

PHARMANETICS INC
Form DEF 14A
April 04, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

PharmaNetics, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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No fee required.

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1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

PHARMANETICS, INC.

9401 Globe Center Drive

Morrisville, North Carolina 27560

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

To Be Held May 8, 2003

TO THE SHAREHOLDERS OF

PHARMANETICS, INC.

The Annual Meeting of Shareholders of PharmaNetics, Inc. (the Company) will be held at the Company's offices located at 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina on Thursday May 8, 2003, at 10:30 a.m. for the following purposes:

1. To elect a board of directors;
2. To ratify the appointment of PricewaterhouseCoopers LLP as our independent auditors for the year ending December 31, 2003; and
3. To act upon such other matters as may properly come before the meeting or any adjournment thereof.

The foregoing items are more fully described in the attached Proxy Statement.

The Board of Directors has fixed the close of business on March 19, 2003 as the record date for the determination of shareholders entitled to notice of and to vote at the meeting or any adjournment or adjournments thereof. You may attend the meeting in person. However, to assure your representation at the meeting, we urge you to mark, sign, date and return the enclosed proxy card as promptly as possible in the postage-prepaid envelope enclosed for that purpose. You may vote in person at the meeting, even if you returned a proxy.

The Company's Proxy Statement and proxy are submitted herewith along with the Company's Annual Report for the year ended December 31, 2002.

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IMPORTANT YOUR PROXY IS ENCLOSED

Whether or not you plan to attend the meeting, please execute and promptly return the enclosed proxy in the enclosed envelope. No postage is required for mailing in the United States.

By Order of the Board of Directors

JOHN P. FUNKHOUSER,

President and Chief Executive Officer

Morrisville, North Carolina

April 3, 2003

PHARMANETICS, INC.

9401 Globe Center Drive

Morrisville, North Carolina 27560

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS

May 8, 2003

INFORMATION CONCERNING SOLICITATION AND VOTING

The enclosed proxy is solicited by the Board of Directors of PharmaNetics, Inc., a North Carolina corporation (the Company), for use at our Annual Meeting of Shareholders to be held at 9401 Globe Center Drive, Morrisville, North Carolina, at 10:30 a.m. on Thursday, May 8, 2003, and any adjournments thereof (the Meeting). We will bear the cost of soliciting proxies. In addition to solicitation of proxies by mail, our employees, without extra remuneration, may solicit proxies personally or by telephone. We will reimburse brokerage firms and other custodians, nominees and fiduciaries for their reasonable out-of-pocket expenses for forwarding proxy materials to beneficial owners and seeking instruction with respect thereto. The mailing address of our principal executive offices is 9401 Globe Center Drive, Suite 140, Morrisville, North Carolina 27560. Copies of this Proxy Statement and accompanying proxy card were mailed to shareholders on or about April 3, 2003.

Revocability of Proxies

You may revoke your proxy at any time before it is voted by giving a later proxy or written notice to us (Attention: Paul Storey, Secretary), or by attending the Meeting and voting in person.

Voting

When the enclosed proxy is properly executed and returned (and not subsequently properly revoked), the shares it represents will be voted in accordance with the directions indicated thereon, or, if no direction is indicated thereon, it will be voted: (i) FOR the election of the nominees for director identified below; (ii) FOR ratification of the appointment of PricewaterhouseCoopers LLP, Raleigh, North Carolina, as our independent auditors for the year ending December 31, 2003; and (iii) in the discretion of the proxies with respect to any other matters properly brought before the shareholders at the Meeting.

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Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum for the transaction of business at the Meeting but will not be counted in tabulation of votes cast on proposals presented at the Meeting. While there is no definitive statutory or case law authority in North Carolina with regard to these matters, we believe that our intended treatment of abstentions and broker non-votes at the Meeting is appropriate.

