured failure to timely pay any other amounts owing to BlueCrest Capital under the Loan and Security Agreement, our material breach of the representations and warranties contained in the Loan and Security Agreement, any material misstatement in any financial statement, report or certificate delivered under the Loan and Security Agreement, our uncured breach of any filing of a notice of lien with respect to any of the collateral securing the BlueCrest Loan, the entry of a money judgment against us in excess of $100,000, a change of control of the Company, the entry of a court order that prevents us from conducting all or any material part of our business and our default in the payment of any debt to any of our other lenders in excess of $100,000 or any other default or breach under any agreement relating to such debt which gives the holders of such debt the right to accelerate the debt.

Bank of America Loan

On June 1, 2007 (the "Closing Date") we entered into a loan agreement with Bank of America pursuant to which Bank of America agreed to provide us with an eight-month, $5.0 million term loan (the "Bank of America Loan") to be used for working capital purposes. The Bank of America Loan bears interest at the prime rate plus 1.5%. The prime rate was 5.00% as of June 30, 2008. As consideration for the Bank of America Loan, we paid Bank of America a fee of $100,000. Effective as of January 31, 2008, the maturity date of the Bank of America Loan was extended until June 1, 2008. On June 1, 2008, Bank of America agreed to extend the maturity date of the loan until January 5, 2009 provided that one of the Guarantors who has not yet signed the extension documents execute such documents by September 15, 2008. As consideration for the first extension of the loan, the Company paid Bank of America a fee of $50,000. As consideration for the second extension of the loan, the Company paid Bank of America a fee of $75,000. Under the terms of the Bank of America Loan, Bank of America is entitled to receive a semi-annual payment of interest and all outstanding principal and accrued interest by the maturity date.

We did not pledge any assets to Bank of America as security for this loan. However, certain of our officers, directors and shareholders (collectively, the "Guarantors") have provided limited personal guarantees and/or pledged collateral to secure the Bank of America Loan. More specifically, as of June 30, 2008, the Bank of America Loan is secured by:

a $3.3 million limited personal guarantee provided by Mr. Howard J. Leonhardt, our Chairman, Chief Executive Officer and Chief Technology Officer, and his spouse, which guarantee is secured by the Leonhardt' s pledge of securities accounts with Bank of America;

$750,000 of collateral provided by Dr. Samuel S. Ahn, who is a member of our Board of Directors;

$400,000 of collateral provided by Dr. William Murphy, who is a member of our Board of Directors; and

an aggregate of $1.1 million of collateral provided by two of our current shareholders.

We and Bank of America have agreed with BlueCrest Capital that we will not individually make any payments due under the Bank of America Loan while the BlueCrest Loan is outstanding. For our benefit, the Guarantors agreed to provide Bank of America in the aggregate up to $5.5 million of funds and/or securities to make these payments.

We have agreed to reimburse the Guarantors with interest at an annual rate of the prime rate plus 5.0% for any and all payments made by them under the Bank of America Loan as well as to pay them certain cash fees in connection with their provision of security for the Bank of America Loan. We have agreed to pay these amounts to the Guarantors upon our repayment in full of the BlueCrest Loan.

We have agreed with Dr. Murphy to use our reasonable best efforts to secure an additional person willing to provide collateral to secure the Bank of America Loan in substitution of the $400,000 of collateral being provided by Dr. Murphy and, until Dr. Murphy' s obligations to Bank of America have been released or satisfied in full, use our reasonable best efforts to restructure, amend or renew the Bank of America Loan in an effort to extend the maturity date of the Bank of America Loan.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

Recent Accounting Pronouncements

Refer to Note 1. *Organization and Summary of Significant Accounting Policies* in the notes to our consolidated financial statements for a discussion of recent accounting pronouncements.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

Our primary market risk exposure with respect to interest rates is changes in short-term interest rates in the U.S., particularly because certain of our debt arrangements represent floating rate debt and we are subject to interest rate risk. We do not use any interest rate risk management contracts to manage our fixed-to-floating ratio. The impact on our results of operations from a hypothetical 10% change in interest rates would not be significant.

The majority of our investments are expected to be in short-term debt securities. The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive without significantly increasing risk. To reduce risk, we maintain our cash and cash equivalents in short-term interest-bearing instruments, including certificates of deposit and overnight funds. We do not have any derivative financial investments in our investment portfolio.

Item 4T. Controls and Procedures

Disclosure Controls and Procedures

We have established disclosure controls and procedures to ensure that material information relating to us is made known to the officers who certify our financial reports, as well as to other members of senior management and the Board of Directors.

We carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of the end of the period covered by this quarterly report. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, our disclosure controls and procedures were effective and provided reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported accurately and within the time frames specified in the SEC' s rules and forms and accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Changes In Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended June 30, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings

On March 9, 2007, Peter K. Law, Ph.D. and Cell Transplants Asia, Limited (the "Plaintiffs") filed a complaint against us and Howard J. Leonhardt, individually, in the United States District Court, Western District of Tennessee. On February 7, 2000, we entered into a license agreement (the "Original Law License Agreement") with Dr. Law and Cell Transplants International, the predecessor entity to Cell Transplants Asia, Limited, pursuant to which Dr. Law and Cell Transplants International granted us a license to certain patents, including the patent that we rely upon to protect our MyoCell product candidate (the "Law IP"). The parties executed an addendum to the Original Law License Agreement (the "License Addendum") in July 2000, the provisions of which amended a number of terms of the Original License Agreement.

More specifically, the License Addendum provided, among other things:

The parties agreed that we would issue, and we did issue, to Cell Transplants International a five-year warrant exercisable for 1.2 million shares of our common stock at an exercise price of $8.00 per share instead of, as originally contemplated under the Original Law License Agreement, issuing to Cell Transplants International or Dr. Law 600,000 shares of our common stock and options to purchase 600,000 shares of our common stock at an exercise price of $1.80 per share. These share amounts and exercise prices do not take into account any subsequent recapitalizations or reverse stock splits.

The parties agreed that our obligation to pay Cell Transplants International a $3 million milestone payment would be triggered upon our commencement of a bona fide U.S. Phase II human clinical trial that utilizes technology claimed under the Law IP instead of, as originally contemplated under the Original Law License Agreement, upon initiation of an FDA approved human clinical study of such technology in the United States. This $3 million payment is included in accrued expenses as of June 30, 2008 and December 31, 2007.

The Plaintiffs are alleging and seeking, among other things, a declaratory judgment that the License Addendum fails for lack of consideration. Based upon this argument, the Plaintiffs allege that we are in breach of the terms of the Original Law License Agreement for failure to, among other things, (i) issue to Cell Transplants International or Dr. Law the 600,000 shares of our common stock and options to purchase 600,000 shares of our common stock contemplated by the Original Law License Agreement and (ii) pay Cell Transplants International the $3 million milestone payment upon our commencement of an FDA approved human clinical study of MyoCell in the United States.

The Plaintiffs have alleged, among other things, certain other breaches of the Original Law License Agreement not modified by the License Addendum including a purported breach of our obligation to pay Plaintiffs royalties on gross sales of products that directly read upon the claims of the Law IP and a purported breach of the contractual restriction on sublicensing the Law IP to third parties. The Plaintiffs are also alleging that we and Mr. Leonhardt engaged in a civil conspiracy against the Plaintiffs and that the court should toll any periods of limitation running against the Plaintiffs to bring any causes of action arising from or which could arise from the alleged breaches.

In addition to seeking a declaratory judgment that the License Addendum is not enforceable, the Plaintiffs are also seeking an accounting of all revenues, remunerations or benefits derived by us or Mr. Leonhardt from sales, provision and/or distribution of products and services that read directly on the Law IP, compensatory and punitive monetary damages and preliminary and permanent injunctive relief to prohibit us from sublicensing our rights to third parties.

We believe this lawsuit is without merit and intend to defend the action vigorously. We filed a motion to dismiss the proceeding against both us and Mr. Leonhardt. On July 26, 2007, the court granted our motion to dismiss Mr. Leonhardt in his individual capacity and the civil conspiracy claim. The court denied our motion to dismiss all other claims. We have filed and served our answer to the Plaintiffs' complaint. We have also asserted counterclaims against the Plaintiffs for declaratory judgment that the License Addendum is a valid and subsisting agreement, and for breach of contract with respect to various obligations undertaken by the Plaintiffs in the Original License Agreement, as amended by the License Addendum. Trial of the action is currently scheduled for September 22, 2008.

On July 11, 2008, the Plaintiffs filed a motion for partial summary judgment with respect to one claim of its complaint asserting that there is no material issue of fact regarding our obligation to pay the Plaintiffs $3.0 million pursuant to the provisions of the Original License Agreement, as amended by the License Addendum, which calls for such payment upon commencement of a bona fide Phase II clinical trial that utilizes the technology claimed under the Law IP with FDA approval in the United States. On October 24, 2007, we completed the MyoCell implantation procedure on the first patient in our MARVEL Trial. We have not yet made the $3 million payment, however the amount is included in accrued expenses as of June 30, 2008 and December 31, 2007. As discussed above, we have asserted various defenses and counterclaims to the Plaintiff' s claims, including the Plaintiff' s failure to honor certain contractual obligations to us. We intend to vigorously oppose the motion for partial summary judgment and demand a plenary trial of all of the claims and counterclaims asserted in the action. Our response to the motion was filed on August 13, 2008. There is a risk that the Court may grant the motion, and direct entry of judgment against the Company requiring payment of the $3.0 million, plus any applicable interest. As in the past, we remain open to reaching a negotiated settlement of all of our disputes with the Plaintiffs. Absent such a resolution, however, our current cash reserves are not sufficient to satisfy a $3.0 million judgment. The entry of such a judgment would also likely constitute a default under the BlueCrest Loan and the Bank of America Loan and have a significant adverse impact on the our financial condition, results of operations and MyoCell commercialization efforts. See Item 1A. "Risk Factors – *Our current cash reserves are not sufficient to satisfy a $3 million judgment; there is a risk that a court could award such a judgment."*

Except as described above, we are not presently engaged in any material litigation and are unaware of any threatened material litigation. However, the biotechnology and medical device industries have been characterized by extensive litigation regarding patents and other intellectual property rights. In addition, from time to time, we may become involved in litigation relating to claims arising from the ordinary course of our business. See Item 1A. "Risk Factors" for a discussion of various litigation related risks we face.

Item 1A. Risk Factors

Except as set forth below, there have been no material changes in our risk factors from those disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A.

The risks and uncertainties described below and disclosed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A are not the only ones facing us. Other events that we do not currently anticipate or that we currently deem immaterial also may affect our results of operations and financial condition. If any events described in the risk factors actually occur, our business, operating results, prospects and financial condition could be materially harmed. In connection with the forward-looking statements that appear elsewhere in this quarterly report, you should also carefully review the cautionary statement referred to under Part I. Item 2 "Cautionary Statement Regarding Forward-Looking Statements."

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Risks Related to Our Financial Position and Potential Need for Additional Financing

We will need to secure additional financing by the end of August 2008 in order to continue to finance our operations. If we are unable to obtain additional financing on acceptable terms, we may be forced to curtail or cease our operations.

As of June 30, 2008, we had cash and cash equivalents of $1.9 million and a working capital deficit of $8.9 million.

