

Edgar Filing: Patient Safety Technologies, Inc - Form S-8

Patient Safety Technologies, Inc  
 Form S-8  
 May 03, 2005

As filed with the Securities and Exchange Commission on May 3, 2005

Reg. No. 333-

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

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

PATIENT SAFETY TECHNOLOGIES, INC.  
 (Exact name of registrant as specified in its charter)

Delaware  
 (State or other jurisdiction of  
 incorporation or organization)

13-3419202  
 (I.R.S. Employer  
 identification No.)

100 Wilshire Blvd., Ste. 1500, Santa Monica, CA 90401

-----  
 (Address of principal executive offices) (Zip Code)

CONSULTING AGREEMENTS AND  
 STOCK OPTION AND RESTRICTED STOCK PLAN  
 (full time of the plan)

Milton "Todd" Ault III, Chief Executive Officer  
 100 Wilshire Blvd., Ste. 1500  
 Santa Monica, CA 90401

-----  
 (Name and address of agent for service)

(310) 752-1416  
 (Telephone number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF SECURITIES TO BE REGISTERED	AMOUNT TO BE REGISTERED (1)	PROPOSED MAXIMUM OFFERING PRICE PER SECURITY (2)	PR O
Common Stock, \$.33 par value	217,017 (3)	\$4.065	
Common Stock, \$.33 par value	100,000 (4)	\$4.065	
Common Stock, \$.33 par value	150,000 (5)	\$4.065	
Common Stock, \$.33 par value	78,000 (6)	\$4.065	
Common Stock, \$.33 par value	1,319,082 (7)	\$4.065	\$
Total	1,864,099	\$4.065	\$

(1) In addition, pursuant to Rule 416(c) under the Securities Act of 1933, as amended, this registration statement also covers an indeterminate amount of interests to be offered or sold pursuant to the Health West Marketing Consulting Agreement described herein.

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(COVER CONTINUES ON FOLLOWING PAGE)

- (2) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(c) and Rule 457(g) under the Securities Act of 1933, using the average of the high and low prices as reported on the American Stock Exchange on April 29, 2005, which was \$4.065 per share.
- (3) Includes 42,017 shares of common stock and 175,000 shares of common stock issuable upon exercise of common stock purchase warrants, issuable to Bill Adams pursuant to a consulting agreement dated April 5, 2005 with Health West Marketing Incorporated.
- (4) Represents 100,000 shares of common stock issuable to David Long upon exercise of common stock purchase warrants, pursuant to a consulting agreement dated April 1, 2005 with Crescent Communications.
- (5) Includes: (a) 60,000 shares of common stock issuable to David Moss upon exercise of common stock purchase warrants; (b) 60,000 shares of common stock issuable to Patrick Gaynes upon exercise of common stock purchase warrants; and (c) 30,000 shares of common stock issuable to Tom DuHamel upon exercise of common stock purchase warrants. Shares of common stock are issuable upon exercise of common stock warrants issuable pursuant to a consulting agreement dated October 18, 2004 with Aegis Securities Corp.
- (6) Represents 78,000 shares of common stock issuable to William B. Horne upon exercise of stock options issuable pursuant to a consulting agreement dated December 10, 2004 with Apex Financial Management Services L.L.C.
- (7) Represents 1,319,082 shares underlying the Registrant's March 30, 2005 Stock Option and Restricted Stock Plan.

### EXPLANATORY NOTE

This Registration Statement on Form S-8 relates to the issuance of: (1) up to 217,017 shares of common stock pursuant to a Consulting Agreement dated April 5, 2005 by and between Health West Marketing Incorporated, a California corporation, and Patient Safety Technologies, Inc. (the "Registrant"); (2) up to 100,000 shares of common stock pursuant to a consulting agreement dated April 1, 2005 among the Registrant and Crescent Communications; (3) up to 150,000 shares of common stock pursuant to a consulting agreement dated October 18, 2004 with among the Registrant and Aegis Securities Corp.; (4) up to 78,000 shares of common stock pursuant to a consulting agreement dated December 10, 2004 with Apex Financial Management Services L.L.C.; and (5) the issuance of up to 1,319,082 shares of common stock pursuant to the Registrant's March 30, 2005 Stock Option and Restricted Stock Plan.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Information required by Part I of Form S-8 to be contained in a prospectus meeting the requirements of Section 10(a) of the Securities Act of 1933, as amended (the "Securities Act"), is not required to be filed with the Securities and Exchange Commission and is omitted from this registration statement in accordance with the explanatory note to Part I of Form S-8 and Rule 428 of the Securities Act.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The Registrant hereby incorporates by reference into this Registration Statement the documents listed below. In addition, all documents subsequently filed pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents:

