

# EMISPHERE TECHNOLOGIES INC

## FORM DEF 14A (Proxy Statement (definitive))

Filed 12/18/95 for the Period Ending 07/31/95

Address	240 CEDAR KNOLLS RD. SUITE 200 CEDAR KNOLLS, NJ 07927
Telephone	973-532-8000
CIK	0000805326
Symbol	EMIS
SIC Code	2834 - Pharmaceutical Preparations
Industry	Biotechnology & Drugs
Sector	Healthcare
Fiscal Year	12/31

**SCHEDULE 14A INFORMATION**

**PROXY STATEMENT PURSUANT TO SECTION 14(a)  
OF THE SECURITIES EXCHANGE ACT OF 1934**

**Filed by the Registrant**

**Filed by a Party other than the Registrant**

Check the appropriate box:

Preliminary Proxy Statement

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Section 240.14a-11(c) or Section 240.14a-12

**EMISPHERE TECHNOLOGIES, INC.**

(Name of Registrant as Specified In Its Charter)

**EMISPHERE TECHNOLOGIES, INC.**

(Name of Person(s) Filing Proxy Statement)

**Payment of Filing Fee (Check the appropriate box):**

\$125 per Exchange Act Rules 0-11(c)(1)(ii), 14a-6(i)(1) or 14a-6(j)(2)

\$500 per each party to the controversy pursuant to Exchange Act Rule  
14a-6(i)(3)

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11

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

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11:

4) Proposed aggregate value of transaction:

Check box if any part of the fee is offset as provided by Exchange Act

Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

EMISPHERE TECHNOLOGIES, INC.  
15 Skyline Drive  
Hawthorne, New York 10532

December 15, 1995

Dear Stockholder:

This year we are combining our 1995 Annual Report to Stockholders with our Proxy Statement in an effort to reduce printing and mailing costs. The Company's 1995 audited financial statements and certain other financial information are set forth starting with the Index to Financial Statements and Other Information on page 12 hereof.

You are cordially invited to attend the Company's Annual Meeting of Stockholders to be held at the Ramada Inn, 540 Saw Mill River Road, Elmsford, Tuesday, January 23, 1996 at 10:00 a.m. local time.

At this meeting, you will be asked to consider and vote upon the election of directors of the Company and to ratify the Board of Directors' selection of Coopers & Lybrand L.L.P. to serve as the Company's independent accountants for the fiscal year ending July 31, 1996.

The Board of Directors appreciates and encourages stockholder participation in the Company's affairs and cordially invites you to attend the meeting in person. It is in any event important that your shares be represented and we ask that you sign, date and mail the enclosed proxy in the envelope provided at your earliest convenience.

Thank you for your cooperation.

Very truly yours,

**MICHAEL M. GOLDBERG, M.D.**  
**Chairman of the Board of Directors**

**EMISPHERE TECHNOLOGIES, INC.**  
15 Skyline Drive  
Hawthorne, New York 10532

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

Hawthorne, New York  
December 15, 1994

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of EMISPHERE TECHNOLOGIES, INC. (the "Company"), a Delaware corporation, will be held at the Ramada Inn, 540 Saw Mill River Road, Elmsford, New York on Tuesday, January 23, 1996 at 10:00 a.m. local time, for the purposes of considering and voting upon the following matters, as more fully described in the attached Proxy Statement:

1. To elect six directors to serve until the next annual meeting of stockholders and until their respective successors are elected and qualified;
2. To ratify the Board of Directors' selection of Coopers & Lybrand L.L.P. to serve as the Company's independent accountants for the fiscal year ending July 31, 1996; and
3. To transact such other business as may properly come before the meeting or any adjournment thereof.

Only those stockholders of record at the close of business on December 12, 1995 will be entitled to receive notice of, and vote at, said meeting. A list of stockholders entitled to vote at the meeting is open to examination by any stockholder at the principal offices of the Company, 15 Skyline Drive, Hawthorne, New York 10532.

All stockholders are cordially invited to attend the meeting in person. In any event, please mark your votes, then date, sign and return the accompanying form of proxy in the envelope enclosed for that purpose (to which no postage need be affixed if mailed in the United States) whether or not you expect to attend the meeting in person. The proxy is revocable by you at any time prior to its exercise. The prompt return of the proxy will be of assistance in preparing for the meeting and your cooperation in this respect will be appreciated.