As of July 31, 2008, we had cash and cash equivalents of approximately $620,000. If we continue to defer approximately $1.0 million of payables and continue to defer our payment of $3.0 million to Cell Transplants International, we project that our existing cash resources will be sufficient to finance our operations through the end of August 2008.

We currently have no commitments or arrangements from third parties for any additional financing to fund our research and development and/or other operations. We are seeking substantial additional financing through public and/or private financing, which may include equity and/or debt financings, and through other arrangements, including collaborative arrangements. As part of such efforts, we may seek loans from certain of our executive officers, directors and/or current shareholders. We may also seek to satisfy some of our obligations to the Guarantors through the issuance of various forms of securities or debt on negotiated terms. However, financing and/or alternative arrangements with the Guarantors may not be available when we need it, or may not be available on acceptable terms.

If we are unable to defer the payments discussed above and secure additional financing by the end of August 2008, we may be forced to:

curtail or abandon our existing business plan,

reduce our headcount;

default on our debt obligations under the BlueCrest Loan;

file for bankruptcy;

seek to sell some or all of our assets; and/or

cease our operations.

If we are forced to take any of these steps, any investment in our common stock may be worthless.

Our ability to continue to enroll patients in the MARVEL Trial in accordance with our current trial schedule is contingent on our ability to secure $5.0 million of additional capital by the end of August 2008. If we do not secure $5.0 million of additional capital by the end of August 2008, we anticipate that we will be required to suspend the MARVEL Trial or more significantly defer the enrollment and treatment of patients in the MARVEL Trial. Such actions will, at a minimum, delay our projected date for completing the MARVEL Trial. Since our inception, we have invested a significant portion of our efforts and financial resources in MyoCell, and depend heavily on its success. The MARVEL Trial is our only ongoing clinical trial of MyoCell and a suspension of this trial will delay, potentially significantly, our proposed timeline for seeking regulatory approval of and commercializing MyoCell.

In the event of an uncured default of the BlueCrest Loan, the agreement provides that all amounts owed to BlueCrest Capital are immediately due and payable and that BlueCrest Capital has the right to enforce its security interest in the assets securing the BlueCrest Loan. In such event, BlueCrest Capital could take possession of any or all of our assets in which they hold a security interest, and dispose of those assets to the extent necessary to pay off our debts, which would materially harm our business. In the event we are forced to file for bankruptcy protection, among other things, our license agreement with the Cleveland Clinic with respect to the intellectual property related to our MyoCell with SDF-1 product candidate will automatically terminate.

Pursuant to our underwriting agreement, dated February 19, 2008, or the Underwriting Agreement Date, with Dawson James Securities, Inc., as representative for the underwriters, we have agreed that we will not, without the consent of Dawson James Securities, Inc. issue any securities (except for shares issuable upon exercise of outstanding stock options) for 180 days following the Underwriting Agreement Date, subject to certain customary extension periods. Accordingly, our ability to obtain additional equity financing during this period is potentially subject to our obtaining the prior agreement of Dawson James Securities, Inc.

In addition, our ability to obtain additional debt financing and/or alternative arrangements with the Guarantors may be limited by the amount of, terms and restrictions of our then current debt. For instance, we do not anticipate repaying the BlueCrest Loan until its scheduled maturity in May 2010. Accordingly, until such time, we will generally be restricted from, among other things, incurring additional indebtedness or liens, with limited exceptions. See "− *We have a substantial amount of debt*..." and "− *Our outstanding indebtedness to BlueCrest Capital Finance, L.P. imposes certain restrictions*..." in Item 1A. "Risk Factors" contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2007, as amended by Amendment No. 1 on Form 10-K/A. Additional debt financing, if available, may involve restrictive covenants that limit or further limit our operating and financial flexibility and prohibit us from making distributions to shareholders.

If we enter into loan agreements with our executive officers, directors, and/or shareholders, although our Audit Committee will be required to approve the terms of any such transaction, there can be no assurances that these arrangements will be advantageous to us, that conflicts of interest will not arise with respect to such transactions, or that if such conflicts arise, they will be resolved in a manner favorable to us.

If we raise additional capital and/or secure alternative arrangements with the Guarantors by issuing equity, equity-related or convertible securities, the economic, voting and other rights of our existing shareholders may be diluted, and those newly issued securities may be issued at prices that are a significant discount to current and/or then prevailing market prices. In addition, any such newly issued securities may have rights superior to those of our common stock. If we obtain additional capital through collaborative arrangements, we may be required to relinquish greater rights to our technologies or product candidates than we might otherwise have or become subject to restrictive covenants that may affect our business.

Our current cash reserves are not sufficient to satisfy a $3 million judgment; there is a risk that a court could award such a judgment.

On July 11, 2008, Peter K. Law, Ph.D. and Cell Transplants International, the licensors of the Law IP filed a motion for partial summary judgment with respect to one claim of its complaint currently pending against us seeking immediate entry of judgment against us for $3.0 million, plus applicable interest. Trial of the action, which is before the United States District Court for the Western District of Tennessee, is currently scheduled to begin on September 22, 2008. The motion for partial summary judgment asserts that there is no material issue of fact regarding our obligation to pay Dr. Law and Cell Transplants $3.0 million pursuant to the provisions of the License Agreement, as amended, between us, Dr. Law and Cell Transplants, which calls for such payment upon commencement of a bona fide Phase II clinical trial that utilizes the technology claimed under the Law IP with FDA approval in the United States.

As previously disclosed, we have asserted various defenses and counterclaims to Dr. Law' s and Cell Transplants claims, including Dr. Law' s and Cell Transplant International' s failure to honor certain contractual obligations to us. These obligations include Dr. Law' s and Cell Transplant' s contractual obligations to supply us with cultured myoblasts, provide us with all pertinent and critical information necessary for us to file an investigational new drug application ("IND") with the FDA for MyoCell and have it approved by the FDA, including information concerning the cell culturing process and pre-clinical testing data, as well as their obligation to conduct research of "mutual interest" with $500,000 in funding we provided. As a result of Dr. Law' s and Cell Transplant' s failure to fulfill these and other obligations, we were forced to incur substantial costs for, among other things, preparing and obtaining approval for the IND for MyoCell and developing cell culturing processes when Dr. Law and Cell Transplants failed to supply us with cultured myoblasts, as required. We have vigorously opposed the motion for partial summary judgment and demanded a plenary trial of all of the claims and counterclaims asserted in the action. Our response to the motion was filed on August 13, 2008.

There is a risk that the Court may grant the motion, and direct entry of judgment against us requiring payment of the $3.0 million, plus any applicable interest. As in the past, we remain open to reaching a negotiated settlement of all of our disputes with Dr. Law and Cell Transplants. However, absent such a resolution or our procurement of additional capital, our current cash reserves are not sufficient to satisfy a $3.0 million judgment. The entry of such a judgment would likely constitute a default under the BlueCrest Loan and the Bank of America Loan and have a significant adverse impact on our financial condition, results of operations and MyoCell commercialization efforts.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

During the quarter ended June 30, 2008, we issued a warrant to purchase 40,000 shares of our common stock at an exercise price of $6.00 per share and an aggregate exercise price of $240,000 in an unregistered transaction pursuant to the exemption from registration provided by Section 4(2) of the Securities Act.

Use of Proceeds

On February 22, 2008, we completed our initial public offering of 1,100,000 shares of our common stock pursuant to a Registration Statement on Form S-1 (Registration No. 333-140672). Dawson James Securities, Inc. acted as the representative of the underwriters.

As a result of the initial public offering:

- we raised approximately $1.45 million in net proceeds from the sale of shares of our common stock in the offering, after deducting underwriting discounts and commissions and offering costs of approximately $4.32 million; and
- we generated approximately $4.56 million of cash proceeds from the offering, which was approximately $3.11 million greater than the net proceeds of this offering due to our payment of $3.11 million of various offering expenses prior the completion of the offering.

Subsequent to the completion of our IPO, we have expended approximately $3.0 million in connection with our MARVEL Trial, $1.1 million for the repayment of a portion of principal and interest on the BlueCrest Loan and $150,000 pursuant to our license agreements.

Item 4. Submission of Matters to a Vote of Security Holders

Our Annual Meeting of Shareholders (the "Annual Meeting") was held in Doral, Florida, on July 30, 2008 for the following purposes:

To elect eight members to our Board of Directors to hold office until the next Annual Meeting of Shareholders or until their successors are duly elected and qualified;

To consider and vote upon a proposal to approve of and ratify the selection of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2008;

To approve of an amendment to Article II of our Amended and Restated Articles of Incorporation, as amended, to increase the number of authorized shares of our common stock from 50,000,000 to 75,000,000 shares; and

To approve of the establishment of the Bioheart, Inc. Omnibus Equity Compensation Plan.

The number of outstanding shares of our Common Stock as of June 6, 2008, the record date for the Annual Meeting, was 14,447,138 shares. 7,923,496 shares of Common Stock were represented in person or by proxy at the Annual Meeting.

Pursuant to our Articles of Incorporation, shareholders are entitled to one vote for each share of Common Stock.

The following directors were elected at the Annual Meeting: (i) Howard J. Leonhardt, (ii) Samuel S. Ahn, M.D., MBA, (iii) Bruce C. Carson, (iv) Peggy A. Farley, (v) David J. Gury, (vi) William P. Murphy, Jr., M.D., (vii) Richard T. Spencer, III and (viii) Mike Tomas.

The following table sets forth the number of votes cast for, against, or withheld for each director nominee:

Director Nominee	Votes Cast For	Votes Cast Against	Votes Withheld
Howard J. Leonhardt	7,889,292	–	34,204
Samuel S. Ahn, M.D., MBA	7,889,092	–	34,404
Bruce C. Carson	7,889,292	–	34,204
Peggy A. Farley	7,889,042	–	34,454
David J. Gury	7,889,292	–	34,204
William P. Murphy, Jr., M.D.	7,881,569	–	41,927
Richard T. Spencer III	7,889,292	–	34,204

With respect to the proposal to approve of and ratify the selection of Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2008: (i) 7,695,157 votes were cast for such proposal, (ii) 15,482 votes were cast against such proposal and (iii) 212,857 shares abstained from voting on such proposal. No votes were withheld nor were there any broker non-votes with respect to such proposal. Accordingly, the proposal to approve of and ratify Grant Thornton LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2008 was approved by the shareholders.

With respect to the proposal to approve of the amendment to our Articles of Incorporation: (i) 7,492,985 votes were cast for such proposal, (ii) 223,979 votes were cast against such proposal and (iii) 206,532 shares abstained from voting on such proposal. No votes were withheld nor were there any broker non-votes with respect to such proposal. Accordingly, the proposal to approve of the amendment to our Articles of Incorporation was approved.

With respect to the proposal to approve of the establishment of our Omnibus Equity Compensation Plan: (i) 6,862,384 votes were cast for such proposal, (ii) 217,115 votes were cast against such proposal and (iii) 220,678 shares abstained from voting on such proposal. In addition, there were 623,319 broker non-votes with respect to such proposal. No votes were withheld. Accordingly, the proposal to approve of the establishment of our Omnibus Equity Compensation Plan was approved.

