

CORNERSTONE THERAPEUTICS INC  
Form S-8  
August 13, 2009

As filed with the Securities and Exchange Commission on August 13, 2009  
Registration No. 333-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM S-8  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933  
CORNERSTONE THERAPEUTICS INC.  
(Exact name of registrant as specified in its charter)**

**Delaware**  
(State or other jurisdiction of incorporation or  
organization)

**04-3523569**  
(I.R.S. Employer Identification No.)

**1255 Crescent Green Drive, Suite 250  
Cary, North Carolina**  
(Address of Principal Executive Offices)

**27518**  
(Zip Code)

**2004 Stock Incentive Plan, as amended and restated**  
(Full title of the Plan)

**Craig A. Collard  
President and Chief Executive Officer  
Cornerstone Therapeutics Inc.  
1255 Crescent Green Drive, Suite 250  
Cary, North Carolina 27518  
(919) 678-6611**

(Name, address and telephone number, including area code, of agent for service)  
*Copies to:*

**David B. Clement  
Smith, Anderson, Blount, Dorsett,  
Mitchell & Jernigan, L.L.P.  
2500 Wachovia Capitol Center  
Raleigh, North Carolina 27601  
(919) 821-1220**

**David Price  
Executive Vice President, Finance  
and Chief Financial Officer  
Cornerstone Therapeutics Inc.  
1255 Crescent Green Drive, Suite 250  
Cary, North Carolina 27518  
(919) 678-6514**

Indicate by checkmark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller  
reporting company)

Smaller reporting  
company

**CALCULATION OF REGISTRATION FEE**

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Title of securities to be registered	Amount to be Registered (1)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.001 per share	1,133,333	\$ 7.73(2)	\$ 8,754,997(2)	\$ 488.53

(1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Registrant's Common Stock as reported on The NASDAQ Capital Market on August 12, 2009.

**STATEMENT OF INCORPORATION BY REFERENCE**

This Registration Statement is being filed for the purpose of registering additional securities of the same class as other securities for which a Registration Statement on Form S-8 has previously been filed and is effective. Accordingly, this Registration Statement on Form S-8 incorporates by reference the contents of the Registration Statement on Form S-8, File No. 333-131037, filed by Cornerstone Therapeutics Inc. (formerly known as Critical Therapeutics, Inc.) (the Registrant ) on January 13, 2006, and the Registration Statement on Form S-8, File No. 333-119409, filed by the Registrant on September 30, 2004, relating to the Registrant's 2000 Equity Incentive Plan, as amended, 2003 Stock Incentive Plan, as amended and 2004 Stock Incentive Plan, as amended, except for, in each case, Item 3, Incorporation of Documents by Reference, Item 6, Indemnification of Directors and Officers, Item 8, Exhibits, and Item 9, Undertakings.

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**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The following documents filed with the Commission are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2008;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended June 30, 2009 and March 31, 2009;
- (c) The Registrant's Current Reports on Form 8-K/A filed on June 26, 2009 and January 15, 2009 and the Registrant's Current Reports on Form 8-K filed on July 31, 2009, July 30, 2009, July 17, 2009, July 8, 2009, June 29, 2009, June 22, 2009, June 18, 2009, June 12, 2009, June 3, 2009, May 19, 2009, May 12, 2009, May 7, 2009, April 7, 2009, and March 27, 2009; and
- (d) The description of the Registrant's Common Stock, \$0.001 par value per share, contained in the Registrant's Registration Statement on Form 8-A filed under the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. However, any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed filed with the Commission, including without limitation the certifications required by Rule 13a-14(b) or Rule 15d-14(b) under the Exchange Act, any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K, shall not be deemed to be incorporated by reference in this Registration Statement.

Any statement in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 6. Indemnification of Directors and Officers.**

Section 102 of the General Corporation Law of Delaware allows a corporation to eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his or her duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. The Registrant's Amended and Restated Certificate of Incorporation provides that, except to the extent that the General Corporation Law of Delaware prohibits the elimination or limitation of liability of directors for breach of fiduciary duty, no director of the Registrant shall be personally liable to the Registrant or its stockholders for monetary damages for any breach of fiduciary duty as a director.