**By order of the Board of Directors**

**SAM J. MILSTEIN, PH.D.**  
**Secretary**

**EMISPHERE TECHNOLOGIES, INC.**  
15 Skyline Drive

**PROXY STATEMENT**

This Proxy Statement is furnished to holders of Common Stock, \$.01 par value per share (the "Common Stock"), of Emisphere Technologies, Inc. (the "Company") in connection with the solicitation of proxies, in the accompanying form, by the Board of Directors of the Company, for use at the Annual Meeting of Stockholders to be held at the Ramada Inn, 540 Saw Mill River Road, Elmsford, on Tuesday, January 23, 1996, at 10:00 a.m. local time, and at any and all adjournments thereof. Stockholders may revoke the authority granted by their execution of proxies at any time prior to their use by filing with the Secretary of the Company a written revocation or duly executed proxy bearing a later date or by attending the meeting and voting in person. Solicitation of proxies will be made chiefly through the mails, but additional solicitation may be made by telephone or telegram by the officers or regular employees of the Company. The Company may also enlist the aid of brokerage houses or the Company's transfer agent in soliciting proxies. All solicitation expenses, including costs of preparing, assembling and mailing proxy material, will be borne by the Company. This proxy statement and accompanying form of proxy are being mailed to stockholders on or about December 15, 1995.

Shares of the Company's Common Stock represented by executed and unrevoked proxies will be voted in accordance with the choice or instructions specified thereon. It is the intention of the persons named in the proxy, unless otherwise specifically instructed in the proxy, to vote all proxies received by them FOR the election of the six nominees named herein and FOR ratification of the Board of Directors' selection of Coopers & Lybrand L.L.P. to serve as the Company's independent accountants for the fiscal year ending July 31, 1996.

If a quorum is present at the meeting, those nominees receiving a plurality of the votes cast will be elected as directors. A majority of the votes cast (excluding abstentions and broker non-votes) will be required for the ratification of the Board's selection of Coopers & Lybrand L.L.P. as the Company's independent accountants.

**VOTING**

Only stockholders of record at the close of business on December 12, 1995 will be entitled to vote at the meeting or any and all adjournments thereof. As of December 12, 1995 the Company had outstanding 8,323,154 shares of Common Stock, the Company's only class of voting securities outstanding. Each stockholder of the Company will be entitled to one vote for each share of Common Stock registered in his or her name on the record date. A majority of all the outstanding shares of Common Stock constitutes a quorum and is required to be present in person or by proxy to conduct business at the meeting.

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BENEFICIAL OWNERSHIP OF COMMON STOCK BY CERTAIN  
STOCKHOLDERS AND MANAGEMENT

The following table sets forth certain information, as of November 28, 1995, except as noted, regarding the beneficial ownership of the Common Stock by (i) each person or group known to the Company to be the beneficial owner of more than 5% of the outstanding Common Stock, (ii) each director and nominee for director of the Company, (iii) each executive officer of the Company named below and (iv) all directors and executive officers of the Company as a group. Except as otherwise specified, the named beneficial owner has sole voting and investment power over the shares listed.

Name and Address of Beneficial Owner<F1>	Amount and Nature of Beneficial Ownership<F2>	Percent of Class
State of Wisconsin Investment Board 121 East Wilson Street Madison, Wisconsin 53703	700,000	8.4%
Elan International Services Ltd 102 St. James Court Flatts Smiths FL04 Bermuda	600,000	7.2%
Invesco Funds Group, Inc. 7800 East Union Avenue Denver, Colorado 80237	520,000	6.2%
Michael M. Goldberg, M.D.	783,996<F3>	8.6%
Sam J. Milstein, Ph.D.	443,248	5.1%
Howard M. Pack	133,483<F4>	1.6%
Jere E. Goyan, Ph.D.	50,000	<F5>
Peter Barton Hutt, Esq.	50,000	<F5>
Mark I. Greene, M.D., Ph.D.	17,000	<F5>
Robert A. Baughman, Jr., Pharm.D., Ph.D.	89,925	1.1%
All directors and executive officers as a group	1,571,438<F3><F4>	16.1%

<F1> Unless otherwise specified, the address of each beneficial owner is c/o the Company, 15 Skyline Drive, Hawthorne, New York 10532.

