CUMBERLAND PHARMACEUTICALS INC
Form S-1/A
July 17, 2009

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As filed with the Securities and Exchange Commission on July 17, 2009
Registration No. 333-142535

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

Amendment No. 19
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Cumberland Pharmaceuticals Inc.
(Exact name of registrant as specified in its charter)

Tennessee	**2834**	**62-1765329**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification No.)*

2525 West End Avenue, Suite 950
Nashville, Tennessee 37203
(615) 255-0068
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

A.J. Kazimi
Chairman and CEO
2525 West End Avenue, Suite 950
Nashville, Tennessee 37203
(615) 255-0068
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed offering to the public: As soon as practicable after this registration statement becomes effective.

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: o

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

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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The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS SUBJECT TO COMPLETION July 17, 2009

5,000,000 Shares

Common Stock

This is the initial public offering of our common stock. No public market currently exists for our common stock. We are offering all of the 5,000,000 shares of our common stock offered by this prospectus. We expect the public offering price to be between $19.00 and $21.00 per share.

We have applied to have our common stock included for quotation on The Nasdaq Global Market under the symbol CPIX .

Investing in our common stock involves a high degree of risk. Before buying any shares, you should carefully read the discussion of material risks of investing in our common stock in Risk factors beginning on page 7 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

	Per share	Total
Public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds, before expenses, to us	$	$

The underwriters may also purchase up to an additional 750,000 shares of our common stock at the public offering price, less the underwriting discounts and commissions payable by us, to cover over-allotments, if any, within 30 days from the date of this prospectus. If the underwriters exercise this option in full, the total underwriting discounts and commissions will be $, and our total proceeds, before expenses, will be $.

The underwriters are offering the common stock as set forth under Underwriting. Delivery of the shares will be made on or about , 2009.

UBS Investment Bank **Jefferies & Company** **Wells Fargo Securities**

Morgan Joseph

The date of this prospectus is , 2009.

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized anyone to provide you with additional information or information different from that contained in this prospectus. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of shares of our common stock.

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Through and including , 2009 (the 25th day after the date of this prospectus), federal securities laws may require all dealers that effect transactions in our common stock, whether or not participating in this offering, to deliver a prospectus. This is in addition to the dealers obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Caldolor™, Acetadote® and the Cumberland Pharmaceuticals logo are trademarks or service marks of Cumberland Pharmaceuticals Inc. All other trademarks or service marks appearing in this prospectus are the property of their respective holders.

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Prospectus summary

This summary highlights select contents of this prospectus, and may not contain all of the information that you should consider before investing in our common stock. This summary should be read together with the more detailed information found elsewhere in this prospectus, including Risk factors and our consolidated financial statements and related notes beginning on page F-1. References in this prospectus to Cumberland, we, us and our refer to Cumberland Pharmaceuticals Inc. and our consolidated subsidiaries, unless the context indicates otherwise.

OUR COMPANY

We are a profitable and growing specialty pharmaceutical company focused on the acquisition, development and commercialization of branded prescription products. Our primary target markets are hospital acute care and gastroenterology, which are characterized by relatively concentrated physician prescriber bases that we believe can be penetrated effectively by relatively small, targeted sales forces. In June 2009, we received FDA approval for Caldolor, our lead product for use in the hospital market. In addition to Caldolor, we market and sell Acetadote and Kristalose through our dedicated hospital and gastroenterology sales forces, which together comprise 66 sales representatives and managers as of July 1, 2009. For the years 2006, 2007 and 2008, our net revenue was $17.8 million, $28.1 million and $35.1 million, respectively, and our net income was $4.4 million, $4.0 million and $4.8 million, respectively.

Since our inception in 1999, we have successfully funded the acquisition and development of our product portfolio with limited external investment, while maintaining profitable operations over the past five years. Unlike many emerging pharmaceutical and biotechnology companies, we have established both product development and commercialization capabilities, and believe our organizational structure can be expanded efficiently to accommodate our expected growth. Our management team consists of pharmaceutical industry veterans experienced in business development, clinical and regulatory affairs, and sales and marketing.