Record Date

Only the holders of record of our Common Stock and Series A Preferred Stock at the close of business on the record date, March 19, 2003 (the Record Date), are entitled to notice of and to vote at the Meeting. On the Record Date, 9,727,872 shares of Common Stock and 81,000 shares of Series A Preferred Stock were outstanding. Shareholders will be entitled to one vote for each share of Common Stock and ten votes for each share of Series A Preferred Stock held on the Record Date.

PROPOSAL NO. 1 ELECTION OF DIRECTORS**Nominees**

Our Bylaws provide that the number of directors constituting the Board of Directors shall be no less than one and no more than nine. There are currently six directors serving on the board and the number authorized for election at the meeting is six. Therefore, six directors are to be elected to serve for one year, until the election and qualification of their successors, and it is intended that proxies, not limited to the contrary, will be voted FOR all of the management nominees named below. If any nominee is unable or declines to serve as a director at the time of the Meeting, the individuals named in the enclosed proxy may exercise their discretion to vote for any substitute proposed by the Board of Directors. It is not anticipated that any nominee listed below will be unable or will decline to serve as a director. Under our Bylaws, shareholders desiring to nominate a person for election at the Meeting were required to give notice to us by March 20, 2003. Because no timely notice has been received, shareholder nominations will not be permitted. None of the nominees is related by blood, marriage or adoption to any other nominee or any executive officer of the Company.

<u>Name of Nominee</u>	<u>Age</u>	<u>Director Since</u>
John P. Funkhouser	49	1993
John K. Pirotte	53	1996
Stephen R. Puckett	50	1996
Philip R. Tracy.	61	1996
Frances L. Tuttle.	55	1999
James B. Farinholt, Jr.	68	2000

John P. Funkhouser was elected our President, Chief Executive Officer and a director in October 1993 upon the Company's acquisition of Coeur Laboratories, Inc., which manufactures and sells disposable power injection syringes for cardiology and radiology procedures, as well as custom angiographic procedure kit manifolds (Coeur). Mr. Funkhouser also served as President and Chief Executive Officer of Coeur from 1992 until its sale in June 1999. Before his employment with Coeur, Mr. Funkhouser was a General Partner with Hillcrest Group, a venture capital firm, and worked for over nine years in managing venture capital portfolio companies. Mr. Funkhouser holds a B.A. from Princeton University and an M.B.A. from the University of Virginia.

John K. Pirotte is Chairman and Chief Executive Officer of CORPEX Technologies Inc., a privately held company that develops and markets surface active chemical technology, since 1990 and is President of Matrix Surface Technologies Inc., a privately held company that develops and markets mechanical surface treatment technologies, since 1997. Mr. Pirotte was also President and Chief Operating Officer of Teleion Wireless, Inc., a privately held company that develops and markets wireless data communication modules, from August 2000 to March 2002. In addition, Mr. Pirotte has operated a private investment company and was Chairman and Chief Executive Officer from 1981 until 1988 and Chief Financial Officer from 1979 to 1981 of The Aviation Group, Inc., a former NASDAQ listed company (symbol LIFT) that was acquired in 1985. He is a member of the Board of Directors of Digital Recorders, Inc. a NASDAQ listed company (symbol TBUS) that manufactures and sells advanced technology products to the transportation industry. He is a founding director of North Carolina Enterprise Corp., a venture capital fund. Mr. Pirotte holds a B.A. from Princeton University and an M.S. from New York University Graduate School of Business Administration.

Stephen R. Puckett is Chairman of the Board of Directors of MedCath Incorporated, a provider of cardiology and cardiovascular services that he founded in 1988. He also formerly served as President and Chief Executive Officer of Medcath. He is also Chairman of the Board of Orthoneuro Corporation. He has also served as Executive Vice President and Chief Operating Officer of the Charlotte Mecklenburg Hospital Authority. Mr. Puckett holds a B.S. and an M.S. in Health Management from the University of Alabama.

