

Edgar Filing: WRIGHT MEDICAL GROUP INC - Form S-8

WRIGHT MEDICAL GROUP INC  
Form S-8  
June 07, 2002

As filed with the Securities and Exchange Commission on June 7, 2002  
Registration No. 333-\_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
UNDER THE SECURITIES ACT OF 1933

WRIGHT MEDICAL GROUP, INC.  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction  
of incorporation or organization)

13-4088127  
(I.R.S. Employer  
Identification Number)

5677 Airline Road  
Arlington, Tennessee 38002

(Address, including zip code, of principal executive offices)

Wright Medical Group, Inc.  
2002 Employee Stock Purchase Plan  
(Full title of the plan)

F. Barry Bays  
President and Chief Executive Officer  
Wright Medical Group, Inc.  
5677 Airline Road  
Arlington, Tennessee 38002  
(901) 867-9971

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

Copy to:  
Rebecca W. Ballou, Esq.  
Baker, Donelson, Bearman & Caldwell  
165 Madison Avenue, 20th Floor  
Memphis, TN 38103  
(901) 526-2000

Calculation of Registration Fee

| Title of securities to be registered | Amount to be registered (1) | Proposed maximum offering price per share (2) | Proposed maximum aggregate offering price (2) |
|--------------------------------------|-----------------------------|---|---|
| Common Stock                         | 200,000                     | \$20.68                                       | \$4,136,000                                   |

1. This Registration Statement covers 200,000 shares of voting common stock,

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\$0.01 par value per share, of Wright Medical Group, Inc. (the "Common Stock") issuable pursuant to the 2002 Wright Medical Group, Inc. Employee Stock Purchase Plan (the "Plan"). In addition, this Registration Statement covers an indeterminable number of additional shares of Common Stock as may hereafter be offered or issued pursuant to the Plan, to prevent dilution resulting from stock splits or similar transactions effected without receipt of consideration and pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the "Securities Act").

2. Estimated solely for calculating the amount of the registration fee. The registration fee has been calculated pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act based upon the average of the high and low sales prices of the Common Stock as reported by the Nasdaq National Market on June 5, 2002.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents, filed with the Securities and Exchange Commission (the "Commission") by Wright Medical Group, Inc., a Delaware corporation (the "Company"), are incorporated by reference into the Registration Statement:

- (a) The Company's Annual Report on Form 10-K for the year ended December 31, 2001, filed with the Commission on February 28, 2002;
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2002, filed with the Commission on May 7, 2002;
- (c) The Company's Current Report on Form 8-K, filed with the Commission on May 13, 2002; and
- (d) The description of the Common Stock contained in the Prospectus portion of the Company's Form S-1 (Registration No. 333-81618) filed with the Commission on February 28, 2002, under the heading "Description of Capital Stock."

All documents subsequently filed by the Company with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 as amended (the "Exchange Act") prior to the filing of a post-effective amendment which indicates that all the securities offered hereby 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 the filing of such documents with the Commission.

The Company was unable to obtain the written consent of Arthur Andersen LLP to incorporate by reference in this registration statement its report dated February 22, 2002, included in the Company's Annual Report on Form 10-K for the year ended December 31, 2001. The absence of such consent may limit recovery by investors on certain claims, including without limitation, claims arising under Section 11 of the Securities Act.

##### ITEM 4. DESCRIPTION OF SECURITIES

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Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

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ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The provisions of the Delaware General Corporation Law ("DGCL") and the Company's amended and restated certificate of incorporation provide that the Company will, under certain situations, indemnify any director, officer, employee or agent of the Company made or threatened to be made a party to a proceeding, by reason of the former or present official capacity of the person, against judgments, penalties, fines, settlements and reasonable expenses, including attorneys' fees, incurred by the person in connection with the proceeding if certain statutory standards are met. Any such person is also entitled, subject to certain limitations, to payment or reimbursement of reasonable expenses in advance of the final disposition of the proceeding. A proceeding means a threatened, pending or completed civil, criminal, administrative, arbitration or investigative proceeding, including one by or in the right of the Company. Reference is made to Section 145 of the DGCL for a full statement of these indemnification rights.

The Company also maintains a directors and officers insurance policy pursuant to which the directors and officers of the Company are insured against liability for actions in their capacity as directors and officers.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

| Exhibit No. | Description of Exhibits   |
|-------------|---|
| -----       | -----   |
| 4.1         | Wright Medical Group, Inc. 2002 Employee Stock Purchase Plan (incorporated by reference to the Company's Definitive Proxy Statement filed with the Commission on April 30, 2002). |
| 5           | Opinion of Baker Donelson Bearman & Caldwell concerning the legality of the securities being registered.  |
| 23.1        | The Company was unable to obtain the written consent of Arthur Andersen LLP to incorporate by reference its report dated February 28, 2002. See Item 3.                           |
| 23.2        | Consent of Baker Donelson Bearman & Caldwell (included in Exhibit 5).   |
| 24          | Power of Attorney (reference is made to the signature   |

page).

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ITEM 9. 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 the Registration Statement:

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

(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;

(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 periodic reports filed by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(b) That, for the purpose of determining any liability under the Securities Act, 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.

(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.

2. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act 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.

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3. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the

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opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company 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 Company 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 Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Company 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 on the 7th day of June, 2002.

WRIGHT MEDICAL GROUP, INC.

By: /s/ F. Barry Bays

-----  
F. Barry Bays  
President and Chief Executive  
Officer

POWER OF ATTORNEY

Each of the undersigned officers and directors of Wright Medical Group, Inc. hereby severally constitutes and appoints John K. Bakewell as the attorney-in-fact for the undersigned, in any and all capacities, with full power of substitution, to sign any and all pre- or post-effective amendments to this Registration Statement, any subsequent Registration Statement for the same offering which may be filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and any and all pre- or post-effective amendments thereto, and to file the same with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact 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 might or could do in person, hereby ratifying and confirming all that said attorney-in-fact may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature Title Date

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|   |   |         |
|---|---|---------|
| /s/ F. BARRY BAYS<br>-----<br>F. Barry Bays                     | President, Chief Executive<br>Officer and Director<br>(Principal Executive Officer)             | June 7, |
| /s/ JOHN K. BAKEWELL<br>-----<br>John K. Bakewell               | Chief Financial Officer<br>(Principal Financial Officer<br>and Principal<br>Accounting Officer) | June 7, |
| /s/ JAMES T. TREACE<br>-----<br>James T. Treace                 | Chairman of the Board   | June 7, |
| /s/ RICHARD B. EMMITT<br>-----<br>Richard B. Emmitt             | Director  | June 7, |
| /s/ JAMES E. THOMAS<br>-----<br>James E. Thomas                 | Director  | June 7, |
| /s/ THOMAS E. TIMBIE<br>-----<br>Thomas E. Timbie               | Director  | June 7, |
| /s/ ELIZABETH H. WEATHERMAN<br>-----<br>Elizabeth H. Weatherman | Director  | June 7, |

INDEX TO EXHIBITS

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