

RESPIRONICS INC
Form S-8
November 16, 2005

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933**

RESPIRONICS, INC.

(Exact name of issuer as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

25-1304989

(I.R.S. Employer
Identification No.)

**1010 Murry Ridge Lane
Murrysville, Pennsylvania**

(Address of Principal Executive Offices)

15668

(Zip Code)

RESPIRONICS, INC.

**2005 SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN
and**

RESPIRONICS, INC.

2005 NON-EMPLOYEE DIRECTOR DEFERRED COMPENSATION PLAN

(Full title of the plan)

John L. Micolot

**President and Chief Executive Officer
Respironics, Inc.**

**1010 Murry Ridge Lane
Murrysville, Pennsylvania 15668
(724) 387-5200**

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

Copies of communications to:

**Steven P. Fulton, Esq.
Vice President and General Counsel
Respironics, Inc.
1010 Murry Ridge Lane
Murrysville, Pennsylvania 15668
(724) 387-5200**

**Jeffrey G. Aromatorio, Esquire
Reed Smith LLP
435 Sixth Avenue
Pittsburgh, Pennsylvania 15219-1886
(412) 288-3364**

CALCULATION OF REGISTRATION FEE

Proposed

Proposed

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| Title of securities | Amount | maximum offering price | maximum aggregate offering price | Amount of registration fee |
|------------------------------------------|------------------|------------------------|----------------------------------|----------------------------|
| to be registered | to be registered | per unit | (1) | |
| Deferred Compensation Obligations (2)(3) | \$25,000,000 | \$ 1.00 | \$25,000,000 | \$2,942.50 |

(1) Estimated solely for purposes of calculating the registration fee.

(2) The Deferred Compensation Obligations being registered are general unsecured obligations of Respironics, Inc. (the Company) to pay deferred compensation in the future to participating members in accordance with the terms of the Respironics, Inc. 2005 Supplemental Executive Retirement Plan and the Respironics, Inc. 2005 Non-Employee Director Deferred Compensation Plan (collectively, the Plans).

(3) Also registering an indeterminable number of plan interests.

The exhibit index for this Registration Statement is at page II-8.

PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document or documents containing the information specified in Part I are not required to be filed with the Securities and Exchange Commission (the Commission) as part of this Form S-8 Registration Statement in accordance with Rule 428 of the Securities Act of 1933, as amended.

PART II
INFORMATION REQUIRED IN
REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference

The following documents filed by the registrant with the Securities and Exchange Commission (File No. 000-16723) are incorporated by reference in this Registration Statement:

(a) The registrant's latest annual report on Form 10-K for the fiscal year ended June 30, 2004 filed pursuant to Section 13(a) of the Securities Exchange Act of 1934 (the 1934 Act);

(b) All other reports filed by the registrant pursuant to Section 13(a) of the 1934 Act since the end of the fiscal year covered by the annual report on Form 10-K referred to in paragraph (a) above; and

(c) The description of the registrant's Common Stock which is contained in the Joint Proxy Statement/Prospectus of the registrant and Healthdyne Technologies, Inc., filed as part of the registrant's Registration Statement on Form S-4 (No. 333-43703) dated January 5, 1998 (the Joint Proxy Statement).

All documents filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the 1934 Act subsequent to the filing of the annual report on Form 10-K referred to in paragraph (a) above and prior to the filing of a post-effective amendment which indicates that all 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 filing of such documents, except that the information included in any document in response to Item 306 or paragraphs (i), (k) or (l) of Item 402 of Regulation S-K is not incorporated by reference in this Registration Statement.

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

Item 4. Description of Securities.

The Respironics, Inc. 2005 Supplemental Executive Retirement Plan and the Respironics, Inc. 2005 Non-Employee Director Deferred Compensation Plan (the Plans) provide a select group of management employees (Eligible Employees) and non-employee directors of the Company the

opportunity to defer the receipt of certain compensation. The Company's obligations under the Plans (the "Deferred Compensation Obligations") will be general unsecured obligations of the Company to pay deferred compensation in the future to participating Eligible Employees and non-employee directors (the "Participants") in accordance with the terms of the Plans.