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Philip R. Tracy was President and CEO of Burroughs-Wellcome Co., the United States subsidiary of Wellcome plc, a global pharmaceutical company, from 1989 until the acquisition of Wellcome by Glaxo plc in

1995. Prior to 1989, he served in various legal capacities with Burroughs-Wellcome, including Vice President and General Counsel. He has served on the boards of Wellcome Plc, the Pharmaceutical Research and Manufacturers of America, and the Non-Prescription Drug Manufacturers Association. He is currently Of Counsel to the law firm of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. and serves as a venture partner with Intersouth Partners, a venture capital firm based in North Carolina. Mr. Tracy holds a B.A. from the University of Nebraska and an L.L.B. from George Washington University School of Law, and has attended the Senior Executive Program at Stanford University.

Frances L. Tuttle has served as Senior Vice President Near Patient Testing of Bayer Diagnostics, a Business Group of the worldwide Bayer Group, since June 2000. From February 1999 to June 2000, Ms. Tuttle served as Senior Vice President Critical Care Systems at Bayer Diagnostics. From 1979 to 1999, Ms. Tuttle served in various positions within Chiron Diagnostics, which was purchased by Bayer Diagnostics in September 1998, most recently as Senior Vice President of the Immunodiagnostics division. Ms. Tuttle holds a B.S. in accounting from the University of North Carolina at Chapel Hill and an M.B.A. from Harvard Business School.

James B. Farinholt, Jr. is a Managing Director of Tall Oaks Capital Partners, LLC, which manages an investment fund focused on businesses primarily in information technology and the life sciences. Mr. Farinholt retired in 2002 as Special Assistant to the President for Economic Development of Virginia Commonwealth University (VCU), advising on campus expansion and commercialization of scientific discoveries. He is a member of the Board of Directors of the VCU Intellectual Properties Foundation. Mr. Farinholt holds a B.S. from Hampden-Sydney College.

Board Nomination Rights

In connection with our sale of approximately \$17.4 million of common stock to Bayer Diagnostics in 2001, Bayer agreed to vote its shares in accordance with the recommendation of the Company's Board related to its slate of board nominees or related to any non-Company sponsored shareholder proposal that is opposed by the Company. In addition, the Company agreed to include in the slate of nominees recommended by the Company for election as directors of the Company at each annual meeting one person designated by Bayer and reasonably acceptable to the Company. Last year's Board nominee designated by Bayer and approved by the Company was Frances L. Tuttle. Ms. Tuttle has been nominated by the Company again this year.

Information Concerning the Board of Directors and Committees

The business of the Company is conducted under the general management of the Board of Directors as provided by the laws of North Carolina and our Bylaws. During the year ended December 31, 2002, the Board of Directors held six formal meetings, excluding actions that were taken by unanimous written consent during the year. Each member of the board attended at least 75% of the 2002 meetings of the Board of Directors and Board committees of which he or she was a member.

The Board of Directors has an Audit Committee and a Compensation Committee. The Board has no Nominating Committee. The Audit Committee currently consists of Messrs. Pirotte, Tracy and Farinholt. The Audit Committee held five formal meetings during 2002 to discuss quarterly results and the year end audit with our auditors. The Audit Committee makes recommendations to the Board of Directors concerning its review of our internal controls and disclosure controls, our accounting system and the annual audit, and regarding the selection of and authorization for the payment of fees to our independent auditors. The Compensation Committee currently consists of Messrs. Pirotte, Puckett and Farinholt. The Compensation Committee recommends employee salaries and incentive compensation to the Board of Directors and administers our stock option plans. During 2002, the Compensation Committee held three meetings, excluding actions that were taken by unanimous written consent during the year.

Vote Required

The six nominees receiving the highest number of affirmative votes of the shares present or represented and entitled to be voted at the Meeting shall be elected as directors of the Company.

The Board of Directors has unanimously approved and recommends that you vote FOR the election of the management nominees listed above.

