

PHARMANETICS INC
Form DEF 14A
April 29, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- | | |
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| <input type="checkbox"/> Preliminary Proxy Statement | <input type="checkbox"/> Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2)) |
| <input checked="" type="checkbox"/> Definitive Proxy Statement | |
| <input type="checkbox"/> Definitive Additional Materials | |
| <input type="checkbox"/> Soliciting Material Pursuant to §240.14a-12 | |

PharmaNetics, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

PHARMANETICS, INC.

9401 Globe Center Drive

Morrisville, North Carolina 27560

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To Be Held May 27, 2004

To the shareholders of

PharmaNetics, Inc.

You are invited to attend the annual meeting of shareholders of PharmaNetics, Inc. to be held at our offices located at 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina on Thursday May 27, 2004, at 10:30 a.m. for the following purposes:

1. To elect a board of directors;
2. To ratify the appointment of PricewaterhouseCoopers LLP as our independent auditors for the year ending December 31, 2004; and
3. To act upon such other matters as may properly come before the meeting or any adjournment thereof.

The foregoing items are more fully described in the attached proxy statement.

The Board of Directors has fixed the close of business on April 8, 2004 as the record date for the determination of shareholders entitled to notice of and to vote at the meeting or any adjournment or adjournments thereof. You may attend the meeting in person. However, to assure your representation at the meeting, we urge you to mark, sign, date and return the enclosed proxy card as promptly as possible in the postage-prepaid envelope enclosed for that purpose. You may vote in person at the meeting, even if you returned a proxy.

Our proxy statement and proxy are submitted herewith along with our Annual Report on Form 10-K for the year ended December 31, 2003.

IMPORTANT YOUR PROXY IS ENCLOSED

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Whether or not you plan to attend the meeting, please execute and promptly return the enclosed proxy in the enclosed envelope. No postage is required for mailing in the United States.

By Order of the Board of Directors

John P. Funkhouser,

President and Chief Executive Officer

Morrisville, North Carolina

April 28, 2004

PHARMANETICS, INC.

9401 Globe Center Drive

Morrisville, North Carolina 27560

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS

May 27, 2004

INFORMATION CONCERNING SOLICITATION AND VOTING

The enclosed proxy is solicited by the Board of Directors of PharmaNetics, Inc., a North Carolina corporation, for use at our annual meeting of shareholders to be held at 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina, at 10:30 a.m. on Thursday, May 27, 2004, and any adjournments thereof. We will bear the cost of soliciting proxies. In addition to solicitation of proxies by mail, our employees, without extra remuneration, may solicit proxies personally or by telephone. We will reimburse brokerage firms and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses for forwarding proxy materials to beneficial owners and seeking instruction with respect thereto. The mailing address of our principal executive offices is 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina 27560. Copies of this proxy statement and accompanying proxy card were mailed to shareholders on or about April 30, 2004.

Revocability of Proxies

You may revoke your proxy at any time before it is voted by giving a later proxy or written notice to us (Attention: John Funkhouser, Chief Executive Officer), or by attending the meeting and voting in person.

Voting

When the enclosed proxy is properly executed and returned (and not subsequently properly revoked), the shares it represents will be voted in accordance with the directions indicated thereon, or, if no direction is indicated thereon, it will be voted: (i) FOR the election of the nominees for director identified below; (ii) FOR ratification of the appointment of PricewaterhouseCoopers LLP, Raleigh, North Carolina, as our independent auditors for the year ending December 31, 2004; and (iii) in the discretion of the proxies with respect to any other matters properly brought before the shareholders at the meeting.

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Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum for the transaction of business at the meeting but will not be counted in tabulation of votes cast on proposals presented at the meeting. While there is no definitive statutory or case law authority in North Carolina with regard to these matters, we believe that our intended treatment of abstentions and broker non-votes at the meeting is appropriate.

Record Date

Only the holders of record of our Common Stock, Series A Preferred Stock and Series B Preferred Stock at the close of business on the record date, April 8, 2004, are entitled to notice of and to vote at the meeting. On the record date, 10,068,246 shares of Common Stock, 65,000 shares of Series A Preferred Stock and 103,508 shares of Series B Preferred Stock were outstanding. Shareholders will be entitled to one vote for each share of Common Stock, 10 votes for each share of Series A Preferred Stock and approximately 14.04 votes for each share of Series B Preferred Stock held on the record date.

