

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**A.P. Pharma, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

94-2875566  
(I.R.S. Employer  
Identification No.)

123 Saginaw Drive, Redwood City, California 94063  
(Address of Principal Executive Offices)

Non-Qualified Stock Plan  
(Full Title of the Plan)

Ronald Prentki  
Chief Executive Officer  
A.P. Pharma, Inc.  
123 Saginaw Drive  
Redwood City, California 94063  
(Name and Address of Agent for Service)

(650) 366-2626  
(Telephone Number, Including Area Code, of Agent for Service)

Copy to:  
Julian Stern, Esq.  
Heller Ehrman LLP  
275 Middlefield Road  
Menlo Park, California 94025-3506  
(650) 324-7000

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer  Accelerated Filer  Non-Accelerated Filer  Smaller Reporting Company

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered	Amount to be Registered (1)	Maximum Price (2)	Proposed Offering per Share	Maximum Offering	Proposed Aggregate Price	Amount of Registration Fee (3)
Common Stock, par value	2,000,000		\$1.43	\$2,860,000		\$112.40
						\$0.01

- (1) Represents 2,000,000 shares issuable upon exercise of equity awards to be granted under Registrant's Non-Qualified Stock Plan. Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, (the "Securities Act"), this Registration Statement includes such additional number of shares as may be required by reason of any stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of common stock, or any anti-dilution provisions of such plan.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h) promulgated under the Securities Act. Pursuant to Rule 457(c) under the Securities Act, the price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant's common stocks reported on the Nasdaq Global Market on August 4, 2008.
- (3) Amount of registration fee was calculated pursuant to Section 6(b) of the Securities Act, which provides that the fee shall be \$39.30 per \$1,000,000 of the proposed maximum aggregate offering price of the securities proposed to be offered.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

The shares being registered herein are 2,000,000 shares of common stock authorized to be issued under Registrant's Non-Qualified Stock Plan.

#### Item 3. Incorporation of Documents by Reference

The following documents filed or to be filed with the Securities and Exchange Commission (the "Commission") by the Registrant are incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for the year ended December 31, 2007;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarter ended March 31, 2008;
- (c) The Registrant's Current Reports on Form 8-K filed with the Commission on January 15, 2008, January 24, 2008 and July 9, 2008;
- (d) The description of the Registrant's Common Stock contained in the registration statement on Form 8-A filed with the Commission on August 7, 1987 pursuant to Section 12 of the Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description; and
- (e) All documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act and prior to the termination of the offering of the securities offered hereby shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective dates of filing of such documents. Any statement contained in a 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 subsequently filed document that also is or is deemed to be incorporated by reference herein, 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

Not applicable.

#### Item 5. Interests of Named Experts and Counsel

Heller Ehrman LLP, counsel to the Company, has rendered an opinion with respect to the legality of the Common Stock issuable under the Non-Qualified Stock Plan. Julian N. Stern, the sole shareholder of a professional corporation that is a partner of Heller Ehrman LLP, is the Secretary of the Company. Mr. Stern owns 42,583 shares of the Company's Common Stock.

#### Item 6. Indemnification of Directors and Officers

The Registrant has the power to indemnify its officers and directors against liability for certain acts pursuant to Section 145 of the General Corporation Law of the State of Delaware. Section B of Article VI of the Registrant's Certificate of Incorporation provides:

- "(1) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation, as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation. The right to indemnification conferred in this Section B shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.
- (2) Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section B shall not be exclusive of any other rights which any person may have or hereafter acquire under any statute, provisions of this Certificate of Incorporation, Bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

- (3) Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware General Corporation Law.”

Registrant maintains directors’ and officers’ liability insurance which covers civil liabilities. Such insurance helps the Registrant to attract qualified officers and directors, by providing a means for the Company to pay the costs and expenses involved in the event civil litigation is brought against of one of the Registrant’s officers or directors.

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## Item 7. Exemption from Registration Claimed

Not Applicable.

## Item 8. Exhibits

- [4.1](#) [Non-Qualified Stock Plan](#)
- [4.2](#) [Form of Non-Qualified Stock Plan Stock Option Agreement](#)
- [5.1](#) [Opinion of Heller Ehrman LLP](#)
- [23.1](#) [Consent of Independent Registered Public Accounting Firm](#)
- [23.2](#) [Consent of Independent Registered Public Accounting Firm](#)
- [23.3](#) [Consent of Heller Ehrman LLP](#)
- [\(filed as part of Exhibit 5.1\)](#)
- [24.1](#) [Power of Attorney \(see page II-6\)](#)

## Item 9. Undertakings

A. 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, as amended (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 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 with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the 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 that 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.

B. The undersigned Registrant hereby undertakes 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 15(d) of the Exchange Act that is incorporated by reference in the 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.

C. 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 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 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Redwood City, State of California, on this 7th day of August, 2008.

