

ERESEARCHTECHNOLOGY INC /DE/  
Form DEF 14A  
March 13, 2009

**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:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

eResearchTechnology, Inc.

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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**eResearchTechnology, Inc.**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held April 29, 2009**

**Important Notice Regarding the Availability of Proxy Materials for the  
Annual Meeting of Stockholders to Be Held on April 29, 2009**

**The Notice of Annual Meeting, proxy statement, annual report and proxy card  
are available at <http://proxydocs.com/eres>.**

To the stockholders of eResearchTechnology, Inc.:

We will hold our annual meeting of stockholders at our executive offices located at 1818 Market Street, Philadelphia, PA 19103, at 10:00 A.M. on April 29, 2009 for the following purposes:

1. To elect two directors to serve terms of three years and until their successors are elected.
2. To ratify the selection by our audit committee of our board of directors of the firm of KPMG LLP as our independent registered public accountants for 2009.
3. To transact any other business that may properly come before the meeting or any adjournment, postponement or continuation thereof.

Stockholders of record as of the close of business on March 9, 2009 are entitled to notice of and to vote at the meeting.

We are mailing our 2008 annual report, which is not part of our proxy soliciting material, to stockholders of record together with this notice.

It is important that you vote your shares at our annual meeting. Whether or not you plan to attend the meeting, please complete, date and sign the enclosed proxy card and return it in the enclosed envelope. Your proxy may be revoked at any time prior to the time it is voted.

By order of the Board of Directors,

JOEL MORGANROTH, MD  
Chairman of the Board of Directors

March 13, 2009  
Philadelphia, Pennsylvania

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**eResearchTechnology, Inc.**

**PROXY STATEMENT**

These proxy materials are furnished in connection with solicitation of proxies by the board of directors (the board of directors or the board) of eResearchTechnology, Inc., a Delaware corporation, for the annual meeting of stockholders to be held at 10:00 A.M. on Wednesday, April 29, 2009 at our executive offices located at 1818 Market Street, Philadelphia, Pennsylvania 19103, and any adjournment, postponement or continuation of such meeting. These proxy materials are being mailed to stockholders on or about March 20, 2009. Unless the context indicates otherwise, all references in this proxy statement to we, us, our, ERT or the Company mean eResearchTechnology, Inc.

**CONTENTS**

	<b>Page</b>
<u>Our Annual Meeting</u>	1
<u>What is the purpose of our annual meeting?</u>	1
<u>What should I do now?</u>	1
<u>Voting</u>	1
<u>Who is entitled to vote at our annual meeting?</u>	1
<u>What are the voting rights of our stockholders?</u>	1
<u>Who can attend our annual meeting?</u>	1
<u>What constitutes a quorum?</u>	1
<u>How do I vote in person?</u>	2
<u>How do I vote if my shares are held in street name?</u>	2
<u>What if I fail to instruct my broker?</u>	2
<u>May I change my vote after I return my proxy card?</u>	2
<u>What are the recommendations of our board of directors?</u>	2
<u>What vote is required?</u>	2
<u>Who will pay the costs of soliciting proxies on behalf of our board of directors?</u>	3
<u>Stock Ownership</u>	3
<u>The Stock Ownership of Our Principal Stockholders, Directors and Executive Officers</u>	3
<u>Section 16(a) Beneficial Ownership Reporting Compliance</u>	4
<u>Election of Directors (Proposal No. 1)</u>	4
<u>Introduction</u>	4
<u>Nominating Procedures</u>	5
<u>Action By Our Governance and Nominating Committee</u>	6
<u>Candidates for Election</u>	6
<u>Corporate Governance Matters</u>	8
<u>Our Board of Directors and Its Committees</u>	8
<u>General</u>	8
<u>Compensation Committee</u>	8
<u>Audit Committee</u>	8
<u>Governance and Nominating Committee</u>	9
<u>Compensation Committee Interlocks and Insider Participation</u>	9
<u>Director Independence</u>	9
<u>Code of Ethics and Business Conduct</u>	9
<u>Stockholder Communications with Our Board of Directors</u>	10