OUR PRODUCTS

Our key products include:

Product	Indication	Delivery	Status
Caldolor™	Pain and Fever	Injectable	FDA Approved
Acetadote®	Acetaminophen Poisoning	Injectable	Marketed
Kristalose®	Chronic and Acute Constipation	Oral Solution	Marketed

Caldolor, our intravenous formulation of ibuprofen, is the first injectable product approved in the United States for the treatment of both pain and fever. To support Caldolor s regulatory approval, we completed a comprehensive clinical program, which culminated in an NDA filing in December 2008. We received FDA approval to market Caldolor in the United States in June 2009. We plan to promote Caldolor in the United States through a dedicated hospital sales force of 77 experienced representatives and managers and internationally through alliances with marketing partners. We are currently preparing for the commercial launch of Caldolor in the United States, which we expect to initiate in the fourth quarter of 2009. We believe Caldolor represents our most significant market

opportunity to date.

According to IMS Health, the U.S. market for injectable analgesics, or pain relievers, exceeded $332 million, or 681 million units, in 2008. This market consists primarily of generic opioids and the non-steroidal anti-inflammatory drug ketorolac. Despite having a poor safety profile, usage of ketorolac has grown from approximately 38 million units in 2004, or 5% of the market, to approximately 46 million units in 2008, or 7% of the market, according to IMS Health. Injectable opioids such as morphine and meperidine accounted for approximately 635 million units sold in 2008. While opioids

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are widely used for acute pain management, they are associated with a variety of side effects including sedation, nausea, vomiting, headache, cognitive impairment and respiratory depression. Based on the results of our clinical studies to date, we believe Caldolor represents a potentially safer alternative to ketorolac, the only non-opioid injectable pain relief drug available in the U.S. Caldolor is the only approved injectable treatment for fever in the U.S.

Acetadote is the only intravenous formulation of N-acetylcysteine, or NAC, approved in the U.S. for the treatment of acetaminophen poisoning. Though safe at recommended doses, acetaminophen can cause liver damage with excessive use. Acetaminophen overdose is the most common cause of acute liver failure in adults in the U.S. According to the American Association of Poison Control Centers National Poison Data System, acetaminophen was the leading cause of toxic drug ingestions reported to poison control centers in the U.S. in 2007.

NAC is accepted worldwide as the standard of care for treating acetaminophen overdose, which is well-documented and is supported by a 2005 article in volume 17 of *Current Opinion in Pediatrics*. Until our 2004 launch of Acetadote, the only FDA-approved form of NAC available in the U.S. was an oral preparation. Medical literature suggests that, for a number of patients, IV treatment is the only reasonable route of administration due to nausea and vomiting associated with the administration of oral NAC for acetaminophen overdose. Sales of Acetadote have increased consistently since we launched the product in June 2004. According to Wolters Kluwer Health Source[tm] Pharmaceutical Audit Suite, Acetadote sales to hospitals grew 33% from 2007 to 2008. Total sales to hospitals in 2008 were $24.3 million. We believe that we can continue to expand market share, and that our Acetadote sales and marketing platform should help facilitate the anticipated launch of Caldolor.

Kristalose, a prescription laxative product, is a crystalline form of lactulose designed to enhance patient acceptance and compliance. Based on data from IMS Health, the U.S. prescription laxative market has grown rapidly over the past few years, increasing from approximately $269 million in 2004 to $344 million in 2008, representing a compound annual growth rate of 6%. Wholesaler sales of Kristalose to pharmacies were $9.4 million in 2008. In April 2006, we acquired exclusive U.S. commercialization rights to Kristalose, subsequently assembling a dedicated field sales force and re-launching the product in September 2006 under the Cumberland brand. We believe that we can increase market share for Kristalose given its many positive, competitive attributes including better taste, consistency, ease of use and cost relative to competing products.