- o Reference is made to the Registrant's annual report on Form 10-K for the year ended December 31, 2004, as filed with the Securities and Exchange Commission on March 30, 2005, which is hereby incorporated by reference.
- o Reference is made to the Registrant's current report on Form 8-K dated March 30, 2005, as filed with the Securities and Exchange Commission on April 5, 2005, which is hereby incorporated by reference.
- o Reference is made to the Registrant's current report on Form 8-K dated April 5, 2005, as filed with the Securities and Exchange Commission on April 11, 2005, which is hereby incorporated by reference.
- o Reference is made to the Registrant's current report on Form 8-K dated April 7, 2005, as filed with the Securities and Exchange Commission on April 13, 2005, which is hereby incorporated by reference.
- o Reference is made to the Registrant's current report on Form 8-K dated April 22, 2005, as filed with the Securities and Exchange Commission on April 26, 2005, which is hereby incorporated by reference.

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- o The description of the Registrant's common stock is incorporated by reference to the Registrant's Registration Statement on Form 8-B, as amended (File No. 87 21 7251), initially filed with the Securities and Exchange Commission on October 14, 1987.

### ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

### ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

Section 145 ("Section 145") of the Delaware General Corporation Law, as amended (the "DGCL"), permits indemnification of directors, officers, agents and controlling persons of a corporation under certain conditions and subject to certain limitations. Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding whether civil, criminal,

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administrative or investigative, by reason of the fact that he or she is or was a director, officer or agent of the corporation or another enterprise if serving at the request of the corporation. Depending on the character of the proceeding, a corporation may indemnify against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the person indemnified acted in good faith and in a manner 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, had no reasonable cause to believe his or her conduct was unlawful. In the case of an action by or in the right of the corporation, no indemnification may be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine that despite the adjudication of liability such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. Section 145 further provides that to the extent a present or former director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to above or in the defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

The Registrant's Amended and Restated Certificate of Incorporation, as amended (the "Charter"), provides that no current or former director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability: (a) for any breach of the director's duty of loyalty to the Registrant or its stockholders; (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the DGCL; or (d) for any transaction from which the director derived any improper personal benefit. The Registrant's Charter also authorizes the Registrant, to the fullest extent permitted by applicable law, to provide indemnification of, and advanced expenses to, the Registrant's agents and any other persons to which the DGCL permits.

In accordance with Section 145, the Registrant's Bylaws provide that the Registrant shall indemnify its officers and directors, and any employee who serves as an officer or director of any corporation at the Registrant's request. According to Article IV of the Bylaws, directors and officers as well as employees and individuals may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation as a derivative action) if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful.

### ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not Applicable.

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### ITEM 8. EXHIBITS.

EXHIBIT NUMBER	DESCRIPTION
5.1	Opinion of Sichenzia Ross Friedman Ference LLP.

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- 10.1 Consulting Agreement entered into as of April 5, 2005 by and between Health West Marketing Incorporated and Patient Safety Technologies, Inc. (Incorporated by reference to the Registrant's Form 8-K, filed with the Securities and Exchange Commission on April 11, 2005).
- 10.2 Agreement dated April 1, 2005 with Crescent Communications.
- 10.3 Agreement dated October 18, 2004 with Aegis Securities Corp.
- 10.4 Consulting Agreement entered into as of December 10, 2004 by and among Franklin Capital Corporation (n/k/a Patient Safety Technologies, Inc.) and Apex Financial Management Services L.L.C.
- 10.5 Stock Option and Restricted Stock Plan effective March 30, 2005
- 23.1 Consent of Sichenzia Ross Friedman Ference LLP is contained in Exhibit 5.1.
- 23.2 Consent of Rothstein, Kass & Company, P.C, independent registered public accounting firm.
- 23.3 Consent of Ernst & Young LLP, independent registered public accounting firm.

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### 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:

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;

(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 that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered herein, 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

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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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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 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 Santa Monica, California on May 3, 2005.

PATIENT SAFETY TECHNOLOGIES, INC.

By: /s/ Milton Ault

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Milton "Todd" Ault, III  
Chief Executive Officer,  
Acting Chief Financial Officer and  
Principal Accounting Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement on Form S-8 has been signed by the following persons in the capacities and on the date indicated:

SIGNATURE	TITLE	DATE
----- /s/ Milton Ault ----- Milton "Todd" Ault, III	Chairman of the Board	May 3, 2005
----- /s/ Alice M. Campbell ----- Alice M. Campbell	Director	May 3, 2005
----- /s/ Lytle Brown III ----- Brigadier General (Ret.) Lytle Brown III	Director	May 3, 2005

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/s/ Louis Glazer, M.D.

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Louis Glazer, M.D., PH.G.

Director

May 3, 2005