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MEDAREX INC
Form S-8
June 28, 2002

As filed with the Securities and Exchange Commission on June 28, 2002
Registration No. 333-

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

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

MEDAREX, INC.
(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction of
incorporation or organization)

22-2822175
(I.R.S. Employer Identification No.)

707 State Road
Princeton, New Jersey
(Address of Principal Executive Offices)

08540
(Zip Code)

MEDAREX, INC. 2002 EMPLOYEE STOCK PURCHASE PLAN
(Full title of the plan)

Donald L. Drakeman
Medarex, Inc.
707 State Road
Princeton, New Jersey 08540
(Name and address of agent for service)

(609) 430-2880
(Telephone number, including area code, of agent for service)

Copies to:

W. Bradford Middlekauff
Senior Vice President, General Counsel
and Secretary
Medarex, Inc.
707 State Road
Princeton, New Jersey 08540

Dwight A. Kinsey, Esq.
Satterlee Stephens Burke & Burke LLP
230 Park Avenue
New York, New York 10169
(212) 818-9200

CALCULATION OF REGISTRATION FEE

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Title of Securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price (2)	Amount of registration fee
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Common Stock, \$.01
par value per share 500,000 shares \$ 6.955 \$ 3,477,500 \$ 320

- (1) The registration statement also includes an indeterminable number of additional shares that may become issuable as a result of the anti-dilution adjustment provisions of the Plan. It also includes preferred share purchase rights under the Medarex, Inc. Shareholder Rights Agreement.
- (2) Estimated solely for the purpose of determining the registration fee pursuant to Rule 457(c) and (h) and based upon the average of the high and low sale prices of the Company's Common Stock as reported by the Nasdaq National Market as June 26, 2002.

PART II

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission are hereby incorporated by reference:

(a) Annual Report on Form 10-K for the fiscal year ended December 31, 2001; (b) Quarterly Report of the Company on Form 10-Q for the three-month period ended March 31, 2002; (c) Proxy Statement dated April 17, 2002 for Annual Meeting of Shareholders held on May 22, 2002; and (d) the description of the Registrant's Common Stock set forth in the Registrant's Registration Statement on Form S-3 (File No. 333-95565), including any amendments or reports filed for the purpose of updating such description; and

(b) All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), after the filing hereof and prior to a filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such reports and documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequent filed document, which also is or is deemed to be incorporated by reference herein, modified or superseded such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as so modified or superseded.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Dwight A. Kinsey, Esq., a partner of Satterlee Stephens Burke & Burke LLP, owns 6,000 shares Medarex Common Stock. Mr. Kinsey also holds options to purchase 40,000 shares of Medarex Common Stock which he received for services rendered as Assistant Secretary of Medarex. No other partner or associate of the firm owns shares or holds options to purchase shares of Medarex having a fair market value either individually or in the aggregate in excess of \$50,000.

Item 6. Indemnification of Directors and Officers.

Section 14A:3-5 of The New Jersey Business Corporation Act (the "NJBCA") empowers a New Jersey corporation to indemnify any person who is or was

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a director, officer, employee or agent of the indemnifying corporation or of any constituent corporation absorbed by the indemnifying corporation in a consolidation or merger and any person who is or was a director, officer, trustee, employee or agent of any other enterprise, serving as such at the request of the indemnifying corporation, or of any such constituent corporation, or legal representative of any such director, officer, trustee, employee or agent (a "corporate agent"), against his expenses and liabilities incurred in connection with any proceeding involving the corporate agent, other than a proceeding by or in the right of the corporation, if (a) such corporate agent 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 (b) with respect to any criminal proceeding, such corporate agent had no reason to believe that his conduct was unlawful. In addition, a corporation may indemnify such corporate agent against his expenses in connection with any proceeding by or in the right of the corporation to procure a judgment in its favor which involves such corporate agent by reason of his having been such corporate agent, if he acted in good faith and in a manner he

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reasonably believed to be in or not opposed to the best interests of the corporation. However, in such proceeding no indemnification shall be provided in respect of any claim, issue or matter as to which such corporate agent shall have been adjudged to be liable to the corporation, unless and only to the extent that the Superior Court of the State of New Jersey or the court in which such proceeding was brought shall determine upon application that despite the adjudication of liability, but in view of all circumstances of the case, such corporate agent is fairly and reasonably entitled to indemnity for such expenses as the Superior Court or such other court shall deem proper.

