

BIOSANTE PHARMACEUTICALS INC

Form S-8

October 03, 2003

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As filed with the Securities and Exchange Commission on October 3, 2003

Registration No. 333-

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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## FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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### BIOSANTE PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**58-2301143**

(I.R.S. Employer  
Identification No.)

**111 Barclay Boulevard, Suite 280**

**Lincolnshire, Illinois**

(Address of Principal Executive Offices)

**60069**

(Zip Code)

## BIOSANTE PHARMACEUTICALS, INC. AMENDED AND RESTATED 1998 STOCK PLAN

(Full title of the plan)

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**Phillip B. Donenberg**

**Chief Financial Officer**

**BioSante Pharmaceuticals, Inc.**

**111 Barclay Boulevard, Suite 280**

**Lincolnshire, IL 60069**

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

**(847) 478-0500**

(Telephone number, including area code, of agent for service)

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**Amy E. Culbert, Esq.**

**Oppenheimer Wolff & Donnelly LLP**

**45 South Seventh Street, Suite 3300**

**Minneapolis, Minnesota 55402**

**(612) 607-7287**

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Approximate date of commencement of proposed sale to the public:

**Immediately upon the filing of this registration statement**

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## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price	Amount of registration fee(2)
Common Stock, par value \$0.0001 per share	1,000,000	\$3.13	\$3,130,000	\$253.22

- (1) Represents the increase in the total number of shares reserved for issuance under the registrant's Amended and Restated 1998 Stock Plan. An aggregate of 1,000,000 shares has been previously registered under registration statements on Form S-8 (File Nos. 333-53384 and 333-100238) In addition, pursuant to Rule 416 under the Securities Act of 1933, this registration statement includes an indeterminate number of additional shares that may be offered and sold as a result of anti-dilution provisions described in the registrant's Amended and Restated 1998 Stock Plan.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee and calculated pursuant to Rule 457(h) under the Securities Act as follows: (i) with respect to stock options to purchase shares previously granted under the Amended and Restated 1998 Stock Plan, on the basis of the weighted average exercise price of these stock options, and (ii) with respect to stock options and other awards to be granted under the plan based on the average between the high and low prices of the registrant's common stock on October 1, 2003 on the American Stock Exchange.

**STATEMENT UNDER GENERAL INSTRUCTION E  
REGISTRATION OF ADDITIONAL SECURITIES**

The registrant, BioSante Pharmaceuticals, Inc., previously filed registration statements on Form S-8 with the Securities and Exchange Commission (SEC File Nos. 333-53384 and 333-100238) in connection with the registration of an aggregate of 1,000,000 (as adjusted to reflect a 1-for-10 reverse stock split effected on May 31, 2002) shares of BioSante's common stock to be issued under the BioSante Pharmaceuticals, Inc. Amended and Restated 1998 Stock Plan. BioSante amended the registration statement (SEC File No. 333-53384) by virtue of a post-effective amendment No. 1 pursuant to Rule 414 under the Securities Act of 1933, as amended, to reflect the reincorporation of BioSante from the State of Wyoming to the State of Delaware.

Pursuant to General Instruction E of Form S-8, this registration statement is filed by BioSante solely to register an additional 1,000,000 shares of common stock reserved for issuance under the BioSante Pharmaceuticals, Inc. Amended and Restated 1998 Stock Plan. This increase was approved by BioSante's board of directors and stockholders. Pursuant to Instruction E, the contents of BioSante's previously filed registration statements on Form S-8 (SEC File Nos. 333-53384 and 333-100238) and the post-effective amendment No. 1 thereto, including without limitation periodic reports that BioSante filed, or will file, after this registration statement to maintain current information about BioSante, are hereby incorporated by reference into this registration statement pursuant to General Instruction E of Form S-8.

**Part II**

**INFORMATION REQUIRED  
IN THE REGISTRATION STATEMENT**

**Item 8. Exhibits.**

Exhibit No.	Description
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5.1	Opinion of Oppenheimer Wolff & Donnelly LLP (filed herewith)
23.1	Consent of Deloitte & Touche LLP (filed herewith)
23.2	Consent of Oppenheimer Wolff & Donnelly LLP (included in Exhibit 5.1)
24.1	Power of Attorney (included on the signature page to this registration statement)

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**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lincolnshire, State of Illinois, on September 10, 2003.

BIOSANTE PHARMACEUTICALS, INC.

By: /s/ STEPHEN M. SIMES

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Stephen M. Simes  
*Vice Chairman, President and Chief Executive Officer*  
*(principal executive officer)*

By: /s/ PHILLIP B. DONENBERG

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Phillip B. Donenberg  
*Chief Financial Officer, Treasurer and Secretary*  
*(principal financial and accounting officer)*

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Stephen M. Simes and Phillip B. Donenberg, and each of them, his or her true and lawful attorney-in-fact and agent with full powers of substitution and resubstitution, for and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his substitute or substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed on September 10, 2003 by the following persons in the capacities indicated.

/s/ STEPHEN M. SIMES

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Vice Chairman, President and Chief Executive Officer

Stephen M. Simes

/s/ LOUIS W. SULLIVAN, M.D.

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Chairman of the Board

Louis W. Sullivan, M.D.

/s/ VICTOR MORGENSTERN

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Director

Victor Morgenstern

Edward C. Rosenow, III, M.D.	Director
/s/ FRED HOLUBOW	
Fred Holubow	Director
/s/ ROSS MANGANO	
Ross Mangano	Director
/s/ ANGELA HO	
Angela Ho	Director
/s/ PETER KJAER	
Peter Kjaer	Director

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**BIOSANTE PHARMACEUTICALS, INC.  
REGISTRATION STATEMENT ON FORM s-8**

**INDEX TO EXHIBITS**

<b>Exhibit No.</b>	<b>Item</b>	<b>Method of Filing</b>
5.1	Opinion of Oppenheimer Wolff & Donnelly LLP	Filed herewith.
23.1	Consent of Deloitte & Touche LLP	Filed herewith.
23.2	Consent of Oppenheimer Wolff & Donnelly LLP	Included in Exhibit 5.1.
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STATEMENT UNDER GENERAL INSTRUCTION E REGISTRATION OF ADDITIONAL SECURITIES

Part II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 8. Exhibits.

SIGNATURES

POWER OF ATTORNEY

INDEX TO EXHIBITS