PROPOSAL NO. 2 RATIFICATION OF SELECTION OF INDEPENDENT AUDITORS

The Board of Directors has appointed the firm PricewaterhouseCoopers LLP (PWC), Raleigh, North Carolina, to serve as our independent auditors for the year ending December 31, 2003, and recommends that the shareholders ratify such action. Shareholder ratification of the selection of PWC as our independent auditors is not required by our bylaws or otherwise. However, the Board is submitting the selection of PWC to our shareholders for ratification as a matter of good corporate practice. If the appointment of PWC is not ratified by the shareholders, the Board of Directors will reconsider its selection. PWC has audited our accounts since 1994 and has advised us that it does not have, and has not had, any direct or indirect financial interest in the Company or its subsidiaries in any capacity other than that of serving as independent auditors. Representatives of PWC are expected to attend the Meeting. They will have an opportunity to make a statement, if they desire to do so, and will also be available to respond to appropriate questions.

Audit Fees

PWC billed the Company aggregate fees of \$70,000 for professional services rendered for the audit of our annual financial statements for fiscal year 2002 and for reviews of the financial statements included in our quarterly reports on Form 10-Q for the first three quarters of fiscal 2002.

All Other Fees

PWC billed the Company aggregate fees of \$15,960 for professional services rendered in fiscal 2002 other than audit services and review of quarterly reports. These fees resulted primarily from services rendered for the review of our fiscal 2001 tax returns. The Audit Committee of the Board of Directors considered these activities to be compatible with the maintenance of PWC independence. We did not engage PWC in fiscal 2002 to perform any services for financial information systems design or implementation.

Vote Required

The affirmative vote of the holders of a majority of the shares of our Common Stock and preferred stock present or represented and voting on this proposal at the Meeting shall constitute ratification of the appointment of PWC.

The Board of Directors has unanimously approved and recommends a vote FOR the ratification of the appointment of PWC as our independent auditors for the year ending December 31, 2003.

OTHER INFORMATION

Principal Shareholders

The following table sets forth certain information regarding the ownership of shares of our Common Stock and Series A Preferred Stock as of the Record Date by (1) each person known by the Company to own beneficially more than 5% of the outstanding shares of Common Stock or Series A Preferred Stock, (2) each of our current directors, (3) each of our Chief Executive Officer and current four most highly compensated executive officers other than the Chief Executive Officer whose cash compensation for the year ended December 31, 2002 exceeded \$100,000 (collectively, the Named Executive Officers), and (4) all of our current directors and executive officers as a group. As of the Record Date, we had 9,727,872 shares of Common Stock and 81,000 shares of Series A Preferred Stock outstanding. Each share of Series A Preferred Stock is convertible into ten shares of Common Stock. Except as indicated in footnotes to this table, the persons named in this table have sole voting and investment power with respect to all shares of Common Stock indicated. Share ownership in the case of Common Stock includes shares issuable upon conversion of Series A Preferred Stock and upon exercise of outstanding options and warrants that may be exercised within 60 days after the Record Date for purposes of computing the percentage of Common Stock owned by such person but not for purposes of computing the percentage owned by any other person. Percentage voting power is calculated assuming the Common Stock and Series A Preferred Stock vote together as one class with each share of Common Stock entitled to one vote and each share of Series A Preferred Stock entitled to ten votes.

	Shares Beneficially Owned				
	Common Stock		Series A Preferred Stock		% Total Voting Power
	Number of	Percent of	Number of	Percent of	
	Shares	Class	Shares	Class	
Bayer Diagnostics Corporation 63 North Street Medfield, MA 02052	2,050,000	21.1%			
Joseph H. Sherrill, Jr 1510 Stickney Point Road Sarasota, FL 34231	609,585(1)	7.0%	6,000	7.4%	5.7%
Salem Investment Counselors, Inc. P. O. Box 25427 Winston-Salem, NC 27114	526,287(2)	5.4%			5.0%
Special Situations Funds(3) 153 East 53rd Street New York, NY 10022	205,000(4)	2.1%	15,500	19.1%	1.5%
Elliot Bossen 3100 Tower Boulevard, #1104 Durham, NC 27707	139,671(5)	1.4%	10,000	11.0%	1.1%
Leonardo, L.P. 245 Park Avenue New York, NY 10167	279,342(6)	2.8%	20,000	24.7%	2.3%
AIG Sound Shore Funds(3) 1281 East Main Street, 3rd Floor Stamford, CT 06902	78,000(7)	*	6,500	8.0%	*