**A.P. PHARMA, INC.**

By: /s/Ronald Prentki  
Ronald Prentki  
Chief Executive Officer

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POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Gregory Turnbull and Ronald Prentki his or her true and lawful attorneys-in-fact and agents, each acting alone, with full power of substitution and resubstitution, for him or her and in his name, place and stead, in any and all capacities, to sign any or all amendments (including post effective amendments) to the Registration Statement, and to sign any registration statement for the same offering covered by this Registration Statement that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post effective amendments thereto, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, each acting alone, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>/s/Ronald Prentki</u> Ronald Prentki	President and Chief Executive Officer, Director (Principal Executive Officer)	August 7, 2008
_____ Gregory Turnbull	Chief Financial Officer (Principal Financial Officer)	
<u>/s/Paul Goddard</u> Paul Goddard	Chairman of the Board of Directors	August 7, 2008
<u>/s/Peter Riepenhausen</u> Peter Riepenhausen	Director	August 7, 2008
<u>/s/Toby Rosenblatt</u> Toby Rosenblatt	Director	August 7, 2008
<u>/s/Arthur Taylor</u> Arthur Taylor	Director	August 7, 2008
<u>/s/Robert Zerbe</u> Robert Zerbe	Director	August 7, 2008

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INDEX TO EXHIBITS

<u>Item No.</u>	<u>Description of Item</u>
<a href="#">4.1</a>	<a href="#">Non-Qualified Stock Plan</a>
<a href="#">4.2</a>	<a href="#">Form of Non-Qualified Stock Plan Stock Option Agreement</a>
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**A.P. PHARMA, INC.**  
**NON-QUALIFIED STOCK PLAN**

**(as amended through July 3, 2008)**

SECTION 1. PURPOSE; DEFINITIONS.

(a) Purpose. The purposes of the Plan are:

(i) to provide to certain persons who are not employees of the Company a material inducement to become executives of, or consultants to, A.P. Pharma, Inc., a Delaware corporation, its subsidiaries or affiliates by providing an opportunity to acquire stock in the Company; and

(ii) to encourage selected employees, excluding officers and directors, to improve operations and increase profits of the Company.

(b) Definitions. For purposes of the Plan, the following terms have the following meanings:

(i) "Award" means any award under the Plan, including any Option, Restricted Stock or Stock Purchase Right Award.

(ii) "Award Agreement" means, with respect to each Award, the signed written agreement between the Company and the Plan participant setting forth the terms and conditions of the Award.

(iii) "Board" means the Board of Directors of the Company.

(iv) "Change in Control" has the meaning set forth in Section 8(a).

(v) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

(vi) "Commission" means the Securities and Exchange Commission and any successor agency.

(vii) "Committee" means the Committee referred to in Section 2, or the Board in its capacity as administrator of the Plan in accordance with Section 2.

(viii) "Company" means A.P. Pharma, Inc., a Delaware corporation.

(ix) "Disability" means permanent and total disability as determined by the Committee for purposes of the Plan.

(x) "Non-Employee Director" has the meaning set forth in Rule 16b-3 under the Exchange Act, and any successor definition adopted by the Commission.

(xi) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

(xii) "Fair Market Value" means as of any given date (a) if the Stock is listed on any established stock exchange or a national market system, the closing sales price for the Stock or the closing bid if no sales were reported, as quoted on such system or exchange, as reported in the Wall Street Journal; or (b) in the absence of an established market for the Stock, the fair market value of the Stock as determined by the Committee in good faith.

(xiii) "Non-Qualified Stock Option" means an Option that is not an Incentive Stock Option, within the meaning of Section 422 of the Code.

(xiv) "Option" means an option granted under Section 5.

(xv) "Plan" means this A.P. Pharma, Inc. Non-Qualified Stock Plan, as amended from time to time.

(xvi) "Restricted Stock" means an Award of Stock subject to restrictions, as more fully described in Section 6.

(xvii) "Restriction Period" means the period determined by the Committee under Section 6(b).

(xviii) "Rule 16b-3" means Rule 16b-3 under Section 16(b) of the Exchange Act, as amended from time to time, and any successor rule.



(xix) “Stock” means the Common Stock of the Company, and any successor security.

(xx) “Stock Appreciation Right” means an Award granted under Section 7.

(xxi) “Subsidiary” has the meaning set forth in Section 424 of the Code.

(xxii) “Tax Date” means the date defined in Section 9(f).

(xxiii) “Termination” means, for purposes of the Plan, with respect to a participant, that the participant has ceased to be, for any reason, employed by, or a consultant to, the Company, a subsidiary or an affiliate; provided, that for purposes of this definition, unless otherwise determined by the President of the Company, in his sole discretion, Termination shall not include a change in status from an employee of, to a consultant to, the Company or any subsidiary or affiliate, or vice versa.

## SECTION 2. ADMINISTRATION.

(a) Committee. The Plan shall be administered by the Board or, upon delegation by the Board, by a committee of Non-Employee Directors appointed by the Board. In connection with the administration of the Plan, the Committee shall have the powers possessed by the Board. The Committee may act only by a majority of its members, except that the Committee may from time to time select another committee or one or more other persons to be responsible for any matters for which Non-Employee Director are not required pursuant to Rule 16b-3. The Board at any time may abolish the Committee and revest in the Board the administration of the Plan.