PROPOSAL NO. 1 ELECTION OF DIRECTORS**Nominees**

Our Bylaws provide that the number of directors constituting the Board of Directors shall be no less than one and no more than nine. There are currently five directors serving on the board and the number authorized for election at the meeting is five, four of whom are to be elected by the holders of common stock and preferred stock, voting together as one class, and the other of whom shall be elected by the holders of Series B preferred stock voting as a separate class. Therefore, five directors are to be elected to serve for one year, until the election and qualification of their successors, and it is intended that proxies, except as directed otherwise, will be voted FOR all of the management nominees and the Series B designee named below. If any nominee or designee is unable or declines to serve as a director at the time of the meeting, the individuals named in the enclosed proxy may exercise their discretion to vote for any substitute proposed by the Board of Directors. It is not anticipated that any nominee or designee listed below will be unable or will decline to serve as a director. Under our Bylaws, shareholders desiring to nominate a person for election at the meeting were required to give notice to us by April 7, 2004. Because no timely notice has been received, shareholder nominations will not be permitted for this year's meeting. None of the nominees is related by blood, marriage or adoption to any other nominee or any of our executive officers.

<u>Names of Management Nominees</u>	<u>Age</u>	<u>Director Since</u>
John P. Funkhouser	50	1993
John K. Pirotte.	54	1996
Stephen R. Puckett	51	1996
James B. Farinholt, Jr.	69	2000
 <u>Name of Nominee Designated by the Series B Preferred Stockholders</u>		
Richard M. Johnston.	69	2003

John P. Funkhouser was elected our President, Chief Executive Officer and a director in October 1993. Before his employment with PharmaNetics, Mr. Funkhouser was a General Partner with Hillcrest Group, a venture capital firm, and worked for over nine years in managing venture capital portfolio companies. Mr. Funkhouser holds a B.A. from Princeton University and an M.B.A. from the University of Virginia.

John K. Pirotte, age 54, has been President of Axxiom Manufacturing, Inc., a privately held manufacturer of air blast equipment since 2003. He has also been Chairman and Chief Executive Officer of CORPEX Technologies Inc., a privately held company that develops and markets surface active chemical technology, since 1990 and President of Matrix Surface Technologies Inc., a privately held company that develops and markets mechanical surface treatment technologies, since 1997. Mr. Pirotte also was President and Chief Operating Officer of Teleion Wireless, Inc., a privately held wireless data communications company, from August 2000 to March 2002. He is a member of the Board of Directors of Digital Recorders, Inc. a NASDAQ listed company (symbol TBUS) that manufactures and sells advanced technology products to the transportation industry. He is a founding director of North Carolina Enterprise Corp., a venture capital fund. Mr. Pirotte holds a B.A. degree from Princeton University and an M.S. from New York University Graduate School of Business Administration.

Stephen R. Puckett is Chairman of the Board of Directors of MedCath Incorporated, a provider of cardiology and cardiovascular services that he founded in 1988. He also formerly served as President and Chief Executive Officer of Medcath. He is also Chairman of the Board of Hospital Partners of America, Inc. He has also served as Executive Vice President and Chief Operating Officer of the Charlotte Mecklenburg Hospital Authority. Mr. Puckett holds a B.S. and an M.S. in Health Management from the University of Alabama.

Richard M. Johnston serves on the Board of Managers, is the Chairman and Executive Vice President of Camden Partners, Inc., and Chairman and Chief Executive Officer of Camden Partners Holdings L.L.C. Mr.

Johnston joined Camden Partners in 2000. Previously, Mr. Johnston was Vice President Investments and a Director of The Hillman Company where he was employed since 1961. The Hillman Company is an investment holding company with diversified operations. Mr. Johnston is a director of several private companies, including Medivance, Inc., Webmedx, Inc., Atricure, Inc., Masterplan, and Lombard Medical plc. He was Chairman of the Board of The Western Pennsylvania Hospital from 1979 to 1999, The Western Pennsylvania Healthcare System from 1984 to 2000, and the West Penn Allegheny Health System from inception in 2000 to 2002. Mr. Johnston holds a B.S. degree from Washington and Lee University and a M.B.A. from The Wharton Graduate School, University of Pennsylvania.