Item 6. Exhibits

Exhibit No.		Exhibit Description
3.1	(6)	Amended and Restated Articles of Incorporation of the registrant, as amended.
3.2	(9)	Articles of Amendment to the Articles of Incorporation of the registrant.
3.3	(8)	Amended and Restated Bylaws.
4.1	(5)	Loan and Security Agreement, dated as of May 31, 2007 by and between BlueCrest Capital Finance, L.P. and the registrant.
10.1**	(1)	1999 Officers and Employees Stock Option Plan.
10.2**	(1)	1999 Directors and Consultants Stock Option Plan.
10.3	(1)	Form of Option Agreement under 1999 Officers and Employees Stock Option Plan.
10.4	(3)	Form of Option Agreement under 1999 Directors and Consultants Stock Option Plan.
10.5**	(4)	Employment Letter Agreement between the registrant and Scott Bromley, dated August 24, 2006.
10.6	(1)	Lease Agreement between the registrant and Sawgrass Business Plaza, LLC, as amended, dated November 14, 2006.
10.7	(1)	Asset Purchase Agreement between the registrant and Advanced Cardiovascular Systems, Inc., dated June 24, 2003.
10.8	(4)	Conditionally Exclusive License Agreement between the registrant, Dr. Peter Law and Cell Transplants International, LLC, dated February 7, 2000, as amended.
10.9	(4)	Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant, Howard J. Leonhardt and Brenda Leonhardt.
10.10	(4)	Loan Guarantee, Payment and Security Agreement, dated as of June 1, 2007, by and between the registrant and William P. Murphy Jr., M.D.
10.11	(4)	Loan Agreement, dated as of June 1, 2007, by and between the registrant and Bank of America, N.A.
10.12	(4)	Warrant to purchase shares of the registrant' s common stock issued to Howard J. Leonhardt and Brenda Leonhardt.
10.13	(4)	Warrant to purchase shares of the registrant' s common stock issued to Howard J. Leonhardt and Brenda Leonhardt.
10.14	(4)	Warrant to purchase shares of the registrant' s common stock issued to William P. Murphy Jr., M.D.
10.15	(4)	Warrant to purchase shares of the registrant' s common stock issued to the R&A Spencer Family Limited Partnership.
10.16	(4)	Material Supply Agreement, dated May 10, 2007, by and between the registrant and Biosense Webster.
10.17	(4)	Supply and License Agreement, dated June 7, 2007, by and between the registrant and BioLife Solutions, Inc.***

Exhibit No.		Exhibit Description
10.18	(5)	Warrant to purchase shares of the registrant' s common stock issued to BlueCrest Capital Finance, L.P.
10.19	(6)	Loan Guarantee, Payment and Security Agreement, dated as of September 12, 2007, by and between the registrant and Samuel S. Ahn, M.D.
10.20	(6)	Loan Guarantee, Payment and Security Agreement, dated as of September 12, 2007, by and between the registrant and Dan Marino.
10.21	(6)	Warrant to purchase shares of the registrant' s common stock issued to Samuel S. Ahn, M.D.
10.22	(6)	Loan Guarantee, Payment and Security Agreement, dated as of September 19, 2007, by and between the registrant and Jason Taylor.
10.23	(7)	Loan Guarantee, Payment and Security Agreement, dated as of October 10, 2007, by and between the registrant and Howard and Brenda Leonhardt.
10.24	(7)	Warrant to purchase shares of the registrant' s common stock issued to Howard and Brenda Leonhardt.
10.25	(7)	Second Amendment to Loan Guarantee, Payment and Security Agreement, dated as of October 10, 2007, by and between the registrant and Howard and Brenda Leonhardt.
10.26	(7)	Second Amendment to Loan Guarantee, Payment and Security Agreement, dated as of October 10, 2007, by and between the registrant and William P. Murphy, Jr., M.D.
10.27*,**		Bioheart, Inc. Omnibus Equity Compensation Plan.
31.1*		Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*		Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*		Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*		Certification Pursuant to 18 U.S.C. Section 1350, As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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* Filed herewith.

** Indicates management contract or compensatory plan.

*** Portions of this document have been omitted and were filed separately with the SEC on August 9, 2007 pursuant to a request for confidential treatment.

(1) Incorporated by reference to the Company' s Form S-1 filed with the Securities and Exchange Commission on February 13, 2007.

(2) Incorporated by reference to Amendment No. 1 to the Company' s Form S-1 filed with the Securities and Exchange Commission on June 5, 2007.

(3) Incorporated by reference to Amendment No. 2 to the Company' s Form S-1 filed with the Securities and Exchange Commission on July 12, 2007.

(4) Incorporated by reference to Amendment No. 3 to the Company' s Form S-1 filed with the Securities and Exchange Commission on August 9, 2007.

(5) Incorporated by reference to Amendment No. 4 to the Company' s Form S-1 filed with the Securities and Exchange Commission on September 6, 2007.

(6) Incorporated by reference to Amendment No. 5 to the Company' s Form S-1 filed with the Securities and Exchange Commission on October 1, 2007.

(7) Incorporated by reference to Post-effective Amendment No. 1 to the Company' s Form S-1 filed with the Securities and Exchange Commission on October 11, 2007.

(8) Incorporated by reference to the Company Current Report on Form 8-K filed with the Securities and Exchange Commission on July 3, 2008.

(9) Incorporated by reference to the Company Current Report on Form 8-K filed with the Securities and Exchange Commission on August 8, 2008.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Bioheart, Inc.

Date: August 14, 2008

By: /s/ William H. Kline
William H. Kline
Chief Financial Officer and Principal Financial Officer

INDEX OF EXHIBITS

Exhibit No.	Exhibit Description
10.27	Bioheart, Inc. Omnibus Equity Compensation Plan
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Exhibit 10.27

BIOHEART, INC.
OMNIBUS EQUITY COMPENSATION PLAN

TABLE OF CONTENTS

ARTICLE I

GENERAL PROVISIONS

1.1 The Plan is designed for the benefit of the directors, executives and key employees of the Company (i) to attract and retain for the Company personnel of exceptional ability; (ii) to motivate such personnel through added incentives to make a maximum contribution to greater profitability; (iii) to develop and maintain a highly competent management team; and (iv) to be competitive with other companies with respect to executive compensation.

1.2 Awards under the Plan may be made to Participants in the form of (i) Incentive Stock Options; (ii) Nonqualified Stock Options; (iii) Stock Appreciation Rights; (iv) Restricted Stock; (v) Deferred Stock; (vi) Stock Awards; (vii) Performance Shares; (viii) Other Stock-Based Awards; and (ix) other forms of equity-based compensation as may be provided and are permissible under this Plan and the law.

1.3 The Plan shall be effective on May 28, 2008 (the "Effective Date"), subject to the approval of the Plan by a majority of the votes cast by the holders of the Company' s Common Stock, which may be voted at the next annual or special shareholder' s meeting. Any Awards granted under the Plan prior to such approval shall be effective when made (unless otherwise specified by the Committee at the time of grant) but shall be conditioned on, and subject to, the approval of the Plan by the Company' s shareholders.

ARTICLE II

DEFINITIONS

Except where the context otherwise indicates, the following definitions apply:

2.1 "Acceleration Event" means the occurrence of an event defined in Article XIII of the Plan.

2.2 "Act" means the Securities Exchange Act of 1934, as amended.

2.3 "Agreement" means the written agreement evidencing each Award granted to a Participant under the Plan.

2.4 "Award" means an award granted to a Participant in accordance with the provisions of the Plan, including, but not limited to, a Stock Option, Stock Right, Restricted or Deferred Stock, Stock Award, Performance Share, Other Stock-Based Award, or any combination of the foregoing.

2.5 "Board" means the Board of Directors of the Company.

2.6 "Change in Control" shall have the meaning set forth in Section 13.2 of the Plan.

2.7 “Change in Control Price” shall have the meaning set forth in Section 13.7 of the Plan.

2.8 “Code” means the Internal Revenue Code of 1986, as amended.

2.9 “Committee” means the Compensation Committee of the Board.

2.10 “Company” means Bioheart, Inc., a Florida corporation.

2.11 “Deferral Period” means the period commencing on the date an Award of Deferred Stock is granted and ending on such date as the Committee shall determine.

2.12 “Deferred Stock” means the stock awarded under Article IX of the Plan.

2.13 “Disability” means disability as determined under procedures established by the Committee or in any Award.

2.14 “Discount Stock Options” means the Nonqualified Stock Options, which provide for an exercise price of less than the Fair Market Value of the Stock at the date of the Award.

2.15 “Early Retirement” means retirement from active employment with the Company, with the express consent of the Committee, pursuant to the early retirement provisions established by the Committee or in any Award.

2.16 “Effective Date” shall have the meaning set forth in Section 1.3 of the Plan.

2.17 “Elective Deferral Period” shall have the meaning set forth in Section 9.3 of the Plan.

2.18 “Eligible Participant” means any director, executive or key employee of the Company, as shall be determined by the Committee, as well as any other person whose participation the Committee determines is in the best interest of the Company, subject to limitations as may be provided by the Code, the Act or the Committee. For purposes of Article IV and Incentive Stock Options that may be granted hereunder, the term “Eligible Participant” shall be limited to an executive or other key employee meeting the qualifications for receipt of an Incentive Stock Option under the provisions of Section 422 of the Code.

2.19 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

2.20 “Fair Market Value” means, with respect to any given day, the closing price of the Stock reported on the Nasdaq Global Market tier of The Nasdaq Stock Market for such day, or if the Stock was not traded on the Nasdaq Global Market tier of The Nasdaq Stock Market on such day, then on the next day on which the Stock was traded, all as reported by such source as the Committee may select. The Committee may establish an alternative method of determining Fair Market Value. Notwithstanding the foregoing, the Committee shall, to the extent Section 409A of the Code applies, use a valuation method that satisfies Section 409A and any regulations thereunder.

2.21 “Incentive Stock Option” means a Stock Option granted under Article IV of the Plan, and as defined in Section 422 of the Code.

2.22 “Limited Stock Appreciation Rights” means a Stock Right which is exercisable only in the event of a Change in Control, as described in Section 6.8 of this Plan, which provides for an amount payable solely in cash, equal to the excess of the Stock Appreciation Right Fair Market Value of a share of Stock on the day the Stock Right is surrendered over the price at which a Participant could exercise a related Stock Option to purchase the share of Stock.

2.23 “Nonqualified Stock Option” means a Stock Option granted under Article V of the Plan.

2.24 “Normal Retirement” means retirement from active employment with the Company or any Subsidiary on or after age 65, or pursuant to such other requirements as may be established by the Committee or in any Award.

2.25 “Option Grant Date” means, as to any Stock Option, the latest of:

(a) the date on which the Committee grants the Stock Option to the Participant;

(b) the date the Participant receiving the Stock Option becomes an employee of the Company or its Subsidiaries, to the extent employment status is a condition of the grant or a requirement of the Code or the Act; or

(c) such other date (other than the dates described in (i) and (ii) above) as the Committee may designate.

2.26 “Other Stock-Based Award” means an Award under Article XII of the Plan that is valued in whole or in part by reference to, or is otherwise based on, Stock.

2.27 “Participant” means an Eligible Participant to whom an Award of equity-based compensation has been granted and who has entered into an Agreement evidencing the Award.

2.28 “Performance Share” means an Award under Article XI of the Plan of a unit valued by reference to a designated number of shares of Stock, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including, without limitation, cash, Stock, or any combination thereof, upon achievement of such Performance Objectives during the Performance Period as the Committee shall establish at the time of such Award or thereafter.

