

EPIX Pharmaceuticals, Inc.
Form S-8
November 14, 2006

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As filed with the Securities and Exchange Commission on November 14, 2006

REGISTRATION NO. 333 -

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
under the
SECURITIES ACT OF 1933**

EPIX Pharmaceuticals, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
*(State or Other Jurisdiction
of Incorporation or Organization)*

04-3030815
*(I.R.S. Employer
Identification No.)*

**4 Maguire Road
Lexington, Massachusetts 02421**
(Address, Including Zip Code, of Principal Executive Offices)
**PREDIX PHARMACEUTICALS HOLDINGS, INC.
AMENDED AND RESTATED 2003 STOCK INCENTIVE PLAN
PHYSIOME SCIENCES, INC. 1997 STOCK OPTION PLAN**
(Full Titles of the Plan)

Michael G. Kauffman, M.D., Ph.D.
**Chief Executive Officer
EPIX Pharmaceuticals, Inc.
4 Maguire Road
Lexington, Massachusetts 02421
(781) 761-7600**
*(Name, Address and Telephone Number, Including
Area Code, of Agent For Service)*

with copies to:
**Edward A. King, Esq.
Goodwin Procter LLP
Exchange Place
Boston, Massachusetts 02109
(617) 570-1000**

CALCULATION OF REGISTRATION FEE

| Title of Securities to be Registered | Amount to be Registered ⁽¹⁾ | Proposed Maximum Offering Price Per Share ⁽²⁾ | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|--------------------------------------|--|--|---|----------------------------|
| Common Stock, \$0.01 par value | 1,116,959 shares | \$ 4.21 | \$4,702,397.39 | 503.16 |
| | | \$ 0.98 | \$1,167,542.60 | 124.93 |

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| | | | | |
|--------------------------------|------------------|---------|----------------|-----------|
| Common Stock, \$0.01 par value | 1,191,370 shares | | | |
| Common Stock, \$0.01 par value | 264,139 shares | \$ 1.74 | \$ 459,601.86 | 49.18 |
| Common Stock, \$0.01 par value | 139,049 shares | \$ 2.18 | \$ 303,126.82 | 32.43 |
| Common Stock, \$0.01 par value | 3,710 shares | \$ 2.28 | \$ 8,458.80 | 0.91 |
| Common Stock, \$0.01 par value | 160,306 shares | \$ 3.62 | \$ 580,307 | 62.09 |
| Common Stock, \$0.01 par value | 17,772 shares | \$ 6.53 | \$ 116,051.16 | 12.42 |
| | 2,893,305 shares | | | |
| Total | | N/A | \$7,337,486.35 | \$ 785.11 |

(1) The number of shares of common stock, par value \$0.01 per share (Common Stock), stated above consists of the aggregate number of shares which may be sold upon (i) the exercise of options which have been granted or upon the exercise of options or issuance of stock awards which may hereafter be granted under the Predix Pharmaceuticals Holdings, Inc. Amended and Restated 2003 Stock Incentive Plan (the 2003 Plan), and (ii) the exercise of options which have been granted under the Physiome

Sciences, Inc.
1997 Stock
Option Plan, as
amended (the
1997 Plan)
which plans
were assumed by
the Registrant on
August 16, 2006,
pursuant to an
Agreement and
Plan of Merger,
by and among
the Registrant,
EPIX Delaware,
Inc., a
wholly-owned
subsidiary of the
Registrant, and
Predix
Pharmaceuticals
Holdings, Inc.
The maximum
number of shares
which may be
sold upon the
exercise of
options issued
under the plans
or the issuance
of stock awards
granted under
the 2003 Plan
are subject to
adjustment in
accordance with
certain
anti-dilution and
other provisions
of the plans.
Accordingly,
pursuant to
Rule 416 under
the Securities
Act of 1933, as
amended (the
Securities Act),
this Registration
Statement
covers, in
addition to the

number of shares stated above, an indeterminate number of shares which may be subject to grant or otherwise issuable after the operation of any such anti-dilution and other provisions.

- (2) This calculation is made solely for the purpose of determining the registration fee pursuant to the provisions of Rule 457(c) and (h) under the Securities Act as follows: (i) in the case of shares of Common Stock which may be purchased upon exercise of outstanding options, the fee is calculated on the basis of the price at which the options may be exercised; and (ii) in the case of shares of Common Stock for which options have not yet been granted and/or stock awards have not yet been issued and the price of which is therefore unknown, the fee is calculated

on the basis of
the average of
the high and low
sale prices per
share of the
Common Stock
on the NASDAQ
Global Market
as of a date
(November 13,
2006) within
five business
days prior to
filing this
Registration
Statement.

