

TERCICA INC  
Form S-8  
March 17, 2006

As filed with the Securities and Exchange Commission on March 17, 2006

Registration No. 333-

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**  
**REGISTRATION STATEMENT**

*UNDER*  
*THE SECURITIES ACT OF 1933*

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**TERCICA, INC.**

(Exact name of registrant as specified in its charter)

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

**2000 Sierra Point Parkway, Suite 400**

**Brisbane, CA 94005**

**(650) 624-4900**

(Address of principal executive offices, including zip code)

**26-0042539**  
(I.R.S. Employer

Identification No.)

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**2004 Stock Plan**

**2004 Employee Stock Purchase Plan**

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(Full titles of the plans)

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John A. Scarlett, M.D.

President and Chief Executive Officer

Tercica, Inc.

2000 Sierra Point Parkway, Suite 400

Brisbane, CA 94005

(650) 624-4900

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copies to:*

Suzanne Sawochka Hooper, Esq.

Cooley Godward LLP

Five Palo Alto Square

3000 El Camino Real

Palo Alto, CA 94306-2155

(650) 843-5000

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**CALCULATION OF REGISTRATION FEE**

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<b>Title of Securities</b>	<b>Amount to be</b>	<b>Proposed</b>	<b>Proposed</b>	
<b>to be Registered</b>	<b>Registered (1)</b>	<b>Maximum</b>	<b>Maximum</b>	<b>Amount of</b>
		<b>Offering</b>	<b>Aggregate</b>	<b>Registration</b>
		<b>Price Per</b>	<b>Offering Price</b>	<b>Fee</b>
		<b>Share (2)</b>	<b>(2)</b>	
Common Stock, par value	1,375,000 shares	\$ 7.31	\$ 10,051,250.00	\$ 1,075.48
\$0.001 per share				

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(1) Pursuant to Rule 416 promulgated under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement shall also cover any additional shares of the Registrant's Common Stock that become issuable under the plans set forth herein by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's Common Stock.

(2)

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Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) promulgated under the Securities Act. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant's Common Stock as reported on the NASDAQ National Market on March 13, 2006, in accordance with Rule 457(c) of the Securities Act. The chart below details the calculation of the registration fee:

<b>Title of Securities to be Registered</b>	<b>Number of Shares</b>	<b>Offering Price Per Share</b>	<b>Aggregate Offering Price</b>
Common Stock, par value \$0.001 per share, reserved for future issuance under the 2004 Stock Plan	1,250,000	\$ 7.31	\$ 9,137,500.00
Common Stock, par value \$0.001 per share, reserved for future issuance under the 2004 Employee Stock Purchase Plan	125,000	\$ 7.31	\$ 913,750.00
Total	1,375,000		\$ 10,051,250.00

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**EXPLANATORY NOTE**

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional (i) 1,250,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2004 Stock Plan, and (ii) 125,000 shares of the Registrant's Common Stock to be issued pursuant to the Registrant's 2004 Employee Stock Purchase Plan.

**INCORPORATION BY REFERENCE OF CONTENTS OF REGISTRATION**

**STATEMENTS ON FORM S-8**

The contents of the Registration Statement on Form S-8 (File No. 333-126307) and the Registration Statement on Form S-8 (File No. 333-113718), as amended by Post-Effective Amendment No. 1 on Form S-8, filed with the SEC on June 30, 2005, are incorporated by reference herein.

**EXHIBITS**

**Exhibit**

<b>Number</b>	<b>Description</b>
5.1	Opinion of Cooley Godward LLP
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Cooley Godward LLP is contained in Exhibit 5.1 to this Registration Statement
24.1	Power of Attorney (contained on the signature pages hereto)
99.1(1)	2004 Stock Plan
99.2(1)	Form of Option Agreement under the 2004 Stock Plan
99.3(1)	2004 Employee Stock Purchase Plan
99.4(1)	Form of Subscription Agreement under the 2004 Employee Stock Purchase Plan

- (1) Filed as an exhibit to Registrant's Registration Statement on Form S-1 (File No. 333-108729) and amendments thereto, declared effective on March 16, 2004, and incorporated herein by reference.

**UNDERTAKINGS**

**1.** The undersigned registrant hereby undertakes:

**(a)** 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 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)(i) and (a)(ii) do not apply if 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 herein.

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

(c) 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.

(d) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

2. 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 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

**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 City of Brisbane, State of California, on this 15th day of March, 2006.

**TERCICA, INC.**

By: /s/ JOHN A. SCARLETT, M.D.  
John A. Scarlett, M.D.  
President and Chief Executive Officer

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**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS**, that each person whose signature appears below constitutes and appoints John A. Scarlett, M.D. and Stephen N. Rosenfield, and each or any one of them, his or her true and lawful attorney-in-fact and agent, 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 other documents in connection therewith, with the Securities and Exchange Commission (the SEC), and generally to do all such things in their names and behalf in their capacities as officers and directors to enable the registrant to comply with the provisions of the Securities Act of 1933 and all requirements of the SEC, 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 connection therewith, as fully to all intents and purposes as he or she might or could do in person, ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitutes or substitute, may lawfully do or cause to be done 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 dates indicated.

Signature	Title	Date
/s/ JOHN A. SCARLETT  John A. Scarlett, M.D.	President, Chief Executive Officer and  Director ( <i>Principal Executive Officer</i> )	March 15, 2006
/s/ SUSAN WONG  Susan Wong	Acting Chief Financial Officer, Vice President, Finance and Chief Accounting Officer ( <i>Principal Accounting and Financial Officer</i> )	March 15, 2006
/s/ MICHAEL J. ASTRUE  Michael J. Astrue	Director	March 15, 2006
/s/ ALEXANDER BARKAS  Alexander Barkas, Ph.D.	Director	March 15, 2006
/s/ ROSS G. CLARK  Ross G. Clark, Ph.D.	Director	March 15, 2006
/s/ KARIN EASTHAM  Karin Eastham	Director	March 15, 2006
/s/ DENNIS HENNER  Dennis Henner, Ph.D.	Director	March 15, 2006
/s/ MARK LESCHLY  Mark Leschly	Director	March 15, 2006
/s/ DAVID L. MAHONEY  David L. Mahoney	Director	March 15, 2006
/s/ THOMAS G. WIGGANS  Thomas G. Wiggans	Director	March 15, 2006

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