

Ampio Pharmaceuticals, Inc.  
Form 8-K  
March 25, 2011

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

## FORM 8-K

### CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): March 23, 2011

## AMPIO PHARMACEUTICALS, INC.

(Exact name of registrant as specified in Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

333-146542  
(Commission  
File No.)  
5445 DTC Parkway, P4

26-0179592  
(IRS Employee  
Identification No.)

Greenwood Village, Colorado 80111

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(Address of Principal Executive Offices)

**(303) 418-1000**

(Issuer Telephone number)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**Item 1.01 Entry into a Material Definitive Agreement**

On March 23, 2011, Ampio Pharmaceuticals, Inc. ( Ampio, we, our, or us ), Ampio Acquisition, Inc., a Colorado corporation and our wholly-owned subsidiary ( Merger Sub ), and DMI BioSciences, Inc., a Colorado corporation ( BioSciences ), completed the business combination pursuant to the terms of the Agreement and Plan of Merger dated September 4, 2010, as amended on December 31, 2010 (the First Amendment ) and March 22, 2011 (the Second Amendment; the Agreement and Plan of Merger, as amended by the First Amendment and the Second Amendment, collectively the Merger Agreement ), under which Merger Sub merged with and into BioSciences and BioSciences became our wholly-owned subsidiary. Pursuant to the Merger Agreement, we acquired BioSciences for aggregate consideration comprised of 8,667,905 shares of Ampio common stock, or the merger stock. The business combination occurred following the satisfaction or waiver of all conditions to closing.

As called for in the Merger Agreement, Ampio issued to holders of BioSciences in-the-money stock options and warrants an aggregate of 405,066 shares out of the 8,667,905 shares of merger stock. In addition, Ampio issued to holders of two BioSciences promissory notes an aggregate of 500,000 shares of merger stock in extinguishment of the notes. Pursuant to an indemnification escrow agreement, an aggregate of 250,000 shares of merger stock will be withheld and placed in an indemnification escrow account with Corporate Stock Transfer, Inc., as escrow agent, until December 31, 2011. Those shares were escrowed and are available to address any material breaches of representations, warranties or covenants by BioSciences which may have occurred prior to the merger. The remaining 7,512,839 shares of merger stock were issued to the holders of BioSciences common stock *pro rata*, subject to receipt from each such stockholder of a signed lock-up agreement under which each stockholder has agreed, or will agree, not to sell, pledge or hypothecate the merger stock until on or after December 31, 2011 or, in the case of executive officers or directors of BioSciences and executive officers of Ampio, until February 29, 2011. The execution of the lock-up agreement by each shareholder of BioSciences is contractually provided for in the Merger Agreement, as amended.

Ampio separately issued 212,693 options in replacement of 250,850 Biosciences options that were out-of-the-money as of the date of execution of the Merger Agreement. Options formerly held by Bruce G. Miller, Dr. David Bar-Or, Raphael Bar-Or, Dr. James Winkler, and Wannell Crook were canceled pursuant to the cancellation agreement, as was compensation accrued by BioSciences for Messrs. Bruce G. Miller, David Bar-Or, and James Winkler.

At the effective time, BioSciences had 9,171,282 shares of common stock outstanding, after giving effect to the donation to capital of 8,804,305 shares of Class B common stock held by present and former executive officers and directors of BioSciences under the donation to capital agreement. The donation to capital took effect immediately prior to the effective time.

At March 15, 2011, Ampio had issued and outstanding 18,402,574 shares of common stock, which reflected the 17,107,036 shares outstanding at February 16, 2011, increased by 1,295,538 shares issued by Ampio in connection with the February 28, 2011 conversion of outstanding debentures. As required by the Merger Agreement, BioSciences donated back to the capital of Ampio at the effective time an aggregate of 3,500,000 shares of Ampio common stock formerly owned by BioSciences. After giving effect to this donation to capital and the issuance of the 8,667,905 shares of merger stock, Ampio has 23,570,479 shares of common stock issued and outstanding. Accordingly, the former BioSciences stockholders, noteholders, and in-the-money optionholders currently hold approximately 37% of Ampio s outstanding common stock, and existing Ampio stockholders currently hold approximately 63% of Ampio s outstanding common stock.

The full text of the Second Amendment to the Merger Agreement is attached hereto as Exhibit 2.7 to this Current Report on Form 8-K and is incorporated by reference herein. The description of the merger contained in this Item 1.01 does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, as amended, which Merger Agreement, together with the First Amendment, is incorporated by reference herein from Annex A to the definitive information statement/prospectus (the Information Statement/Prospectus ) included in Ampio s Registration Statement on Form S-4, which was declared effective by the SEC on February 25, 2011. The donation to capital agreement, form of indemnification agreement, form of cancellation agreement, and conversion

agreement are incorporated by reference from Exhibits 2.2, 2.3, 2.4 and 2.5 to the Form 8-K filed with the SEC on January 7, 2011.