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EXPLANATORY NOTE

Pursuant to a certain Agreement and Plan of Merger, dated as of April 3, 2006, as amended, by and among the Registrant, a wholly owned subsidiary of the Registrant, EPIX Delaware, Inc., and Predix Pharmaceuticals Holdings, Inc. (Predix), on August 16, 2006, the Registrant assumed all options to purchase Predix common stock then outstanding granted under the Predix Pharmaceuticals Holdings, Inc. Amended and Restated 2003 Stock Incentive Plan (the 2003 Plan) and the Physiome Sciences, Inc. 1997 Stock Option Plan, as amended (the 1997 Plan). In conjunction with its assumption of those options and the 2003 Plan and the 1997 Plan, the Registrant is registering on this Registration Statement an aggregate of 2,889,595 shares under the 2003 Plan and an aggregate of 3,710 shares under the 1997 Plan.

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The following documents filed by the Registrant with the Securities and Exchange Commission (the Commission) are incorporated herein by reference:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, as filed on March 1, 2006 and amended on April 28, 2006.
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006.
- (c) The Registrant's Current Reports on Form 8-K, filed with the Commission on January 10, 2006, February 1, 2006, February 16, 2006, March 9, 2006, April 3, 2006, April 26, 2006, May 8, 2006, May 24, 2006, July 5, 2006, July 12, 2006, July 13, 2006, July 20, 2006, July 26, 2006, July 28, 2006, July 31, 2006, August 15, 2006, August 17, 2006 (as amended on August 18, 2006 and October 27, 2006), September 7, 2006, September 21, 2006, September 22, 2006, October 23, 2006 and October 26, 2006.
- (d) The Registrant's joint proxy statement/prospectus filed pursuant to Rule 424(b)(3) of the Securities Act of 1933, as amended, with the SEC on July 18, 2006 (Reg. No. 333-133513).
- (e) The description of the Registrant's common stock contained in "Description of Capital Stock" in the registration statement on Form S-4 filed with the SEC on April 25, 2006 (File No. 333-33513) and any amendments or reports filed to update such description.

All reports and other documents filed by the Registrant after the date hereof pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be part hereof from the date of filing of such reports and documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

The validity of the issuance of the shares of common stock registered under this Registration Statement has been passed upon for the Registrant by Goodwin Procter LLP, Boston, Massachusetts.

Item 6. Indemnification of Directors and Officers.

The Registrant's Restated Certificate of Incorporation, as amended (the Restated Certificate) provides that the Registrant shall indemnify to the fullest extent authorized by the Delaware General Corporation Law (DGCL), each person who is involved in any litigation or other proceeding because such person is or was a director or officer of the Registrant or is or was serving as an officer or director of another entity at the request of the Registrant, against expenses (including attorneys' fees), judgments, fines and amounts reasonably incurred in connection therewith. The Restated Certificate provides that the right to indemnification includes the right to be paid expenses incurred in defending any proceeding in advance of its final disposition; provided, however, that such advance payment will only be made upon delivery to the Registrant of an undertaking, by the director or officer, to repay all amounts so advanced if it is ultimately determined that such director or officer is not entitled to indemnification.

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Section 145 of the DGCL permits a corporation to indemnify any director or officer of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any action, suit or proceeding brought by reason of the fact that such person is or was a director or officer of the corporation, if such person acted in good faith and in a manner that he or she reasonably believed to be in, or not opposed to, the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reason to believe his or her conduct was unlawful. In a derivative action, (i.e., one brought by or on behalf of the corporation), indemnification may be made only for expenses, actually and reasonably incurred by any director or officer in connection with the defense or settlement of such an action or suit, if such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged to be liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine that the defendant is fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

Pursuant to Section 102(b)(7) of the DGCL, the Restated Certificate eliminates the liability of a director or the corporation or its stockholders for monetary damages for such breach of fiduciary duty as a director, except for liabilities arising (i) from any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) from any transaction from which the director derived an improper personal benefit. The Registrant has obtained insurance policies insuring the directors and officers of the Registrant against certain liabilities that they may incur in their capacity as directors and officers.