James B. Farinholt, Jr. is a Managing Director of Tall Oaks Capital Partners, LLC, which manages an investment fund focused on businesses primarily in information technology and the life sciences. Mr. Farinholt retired in 2002 as Special Assistant to the President for Economic Development of Virginia Commonwealth University (VCU), advising on campus expansion and commercialization of scientific discoveries. He is a member of the Board of Directors of the VCU Intellectual Properties Foundation. He is also a member of the Board of Directors of Owens & Minor, a public company that is the nations largest distributor of brand name hospital supplies. Mr. Farinholt holds a B.S. from Hampden-Sydney College.

Board Nomination, Representation and Observation Rights

In connection with our sale of approximately \$17.4 million of common stock to Bayer Diagnostics in 2001, Bayer agreed to vote its shares in accordance with the recommendation of our Board related to its slate of board nominees and related to any non-company sponsored shareholder proposal that is opposed by the Board. In addition, we agreed to include in the slate of nominees recommended by us for election as directors at each annual meeting one person designated by Bayer and reasonably acceptable to the Company. Last year s Board nominee designated by Bayer and approved by us was Frances L. Tuttle. Ms. Tuttle resigned from the Board during 2003 and Bayer has not designated a replacement nominee for election this year. Bayer retains the right to name a nominee in the future.

In connection with our \$9.5 million Series B preferred stock private placement completed in May 2003, we agreed that so long as 20% of the shares of Series B preferred stock issued at closing remain outstanding, the holders thereof shall be entitled to elect, at a meeting of such shareholders or by written consent in lieu thereof, one member of our Board of Directors. Pursuant to these rights, Mr. Johnston was appointed to our Board in May 2003 and has been designated by the holders of Series B preferred stock for election by them to the Board at the meeting. In addition, the holders of Series B preferred stock have the right to designate one person to attend all meetings of our Board of Directors and committee meetings thereof to the extent practicable, in each case as an observer. The Series B holders have not yet exercised these Board observation rights.

Information Concerning the Board of Directors and Committees

The business of the Company is conducted under the general management of the Board of Directors as provided by the laws of North Carolina and our Bylaws. During the year ended December 31, 2003, the Board of Directors held ten formal meetings, excluding actions that were taken by unanimous written consent during the year. Each member of the board attended at least 75% of the 2003 meetings of the Board of Directors and Board committees of which he or she was a member.

The Board of Directors has an Audit Committee, a Compensation Committee and a Governance and Nominating Committee.

Audit Committee. The Audit Committee currently consists of Messrs. Pirotte and Farinholt. The Audit Committee held five formal meetings during 2003 to discuss quarterly results and the year-end audit with our auditors. The Audit Committee is comprised solely of directors who

meet all the independence standards for

audit committee members as set forth in the listing standards of the Nasdaq SmallCap Market System. The Board has designated and determined the qualification of Mr. Pirotte as the audit committee financial expert as that term is defined in the SEC rules adopted pursuant to the Sarbanes-Oxley Act. The Audit Committee is governed by a written charter adopted by the Board of Directors. The Audit Committee makes recommendations to the Board of Directors concerning its review of our internal controls and disclosure controls, our accounting system and the annual audit, and regarding the selection of and authorization for the payment of fees to our independent auditors. See the Report of the Audit Committee below.

Compensation Committee. The Compensation Committee currently consists of Messrs. Pirotte, Puckett and Farinholt. The Compensation Committee is comprised solely of directors who meet all the independence standards for compensation committee members as set forth in the listing standards of the Nasdaq SmallCap Market System. The Compensation Committee recommends employee salaries and incentive compensation to the Board of Directors and administers our stock option plans. During 2003, the Compensation Committee held three meetings. See the Report of the Compensation Committee below.

Governance and Nominating Committee. The Governance and Nominating Committee, which was formed during 2003, has two members, Mr. Farinholt and Mr. Johnston. The Governance and Nominating Committee is comprised solely of directors who meet all the independence standards for committee members as set forth in the listing standards of the Nasdaq SmallCap Market System. The Governance and Nominating Committee has established a written charter. This committee's role is to (1) recommend the Board director nominees for each committee (2) oversee the governance of the company, including recommending to the Board corporate governance guidelines for the company (3) lead the Board in its annual review of the Board's performance and (4) assist the Board by identifying individuals qualified to become Board members and to recommend to the Board the director nominees for the next annual meeting of shareholders.

