

CLEVELAND BIOLABS INC  
Form POS AM  
April 19, 2007

As filed with the Securities and Exchange Commission on April 19, 2007  
Registration Number 333-136904

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

POST-EFFECTIVE AMENDMENT NO.2 TO  
FORM SB-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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**CLEVELAND BIOLABS, INC.**  
(Name of small business issuer in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation or organization )

**8731**  
(Primary Standard Industrial  
Classification Code Number)

**20-0077155**  
(I.R.S. Employer  
Identification No.)

11000 Cedar Ave.  
Suite 290  
Cleveland, Ohio 44106  
(216) 229-2251

(Address, including zip code, and telephone number, including area code, of Registrant's principal executive offices)

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**Dr. Michael Fonstein**  
**Chief Executive Officer & President**

Cleveland BioLabs, Inc.  
11000 Cedar Ave.  
Suite 290  
Cleveland, Ohio 44106  
(216) 229-2251

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copies to:*

**Ram Padmanabhan, Esq.**  
**Katten Muchin Rosenman LLP**  
**525 West Monroe Street**  
**Chicago, Illinois 60661**  
**(312) 902-5200 / (312) 902-1061 (Telecopy)**

**Approximate date of commencement of proposed sale to the public:**

From time to time after the effective date of this Registration Statement, as determined by the selling stockholders.

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If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.  x

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  o

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  o

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.  o

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.  o

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**EXPLANATORY NOTE**

This Post-Effective Amendment No. 2 to the Registration Statement on Form SB-2 (File No. 333-136904) is being filed for the sole purpose of including the required signatures of Cleveland BioLabs, Inc., its principal executive officer, its principal financial and accounting officer, and the members of its Board of Directors. Accordingly, Part I of the Registration Statement is omitted in its entirety.

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**PART II****INFORMATION NOT REQUIRED IN PROSPECTUS****OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION**

The following table sets forth the costs and expenses. All amounts are estimates except the SEC registration fee.

SEC registration fee	\$ 2,278
Blue Sky Expenses	\$ 5,000
Printing and engraving expenses	\$ 15,000
Legal fees and expenses	\$ 40,000
Accounting fees and expenses	\$ 10,000
Miscellaneous expense	\$ 10,000
Total	\$ 82,278

**INDEMNIFICATION**

Section 102 of the General Corporation Law of the State of Delaware (the “DGCL”) allows a corporation to eliminate the personal liability of directors to a corporation or its stockholders for monetary damages for a breach of a fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase or redemption in violation of Delaware corporate law or obtained an improper personal benefit. As permitted by Section 102(b)(7) of the DGCL, CBL’s Certificate of Incorporation contains a provision eliminating the personal liability of a director to CBL or its stockholders to the fullest extent permitted by the DGCL.

Section 145 of the DGCL empowers a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. A Delaware corporation may indemnify directors, officers, employees and other agents of such corporation in an action by or in the right of a corporation under the same conditions against expenses (including attorneys’ fees) actually and reasonably incurred by the person in connection with the defense and settlement of such action or suit, except that no indemnification is permitted without judicial approval if the person to be indemnified has been adjudged to be liable to the corporation. Where a present or former director or officer of the corporation is successful on the merits or otherwise in the defense of any action, suit or proceeding referred to above or in defense of any claim, issue or matter therein, the corporation must indemnify such person against the expenses (including attorneys’ fees) which he or she actually and reasonably incurred in connection therewith. CBL’s Certificate of Incorporation contains provisions that provide for indemnification of officers and directors and each person who is or was serving at the request of CBL as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise to the full extent permitted by the DGCL.

Section 174 of the DGCL provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption, may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered into the books containing the minutes of the meetings of the

board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

CBL maintains, at its expense, a policy of insurance which insures its directors and officers, subject to exclusions and deductions as are usual in these kinds of insurance policies, against specified liabilities which may be incurred in those capacities.

#### **RECENT SALES OF UNREGISTERED SECURITIES**

During the past three years, we have issued unregistered securities to the persons, as described below. None of these transactions involved any underwriters, underwriting discounts or commissions, except as specified below, or any public offering, and we believe that each transaction was exempt from the registration requirements of the Securities Act of 1933 by virtue of Section 4(2) thereof and/or Regulation D. All recipients had adequate access to information about us.

II-1

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On September 30 2004, we issued 29,800 warrants to Sunrise Securities Corp. and its designees at an exercise price of \$2.00 per share, which expire in March 2010. The warrants were issued to retain Sunrise Securities Corp. as an investment banker.

We issued on March 15, 2005 and March 28, 2005, pursuant to the closing of the Series A Preferred Stock financing, 3,000,000 shares of our Series A Preferred Stock to 29 different purchasers at a price of \$2.00 per share, raising a total of \$6 million, on March 15, 2005 and March 28, 2005, we also issued 308,000 shares of common stock to nine individuals and entities related to Sunrise Securities Corp. and warrants to purchase 300,000 shares of common stock to 10 individuals and entities related to Sunrise Securities Corp. both for consideration for services rendered by Sunrise Securities Corp. as placement agent in the Series A Preferred Stock financing.