<F2> The number of shares set forth for each director and executive officer of the Company includes the following number of shares with respect to which such individual has the right, exercisable within 60 days, to acquire

beneficial ownership upon exercise of options granted by the Company:

	Number of Shares
Dr. Goldberg	757,497
Dr. Milstein	437,757
Mr. Pack	50,000
Dr. Goyan	50,000
Mr. Hutt	50,000
Dr. Greene	17,000
Dr. Baughman	89,925
All directors and executive officers as a group	1,453,675

<F3> Does not include 130,000 shares with respect to which members of Dr. Goldberg's family have the right to acquire beneficial ownership upon exercise of options and with respect to which Dr. Goldberg disclaims beneficial ownership.

<F4> Does not include 439,040 shares beneficially owned by various members of Mr. Pack's family, with respect to which Mr. Pack disclaims beneficial ownership.

<F5> Less than 1%

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## PROPOSAL I: ELECTION OF DIRECTORS

At the meeting, six directors (constituting the entire Board of Directors) are to be elected to serve until the next annual meeting of stockholders and until their respective successors are elected and qualified. The proxies given pursuant to this solicitation will be voted in favor of the six nominees listed below unless authority is withheld. Should a nominee become unavailable to serve for any reason, the proxies will be voted for an alternative nominee to be determined by the persons named in the proxy. The Board of Directors has no reason to believe that any nominee will be unavailable. Proxies cannot be voted for a greater number of persons than the number of nominees named. The election of directors requires a plurality vote of those shares voted at the meeting with respect to the election of directors.

### Information Concerning Nominees

The persons nominated as directors of the Company (all of whom are currently directors of the Company), their respective ages, the year in which each first became a director of the Company and their principal occupations or employment during the past five years are as follows:

Name	Age	Year First Elected Director	Position with the Company
Michael M. Goldberg, M.D.	36	1990	Chairman of the Board of Directors and Chief Executive Officer
Sam J. Milstein, Ph.D.	46	1991	Director, President, Chief Scientific Officer and Secretary
Howard M. Pack	78	1985	Director
Jere E. Goyan, Ph.D.	66	1992	Director
Peter Barton Hutt, Esq.	61	1992	Director

### Mark I. Greene, M.D., Ph.D. 47 1995 Director

Michael M. Goldberg, M.D. has served as Chairman of the Board of Directors since November 1991 and President and Chief Executive Officer and a director of the Company since August 1990. In addition, Dr. Goldberg served as President from August 1990 to October 1995. In February 1990, Dr. Goldberg founded Montaur Capital Corporation, a health care investment banking firm. Prior thereto he was a vice president of The First Boston Corporation, and was a founding member of the firm's healthcare banking group.

Sam J. Milstein, Ph.D. has been with the Company since September 1990, as a director and Chief Scientific Officer since November 1991, as President since October 1995, as Secretary since December 1990 and as Co-Director of Science and Research and Development prior to November 1991. In addition, Dr. Milstein served as Executive Vice President from November 1990 to October 1995. Prior to September 1990, Dr. Milstein served as President of Mortar & Pestle Consulting, Inc., a consulting firm.

Howard M. Pack has served as a director of the Company since its inception in April 1985 and served as Executive Vice President of Finance from the Company's inception until October 1988. For more than five years until November 1992, Mr. Pack served as Chairman of the Board for Seatrain Lines, Inc., a cargo company that filed a consent to an involuntary petition for reorganization under the Federal Bankruptcy Code in February 1981 and a plan of complete liquidation under Chapter 7 thereof in November 1992.

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Jere E. Goyan, Ph.D., is President, Chief Operating Officer, and a director of Alteon, Inc., a development stage pharmaceutical company, where he started as Senior Vice President Research and Development in January 1993. Prior thereto he was a Professor of Pharmacy and Pharmaceutical Chemistry and the Dean of the School of Pharmacy at the University of California, San Francisco, and has served in various

other academic, administrative and advisory positions, including that of Commissioner of the Food and Drug Administration. He currently serves as a director of Atrix Corporation, SciClone Pharmaceuticals and Boeringer Ingelheim.

Peter Barton Hutt, Esq., has for more than the past five years been a partner at the law firm of Covington & Burling in Washington, D.C., where he specializes in the practice of food and drug law. He currently serves as a director of IDEC Pharmaceuticals, Inc., Cell Genesys, Inc., Interneuron Pharmaceuticals, Inc., Vivus Inc. and Sparta Pharmaceuticals, Inc.