Early-stage product candidates. Our pre-clinical product candidates are being developed by Cumberland Emerging Technologies, Inc., or CET, our 85%-owned subsidiary. CET collaborates with leading research institutions to identify and advance the development of promising pre-clinical product candidates within our target segments. Current CET projects include an improved treatment for fluid buildup in the lungs of cancer patients, an anti-infective for treating fungal infections in immuno-compromised patients and a novel treatment to reduce or eliminate asthmatic reaction in pediatric patients.

OUR COMPETITIVE STRENGTHS

We believe our key competitive strengths include the following:

Ø A significant product opportunity in Caldolor;

Ø Strong growth potential of our existing marketed products, Acetadote and Kristalose;

Ø Our focus on underserved niche markets, including hospital acute care and gastroenterology;

Ø A profitable business with a history of fiscal discipline; and

Ø Extensive management expertise in business development, clinical and regulatory affairs, and sales and marketing.

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OUR STRATEGY

Our objective is to develop, acquire and commercialize branded pharmaceutical products for specialty physician market segments. Our strategy to achieve this objective includes the following key elements:

- Successfully launch and commercialize Caldolor;
- Maximize sales of our marketed products, Acetadote and Kristalose;
- Expand our product portfolio by acquiring rights to additional marketed products and late-stage product candidates;
- Expand our dedicated hospital and gastroenterology sales forces; and
- Develop a pipeline of early-stage products through CET, our majority-owned subsidiary.

RISKS AFFECTING US

Our business is subject to numerous risks that could prevent us from successfully implementing our business strategy. These and other risks are discussed further in the section entitled Risk factors immediately following this prospectus summary, and include the following:

- The commercial launch of Caldolor is subject to many internal and external challenges and if we cannot overcome these challenges in a timely manner, our future revenues and profits could be materially and adversely affected;
- The FDA has approved Caldolor as a treatment for the reduction of pain and fever in adults in the U.S. and any attempt by us to expand the potential market for Caldolor is subject to limitations;
- Sales of Acetadote and Kristalose currently generate almost all of our revenues. An adverse development regarding either of these products could have a material and adverse impact on our future revenues and profitability;
- If any manufacturer we rely upon fails to produce our products and product candidates in the amounts we require on a timely basis, or fails to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the commercialization of Caldolor, or may be unable to meet demand for the product supplied by the manufacturer and may lose potential revenues;
- We are dependent on a variety of other third parties. If these third parties fail to perform as we expect, our operations could be disrupted and our financial results could suffer; and
- If we are unable to maintain and build an effective sales and marketing infrastructure, we will not be able to successfully commercialize and grow our products and product candidates.

CORPORATE INFORMATION

We were incorporated in Tennessee in 1999. Our principal executive offices are located at 2525 West End Avenue, Suite 950, Nashville, Tennessee 37203, and our telephone number is (615) 255-0068. Our website address is www.cumberlandpharma.com. The information on, or accessible through, our website is not part of this prospectus.

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The offering

Common stock we are offering	5,000,000 shares
Common stock to be outstanding after this offering	17,091,191 shares
Fully diluted common stock to be outstanding after this offering	23,617,523 shares
Use of proceeds	We estimate that the net proceeds to us from this offering will be approximately $89.1 million, or approximately $103.1 million if the underwriters exercise their over-allotment option in full, based on an assumed initial public offering price of $20.00 per share, the midpoint of the price range on the cover of the prospectus. We expect to use the net proceeds from this offering primarily for potential acquisitions and product development. We may use the proceeds from this offering for the commercial introduction of Caldolor, as well as additional development of that product. We may also use the proceeds from this offering to expand operations, including expansion of our sales forces, for reduction of bank debt and for general corporate purposes.
Proposed Nasdaq Global Market Symbol	CPIX

Common stock to be outstanding after this offering is based on 12,091,191 shares outstanding as of March 31, 2009 and excludes:

- 6,550 shares of unvested restricted common stock;
- 7,207,247 shares of common stock issuable upon exercise of outstanding options at a weighted-average exercise price of $2.04 per share;
- 68,958 shares of common stock issuable upon exercise of outstanding warrants at a weighted- average exercise price of $6.17 per share;
- 2,361,322 shares of common stock reserved for future issuance under our current incentive plans; and
- 2,924,769 net shares issued in connection with the expected Option Transaction as described in the section entitled Certain relationships and related party transactions.