	<b>Page</b>
<u>Compensation Discussion and Analysis</u>	10
<u>Our Compensation Philosophy</u>	10
<u>Review of External Data</u>	10
<u>Elements of Our Compensation Program</u>	11
<u>The Role of Our Compensation Committee and Chief Executive Officer</u>	14
<u>Tax Considerations</u>	15
<u>Compensation Committee Report</u>	15
<u>Summary Compensation Table</u>	16
<u>Grants of Plan Based Awards</u>	17
<u>Compensation of Our Named Executive Officers</u>	17
<u>Outstanding Equity Awards at Fiscal year-end</u>	20
<u>Option Exercises</u>	21
<u>Potential Payments Upon Termination or Change of Control</u>	21
<u>Director Compensation</u>	23
<u>Related Party Transactions</u>	24
<u>Ratification of Independent Registered Public Accountants (Proposal No. 2)</u>	25
<u>Audit and Non-Audit Fees</u>	25
<u>General</u>	25
<u>Audit Committee Report on Audited Consolidated Financial Statements</u>	26
<u>Stockholder Proposals</u>	27
<u>Other Matters</u>	27

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## OUR ANNUAL MEETING

### *What is the purpose of our annual meeting?*

At our annual meeting, stockholders will act upon the matters outlined in the notice of meeting on the cover page of this proxy statement, including:

the election of two directors; and

the ratification of the selection by our audit committee of our board of directors of the firm of KPMG LLP as independent registered public accountants for 2009.

In addition, our management will report on our performance during 2008 and respond to appropriate questions from stockholders.

### *What should I do now?*

You should first read this proxy statement carefully. After you have decided how you wish to vote your shares, you should complete, properly sign and return the accompanying proxy card to us in the enclosed postage-paid return envelope. The proxies will vote your shares as you direct. If your shares are registered in your name, you may also attend our annual meeting and either deliver your completed proxy in person or vote in person. If your shares are held in street name and you wish to vote them at the annual meeting, you will need to obtain a signed proxy from the nominee in whose name your shares are registered.

## VOTING

### *Who is entitled to vote at our annual meeting?*

Holders of record of our common stock at the close of business on the record date, March 9, 2009, are entitled to receive notice of and to vote at our annual meeting, and any adjournment, postponement or continuation of our annual meeting. A complete alphabetical list of the record holders of our common stock entitled to vote at our annual meeting will be available for inspection at our principal executive offices during normal business hours for any purpose germane to our annual meeting for a period of ten days prior to the date of our annual meeting. As of the record date, there were 50,315,890 outstanding shares of our common stock.

### *What are the voting rights of our stockholders?*

Each share of common stock outstanding as of the record date is entitled to one vote on each matter that may be brought before the annual meeting.

### *Who can attend our annual meeting?*

All stockholders as of the record date, or their duly appointed proxies, may attend our annual meeting. Even if you currently plan to attend our annual meeting, we recommend that you also submit your proxy so that your vote will be counted if you later decide not to attend, or are unable to attend, our annual meeting.

If you hold your shares in street name, that is, through a broker or other nominee, you will need to bring a copy of a brokerage statement reflecting your stock ownership as of the record date and check in at the registration desk at our annual meeting.

***What constitutes a quorum?***

The presence at our annual meeting, in person or by proxy, of the holders of a majority of the total votes entitled to be cast by the holders of our common stock outstanding on the record date on a particular issue will constitute a quorum for the purpose of considering such matter. Proxies received but marked as abstentions and broker non-votes will be included in the calculation of the number of shares present at our annual meeting.



***How do I vote in person?***

If your shares are registered in your name and you attend our annual meeting and wish to vote in person, we will provide you with a ballot before voting commences at our annual meeting.

***How do I vote if my shares are held in street name?***

If you are not a stockholder of record, but you are a beneficial owner, meaning that your shares are registered in a name other than your own, such as a broker's name, you must either direct the holder of record of your shares as to how you want to vote your shares or obtain a form of proxy from the holder of record that you may then vote.