	Shares Beneficially Owned				
	Common Stock		Series A Preferred Stock		% Total Voting Power
	Number of	Percent of	Number of	Percent of	
	Shares	Class	Shares	Class	
John P. Funkhouser	420,110(8)	4.1%			
Michael D. Riddle	103,001(9)	1.0%			*
James A. McGowan	80,000(10)	*			*
Mark X. Triscott	31,251(11)	*			*
Stephen R. Puckett	24,000(12)	*			*
John K. Pirotte	23,000(12)	*			*
Philip R. Tracy	23,000(12)	*			*
James B. Farinholt, Jr.	16,500(13)	*			*
Frances L. Tuttle					
All current executive officers and directors as a Group (5 directors and 5 executive officers)	743,362(14)	7.1%			*

* Less than one percent.

- (1) As reported in the Schedule 13G dated February 5, 2003 filed with the SEC by Joseph H. Sherrill Jr. Includes 60,000 shares of common stock issuable to Mr. Sherrill upon conversion of shares of Series A Preferred Stock and a warrant to purchase 12,000 shares of Common Stock.
- (2) As reported in the Schedule 13G dated February 12, 2003 filed with the SEC by Salem Investment Counselors, Inc. Consists of shares held by individuals who are customers or representatives (or members of a representatives immediate family) of Salem Investment Counselors, Inc., which disclaims beneficial ownership.
- (3) Consists of separate but affiliated limited partnerships or companies.
- (4) Consists of 155,000 shares of Common Stock issuable upon conversion of Series A Preferred Stock and 50,000 shares of Common Stock issuable upon exercise of a warrant.
- (5) Consists of: (a) Common Stock of 19,671 and (b) 100,000 shares of Common Stock issuable upon conversion of Series A Preferred Stock and 20,000 shares of Common Stock issuable upon exercise of a warrant.
- (6) Consists of: (a) Common Stock of 39,342 and (b) 200,000 shares of Common Stock issuable upon conversion of Series A Preferred Stock and 40,000 shares of Common Stock issuable upon exercise of a warrant.
- (7) Consists of 65,000 shares of Common Stock issuable upon conversion of Series A Preferred Stock and 13,000 shares of Common Stock issuable upon exercise of a warrant.
- (8) Includes 395,410 shares underlying options.
- (9) Includes 88,001 shares underlying options.
- (10) Includes 75,000 shares underlying options.
- (11) Includes 31,251 shares underlying options.
- (12) Includes 17,000 shares underlying options.
- (13) Includes 15,000 shares underlying options.
- (14) Includes shares referenced in footnotes (8) through (13).

Compensation of Executive Officers

Summary Compensation.

The following table reflects all cash and noncash compensation paid by us to the Named Executive Officers for their services in all capacities during the years ended December 31, 2002, 2001 and 2000:

<u>Name and Principal Position</u>	<u>Annual Compensation</u>			<u>Long-Term Compensation Awards</u>	<u>All Other Compensation</u>
	<u>Year</u>	<u>Salary</u>	<u>Bonus</u>	<u>Options/ SARs</u>	
John P. Funkhouser, President, Chief Executive Officer	2002	\$ 250,000	\$ 30,000	238,762(1)	\$ 24,175(2)
		250,000	25,000		
	2001				
	2000	234,000	15,000		&nbs