In evaluating and determining whether to recommend a person as a candidate for election as a director, the Committee will consider, among other things, relevant management and/or industry experience; values such as integrity, accountability, judgment and adherence to high performance standards; independence pursuant to the guidelines set forth in the listing standard of the Nasdaq SmallCap Market System; ability and willingness to undertake the requisite time commitment to Board functions; and an absence of conflicts of interest with the Company. The Committee will employ a variety of methods for identifying and evaluating nominees for director, including the need for expertise on the Board, and will consider candidates that come to the Committee's attention through current Board members, professional search firms, shareholders or other persons. The Committee will consider candidates recommended by our shareholders. Following verification of the shareholder status of persons proposing candidates, the Committee will perform an analysis, using the criteria stated above, of the qualifications of the candidate recommended in determining whether the candidate is qualified for service on the Board.

Although we do not have a formal policy with regard to Board members' attendance at annual meetings, we encourage our directors to attend them. At the 2003 annual meeting, Messrs. Funkhouser, Farinholt, Pirotte and Johnston were in attendance.

Vote Required

The four nominees receiving the highest number of affirmative votes of the shares of common stock and preferred stock present or represented and entitled to be voted at the meeting, voting together as one class, together with the one Series B designee receiving the highest number of affirmative votes of the shares of Series B preferred stock present or represented and entitled to vote at the meeting, shall be elected as our directors.

The Board of Directors has unanimously approved and recommends that you vote FOR the election of the management nominees and the Series B designee listed above.

PROPOSAL NO. 2 RATIFICATION OF SELECTION OF INDEPENDENT AUDITORS

The Board of Directors has appointed the firm PricewaterhouseCoopers LLP (PWC), Raleigh, North Carolina, to serve as our independent auditors for the year ending December 31, 2004, and recommends that the shareholders ratify such action. Shareholder ratification of the selection of PWC as our independent auditors is not required by our bylaws or otherwise. However, the Board is submitting the selection of PWC to our shareholders for ratification as a matter of good corporate practice. If the appointment of PWC is not ratified by the shareholders, the Board of Directors will reconsider its selection. PWC has audited our accounts since 1994 and has advised us that it does not have, and has not had, any direct or indirect financial interest in the Company or its subsidiaries in any capacity other than that of serving as independent auditors. Representatives of PWC are expected to attend the Meeting. They will have an opportunity to make a statement, if they desire to do so, and will also be available to respond to appropriate questions.

Fees Paid to Independent Auditors

For the years ended December 31, 2003 and 2002, PWC, our independent auditors, performed professional services for us. The professional services provided by PWC and the fees billed for those services are set forth below.

Audit Fees

PWC billed us aggregate fees of \$80,000 and \$70,000 for professional services rendered for the audit of our annual financial statements for fiscal years 2003 and 2002, respectively, and for reviews of the financial statements included in our quarterly reports on Form 10-Q for the first three quarters of fiscal years 2003 and 2002.

Audit-Related Fees

PWC billed us aggregate fees for assurance and related services that were reasonably related to the audit or review of our financial statements for fiscal 2003, and which are not included in the amounts disclosed above under the caption Audit Fees, of \$17,500. These fees resulted primarily from services rendered in connection with the preparation, filing and SEC review of our registration statement related to our Series B preferred stock offering. No such fees were billed during 2002.

Tax Fees

The aggregate fees billed to us by PWC for tax services for fiscal years 2003 and 2002 were \$16,820 and \$15,960, respectively. The fees for tax services related to federal and state tax preparation assistance, tax compliance and general tax consulting.

All Other Fees

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PWC did not provide, or bill us for, services during fiscal 2003 and 2002 other than as described above.

The Audit Committee of the Board of Directors considered these activities to be compatible with the maintenance of PWC independence.

Vote Required

The affirmative vote of the holders of a majority of the shares of our common stock and preferred stock present or represented and voting together as one class on this proposal at the Meeting shall constitute ratification of the appointment of PWC.

The Board of Directors has unanimously approved and recommends a vote FOR the ratification of the appointment of PWC as our independent auditors for the year ending December 31, 2004.