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Section 145 of the General Corporation Law of Delaware provides that a corporation has the power to indemnify a director, officer, employee or agent of the corporation and certain other persons serving at the request of the corporation in related capacities against amounts paid and expenses incurred in connection with an action or proceeding to which such person is or is threatened to be made a party by reason of such position, if such person shall have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, in any criminal proceeding, if such person had no reasonable cause to believe his or her conduct was unlawful; provided that, in the case of actions brought by or in the right of the corporation, no indemnification shall be made with respect to any matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the adjudicating court determines that such indemnification is proper under the circumstances.

The Registrant's Amended and Restated Certificate of Incorporation provides that:

The Registrant must indemnify its directors and officers to the fullest extent permitted by Delaware law; and

The Registrant must advance expenses, as incurred, to its directors and executive officers in connection with a legal proceeding to the fullest extent permitted by Delaware law.

The indemnification provisions contained in the Amended and Restated Certificate of Incorporation are not exclusive of any other rights to which a person may be entitled by law, agreement, vote of stockholders or disinterested directors or otherwise.

Cornerstone BioPharma Holdings, Inc. ( CBHI ), a wholly owned subsidiary of the Registrant, has entered into an indemnification agreement with Craig A. Collard. Among other things, the indemnification agreement requires CBHI to indemnify Mr. Collard for expenses incurred by Mr. Collard in connection with actions or proceedings in connection with his service as a director, officer, employee, agent or fiduciary of CBHI or of any other enterprise that he is or was serving at CBHI's express written request. The indemnification agreement also provides for mandatory advancement of expenses to Mr. Collard.

In addition, the Registrant maintains insurance on behalf of its directors and officers insuring them against liability asserted against them in their capacities as directors or officers or arising out of such status.

#### **Item 8. Exhibits.**

##### **Exhibit**

<b>No.</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2004 (SEC File No. 000-50767)).
4.2	Amendment to the Registrant's Certificate of Incorporation, effecting a 10-to-1 reverse stock split of Critical Therapeutics, Inc.'s common stock (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on November 5, 2008 (SEC File No. 000-50767)).
4.3	Amendment to the Registrant's Certificate of Incorporation, changing the name of the corporation from Critical Therapeutics, Inc. to Cornerstone Therapeutics Inc. (Incorporated by reference to Exhibit 3.2 to the Registrant's Current Report on Form 8-K filed on November 5, 2008 (SEC File No. 000-50767)).
4.4	Fourth Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on July 31, 2009 (SEC File No. 000-50767)).
5.1	Opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.

**Exhibit**

<b>No.</b>	<b>Description</b>
23.1	Consent of Grant Thornton LLP.
23.2	Consent of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. (Contained in Exhibit 5.1).
24.1	Power of attorney (Contained in the signature pages of this registration statement).
99.1	Cornerstone Therapeutics Inc. 2004 Stock Incentive Plan, as amended and restated (Incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on June 3, 2009 (SEC File No. 000-50767)).

**Item 9. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

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

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

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

*Provided, however, that* paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(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 therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to

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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 the Town of Cary, State of North Carolina, on August 13, 2009.

CORNERSTONE THERAPEUTICS INC.

By: /s/ Craig A. Collard  
Craig A. Collard  
President, Chief Executive Officer and  
Chairman

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**POWER OF ATTORNEY AND SIGNATURES**

KNOW ALL PERSONS BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Craig A. Collard and David Price, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments, including post-effective amendments, to this Registration Statement, and to file the same, with all exhibits thereto and all documents in connection therewith, making such changes in this Registration Statement as such person or persons so acting deems appropriate, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

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

\* \* \* \* \*

Name	Title	Date
/s/ Craig A. Collard Craig A. Collard	President, Chief Executive Officer and Chairman (Principal Executive Officer)	August 13, 2009
/s/ David Price David Price	Executive Vice President, Finance and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	August 13, 2009
/s/ Christopher Codeanne Christopher Codeanne	Director	August 13, 2009
/s/ Michael Enright Michael Enright	Director	August 13, 2009
/s/ Michael Heffernan Michael Heffernan	Director	August 13, 2009
/s/ Robert Stephan Robert Stephan	Director	August 13, 2009

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**EXHIBIT INDEX**

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