
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

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) **November 21, 2008**

BioScrip, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

0-28740
(Commission
File Number)

05-0489664
(IRS Employer
Identification No.)

100 Clearbrook Road, Elmsford, New York
(Address of Principal Executive Offices)

10523
(Zip Code)

Registrant's telephone number, including area code **(914) 460-1600**

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Section Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12).
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240-14d-2(b)).
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c)).
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Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On November 21, 2008, Richard M. Smith was appointed President and Chief Operating Officer of BioScrip, Inc. (the “Company”) pursuant to the terms of an employment offer letter dated November 13, 2008 (the “Offer Letter”). Prior to joining the Company, from June 2006 to November 2008 Mr. Smith, age 49, was Chief Executive Officer and a director of Byram Healthcare Centers, Inc. a provider of medical supplies and pharmacy items to long term chronic patients. From May 2003 to May 2006 Mr. Smith was the President and Chief Operating Officer of Option Care, Inc., a home infusion and specialty pharmaceutical company. There is no family relationship between Mr. Smith and any director or executive officer of the Company.

The terms of the Offer Letter provide for the employment of Mr. Smith as the Company’s President and Chief Operating Officer at an initial base annual salary of \$475,000 with eligibility to participate in the Company’s Short-term Cash Bonus Program. Mr. Smith will be granted options to purchase 105,000 shares of Common Stock on the day he commences employment. The exercise price of such options will be equal to the fair market value of a share of the Company’s common stock on the date of grant and will vest in three equal installments on the anniversary of the grant date. Mr. Smith will also receive 120,000 performance shares having stock price, EBITDAO and time measurements. The Company has also agreed to reimburse Mr. Smith for three months of temporary housing expenses not to exceed \$2,500 per month beginning May 15, 2009 and up to \$30,000 towards the cost of relocating to the New York tri-state area. Under the terms of the Offer Letter, as a condition to his employment Mr. Smith is required to enter into a restrictive covenant agreement with the Company which will provide that during the term of employment and for two years following the later of his termination or his receipt of severance payments (described below), Mr. Smith may not directly or indirectly participate in any business which is competitive with the Company’s business. Similarly, for one year following his termination, Mr. Smith may not solicit or otherwise interfere with the Company’s relationship with any present or former employee or customer of the Company. Mr. Smith is also required to keep confidential during the term of employment and thereafter all information concerning the Company and its business.

The Company also entered into a severance agreement (the “Severance Agreement”) with Mr. Smith under which he is entitled to receive severance payment protection in the event of the termination of his employment under certain circumstances.

If Mr. Smith’s employment is terminated due to his death or disability, (i) he is entitled to receive his salary, bonus and other benefits earned and accrued through the date of termination, (ii) all fully vested and exercisable options may be exercised by his estate for one year following termination, and (iii) any stock grants that are subject to forfeiture shall become non-forfeitable and shall fully vest. In addition, if Mr. Smith should remain disabled for six months following his termination for disability, he shall also be entitled to receive for a period of two years following termination, his annual salary at the time of termination (less any proceeds received by him on account of Social Security payments or similar benefits and the proceeds of any Company provided long-term disability insurance) and continuing coverage under all benefit plans and programs to which he was previously entitled.

If the Company terminates Mr. Smith for “Cause” or if Mr. Smith terminates his employment without “Good Reason” (each as defined in the Severance Agreement), (i) he shall be entitled to receive his salary, bonus and other benefits earned and accrued through the date of termination, (ii) all vested and unvested stock options shall lapse and terminate (except that in the event of termination without Good Reason he shall have 30 days from the date of termination to exercise any vested options), and (iii) any stock grants made to him that are subject to forfeiture shall be immediately forfeited.

If the Company terminates Mr. Smith's employment without Cause or Mr. Smith terminates his employment for Good Reason, (i) he is entitled to receive his salary, bonus and other benefits earned and accrued through the date of termination, (ii) for a period of two years following termination he shall be entitled to receive his annual salary at the time of termination and continuing coverage under all benefit plans and programs to which he was previously entitled, (iii) all unvested options shall become vested and immediately exercisable in accordance with the terms of the options and he shall become vested in any other pension or deferred compensation plan, and (iv) any stock grants that are subject to forfeiture shall become non-forfeitable and shall fully vest.

If within one year following a "Change of Control" (as defined in the Severance Agreement) Mr. Smith is terminated by the Company or any successor, or within such one year period he elects to terminate his employment due to a material reduction in his duties or a relocation, (i) he will be entitled to receive his salary and other benefits earned and accrued through the date of termination, (ii) he will be entitled to receive for two years following termination his annual salary at the time of termination and continuing coverage under all benefits plans and programs to which he was previously entitled to the extent eligible under such plans or programs, (iii) all unvested options will fully vest and (together with any other vested options then held by Mr. Smith) may be exercised in accordance with their terms, (iv) he will become vested in any pension or other deferred compensation other than pension or deferred compensation under a plan intended to be qualified under Section 401(a) or 403(a) of the Code, (v) all unvested shares of restricted stock will fully vest and be free from restriction on transferrability (other than restrictions imposed under Federal and state securities laws), and (vi) any stock grants previously made that are subject to forfeiture shall become non-forfeitable.