OTHER INFORMATION

Principal Shareholders

The following table sets forth certain information regarding the ownership of shares of our common stock, Series A preferred stock and Series B preferred stock as of the record date by (1) each person known by the Company to own beneficially more than 5% of the outstanding shares of Common Stock, Series A preferred stock or Series B preferred stock, (2) each of our current directors, (3) each of our Chief Executive Officer and the only two most highly compensated executive officers other than the Chief Executive Officer whose cash compensation for the year ended December 31, 2003 exceeded \$100,000 (collectively, the Named Executive Officers), and (4) all of our current directors and executive officers as a group. As of the record date, we had 10,068,246 shares of common stock, 65,000 shares of Series A preferred stock and 103,508 shares of Series B preferred stock outstanding. Each share of Series A preferred stock is currently convertible into 10 shares of common stock and each share of Series B Preferred Stock is currently convertible into 16.667 shares of common stock. Except as indicated in footnotes to this table, the persons named in this table have sole voting and investment power with respect to all shares of common stock and preferred stock indicated. Share ownership in the case of common stock includes shares issuable upon conversion of Series A preferred stock and upon exercise of outstanding options and warrants that may be exercised within 60 days after the record date for purposes of computing the percentage of common stock owned by such person but not for purposes of computing the percentage owned by any other person. Percentage voting power is calculated assuming the common stock, Series A preferred stock and Series B preferred stock vote together as one class with each share of common stock entitled to one vote, each share of Series A preferred stock entitled to 10 votes and each share of Series B preferred stock entitled to approximately 14.04 votes (even though each share of Series B preferred stock is convertible into 16.667 shares of common stock).

	Common Stock		Series A Preferred Stock		Series B Preferred Stock		% of Total Voting Power
	Number of Shares	Percent of Class	Number of Shares	Percent of Class	Number of Shares	Percent of Class	
Bayer Corporation 63 North Street Medfield, MA 02052	2,050,000	20.4%					16.8%
Camden Partners(6) One South Street, Suite 2150 Baltimore, MD 21202	1,190,407(7)	10.6%			55,103	53.2%	7.5%
Joseph H. Sherrill, Jr 1510 Stickney Point Road Sarasota, FL 34231	498,715(1)	5.6%	6,000	9.2%			4.6%
Elliot Bossen 3100 Tower Boulevard, #1104 Durham, NC 27707	155,008(2)	1.5%	10,000	15.4%			1.1%
Leonardo, L.P. 245 Park Avenue New York, NY 10167	310,016(3)	3.0%	20,000	30.8%			2.2%
AIG Sound Shore Funds(4) 1281 East Main Street, 3rd Floor Stamford, CT 06902	206,386(5)	2.0%	6,500	10.0%	5,943	5.7%	1.3%
Baystar Capital II LP 80 E Sir Francis Drake Blvd., Suite 2B Larkspur, CA 94939	233,421(8)	2.3%			10,805	10.4%	1.5%

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	Common Stock		Series A Preferred Stock		Series B Preferred Stock		% of Total Voting Power
	Number of Shares	Percent of Class	Number of Shares	Percent of Class	Number of Shares	Percent of Class	
Capital Ventures International(4) 425 California Street, Suite 1100 San Francisco, CA 94104	140,053(9)	1.4%			6,483	6.3%	*
Crestview Capital(4) 95 Revere Drive, Suite F Northbrook, IL 60062	175,070(10)	1.7%			8,104	7.8%	1.1%
Mainfield Enterprises 660 Madison Ave., 18th Floor New York, NY 10019	112,036(11)	1.1%			5,186	5.0%	*
Omicron Master Trust 810 Seventh Ave. New York, NY 10019	116,702(12)	1.1%			5,402	5.2%	*
Smithfield Fiduciary LLC 9 West 57th Street, 27th Floor New York, NY 10019	140,053(13)	1.4%			6,483	6.3%	*
John P. Funkhouser	420,110(14)	4.0%					*
Stephen R. Puckett	29,000(15)	*					*
John K. Pirotte	28,000(15)	*					*
James B. Farinholt, Jr.	21,500(16)	*					*
Richard M. Johnston	1,195,407(17)	10.6%			55,103	53.2%	7.6%
All current executive officers and directors as a group (6 persons)	1,717,767(18)	14.6%			55,103	53.2%	11.9%

* Less than one percent

- (1) As reported in the Schedule 13G dated January 20, 2004 filed with the SEC by Joseph H. Sherrill Jr. Includes 60,000 shares of common stock issuable to Mr. Sherrill upon conversion of shares of Series A Preferred Stock and a warrant to purchase 12,000 shares of Common Stock.
- (2) Consists of: (a) 35,008 shares of Common Stock and (b) 100,000 shares of Common Stock issuable upon conversion of Series A Preferred Stock and 20,000 shares of Common Stock issuable upon exercise of a warrant.
- (3)