

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

FORM 8-K

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

Date of report (date of earliest event reported): April 26, 2006

ZIOPHARM Oncology, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

0-32353
(Commission File Number)

84-1475642
(IRS Employer Identification No.)

1180 Avenue of the Americas, 19th Floor
New York, NY 10036
(Address of principal executive offices) (Zip Code)

(646) 214-0700
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Adoption of Amendment to 2003 Stock Option Plan

At the Company's annual stockholders' meeting held on April 26, 2006, the Registrant's stockholders approved the adoption of an amendment (the "Amendment") to the 2003 Stock Option Plan (the "2003 Plan") that increases the number of shares of common stock available for issuance under the 2003 Plan from 1,252,436 shares to 2,002,436 shares. A copy of the Amendment is filed as Exhibit 10.1 to this report.

Grant of Stock Options to Director and Officers

Effective upon the approval of the Amendment by the Company stockholders on April 26, 2006, as discussed above, the Company granted stock options to each of its six non-employee directors to purchase 15,000 shares of the Company's common stock. Each such stock option was granted under the 2003 Plan, was vested with respect to all shares on the date of grant and has an exercise price per share equal to \$5.01. Otherwise, each such stock option was granted in substantially in the form attached as Exhibit 10.10 to the Registrant's Annual Report on Form 10-KSB (SEC File No. 000-32353) filed March 20, 2006.

Also effective upon the approval of the Amendment by the Company stockholders on April 26, 2006, as discussed above, the Company granted stock options, each with an exercise price per share equal to \$5.01, to the following officers in the amounts and subject to the vesting provisions set forth below:

| <u>Name</u> | <u>Title</u> | <u>No. of Options</u> | <u>Vesting</u> |
|-------------------|--|-----------------------|---|
| Jonathan Lewis | Chief Executive Officer | 214,315 | 100% upon date of grant |
| Richard E. Bagley | President, Chief Operating Officer and Treasurer | 54,873 | 100% upon date of grant |
| | | 40,000 | 50% upon date of grant and 50% on December 14, 2006 |
| Robert Peter Gale | Senior Vice President Research | 25,000 | 50% upon date of grant and 50% on December 14, 2006 |

Otherwise, each such stock option was granted in substantially in the form attached as Exhibit 10.8 to the Registrant's Annual Report on Form 10-KSB (SEC File No. 000-32353) filed March 20, 2006.

Item 8.01. Other Events.

Adoption of Amended and Restated Certificate of Incorporation

At the Company's annual stockholders' meeting held on April 26, 2006, the Registrant's stockholders approved the adoption of an Amended and Restated Certificate of Incorporation for the Company, in the form attached as Exhibit 3.1 to this report. A proposal regarding the adoption of the Amended and Restated Certificate of Incorporation was included in the Company's proxy for the stockholders' meeting filed with the Securities and Exchange Commission. The Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on April 26, 2006.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

3.1 Amended and Restated Certificate of Incorporation filed , as filed with the Delaware Secretary of State on April 26, 2006.

10.1 Amendment No. 1 to 2003 Stock Incentive Plan of ZIOPHARM Oncology, Inc.

SIGNATURE

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 hereunto duly authorized.

ZIOPHARM Oncology, Inc.:
(Registrant)

Date: April 26, 2006

By: /s/ Jonathan Lewis

Jonathan Lewis, *Chief Executive Officer*

Exhibit Index

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|--|
| 3.1 | Amended and Restated Certificate of Incorporation filed , as filed with the Delaware Secretary of State on April 26, 2006. |
| 10.1 | Amendment No. 1 to 2003 Stock Incentive Plan of ZIOPHARM Oncology, Inc. |

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
of
ZIOPHARM Oncology, Inc.

ZIOPHARM Oncology, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is ZIOPHARM Oncology, Inc., formerly known as EasyWeb, Inc. The date of filing of its original Certificate of Incorporation with the Secretary of State was May 16, 2005.