From March 2005 to March 2006, we issued to 26 employees and third party consultants options to purchase 500,590 shares of common stock with exercise prices ranging from \$0 to \$4.50 per share.

We also issued in March 2005, pursuant to the conversion of \$102,438 principal amount of outstanding promissory notes, 51,219 shares of Series A Preferred Stock to two investors.

On August 1, 2005, payment of the first part of the accrued dividends on the Series A Preferred Stock were made in the form of 69,201 shares of common stock to 31 holders of the Series A Preferred Stock. On February 1, 2006, we issued 91,776 shares of common stock as accrued dividends on the Series A Preferred Stock to the same preferred stockholders. On July 20, 2006, we issued 92,407 shares of common stock as accrued dividends on the Series A Preferred Stock.

On September 30, 2005, we issued 59,600 shares of common stock to an outside consultant upon the exercise of a fully vested stock option.

On January 27, 2006, we issued 240,000 shares of Series A Preferred Stock to 29 holders of the Series A Preferred Stock and 54,060 shares of common stock to 33 holders of our common and preferred stock in connection with certain provisions of the Series A Rights Agreement dated as of March 15, 2005.

On June 21, 2006, we issued 60,000 shares of Series A Preferred Stock to 29 holders of the Series A Preferred Stock and 15,295 shares of common stock to 33 holders of our common and preferred stock in connection with certain provisions of the Series A Rights Agreement dated as of March 15, 2005, as amended February 17, 2006.

On July 20, 2006, the effective date of our initial public offering, we issued 124,206 shares of common stock to three convertible note holders upon the automatic conversion of notes in the principal amount of \$283,500 plus accrued interest.

On July 20, 2006, we issued warrants to purchase 170,000 shares of common stock to Sunrise Securities Corp., Roth Capital Partners, LLC and their designees at a cost of \$100.00. The warrants have an exercise price of \$8.70 per share.

On July 20, 2006, we issued options to purchase an aggregate of 45,000 shares of common stock with an exercise price of \$6.00 per share to our three new independent directors.

On July 27, 2006, we issued 625 shares of common stock to an employee upon the exercise of a stock option, which was partially vested.

On November 16, 2006, we issued 50,000 warrants to an outside consultant in connection with assistance in capital raising activities that led to our March 2007 private placement. These warrants are immediately exercisable into common shares of the Company and have an exercise price of \$6.00 per share and an expiration date of November 16, 2011.

On February 26, 2007, we issued 55,000 warrants to an outside consultant in connection with capital raising activities. These warrants are immediately exercisable into common shares of the Company and have an exercise price of \$9.19 per share and an expiration date of February 26, 2012.

II-2

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**EXHIBITS**

<b>Exhibit No.</b>	<b>Description</b>
3.1	Certificate of Incorporation filed with the Secretary of State of Delaware on June 5, 2003***
3.2	Certificate of Amendment of Certificate of Incorporation filed with the Secretary of State of Delaware on February 25, 2005***
3.3	Certificate of Designation of Series A Participating Convertible Preferred Stock filed with the Secretary of State of Delaware on March 8, 2005***
3.4	Second Certificate of Amendment of Certificate of Incorporation filed with Secretary of State of Delaware on June 30, 2006***
3.5	Certificate of Designations, Preferences and Rights of Series B Convertible Preferred Stock, dated March 16, 2007*****
3.6	Amended and Restated By-Laws***
4.1	Form of Specimen Common Stock Certificate*
4.2	Form of Warrants issues to designees of Sunrise Securities Corp., dated March 2005*
4.3	Form of Warrants issued to underwriters***
4.4	Warrant to Purchase Common Stock issued to ChemBridge Corporation, dated April 27, 2004*
4.5	Form of Series B Warrant *****
4.6	Form of Series C Warrant *****
5.1	Opinion of Katten Muchin Rosenman LLP (previously filed)
10.1	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Michael Fonstein, dated as of July 5, 2003*
10.2	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Yakov Kogan, dated as of July 5, 2003*
10.3	Restricted Stock Agreement between Cleveland BioLabs, Inc. and Andrei Gudkov, dated as of July 5, 2003*
10.4	Library Access Agreement by and between ChemBridge Corporation and Cleveland BioLabs, Inc., effective as of April 27, 2004*
10.5	Restricted Stock and Investor Rights Agreement between Cleveland BioLabs, Inc. and ChemBridge Corporation, dated as of April 27, 2004*