2.29 “Performance Objectives” shall have the meaning set forth in Article XI of the Plan.

2.30 “Performance Period” shall have the meaning set forth in Article XI of the Plan.

2.31 “Plan” means the Bioheart, Inc. Omnibus Equity Compensation Plan, as amended from time to time.

2.32 “Related Stock Appreciation Right” shall have the meaning set forth in Section 6.1 of the Plan.

2.33 “Restricted Stock” means an Award of Stock under Article VIII of the Plan, which Stock is issued with the restriction that the holder may not sell, transfer, pledge, or assign such Stock and with such other restrictions as the Committee, in its sole discretion, may impose (including, without limitation, any restriction on the right to vote such Stock, and the right to receive any cash dividends), which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee may deem appropriate.

2.34 “Restriction Period” means the period commencing on the date an Award of Restricted Stock is granted and ending on such date as the Committee shall determine.

2.35 “Retirement” means Normal or Early Retirement.

2.36 “Stock” means shares of common stock par value $.001 per share of the Company, as may be adjusted pursuant to the provisions of Section 3.10.

2.37 “Stock Appreciation Right” means a Stock Right, as described in Article VI of this Plan, which provides for an amount payable in Stock and/or cash, as determined by the Committee, equal to the excess of the Fair Market Value of a share of Stock on the day the Stock Right is exercised over the price at which the Participant could exercise a related Stock Option to purchase the share of Stock; provided that, such price shall not be less than one hundred percent (100%) of the Fair Market Value of the Stock on the date of grant.

2.38 “Stock Appreciation Right Fair Market Value” means a value established by the Committee for the exercise of a Stock Appreciation Right or a Limited Stock Appreciation Right.

2.39 “Stock Award” means an Award of Stock granted in payment of compensation, as provided in Article X of the Plan.

2.40 “Stock Option” means an Award under Article IV or V of the Plan of an option to purchase Stock. A Stock Option may be either an Incentive Stock Option or a Nonqualified Stock Option.

2.41 “Stock Right” means an Award under Article VI of the Plan. A Stock Right may be either a Stock Appreciation Right or a Limited Stock Appreciation Right.

2.42 “Termination of Employment” means the discontinuance of employment of a Participant with the Company. The determination of whether a Participant has discontinued employment shall be made by the Committee in its discretion. In determining whether a Termination of Employment has occurred, the Committee may provide that service as a consultant or service with a business enterprise in which the Company has a significant ownership interest shall be treated as employment with the Company. The Committee shall have the discretion, exercisable either at the time the Award is granted or at the time the Participant terminates employment, to establish as a provision applicable to the exercise of one or more Awards that during the limited period of exercisability following Termination of Employment, the Award may be exercised not only with respect to the number of shares of Stock for which it

is exercisable at the time of the Termination of Employment but also with respect to one or more subsequent installments for which the Award would have become exercisable had the Termination of Employment not occurred. Notwithstanding the foregoing, Termination of Employment shall, for purposes of any payment under an Award to which Section 409A of Code applies, have the same meaning as "separation from service" under Section 409A (and any regulations thereunder).

ARTICLE III

ADMINISTRATION

3.1 This Plan shall be administered by the Committee. Members of the Committee may vote on any matters affecting the administration of the Plan or the grant of Awards pursuant to the Plan, except that no such member shall act upon the granting of an Award to himself or herself, but any such member may be counted in determining the existence of a quorum at any meeting of the Committee or Board during which action is taken with respect to the granting of an Award to such member. The Committee, in its discretion, may delegate to one or more of its members such of its powers, as it deems appropriate. The Committee also may limit the power of any member to the extent necessary to comply with Rule 16b-3 under the Act or any other law. The Board, in its discretion, may require that all or any final actions or determinations by the Committee be made by or be subject to approval or ratification by the Board before becoming effective. To the extent all or any decisions, actions, or determinations relating to the administration of the Plan are made by the Board, the Board shall have all power and authority granted to the Committee in this Article and otherwise in this Plan, and for these purposes, all references to the "Committee" herein shall be deemed to include the Board.

3.2 The Committee shall have the exclusive right to interpret, construe and administer the Plan, to select the persons who are eligible to receive an Award, and to act in all matters pertaining to the granting of an Award and the contents of the Agreement evidencing the Award, including, without limitation, the determination of the number of Stock Options, Stock Rights, shares of Stock or Performance Shares subject to an Award and the form, terms, conditions and duration of each Award, and any amendment thereof consistent with the provisions of the Plan. All acts, determinations and decisions of the Committee made or taken pursuant to grants of authority under the Plan or with respect to any questions arising in connection with the administration and interpretation of the Plan, including the severability of any and all of the provisions thereof, shall be conclusive, final and binding upon all Participants, Eligible Participants and their beneficiaries.

3.3 The Committee may adopt such rules, regulations and procedures of general application for the administration of this Plan, as it deems appropriate.

3.4 Without limiting the foregoing Sections 3.1, 3.2 and 3.3, and notwithstanding any other provisions of the Plan, the Committee is authorized to take such action as it determines to be necessary or advisable, and fair and equitable to Participants, with respect to an Award in the event of an Acceleration Event as defined in Article XIII. Such action may include, but shall not be limited to, establishing, amending or waiving the forms, terms, conditions and duration of an Award and the Award Agreement, so as to provide for earlier, later, extended or additional times for exercise or payments, differing methods for calculating payments, alternate forms and

amounts of payment, an accelerated release of restrictions or other modifications. The Committee may take such actions pursuant to this Section 3.4 by adopting rules and regulations of general applicability to all Participants or to certain categories of Participants, by including, amending or waiving terms and conditions in an Award and the Award Agreement, or by taking action with respect to individual Participants.

3.5 The aggregate number of shares of Stock, which are reserved for issuance under the Plan, shall be five million (5,000,000). The aggregate number of shares of stock reserved for issuance under the plan shall be adjusted in accordance with Section 3.10.

(a) If, for any reason, any shares of Stock or Performance Shares awarded or subject to purchase under the Plan are not delivered or purchased, or are reacquired by the Company, for reasons including, but not limited to, a forfeiture of Restricted Stock or termination, expiration or cancellation of a Stock Option, Stock Right or Performance Share, or any other termination of an Award without payment being made in the form of Stock (whether or not Restricted Stock), such shares of Stock or Performance Shares shall not be charged against the aggregate number of shares of Stock available for Award under the Plan, and shall again be available for Award under the Plan.

(b) For all purposes under the Plan, each Performance Share awarded shall be counted as one share of Stock subject to an Award.

(c) To the extent a Stock Right granted in connection with a Stock Option is exercised without payment being made in the form of Stock (whether or not Restricted Stock), the shares of Stock which otherwise would have been issued upon the exercise of such related Stock Option shall not be charged against the aggregate number of shares of Stock subject to an Award under the Plan, and shall again be available for Award under the Plan.

3.6 Each Award granted under the Plan shall be evidenced by a written Award Agreement. Each Award Agreement shall be subject to and incorporate (by reference or otherwise) the applicable terms and conditions of the Plan, and any other terms and conditions (not inconsistent with the Plan) required by the Committee.

3.7 The Company shall not be required to issue or deliver any certificates for shares of Stock prior to:

(a) the listing of such shares on any stock exchange on which the Stock may then be listed; and

(b) the completion of any registration or qualification of such shares of Stock under any federal or state law, or any ruling or regulation of any government body which the Company shall, in its discretion, determine to be necessary or advisable.

3.8 All certificates for shares of Stock delivered under the Plan shall also be subject to such stop-transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Stock is then listed and any applicable federal or state laws, and the Committee may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions. In making such determination, the Committee may rely upon an opinion of counsel for the Company.

3.9 Subject to the restrictions on Restricted Stock, as provided in Article VIII of the Plan and in the Restricted Stock Award Agreement, each Participant who receives an Award of Restricted Stock shall have all of the rights of a shareholder with respect to such shares of Stock, including the right to vote the shares to the extent, if any, such shares possess voting rights and receive dividends and other distributions. Except as provided otherwise in the Plan or in an Award Agreement, no Participant awarded a Stock Option, Stock Right, Deferred Stock, Stock Award or Performance Share shall have any right as a shareholder with respect to any shares of Stock covered by his or her Stock Option, Stock Right, Deferred Stock, Stock Award or Performance Share prior to the date of issuance to him or her of a certificate or certificates for such shares of Stock.

3.10 If any reorganization, recapitalization, reclassification, stock split-up, stock dividend, or consolidation of shares of Stock, merger or consolidation of the Company or its Subsidiaries or sale or other disposition by the Company or its Subsidiaries of all or a portion of its assets, any other change in the Company' s or its Subsidiaries' corporate structure, or any distribution to shareholders other than a cash dividend results in the outstanding shares of Stock, or any securities exchanged therefor or received in their place, being exchanged for a different number or class of shares of Stock or other securities of the Company, or for shares of Stock or other securities of any other Company; or new, different or additional shares or other securities of the Company or of any other Company being received by the holders of outstanding shares of Stock, then equitable adjustments shall be made by the Committee in:

(a) the limitation of the aggregate number of shares of Stock that may be awarded as set forth in Sections 3.5, 3.15, and 4.1(e) (to the extent permitted under Section 422 of the Code) of the Plan;

(b) the number of shares and class of Stock that may be subject to an Award, and which have not been issued or transferred under an outstanding Award;

(c) the purchase price to be paid per share of Stock under outstanding Stock Options and the number of shares of Stock to be transferred in settlement of outstanding Stock Rights; and

(d) the terms, conditions or restrictions of any Award and Award Agreement, including the price payable for the acquisition of Stock; provided, however, that all adjustments made as the result of the foregoing in respect of (i) each Incentive Stock Option shall be made so that such Stock Option shall continue to be an Incentive Stock Option, as defined in Section 422 of the Code and (ii) any Award that is subject to Section 409A of the Code shall comply with Section 409A and any regulations thereunder.

3.11 In addition to such other rights of indemnification as they may have as directors or as members of the Committee, the members of the Committee shall be indemnified by the Company against reasonable expenses, including attorney' s fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan or any Award granted thereunder, and against

all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment or settlement in any such action, suit or proceeding, except as to matters as to which the Committee member has been negligent or engaged in misconduct in the performance of his duties; provided, that within sixty (60) days after institution of any such action, suit or proceeding, a Committee member shall in writing offer the Company the opportunity, at its own expense, to handle and defend the same. Any payments required under this Section 3.11 that are subject to Section 409A of the Code shall be made by the end of year following the year in which the expenses and liabilities were incurred.

3.12 The Committee may require each person purchasing shares of Stock pursuant to a Stock Option or other Award under the Plan to represent to and agree with the Company in writing that he is acquiring the shares of Stock without a view to distribution thereof. The certificates for such shares of Stock may include any legend, which the Committee deems appropriate to reflect any restrictions on transfer.

3.13 The Committee shall be authorized to make adjustments in a performance based criteria or in the terms and conditions of other Awards in recognition of unusual or nonrecurring events affecting the Company or its financial statements or changes in applicable laws, regulations or accounting principles. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement in the manner and to the extent it shall deem desirable to carry it into effect or comply with applicable law. In the event the Company (or any Subsidiary, if applicable) shall assume outstanding employee benefit awards or the right or obligation to make future such awards in connection with the acquisition of another Company or business entity, the Committee may, in its discretion, make such adjustments in the terms of Awards under the Plan as it shall deem appropriate.