(b) Authority. The Committee shall grant Awards only to persons who are not at the time of the Award employees of the Company for the purpose of providing a material inducement to such persons to become employees of or consultants to the Company. In particular and without limitation, the Committee, subject to the terms of the Plan, shall:

(i) select the persons to whom Awards may be granted;

(ii) determine whether and to what extent Awards are to be granted under the Plan;

(iii) determine the number of shares to be covered by each Award granted under the Plan;

(iv) determine the terms and conditions of any Award granted under the Plan and any related loans to be made by the Company, based upon factors determined by the Committee; and

(v) determine to what extent and under what circumstances any Award payments may be deferred by a participant.

(c) Committee Determinations Binding. The Committee may adopt, alter and repeal administrative rules, guidelines and practices governing the Plan as it from time to time shall deem advisable, may interpret the terms and provisions of the Plan, any Award and any Award Agreement and may otherwise supervise the administration of the Plan. Any determination made by the Committee pursuant to the provisions of the Plan with respect to any Award shall be made in its sole discretion at the time of the grant of the Award or, unless in contravention of any express term of the Plan or Award, at any later time. All decisions made by the Committee under the Plan shall be binding on all persons, including the Company and Plan participants.

## SECTION 3. STOCK SUBJECT TO PLAN.

(a) Number of Shares. The total number of shares of Stock reserved and available for issuance pursuant to Awards under this Plan shall be 2,062,500 shares. Such shares may consist, in whole or in part, of authorized and unissued shares or treasury shares or shares reacquired in private transactions or open market purchases, but all shares issued under the Plan, regardless of source shall be counted against the 2,062,500 share limitation. If any Option terminates or expires without being exercised in full or if any shares of Stock subject to an Award are forfeited, or if an Award otherwise terminates without issuance in full being made to the participant in the form of Stock, the shares not issued under such Option or Award shall again be available for issuance in connection with Awards. Any Award under this Plan shall be governed by the terms of the Plan and any applicable Award Agreement.

(b) Adjustments. In the event of any merger, reorganization, consolidation, recapitalization, stock dividend, stock split or other change in corporate structure affecting the Stock, such substitution or adjustments shall be made in the aggregate number of shares of Stock reserved for issuance under the Plan, in the number and exercise price of shares subject to outstanding Options, and in the number of shares subject to other outstanding Awards, as may be determined to be appropriate by the Committee, in its sole discretion; provided, however, that the number of shares subject to any Award shall always be a whole number.

## SECTION 4. ELIGIBILITY.

Awards may be granted only to persons (i) not employed by the Company at the time of the Award and who the Company wishes to attract as an officer or other employee of, or consultant to, the Company, its subsidiaries and affiliates as a material inducement to accepting employment or consultancy with the Company or (ii) who are employees of the Company but are not officers or directors of the Company at the time of the Award.

## SECTION 5. STOCK OPTIONS.

(a) Type. Any Option granted under the Plan shall be in such form as the Committee may from time to time approve; provided, that only Non-Qualified Stock Options may be granted under the Plan.

(b) Terms and Conditions. Options granted under the Plan shall be subject to the following terms and conditions:

(i) Option Term. The term of each Option shall be fixed by the Committee, but no Option shall be exercisable more than ten (10) years after the date the Option is granted.

(ii) Grant Date. The Company may grant Options under the Plan at any time and from time to time before the Plan terminates. The Committee shall specify the date of grant or, if it fails to, the date of grant shall be the date the intended optionee is first treated as an employee or consultant for payroll purposes.

(iii) Exercise Price. The exercise price per share of Stock purchasable under an Option shall be equal to at least 100% of the Fair Market Value on the date of grant.

(iv) Exercisability. Subject to the other provisions of the Plan, an Option shall be exercisable in its entirety at grant or at such times and in such amounts as are specified in the Award Agreement evidencing the Option. Except to the extent otherwise provided in the Award Agreement, in the event of Termination prior to the Option being exercisable in full, any such unexercisable portion shall expire as of such Termination. The Committee, in its absolute discretion, at any time may waive any limitations respecting the time at which an Option first becomes exercisable in whole or in part.

(v) Method of Exercise; Payment. To the extent the right to purchase shares has accrued, Options may be exercised, in whole or in part, from time to time, by written notice from the optionee to the Company stating the number of shares being purchased, accompanied by payment of the exercise price for the shares.

## SECTION 6. RESTRICTED STOCK.

(a) Price. The Committee may grant to a participant Restricted Stock. The grantee shall pay the par value per share as consideration therefor.

(b) Restrictions. Subject to the provisions of the Plan and the Award Agreement, during the Restriction Period set by the Committee, commencing with and not exceeding ten (10) years from the date of such Award, the participant shall not be permitted to sell, assign, transfer, pledge or otherwise encumber shares of Restricted Stock. Within these limits, the Committee may provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions, in whole or in part, based on service, performance or such other factors or criteria as the Committee may determine.