The Severance Agreement is intended to comply with the provisions of 409A of the Internal Revenue Code, to the extent applicable.

The foregoing summary is qualified in its entirety by reference to the complete text of the Offer Letter, a copy of which is filed with this report as Exhibit 10.1, and the Severance Agreement, a copy of which is filed with this report as Exhibit 10.2.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits. The following information is furnished as an exhibit to this Current Report:

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.1	Offer Letter between BioScrip, Inc. and Richard M. Smith.
10.2	Severance Agreement between BioScrip, Inc. and Richard M. Smith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned duly authorized.

Date: November 24, 2008

BIOSCRIP, INC.

By: /s/ Barry A. Posner

Barry A. Posner,
Executive Vice President, Secretary and General
Counsel

November 13, 2008

Mr. Richard M. Smith

Re: BioScrip, Inc. and Subsidiaries

Dear Rick:

BioScrip, Inc., a Delaware corporation (the "Company"), is pleased to offer you employment as the Company's President and Chief Operating Officer, according to the terms and subject to the conditions set forth below. The terms and conditions of your employment would be as follows:

1. **POSITION AND DUTIES:**

President and Chief Operating Officer ("COO") based in Elmsford, New York.

You would report primarily to, and would have such duties as assigned to you from time to time by the Company's Chief Executive Officer or as directed by Board of Directors. You will be provided with full authority to act as the Company's COO and take all actions as are necessary to fulfill your position, and all employees at the Company, other than the Chief Executive Officer, the General Counsel, the Chief Financial Officer and each of their respective direct and indirect reports, shall report directly or indirectly to you. You acknowledge and understand that you are an employee at will.

2. **BASE COMPENSATION:**

Your annual base salary would be \$475,000 payable bi-weekly or at such other times as other employees of the Company are paid. You would be reviewed annually according to company practice.

3. **PARTICIPATION IN HEALTH AND OTHER BENEFIT PLANS:**

During your employment with the Company, you would be permitted, if and to the extent eligible, to participate in all employee benefit plans, policies and practices now or hereafter maintained by or on behalf of the Company and its subsidiary and affiliate corporations, commensurate with your position and level of individual contribution, at the Company's discretion. The Company may terminate or amend any such plans or coverage so as to eliminate, reduce or otherwise change any benefit payable there under.

4. **BONUS:**

You would be eligible to participate in BioScrip's Management Short-term Cash Bonus Program as long you remain continuously employed with BioScrip through the last date of the fiscal year on which a bonus is based.

Your target bonus would be at level of 50% of your base salary in 2009, which would be based on individual targets recommended by the Chief Executive Officer and approved by the Board of Directors. Any bonus, if payable, shall be paid as and when bonuses are paid to management generally, but in any event, no later than 30 days after the completion of the Company's prior year audit.

5. **EXPENSES:**

Subject to such policies as may from time to time be established by the Company's management, the Company would pay or reimburse you for all reasonable and necessary expenses actually incurred or paid by you during your employment upon submission and approval of expense statements, vouchers or other reasonable supporting information in accordance with the then customary practices of the Company. If a business expense reimbursement is not exempt from Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), any reimbursement in one calendar year shall not affect the amount that may be reimbursed in any other calendar year and a reimbursement (or right thereto) may not be exchanged or liquidated for another benefit or payment. Any business expense reimbursements subject to Section 409A of the Code shall be made no later than the end of the calendar year following the calendar year in which such business expense is incurred by the Executive.

6. **EQUITY COMPENSATION:**

You would be granted (i) 105,000 stock options which would be awarded at the current market price on the date your employment commenced, and (ii) 120,000 performance shares having the financial performance measurements and time measurements as are set forth in the performance share certificate accompanying this document. As a consequence of having received these sign on grants, you will not be eligible to receive long-term incentive compensation awards until the management grant in 2010; provided, however, that the Company's Board or its Management Development and Compensation Committee (the "Committee") may, in its sole and absolute discretion, award a grant to you in 2009.

7. **VACATION:**

You would initially be entitled to four weeks (20 business days) vacation per year during the term of your employment.

8. **SEVERANCE:** You would be entitled to two years of severance under the terms of a Severance Agreement attached hereto.
9. **RELOCATION AND LEGAL REVIEW** Beginning May 15, 2009, the Company will reimburse you for three months of temporary housing expenses, not to exceed \$2,500 per month, exclusive of meals and transportation. You would also be entitled to reimbursement of up to \$30,000 towards the cost of relocating your principal residence to the New York tri-state area. In order to facilitate your home search, the Company would pay for two round trip coach airfares for your spouse or partner. The Company would also reimburse you for up to \$12,500 towards legal expenses in connection with the review of these documents.
10. **FEDERAL IMMIGRATION LAW:** For purposes of federal immigration law, you would be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your commencement date, or our employment relationship with you may be terminated.
11. **RESTRICTIVE COVENANT:** As a condition to your employment with the Company, you will be obligated to enter into a restrictive covenant agreement between you and the Company, covering, among other things, non-competition provisions, non-solicitation provisions, and the protection of the Company's trade secrets. That agreement is attached.
12. **OTHER TERMS:** Your employment and restrictive covenants would include customary and usual terms, provisions, conditions and representations as are found in the Company's similar arrangements with its employees.
13. **INDEMNITY:** You will be provided indemnity to the fullest extent permitted under the Company's certificate of corporation, bylaws or any other organizational document or to the maximum extent provided by Delaware law. The Company will provide you with usual and customary directors and officers liability insurance.
14. **CORPORATE APPROVAL:** The Company's Management Development and Compensation Committee has approved the material terms of this employment offer.
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Mr. Richard M. Smith
November 13, 2008
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This offer supersedes all prior offers, both verbal and written. Please call me to discuss any questions or comments that you may have regarding these terms. Please return your paperwork by mail or fax to:

BioScrip, Inc.
Attn: Barry A. Posner
100 Clearbrook Road
Elmsford, NY 10523
Fax: 914-460-1670

We are very pleased at the prospect of you joining our team!

Sincerely yours,

BIOSCRIP, INC.

By: _____

RESTRICTIVE COVENANTS
(Attachment to Offer Letter of Richard M. Smith)

Covenant Against Competition; Other Covenants. You acknowledge that (i) the principal business of the Company (for purposes of these restrictive covenants, the “Company” shall include its subsidiaries and affiliates (as that term is defined in Rule 12-b2 of the Securities Exchange Act of 1934, as amended from time to time)) is the provision of a broad range of prescription products and services designed to promote the cost-effective delivery of pharmacy benefits, including pharmacy benefit management services, claims processing, the purchasing of pharmaceutical products on behalf of pharmacy networks and long term care facilities (including assisted living facilities and nursing homes), specialty pharmaceutical programs and mail order pharmacy services, including the dispensing of prescription pharmaceutical products, and the sale and distribution, on a retail and wholesale basis, of OTC’s, vitamins, supplements, herbals and other goods typically offered for sale through a retail, mail order or internet on-line pharmacy (such business, and any and all other businesses that after the date hereof, and from time to time during the Term, become material with respect to the Company’s then-overall business, herein being collectively referred to as the “Business”); (ii) the Company is dependent on the efforts of a certain limited number of persons who have developed, or will be responsible for developing the Company’s Business; (iii) is national in scope; (iv) your work for the Company will give you access to the confidential affairs and proprietary information of the Company; (v) your covenants and agreements contained in these Restrictive Covenants are essential to the business and goodwill of the Company; and (vi) the Company would not have offered you employment but for the covenants and agreements set forth herein. Accordingly, you covenant and agree that:

(a) At any time during your employment with the Company and ending two years following termination of your employment with the Company (irrespective of the reason for such termination) or (ii) payment of any severance, whichever occurs last, you shall not engage, directly or indirectly, in sales or marketing or otherwise assist any company or other business entity (which includes, without limitation, owning, managing, operating, controlling, being employed by, giving financial assistance to, participating in or being connected in any material way with any person or entity other than the Company), engaged in (i) the Business or (ii) any material component of the Business; provided, however, that the Executive’s ownership as a passive investor of less than two percent (2%) of the issued and outstanding stock of a publicly held corporation shall not be deemed to constitute competition. Notwithstanding the foregoing, commencing 18 months after the termination of your employment, you may elect to forego continued severance at which time you will be released from your obligations under this Section (a)

(b) During and after the period during which you are employed, you shall keep secret and retain in strictest confidence, and shall not use for your benefit or the benefit of others, except in connection with the Business and affairs of the Company and its affiliates, all confidential matters relating to the Company’s Business

and the business of any of its affiliates and to the Company and any of its affiliates, learned by you heretofore or hereafter directly or indirectly from the Company or any of its affiliates (the "Confidential Company Information"), including, without limitation, information with respect to (i) the strategic plans, budgets, forecasts, intended expansions of product, service, or geographic markets of the Company and its affiliates, (ii) sales figures, contracts, agreements, and undertakings with or with respect to customers, (iii) profit or loss figures, and (iv) customers, clients, suppliers, sources of supply and customer lists, and shall not disclose such Confidential Company Information to anyone outside of the Company except with the Company's express written consent and except for Confidential Company Information which is at the time of receipt or thereafter becomes publicly known through no wrongful act of you or is received from a third party not under an obligation to keep such information confidential and without breach of these Restrictive Covenants or the Agreement. Notwithstanding the foregoing, this section (b) shall not apply to the extent that you are acting to the extent necessary to comply with legal process; provided that in the event that you are subpoenaed to testify or to produce any information or documents before any court, administrative agency or other tribunal relating to any aspect pertaining to the Company, you shall immediately notify the Company thereof.

