

CRITICARE SYSTEMS INC /DE/
Form 10-K/A
October 30, 2006

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

FORM 10-K/A

**FOR ANNUAL AND TRANSITION REPORTS
PURSUANT TO SECTIONS 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the fiscal year ended June 30, 2006

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.

For the transition period from _____ to _____

Commission file number 1-31943

Criticare Systems, Inc.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

39-1501563
(I.R.S. Employer Identification No.)

20925 Crossroads Circle, Suite 100, Waukesha, Wisconsin
(Address of Principal Executive Offices)

53186
(Zip Code)

Registrant's telephone number, including area code: 262-798-8282

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Name of Each Exchange on Which Registered |
|---|---|
| Voting Common Stock, \$.04 par value (together with associated Preferred Stock Purchase Rights) | American Stock Exchange |

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes [] No [X]

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act.
Yes [] No [X]

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
Yes [X] No []

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. []

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Exchange Act Rule 12b-2. (Check one)

Large accelerated filer [] Accelerated filer [] Non-accelerated filer [X]

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes [] No [X]

The aggregate market value of the voting common stock held by nonaffiliates of the registrant as of December 30, 2005 (the last business day of the registrant's most recently completed second fiscal quarter) was \$57,552,011. Shares of voting common stock held as of December 30, 2005 by any person who was an executive officer or director of the Registrant as of December 30, 2005 and any person who beneficially owned 10% or more of the outstanding voting common stock as of December 30, 2005 have been excluded from this computation because such persons may be deemed to be affiliates. This determination of affiliate status is not a conclusive determination for other purposes.

On August 31, 2006, there were 12,293,668 shares of the registrant's \$.04 par value voting common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Definitive Consent Revocation Statement filed by the Company with the Securities and Exchange Commission on October 11, 2006 are incorporated by reference into Part III of this report.

As used in this report, the terms "we," "us," "our," "Criticare" and the "Company" mean Criticare Systems, Inc. and its subsidiaries, unless the context indicates another meaning, and the term "common stock" means our common stock, par value \$0.04 per share.

Special Note Regarding Forward-Looking Statements

A number of the matters and subject areas discussed in this report that are not historical or current facts deal with potential future circumstances and developments. These include anticipated product introductions, expected future financial results, liquidity needs, financing ability, management's or the Company's expectations and beliefs and similar matters discussed in this report. These statements may be identified by the use of forward-looking words or phrases such as "anticipate," "believe," "could," "expect," "intend," "may," "hope," "plan," "potential," "should," "estimate," "predict," "continue," "future," "will," "would" or the negative of these terms or other words of similar meaning. Such forward-looking statements are inherently subject to known and unknown risks and uncertainties. Our actual results and future developments could differ materially from the results or developments expressed in, or implied by, these forward-looking statements. Factors that may cause actual results to differ materially from those contemplated by such forward-looking statements include, but are not limited to, those described under the caption "Risk Factors" in Item 1A of this report. We undertake no obligation to make any revisions to the forward-looking statements contained in this filing or to update them to reflect events or circumstances occurring after the date of this filing.

Explanatory Note

Criticare Systems, Inc. (the "Company") is amending Items 10, 11, 12, 13 and 14 of Part III of the Company's Annual Report on Form 10-K for the year ended June 30, 2006, as filed with the Securities and Exchange Commission on September 28, 2006 (the "Annual Report"). This amendment is being made to incorporate by reference into Part III of the Annual Report portions of the Company's Definitive Consent Revocation Statement filed with the Securities and Exchange Commission on October 11, 2006 (the "Consent Revocation Statement").

PART III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT.

Information regarding the executive officers and directors of the Company is incorporated herein by reference to the discussions under "Current Directors of Criticare," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Executive Officers" in the Consent Revocation Statement.

The Audit Committee of the Company's Board of Directors is an "audit committee" for purposes of Section 3(a)(58)(A) of the Securities Exchange Act of 1934. The members of the Audit Committee are Dr. Higgins D. Bailey, Dr. N.C. Joseph Lai and Stephen K. Tannenbaum (Chairman).

The Company's Board of Directors has determined that one of the members of the Audit Committee, Stephen K. Tannenbaum, qualifies as an "audit committee financial expert" as defined by the rules of the SEC based on his work experience and education.

The Company has adopted a Code of Business Ethics that applies to all of the Company's employees, including the Company's principal executive officer, principal financial officer and principal accounting officer. A copy of the Code of Business Ethics is available on the Company's corporate web site which is located at www.csiusa.com. The Company also intends to disclose any amendments to, or waivers from, the Code of Business Ethics on its corporate web site.

Item 11. EXECUTIVE COMPENSATION.