(c) Dividends. Unless otherwise determined by the Committee, with respect to dividends on shares of Restricted Stock, dividends payable in cash shall be automatically reinvested in additional Restricted Stock, and dividends payable in Stock shall be paid in the form of Restricted Stock.

(d) Termination. Except to the extent otherwise provided in the Award Agreement and pursuant to Section 6(b), in the event of a Termination during the Restriction Period, all shares still subject to restriction shall be forfeited by the participant.

## SECTION 7. STOCK APPRECIATION RIGHTS.

(a) General. Stock Appreciation Rights may be granted either alone, in addition to, or in tandem with other Awards granted under the Plan. The Administrator may grant Stock Appreciation Rights to eligible participants subject to terms and conditions not inconsistent with this Plan and determined by the Administrator. The specific terms and conditions applicable to the participant shall be provided for in the Stock Award Agreement. Stock Appreciation Rights shall be exercisable, in whole or in part, at such times as the Administrator shall specify in the Stock Award Agreement.

(b) Exercise of Stock Appreciation Right. Upon the exercise of a Stock Appreciation Right, in whole or in part, the participant shall be entitled to a payment in an amount equal to the excess of the Fair Market Value on the date of exercise of a fixed number of shares of Stock covered by the exercised portion of the Stock Appreciation Right, over the Fair Market Value on the Grant Date of the Stock covered by the exercised portion of the Stock Appreciation Right (or such other amount calculated with respect to Stock subject to the Award as the Administrator may determine). The amount due to the participant upon the exercise of a Stock Appreciation Right shall be paid in such form of consideration as determined by the Administrator and may be in cash, shares of Stock or a combination thereof, over the period or periods specified in the Stock Award Agreement. A Stock Award Agreement may place limits on the amount that may be paid over any specified period or periods upon the exercise of a Stock Appreciation Right, on an aggregate basis or as to any participant. A Stock Appreciation Right shall be considered exercised when the Company receives written notice of exercise in accordance with the terms of the Stock Award Agreement from the person entitled to exercise the Stock Appreciation Right.

(c) Nonassignability of Stock Appreciation Rights. Except as determined by the Administrator, no Stock Appreciation Right shall be assignable or otherwise transferable by the participant, except by will or by the laws of descent and distribution.

## SECTION 8. CHANGE IN CONTROL.

(a) Definition of “Change in Control”. For purposes of Section 8(b), a “Change in Control” means the occurrence of any one of the following:

(i) Any “person”, as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Company, a subsidiary, an affiliate, or a Company employee benefit plan, including any trustee of such plan acting as trustee) is or becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 51% or more of the combined voting power of the Company’s then outstanding securities; or

(ii) the dissolution or liquidation (partial or total) of the Company or a sale of assets involving 51% or more of the assets of the Company, any merger or reorganization of the Company, whether or not another entity is the survivor, in a transaction pursuant to which the holders, as a group, of all of the shares of the Company outstanding prior to the transaction hold, as a group, less than 51% of the shares of the Company outstanding after the transaction, or any other event which the Board determines, in its discretion, would materially alter the structure of the Company or its ownership.

(b) Impact of Event. In the event of a “Change in Control” as defined in Section 8(a), the Board may, in its discretion, approve of acceleration provisions no more favorable to participants than the following shall apply:

(i) Any Options outstanding as of the date such Change in Control is determined to have occurred and not then exercisable and vested shall become fully exercisable and vested; and

(ii) The restrictions and limitations applicable to any Restricted Stock and Stock Purchase Rights shall lapse, and such Restricted Stock shall become fully vested.

## SECTION 9. GENERAL PROVISIONS.

(a) Award Grants. Any Award may be granted either alone or in addition to other Awards granted under the Plan. Subject to the terms and restrictions set forth elsewhere in the Plan, the Committee shall determine the consideration, if any, payable by the participant for any Award and, in addition to those set forth in the Plan, any other terms and conditions of the Awards. The Committee may condition the grant or payment of any Award upon the attainment of specified performance goals or such other factors or criteria, including vesting based on continued employment or consulting, as the Committee shall determine. Performance objectives may vary from participant to participant and among groups of participants and shall be based upon such Company, subsidiary, group or division factors or criteria as the Committee may deem appropriate, including, but not limited to, earnings per share or return on equity. The other provisions of Awards also need not be the same with respect to each recipient.

(b) Award Agreement. As soon as practicable after the date of an Award grant, the Company and the participant shall enter into a written Award Agreement identifying the date of grant, and specifying the terms and conditions of the Award. Options are not exercisable until after execution of the Award agreement by the Company and the Plan participant, but a delay in execution of the agreement shall not affect the validity of an Option grant.

(c) Certificates. All certificates for shares of Stock or other securities delivered under the Plan shall be subject to such stock transfer orders, legends and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the Commission, any market in which the Stock is then traded and any applicable federal, state or foreign securities law.

