

BIOCEPT INC

FORM 8-K (Current report filing)

Filed 09/29/17 for the Period Ending 09/27/17

Address	5810 NANCY RIDGE DR SAN DIEGO, CA, 92121
Telephone	858-320-8200
CIK	0001044378
Symbol	BIOC
SIC Code	8071 - Services-Medical Laboratories
Industry	Medical Equipment, Supplies & Distribution
Sector	Healthcare
Fiscal Year	12/31

**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): September 27, 2017

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

Delaware
(State or other jurisdiction
of incorporation)

001-36284
(Commission
File Number)

80-0943522
(I.R.S. Employer
Identification No.)

5810 Nancy Ridge Drive, San Diego, CA
(Address of principal executive offices)

92121
(Zip Code)

Registrant's telephone number, including area code: (858) 320-8200

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:

- 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On September 27, 2017, the Board of Directors of Biocept, Inc. (the “ *Company* ”) approved an amendment (the “ *Amendment* ”) to the Company’s Amended and Restated Bylaws (the “ *Bylaws* ”), effective immediately, in order to make the following changes to the Bylaws:

- to revise Section 5 of Article II of the Bylaws to provide that, in the absence of a quorum, the Chairman of a stockholders meeting shall have the power to adjourn the meeting;
- to revise Section 6 of Article II of the Bylaws, which relates to the vote required to approve any matter brought before any meeting of stockholders; and
- to add a new Article VIII of the Bylaws to provide that, unless the Company consents in writing to an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company’s stockholders, (iii) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware, the certificate of incorporation of the Company or the Bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine.

The foregoing summary of the Amendment is qualified in its entirety by reference to the complete text of the Amendment, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amendment to Amended and Restated Bylaws of Biocept, Inc.</u>

SIGNATURE

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: September 29, 2017

BIOCEPT, INC.

By: /s/ Timothy C. Kennedy

Name: Timothy C. Kennedy

Title: Chief Financial Officer, Senior Vice President of
Operations and Corporate Secretary

AMENDMENT TO AMENDED AND RESTATED BYLAWS OF BIOCEPT, INC.

The Amended and Restated Bylaws (the “*Bylaws*”) of Biocept, Inc., a Delaware corporation (the “*Company*”), are hereby amended as follows, effective upon the execution of this amendment by the Secretary or Assistant Secretary of the Company:

1. The third sentence of Section 5 of Article II of the Bylaws is amended and restated to read in its entirety as follows:

“If, however, such quorum shall not be present or represented at any meeting of the stockholders, either the stockholders entitled to vote thereat, present in person or represented by proxy, or the Chairman of the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, and the means of remote communication, if any, until a quorum shall be present or represented.”

2. The first sentence of Section 6 of Article II of the Bylaws is amended and restated to read in its entirety as follows:

“Except as otherwise required by law, or provided by the Certificate or these Bylaws, any matter brought before any meeting of stockholders at which a quorum is present shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote on the matter; provided, however, that directors shall be elected by plurality vote.”

3. A new Article VIII is hereby added to the Bylaws, which shall read in its entirety as follows:

“

**ARTICLE VIII
FORUM FOR ADJUDICATION OF DISPUTES**

Forum for Adjudication of Disputes . Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of Delaware, the Certificate or these Bylaws, or (d) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article.”

Dated: September 27, 2017

By: /s/ Timothy C. Kennedy
 Name: Timothy C. Kennedy
 Title: Chief Financial Officer, Senior Vice President of Operations and
 Corporate Secretary