***What if I fail to instruct my broker?***

Brokers normally have discretion to vote on routine matters, such as director elections and ratification of the appointment of independent registered public accounting firms, but not on non-routine matters. Because the proposals identified in this proxy statement involve only routine matters, your broker may either use its discretion to vote your shares on the matters described in this proxy statement or leave your shares un-voted. We encourage you to provide voting instructions to your broker by completing the voting instruction card or proxy that it sends to you.

***May I change my vote after I return my proxy card?***

Yes. Even after you have returned your proxy card, you may change your vote at any time before your proxy is exercised by filing either a notice of revocation or a duly executed proxy bearing a later date with our secretary. The proxy holders will not vote your proxy if you attend our annual meeting in person and request the revocation of your proxy, although your attendance at our annual meeting will not by itself revoke your proxy.

***What are the recommendations of our board of directors?***

Unless you provide contrary instructions on your proxy card, the persons named as proxy holders on the proxy card will vote in accordance with the recommendations of our board of directors. Our board of directors recommends that you vote for the election of our two nominees for director and for the ratification of the selection by our audit committee of our board of directors of the firm of KPMG LLP as independent registered public accountants for 2009.

***What vote is required?***

***Election of Directors.*** Election of directors will be by plurality of the votes cast. Accordingly, the two candidates who receive the highest number of For votes cast by the holders of our common stock will be elected as directors. A properly executed proxy card marked Withhold Authority will not be voted with respect to the nominee or nominees so indicated although the votes represented by the proxy card will be counted for the purposes of determining whether a quorum is present. Our certificate of incorporation and by-laws do not authorize cumulative voting in the election of directors.

***Other Matters.*** Any other proposal, including the proposal to ratify the appointment of KPMG LLP as our independent registered public accountants for 2009, will require the affirmative vote of a majority of the votes that the holders of shares present in person or by proxy are entitled to cast on such proposal.

Abstentions and shares held by brokers and nominees as to which we have not received voting instructions from the beneficial owner of, or other person entitled to vote, such shares and as to which the broker or nominee does not have discretionary voting power, i.e., broker non-votes, are considered shares of outstanding stock entitled to vote and such shares are counted in determining whether a quorum or a majority is present. An abstention or a broker non-vote will therefore have the practical effect of voting against approval of any matter that properly comes before our annual meeting other than the election of directors because each abstention or broker non-vote will not represent a vote for approval of the matter.

**Who will pay the costs of soliciting proxies on behalf of our board of directors?**

We will pay the entire cost of this proxy solicitation, including preparing and mailing this proxy statement on behalf of our board of directors. In addition, we may make arrangements with brokerage houses and other custodians, nominees and fiduciaries to send proxies and proxy materials to the beneficial owners of stock, and we may reimburse expenses for doing so. Our directors, officers or regular employees may solicit proxies in person or by telephone, but will not receive additional compensation for doing so.

**STOCK OWNERSHIP****The Stock Ownership of Our Principal Stockholders, Directors and Executive Officers**

The following table shows the amount and percentage, as of March 9, 2009, of our common stock that is beneficially owned by (i) each of our directors, director nominees and named executive officers; (ii) our directors and executive officers as a group; and (iii) each person whom we know to own beneficially more than 5% of our common stock.

<b>Name of Beneficial Owner</b>	<b>Shares Beneficially Owned</b>	<b>Percentage Owned</b>
Blum Capital Partners, L.P.(1)	6,741,225	13.4%
Columbia Wanger Asset Management, L.P.(2)	3,957,101	7.9
Royce & Associates, LLC(3)	3,409,944	6.8
Joel Morganroth, MD(4)	1,713,975	3.4
Stephen S. Phillips(4)	305,860	*
Jeffrey S. Litwin, MD(4)	274,251	*
Michael J. McKelvey, Ph.D(4)	145,000	*
Amy Furlong(4)	133,112	*
David D. Gathman(4)	107,200	*
Sheldon M. Bonovitz(4)	103,832	*
Elam M. Hitchner(4)	84,500	*
Gerald A. Faich, MD, MPH(4)	77,000	*
Stephen M. Scheppmann(4)	52,000	*
Steven M. Eisenstein(4)	36,500	*
Michael F. DeMane(4)	32,000	*
Keith D. Schneck		
Richard A. Baron		
All directors and executive officers as a group (18 persons)(4)	3,692,924	7.1