Mark I. Greene, M.D., Ph.D. has been Professor of Medicine, Department of Pathology, School of Medicine at the University of Pennsylvania for more than the past five years.

### Meetings and Committees of the Board of Directors

During the fiscal year ended July 31, 1995, the Board of Directors of the Company held three meetings. Each of the incumbent directors attended more than 75% of the aggregate number of meetings held by the Board and the Committees thereof on which he served.

The Company has an Audit Committee and a Compensation Committee of the Board of Directors. Dr. Goyan and Messrs. Hutt and Pack serve on both committees. The Audit Committee consults with the Company's independent accountants, reviews the services provided by such independent accountants and oversees the internal accounting procedures of the Company. The Audit Committee held one meeting during the fiscal year ended July 31, 1995.

The Compensation Committee makes recommendations to the Board of Directors regarding compensation of executive officers of the Company and administers the Company's stock option plans. The Compensation Committee held no meetings during the fiscal year ended July 31, 1995.

The Company has no standing nominating committee and no committee performing a similar function.

### Compensation of Directors

Directors receive no cash compensation in their capacity as directors. Directors who are not employees of the Company receive, pursuant to the Company's Stock Option Plan for Outside Directors, (the "Directors Plan") (i) an initial option to purchase 20,000 shares of Common Stock on the date (the "Starting Date") of his or her initial election or appointment to the Board of Directors and (ii) a second option to purchase 50,000 shares of Common Stock on the first anniversary of his or her Starting Date. The exercise price per share for the options is the fair market value of the Common Stock on the Starting Date and the options are exercisable within ten years from the date of grant. The initial option becomes fully vested with respect to 6,666 shares on the first anniversary of the Starting Date and with respect to 6,667 shares on each of the next two anniversaries thereafter; the second option becomes fully vested with respect to 10,000 shares on each of the first five anniversaries of the Starting Date. In the event an optionholder ceases to serve as a director of the Company, fully vested options may be

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exercised within six months thereafter and all unvested options terminate immediately.

Pursuant to the Directors Plan, Dr. Goyan and Messrs. Hutt and Pack were each granted (i) on April 29, 1992 an option to purchase 20,000 shares of Common Stock for \$13.00 per share and (ii) on April 29, 1993 an option to purchase 50,000 shares of Common Stock for \$13.00 per share. Pursuant to the Directors Plan, Dr. Greene was granted on October 23, 1995 an option to purchase 70,000 shares of Common Stock for \$8.625 per share.

The Board of Directors of the Company deems the election of the six nominees listed above as directors to be in the best interest of the Company and its stockholders and recommends a vote "FOR" their election.

#### EXECUTIVE COMPENSATION

The following table sets forth information regarding the aggregate compensation paid by the Company for the three fiscal years ended July 31, 1995 to the Company's Chief Executive Officer and other executive officers whose total compensation exceeded \$100,000 during the last fiscal year:

Name and Principal Position	Fiscal Year	Annual		
		Compensation<F1>	Stock Option Grants	Other <F2>
Michael M. Goldberg Chairman of the Board, President and Chief Executive Officer	1995	\$227,605	16,567 shares	\$4,497
	1994	237,500	-	4,122
	1993	237,500	562,315 shares	-
Sam J. Milstein Executive Vice President, Chief Scientific Officer and Secretary	1995	\$202,187	10,792 shares	\$3,850
	1994	192,500	-	3,850
	1993	192,500	346,716 shares	-
Robert A. Baughman, Jr. Senior Vice President, Director	1995	\$165,641	8,131 shares	\$3,175
	1994	156,002	65,000 shares	2,910

of Operations and Development 1993 124,940 - -

<F1> Annual compensation consists solely of base salary except that Drs. Milstein and Baughman were also paid \$14,808 and \$12,308, respectively, in lieu of earned vacations. As to each individual named, the aggregate amounts of all perquisites and other personal benefits, securities and property not included in the summary compensation table above or described below do not exceed the lesser of \$50,000 or 10% of the annual compensation. During a portion of the 1995 fiscal year, the executive officers and certain other employees of the Company agreed to forgo a portion of cash compensation in return for an option to purchase a number of shares of the Common Stock determined by dividing the amount of cash compensation forgone by the fair market value of the Common Stock on the date of grant of the option.