### **Forward-Looking Statements**

This Current Report on Form 8-K and the exhibits attached hereto or incorporated by reference herein may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, regarding the acquisition of BioSciences or related matters. Forward-looking statements typically are identified by use of terms such as may, project, should, plan, expect, anticipate, believe, estimate and similar words, although some forward-looking statements are identified differently. Forward-looking statements represent our management's judgment regarding future events. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to be correct. All statements other than statements of historical fact included in this Current Report on Form 8-K and the exhibits hereto, or incorporated by reference herein, are forward-looking statements. Inclusion of such forward-looking statements herein or in the exhibits hereto or incorporated by reference herein should not be regarded as a representation by us that the statements will prove to be correct. Except as required by applicable law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. We cannot guarantee the accuracy of the forward-looking statements, and you should be aware that our actual results could differ materially from those contained in forward-looking statements due to a number of factors, including the statements under Risk Factors found in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on February 16, 2011 and any subsequent filings made by the Company with the SEC.

### **Item 2.01 Completion of Acquisition or Disposition of Assets**

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The Second Amendment is attached hereto as Exhibit 2.7 to this Current Report on Form 8-K. The Merger Agreement and the First Amendment are incorporated herein by reference from Annex A to the Information Statement/Prospectus. The donation to capital agreement, form of indemnification agreement, form of cancellation agreement, and conversion agreement are incorporated by reference from Exhibits 2.2, 2.3, 2.4 and 2.5 to the Form 8-K filed with the SEC on January 7, 2011.

### **Item 5.07 Submission of Matters to a Vote of Security Holders**

Pursuant to the Ampio certificate of incorporation, a consent of the majority shareholders of Ampio was obtained in November 2010. Ampio is delivering to its shareholders a copy of the Information Statement/Prospectus as notice of the action taken by majority consent. BioSciences stockholders unanimously approved the merger, with one abstention, at a special meeting held on September 14, 2010 (which was effective only for purposes of Colorado corporate law), and a majority of the BioSciences stockholders executed a majority stockholder consent to the merger following the delivery of the Information Statement/Prospectus to all of the BioSciences stockholders, including the consenting stockholders.

### **Item 8.01 Other Events**

Neither this Current Report on Form 8-K nor the exhibits attached hereto or incorporated by reference herein is an offer to sell or the solicitation of an offer to buy shares of our common stock or any other security.

### **Item 9.01 Financial Statements and Exhibits.**

(a) Financial statements of business acquired attached as Annex F .

Audited financial statements of DMI BioSciences, Inc. as of and for the years ended September 30, 2010 and 2009.

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Unaudited financial statements of DMI BioSciences, Inc. as of and for the three months ended December 31, 2010 and December 31, 2009.

(b) Pro forma financial information attached as Annex G .

Pro forma unaudited consolidated balance sheet as of December 31, 2010 (Ampio) and September 30, 2010 (BioSciences).

Pro forma unaudited consolidated statements of operations for the year ended December 31, 2010 (Ampio) and September 30, 2010 (BioSciences).

Pro forma unaudited consolidated statements of operations for the year ended December 31, 2009 (Ampio) and September 30, 2009 (BioSciences).

(d) Exhibits.

<b>Exhibit Number</b>	<b>Description of Exhibits</b>
2.1	Agreement and Plan of Merger, dated September 4, 2010, by and among Ampio Pharmaceuticals, Inc., Ampio Acquisition, Inc., DMI BioSciences, Inc. and the Control Shareholders (incorporated by reference to Annex A to the Information Statement/Prospectus filed with the SEC on February 25, 2011).
2.2	Amendment to Agreement and Plan of Merger, dated December 31, 2010, by and among Ampio Pharmaceuticals, Inc., Ampio Acquisition, Inc., DMI BioSciences, Inc. and the Control Shareholders (incorporated by reference to Annex A to the Information Statement/Prospectus filed with the SEC on February 25, 2011).
2.3	Donation to Capital Agreement, effective immediately prior to closing of the merger, among DMI BioSciences, Inc. and its management shareholders (incorporated by reference to Exhibit 2.2 to the Current Report on Form 8-K filed with the SEC on January 7, 2011).
2.4	Form of Indemnification Escrow Agreement, effective upon closing of the Merger, among the Company, Ampio Acquisition, Inc., BioSciences, the BioSciences control shareholders, and Corporate Stock Transfer, Inc., as Escrow Agent (incorporated by reference to Exhibit 2.3 to the Current Report on Form 8-K filed with the SEC on January 7, 2011).
2.5	Form of Cancellation Agreement, effective immediately prior to closing of the Merger, among BioSciences and members of BioSciences management (incorporated by reference to Exhibit 2.4 to the Current Report on Form 8-K filed with the SEC on January 7, 2011).
2.6	Form of Conversion Agreement, effective immediately prior to closing of the Merger, among BioSciences and Richard Yukl and IRA for Richard Yukl (incorporated by reference to Exhibit 2.5 to the Current Report on Form 8-K filed with the SEC on January 7, 2011).
2.7*	Amendment to Agreement and Plan of Merger, dated March 22, 2011, by and among Ampio Pharmaceuticals, Inc., Ampio Acquisition, Inc., DMI BioSciences, Inc. and the Control Shareholders.
3.1*	Filed Statement of Merger of Ampio Acquisition, Inc. and DMI BioSciences, Inc.

