

IMPAX LABORATORIES INC

FORM 8-K (Current report filing)

Filed 08/18/06 for the Period Ending 08/14/06

Address	30831 HUNTWOOD AVENUE HAYWARD, CA 94544
Telephone	510-240-6000
CIK	0001003642
Symbol	IPXL
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

IMPAX LABORATORIES INC

FORM 8-K (Current report filing)

Filed 8/18/2006 For Period Ending 8/14/2006

Address	30831 HAYWARD AVE HAYWARD, California 94544
Telephone	215-289-2220
CIK	0001003642
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

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UNITED STATES
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): August 14, 2006

Impax Laboratories, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

0-27354

(Commission
File Number)

65-0403311

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

30831 Huntwood Ave., Hayward, CA 94544

(Address of principal executive offices) (Zip Code)

510-476-2000

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

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))
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Item 1.01. Entry into a Material Definitive Agreement.

Item 1.02. Termination of a Material Definitive Agreement.

Item 5.02. Departure of Directors or Principal Officers; Appointment of Principal Officer.

On August 15, 2006, the registrant announced that Barry R. Edwards will be relinquishing his positions as Chief Executive Officer and Director and that its President, Larry Hsu, Ph.D., will assume the additional position of Chief Executive Officer, both effective October 1, 2006. A copy of the press release containing the announcement is attached as Exhibit 99.1 to this report.

In connection with Mr. Edwards' retirement the registrant on August 14, 2006 entered into a Consulting/Separation Agreement and Full Mutual Release with Mr. Edwards under which the registrant will pay Mr. Edwards a lump sum severance of \$649,080 in three equal quarterly installments beginning October 6, 2006. Mr. Edwards will also serve as a special consultant to the registrant through September 30, 2008, for which he will receive consulting fees of \$18,750 per month. All stock options held by Mr. Edwards will continue to be exercisable until 180 days after the end of the consulting term. The agreement also contains mutual releases and waivers with respect to matters arising out of Mr. Edwards' employment. A copy of the agreement is attached as Exhibit 10.1 to this report. A description of Mr. Edwards' employment agreement is contained in the registrant's Proxy Statement filed on April 12, 2004 and is incorporated herein by reference.

The terms of Dr. Hsu's employment agreement will not change as a result of his assuming the position of Chief Executive Officer. Information concerning Dr. Hsu's background and his employment agreement is contained in the registrant's Proxy Statement filed April 12, 2004 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

Exhibits. The following exhibits are filed herewith:

10.1 Consulting/Separation Agreement and Full Mutual Release dated August 14, 2006.

99.1 Press Release dated August 15, 2006.

EXHIBIT INDEX

Exhibit No.	Description
10.1	Consulting/Separation Agreement and Full Mutual Release dated August 14, 2006
99.1	Press Release dated August 15, 2006

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.

Dated: August 18, 2006

IMPAX LABORATORIES, INC.

By: /s/ Arthur A. Koch, Jr.

Name: Arthur A. Koch, Jr.

Title: Chief Financial Officer

CONSULTING/SEPARATION AGREEMENT AND FULL MUTUAL RELEASE

This Separation Agreement and Full Mutual Release ("Agreement") is made by and between Barry R. Edwards ("Edwards") and Impax Laboratories, Inc. ("Employer" or "the Company"). Edwards and the Company are both parties to this Agreement and are collectively referred to herein as the "Parties." Both Edwards and the Company desire to enter into this Agreement to fully resolve all questions of compensation, entitlement to benefits, and any and all other claims, whether known or unknown, which the Parties may have relating to Edwards' employment with, and separation from, the Company.

NOW, THEREFORE, in consideration of the mutual promises, agreements and representations contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, any reference to Edwards shall include himself, and in their capacities as such, his attorneys, heirs, administrators, representatives, executors, legatees, successors, agents and assigns. As used in this Agreement, any reference to the Company shall include itself, its predecessors, successors, controlling or related entities, affiliates, divisions, subsidiaries, managing agents, and joint ventures, and, in their capacities as such, all of their past, present and future representatives, agents, assigns, attorneys, directors, officers, partners, shareholders and employees (except Edwards).