3.14 The Committee shall have full power and authority to determine whether, to what extent and under what circumstances, any Award shall be canceled or suspended. In particular, but without limitation, all outstanding Awards to any Participant shall be canceled if (a) the Participant, without the consent of the Committee, while employed by the Company or after termination of such employment, becomes associated with, employed by, renders services to, or owns any interest in (other than any nonsubstantial interest, as determined by the Committee), any business that is in competition with the Company or with any business in which the Company has a substantial interest as determined by the Committee; or (b) is terminated for cause as determined by the Committee.

3.15 Subject to the limitations of Section 3.5, the maximum number of shares of Stock with respect to which an Award or Awards of Stock Options and/or Stock Rights under the Plan may be granted during any calendar year to any participant shall be five hundred thousand (500,000) shares.

ARTICLE IV

INCENTIVE STOCK OPTIONS

4.1 Each provision of this Article IV and of each Incentive Stock Option granted hereunder shall be construed in accordance with the provisions of Section 422 of the Code, and

any provision hereof that cannot be so construed shall be disregarded. Incentive Stock Options shall be granted only to Eligible Participants, each of whom may be granted one or more such Incentive Stock Options at such time or times determined by the Committee following the Effective Date until the ten (10) year anniversary of the Effective Date, subject to the following conditions:

(a) The Incentive Stock Option price per share of Stock shall be set in the Award Agreement, but shall not be less than one hundred percent (100%) of the Fair Market Value of the Stock at the time of the Option Grant Date.

(b) The Incentive Stock Option and its related Stock Right, if any, may be exercised in full or in part from time to time within ten (10) years from the Option Grant Date, or such shorter period as may be specified by the Committee in the Award; provided, that in any event, the Incentive Stock Option and related Stock Right shall lapse and cease to be exercisable upon, or within such period following, a Termination of Employment as shall have been determined by the Committee and as specified in the Incentive Stock Option Award Agreement or its related Stock Right Award Agreement; provided, however, that such period following a Termination of Employment shall not exceed three (3) months unless employment shall have terminated:

(i) as a result of death or Disability, in which event, such period shall not exceed one year after the date of death or Disability; and

(ii) as a result of death, if death shall have occurred following a Termination of Employment and while the Incentive Stock Option or Stock Right was still exercisable, in which event, such period shall not exceed one year after the date of death;

provided, further, that such period following a Termination of Employment shall in no event extend the original exercise period of the Incentive Stock Option or any related Stock Right.

(c) The aggregate Fair Market Value, determined as of the Option Grant Date, of the shares of Stock with respect to which Incentive Stock Options are exercisable for the first time during any calendar year by any Eligible Participant shall not exceed one hundred thousand dollars ($100,000); provided, however, to the extent permitted under Section 422 of the Code:

(i) if a Participant' s employment is terminated by reason of death, Disability or Retirement and the portion of any Incentive Stock Option that is otherwise exercisable during the post-termination period applied without regard to the one hundred thousand dollar ($100,000) limitation contained in Section 422 of the Code is greater than the portion of such option that is immediately exercisable as an Incentive Stock Option during such post-termination period under Section 422, such excess shall be treated as a Nonqualified Stock Option; and

(ii) if the exercise of an Incentive Stock Option is accelerated by reason of an Acceleration Event, any portion of such Award that is not exercisable as an Incentive Stock Option by reason of the one hundred thousand dollar ($100,000) limitation contained in Section 422 of the Code shall be treated as a Nonqualified Stock Option.

Notwithstanding the foregoing, no Stock Option that is intended to be an Incentive Stock Option shall be invalid for failure to qualify as such and the Company shall honor any such stock Option as a Nonqualified Stock Option.

(d) Incentive Stock Options shall be granted only to an Eligible Participant who, at the time of the Option Grant Date, does not own Stock possessing more than 10% of the total combined voting power of all classes of stock of the Company; provided, however, the foregoing restriction shall not apply if at the time of the Option Grant Date the option price is at least one hundred ten percent (110%) of the Fair Market Value of the Stock subject to the Incentive Stock Option and such Incentive Stock Option by its terms is not exercisable after the expiration of five (5) years from the Option Grant Date.

(e) The Committee may adopt any other terms and conditions which it determines should be imposed for the Incentive Stock Option to qualify under Section 422 of the Code, as well as any other terms and conditions not inconsistent with this Article IV as determined by the Committee.

4.2 The Committee may at any time offer to buy out for a payment in cash, Stock, Deferred Stock or Restricted Stock an Incentive Stock Option previously granted, based on such terms and conditions as the Committee shall establish and communicate to the Participant at the time that such offer is made.

4.3 If the Incentive Stock Option Award Agreement so provides, the Committee may, to the extent consistent with Section 409A of the Code (and any regulations thereunder), require that all or part of the shares of Stock to be issued upon the exercise of an Incentive Stock Option shall take the form of Deferred or Restricted Stock, which shall be valued on the date of exercise, as determined by the Committee, on the basis of the Fair Market Value of such Deferred Stock or Restricted Stock determined without regard to the deferral limitations and/or forfeiture restrictions involved.

ARTICLE V

NONQUALIFIED STOCK OPTIONS

5.1 One or more Stock Options may be granted as Nonqualified Stock Options to Eligible Participants to purchase shares of Stock at such time or times determined by the Committee, following the Effective Date, subject to the terms and conditions set forth in this Article V.

5.2 The Nonqualified Stock Option price per share of Stock shall be established in the Award Agreement, but shall not be less than one hundred percent (100%) of the Fair Market Value of the Stock on the Option Grant Date.

5.3 The Nonqualified Stock Option and its related Stock Right, if any, may be exercised in full or in part from time to time within such period as may be specified by the Committee or in the Award Agreement; provided, that, in any event, the Nonqualified Stock Option and the related Stock Right shall lapse and cease to be exercisable upon, or within such period following, Termination of Employment as shall have been determined by the Committee and as specified in the Nonqualified Stock Option Award Agreement or Stock Right Award Agreement; provided, however, that such period following Termination of Employment shall not exceed three (3) months unless employment shall have terminated:

(a) as a result of Retirement or Disability, in which event, such period shall not exceed one year after the date of Retirement or Disability, or within such longer period as the Committee may specify; and

(b) as a result of death, or if death shall have occurred following a Termination of Employment and while the Nonqualified Stock Option or Stock Right was still exercisable, in which event, such period may exceed one year after the date of death, as provided by the Committee or in the Award Agreement.

5.4 The Nonqualified Stock Option Award Agreement may include any other terms and conditions not inconsistent with this Article V or with Article VII, as determined by the Committee.

ARTICLE VI

STOCK APPRECIATION RIGHTS

6.1 A Stock Appreciation Right may be granted to an Eligible Participant in connection with an Incentive Stock Option or a Nonqualified Stock Option granted under Article IV or Article V of this Plan (a "Related Stock Appreciation Right"), or may be granted independent of any related Incentive or Nonqualified Stock Option.

6.2 A Related Stock Appreciation Right shall entitle a holder of a Stock Option, within the period specified for the exercise of the Stock Option, to surrender the unexercised Stock Option (or a portion thereof) and to receive in exchange therefor a payment in cash or shares of Stock having an aggregate value equal to the amount by which the Fair Market Value of each share of Stock exceeds the Stock Option price per share of Stock, times the number of shares of Stock under the Stock Option, or portion thereof, which is surrendered.

6.3 Each Related Stock Appreciation Right granted hereunder shall be subject to the same terms and conditions as the related Stock Option, including limitations on transferability, if any, and shall be exercisable only to the extent such Stock Option is exercisable and shall terminate or lapse and cease to be exercisable when the related Stock Option terminates or lapses. The grant of a Related Stock Appreciation Right related to an Incentive Stock Option must be concurrent with the grant of the Incentive Stock Option. With respect to Nonqualified Stock Options, the grant of a Related Stock Appreciation Right either may be concurrent with the grant of the Nonqualified Stock Option, or (to the extent consistent with the exemption for stock appreciation rights under the Section 409A regulations) subsequent to the grant of the Nonqualified Stock Option, in connection with a Nonqualified Stock Option previously granted under Article V, which is unexercised and has not terminated or lapsed.

6.4 The Committee shall have the sole discretion to determine, in each case whether the payment with respect to the exercise of a Stock Appreciation Right shall be made in the form of all cash, all Stock, or any combination thereof. If payment is to be made in Stock, the number of shares of Stock shall be determined based on the Fair Market Value of the Stock on the date of exercise of the Stock Appreciation Right. If the Committee elects to make full payment in Stock, no fractional shares of Stock shall be issued and cash payments shall be made in lieu of fractional shares.

6.5 The Committee shall have sole discretion as to the timing of any payment made in cash, Stock, or a combination thereof upon exercise of a Stock Appreciation Right. Payment may, to the extent consistent with Section 409A of the Code (and any regulations thereunder), be made in a lump sum, in annual installments or may be otherwise deferred and the Committee shall have sole discretion to determine whether any deferred payments may bear amounts equivalent to interest or cash dividends.

6.6 Upon the exercise of a Related Stock Appreciation Right, the number of shares of Stock subject to exercise under any related Stock Option shall automatically be reduced by the number of shares of Stock represented by the Stock Option or portion thereof which is surrendered.

6.7 The Committee, in its sole discretion, may, to the extent consistent with the exemption for stock appreciation rights under the Section 409A regulations, also provide that, in the event of a Change in Control, the amount to be paid upon the exercise of a Stock Appreciation Right or Limited Stock Appreciation Right shall be based on the Change in Control Price, subject to such terms and conditions as the Committee may specify at grant.

6.8 In its sole discretion, the Committee may grant Limited Stock Appreciation Rights under this Article VI. Limited Stock Appreciation Rights shall become exercisable only in the event of a Change in Control, subject to such terms and conditions as the Committee, in its sole discretion, may specify at grant. Such Limited Stock Appreciation Rights shall be settled solely in cash. A Limited Stock Appreciation Right shall entitle the holder of the related Stock Option to surrender such Stock Option, or any portion thereof, to the extent unexercised, in respect of the number of shares of Stock as to which such Limited Stock Appreciation Right is exercised, and to receive a cash payment equal to the difference between (a) the Stock Appreciation Right Fair Market Value (at the date of surrender) of a share of Stock for which the surrendered Stock Option or portion thereof is then exercisable, and (b) the price at which a Participant could exercise a related Stock Option to purchase the share of Stock. Such Stock Option shall, to the extent so surrendered, thereupon cease to be exercisable. A Limited Stock Appreciation Right shall be subject to such further terms and conditions as the Committee shall, in its sole discretion, deem appropriate.

ARTICLE VII

INCIDENTS OF STOCK OPTIONS AND STOCK RIGHTS

7.1 Each Stock Option and Stock Right shall be granted subject to such terms and conditions, if any, not inconsistent with this Plan, as shall be determined by the Committee, including any provisions as to continued employment as consideration for the grant or exercise of such Stock Option or Stock Right and any provisions which may be advisable to comply with applicable laws, regulations or rulings of any governmental authority.