\* Less than 1.0%

(1) Blum Capital Partners, L.P. ( Blum L.P. ) is located at 909 Montgomery Street, Suite 400, San Francisco, California 94133. The information presented in the table and in this footnote is as reported in a Schedule 13D/A filed with the Securities and Exchange Commission on January 5, 2009 by Blum L.P., a California limited partnership; Richard C. Blum & Associates, Inc., a California corporation; Blum Strategic GP II, L.L.C., a

Delaware limited liability company; Blum Strategic GP III, L.L.C., a Delaware limited liability company; Blum Strategic GP III, L.P., a Delaware limited liability partnership; Blum Strategic GP IV, L.L.C., a Delaware limited liability company; Blum Strategic GP IV, L.P., a Delaware limited liability partnership; and Saddlepoint Partners GP, L.L.C., a Delaware limited liability company. Blum L.P.'s principal business is acting as general partner for investment partnerships and providing investment advisory services. Blum L.P. is an investment advisor registered with the Securities and Exchange Commission.

- (2) Columbia Wanger Asset Management, L.P. ( Columbia ) is located at 227 West Monroe Street, Suite 3000, Chicago, Illinois 60606. The information presented in the table and in this footnote is as reported in a Schedule

13G/A filed with the Securities and Exchange Commission on February 6, 2009 by Columbia and Columbia Acorn Trust.

- (3) Royce & Associates, LLC ( Royce ) is located at 1414 Avenue of the Americas, New York, New York 10019. This information is as reported by Royce in a Schedule 13G/A filed with the Securities and Exchange Commission on January 23, 2009.
- (4) Includes the following shares issuable with respect to options granted pursuant to our 1996 Stock Option Plan and our Amended and Restated 2003 Equity Incentive Plan, which are currently exercisable or exercisable within 60 days after March 9, 2009:

Name	Number of options
Joel Morganroth, MD	202,500
Stephen S. Phillips	122,000
Jeffrey S. Litwin, MD	225,751
Michael J. McKelvey, Ph.D.	135,000
Amy Furlong	95,875
David D. Gathman	100,000
Sheldon M. Bonovitz	97,000
Elam M. Hitchner	77,000
Gerald A. Faich, MD, MPH	67,000
Stephen M. Scheppmann	52,000
Steven M. Eisenstein	36,500
Michael F. DeMane	32,000
All directors and executive officers as a group	1,823,083

### Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, or the Exchange Act, requires that our officers and directors, as well as persons who own 10% or more of a class of our equity securities, file reports of their ownership of our securities, as well as statements of changes in such ownership, with us and the Securities and Exchange Commission. Based upon written representations we received from our officers, directors and 10% or greater stockholders, and our review of the statements of beneficial ownership changes our officers, directors and 10% or greater stockholders filed during 2008, we believe that all such filings required during 2008 were made on a timely basis except for a filing by one of our officers. David Laky, our former Senior Vice President, eClinical, filed one Form 4 report 18 days late reporting the exercise of options to purchase an aggregate of 29,062 shares and the sale of an aggregate of 12,446 shares acquired upon such exercise.

## ELECTION OF DIRECTORS (Proposal No. 1)

### Introduction

Our board of directors currently consists of nine members. Each director is elected for a three-year term and until the director's successor has been duly elected. The current three-year terms of our directors expire in the years 2009, 2010 and 2011, respectively.

David D. Gathman, who will not be standing for reelection at the annual meeting, has served as a director since 2003. The governance and nominating committee determined not to nominate him for a new term due to his recent relocation to Florida and the demands of his position as Chief Financial Officer of SunGard Public Sector Group, Inc. The governance and nominating committee concluded that the interests of the stockholders would be appropriately represented by a board consisting of eight members and, as a result, at the governance and nominating committee's recommendation, the board of directors decided at its meeting on December 9, 2008 not to nominate Mr. Gathman for a new term and to reduce the number of directors from nine to eight effective at the annual meeting.