2. That the Board of Directors of the corporation adopted resolutions, in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, setting forth a proposed Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate"), declaring the Amended and Restated Certificate to be advisable. The resolution setting forth the proposed Amended and Restated Certificate is as follows:

"RESOLVED, that, subject to the approval of the holders of a majority of the outstanding shares of the Corporation's common stock, par value \$.001 per share (the "Common Stock"), the Corporation's Amended Certificate of Incorporation shall be amended and restated in the manner set forth on the attached Exhibit A."

[Please see Exhibit A attached hereto.]

3. This Amended and Restated Certificate was duly adopted by vote of the stockholders of the Corporation in accordance with the provisions of Sections 222, 242 and 245 of the General Corporation Law of the State of Delaware.

4. That the Amended and Restated Certificate was duly adopted in accordance with the applicable provisions of Sections 222, 242 and 245 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this document to be executed in its corporate name as of this 26th day of April, 2006.

ZIOPHARM Oncology, Inc.

By: /s/ Jonathan Lewis

Jonathan Lewis, *Chief Executive Officer*

EXHIBIT A

1. *Name.* The name of the corporation is ZIOPHARM Oncology, Inc. (the “Corporation”).
2. *Address; Registered Office and Agent.* The address of the Corporation’s registered office is 2711 Centerville Road Suite 400, Wilmington, Delaware 19808. The Corporation may from time to time, in the manner provided by law, change the registered agent and the registered office within the State of Delaware. The Corporation may also maintain offices for the conduct of its business, either within or without the State of Delaware.
3. *Purposes.* The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.
4. *Number of Shares.* The total number of shares of all classes of stock that the Corporation shall have authority to issue is Two Hundred Eighty Million (280,000,000) shares consisting of: Two Hundred Fifty Million (250,000,000) shares of common stock, \$.001 par value per share (“Common Stock”); and Thirty Million (30,000,000) shares of preferred stock, \$.001 par value per share (“Preferred Stock”).

The Preferred Stock may be divided into, and may be issued from time to time in one or more series. The Board of Directors of the Corporation (the “Board”) is authorized from time to time to establish and designate any such series of Preferred Stock, to fix and determine the variations in the relative rights, preferences, privileges and restrictions as between and among such series and any other class of capital stock of the Corporation and any series thereof, and to fix or alter the number of shares comprising any such series and the designation thereof. The authority of the Board from time to time with respect to each such series shall include, but not be limited to, determination of the following:

- a. The designation of the series;
 - b. The number of shares of the series and (except where otherwise provided in the creation of the series) any subsequent increase or decrease therein;
 - c. The dividends, if any, for shares of the series and the rates, conditions, times and relative preferences thereof;
 - d. The redemption rights, if any, and price or prices for shares of the series;
 - e. The terms and amounts of any sinking fund provided for the purchase or redemption of the series;
 - f. The relative rights of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;
 - g. Whether the shares of the series shall be convertible into shares of any other class or series of shares of the Corporation, and, if so, the specification of such other class or series, the conversion prices or rate or rates, any adjustments thereof, the date or dates as of which such shares shall be convertible and all other terms and conditions upon which such conversion may be made;
 - h. The voting rights, if any, of the holders of such series; and
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i. Such other designations, powers, preference and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof.

5. *Election of Directors.* Unless and except to the extent that the by-laws of the Corporation (the “By-laws”) shall so require, the election of directors of the Corporation need not be by written ballot.

6. *Limitation of Liability.* To the fullest extent permitted under the General Corporation Law, as amended from time to time, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment, repeal or modification of the foregoing provision shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, repeal or modification.

7. *Indemnification.*

7.1 *Right to Indemnification.* The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a “Covered Person”) who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a “Proceeding”), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity (an “Other Entity”), including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board.

7.2 *Prepayment of Expenses.* The Corporation shall pay the expenses (including attorneys’ fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition, provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article 7 or otherwise.