(d) Termination. Unless otherwise provided in the applicable Award Agreement or by the Committee, in the event of Termination for any reason other than death, retirement or Disability, Awards held at the date of Termination (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part at any time within three (3) months after the date of Termination, or such lesser period specified in the Award Agreement (but in no event after the expiration date of the Award), but not thereafter. If Termination is due to retirement or to death or Disability, Awards held at the date of Termination (and only to the extent then exercisable or payable, as the case may be) may be exercised in whole or in part by the participant in the case of retirement or Disability, by the participant’s guardian or legal representative or by the person to whom the Award is transferred by will or the laws of descent and distribution, at any time within two (2) years from the date of Termination or any lesser period specified in the Award Agreement (but in no event after the expiration of the Award).

(e) Delivery of Purchase Price. If and only to the extent authorized by the Committee, participants may make all or any portion of any payment due to the Company

(i) with respect to the consideration payable for an Award,

(ii) upon exercise of an Award, or

(iii) with respect to federal, state, local or foreign tax payable in connection with an Award, by delivery of (x) cash, (y) check, or (z) any property other than cash (including a promissory note of the participant or shares of Stock or securities) so long as, if applicable, such property constitutes valid consideration for the Stock under, and otherwise complies with, applicable

law. No promissory note under the Plan shall have a term (including extensions) of more than five years or shall be of a principal amount exceeding 90% of the purchase price paid by the borrower.

(f) Tax Withholding. Any shares or other securities so withheld or tendered will be valued by the Committee as of the date they are withheld or tendered; provided, however, that Stock shall be valued at Fair Market Value on such date. The value of the shares withheld or tendered may not exceed the required federal, state, local and foreign withholding tax obligations as computed by the Company. Unless the Committee permits otherwise, the participant shall pay to the Company in cash, promptly when the amount of such obligations becomes determinable (the "Tax Date"), all applicable federal, state, local and foreign withholding taxes that the Committee in its discretion determines to result (i) from the lapse of restrictions imposed upon an Award, (ii) upon exercise of an Award, or (iii) from a transfer or other disposition of shares acquired upon exercise or payment of an Award, or otherwise related to the Award or the shares acquired in connection with an Award.

A participant who has received an Award or payment under an Award may, to the extent, if any, authorized by the Committee in its discretion, make an election to (x) deliver to the Company a promissory note of the participant on the terms set forth in Section 9(e), or (y) tender any such securities to the Company to pay the amount of tax that the Committee in its discretion determines to be required to be withheld by the Company subject to any limitations imposed by Section 16(b) of the Exchange Act or other applicable law.

(g) No Transferability. Unless otherwise provided for in the applicable Award Agreement or by the Committee, no Award shall be assignable or otherwise transferable by the participant other than by will or by the laws of descent and distribution, and during the life of a participant, an Award shall be exercisable, and any elections with respect to an Award may be made, only by the participant or participant's guardian or legal representative.

(h) Adjustment of Awards; Waivers. The Committee may adjust the performance goals and measurements applicable to Awards (i) to take into account changes in law and accounting and tax rules, (ii) to make such adjustments as the Committee deems necessary or appropriate to reflect the inclusion or exclusion of the impact of extraordinary or unusual items, events or circumstances in order to avoid windfalls or hardships, and (iii) to make such adjustments as the Committee deems necessary or appropriate to reflect any material changes in business conditions. In the event of hardship or other special circumstances of a participant and otherwise in its discretion, the Committee may waive in whole or in part any or all restrictions, conditions, vesting, or forfeiture with respect to any Award granted to such participant.

(i) Non Competition. The Committee may condition its discretionary waiver of a forfeiture, the acceleration of vesting at the time of Termination of a participant holding any unexercised or unearned Award, the waiver of restrictions on any Award, or the extension of the expiration period to a period not longer than that provided by the Plan upon such participant's agreement (and compliance with such agreement) to (i) not engage in any business or activity competitive with any business or activity conducted by the Company and (ii) be available for consultations at the request of the Company's management, all on such terms and conditions (including conditions in addition to clauses (i) and (ii)) as the Committee may determine.

(j) Dividends. The reinvestment of dividends in additional Stock or Restricted Stock at the time of any dividend payment pursuant to Section 6(c) shall only be permissible if sufficient shares of Stock are available under Section 3 for such reinvestment (taking into account then outstanding Awards).

(k) Regulatory Compliance. Each Award under the Plan shall be subject to the condition that, if at any time the Committee shall determine that (i) the listing, registration or qualification of the shares of Stock upon any securities exchange or for trading in any securities market or under any state or federal law, (ii) the consent or approval of any government or regulatory body or (iii) an agreement by the participant with respect thereto, is necessary or desirable, then such Award shall not be consummated in whole or in part unless such listing, registration, qualification, consent, approval or agreement shall have been effected or obtained free of any conditions not acceptable to the Committee.