(c) During the period commencing on the date hereof and ending twelve months following the date upon which you shall cease to be an employee of the Company or its affiliates, you shall not, without the Company's prior written consent, directly or indirectly, (i) solicit or encourage to leave the employment or other service of the Company or any of its affiliates, any employee or independent contractor thereof or hire (on your behalf or any other person or entity) any employee or independent contractor who has left the employment or other service of the Company or any of its affiliates within one year of the termination of such employee's or independent contractor's employment or other service with the Company and its affiliates, or (ii) solicit, contact, market to, work for, or assist others in soliciting any customer or client of the Company with whom the Company was in contact with or was providing goods and services to at the time of your termination of employment with the Company. During such period, you will not, whether for your own account or for the account of any other person, firm, corporation or other business organization, intentionally interfere with the Company's or any of its affiliates' relationship with, or endeavor to entice away from the Company or any of its affiliates, any person who during the Term is or was a customer or client of the Company or any of its affiliates.

(d) All memoranda, notes, lists, records, property and any other tangible product and documents (and all copies thereof) made, produced or compiled by you or made available to you concerning the Business of the Company and its affiliates shall be the Company's property and shall be delivered to the Company at any time on request. Rights and Remedies upon Breach of Restrictive Covenants.

(a) You acknowledge and agree that any breach by him of any of the provisions of sections (a) through (d) above (the "Restrictive Covenants") would result in irreparable injury and damage for which money damages would not provide an adequate remedy. Therefore, if you breach, or threaten to commit a breach of, any of the Restrictive Covenants, the Company and its affiliates shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company and its affiliates under law or in equity (including, without limitation, the recovery of damages):

(b) The right and remedy to have the Restrictive Covenants specifically enforced (without posting bond and without the need to prove damages) by any court having equity jurisdiction, including, without limitation, the right to an entry against you of restraining orders and injunctions (preliminary, mandatory, temporary and permanent) against violations, threatened or actual, and whether or not then continuing, of such covenants. (c) The right and remedy to require you to account for and pay over to the Company and its affiliates all compensation, profits, monies, accruals, increments or other benefits (collectively, "Benefits") derived or received by you as the result of any transactions constituting a breach of the Restrictive Covenants, and you shall account for and pay over such Benefits to the Company and, if applicable, its affected affiliates.

(d) You agree that in any action seeking specific performance or other equitable relief, you will not assert or contend that any of the provisions of these Restrictive Covenants are unreasonable or otherwise unenforceable. The existence of any claim or cause of action by you, whether predicated on the Agreement or otherwise, shall not constitute a defense to the enforcement of the Restrictive Covenants.

Agreed to and accepted by:

Richard M. Smith

SEVERANCE AGREEMENT

SEVERANCE AGREEMENT (this "Agreement") dated as of November 13, 2008, by and between BIOSCRIP, INC., a Delaware corporation, with its principal place of business at 100 Clearbrook Road, Elmsford, New York 10523 (hereinafter referred to as the "Company"), and Richard M. Smith (hereinafter referred to as the "Executive").

WHEREAS, the Executive and the Company are parties to an employment offer letter dated as of November 13, 2008 (the "Offer Letter")

WHEREAS, pursuant to the terms of the Offer Letter the Company agreed to enter into this Agreement in order to provide Executive with the severance payment protection upon termination of Executive's employment with the Company;

Accordingly, the parties hereto agree as follows:

1. Severance upon Death or Disability.

1.1. Termination upon Death. If the Executive dies while employed by the Company: (i) the Executive's estate or beneficiaries shall be entitled to receive any salary and other benefits (including bonuses awarded or declared but not yet paid) earned and accrued prior to the date of termination and reimbursement for expenses incurred prior to the date of termination; (ii) all fully vested and exercisable stock options ("Options") previously or hereafter granted by the Company to Executive under any bonus program and held by the Executive may be exercised by his estate for a period of one (1) year from and after the date of the Executive's death unless such longer period is set forth in the grant agreement evidencing the Options; (iii) any restricted stock units ("Restricted Stock Units") granted under any bonus program or otherwise granted shall vest and be free from restrictions on transferability (other than restrictions on transfer imposed under Federal and State securities laws); (iv) any shares of common stock granted ("Stock Grants") to Executive under any bonus program that are subject to forfeiture shall become non-forfeitable and shall be fully vested and transferable; and (v) the Executive's estate and beneficiaries shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder. Notwithstanding anything to the contrary contained in this Section 1.1, it is expressly understood and agreed that nothing in the foregoing clause (v) shall restrict the ability of the Company to amend or terminate any benefits plans and programs from time to time in its sole and absolute discretion; provided, however, that the Company shall in no event be required to provide any coverage under such benefit plans and programs after such time as the Executive becomes entitled to coverage under the benefit plans and programs of another employer or recipient of the Executive's services (and provided, further, that such entitlement shall be determined without regard to any individual waivers or other arrangements).