## Nominating Procedures

In accordance with the policy of our governance and nominating committee, a stockholder desiring to propose a candidate for our board of directors to our governance and nominating committee should submit a written recommendation, together with biographical information concerning the individual, to our chairman of our governance and nominating committee at eResearchTechnology, Inc., 1818 Market Street, Philadelphia, PA 19103. While recommendations may be submitted for consideration at any time, we request that recommendations be received prior to November 15 in any year for consideration in connection with the nomination and election of directors at our next annual meeting of stockholders. Once our governance and nominating committee has identified a prospective nominee, including candidates proposed by stockholders, it makes an initial determination as to whether to conduct a full evaluation of the candidate. This initial determination is based on whatever information is provided to our governance and nominating committee with the recommendation of the prospective candidate, as well as our governance and nominating committee's own knowledge of the prospective candidate, which may be supplemented by inquiries to the person making the recommendation or others. The preliminary determination is based primarily on the need for additional board members to fill vacancies or expand the size of our board and the likelihood that the prospective nominee can satisfy the evaluation factors described below. If our governance and nominating committee determines, in consultation with the chairman of our board and other board members as appropriate, that additional consideration is warranted, it will then evaluate the prospective nominee against the standards and qualifications it has established, including:

Except as noted below, the director candidate must be independent in accordance with Rule 4200(a)(15) of The Nasdaq Stock Market, Inc. ( Nasdaq ) listing standards.

Our board of directors will consider appointing a limited number of individuals who are not independent to serve as directors. We currently have, and historically have had, directors who are or were not independent in accordance with Rule 4200(a)(15) of the Nasdaq listing standards. The consideration of these individuals will include consideration of the items listed below while also maintaining an appropriate level of management service on our board of directors.

The candidate must have business experience that includes leading or occupying a senior position in the operations of a significant business or occupying a senior executive or advisory position in business strategy, investing or mergers and acquisitions of a significant business. While not required, experience in health care, particularly pharmaceuticals, biotechnology or medical devices, is preferred.

The candidate must have prior board experience. While public company board experience is not required, it is highly preferred.

The candidate must have an excellent business and personal reputation for accomplishment and integrity. We prefer that our candidates have personal characteristics that include a deliberative style and being a good listener, articulate, direct, succinct and able to accept/respect other board members' opinions.

The candidate must have personal and business references from people upon whose recommendations our governance and nominating committee can rely.

Candidates must be able to commit adequate time to our board of directors and our committees to attend at least 75% of board and committee meetings in person and to be a significant contributor to each. At a minimum, this means, on average, not less than one full day every month for ordinary matters, a full day for

regularly scheduled quarterly meetings and occasional unscheduled hours of accessibility. Living or working within 90 minutes of Philadelphia is not required but is highly preferred.

Our board of directors will also consider, in its choice of candidates, the need for specific expertise needed for service with its various committees such as the governance and nominating, compensation and audit committees. Such expertise would include experience serving on such committees on other boards of directors or specific experience with the substantive responsibilities of those committees.

Our governance and nominating committee also considers such other relevant factors as it deems appropriate, including the current composition of our board's committees, expertise, diversity and the evaluations of other prospective nominees.



In connection with the evaluation of prospective nominees, our governance and nominating committee determines whether to interview the prospective nominee. If warranted, one or more members of our governance and nominating committee, and others as appropriate, interview prospective nominees in person or by telephone. After completing this evaluation and interview, our governance and nominating committee makes a recommendation to the full board as to the persons who should be nominated by our board, and our board determines the nominees after considering the recommendation and report of our governance and nominating committee. We do not currently employ an executive search firm, or pay a fee to any other third party, to locate qualified candidates for director positions.

In addition to evaluating nominees to fill vacancies, the governance and nominating committee annually reviews incumbent directors whose terms are expiring. The governance and nominating committee solicits feedback from members of the board and members of management in making its recommendations regarding board nominees, whether they be incumbent directors or new nominees.