(l) Rights as Shareholder. Unless the Plan or the Committee expressly specifies otherwise, an optionee shall have no rights as a shareholder with respect to any shares covered by an Award until the stock certificates representing the shares are actually delivered to the optionee. Subject to Sections 3(b) and 6(c), no adjustment shall be made for dividends or other rights for which the record date is prior to the date the certificates are delivered.

(m) Beneficiary Designation. The Committee, in its discretion, may establish procedures for a participant to designate a beneficiary to whom any amounts payable in the event of the participant's death are to be paid.

(n) Additional Plans. Nothing contained in the Plan shall prevent the Company, a subsidiary or an affiliate from adopting other or additional compensation arrangements for its employees and consultants.

(o) No Employment Rights. The adoption of the Plan shall not confer upon any employee any right to continued employment nor shall it interfere in any way with the right of the Company, a subsidiary or an affiliate to terminate the employment of any employee at any time.

(p) Rule 16b-3. Notwithstanding any provision of the Plan, the Plan shall always be administered, and Awards shall always be granted and exercised, in such a manner as to conform to the provisions of Rule 16b-3.

(q) Governing Law. The Plan and all Awards shall be governed by and construed in accordance with the laws of the State of California.

(r) Use of Proceeds. All cash proceeds to the Company under the Plan shall constitute general funds of the Company.

(s) Unfunded Status of Plan. The Plan shall constitute an “unfunded” plan for incentive and deferred compensation. The Committee may authorize the creation of trusts or arrangements to meet the obligations created under the Plan to deliver Stock or make payments; provided, however, that unless the Committee otherwise determines, the existence of such trusts or other arrangements shall be consistent with the “unfunded” status of the Plan.

(t) Assumption by Successor. The obligations of the Company under the Plan and under any outstanding Award may be assumed by any successor corporation, which for purposes of the Plan shall be included within the meaning of “Company”.

#### SECTION AMENDMENTS AND TERMINATION.

10.

The Board may amend, alter or discontinue the Plan or any Award, but no amendment, alteration or discontinuance shall be made which would impair the rights of a participant under an outstanding Award without the participant’s consent.

#### SECTION EFFECTIVE DATE OF PLAN.

11.

The Plan shall be effective on the date it is adopted by the Board.

#### SECTION TERM OF PLAN.

12.

No Award shall be granted on or after October 24, 2010, but Awards granted prior to October 24, 2010 may extend beyond that date.

Plan approved by the Board of Directors on October 24, 2000.

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**A.P. PHARMA, INC.**

**NON-QUALIFIED STOCK PLAN**

**NONQUALIFIED STOCK OPTION AGREEMENT**

(A)	Name of Optionee:	Name
(B)	Grant Date:	Grant Date
(C)	Number of Shares:	Shares Granted
(D)	Exercise Price:	Grant Exercise Price(FMV)
(E)	Vesting Base Date:	Vest Start Date
(F)	Effective Date:	Effective Date

THIS NONQUALIFIED STOCK OPTION AGREEMENT (the “**Agreement**”), is made and entered into as of the date set forth in Item F above (the “**Effective Date**”) between **A.P. Pharma, Inc.**, a Delaware corporation (the “**Company**”) and Enter Name (“**Optionee**”).

THE PARTIES AGREE AS FOLLOWS:

**1. Grant of Option.** The Company hereby grants to Optionee pursuant to the Company’s Non-Qualified Stock Plan (the “**Plan**”), a copy of which is attached to this Agreement as Exhibit 1, a nonqualified stock option (the “**NQO**”) to purchase all or any part of an aggregate of the number of shares (the “**NQO Shares**”) of the Company’s Common Stock (as defined in the Plan) listed in Item C above on the terms and conditions set forth herein and in the Plan, the terms and conditions of the Plan being hereby incorporated into this Agreement by reference.

**2. Exercise Price.** The exercise price for purchase of each share of Common Stock covered by this NQO shall be the price set forth in Item D above.

**3. Term.** This NQO shall expire ten (10) years after the Grant Date

**4. Adjustment of NQOs.** The Company shall adjust the number and kind of shares and the exercise price thereof in certain circumstances in accordance with the provisions of Section 3(b) of the Plan.

**5. Exercise of Options.**

**5.1 Vesting; Time of Exercise.** This NQO shall be exercisable according to the schedule set forth on Exhibit 5.1 attached hereto. Such schedule shall commence as of the date set forth in Item (E) above (the “**Vesting Base Date**”).

**5.2 Exercise After Termination of Status as an Employee, Director or Consultant.** In the event of termination of Optionee’s continuous status as an employee, director or consultant, this NQO may be exercised in whole or in part at any time within 90 days of the date of such termination (but in no event after the expiration date of this NQO pursuant to Section 3), provided, however, that in the event of death or disability, this NQO may be exercised in accordance with the provisions of Section 9(d) of the Plan.