2. **Release.** Except as to the promises made in this Agreement, the Parties hereby fully, forever, irrevocably and unconditionally release, remise, settle and discharge each other from any and all manner of claims, charges, complaints, debts, liabilities, demands, actions, causes of action, suits, rights, covenants, contracts, controversies, agreements, promises, omissions, damages, obligations and expenses of any kind, including attorneys' fees, whether known or unknown, which they had, now have, or hereafter may have against each other arising from, or relating in any way to, Edwards' employment relationship with the Company, including, but not limited to, Title VII, the Age Discrimination In Employment Act, the Older Worker Benefit Protection Act, the Pennsylvania Human Relations Act, and any other federal, state or local statutes, or common law. It is expressly agreed and understood that this is a GENERAL RELEASE.

3. **Company's Obligations.** In consideration for this Agreement, and in addition to the Release set forth in Paragraph 2 above, the Company agrees that:

- (a) it shall, pay Edwards a lump sum severance of \$649,080 in 3 equal installments on October 6, 2006, January 6, 2007 and April 6, 2007.
 - (b) it shall, starting October 1, 2006 through September 30, 2008, pay Edwards compensation as a special consultant of \$18,750 per month, payable weekly in the gross amount of \$4327, although Edwards' services to the Company as CEO and Director shall cease effective October 1, 2006 upon his retirement;
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- (c) it shall, reimburse Edwards for reasonable expenses incurred in conjunction with his consulting, subject to the expense reporting and policies of the Company
- (d) it shall, through the earlier of September 30, 2008, or such time as Edwards finds replacement health care and dental coverage, pay the COBRA premiums for Edwards to continue the health and dental coverage that he had while actively employed by the Company, after which time, Edwards can continue the COBRA coverage under the terms of COBRA if he desires to do so. All other benefits Edwards enjoyed as an employee shall cease on October 2, 2006, and Edwards shall not be eligible for any bonus awarded by the Company under any 2006 bonus plan or for any stock options issued for 2005 or 2006;
- (e) Edwards' Executive Life Plan shall continue two years beyond the current term, which expires on July 7, 2007 until July 7, 2009;
- (f) Edwards' Executive Long Term Disability Plan shall expire on July 1, 2007;
- (g) effective immediately prior to September 30, 2006, all stock options held by Edwards shall automatically become exercisable;
- (h) the Compensation Committee of the Board of Directors has determined that, as a result of becoming a consultant to the company, Edwards will remain in the "Continuous Service" of the Company during the Consulting Term referenced in ¶ 4 below and, accordingly, all of Edwards' outstanding stock options will continue to be exercisable throughout the Consulting Term and thereafter for a period ending on the earlier of (i) 180 days after the end of the Consulting Term or (ii) the Expiration Date of the option;
- (i) Edwards will be eligible to participate in the Impax Laboratories, Inc. Executive Non-Qualified Deferred Compensation Plan ("the Plan") pursuant to the terms of the Plan and subject to the approval of the Compensation Committee of the Board of Directors; and that he shall be entitled to matching contributions through September 30, 2007 as provided in the Plan; and that such contributions shall be forfeited in the event Edwards does not comply with the terms of this Agreement; and
- (j) recognizing that the payments for those benefits described in (d), (e) and (f) above will result in taxable income to Edwards, it shall, at the end of the 2006, 2007 and 2008 tax years, pay Edwards an amount equal to the state and federal tax he will owe as a result of the Company's payment for those benefits.

4. **Edwards' Obligation** . In consideration of this Agreement, and in addition to the release set forth in paragraph 2 above, Edwards agrees that he shall:

- (a) make himself available to the Company as a consultant but in no event shall he be obligated to act as a consultant beyond September 30, 2008 ("the Consulting Term");
- (b) not solicit, on behalf of himself or any other person or entity, any current employees of the Company during the term of his consulting period;
- (c) keep confidential the terms of this Agreement, and not disclose or publish same, except in response to a subpoena, or except to his immediate family members, his financial advisor, his attorney, or to his accountant for the purpose of filing government tax returns;
- (d) make no negative or disparaging comments of any kind about the Company to any person or entity;
- (e) with the exception of the laptop computer setups and certain office furniture that Edwards was provided by the Company, return to the Company any equipment or documents that have not already been returned; and
- (f) maintain the confidentiality of all proprietary information Edwards obtained about the Company, whether during his time as an employee or as a Consultant.

5. **Acknowledgment** . Edwards acknowledges that if he materially breaches any of the provisions of paragraph 4 of this Agreement, in addition to any other of the Company's rights and remedies, the Company shall immediately cease all payments or benefits described in paragraph 3 above. Edwards further acknowledges that the consideration being provided by the Company is more than the Employer is required to provide under its normal policies, practices or Edwards benefit plans and represents benefits to which Edwards is not otherwise entitled.