The Registrant has entered into indemnification agreements (the Indemnification Agreements), with certain of its directors and certain of its officers. The Indemnification Agreements provide that the Registrant will, to the fullest extent permitted by law, pay any attorneys' fees and all other costs, expenses and obligations paid or incurred by the indemnitee in connection with claims against him or her related to the fact that he or she was a director or officer of the Registrant or serving at the request of the Registrant in such capacity with another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise. The payments to be made under the Indemnification Agreements include expenses, judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other judgments, fines, penalties or amounts paid in settlement) of such claims. If requested by the indemnitee, the Registrant shall advance all expenses to the indemnitee. Any payments made by the Registrant under the Indemnification Agreements are subrogated to all of the rights of recovery of the indemnitee. The rights of the indemnitee are in addition to such rights the indemnitee may have under the Registrant's Restated Certificate, the Registrant's by-laws and the DGCL.

Pursuant to the Agreement and Plan of Merger by and among the Registrant, EPIX Delaware Inc., a wholly-owned subsidiary of the Registrant, and Predix Pharmaceuticals Holdings, Inc. (Predix) dated as of April 3, 2006, as amended, the Registrant agreed to fulfill and honor the obligations of Predix which existed prior to the merger to indemnify Predix's present and former directors and officers. The certificate of incorporation and by-laws of EPIX Delaware Inc. provide for the indemnification and elimination of liability for monetary damages to the same extent as set forth in Predix's certificate of incorporation and by-laws and such provision may not be amended, repealed or otherwise modified for a period of six years after the merger in any manner that would adversely affect the rights of the directors or officers of Predix at the time of the completion of the merger. The Registrant has agreed to guarantee the timely payment of all funds owing by, and the timely performance of all obligations of the EPIX Delaware, Inc. relating to these indemnification obligations.

Item 7. Exemption from Registration Claimed.

Not applicable.

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Item 8. Exhibits.

Exhibit

Number

Description

- | | |
|------|--|
| 4.1 | Specimen certificate for shares of Common Stock of EPIX Pharmaceuticals, Inc. (filed as Exhibit 4.1 to EPIX Pharmaceuticals Inc.'s Quarterly Report on Form 10-Q dated November 9, 2006 and incorporated herein by reference). |
| 5.1 | Opinion of Goodwin Procter LLP as to the legality of shares being registered. |
| 23.1 | Consent of Goodwin Procter LLP (included in opinion of counsel filed as Exhibit 5.1). |
| 23.2 | Consent of Ernst & Young LLP. |
| 24.1 | Power of Attorney to file future amendments (set forth on the signature page of this Registration Statement). |

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.

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

Provided, however, That:

(A) Paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8 (§ 230.16b of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated by reference in this registration statement; and

(B) Paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 (§ 239.13 of this chapter) or Form F-3 (§ 239.33 of this chapter) and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§ 230.424(b) of this chapter) that is part of the registration statement.

(C) *Provided further, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is for an offering of asset-backed securities on Form S-1 (§ 239.11 of this chapter) or Form S-3 (§ 239.13 of this chapter), and the information required to be included in a post-effective amendment is provided pursuant to Item 1100(c) of Regulation AB (§ 229.1100(c)).

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- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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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 for 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 Lexington, Massachusetts on November 14, 2006.

EPIX PHARMACEUTICALS, INC.

By: /s/ Michael G. Kauffman, M.D., Ph.D.

Michael G. Kauffman, M.D., Ph.D.
Chief Executive Officer

Each person whose signature appears below constitutes and appoints Michael G. Kauffman and Kimberlee C. Drapkin, and each of them singly, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them singly, for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8 of EPIX Pharmaceuticals, Inc., and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting to the attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in or about the premises, as full to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that the attorneys-in-fact and agents or any of each of them or their substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|-------------------|
| /s/ Michael G. Kauffman, M.D., Ph.D. Michael G. Kauffman, M.D., Ph.D. | Chief Executive Officer and Director (Principal Executive Officer) | November 14, 2006 |
| /s/ Kimberlee C. Drapkin Kimberlee C. Drapkin | Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | November 14, 2006 |
| /s/ Christopher F.O. Gabrieli Christopher F.O. Gabrieli | Chairman of the Board | November 14, 2006 |
| /s/ Patrick J. Fortune Patrick J. Fortune | Director | November 14, 2006 |
| /s/ Frederick Frank Frederick Frank | Director | November 14, 2006 |
| /s/ Michael Gilman | Director | November 14, 2006 |

Michael Gilman

/s/ Mark Leuchtenberger

Director

November 14, 2006

Mark Leuchtenberger

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| Signature | Title | Date |
|--|----------|-------------------|
| /s/ Robert J. Perez Robert J. Perez | Director | November 14, 2006 |
| /s/ Gregory D. Phelps Gregory D. Phelps | Director | November 14, 2006 |
| /s/ Ian F. Smith Ian F. Smith | Director | November 14, 2006 |

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EXHIBIT INDEX

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