Under the NJBCA, a corporation shall indemnify a corporate agent against expenses to the extent that such corporate agent has been successful on the merits or otherwise in any proceeding referred to above or in defense of any claim, issue or matter therein.

The indemnification and advancement of expenses provided by or granted pursuant to the NJBCA shall not exclude any other rights, including the right to be indemnified against liabilities and expenses incurred in proceedings by or in the right of the corporation, to which a corporate agent may be entitled under a certificate of incorporation, bylaw, agreement, vote of shareholders, or otherwise; provided that no indemnification shall be made to or on behalf of a corporate agent if a judgment or other final adjudication adverse to the corporate agent establishes that his acts or omissions (a) were in breach of his duty of loyalty to the corporation or its shareholders, (b) were not in good faith or involved a knowing violation of law or (c) resulted in receipt by the corporate agent of an improper personal benefit.

The Restated Certificate of Incorporation, as amended, and Article XIII of the Registrant's Amended and Restated By-Laws provide for the indemnification of its Officers and Directors under certain circumstances and are incorporated herein by reference.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit No.	Description
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4(b)	Restated Certificate of Incorporation of Medarex, Inc. (Incorporated by reference to Exhibit 4(b) to the Registrant's Registration Statement on Form S-8 (File No. 333-39084) filed on June 12, 2000), as amended by Registrant's Certificate of Amendment of the Restated Certificate of Incorporation (Incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K filed on June 26, 2001).
4(c)	Medarex, Inc. Amended and Restated By-Laws (Incorporated by reference to Exhibit 4.2 to the Registrant's Form 8-K filed on May 25, 2001).
5	Opinion of Satterlee Stephens Burke & Burke LLP as to legality of the securities being registered
10.1	Medarex, Inc. 2002 Employee Stock Purchase Plan
15	Not Applicable

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Exhibit No.	Description
23(a)	Consent of Ernst & Young LLP
23(b)	Consent of PricewaterhouseCoopers
24	Power of Attorney (accompanies signature pages to the Registration Statement)
99	Not Applicable

Item 9. Undertakings.

The undersigned Registrant hereby undertakes as follows:

(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 "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 aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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- (iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

provided, however, that the undertakings set forth in paragraphs (i) and (ii) above shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Securities and Exchange Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) 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 the time shall be deemed to be the initial bona fide offering thereof.

(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.

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(4) That, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this 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.

(5) To deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(6) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, and controlling persons of the Registrant pursuant to the foregoing provisions 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 Securities 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 Securities Act and will be governed by the final adjudication of such issue.

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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 or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Princeton, State of New Jersey, on this 26th day of June, 2002.

MEDAREX, INC.

By:/s/Irwin Lerner

Irwin Lerner-Chairman of the Board

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned officers and directors of Medarex, Inc., a New Jersey corporation, do hereby constitute and appoint Donald L. Drakeman and Christian Schade, and either of them, the lawful attorney and agent, with power and authority to do any and all acts and things and to execute any and all instruments which said attorney and agent, determine may be necessary or advisable or required to enable said corporation to comply with the Securities Act of 1933, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Registration Statement. Without limiting the generality of the foregoing power of authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Registration Statement, to any and all amendments and supplements thereof, and to any and all instruments or documents filed as part of or in connection with such Registration Statement, and each of the undersigned hereby certifies and confirms all that said attorney and agent, shall do or cause to be done by virtue hereof. The Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney as of the dates indicated below.

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

Signature -----	Title -----
/s/Irwin Lerner ----- Irwin Lerner	Chairman of the Board
/s/Donald L. Drakeman ----- Donald L. Drakeman	President, Chief Executive Officer and Director (Principal Executive Officer)
/s/Michael A. Appelbaum -----	Executive Vice President and Director

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Michael A. Appelbaum

/s/Christian Schade Senior Vice President and Chief Financial Officer

Christian Schade (Principal Financial and Accounting Officer)

/s/Michael W. Fanger Director

Michael W. Fanger

/s/Julius A. Vida Director

Julius A. Vida

/s/Charles R. Schaller Director

Charles R. Schaller

/s/W. Leigh Thompson, Jr. Director

W. Leigh Thompson, Jr.

/s/Frederick B. Craves Director

Frederick B. Craves

Director

Ronald J. Saldarini

INDEX TO EXHIBITS

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