<F2> Other compensation consists solely of matching contributions made by the Company under a defined contribution plan introduced during the 1994 fiscal year for substantially all employees.

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The following table sets forth certain information relating to stock option grants to the executive officers named above during the fiscal year ended July 31, 1995:

STOCK OPTION GRANTS DURING THE FISCAL YEAR ENDED JULY 31, 1995

Name	Number of Shares Underlying Options Granted <F1>	Percent of Total Option Shares Granted to Employees <F2>	Exercise Price per Share	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
Michael M. Goldberg	5,080	1.9%	\$1.43	5/1/95	\$1,282	\$1,282
	1,900	0.1%	3.13	8/1/95	1,048	1,048
	4,948	1.8%	1.50	11/1/95	1,310	1,310
	2,639	0.1%	1.65	5/15/00	2,093	5,913
	1,505	0.1%	2.89	6/15/00	2,089	5,901
	495	-	4.40	7/15/00	1,047	2,490
Sam J. Milstein	1,539	0.1%	\$3.13	8/1/95	\$ 849	\$ 849
	5,491	2.0%	1.50	11/1/95	1,454	1,454
	2,139	0.1%	1.50	5/15/05	2,017	5,113
	1,222	-	2.63	6/15/05	2,017	5,112
	401	-	4.00	7/15/05	1,245	3,156
Robert A. Baughman, Jr.	1,673	0.1%	\$3.13	8/1/95	\$ 923	\$ 923
	3,333	1.2%	1.50	11/1/95	882	882
	1,778	0.1	1.50	5/15/05	1,677	4,251
	1,014	-	2.63	6/15/05	1,673	4,242
	333	-	4.00	7/15/05	838	2,123

<F1> Options that expired or will expire in 1995 were all granted under the Company's Employee Stock Purchase Plan or Non-Qualified Employee Stock Purchase Plan at exercise prices equal to the lower of the fair market value on the date of grant or 85% of the fair market value on the date of exercise. Options expiring in 2000 and 2005 were all granted under the Company's 1991 Stock Option Plan at prices equal to the fair market value on the date of grant, except that options granted to Dr. Goldberg were all at prices equal to 110% of the fair market value on the date of grant.

<F2> The total option shares granted during the 1995 fiscal year to employees includes 134,023 shares subject to options under the Company's 1991 Stock Option Plan and 78,652 shares issued or issuable pursuant to options granted under the Company's Employee Stock Purchase Plan or Non-Qualified Employee Stock Purchase Plan.

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The following table sets forth information as to the unexercised options held by the executive officers named above as of July 31, 1995:

AGGREGATED OPTION EXERCISES AND YEAR-END OPTION VALUES

Name	Exercises During the Fiscal Year		Number of Shares Underlying Unexercised Options	Value of Unexercised Options	Value of Unexercised In-the-Money Options <F1>	
	Number of Shares Acquired	Value Realized			Exercisable	Unexercisable
Michael M. Goldberg	5,080	\$1,286<F2>	894,345<F3>	-	\$54,736	-
Sam J. Milstein	-	-	444,787	-	53,129	-
Robert A. Baughman, Jr.	-	-	74,931	46,200	39,012	-

<F1> Based on a closing price of \$6.875 on July 31, 1995 on the NASDAQ National Market System.

<F2> Based on a closing price of \$1.69 on May 1, 1995, the date of exercise, on the NASDAQ National Market System.

<F3> Includes 130,000 shares with respect to which Dr. Goldberg has transferred options to members of his family and with respect to which Dr. Goldberg disclaims beneficial interest.