**5.3 Manner of Exercise.** Optionee may exercise this NQO, or any portion of this NQO, by giving written notice to the Company at its principal executive office, to the attention of the officer of the Company designated by the Plan Administrator, accompanied by payment of the exercise price and payment of any applicable withholding or employment taxes. The date the Company receives written notice of an exercise hereunder accompanied by payment will be considered as the date this NQO was exercised.

**5.4 Payment.** Except as provided in Exhibit 5.4 attached hereto, if any (the absence of such exhibit indicating that no exhibit was intended), payment may be made for NQO Shares purchased at the time written notice of exercise of the NQO is given to the Company, by delivery of cash, check or, in the exercise of the absolute discretion of the Administrator, previously owned shares of Common Stock (including constructive delivery) or a full recourse promissory note equal to up to 90% of the exercise price and payable over no more than five years. Any applicable taxes must be paid in cash. The proceeds of any payment shall constitute general funds of the Company.

**5.5 Delivery of Certificate.** Promptly after receipt of payment and written notice of exercise of the NQO, the Company shall, without stock issue or transfer taxes to the Optionee or other person entitled to exercise, deliver to the Optionee or other person a certificate or certificates for the requisite number of NQO Shares or shall register the Optionee as a shareholder on the books of the Company. An Optionee or transferee of an Optionee shall not have any privileges as a shareholder with respect to any NQO Shares covered by the option until the date of issuance of a stock certificate or, if applicable, such registration.

**6. Nonassignability of NQO.** This NQO is not assignable or transferable by Optionee except by will or by the laws of descent and distribution. During the life of Optionee, the NQO is exercisable only by the Optionee. Any attempt to assign, pledge, transfer, hypothecate or otherwise dispose of this NQO in a manner not herein permitted, and any levy of execution, attachment, or similar process on this NQO, shall be null and void.

**7. Company’s Right of Repurchase Upon Termination of Employment.** The NQO Shares arising from exercise of this NQO shall be subject to a right of repurchase in favor of the Company (the “**Right of Repurchase**”) to the extent set forth on Exhibit 7 attached hereto (the absence of such exhibit indicating that no such exhibit was intended and that the NQO shall be subject only to the limitations set forth on Exhibit 5.1).

**8. Restriction on Transfer.** Regardless whether the sale of the NQO Shares has been registered under the Securities Act or has been registered or qualified under the securities laws of any state, the Company may impose restrictions upon the sale, pledge, or other transfer of NQO Shares (including the placement of appropriate legends on stock certificates) if, in the judgment of the Company and the Company's counsel, such restrictions are necessary or desirable in order to achieve compliance with the provisions of the Securities Act, the securities laws of any state, or any other law, or if the Company does not desire to have a trading market develop for its securities.

**9. Tax Advice.** The Company has made no warranties or representations to Purchaser with respect to the income tax consequences of the transactions contemplated by the agreement pursuant to which the NQO Shares will be purchased and Purchaser is in no manner relying on the Company or its representatives for an assessment of such tax consequences.

**10. Assignment; Binding Effect.** Subject to the limitations set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of the executors, administrators, heirs, legal representatives, and successors of the parties hereto; provided, however, that Optionee may not assign any of Optionee's rights under this Agreement.

**11. Damages.** Optionee shall be liable to the Company for all costs and damages, including incidental and consequential damages, resulting from a disposition of NQO Shares which is not in conformity with the provisions of this Agreement.

**12. Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California excluding those laws that direct the application of the laws of another jurisdiction.

**13. Notices.** All notices and other communications under this Agreement shall be in writing. Unless and until the Optionee is notified in writing to the contrary, all notices, communications, and documents directed to the Company and related to the Agreement, if not delivered by hand, shall be mailed, addressed as follows:

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**A.P. Pharma, Inc.**

123 Saginaw Drive

Redwood City, CA 94063

Attention: President

Unless and until the Company is notified in writing to the contrary, all notices, communications, and documents intended for the Optionee and related to this Agreement, if not delivered by hand, shall be mailed to Optionee's last known address as shown on the Company's books. Notices and communications shall be mailed by first class mail, postage prepaid; documents shall be mailed by registered mail, return receipt requested, postage prepaid. All mailings and deliveries related to this Agreement shall be deemed received when actually received, if by hand delivery, and two business days after mailing, if by mail.

**14. Arbitration.** Any and all disputes or controversies arising out of this Agreement shall be finally settled by arbitration conducted in California in accordance with the then existing rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof; provided that nothing in this Section 14 shall prevent a party from applying to a court of competent jurisdiction to obtain temporary relief pending resolution of the dispute through arbitration. The parties hereby agree that service of any notices in the course of such arbitration at their respective addresses as provided for in Section 13 shall be valid and sufficient.

**15. Entire Agreement.** Company and Optionee agree that this Agreement (including its attached Exhibits) is the complete and exclusive statement between Company and Optionee regarding its subject matter and supersedes all prior proposals, communications, and agreements of the parties, whether oral or written, regarding the grant of stock options or issuances of shares to Optionee.

IN WITNESS WHEREOF, the parties have executed this Nonqualified Stock Option Agreement as of the Effective Date.