Fully diluted common stock to be outstanding after this offering represents the sum of the 17,091,191 shares to be outstanding after this offering, 6,550 shares of unvested restricted stock and the 7,276,205 shares of common stock issuable upon exercise of options and warrants outstanding as of March 31, 2009 of which we have received notice that 4,377,090 options will be exercised immediately prior to this offering pursuant to the Option Transaction. The number of outstanding options and warrants is reduced by the 756,423 shares of common stock that could theoretically be repurchased with the approximately $15.1 million in aggregate exercise price of such options and warrants at a repurchase price equal to the assumed initial public offering price of $20.00 per share, which is the midpoint of the range listed on the cover page of this prospectus.

Unless otherwise indicated, the share information in this prospectus is as of March 31, 2009 and has been adjusted to reflect or assume the following:

Ø the conversion of all outstanding shares of our preferred stock into 1,625,498 shares of common stock;

Ø a 2-for-1 stock split of our common stock, which became effective on July 6, 2007; and

Ø no exercise of the underwriters over-allotment option.

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Summary consolidated financial data

The tables below summarize our financial data as of the dates and for the periods indicated. You should read the following information together with the more detailed information contained in Selected consolidated financial data, Management s discussion and analysis of financial condition and results of operations and our consolidated financial statements and the accompanying notes included elsewhere in this prospectus.

The pro forma statement of income and balance sheet data below gives effect to the conversion of 812,749 shares of our preferred stock into 1,625,498 shares of common stock. The pro forma as adjusted balance sheet data below gives further effect to the sale of 5,000,000 shares of common stock that we are offering at an assumed initial public offering price of $20.00 per share, after deducting underwriting discounts and commissions and estimated offering expenses to be paid by us.

	Years Ended December 31,			Three Months Ended March 31,	
Statement of income data:	**2006**	**2007**	**2008**	**2008**	**2009**
	(in thousands, except per share data)			**(unaudited)**	
Net revenues:					
Acetadote	$ 10,722	$ 18,817	$ 25,439	$ 5,799	$ 7,133
Kristalose	6,511	9,013	9,469	2,478	2,229
Other[1]	582	234	167	26	43
Total net revenues[2]	$ 17,815	$ 28,064	$ 35,075	$ 8,304	$ 9,405
Operating income	$ 2,224	$ 6,725	$ 7,282	$ 1,794	$ 2,117
Net income before income taxes	1,708	6,469	7,310	1,762	2,037
Net income attributable to common shareholders	4,404	4,044	4,766	1,395	1,218
Earnings per share attributable to common shareholders basic	$ 0.45	$ 0.40	$ 0.47	$ 0.14	$ 0.12
Earnings per share attributable to common shareholders diluted	$ 0.27	$ 0.24	$ 0.29	$ 0.09	$ 0.08
Pro forma earnings per share attributable to common shareholders basic			$ 0.41		$ 0.10
Pro forma earnings per share attributable to common shareholders diluted			$ 0.29		$ 0.08
Weighted-average shares outstanding basic	9,797	10,032	10,143	10,094	10,321
Weighted-average shares outstanding diluted	16,454	16,582	16,540	16,412	16,127
Pro forma weighted-average shares outstanding basic			11,768		11,947
Pro forma weighted-average shares outstanding diluted			16,540		16,127

	As of March 31, 2009

Balance sheet data:	Actual	Pro Forma	Pro Forma as Adjusted[3]
		(in thousands) (unaudited)	
Cash and cash equivalents	$ 10,072	$ 10,072	$ 95,006
Working capital	11,262	11,262	97,029
Total assets	30,986	30,986	115,919
Total long-term debt and other long-term obligations (including current portion)[4]	7,261	7,261	3,094
Convertible preferred stock	2,604		