## **Employment Agreements**

The Company has entered into employment agreements with Michael M. Goldberg, M.D. and Sam J. Milstein, Ph.D., expiring on July 31, 2000. Pursuant to the agreements, Dr. Goldberg is to serve as Chairman and Chief Executive Officer of the Company at an annual salary of \$310,000 to increase at 6% per year, Dr. Milstein is to serve as President and Chief Scientific Officer at an annual salary of \$250,000 to increase at 6% per year and both are to be nominated to serve as members of the Board of Directors. The agreements also provide for the grant of an option to purchase 750,000 shares of the Common Stock with respect to Dr. Goldberg and an option to purchase 550,000 shares with respect to Dr. Milstein. The options have an exercise price of \$8.625 per share and they expire on October 5, 2005. The options become fully exercisable on August 1, 2005 except that they become earlier exercisable if the Company achieves certain milestones, with the rate in no event being greater than either 25% of the shares for each milestone achieved or 20% of the shares in any employment year. The Company milestones required for exercisability of the options are (i) execution of a collaboration agreement providing for the commercialization of a product utilizing the Company's drug delivery technology and the payment of a royalty to the Company, (ii) one or more financings by the Company that provide aggregate net proceeds of at least \$15,000,000 and (iii) any subsequent such collaboration agreement or such financings.

The agreements provide that, upon (i) termination by the Company either without cause or for any reason following a Change of Control (as defined in the agreements) or (ii) termination by Dr. Goldberg or Dr. Milstein, as the case may be, following an uncured breach or bankruptcy by the Company, the stock options will become fully vested and the Company will make severance payments equal to the greater of (i) the compensation payable under the agreements from the date of termination to July 31, 2000 or (ii) one year's compensation under the agreements.

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## **Compensation Committee Report on Executive Compensation**

The Compensation Committee's policies applicable to the compensation of the Company's executive officers are based on the principle that total compensation should be set to attract and retain those executives critical to the overall success of the Company and should reward executives for their contributions to the enhancement of shareholder value. With respect to Michael M. Goldberg, Chairman and Chief Executive Officer, and Sam J. Milstein, President and Chief Scientific Officer, the Compensation Committee's policies are also based on the belief that the Company's current drug delivery technology is so different from what existed when they started with the Company that they should be viewed for purposes of compensation as equivalent to founders.

The key elements of the executive compensation package are base salary, employee benefits applicable to all employees and long-term incentive compensation in the form of stock options. In general, the Compensation Committee has adopted the policy that compensation for executive officers should be competitive with that paid by leading technology companies for corresponding senior executives. The Compensation Committee also believes that it is important to have stock options constitute a substantial portion of executive compensation in order to help executives align their interests with those of the stockholders and to reflect the requirement on the part of the Company that executive decisions should look to the long-term success of the Company.

In determining the compensation for each executive officer, the Compensation Committee generally considers (i) data from outside studies and proxy materials regarding compensation of executive officers at comparable companies, (ii) the input of other directors regarding individual performance of each executive officer and (iii) qualitative measures of Company performance such as progress in the development of the Company's technology, the engagement of corporate partners for the commercial development and marketing of products and the success of the Company in raising the funds necessary to conduct research and development. The Compensation Committee's consideration of such factors is subjective and informal.

The compensation of Michael M. Goldberg, the Chief Executive Officer of the Company, for the 1995 fiscal year was as called for by his employment agreement with the Company entered into during the 1993 fiscal year and, except for a salary reduction in exchange for stock options implemented in May of 1995 and applicable to all executive officers, the Compensation Committee did not consider any amendments to the compensation thereunder. The Compensation Committee approved by majority vote the five-year employment agreement negotiated with Dr. Goldberg for the period ending July 31, 2000, concluding that Dr. Goldberg's leadership contributed significantly to the Company's achievements and progress in the past and that Dr. Goldberg will continue to make significant contributions to the Company's performance in the future.

Howard M. Pack Jere E. Goyan Peter Barton Hutt

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## **Comparative Stock Performance Graph**

The graph below compares the cumulative total stockholder return on the Company's Common Stock with the cumulative total stockholder return of (i) the NASDAQ Stock Market (U.S.) Index and (ii) the NASDAQ Pharmaceutical Index, assuming an investment of \$100 on July 31,

1990 in each of the Company's Common Stock, the stocks comprising the NASDAQ Index and the stocks comprising the Pharmaceutical Index.

Date	Emisphere	NASDAQ Market	NASDAQ Pharm.
7/31/90	100	100	100
7/31/91	102	118	185
7/31/92	151	139	214
7/31/93	119	169	171
7/31/94	33	174	152
7/31/95	55	243	214

#### **Compliance with Section 16(a) of the Securities Exchange Act of 1934**

Based solely on a review of the reports and representations furnished to the Company during the last fiscal year, the Company believes that each of the persons required to file reports under Section 16(a) of the Exchange Act is in compliance with all applicable filing requirements.