**A.P. PHARMA, INC.**

By: Gregory Turnbull  
Title: Chief Financial Officer

The Optionee hereby accepts and agrees to be bound by all of the terms and conditions of this Agreement and the Plan.

Name

Optionee's spouse indicates by the execution of this Nonqualified Stock Option Agreement his or her consent to be bound by the terms thereof as to his or her interests, whether as community property or otherwise, if any, in the option granted hereunder, and in any NQO Shares purchased pursuant to this Agreement.

Optionee's Spouse

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**EXHIBITS**

Exhibit 1	Non-Qualified Stock Plan
Exhibit 5.1	Time of Exercise
Exhibit 5.4 (if applicable)	Payment (not applicable)
Exhibit 7 (if applicable)	Right of Repurchase (not applicable)

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**EXHIBIT 1 OF THE NONQUALIFIED STOCK**

**OPTION AGREEMENT**

**NON-QUALIFIED STOCK PLAN**

[See Exhibit 4.1](#)

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**EXHIBIT 5.1 OF THE NONQUALIFIED STOCK**

**OPTION AGREEMENT**

The NQO shall be exercisable with respect to 25% of the total number of NQO Shares one year after the Vesting Base Date and with respect to an additional 1/48 of the total number of NQO Shares on the monthly anniversary of the Vesting Base Date of each month thereafter, so that the NQO shall be exercisable with respect to all of the NQO Shares on and after four years after the Vesting Base Date.

Executed by:

**A.P. PHARMA, INC.**

By: Gregory Turnbull \_\_\_\_\_

Title: Chief Financial Officer

Name \_\_\_\_\_

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August 7, 2008

A.P. Pharma, Inc.  
123 Saginaw Drive  
Redwood City, California 94063

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

This opinion is furnished to A.P. Pharma, Inc. (the "Company") in connection with the filing of a Registration Statement on Form S-8 (the "Registration Statement") with the Securities and Exchange Commission for purpose of registering under the Securities Act of 1933, as amended, relating to the proposed sale by the Company of up to an aggregate of 2,000,000 shares of common stock, par value \$0.01 (the "Shares"). All of the Shares are issuable under the Company's Non-Qualified Stock Plan (the "Plan").

We have based our opinion upon our review of the following records, documents, instruments and certificates:

- The Amended and Restated Certificate of Incorporation of the Company, as amended to date (the "Certificate"), certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;
- The Bylaws of the Company (the "Bylaws") certified to us by an officer of the Company as being complete and in full force and effect as of the date of this opinion;
- Records certified to us by an officer of the Company as constituting all records of proceedings and of actions of the Board of Directors and stockholders relating to the adoption of the Plan and the reservation of the Shares for issuance pursuant to the Plan;
- The Plan; and
- Information provided by the Company's transfer agent as to the number of outstanding shares of Common Stock of the Company.

In connection with this opinion, we have, with your consent, assumed the authenticity of all records, documents and instruments submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the authenticity and conformity to the originals of all records, documents and instruments submitted to us as copies.

This opinion is limited to the federal laws of the United States of America and the Delaware General Corporation Law, and we disclaim any opinion as to the laws of any other jurisdiction. We further disclaim any opinion as to any statute, rule, regulation, ordinance, order or other promulgation of any regional or local governmental body or as to any related judicial or administrative opinion.

Our opinion is qualified to the extent that in the event of a stock split, share dividend or other reclassification of the Common Stock effected subsequent to the date hereof, the number of shares of Common Stock issuable under the Plan may be adjusted automatically, as set forth in the terms of the Plan, such that the number of such shares, as so adjusted, may exceed the number of Company's remaining authorized, but unissued shares of Common Stock following such adjustment.

Based upon the foregoing and our examination of such questions of law as we have deemed necessary or appropriate for the purpose of this opinion, and subject to the assumptions and qualifications expressed herein, it is our opinion that upon payment of the purchase price for the Shares and issuance and delivery of the Shares pursuant to the terms of the Plan, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion as an exhibit to, and to the use of this opinion in connection with, the Registration Statement.

This opinion is rendered to you and is solely for your benefit. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent. We disclaim any obligation to advise you of any change of law that occurs, or any facts of which we become aware, after the date of this opinion.

Very truly yours,

/s/ Heller Ehrman LLP

Heller Ehrman LLP



**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 pertaining to the Non-Qualified Stock Plan of our report dated March 25, 2008 relating to the financial statements and financial statement schedule of A.P. Pharma, Inc., which appear in A.P. Pharma, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007, filed with the Securities and Exchange Commission.

/s/ ODENBERG, ULLAKKO, MURANISHI & CO. LLP

San Francisco, California  
August 6, 2008

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Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Non-Qualified Stock Plan of AP Pharma, Inc. of our report dated February 24, 2006, with respect to the 2005 financial statements and schedule of A.P. Pharma, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2007, filed with the Securities and Exchange Commission.

/s/Ernst & Young LLP

Palo Alto, California  
August 6, 2008

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