### **Action By Our Nominating Committee**

Our governance and nominating committee met on December 9, 2008 for the purpose of evaluating the performance and qualifications of the members of our board of directors and nominating candidates for election as directors by our stockholders at our annual meeting. After considering the performance and qualifications of the members of our board of directors during 2008, our governance and nominating committee nominated, and our board of directors thereafter accepted and approved, the individuals named below.

### **Candidates for Election**

Two directors are to be elected at our annual meeting. The nominees are Michael J. McKelvey, Ph.D and Stephen M. Scheppmann, both of whom currently serve on our board. Unless otherwise instructed, the proxies solicited by our board of directors will be voted for the election of the two nominees.

In the event either nominee is unable or declines to serve as a director at the time of our annual meeting, the proxies intend to vote for a substitute nominee designated by our board of directors. We have no reason to believe that either nominee is unable or will decline to serve as a director if elected. Any vacancy occurring on our board of directors for any reason may be filled by a majority of our directors then in office until the expiration of the term of the class of directors in which the vacancy exists.

### **OUR BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE ELECTION OF DR. MCKELVEY AND MR. SCHEPPMANN.**

The names of our nominees for director and directors who will continue in office after our annual meeting until the expiration of their respective terms, together with certain information regarding them, are as follows:

<b>Name</b>	<b>Age As of March 1, 2009</b>	<b>Year of Expiration of Term as Director</b>
<i>Nominees for Election</i>		
Michael J. McKelvey, Ph.D	56	2012
Stephen M. Scheppmann	53	2012

*Directors Continuing in Office*

Sheldon M. Bonovitz	71	2010
Michael F. DeMane	53	2011
Gerald A. Faich, MD, MPH	66	2010
Elam M. Hitchner	62	2010
Joel Morganroth, MD	63	2011
Stephen S. Phillips	63	2011

*Dr. McKelvey* has been nominated by our board of directors, with the recommendation of our governance and nominating committee, to serve as a member of our board for a three-year term beginning in April 2009.

Dr. McKelvey has served as our President and Chief Executive Officer since June 2006 and has served on our board of directors since July 2006. Prior to joining us, Dr. McKelvey was employed for five years by PAREXEL International, one of the largest biopharmaceutical outsourcing organizations in the world, where he served as Corporate Senior Vice President, Clinical Research Services.

*Mr. Scheppmann* has been nominated by our board of directors, with the recommendation of our governance and nominating committee, to serve as a member of our board for a three-year term beginning in April 2009.

Mr. Scheppmann has served on our board of directors since January 2006. Since September 2007, Mr. Scheppmann has served as Executive Vice President and Chief Financial Officer of Teradata Corporation, a data warehousing and enterprise analytics company. From May 2006 until May 2007, he served as Executive Vice President and Chief Financial Officer for Per-Se Technologies, Inc., a healthcare business services and information technology company and a wholly-owned subsidiary of McKesson Corporation. From May 2000 to May 2006, Mr. Scheppmann served as Executive Vice President and Chief Financial Officer for NOVA Information Systems, Inc., a leading payments processing company.

*Mr. Bonovitz* has served on our board of directors since 1999. Mr. Bonovitz is Chairman Emeritus of and counsel to Duane Morris LLP, having stepped down as Chairman and Chief Executive Officer in January 2008 after serving ten years in those positions. Mr. Bonovitz is also a director of Comcast Corporation. In addition, he serves on the advisory boards of several privately-held companies and on the Board of Trustees of The Curtis Institute of Music, The Philadelphia Museum of Art and The Barnes Foundation. He also serves on the Board of The Free Library of Philadelphia Foundation and as a Trustee of the Christian and Mary Lindbach Foundation and The Dolfinger-McMahon Foundation.

*Mr. DeMane* has served on our board of directors since July 2008. Effective April 2009, Mr. DeMane will serve as Senior Advisor with Thomas, McNerney & Partners, a health care venture capital firm. Mr. DeMane served as Chief Operating Officer of Medtronic, Inc. from August 2007 to April 2008. Prior to that, Mr. DeMane served Medtronic as Senior Vice President from May 2007 to August 2007, Senior Vice President and President of Europe, Canada, Latin America and Emerging Markets from August 2005 to May 2007 and Senior Vice President and President, Spinal, ENT and Navigation from February 2002 to August 2005.