7.2 An Incentive Stock Option and its related Stock Right, if any, shall not be transferable by the Participant other than by will or by the laws of descent and distribution, and shall be exercisable during the lifetime of the Participant only by him or by his guardian or legal representative. A Nonqualified Stock Option and its related Stock Right, if any, shall be subject to the transferability and exercisability restrictions of the immediately preceding sentence unless otherwise determined by the Committee, in its sole discretion, and set forth in the applicable Award Agreement.

7.3 Shares of Stock purchased upon exercise of a Stock Option shall be paid for in such amounts, at such times and upon such terms as shall be determined by the Committee, subject to limitations set forth in the Stock Option Award Agreement. Without limiting the foregoing, the Committee may establish payment terms for the exercise of Stock Options which permit the Participant to deliver shares of Stock (or other evidence of ownership of Stock satisfactory to the Company) with a Fair Market Value equal to the exercise price of the Stock Option as payment.

7.4 No cash dividends shall be paid on shares of Stock subject to unexercised Stock Options. To the extent consistent with the exemption for stock options under the Section 409A regulations (if applicable), the Committee may provide, however, that a Participant to whom a Stock Option has been granted which is exercisable in whole or in part at a future time shall be entitled to receive an amount per share equal in value to the cash dividends, if any, paid per share on issued and outstanding Stock, as of the dividend record dates occurring during the period between the date of the grant and the time each such share of Stock is delivered pursuant to exercise of such Stock Option or the related Stock Right. Such amounts (herein called "dividend equivalents") may, in the discretion of the Committee, be:

(a) paid in cash or Stock either from time to time prior to, or at the time of the delivery of, such Stock, or upon expiration of the Stock Option if it shall not have been fully exercised; or

(b) converted into contingently credited shares of Stock (with respect to which dividend equivalents may accrue) in such manner, at such value, and deliverable at such time or times, as may be determined by the Committee. Such Stock (whether delivered or contingently credited) shall be charged against the limitations set forth in Section 3.5.

7.5 The Committee may, in its sole discretion consistent with Section 409A of the Code (and any regulations thereunder), authorize payment of interest equivalents on dividend equivalents which are payable in cash at a future time.

7.6 In the event of death or Disability, the Committee, with the consent of the Participant or his legal representative, may authorize payment, in cash or in Stock, or partly in cash and partly in Stock, as the Committee may direct, of an amount equal to the difference at the time between the Fair Market Value of the Stock subject to a Stock Option and the exercise price of the Option in consideration of the surrender of the Stock Option.

7.7 If a Participant is required to pay to the Company an amount with respect to income and employment tax withholding obligations in connection with exercise of a Nonqualified Stock Option and/or with respect to certain dispositions of Stock acquired upon the exercise of an Incentive Stock Option, the Committee, in its discretion and subject to such rules as it may adopt, may permit the Participant to satisfy the obligation, in whole or in part, by making an irrevocable election that a portion of the total Fair Market Value of the shares of Stock subject to the Nonqualified Stock Option and/or with respect to certain dispositions of Stock acquired upon the exercise of an Incentive Stock Option, be paid in the form of cash in lieu of the issuance of Stock and that such cash payment be applied to the satisfaction of the withholding obligations. The amount to be withheld shall not exceed the statutory minimum Federal and State income and employment tax liability arising from the Stock Option exercise transaction.

7.8 The Committee may, to the extent consistent with the exemption for stock options under the Section 409A regulations (if applicable), permit the voluntary surrender of all or a portion of any Stock Option granted under the Plan to be conditioned upon the granting to the Participant of a new Stock Option for the same or a different number of shares of Stock as the Stock Option surrendered, or may require such voluntary surrender as a condition precedent to a grant of a new Stock Option to such Participant. Subject to the provisions of the Plan, such new Stock Option shall be exercisable at the same price, during such period and on such other terms and conditions as are specified by the Committee at the time the new Stock Option is granted. Upon surrender, the Stock Options surrendered shall be canceled and the shares of Stock previously subject to them shall be available for the grant of Awards under the Plan.

ARTICLE VIII

RESTRICTED STOCK

8.1 Restricted Stock Awards may be made to certain Participants as an incentive for the performance of future services that will contribute materially to the successful operation of the Company. Awards of Restricted Stock may be made either alone, in addition to or in conjunction with other Awards granted under the Plan and/or cash payments made outside of the Plan.

8.2 With respect to Awards of Restricted Stock, the Committee shall:

(a) determine the purchase price, if any, to be paid for such Restricted Stock, which may be equal to or less than par value and may be zero, subject to such minimum consideration as may be required by applicable law;

(b) determine the length of the Restriction Period;

(c) determine any restrictions applicable to the Restricted Stock such as service or performance, other than those set forth in this Article VIII;

(d) determine if the restrictions shall lapse as to all shares of Restricted Stock at the end of the Restriction Period or as to a portion of the shares of Restricted Stock in installments during the Restriction Period; and

(e) determine if dividends and other distributions on the Restricted Stock are to be paid currently to the Participant or withheld by the Company for the account of the Participant.

8.3 Awards of Restricted Stock must be accepted within a period of sixty (60) days (or such other period as the Committee may specify) after the date of the Award of Restricted Stock, by executing a Restricted Stock Award Agreement and paying whatever price (if any) is required.

The prospective recipient of a Restricted Stock Award shall not have any rights with respect to such Award, unless such recipient has executed a Restricted Stock Award Agreement and has delivered a fully executed copy thereof to the Committee, and has otherwise complied with the applicable terms and conditions of such Award.

8.4 Except when the Committee determines otherwise, or as otherwise provided in the Restricted Stock Award Agreement, if a Participant terminates employment with the Company for any reason before the expiration of the Restriction Period, all shares of Restricted Stock still subject to restriction shall be forfeited by the Participant and shall be reacquired by the Company.

8.5 Except as otherwise provided in this Article VIII, no shares of Restricted Stock received by a Participant shall be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of during the Restriction Period.

8.6 To the extent not otherwise provided in a Restricted Stock Award Agreement, in cases of death, Disability or Retirement or in cases of special circumstances, the Committee, if it finds that a waiver would be appropriate, may elect to waive any or all remaining restrictions with respect to such Participant' s Restricted Stock.

8.7 In the event of hardship or other special circumstances of a Participant whose employment with the Company is involuntarily terminated (other than for cause), the Committee may waive in whole or in part any or all remaining restrictions with respect to any or all of the Participant' s Restricted Stock, based on such factors and criteria as the Committee may deem appropriate.

8.8 The certificates representing shares of Restricted Stock may either:

(a) be held in custody by the Company until the Restriction Period expires or until restrictions thereon otherwise lapse, and the Participant shall deliver to the Company a stock power endorsed in blank relating to the Restricted Stock; and/or

(b) be issued to the Participant and registered in the name of the Participant, and shall bear an appropriate restrictive legend and shall be subject to appropriate stop-transfer orders.

8.9 Except as provided in this Article VIII, a Participant receiving a Restricted Stock Award shall have, with respect to the shares of Restricted Stock covered by any Award, all of the rights of a shareholder of the Company, including the right to vote the shares to the extent, if any, such shares possess voting rights, and the right to receive any dividends; provided, however, the Committee may, to the extent consistent with Section 409A of the Code (and any regulations thereunder), require that any dividends on such shares of Restricted Stock shall be automatically deferred and reinvested in additional Restricted Stock subject to the same restrictions as the underlying Award, or may require that dividends and other distributions on Restricted Stock shall be withheld by the Company for the account of the Participant. The Committee shall determine whether interest shall be paid on amounts withheld, the rate of any such interest, and the other terms applicable to such withheld amounts.

8.10 If and when the Restriction Period expires without a prior forfeiture of the Restricted Stock subject to such Restriction Period, unrestricted certificates for such shares shall be delivered to the Participant.

8.11 In order to better ensure that Award grants actually reflect the performance of the Company and the service of the Participant, the Committee may provide, in its sole discretion, for a tandem performance-based or other Award designed to guarantee a minimum value, payable in cash or Stock to the recipient of a Restricted Stock Award, subject to such performance, future service, deferral and other terms and conditions as may be specified by the Committee consistent (where applicable) with Section 409A of the Code (and any regulations thereunder).

ARTICLE IX

DEFERRED STOCK

9.1 Shares of Deferred Stock (together with cash dividend equivalents, if so determined by the Committee) may be issued either alone or in addition to other Awards granted under the Plan in the discretion of the Committee. The Committee shall determine the individuals to whom, and the time or times at which, such Awards will be made, the number of shares to be awarded, the price (if any) to be paid by the recipient of a Deferred Stock Award, the time or times within which such Awards may be subject to forfeiture, and all other conditions of the Awards. The Committee may condition Awards of Deferred Stock upon the attainment of specified performance goals or such other factors or criteria as the Committee may determine. Any such Award that is subject to Section 409A of the Code shall comply with the applicable deferral, distribution timing and other applicable rules under Section 409A (and any regulations thereunder).

9.2 Deferred Stock Awards shall be subject to the following terms and conditions:

(a) Subject to the provisions of this Plan and the applicable Deferred Stock Award Agreement, Deferred Stock Awards may not be sold, transferred, pledged, assigned or otherwise encumbered during the Deferral Period. At the expiration of the Deferral Period (or the Elective Deferral Period defined in Section 9.3), share certificates shall be delivered to the Participant, or his legal representative, in a number equal to the number of shares of Stock covered by the Deferred Stock Award. Notwithstanding the foregoing, based on service, performance and/or such other factors or criteria as the Committee may determine, the Committee, at or after the date of the grant, may accelerate the vesting of all or any part of any Deferred Stock Award and/or waive the deferral limitations for all or any part of such Deferred Stock Award.

(b) Unless otherwise determined by the Committee, amounts equal to any dividends that would have been payable during the Deferral Period with respect to the number of shares of Stock covered by a Deferred Stock Award if such shares of Stock had been outstanding shall be automatically deferred and deemed to be reinvested in additional Deferred Stock, subject to the same deferral limitations as the underlying Deferred Stock Award.

(c) Except to the extent otherwise provided in this Plan or in the applicable Deferred Stock Award Agreement, upon Termination of Employment during the Deferral Period for a given Award, the Deferred Stock covered by such Award shall be forfeited by the Participant; provided, however, the Committee may provide for accelerated vesting in the event of Termination of Employment due to death, Disability or Retirement, or in the event of hardship or other special circumstances as the Committee deems appropriate.

(d) The Committee may require that a designated percentage of the total Fair Market Value of the shares of Deferred Stock held by one or more Participants be paid in the form of cash in lieu of the issuance of Stock and that such cash payment be applied to the satisfaction of the federal and state income and employment tax withholding obligations that arise at the time the Deferred Stock becomes free of all restrictions; provided, that for any Award of Deferred Shares subject to Section 409A of the Code, any such offset or payment may only be made to the extent permitted under Section 409A (or any regulations thereunder). The designated percentage shall be equal to the income and employment tax withholding rate in effect at the time under federal and applicable state laws.

(e) The Committee may provide one or more Participants subject to the mandatory cash payment with an election to receive an additional percentage of the total value of the Deferred Stock in the form of a cash payment in lieu of the issuance of Deferred Stock. The additional percentage shall not exceed the difference between fifty percent (50%) and the designated percentage cash payment.

(f) The Committee may impose such further terms and conditions on partial cash payments with respect to Deferred Stock as it deems appropriate.