1.2. Severance upon Disability. Upon termination of employment by virtue of Executive's disability, (i) the Executive shall receive salary and other benefits (including bonuses awarded or declared but not yet paid) earned and accrued prior to the effective date of the termination of employment and reimbursement for expenses incurred prior to the effective date of the termination of employment; (ii) all fully vested and exercisable Options previously or hereafter granted and held by

the Executive may be exercised by the Executive or his estate or beneficiaries for a period of one (1) year from and after the date of the Executive's termination due to disability unless such longer period is set forth in the grant agreement evidencing the Options; (iii) any Restricted Stock Units granted under any bonus program or otherwise granted shall vest and be free from restrictions on transferability (other than restrictions on transfer imposed under Federal and State securities laws); (iv) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall become non-forfeitable and shall be fully vested and transferable; (v) if the Executive's disability shall continue for a period of six (6) months after his termination, the Executive shall receive for a period for two (2) years after termination of employment (A) the annual salary that the Executive was receiving at the time of such termination of employment ("Annual Salary"), less the gross proceeds paid to the Executive on account of Social Security or other similar benefits and Company provided long-term disability insurance, payable in accordance with the customary payroll practices of the Company applicable to senior executives, in installments not less frequently than monthly; and (B) such continuing coverage under the benefit plans and programs the Executive would have received in the absence of such termination, including, without limitation, coverage under any health insurance plans or programs which are available or provided to senior executives of the Company generally, and at the same cost to Executive, if any, in each case to the extent that the Executive is eligible under the terms of such plans or programs; it being expressly understood and agreed that nothing in this clause (v) shall restrict the ability of the Company to amend or terminate such benefits plans and programs from time to time in its sole and absolute discretion; provided, however, that the Company shall in no event be required to provide any coverage under such benefit plans and programs after such time as the Executive becomes entitled to coverage under the benefit plans and programs of another employer or recipient of the Executive's services (and provided, further, that such entitlement shall be determined without regard to any individual waivers or other arrangements); and (vi) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder. Notwithstanding the foregoing, if and only to the extent that Executive's disability is a trigger for the payment of deferred compensation, as defined in Section 409A of the Code, "disability" shall have the meaning set forth in Section 409A(a)(2)(C) of the Code.

2. Severance in the Event of Certain Terminations of Employment

2.1. Termination for "Cause"; Termination of Employment by the Executive Without Good Reason.

2.1.1. For purposes of this Agreement, "Cause" shall mean (i) the Executive's conviction of a felony or a crime of moral turpitude; or (ii) the Executive's commission of unauthorized acts intended to result in the Executive's personal enrichment at the material expense of the Company; or (iii) the Executive's material violation of the Executive's duties or responsibilities to the Company which constitute willful misconduct or dereliction of duty, provided as to any termination pursuant to Section 2.1.1(iii), a majority of the Compensation Committee of the Board of Directors (or any successor committee thereto) shall first approve such "Cause" termination before the Company effectuates such a termination.

2.1.2. If the Company terminates the Executive for Cause, (i) the Executive shall receive Annual Salary and other benefits (including bonuses awarded or declared but not yet paid) earned and

accrued prior to the effective date of the termination of employment (and reimbursement for expenses incurred prior to the effective date of the termination of employment); (ii) all unvested options shall lapse and terminate immediately and may no longer be exercised; (iii) any unvested Restricted Stock Units shall terminate immediately; (iv) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall be immediately forfeited; and (v) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

2.1.3. The Executive may terminate his employment upon written notice to the Company which specifies an effective date of termination not less than 30 days from the date of such notice. If the Executive terminates his employment and the termination is not covered by Sections 1, 2.2, or 2.3 hereof, (i) the Executive shall receive Annual Salary and other benefits (including bonuses awarded or declared but not yet paid) earned and accrued prior to the effective date of the termination of employment (and reimbursement for expenses incurred prior to the effective date of the termination of employment); (ii) all fully vested and exercisable options granted by the Company to the Executive under any bonus program or otherwise and held by the Executive may be exercised by the Executive for a period of 30 days from and after the date of the Executive's effective date of termination unless such longer period is set forth in the grant agreement evidencing the Options; (iii) any unvested Restricted Stock Units hereafter granted shall terminate immediately; (iv) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall be immediately forfeited; and (v) the Executive shall have no further rights to any compensation or other benefits hereunder on or after the termination of employment, or any other rights hereunder.

2.2. Termination Without Cause; Termination for Good Reason.

2.2.1. For purposes of this Agreement, "Good Reason" shall mean the existence of any one or more of the following conditions that shall continue for more than 45 days following written notice thereof by the Executive to the Company: (i) the material change in or reduction of the Executive's authority, duties and responsibilities, or the assignment to the Executive of duties materially inconsistent with the Executive's position or positions with the Company; (ii) a reduction in the Executive's then current Annual Salary without the Executive's consent; or (iii) the relocation of the Executive's principal location of employment more than fifty (50) miles from the Executive's current site without the Executive's consent.

2.2.2. If the Company terminates the Executive's employment and the termination is not covered by Section 1, 2.1 or 2.3 hereof: (i) the Executive shall receive Annual Salary and other benefits (including bonuses awarded or declared but not yet paid) earned and accrued under this Agreement prior to the effective date of the termination of employment (and reimbursement for expenses incurred prior to the effective date of the termination of employment); (ii) the Executive shall receive for two (2) years after termination of employment, (A) the Annual Salary that the Executive was receiving at the time of such termination of employment, payable in accordance with the customary payroll practices of the Company applicable to senior executives, in installments not less frequently than monthly, and (B) such continuing coverage under the benefit plans and programs the Executive would have received in the absence of such termination, including, without limitation, coverage under any health insurance plans or programs which are available or provided to senior executives of the Company generally, and at the same cost to Executive, if any, in each case to the