7.3 *Claims.* If a claim for indemnification or advancement of expenses under this Article 7 is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

7.4 *Nonexclusivity of Rights.* The rights conferred on any Covered Person by this Article 7 shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the By-laws, agreement, vote of stockholders or disinterested directors or otherwise.

7.5 *Other Sources.* The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of an Other Entity shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such Other Entity.

7.6 *Amendment or Repeal.* Any repeal or modification of the foregoing provisions of this Article 7 shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such repeal or modification.

7.7 *Other Indemnification and Prepayment of Expenses.* This Article 7 shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

8. *Adoption, Amendment and/or Repeal of By-Laws.* In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to make, alter and repeal the By-laws, subject to the power of the stockholders of the Corporation to alter or repeal any By-law whether adopted by them or otherwise.

9. *Certificate Amendments.* The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by applicable law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Amended and Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

ZIOPHARM Oncology, Inc.

**Amendment No. 1 to
2003 Stock Option Plan**

This Amendment No. 1 to 2003 Stock Option Plan (the “**Amendment**”) dated as of April 26, 2006, amends the 2003 Stock Option Plan (the “**2003 Plan**”) of ZIOPHARM Oncology, Inc. (the “**Company**”). Except as otherwise explicitly set forth herein, all provisions of the 2003 Plan shall remain in full force and effect. Capitalized terms used in this Amendment without definition shall have the meanings set forth in the 2003 Plan.

WHEREAS, the 2003 Plan was adopted by the Company pursuant to resolutions of the Board of Directors of ZIOPHARM, Inc., the Company’s predecessor, as of December 30, 2003 and approved by ZIOPHARM, Inc.’s stockholders as of December 21, 2004;

WHEREAS, pursuant to a merger transaction that became effective in September 2005, a wholly owned subsidiary of the Company merged with and into ZIOPHARM, Inc., with ZIOPHARM, Inc. remaining as the surviving entity and a wholly owned operating subsidiary of the Company, after which ZIOPHARM, Inc. merged with and into the Company, with the Company remaining as the surviving corporation (such merger transactions are collectively referred to as the “**Merger**”);

WHEREAS, immediately prior to the Merger, the number of shares of ZIOPHARM, Inc. common stock available for issuance under the 2003 Plan was 2,500,000;

WHEREAS, upon the Merger, the Company assumed the 2003 Plan and, as a result of the conversion ratio applicable to the Merger, the number of shares of the Company’s common stock available for issuance under the 2003 Plan immediately following the Merger was 1,252,436;

WHEREAS, an amendment to the 2003 Plan increasing the number of shares of the Company’s common stock available for issuance thereunder to 2,002,436 was adopted by the Company pursuant to resolutions of the Board of Directors on February 22, 2006 and approved by the Company’s stockholders at a meeting of the stockholders held on April 26 2006; and

WHEREAS, pursuant to Section 10.11 of the 2003 Plan, the 2003 Plan may be amended upon approval of the Board of Directors of the Company, and pursuant to resolutions adopted by the Board of Directors on February 22, 2006, the Company has determined that it is in the best interests of the Company to amend the Plan as hereinafter provided.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Increase in Number of Shares Subject to the Plan. Section 5.1 of the Plan is hereby amended in its entirety to read as follows:

“5.1. Number of Shares. Subject to adjustment as provided in Section 10.6, the number of shares of Common Stock which may be issued under the Plan shall not exceed 2,002,436 shares of Common Stock. Shares of Common Stock that are issued under the Plan or are subject to outstanding Incentives will be applied to reduce the maximum number of shares of Common Stock remaining available for issuance under the Plan.”

2. **Effective Date.** This Amendment shall be effective upon the date first written above.

IN WITNESS WHEREOF, the Company has caused this Amendment to be executed by the undersigned officer, thereunto duly authorized pursuant to the resolutions of the Board of Directors.

ZIOPHARM Oncology, Inc.:

By: /s/ Jonathan Lewis

Name: Jonathan Lewis

Title: Chief Executive Officer