9.3 A Participant may elect to further defer receipt of Deferred Stock for a specified period or until a specified event (the "Elective Deferral Period"), subject in each case to the Committee' s approval and to such terms as are determined by the Committee consistent with Section 409A of the Code. Such election must be made at such time as may be permitted under Section 409A (and any regulations thereunder). The deferral of any Award under this Section 9.3 shall comply and be administered consistent with Section 409A. Notwithstanding anything herein to the contrary, in no event will any deferral of any Award be allowed if the Committee determines that the deferral would result in a violation of the requirements of Section 409A for deferral elections and/or the timing of payments. Any deferral election may be reformed by the Committee to the extent necessary or appropriate to comply with the requirements of Section 409A.

9.4 Each Award shall be confirmed by, and subject to the terms of, a Deferred Stock Award Agreement.

9.5 In order to better ensure that the Award actually reflects the performance of the Company and the service of the Participant, the Committee may provide, in its sole discretion consistent with Section 409A of the Code (where applicable), for a tandem performance-based or other Award designed to guarantee a minimum value, payable in cash or Stock to the recipient of a Deferred Stock Award, subject to such performance, future service, deferral and other terms and conditions as may be specified by the Committee.

ARTICLE X

STOCK AWARDS

10.1 A Stock Award shall be granted only in payment of compensation that has been earned or as compensation to be earned, including, without limitation, compensation awarded concurrently with or prior to the grant of the Stock Award.

10.2 For the purposes of this Plan, in determining the value of a Stock Award, all shares of Stock subject to such Stock Award shall be valued at not less than one hundred percent (100%) of the Fair Market Value of such shares of Stock on the date such Stock Award is granted, regardless of whether or when such shares of Stock are issued or transferred to the Participant and whether or not such shares of Stock are subject to restrictions which affect their value.

10.3 Shares of Stock subject to a Stock Award may be issued or transferred to the Participant at the time the Stock Award is granted, or (to the extent consistent with Section 409A of the Code and any regulations thereunder) at any time subsequent thereto or in installments from time to time, as the Committee shall determine. If any such issuance or transfer shall not be made to the Participant at the time the Stock Award is granted, the Committee may provide for payment to such Participant, either in cash or shares of Stock, from time to time or at the time or times such shares of Stock shall be issued or transferred to such Participant, of amounts not exceeding the dividends which would have been payable to such Participant in respect of such shares of Stock (as adjusted under Section 3.10) if such shares of Stock had been issued or transferred to such Participant at the time such Stock Award was granted. Any issuance payable in shares of Stock under the terms of a Stock Award, at the discretion of the Committee, may be paid in cash on each date on which delivery of shares of Stock would otherwise have been made, in an amount equal to the Fair Market Value on such date of the shares of Stock which would otherwise have been delivered.

10.4 A Stock Award shall be subject to such terms and conditions, including, without limitation, restrictions on the sale or other disposition of the Stock Award or of the shares of Stock issued or transferred pursuant to such Stock Award, as the Committee shall determine; provided, however, that upon the issuance or transfer of shares pursuant to a Stock Award, the Participant, with respect to such shares of Stock, shall be and become a shareholder of the Company fully entitled to receive dividends, to vote to the extent, if any, such shares possess voting rights and to exercise all other rights of a shareholder except to the extent otherwise provided in the Stock Award. Each Stock Award shall be evidenced by a written Award Agreement in such form as the Committee shall determine.

ARTICLE XI

PERFORMANCE SHARES

11.1 Awards of Performance Shares may be made to certain Participants as an incentive for the performance of future services that will contribute materially to the successful operation of the Company. Awards of Performance Shares may be made either alone, in addition to or in tandem with other Awards granted under the Plan and/or cash payments made outside of the Plan.

11.2 With respect to Awards of Performance Shares, which may be issued for no consideration or such minimum consideration as is required by applicable law, the Committee shall:

(a) determine and designate from time to time those Participants to whom Awards of Performance Shares are to be made;

(b) determine the performance period (the "Performance Period") and/or performance objectives (the "Performance Objectives") applicable to such Awards;

(c) determine the form of settlement of a Performance Share; and

(d) generally determine the terms and conditions of each such Award. At any date, each Performance Share shall have a value equal to the Fair Market Value, determined as set forth in Section 2.15.

11.3 Performance Periods may overlap, and Participants may participate simultaneously with respect to Performance Shares for which different Performance Periods are prescribed.

11.4 The Committee shall determine the Performance Objectives of Awards of Performance Shares. Performance Objectives may vary from Participant to Participant and between Awards and shall be based upon such performance criteria or combination of factors as the Committee may deem appropriate. Performance Objectives shall include any one or more of the following performance criteria, either individually, alternatively or in any combination, applied to either the Company as a whole or to a business unit or Subsidiary, either individually, alternatively or in any combination, and measured either annually or cumulatively over a period of years, on an absolute basis or relative to a pre-established target, to previous years' results or to a designated comparison group, in each case as specified by the Committee: (a) operating income; (b) earnings before interest, taxes, depreciation and amortization ("EBITDA"); (c) earnings; (d) cash flow; (e) market share; (f) sales or revenue; (g) expenses; (h) profit/loss or profit margin; (i) working capital; (j) return on equity or capital; (k) earnings per share; (l) stock price; (m) price/earnings ratio; (n) debt or debt-to-equity; (o) balance sheet measurements; (p) cash or assets; (q) liquidity; (r) economic value added ("EVA"); (s) operations; (t) mergers and acquisitions or divestitures; (y) development status of product candidates; and (z) status of clinical trials. If during the course of a Performance Period there shall occur significant events which the Committee expects to have a substantial effect on the applicable Performance Objectives during such period, the Committee may revise such Performance Objectives.

11.5 The Committee shall determine for each Participant the number of Performance Shares which shall be paid to the Participant if the applicable Performance Objectives are exceeded or met in whole or in part.

11.6 If a Participant terminates service with the Company during a Performance Period because of death, Disability, Retirement or under other circumstances in which the Committee in its discretion finds that a waiver would be appropriate, that Participant, as determined by the Committee, may be entitled to a payment of Performance Shares at the end of the Performance Period based upon the extent to which the Performance Objectives were satisfied at the end of such period and pro rated for the portion of the Performance Period during which the Participant was employed by the Company; provided, however, the Committee may, in its sole discretion, provide for an earlier payment in settlement of such Performance Shares in such amount and under such terms and conditions as the Committee deems appropriate or desirable. If a Participant terminates service with the Company during a Performance Period for any other reason, then such Participant shall not be entitled to any payment with respect to that Performance Period unless the Committee shall otherwise determine.

11.7 Each Award of a Performance Share shall be paid in whole shares of Stock, or cash, or a combination of Stock and cash as the Committee shall determine, with payment to be made as soon as practicable after the end of the relevant Performance Period.

11.8 The Committee shall have the authority to approve requests by Participants to defer payment of Performance Shares on terms and conditions approved by the Committee and set forth in a written Award Agreement between the Participant and the Company entered into in advance of the time of receipt or constructive receipt of payment by the Participant.

ARTICLE XII

OTHER STOCK-BASED AWARDS

12.1 Other awards of Stock and other awards that are valued in whole or in part by reference to, or are otherwise based on, Stock ("Other Stock-Based Awards"), including, without limitation, convertible preferred stock, convertible debentures, exchangeable securities, phantom stock and Stock awards or options valued by reference to book value or performance, may be granted either alone or in addition to or in tandem with Stock Options, Stock Rights, Restricted Stock, Deferred Stock or Stock Awards granted under the Plan and/or cash awards made outside of the Plan. Subject to the provisions of the Plan, the Committee shall have authority to determine the Eligible Participants to whom and the time or times at which such Awards shall be made, the number of shares of Stock subject to such Awards, and all other conditions of the Awards. The Committee also may provide for the grant of shares of Stock upon the completion of a specified Performance Period. The provisions of Other Stock-Based Awards need not be the same with respect to each recipient.

12.2 Other Stock-Based Awards made pursuant to this Article XII shall be subject to the following terms and conditions:

(a) Subject to the provisions of this Plan and the Award Agreement, shares of Stock subject to Awards made under this Article XII may not be sold, assigned, transferred, pledged or otherwise encumbered prior to the date on which the shares are issued, or, if later, the date on which any applicable restriction, performance or deferral period lapses.

(b) Subject to the provisions of this Plan and the Award Agreement and unless otherwise determined by the Committee at the time of the Award, the recipient of an Award under this Article XII shall be entitled to receive, currently or on a deferred basis, interest or dividends or interest or dividend equivalents with respect to the number of shares covered by the Award, as determined at the time of the Award by the Committee, in its sole discretion, and the Committee may provide that such amounts (if any) shall be deemed to have been reinvested in additional Stock or otherwise reinvested.

(c) Any Award under this Article XII and any Stock covered by any such Award shall vest or be forfeited to the extent so provided in the Award Agreement, as determined by the Committee, in its sole discretion.

(d) Upon the Participant' s Retirement, Disability or death, or in cases of special circumstances, the Committee may, in its sole discretion, waive in whole or in part any or all of the remaining limitations imposed hereunder (if any) with respect to any or all of an Award under this Article XII.

(e) Each Award under this Article XII shall be confirmed by, and subject to the terms of, an Award Agreement.

(f) Stock (including securities convertible into Stock) issued on a bonus basis under this Article XII may be issued for no cash consideration.

(g) Any such Award that is subject to Section 409A of the Code shall comply with the applicable deferral, distribution timing and other applicable rules under Section 409A (and any regulations thereunder).

12.3 Other Stock-Based Awards may include a phantom stock Award, which is subject to the following terms and conditions:

(a) The Committee shall select the Eligible Participants who may receive phantom stock Awards. The Eligible Participant shall be awarded a phantom stock unit, which shall be the equivalent to a share of Stock.

(b) Under an Award of phantom stock, payment shall be made on the dates or dates as specified by the Committee or as stated in the Award Agreement and phantom stock Awards may be settled in cash, Stock, or some combination thereof; provided, that if such Award is subject to Section 409A of the Code, it shall comply with the applicable deferral, distribution timing and other applicable rules under Section 409A (and any regulations thereunder).

(c) The Committee shall determine such other terms and conditions of each Award as it deems necessary in its sole discretion.

ARTICLE XIII

ACCELERATION EVENTS

13.1 For the purposes of the Plan, an Acceleration Event shall occur in the event of a "Change in Control".

13.2 A "Change in Control" shall be deemed to have occurred if:

(a) Any "Person" as defined in Section 3(a)(9) of the Act, including a "group" (as that term is used in Sections 13(d)(3) and 14(d)(2) of the Act), but excluding the Company and any employee benefit plan sponsored or maintained by the Company and (including any trustee of such plan acting as trustee) who:

(i) makes a tender or exchange offer for any shares of the Company' s Stock (as defined below) pursuant to which any shares of the Company' s Stock are purchased (an "Offer"); or

(ii) together with its "affiliates" and "associates" (as those terms are defined in Rule 12b-2 under the Act) becomes the "Beneficial Owner" (within the meaning of Rule 13d-3 under the Act) of at least fifty percent (50%) of the Company' s Stock (an "Acquisition");

(b) The shareholders of the Company approve a definitive agreement or plan (i) to merge or consolidate the Company with or into another Company and (x) the Company shall not be the surviving corporation or (y) the Company shall be the surviving corporation and in connection therewith, all or part of the outstanding stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, (ii) to sell or otherwise dispose of 50% or more of its assets, or (iii) to liquidate the Company;

(c) The Company shall be a party to a statutory share exchange with any other Person after which the Company is a subsidiary of any other Person; or

(d) When, as a result of, or in connection with, any tender or exchange offer, merger or other business combination, sale of assets or contested election, or any combination of the foregoing, the individuals who, prior to such transaction, constitute the Board (the "Incumbent Directors") cease for any reason other than death to constitute at least a majority thereof.