extent that the Executive is eligible under the terms of such plans or programs; it being expressly understood and agreed that nothing in this clause (ii) shall restrict the ability of the Company to amend or terminate such benefits plans and programs from time to time in its sole and absolute discretion; provided, however, that the Company shall in no event be required to provide any coverage under such benefit plans and programs after such time as the Executive becomes entitled to coverage under the benefit plans and programs of another employer or recipient of the Executive's services (and provided, further, that such entitlement shall be determined without regard to any individual waivers or other arrangements); (iii) outstanding unvested Options previously or hereafter granted to the Executive and held by the Executive shall vest and become immediately exercisable and all Options held by the Executive on the effective date of termination may be exercised by the Executive for a period of 30 days from and after the date of the Executive's effective date of termination unless such longer period is set forth in the grant agreement evidencing the Options; (iv) the Executive shall become vested in any pension or other deferred compensation other than pension or deferred compensation under a plan intended to be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended; (v) any Restricted Stock Units granted under any bonus program or otherwise granted shall vest and be free from restrictions on transferability (other than restrictions on transfer imposed under Federal and State securities laws) as of the date of the Executive's effective date of termination; (vi) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall become non-forfeitable and shall be fully vested and transferable as of the date of the Executive's effective date of termination; and (vii) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

2.2.3. If the Executive terminates his employment for Good Reason and such termination is not covered by Section 2.3 hereof, (i) the Executive shall receive Annual Salary and other benefits (including bonuses awarded but not yet paid) earned and accrued prior to the effective date of the termination of employment (and reimbursement for expenses incurred prior to the effective date of the termination of employment); (ii) the Executive shall receive for a period of two (2) years after termination of employment (A) the Annual Salary that the Executive was receiving at the time of such termination of employment, payable in accordance with the customary payroll practices of the Company applicable to senior executives, in installments not less frequently than monthly, and (B) such continuing coverage under the benefit plans and programs the Executive would have received in the absence of such termination, including, without limitation, coverage under any health insurance plans or programs which are available or provided to senior executives of the Company generally, and at the same cost to Executive, if any, in each case to the extent that the Executive is eligible under the terms of such plans or programs; it being expressly understood and agreed that nothing in this clause (ii) shall restrict the ability of the Company to amend or terminate such benefits plans and programs from time to time in its sole and absolute discretion; provided, however, that the Company shall in no event be required to provide any coverage under such benefit plans and programs after such time as the Executive becomes entitled to coverage under the benefit plans and programs of another employer or recipient of the Executive's services (and provided, further, that such entitlement shall be determined without regard to any individual waivers or other arrangements); (iii) all outstanding unvested Options previously or hereafter granted to the Executive under any benefit program shall vest and become immediately exercisable unless such longer period is set forth in the grant agreement evidencing the Options; (iv) the Executive shall become vested in any pension or other deferred compensation other than pension or deferred compensation under a plan intended to be qualified

under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended; (v) any Restricted Stock Units granted under any bonus program or otherwise granted shall vest and be free from restrictions on transferability (other than restrictions on transfer imposed under Federal and State securities laws); (vi) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall become non-forfeitable and shall be fully vested and transferable; and (vii) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment, or any other rights hereunder.

2.3. Severance upon a Termination after Change of Control.

2.3.1. For purposes of this Agreement, "Change of Control" means the occurrence of one or more of the following: (i) a "person" or "group" within the meaning of sections 13(d) and 14(d) of the Securities and Exchange Act of 1934 (the "Exchange Act") becomes the "beneficial owner" (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company (including options, warrants, rights and convertible and exchangeable securities) representing 30% or more of the combined voting power of the Company's then outstanding securities in any one or more transactions unless approved by at least two-thirds of the Board of Directors then serving at that time; provided, however, that purchases by employee benefit plans of the Company and by the Company or its affiliates shall be disregarded; or (ii) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the operating assets of the Company; or (iii) a merger or consolidation, or a transaction having a similar effect, where (A) the Company is not the surviving corporation, (B) the majority of the common stock of the Company is no longer held by the stockholders of the Company immediately prior to the transaction, or (C) the Company's common stock is converted into cash, securities or other property (other than the common stock of a company into which the Company is merged), unless such merger, consolidation or similar transaction is with a subsidiary of the Company or with another company, a majority of whose outstanding capital stock is owned by the same persons or entities who own a majority of the Company's common stock at such time; or (iv) at any annual or special meeting of stockholders of the Company at which a quorum is present (or any adjournments or postponements thereof), or by written consent in lieu thereof, directors (each a "New Director" and collectively the "New Directors") then constituting a majority of the Company's Board of Directors shall be duly elected to serve as New Directors and such New Directors shall have been elected by stockholders of the Company who shall be an (I) "Adverse Person(s)"; or (II) "Acquiring Person(s)" (as each of the terms set forth in (I) and (II) hereof are defined in that certain Amended and Restated Rights Agreement, dated as of December 3, 2002, between the Company and American Stock Transfer & Trust Company, as Rights Agent).