*Dr. Faich* has served on our board of directors since 2004. Dr. Faich has served as Senior Vice President of UBC Epidemiology and Risk Management since June 2005. He served as the President of Pharmaceutical Safety Assessments, a consulting firm, from 1994 until June 2005. Dr. Faich co-chaired the original CIOMS International Adverse Reaction Working Group and was a founding board member of the International Society of Pharmacoepidemiology. Dr. Faich is a Fellow of the American Colleges of Physicians, Preventive Medicine and Epidemiology and has authored over 90 scientific papers and received numerous awards. He is currently an Adjunct Scholar for the Center for Clinical Epidemiology at the University of Pennsylvania.

*Mr. Hitchner* has served on our board of directors since 2004. Mr. Hitchner was a partner in the law firm of Pepper Hamilton LLP from May 1992 to June 1999, and returned to the firm in January 2001 as a partner and, subsequently, counsel through 2004. Commencing in 2005, Mr. Hitchner began providing consulting services to the firm. Mr. Hitchner is also a director of Mothers Work, Inc., for which he has served on the audit committee since 1993, including as chairman of that committee since 2000.

*Dr. Morganroth* has served as the chairman of our board of directors since 1999 and a member of our board of directors since 1997. He has served as our Chief Scientific Officer since April 2006. Prior to that, he served as our Chief Scientist from March 2001 to December 2005 and our Chief Executive Officer from 1993 to March 2001. In

addition, Dr. Morganroth has consulted for us since 1977. Dr. Morganroth is a globally recognized cardiologist and clinical researcher. Dr. Morganroth served for over ten years as an external Medical Review Officer/Expert for the U.S. Food and Drug Administration.

*Mr. Phillips* has served on our board of directors since August 2002. Mr. Phillips has served as Special Counsel to Medtronic, Inc. since 1999. Mr. Phillips was the Executive Vice President, General Counsel and Secretary of Sofamor Danek Group, Inc., a manufacturer of spinal implants and cranial navigation systems used in neurosurgery,

before its acquisition in 1999 by Medtronic. Mr. Phillips serves on the advisory boards of several privately-held companies.

There are no family relationships among our directors, our director nominees and our executive officers.

## **CORPORATE GOVERNANCE MATTERS**

### **Our Board of Directors and Its Committees**

#### *General*

Our board of directors held a total of seven meetings during 2008, and our independent directors met in executive session at the four regular quarterly meetings. Each director attended more than 75% of the meetings of our board of directors and of any committee of which he was a member. Our board has not adopted a formal policy regarding board member attendance at our annual meeting of stockholders, but our board highly encourages all board members to attend such meetings. In April 2008, all members of our board standing for reelection or continuing in office were present at the annual meeting of stockholders.

Our board of directors has a compensation committee, an audit committee and a governance and nominating committee.

#### *Compensation Committee*

Our compensation committee is currently composed of three members of our board of directors, all of whom, in the judgment of our board, (i) are independent in accordance with Rule 4200(a)(15) of the listing standards of Nasdaq; (ii) are Non-employee Directors for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act); and (iii) satisfy the requirements of an outside director for purposes of Section 162(m) of the Internal Revenue Code. Our compensation committee is primarily responsible for determining or making recommendations to our board of directors regarding the compensation payable to our executive officers and directors. In addition, our compensation committee is responsible for making recommendations to our board of directors regarding additions, deletions and alterations with respect to the various employee benefit plans and other fringe benefits that we provide. Our compensation committee also is primarily responsible for administering our equity compensation plans and making determinations or recommendations to our board of directors with respect to awards of equity compensation to our employees and the terms and conditions on which the equity compensation is awarded. See Executive Compensation Compensation Discussion and Analysis for further information. Our compensation committee has the responsibility and authority described in its written charter, which has been adopted and approved by our board of directors and made available on our website at [www.ERT.com](http://www.ERT.com). Our compensation committee, which currently consists of Messrs. Bonovitz, Hitchner and Phillips, held six meetings during 2008. Mr. Hitchner serves as chairman of our compensation committee.