#### **PROPOSAL II: RATIFICATION OF SELECTION OF INDEPENDENT ACCOUNTANTS**

The Board of Directors has selected Coopers & Lybrand L.L.P. to serve as independent accountants for the fiscal year ending July 31, 1996. Coopers & Lybrand L.L.P. has served as the Company's independent accountants since November 1991.

A representative of Coopers & Lybrand L.L.P. is expected to be present at the meeting with the opportunity to make a statement if he desires to do so and is expected to be available to respond to appropriate questions. Although it is not required to do so, the Board of Directors is submitting the selection of independent accountants for ratification at the meeting. If this selection is not ratified, the Board of Directors will reconsider its choice.

A majority of the votes cast (excluding abstentions and broker non-votes) at the meeting in person or by proxy is necessary for ratification of the selection of Coopers & Lybrand L.L.P. as independent accountants of the Company.

The Board of Directors of the Company deems the ratification of the selection of Coopers & Lybrand L.L.P. as independent accountants of the Company to be in the best interest of the Company and its stockholders and recommends that holders of the Common Stock vote FOR Proposal II.

#### **STOCKHOLDER PROPOSALS**

All stockholder proposals which are intended to be presented at the Annual Meeting of Stockholders of the Company contemplated to be held in December 1996 must be received by the Company no later than July 31, 1996, for inclusion in the Board of Directors' proxy statement and form of proxy relating to the meeting.

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#### **OTHER BUSINESS**

The Board of Directors knows of no other business to be acted upon at the meeting. However, if any other business properly comes before the meeting, it is the intention of the persons named in the enclosed proxy to vote on such matters in accordance with their best judgment.

The prompt return of your proxy will be appreciated and helpful in obtaining the necessary vote. Therefore, whether or not you expect to attend the meeting, please sign the proxy and return it in the enclosed envelope.

**By order of the Board of Directors**

**SAM J. MILSTEIN, PH.D.**  
**Secretary**

Hawthorne, New York  
December 15, 1995

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**EMISPHERE TECHNOLOGIES, INC.**  
15 Skyline Drive  
Hawthorne, New York 10532

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

The undersigned hereby appoints Michael M. Goldberg, M.D. and Sam J. Milstein, Ph.D., and each of them, as Proxies each with the power to appoint his substitute and hereby authorizes them to represent and to vote, as designated below, all of the shares of Common Stock of Emsisphere Technologies, Inc. held of record by the undersigned on December 12, 1995 at the Annual Meeting of Stockholders to be held on January 23, 1996 or any adjournments or postponements thereof.

1. ELECTION OF DIRECTORS

**Nominees: STOCKHOLDERS MAY WITHHOLD AUTHORITY TO VOTE FOR ANY NOMINEE BY DRAWING A LINE THROUGH OR Michael M. Goldberg, M.D. OTHERWISE STRIKING OUT THE NAME OF SUCH NOMINEE. Jere E. Goyan, Ph.D ANY PROXY EXECUTED IN SUCH MANNER AS NOT TO Peter Barton Hutt WITHHOLD AUTHORITY TO VOTE FOR THE ELECTION OF Sam J. Milstein, Ph.D. ANY NOMINEE SHALL BE DEEMED TO GRANT SUCH**

Howard M. Pack AUTHORITY.  
Mark I. Greene, M.D., Ph.D.

GRANT authority to vote for the six nominees as a group WITHHOLD authority to vote for the six nominees as a group

2. Ratification of the Board of Directors' selection of Coopers & Lybrand L.L.P. to serve as the Company's independent accountants for the fiscal year ending July 31, 1996

**FOR AGAINST ABSTAIN**

3. Authority to vote in their discretion on such other business as may properly come before the meeting

**FOR AGAINST ABSTAIN**

This proxy, when properly executed, will be voted in the manner directed herein by the undersigned stockholder. If no direction is made, this proxy will be voted for each of the proposals named above.

**PLEASE MARK, SIGN, DATE AND RETURN THIS PROXY CARD PROMPTLY, USING THE ENCLOSED ENVELOPE.**

**Dated , 1996**

(Signature)

(Signature if held jointly)

Please sign exactly as name appears hereon. When shares are held by joint tenants, both should sign. When signing as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by president or other authorized officer. If a partnership, please sign in partnership

name by authorized person.

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**End of Filing**

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