2.3.2. If within the one (1) year period commencing upon the effective date of any Change of Control, the Executive is terminated by the Company or a successor entity and the termination is not covered by Section 1 or 2.1 hereof, or, within such one (1) year period, the Executive elects to terminate his employment after the Company or a successor entity materially reduces or changes the Executive's authority, duties and responsibilities or the Company assigns the Executive duties materially inconsistent with the Executive's position or positions with the Company or a successor entity immediately prior to such Change of Control, (i) the Executive shall receive Annual Salary and other benefits (including bonuses awarded or declared but not yet paid) earned and accrued under this Agreement prior to the effective date of the termination of employment (and reimbursement for expenses incurred prior to the effective date of the termination of employment); (ii) the Executive

shall receive (A) for two (2) years after termination of employment; the Annual Salary that the Executive was receiving at the time of such termination of employment, payable in accordance with the customary payroll practices of the Company applicable to senior executives, in installments not less frequently than monthly, and (B) for two (2) years after termination of employment, such continuing coverage under the benefit plans and programs the Executive would have received in the absence of such termination, including, without limitation, coverage under any health insurance plans or programs which are available or provided to senior executives of the Company generally, and at the same cost to Executive, if any, in each case to the extent that the Executive is eligible under the terms of such plans or programs; it being expressly understood and agreed that nothing in this clause (ii) shall restrict the ability of the Company to amend or terminate such benefits plans and programs from time to time in its sole and absolute discretion; provided, however, that the Company shall in no event be required to provide any coverage under such benefit plans and programs after such time as the Executive becomes entitled to coverage under the benefit plans and programs of another employer or recipient of the Executive's services (and provided, further, that such entitlement shall be determined without regard to any individual waivers or other arrangements); (iii) all outstanding unvested Options previously or hereafter granted under any bonus program or otherwise and held by the Executive shall vest and become immediately exercisable and shall otherwise be exercisable in accordance with their terms; (iv) the Executive shall become vested in any pension or other deferred compensation other than pension or deferred compensation under a plan intended to be qualified under Section 401(a) or 403(a) of the Internal Revenue Code of 1986, as amended; (v) any Restricted Stock Units shall vest and be free from restrictions on transferability (other than restrictions on transfer imposed under Federal and State securities laws); (vi) any Stock Grants made to Executive under any bonus program that are subject to forfeiture shall become non-forfeitable and shall be fully vested and transferable as of the date of the Executive's effective date of termination; and (vii) the Executive shall have no further rights to any other compensation or benefits hereunder on or after the termination of employment or any other rights hereunder.

2.3.3. The payments, benefits and vesting, if any, to which Executive is entitled under Section 2.3.2 (and all other payments, benefits and vesting to which Executive may be entitled) shall be provided without regard to whether the deductibility of such payments, benefits and vesting would be limited or precluded by Section 280G of the Internal Revenue Code ("Section 280G") and without regard to whether such payments (or any other payment, benefits and vesting) would subject Executive to the federal excise tax levied on certain "excess parachute payments" under Section 4999 of the Code (the "Excise Tax"). If any portion of the payments, benefits and vesting to or for Executive's benefit (including, but not limited to, payments, benefits and vesting under this Agreement but determined without regard to this paragraph) constitutes an "excess parachute payment" within the meaning of Section 280G (the aggregate of such payments being hereinafter referred to as the "Excess Parachute Payments"), the Company shall promptly pay to Executive an additional amount (the "gross-up payment") that after reduction for all taxes (including but not limited to the Excise Tax) with respect to such gross-up payment equals the Excise Tax with respect to the Excess Parachute Payments; *provided*, that to the extent any gross-up payment would be considered "deferred compensation" for purposes of Section 409A of the Internal Revenue Code ("Section 409A"), the manner and time of payment, and the provisions of this Section shall be adjusted to the extent necessary (but only to the extent necessary) to comply with the requirements of Section 409A with respect to such payment so that the payment does not give rise to the interest or additional tax amounts described at Section 409A(a)(1)(B) or Section 409A(b)(4) of the Code. The determination

as to whether Executive's payments, benefits and vesting include Excess Parachute Payments and, if so, the amount of such, the amount of any Excise Tax owed with respect thereto, and the amount of any gross-up payment shall be made at the Company's expense by such certified public accounting firm as the Board of Directors may designate prior to a Change of Control.

3. Other Provisions

3.1 To the extent applicable, it is intended that this Agreement comply with the provisions of Section 409A in accordance with the provisions below:

- a) The Agreement will be administered and interpreted in a manner consistent with this intent, and any provision that would cause the Agreement to fail to satisfy Section 409A will have no force and effect until amended to comply therewith (which amendment may be retroactive to the extent permitted by Section 409A). In addition, the parties shall cooperate fully with one another to ensure compliance with Section 409A, including, without limitation, adopting amendments to arrangements subject to Section 409A and operating such arrangements in compliance with Section 409A.
- b) Notwithstanding any other provision of the Agreement to the contrary, to the extent any payment or benefit to be paid or provided to Executive pursuant to the Agreement as a result of the termination of his employment constitutes "non-qualified deferred compensation" subject to Section 409A, such payment or benefit shall be paid or provided to the Executive under the Agreement at such time as the Executive would be considered to have incurred a "separation from service" from the Company within the meaning of Section 409A (without regard to whether such "separation from service" comes before, after or coincides with his termination of employment). For purposes of clarification, this paragraph shall not cause a forfeiture of any payment or benefits on the part of Executive, but shall only act as a delay until such time as a "separation from service" occurs.
- c) Notwithstanding any other provisions of the Agreement to the contrary, if any amount (including imputed income) to be paid to Executive pursuant to the Agreement as a result of Executive's termination of employment is "deferred compensation" subject to Section 409A, and if Executive is a "specified employee" (as defined under Section 409A) as of the termination date, then, to the extent necessary to avoid the imposition of additional tax or other penalties under Section 409A, the payment of benefits, if any, scheduled to be paid by the Company to Executive hereunder during the first six-month period following the date of employment termination shall not be paid until the date which is the first business day which comes six months and a one day after the date the Executive has incurred a "separation from service" within the meaning of Section 409A. Any deferred compensation payments delayed in accordance with the terms of this Section shall be paid in a lump sum on the first day following such six-month and one day period.

- d) With respect to items eligible for reimbursement under the terms of the Agreement, (i) the amount of such expenses eligible for reimbursement in any taxable year shall not affect the expenses eligible for reimbursement in another taxable year, (ii) no such reimbursement may be exchanged or liquidated for another payment or benefit, and (iii) any reimbursements of such expenses shall be made no later than the end of the calendar year following the calendar in which the related expenses were incurred, except, in each case, to the extent that the right to reimbursement does not provide for a “deferral of compensation” within the meaning of Section 409A.
- e) It is intended that each installment of payments and benefits provided under the Agreement shall be treated as a separate identified payment for purposes of Section 409A. Neither the Company nor Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.
- f) The Company agrees to act in good faith under this Section 3.1 based on the guidance available from the Treasury Department and Internal Revenue Service respecting the proper interpretation of Section 409A, but nothing in this Section 3.1 shall constitute, or be construed as, a covenant by the Company that no payment will be made or benefit will be provided which will be subject to taxation under Section 409A or as a guarantee or indemnity by the Company with respect to the tax consequences to any such payment or benefit.

3.2. Severability. If it is determined that any of the provisions of this Agreement, or any part thereof, is invalid or unenforceable, the remainder of the provisions of this Agreement shall not thereby be affected and shall be given full effect, without regard to the invalid portions thereof.

3.3. Enforceability; Jurisdictions. Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement that is not resolved by Executive and the Company (or its subsidiaries or affiliates, where applicable) shall be submitted to arbitration in New York, New York in accordance with New York law and the procedures of the American Arbitration Association. The determination of the arbitrator(s) shall be conclusive and binding on the Company (or its subsidiaries or affiliates, where applicable) and Executive and judgment may be entered on the arbitrator(s)' award in any court having jurisdiction. The cost of any arbitration hereunder shall be borne by the Company.

3.4. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be delivered personally, telegraphed, telexed, sent by facsimile transmission or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, telegraphed, telexed or sent by facsimile transmission or, if mailed, five days after the date of deposit in the United States mails as follows:

(i) If to the Company, to:

BioScrip, Inc.
100 Clearbrook Road
Elmsford, New York 10523
Attention: Assistant General Counsel

with a copy to:

King & Spalding, LLP
1180 Peachtree Street
Atlanta, GA 30309
Attention: Shelly Sharp Blews

(ii) If to the Executive, to:

Richard M. Smith

with a copy to:

Jennifer B. Rubin
Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.
666 Third Avenue
New York, NY 10017

Any such person may by notice given in accordance with this Section 3.4 to the other parties hereto designate another address or person for receipt by such person of notices hereunder.

3.5. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

3.6. Waivers and Amendments. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege nor any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.

3.7. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPALS OF CONFLICTS OF LAW.

3.8. Assignment. This Agreement, and the Executive's rights and obligations hereunder, may not be assigned by the Executive; any purported assignment by the Executive in violation hereof shall be null and void. In the event of any sale, transfer or other disposition of all or substantially all of the Company's assets or business, whether by merger, consolidation or otherwise, the Company (without limiting the Executive's rights under Section 2.3) may assign this Agreement and its rights hereunder.

3.9. Withholding. The Company shall be entitled to withhold from any payments or deemed payments any amount of tax withholding required by law.

3.10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, heirs, executors and legal representatives.

3.11. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of two copies hereof each signed by one of the parties hereto.

3.12. Survival. Anything contained in this Agreement to the contrary notwithstanding, the provisions hereof shall survive any termination of the Executive's employment hereunder.

3.13. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

3.14. Supersedes Prior Agreements. Upon execution and delivery of this Agreement, this Agreement shall supersede in its entirety any and all prior agreements with respect to the Company's and the Executive's respective rights and obligations upon the termination of the Executive's employment with the Company.

IN WITNESS WHEREOF, the parties hereto have signed their names as of the day and year first above written.

BIOSCRIP, INC.

By:

Barry A. Posner,
Executive Vice President

Richard M. Smith