

Patient Safety Technologies, Inc
Form 10-K/A
February 13, 2006

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

**FORM 10-K/A
Amendment No. 2**

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2004

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM TO

COMMISSION FILE NUMBER: 1-9727

**PATIENT SAFETY TECHNOLOGIES, INC.
(F/K/A FRANKLIN CAPITAL CORPORATION)
(Exact name of registrant as specified in its charter)**

Delaware (State of Incorporation)	13-3419202 (I.R.S. Employer Identification Number)
100 Wilshire Boulevard, Suite 1500 Santa Monica, California (Address of principal executive offices)	90401 (Zip Code)

Registrant's telephone number, including area code:(310) 752-1416

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$1.00 per share	The American Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements

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incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. "

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2) Yes No .

The aggregate market value of common stock held by non-affiliates of the Registrant on June 30, 2004, based on the closing price on that date of \$4.00 on the American Stock Exchange, was \$3,142,092. For the purposes of calculating this amount only, all directors and executive officers of the Registrant have been treated as affiliates. There were 1,758,776 shares of the Registrant's common stock outstanding as of March 28, 2005.

FRANKLIN CAPITAL CORPORATION**FORM 10-K FOR THE FISCAL YEAR
ENDED DECEMBER 31, 2004****TABLE OF CONTENTS**

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PART I

Item 1. Business

General

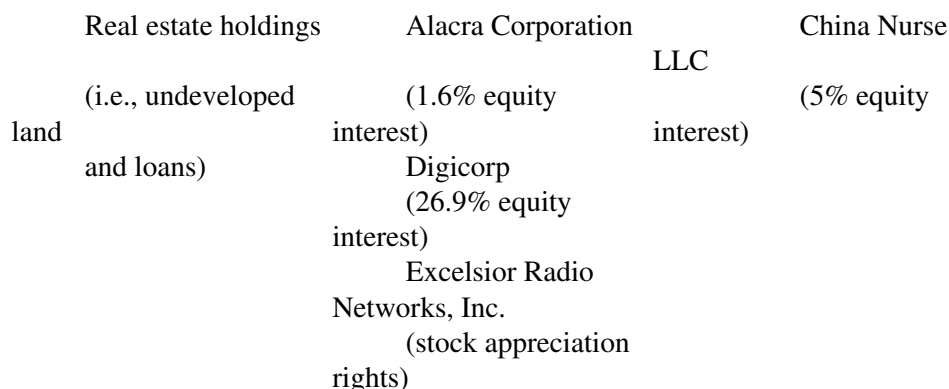
Franklin Capital Corporation (“Franklin”, or the “Company”) is a publicly traded, non-diversified internally managed, closed-end investment company that elected to be treated as a business development company (“*BDC*”) under the Investment Company Act of 1940, as amended (the “*1940 Act*”) on November 18, 1997. We were incorporated on March 31, 1987 as a Delaware corporation and have been listed on the American Stock Exchange (“*AMEX*”) since October 1, 1987. We are currently involved in providing capital and managerial assistance to early stage companies in the medical products, health care solutions, financial services and real estate industries.

We anticipate that in the process of identifying opportunities that fall within our areas of focus we will often take a controlling interest in an entity, or alternatively establish a new entity to contribute assets that we acquire, which we believe will provide the basis for a compelling business. This may necessitate the need for capital investment into the entity and or services such as (i) identification of outside financing sources; (ii) providing capital introductions of financial institutions and/or strategic investors; (iii) evaluation and recommendation of candidates for appointment as officers, directors or employees; (iv) making personnel of the Company available to provide services on a temporary or permanent basis; or (v) evaluation and/or negotiation of merger or sale opportunities

In the first half of 2004, we focused our investment strategy on the achievement of capital appreciation through long-term equity investments in start-up and early stage companies in the radio and telecommunications industries. However, beginning in June 2004, we undertook a strategic restructuring and recapitalization plan (the “*Restructuring Plan*”) which ultimately culminated in a subsequent change in control in our management and a shift in our business focus away from the radio and telecommunications industries toward the medical products, health care solutions, financial services and real estate industries. For more information see, “*Summary of 2004 Restructuring Plan and Change in Control.*”

As part of the Restructuring Plan we formed two wholly-owned subsidiaries: Franklin Capital Properties, LLC, (“Franklin Capital”) a real estate development and management company and Franklin Medical Products, LLC, a healthcare consulting services company. Effective February 23, 2005, Franklin Medical Products, LLC changed its name to Patient Safety Consulting Group, LLC (“PSCG”).