13.3 Upon the occurrence of an Acceleration Event, the Committee may, in its discretion, declare that all then outstanding Performance Shares with respect to which the applicable Performance Period has not been completed shall be paid as soon as practicable as follows:

(a) all Performance Objectives applicable to the Award of Performance Shares shall be deemed to have been satisfied to the extent necessary to result in payment of one hundred percent (100%) of the Performance Shares covered by the Award; and

(b) the applicable Performance Period shall be deemed to have ended on the date of the Acceleration Event;

(c) the payment to the Participant shall be the amount determined either by the Committee, in its sole discretion, or in the manner stated in the Award Agreement. This amount shall then be multiplied by a fraction, the numerator of which is the number of full calendar months of the applicable Performance Period that have elapsed prior to the date of the Acceleration Event, and the denominator of which is the total number of months in the original Performance Period; and

(d) upon the making of any such payment, the Award Agreement as to which it relates shall be deemed canceled and of no further force and effect.

13.4 Upon the occurrence of an Acceleration Event, the Committee, in its discretion, may declare that 50% of all then outstanding Stock Options not previously exercisable and vested as immediately exercisable and fully vested, in whole or in part. Notwithstanding the foregoing sentence, the percentage of outstanding Stock Options which may become immediately exercisable and fully vested upon the Acceleration Event may, in the Committee' s discretion, be higher or lower than 50%.

13.5 Upon the occurrence of an Acceleration Event, the Committee, in its discretion, may declare the restrictions applicable to Awards of Restricted Stock, Deferred Stock or Other Stock- Based Awards to have lapsed, in which case the Company shall remove all restrictive legends and stop-transfer orders applicable to the certificates for such shares of Stock, and deliver such certificates to the Participants in whose names they are registered.

13.6 The value of all outstanding Stock Option, Stock Rights, Restricted Stock, Deferred Stock, Performance Shares, Stock Awards and Other Stock-Based Awards, in each case to the extent vested, shall, unless otherwise determined by the Committee in its sole discretion at or after grant but prior to any Change in Control, be cashed out on the basis of the "Change in Control Price," as defined in Section 13.7 as of the date such Change in Control is determined to have occurred or such other date as the Committee may determine prior to the Change in Control.

13.7 For purposes of Section 13.7, "Change in Control Price" means the highest price per share of Stock paid in any transaction reported on the Nasdaq Global Market tier of The Nasdaq Stock Market, or paid or offered in any bona fide transaction related to a Potential or actual Change in Control of the Company at any time during the sixty (60) day period immediately preceding the occurrence of the Change in Control, in each case as determined by the Committee except that, in the case of Incentive Stock Options and Stock Appreciation Rights (or Limited Stock Appreciation Rights) relating to such Incentive Stock Options, such price shall be based only on transactions reported for the date on which the Participant exercises such Stock Appreciation Rights (or Limited Stock Appreciation Rights). Notwithstanding the foregoing, Fair Market Value on the date of exercise shall be used for any Award, the use of any other value for which would result in the imposition of income taxes and penalties under Section 409A of the Code.

13.8 Notwithstanding the foregoing, the time for payment of any Award subject to Section 409A of the Code shall not be accelerated or otherwise changed under this Article to the extent such acceleration or other change would be contrary to the payment timing or other rules under Section 409A (or any regulations thereunder).

ARTICLE XIV

AMENDMENT AND TERMINATION

14.1 The Board, upon recommendation of the Committee, or otherwise, at any time and from time to time, may amend or terminate the Plan as may be necessary or desirable to implement or discontinue this Plan or any provision thereof. No amendment, without approval by the Company' s shareholders, shall:

(a) alter the group of persons eligible to participate in the Plan;

(b) except as provided in Sections 3.5 and 3.10, increase the maximum number of shares of Stock or Stock Options or Stock Rights which are available for Awards under the Plan or increase the maximum number of shares with respect to which Stock Options or Stock Rights may be granted to any employee under the Plan;

(c) extend the period during which Incentive Stock Option Awards may be granted beyond May 28, 2018;

(d) limit or restrict the powers of the Board and the Committee with respect to the administration of this Plan; or

(e) change any of the provisions of this Article XIV.

14.2 No amendment to or discontinuance of this Plan or any provision thereof by the Board or the shareholders of the Company shall, without the written consent of the Participant, adversely affect, as shall be determined by the Committee, any Award theretofore granted to such Participant under this Plan; provided, however, the Committee retains the right and power to:

(a) annul any Award if the Participant competes against the Company or any Subsidiary or is terminated for cause as determined by the Committee;

(b) provide for the forfeiture of shares of Stock or other gain under an Award as determined by the Committee for competing against the Company or any Subsidiary; and

(c) convert any outstanding Incentive Stock Option to a Nonqualified Stock Option.

14.3 If an Acceleration Event has occurred, no amendment or termination shall impair the rights of any person with respect to an outstanding Award as provided in Article XIII.

ARTICLE XV

MISCELLANEOUS PROVISIONS

15.1 Nothing in the Plan or any Award granted hereunder shall confer upon any Participant any right to continue in the employ of the Company (or to serve as a director thereof) or interfere in any way with the right of the Company to terminate his or her employment at any time. Unless specifically provided otherwise, no Award granted under the Plan shall be deemed salary or compensation for the purpose of computing benefits under any employee benefit plan or other arrangement of the Company or its Subsidiaries for the benefit of its employees unless the Company shall determine otherwise. No Participant shall have any claim to an Award until it is actually granted under the Plan. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall, except as otherwise provided by the Committee, be no greater than the right of an unsecured general creditor of the Company. All payments to be made hereunder shall be paid from the general funds of the Company, and no special or separate fund shall be established and no segregation of assets shall be made to assure payment of such amounts, except as provided in Article VIII with respect to Restricted Stock and except as otherwise provided by the Committee.

15.2 The Company may make such provisions and take such steps as it may deem necessary or appropriate for the withholding of any taxes which the Company or any Subsidiary is required by any law or regulation of any governmental authority, whether federal, state or local, domestic or foreign, to withhold in connection with any Stock Option or the exercise thereof, any Stock Right or the exercise thereof, or in connection with any other type of equity- based compensation provided hereunder or the exercise thereof, including, but not limited to, the withholding of payment of all or any portion of such Award or (to the extent consistent with Section 409A of the Code) another Award under this Plan until the Participant reimburses the Company for the amount the Company is required to withhold with respect to such taxes, or canceling any portion of such Award or (to the extent consistent with Section 409A) another Award under this Plan in an amount sufficient to reimburse itself for the amount it is required to so withhold, or (to the extent consistent with Section 409A) selling any property contingently credited by the Company for the purpose of paying such Award or another Award under this Plan, in order to withhold or reimburse itself for the amount it is required to so withhold.

15.3 The Plan and the grant of Awards shall be subject to all applicable federal and state laws, rules, and regulations and to such approvals by any government or regulatory agency as may be required. Any provision herein relating to compliance with Rule 16b-3 under the Act shall not be applicable with respect to participation in the Plan by Participants who are not subject to Section 16(b) of the Act.

15.4 The terms of the Plan shall be binding upon the Company, its Subsidiaries, and their successors and assigns.

15.5 Neither a Stock Option, Stock Right, nor any other type of equity-based compensation provided for hereunder, shall be transferable except as provided for herein. If any Participant makes such a transfer in violation hereof, any obligation of the Company shall forthwith terminate.

15.6 This Plan and all actions taken hereunder shall be governed by the laws of the State of Florida, except to the extent preempted by ERISA.

15.7 The Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company. In its sole discretion, the Committee may authorize the creation of trusts or other arrangements to meet the obligations created under the Plan to deliver shares of Stock or payments in lieu of or with respect to Awards hereunder; provided, however, that, unless the Committee otherwise determines with the consent of the affected Participant, the existence of such trusts or other arrangements is consistent with the “unfunded” status of the Plan.

15.8 Each Participant exercising an Award hereunder agrees to give the Committee prompt written notice of any election made by such Participant under Section 83(b) of the Code, or any similar provision thereof.

15.9 If any provision of this Plan or an Award Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, or would disqualify the Plan or any Award Agreement under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws or if it cannot be construed or deemed amended without, in the determination of the Committee, materially altering the intent of the Plan or the Award Agreement, it shall be stricken and the remainder of the Plan or the Award Agreement shall remain in full force and effect.

15.10 All Awards shall, to extent applicable, comply and be administered in accordance with the rules and requirements of Section 409A of the Code. Notwithstanding any other provision of the Plan, the Committee may take such actions as it deems necessary or appropriate to ensure that any Award comply with or be exempt from Section 409A and may interpret this Plan in any manner necessary to ensure that Awards comply with or are exempt from Section 409A. In the event that the Committee determines that an Award should comply with or be exempt from Section 409A and that a Plan provision or Award Agreement provision is necessary to ensure that such Award complies with or is exempt from Section 409A of the Code, such provision shall be deemed included in the Plan or such Award Agreement. The Committee may also unilaterally reform any Agreement to the extent necessary to comply with Section 409A.

15.11 In the event that a Participant is a "specified employee" within the meaning of Section 409A (as determined by the Company or its delegate), any payment required under this Plan that is subject to Section 409A and is payable upon Termination of Employment, shall not be made or begin until the expiration of the 6-month period following the Participant' s Termination of Employment.

BIOHEART, INC.

By: /s/
Authorized Officer

ATTEST:

(Corporate Seal)

Secretary

EXHIBIT 31.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Howard J. Leonhardt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Bioheart, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Evaluated the effectiveness of the registrant' s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) Disclosed in this report any change in the registrant' s internal control over financial reporting that occurred during the registrant' s most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant' s internal control over financial reporting; and

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

Date: August 14, 2008

/s/ Howard J. Leonhardt
Howard J. Leonhardt
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, William H. Kline, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Bioheart, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant' s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Evaluated the effectiveness of the registrant' s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

c) Disclosed in this report any change in the registrant' s internal control over financial reporting that occurred during the registrant' s most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant' s internal control over financial reporting; and

5. The registrant' s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant' s auditors and the audit committee of the registrant' s board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant' s ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant' s internal control over financial reporting.

Date: August 14, 2008

/s/ William H. Kline
William H. Kline
Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Bioheart, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2008 as filed with the Securities and Exchange Commission (the "Report"), I, Howard J. Leonhardt, Chief Executive Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ Howard J. Leonhardt
Howard J. Leonhardt
Chief Executive Officer

August 14, 2008

This certification accompanies this Report on Form 10-Q pursuant to Section 906 of Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.

EXHIBIT 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Bioheart, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2008 as filed with the Securities and Exchange Commission (the "Report"), I, William H. Kline, Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to the best of my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ William H. Kline
William H. Kline
Chief Financial Officer

August 14, 2008

This certification accompanies this Report on Form 10-Q pursuant to Section 906 of Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by such Act, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent that the Company specifically incorporates it by reference.