6. **Covenant Not To Sue** . Edwards warrants that he has not filed any complaints, charges or claims for relief against the Company with any local, state or federal court or administrative agency that are currently outstanding. Edwards further agrees and covenants not to sue the Company with respect to any matter arising before the effective date of this Agreement or covered by the release set forth in paragraph 2 above, and not to assert against the Company in any action, suit, litigation or proceeding any matter arising before the effective date of this Agreement or covered by the release set forth in paragraph 2 above.

7. **No Admission of Liability.** It is expressly understood and agreed that this Agreement, and any acts undertaken hereunder, shall not be construed as an admission of liability or wrongdoing on the part of either Party under any law, regulation or ordinance.

8. **Controlling Law.** This Agreement and all matters arising out of, or relating to it, shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania.

9. **Jurisdiction.** Any action arising out of, or relating to, any of the provisions of this Agreement may, at the election of the Company, be brought and prosecuted only in the courts of, or located in, the Commonwealth of Pennsylvania, and in the event of such election, the Parties consent to the jurisdiction and venue of said courts.

10. **Entire Agreement.** The Parties understand that no promise, inducement, or other agreement not expressly contained herein has been made conferring any benefit upon them; that the Agreement contains the entire Agreement between the Parties; and that the terms of the Agreement are contractual and not recitals only.

11. **Severability.** If any provision of this Agreement is construed to be invalid, illegal or unenforceable, then the remaining provisions hereof shall not be affected thereby and shall be enforceable without regard thereto, except that, if the release set forth in Paragraph 2 above is held for any reason to be invalid or unenforceable, Edwards acknowledges and agrees that he shall be obligated to return any consideration already provided by the Company in exchange for said Release, and that the Company shall have no obligation to provide any further consideration.

12. **Section Headings.** Section and subsection headings in this Agreement are for convenience of reference only and shall neither constitute a part of this Agreement nor affect its interpretation.

13. **Amendment.** The Parties agree that this Agreement may not be altered, amended, or modified, in any respect, except by a writing duly executed by both Parties

14. EDWARDS ACKNOWLEDGES THAT HE WAS GIVEN A PERIOD OF 21 DAYS, COMMENCING ON AUGUST 14, 2006 IN WHICH TO CONSIDER THIS AGREEMENT BEFORE SIGNING IT; THAT HE MAY USE AS MUCH OF THIS 21-DAY PERIOD AS HE WISHES PRIOR TO SIGNING; THAT HE MAY REVOKE THIS AGREEMENT WITHIN SEVEN (7) DAYS OF SIGNING IT; AND THAT FOR SUCH REVOCATION TO BE EFFECTIVE, WRITTEN NOTICE MUST BE RECEIVED IN WRITING BY LARRY HSU, IMPAX LABORATORIES, INC., 121 NEW BRITAIN BOULEVARD, CHALFONT, PA 18914, NO LATER THAN THE CLOSE OF BUSINESS ON THE SEVENTH DAY AFTER EDWARDS HAS SIGNED THIS AGREEMENT. IF EDWARDS REVOKES THIS AGREEMENT, IT SHALL NOT BE EFFECTIVE OR ENFORCEABLE, AND EDWARDS WILL NOT RECEIVE THE CONSIDERATION DESCRIBED IN PARAGRAPH 3 ABOVE. IF EDWARDS MATERIALLY BREACHES ANY PROVISION OF THIS AGREEMENT AFTER IT HAS BECOME EFFECTIVE, EDWARDS SHALL NOT RECEIVE ANY REMAINING CONSIDERATION THAT HAS NOT YET BEEN PAID AT THE TIME OF THE BREACH.

EDWARDS REPRESENTS THAT HE HAS READ THE TERMS OF THIS AGREEMENT; THAT HE HAS HAD AN OPPORTUNITY TO FULLY DISCUSS AND REVIEW THE TERMS OF THIS AGREEMENT WITH HIS ATTORNEY; THAT HE UNDERSTANDS THE CONTENTS HEREOF; AND THAT HE FREELY AND VOLUNTARILY ASSENTS TO ALL THE TERMS AND CONDITIONS HEREOF, AND SIGNS THE SAME AS HIS OWN FREE ACT, AND WITH THE INTENTION OF RELEASING THE COMPANY FROM EACH AND EVERY CLAIM RELATING IN ANY WAY TO HIS EMPLOYMENT WITH THE COMPANY.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties agree to the terms of this Agreement.