Each Participant may elect to defer under the Plan a portion of his or her compensation that may otherwise be payable during a calendar year. An Eligible Employee's deferred compensation shall be deferred by means of a reduction in the employee's annual base salary, commission, and bonus or incentive compensation as requested under the employee's deferral election. In the case of a non-employee director, deferred compensation shall be deferred by means of a reduction in the director's fees that are paid by the Company to the non-employee director as compensation for services performed by him or her as a director.

Participants' compensation deferrals under the Plans are credited to individual hypothetical deferral accounts maintained under the Plans. At the time of making an election to defer and participate in the Plans, each Participant may choose to allocate his or her deferred compensation among certain fixed income and equity funds, including the Respironics, Inc. Common Stock Fund, which are used to calculate the investment return rate on each Participant's individual hypothetical deferral account.

With certain exceptions, Deferred Compensation Obligations will be paid after: (1) the Eligible Employee participant's death, disability, retirement or termination of employment with the Company or, if elected by the Eligible Employee, upon the date of their attainment of a specified age, as provided in the Plan; or (2) the nonemployee director Participant's termination of service as a director, as the case may be. Subject to certain limitations set forth in the Plans, Participants may generally elect that payments under the Plans be made in a lump sum or in installments. The terms of the Plans may require payment in the form of a lump sum in certain circumstances.

No amount payable under the Plans shall be subject to assignment, transfer, sale, pledge, encumbrance, alienation or charge except as may be required by law. The duration of the Plans is indefinite, however, the Company reserves the right to offer deferral periods in future years and to terminate or amend the Plans at any time.

The total amount of the Deferred Compensation Obligations cannot be determined as the amount will vary based on the level of participation in the Plans and each Participant's amount of deferral compensation.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Section 145 of Delaware General Corporation Law. Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably

incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 145 also provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Any such indemnification (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth above. Such determination shall be made:

(a) by a majority vote of the directors who were not parties to such action, suit or proceeding, even though less than a quorum; or

(b) if there are no such directors, or, if such directors so direct, by independent legal counsel in a written opinion; or

(c) by the stockholders.

Section 145 permits a Delaware business corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify such person against such liability.

Section 102(b)(7) of the Delaware General Corporation Law. Section 102(b)(7) of the DGCL provides that a corporation may set forth in its Certificate of Incorporation a provision eliminating or

limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL regarding the unlawful payment of dividends or approval of unlawful stock repurchases or redemptions, or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective.

Certificate of Incorporation Provision on Liability of Directors and Indemnification. The registrant's Amended and Restated Certificate of Incorporation (the Charter) provides that, to the fullest extent permitted by the DGCL, no director of the registrant shall be personally liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director. The Charter also provides that the registrant shall indemnify, to the fullest extent permitted by applicable law, any person who is or was a director or officer of the registrant for any liability and expense in connection with any actual or threatened claim, action, suit or proceeding, whether civil or criminal, administrative or investigative (including, without limitation, any action, suit or proceeding by or in the right of the registrant to procure a judgment in its favor) by reason of the fact that such person is or was a director or officer of the registrant.

Item 7. Exemption From Registration Claimed.

Not applicable.

Item 8. Exhibits.

An Exhibit Index, containing a list of all exhibits filed with this Registration Statement, is included on page II-8.

Item 9. Undertakings.

(a) *Rule 415 offering.*

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 (the 1933 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)(1)(i) and (a)(1)(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 registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 (the 1934 Act) that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the 1933 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; and

(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) Filings incorporating subsequent Exchange Act Documents by Reference.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the 1934 Act 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.

(h) Filing of Registration Statement on Form S-8.

Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 6 above, 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 1933 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 1933 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 Murrysville, Commonwealth of Pennsylvania, on the 15th day of November, 2005.

RESPIRONICS, INC.

By: /s/ John L. Miclot
John L. Miclot
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints John L. Miclot, Daniel J. Bevevino and Steven P. Fulton, and each of them, the undersigned's true and lawful attorneys-in-fact and agents, with full power of substitution and revocation, for and in the undersigned's 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, 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, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitutes, may lawfully do or cause to be done by virtue thereof.