Information regarding executive compensation is incorporated herein by reference to the discussion under "Executive Compensation" and "Compensation of Directors" in the Consent Revocation Statement.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

Information regarding security ownership of certain beneficial owners and management is incorporated herein by reference to the discussion under "Security Ownership of Certain Beneficial Owners and Management" in the Consent Revocation Statement.

The following table summarizes share information for the Company's equity compensation plans as of June 30, 2006, including the 2003 Stock Option Plan, the 1992 Employee Stock Option Plan, the 1992 Non-Employee Stock Option Plan, the 1987 Employee Stock Option Plan, the 1987 Non-Employee Stock Option Plan and the Company's Employee Stock Purchase Plan.

Equity Compensation Plan Information

| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants and rights | Weighted average exercise price of outstanding options warrants and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities in first column) |
|--|---|--|---|
| Equity compensation plans approved by security holders | 543,688 shares | \$3.17 per share | 922,232 shares |
| Equity compensation plans not approved by security holders | 30,000 shares | \$2.88 per share | 0 shares |
| Total | 573,688 shares | \$3.15 per share | 922,232 shares |

As noted in the table above, the Company has issued warrants to a consultant which have not been approved by the Company's stockholders. The Company extended warrants for the purchase of 30,000 shares of Common Stock issued to the consultant expiring in February 2003 for an additional five years with an exercise price of \$2.88 per share.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS.

Information regarding certain relationships and related party transactions is incorporated herein by reference to the discussion under "Executive Compensation—Employment Agreements" in the Consent Revocation Statement.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

The following table summarizes the fees the Company was billed for audit and nonaudit services rendered by the Company's independent auditors during fiscal 2006 and 2005:

| Service Type | Fiscal 2006 | | Fiscal 2005 | |
|--------------------------|--------------------|----------------|--------------------|----------------|
| Audit Fees (1) | \$ | 170,060 | \$ | 158,428 |
| Audit-related Fees | | - | | - |
| Tax Fees (2) | | 19,350 | | 19,550 |
| All Other Fees | | - | | - |
| Total Fees Billed | \$ | 189,410 | \$ | 177,978 |

(1) Consists of fees for professional services rendered in connection with the audit of the Company's financial statements for the fiscal years ended June 30, 2006 and June 30, 2005; the reviews of the financial statements included in each of the Company's quarterly reports on Form 10-Q during those fiscal years; and consents and assistance with documents filed by the Company with the SEC.

(2) Consists of fees for tax advisory services in connection with preparation of the Company's federal and state tax returns and I.R.S. audit.

The Audit Committee of the Board of Directors of the Company considered that the provision of the services and the payment of the fees described above are compatible with maintaining the independence of BDO Seidman, LLP.

The Audit Committee is responsible for reviewing and pre-approving any non-audit services to be performed by the Company's independent auditors. The Audit Committee has delegated certain of its pre-approval authority to the Chairman of the Audit Committee to act between meetings of the Audit Committee. Any pre-approval given by the Chairman of the Audit Committee pursuant to this delegation is presented to the full Audit Committee at its next regularly scheduled meeting. The Audit Committee or Chairman of the Audit Committee reviews and, if appropriate, approves non-audit service engagements, taking into account the proposed scope of the non-audit services, the proposed fees for the non-audit services, whether the non-audit services are permissible under applicable law or regulation and the likely impact of the non-audit services on the independence of the independent auditors.

Since the effective date of the SEC rules requiring pre-approval of non-audit services on May 6, 2003, each new engagement of the Company's independent auditors to perform non-audit services has been approved in advance by the Audit Committee or the Chairman of the Audit Committee pursuant to the foregoing procedures.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a)(3) Exhibits:

The following exhibits are filed with this Form 10-K/A:

31.1 Certification of Emil H. Soika, President and Chief Executive Officer (Principal Executive Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

31.2 Certification of Joel D. Knudson, Vice President - Finance and Secretary (Principal Financial Officer) pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Form 10-K/A to be signed on its behalf by the undersigned, thereunto duly authorized.

CRITICARE SYSTEMS, INC.

By /s/ Emil H. Soika
 Emil H. Soika, President
 and Chief Executive Officer

Date: October 30, 2006

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|--|--|------------------|
| /s/ Emil H. Soika Emil H. Soika | President, Chief Executive Officer and Director (Principal Executive Officer) | October 30, 2006 |
| /s/ Joel D. Knudson Joel D. Knudson | Vice President-Finance and Secretary (Principal Financial and Accounting Officer) | October 30, 2006 |
| * Dr. Higgins Bailey | Chairman of the Board and Director | October 30, 2006 |
| * N.C. Joseph Lai, Ph.D. | Director | October 30, 2006 |
| * Jeffrey T. Barnes | Director | October 30, 2006 |

* Director October 30, 2006
Stephen K. Tannenbaum

* Director October 30, 2006
Sam B. Humphries

/s/ Emil H. Soika October 30, 2006
Emil H. Soika
*Attorney-in-Fact