For Impax Laboratories, Inc.

Date: 8/14/06

By: /s/ Larry Hsu

Larry Hsu, Ph.D.
President

Date: 8/14/06

/s/ Barry R. Edwards

Barry R. Edwards

Exhibit 99.1

IMPAX Names Larry Hsu as CEO Effective October 1, 2006

HAYWARD, Calif.–(BUSINESS WIRE)–Aug. 15, 2006–IMPAX Laboratories, Inc. (OTC:IPXL) today announced that its President, Larry Hsu, Ph.D., will assume the additional position of Chief Executive Officer on October 1, 2006. He will replace Barry R. Edwards, the Company's current CEO, who is also resigning as a director of the Company. Mr. Edwards will serve as a special consultant to the Company through October 2008.

Commenting on the change in management, Charles Hsiao, Ph.D., chairman of the board of directors, said, “Since forming IMPAX, we have assembled a strong leadership team, set a clear strategy, focused on development excellence, created new product opportunities and built a solid infrastructure. We are fortunate to have in Larry Hsu a talented executive who is ready and highly capable to take on the responsibilities of chief executive. We are very sorry that Barry will no longer be managing the day to day activities of the Company, but are delighted that he has agreed to remain involved for the next two years. Barry will long be remembered for his inspired leadership during this remarkable period of growth and transformation.”

“I am extremely gratified by the Board's confidence,” Dr. Hsu said. “It is an honor to be asked to lead this company, which I co-founded more than 10 years ago. I am grateful to Barry for his stewardship during the past seven years. Thanks to his vision, IMPAX today is a vastly different and more mature company than the one he was asked to lead in 1999.”

“The Board of Directors has great confidence in Larry's leadership and in his vision for IMPAX Laboratories,” said Mr. Edwards. “He helped create IMPAX's business strategy and he understands, as I do, that the Company's strength lies in the hundreds of employees who have been and continue to be a critical component of our success. The transition is expected to be orderly as several important functions, in particular sales and finance, have been reporting to Larry for some time. Nevertheless, I intend to work closely with Larry to ensure that the transition is seamless.”

About IMPAX Laboratories, Inc.

IMPAX Laboratories, Inc. is a technology based specialty pharmaceutical company applying its formulation expertise and drug delivery technology to the development of controlled-release and specialty generics in addition to the development of branded products. IMPAX markets its generic products through its Global Pharmaceuticals division and markets its branded products through the IMPAX Pharmaceuticals division. Additionally, where strategically appropriate, IMPAX has developed marketing partnerships to fully leverage its technology platform. IMPAX Laboratories is headquartered in Hayward, California, and has a full range of capabilities in its Hayward and Philadelphia facilities. For more information, please visit the Company's Web site at: www.impaxlabs.com.

“Safe Harbor” Statement under the Private Securities Litigation Reform Act of 1995:

To the extent any statements made in this news release contain information that is not historical, these statements are forward-looking in nature and express the beliefs and expectations of management. Such statements are based on current expectations and involve a number of known and unknown risks and uncertainties that could cause IMPAX's future results, performance or achievements to differ significantly from the results, performance or achievements expressed or implied by such forward-looking statements. Such risks and uncertainties include, but are not limited to, possible adverse effects resulting from the delisting of IMPAX's stock, IMPAX's delay in filing its 2004 Form 10-K, its Form 10-Q for each of the first three quarters of 2005, its Form 10-K for 2005, and its Form 10-Q for the first quarter of 2006, IMPAX's ability to obtain sufficient capital to fund its operations, the difficulty of predicting FDA filings and approvals, consumer acceptance and demand for new pharmaceutical products, the impact of competitive products and pricing, IMPAX's ability to successfully develop and commercialize pharmaceutical products, IMPAX's reliance on key strategic alliances, the uncertainty of patent litigation, the availability of raw materials, the regulatory environment, dependence on patent and other protection for innovative products, exposure to product liability claims, fluctuations in operating results and other risks detailed from time to time in IMPAX's filings with the Securities and Exchange Commission. Forward-looking statements speak only as to the date on which they are made, and IMPAX undertakes no obligation to update publicly or revise any forward-looking statement, regardless of whether new information becomes available, future developments occur or otherwise.

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Larry Hsu, Ph.D.

510-476-2000, x1111

Arthur Koch,

215-933-0351

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or

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