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 | Capacity | Date |
|------------------------|-------------------------------------------------------|-------------------|
| /s/ John L. Miclot | President and Chief Executive | November 15, 2005 |
| John L. Miclot | Officer and Director (Principal Executive Officer) | |
| /s/ Daniel J. Bevevino | Vice President and Chief | November 15, 2005 |
| Daniel J. Bevevino | Financial Officer (Principal Accounting Officer) | |
| /s/ James W. Liken | Director | November 15, 2005 |
| James W. Liken | | |

| Signature | Capacity | Date |
|----------------------------------------------|-----------------|-------------------|
| /s/ John C. Miles II John C. Miles II | Director | November 15, 2005 |
| /s/ Donald H. Jones Donald H. Jones | Director | November 15, 2005 |
| /s/ Joseph C. Lawyer Joseph C. Lawyer | Director | November 15, 2005 |
| /s/ Gerald E. McGinnis Gerald E. McGinnis | Director | November 15, 2005 |
| /s/ Douglas A. Cotter Douglas A. Cotter | Director | November 15, 2005 |
| /s/ J. Terry Dewberry J. Terry Dewberry | Director | November 15, 2005 |
| /s/ Craig B. Reynolds Craig B. Reynolds | Director | November 15, 2005 |
| /s/ Candace L. Littell Candace L. Littell | Director | November 15, 2005 |
| /s/ Sean C. McDonald Sean C. McDonald | Director | November 15, 2005 |

/s/ Mylle H. Mangum

Director

November 15, 2005

Mylle H. Mangum

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RESPIRONICS, INC.
Respironics, Inc. 2005 Supplemental Executive Retirement Plan
and
Respironics, Inc. 2005 Non-Employee Director Deferred Compensation Plan

REGISTRATION STATEMENT
ON FORM S-8
Exhibit Index
(Pursuant to Item 601 of Regulation S-K)

| Exhibit No. | Description and Method of Filing | Sequential Page |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 4.1 | Restated Certificate of Incorporation of the registrant, incorporated herein by reference to Exhibit 3.2 to Amendment No. 1 to Form S-1, Registration No. 33-20899. | * |
| 4.2 | Amendment to Restated Certificate of Incorporation of the registrant, filed as Exhibit 3.2 to Form S-1 (No. 33-39938). | * |
| 4.3 | Amendment to Restated Certificate of Incorporation of the registrant, incorporated herein by reference to Exhibit 4.2 to the registrant's registration statement on Form S-8 (No. 33-36459). | * |
| 4.4 | Amendment to Restated Certificate of Incorporation of the registrant, filed as Exhibit 4.2 to Form S-8 (No. 33-89308). | * |
| 4.5 | Amendment to Restated Certificate of Incorporation of the registrant, filed as Exhibit 3.5 to the registrant's quarterly report on Form 10-Q for the fiscal quarter ended December 31, 1996. | |
| 4.6 | By-Laws of the registrant, incorporated herein by reference to Exhibit 3.4 to Amendment No. 2 to the registrant's registration statement on Form S-1 (No. 33-20899). | * |
| 4.7 | Amendment to the By-Laws of the registrant, incorporated herein by reference to Exhibit 3.7 to the registrant's annual report on Form 10-K for the fiscal year ended June 30, 1998. | * |
| 4.8 | Amendment to the By-Laws of the registrant, incorporated herein by reference to Exhibit 3.8 to the registrant's quarterly report on Form 10-Q for the fiscal quarter ended December 31, 1998. | * |

| Exhibit No. | Description and Method of Filing | Sequential Page |
|--------------------|--------------------------------------------------------------------------------------------------------------------------|------------------------|
| 5.1 | Opinion of Reed Smith LLP as to the legality of the deferred compensation obligations being registered (filed herewith). | 11 |
| 15.1 | Acknowledgement of Ernst & Young LLP, independent registered public accounting firm. | 12 |
| 23.1 | Consent of Reed Smith LLP (contained in the opinion filed as Exhibit 5.1 hereto). | |
| 23.2 | Consent of Ernst & Young LLP, independent registered public accounting firm (filed herewith). | 13 |
| 24.1 | Power of Attorney, contained on the signature page to this Registration Statement. | |

* Incorporated by reference.