- 10.6 Common Stockholders Agreement by and among Cleveland BioLabs, Inc. and the stockholders named therein, dated as of July 1, 2004\*
- 10.7 Exclusive License Agreement by and between The Cleveland Clinic Foundation and Cleveland BioLabs, Inc., effective as of July 1, 2004\*
- 10.8 Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Michael Fonstein, dated August 1, 2004\*
- 10.9 Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Yakov Kogan, dated August 1, 2004\*
- 10.10 Consulting Agreement between Cleveland BioLabs, Inc. and Dr. Andrei Gudkov, dated August 1, 2004\*
- 10.11 Cooperative Research and Development Agreement by and between the Uniformed Services University of the Health Sciences, the Henry M. Jackson Foundation for the Advancement of Military Medicine, Inc., the Cleveland Clinic Foundation, and Cleveland BioLabs, Inc., dated as of August 1, 2004\*\*
- 10.12 Form of Stock Purchase Agreement between Cleveland BioLabs, Inc. and the Purchasers party thereto, dated as of March 15, 2005\*

10.13	Form of Series A Rights Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of March 15, 2005*
10.14	Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Farrel Fort, dated June 1, 2005*
10.15	Amendment to Employment Agreement by and between Cleveland BioLabs, Inc. and Dr. Farrel Fort, dated September 30, 2005*
10.16	Amendment to Consulting Agreement between Cleveland BioLabs, Inc. and Dr. Andrei Gudkov, dated as of January 23, 2006*
10.17	Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Michael Fonstein, dated as of January 23, 2006*
10.18	Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Yakov Kogan, dated as of January 23, 2006*
10.19	Amendment to Restricted Stock Agreement between Cleveland BioLabs, Inc. and Andrei Gudkov, dated as of January 23, 2006*
10.20	Amendment to Common Stockholders Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of January 26, 2006*
10.21	Form of Amendment to Series A Rights Agreement by and among Cleveland BioLabs, Inc. and the parties thereto, dated as of February 17, 2006*
10.22	Cleveland BioLabs, Inc. 2006 Equity Incentive Plan***
10.23	Process Development and Manufacturing Agreement between Cleveland BioLabs, Inc. and SynCo Bio Partners B.V., effective as of August 31, 2006****
10.24	Sponsored Research Agreement between Cleveland BioLabs, Inc. and Roswell Park Cancer Institute Corporation, effective as of January 12, 2007*****
10.25	Securities Purchase Agreement, dated March 16, 2007*****
10.26	Registration Rights Agreement, dated March 16, 2007*****
10.27	Voting Agreement, dated March 16, 2007*****
16.1	Letter on change in certifying accountant*
23.1	Consent of Meaden & Moore, Ltd. (previously filed)
23.2	Consent of Katten Muchin Rosenman LLP (included in Exhibit 5.1).
24.1	Power of Attorney (previously filed)

\*

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Incorporated by reference to Amendment No. 1 to Registration Statement on Form SB-2 as filed on April 25, 2006 (File No. 333-131918).

\*\* Incorporated by reference to Amendment No. 2 to Registration Statement on Form SB-2 as filed on May 31, 2006 (File No. 333-131918).

\*\*\* Incorporated by reference to Amendment No. 3 to Registration Statement on Form SB-2 as filed on July 10, 2006 (File No. 333-131918).

\*\*\*\* Incorporated by reference to Form 8-K as filed on October 25, 2006.

\*\*\*\*\* Incorporated by reference to Form 8-K as filed on January 12, 2007.

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II-4

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## UNDERTAKINGS

The undersigned registrant hereby undertakes that it will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by section 10(a)(3) of the Securities Act;

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

(iii) Include any additional or changed material information on the plan of distribution.

(2) For determining any liability under the Securities Act of 1933, treat each post-effective amendment as a new registration statement to the securities offered in the U.S., and the offering of the securities at that time as the initial bona fide offering of those securities.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

Insofar as indemnification by the undersigned small business issuer for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933, 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 of 1933 and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Cleveland, Cuyahoga County, State of Ohio, on the 19th day of April, 2007.

**CLEVELAND BIOLABS, INC.**

By: /s/ Michael Fonstein

Michael Fonstein  
Chief Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 2 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Michael Fonstein Michael Fonstein	Chief Executive Officer, President and Director (Principal Executive Officer)	April 19, 2007
/s/ John A. Marhofer, Jr. John A. Marhofer, Jr.	Chief Financial Officer (Principal Financial and Accounting Officer)	April 19, 2007
* James Antal	Director	April 19, 2007
* Paul DiCorleto	Director	April 19, 2007
* Andrei Gudkov	Chief Scientific Officer and Director	April 19, 2007
* Bernard L. Kasten	Director, Chairman of the Board	April 19, 2007
* Yakov Kogan	Executive Vice President of Business Development, Secretary and Director	April 19, 2007
* H. Daniel Perez	Director	April 19, 2007

\*By: /s/ Michael Fonstein  
Michael Fonstein  
Attorney-in-Fact and Agent

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