#### *Audit Committee*

Our audit committee, which was established in accordance with Section 3(a)(58)(A) of the Exchange Act, is currently composed of four members of our board of directors, all of whom, in the judgment of our board, are independent in accordance with Rule 4200(a)(15) of the Nasdaq listing standards and satisfy the criteria in Rule 4350(d)(2) of the Nasdaq listing standards. Our audit committee is primarily responsible for engaging and approving the services performed by our independent registered public accountants and reviewing and evaluating our accounting principles and reporting practices and its system of internal accounting controls. Our audit committee has the responsibility and authority described in its written charter, which has been adopted and approved by our board of directors and made

available on our website at [www.ERT.com](http://www.ERT.com). Our audit committee, which currently consists of Messrs. DeMane, Gathman, Hitchner and Scheppmann, held nine meetings during 2008. Messrs. Scheppmann and Gathman have each been determined by our board of directors to be an audit committee financial expert as defined in Item 407 of Regulation S-K. Mr. Scheppmann serves as the chairman of our audit committee.

### ***Governance and Nominating Committee***

Our governance and nominating committee is currently composed of three members of our board of directors, all of whom, in the judgment of our board, are independent in accordance with Rule 4200(a)(15) of the Nasdaq listing standards. Our governance and nominating committee is primarily responsible for recommending to our board governance policies for our Company, the appropriate size, function and needs of our board to perform that governance and qualified candidates for our board. Our governance and nominating committee has the responsibility and authority described in its written charter, which has been adopted and approved by our board and made available on our website at [www.ERT.com](http://www.ERT.com). Our governance and nominating committee, which currently consists of Messrs. Bonovitz, Hitchner and Phillips, held four meetings during 2008. Mr. Phillips serves as chairman of our governance and nominating committee.

### ***Compensation Committee Interlocks and Insider Participation***

During 2008, Messrs. Bonovitz, Hitchner and Phillips and Dr. Faich all served on our compensation committee. None of these individuals is a current or former officer or employee of our Company or any of our subsidiaries, nor had they had any other relationship requiring disclosure by us under Item 404 of Regulation S-K.

### **Director Independence**

Our board recognizes the importance of director independence. We are subject to the listing standards of Nasdaq, which require that a majority of our directors be independent. Under the Nasdaq listing standards, a director is independent if he is not an executive officer or employee of our Company and does not have any relationship that, in the opinion of our board of directors, would interfere with his exercise of independent judgment in carrying out his responsibilities as a director. The listing standards also identify a variety of relationships that, if they exist, prevent a director from being considered independent.

Our board has determined that seven of our nine directors are independent under these standards. The independent directors are as follows: Sheldon M. Bonovitz, Michael F. DeMane, Gerald A. Faich, MD, MPH, David D. Gathman, Elam M. Hitchner, Stephen S. Phillips and Stephen M. Scheppmann. The other two directors are Michael J. McKelvey, Ph.D, our current President and Chief Executive Officer, and Joel Morganroth, MD, our Chief Scientific Officer who currently serves as chairman of our board. In making the determination of independence, we considered Mr. Bonovitz's status during 2008 as Chairman Emeritus of and counsel to the law firm of Duane Morris LLP, which performs legal services for us, but concluded that this relationship did not interfere with his exercise of independent judgment.

In addition, each of the directors serving on the audit, compensation and governance and nominating committees is one of the independent directors noted above.

On an annual basis, each director and executive officer is obligated to complete a director and officer questionnaire which requires disclosure of any transactions with us in which the director or executive officer, or any member of his or her immediate family, has a direct or indirect material interest. Directors have an affirmative obligation to notify our board of any material changes in their relationships, which may affect their independence status as determined by our board. The obligation encompasses all relationships between directors and us or members of senior management and their affiliates.

### **Code of Ethics and Business Conduct**

We have adopted a Code of Ethics and Business Conduct that applies to our