\* Filed herewith.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AMPIO PHARMACEUTICALS, INC.**

March 25, 2011

By: /s/ Bruce G. Miller  
Name: Bruce G. Miller  
Title: Chief Financial Officer

**EXHIBIT INDEX**

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\* Filed herewith.

**Annex F**

**DMI BIOSCIENCES, INC.**

**Financial Statements**

**and**

**Independent Auditors Report**

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**DMI BIOSCIENCES, INC.**

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**INDEPENDENT AUDITORS REPORT**

Board of Directors and Stockholders

DMI BioSciences, Inc.

Denver, Colorado

We have audited the accompanying balance sheets of DMI BioSciences, Inc. ( BioSciences ) as of September 30, 2010 and 2009, and the related statements of operations, changes in stockholders' deficit, and cash flows for the years then ended. These financial statements are the responsibility of BioSciences' management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the company's internal control over financial reporting. Accordingly, we express no such opinion. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of BioSciences as of September 30, 2010 and 2009, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

/s/ Ehrhardt Keefe Steiner & Hottman PC

January 5, 2011

Denver, Colorado

## DMI BIOSCIENCES, INC.

## Balance Sheets

	September 30,		December 31,	
	2010	2009	2010	2009
			(unaudited)	(unaudited)
<b>Assets</b>				
Cash	\$ 288,196	\$ 1,702,204	\$ 6,551	\$ 973,098
Prepaid expenses				21,810
Income tax receivable	34,118		33,623	
Related party receivable			193,821	
Related party notes receivable	300,000		300,000	100,000
Accrued interest receivable related party	8,416		12,954	
Total assets	\$ 630,730	\$ 1,702,204	\$ 546,949	\$ 1,094,908
<b>Liabilities and Stockholders Deficit</b>				
Current liabilities				
Accounts payable	\$ 123,426	\$ 607,659	\$ 105,913	\$ 227,567
Accrued liabilities	22,353	47,876	5,424	
Accrued wages payable	1,039,807	1,039,906	1,039,807	1,039,807
Accrued interest - stockholders	461,073	443,937	472,350	427,598
Deferred revenue		625,000		404,410
Notes payable - stockholders	430,000	530,000	430,000	430,000
Current portion of capital leases	10,268	16,487	7,345	20,513
Due to related party	1,527	8,312		8,123
Total current liabilities	2,088,454	3,319,177	2,060,839	2,558,018
Capital leases, less current portion		16,163		6,803
Total liabilities	2,088,454	3,335,340	2,060,839	2,564,821
Stockholders deficit				
Preferred Stock; 50,000,000 shares authorized, none outstanding				
Common Stock; no par value, 91,195,695 shares authorized, 9,171,282 shares outstanding at September 30, 2010 and 2009, respectively, and 9,171,282 shares outstanding at December 31, 2010 (unaudited) and 2009 (unaudited)	8,830,387	8,809,537	8,830,387	8,819,962
Common Stock Class B; no par value, 8,804,305 shares authorized and 8,804,305 shares outstanding at September 30, 2010 and 2009, respectively, and 8,804,305 shares outstanding at December 31, 2010 (unaudited) and 2009 (unaudited)	8,445,097	8,445,097	8,445,097	8,445,097
Treasury stock	(327,355)	(327,355)	(327,355)	(327,355)
Accumulated deficit	(18,405,853)	(18,560,415)	(18,462,019)	(18,407,617)
Total stockholders deficit	(1,457,724)	(1,633,136)	(1,513,890)	(1,469,913)
Total liabilities and stockholders deficit	\$ 630,730	\$ 1,702,204	\$ 546,949	\$ 1,094,908

See notes to financial statements.



**DMI BIOSCIENCES, INC.****Statements of Operations**

	For the Years Ended		For the Three Months	
	September 30, 2010	September 30, 2009	Ended December 31, 2010 (unaudited)	Ended December 31, 2009 (unaudited)
<b>Revenue</b>				
License fees	\$ 625,000	\$ 875,000	\$	\$ 220,590
Royalty fees		58,750		
Milestone payments		1,500,475		
Other revenue		111,943		
<b>Total revenue</b>	<b>625,000</b>	<b>2,546,168</b>		<b>220,590</b>
<b>Operating expenses</b>				
Research and development	152,202	866,113		62,870
General and administrative	280,493	7,242,975	57,256	15,061
<b>Total operating expenses</b>	<b>432,695</b>	<b>8,109,088</b>	<b>57,256</b>	<b>77,931</b>
<b>Income (loss) from operations</b>	<b>192,305</b>	<b>(5,562,920)</b>	<b>(57,256)</b>	<b>142,659</b>
<b>Other income (expense)</b>				
Interest expense	(49,385)	(57,520)	(11,275)	(14,047)
Other income	11,642	1,568	12,365	