Our corporate structure at December 31, 2004, including our subsidiaries and our interests in public and private companies that we have purchased, is set forth depicted in the following diagram:



Since both Franklin Capital and PSCG are wholly-owned subsidiaries we maintain control of the entities with full rights to their assets. However, in the event we elect to partner with a strategic third party the Limited Liability Company structure provides more flexibility than a traditional corporation with an equivalent level of liability protection. Further, by establishing distinct entities we believe that we are better able to segregate our core patient safety business from our other business segments.

Overview of our Business Plan and Restructuring

The Restructuring Plan shifted our primary investment focus from the radio and telecommunications industry to the medical products, health care solutions, financial services and real estate industries. Accordingly, our primary investment objective has also shifted and is now focused on maximizing long-term capital growth through the appreciation of our investments in health care and medical products related companies, and to a lesser extent in the financial services and real estate industries. Franklin Capital Properties, LLC, a real estate development and management company and Franklin Medical Products, LLC, a healthcare consulting services company, both wholly-owned subsidiaries of Franklin, were created to augment our investments in these industries.

The Company and its operating subsidiaries are currently engaged in the acquisition of controlling interests in companies and research and development of products and services focused on the health care and medical products field, particularly, the patient safety market, as well as the financial services and real estate industries.

On February 25, 2005, in furtherance of the implementation of the Company's Restructuring Plan the Company purchased SurgiCount, a privately held, California-based developer of patient safety devices. SurgiCount is the Company's first acquisition in its plan to become a leader in what it believes to be the billion dollar patient safety field market and management believes that the acquisition is a significant milestone in the Company's plan to shift its focus from radio and telecommunications to products and services targeting patient safety.

Given the changing nature of our business and investment focus from investing, reinvesting, owning, holding, or trading in investment securities in the radio and telecommunications industries toward that of an operating company whose focus will be on acquisitions of controlling investments in operating companies and assets in the healthcare and medical products industries, as well as the financial services and real estate industries, we believe that the regulatory regime governing BDC's is no longer appropriate and will hinder our future growth. Accordingly, among other things, we are seeking shareholder approval at the upcoming annual meeting to withdraw our election to be treated as a BDC. For more information see, "*Withdrawal of the Company's election to be treated as a BDC.*"

Milton "Todd" Ault III and Louis Glazer, M.D., Ph. G. currently serve as the principal executives in the management group responsible for the operations and allocation of the resources of the Company and its subsidiaries. Messrs. Ault and Glazer, oversee and coordinate the activities of the Company's health care, medical products, financial services and real estate companies.

Our capital is generally used to finance research and development of products in the health care and patient safety markets, organic growth, acquisitions, recapitalizations and working capital. Our investment decisions are based on extensive analysis of potential portfolio companies' business operations supported by an in-depth understanding of the quality of their revenues and cash flow potential, variability of costs and the inherent value of their assets, including proprietary intangible assets and intellectual property.

Our target industries are heavily regulated. In the U.S., the principal authority regulating the operations of our medical companies is the Food and Drug Administration ("*FDA*"). The FDA regulates the safety and efficacy of the products we offer, our research quality, our manufacturing processes and our promotion and advertising. In addition, we are also currently subject to the requirements of the 1940 Act applicable to BDC's. For more information see "*BDC and Healthcare Regulation*" below.

Withdrawal of the Company's election to be treated as a BDC

General

On December 30, 2004, the Board unanimously approved a proposal to authorize the Board to withdraw the Company's election to be treated as a BDC as soon as practicable so that it may begin conducting business as an operating company rather than an investment company subject to the 1940 Act. Such proposal is scheduled to be voted upon by stockholders at the company's Annual Meeting.

The Board believes that given the changing nature of the Company's business and investment focus from investing, reinvesting, owning, holding, or trading in investment securities in the radio and telecommunications industries toward that of an operating company whose focus will be on acquisitions of controlling investments in operating companies and assets in the target industries, that the regulatory regime governing BDC's is no longer appropriate and will hinder the Company's future growth. In addition, the Board believes that the Company will not be required to be regulated under the 1940 Act under these circumstances.

Over the years, since the Company commenced operating as a BDC, the business, regulatory and financial climates have shifted gradually but greatly, making operations as a BDC more challenging and difficult. Given the investment focus, asset mix, business and operations of the Company that will result from the implementation of the

Restructuring Plan, the Board believes that it is prudent for the Company to withdraw its election as a BDC as soon as practicable to eliminate many of the regulatory, financial reporting and other requirements and restrictions imposed by the 1940 Act discussed below. For example:

- § Business Focus. As a result of the Restructuring Plan, the nature of the Company's business is changing from a business that has historically been in the business of investing, reinvesting, owning, holding, or trading in investment securities in the radio and telecommunications industry toward that of an operating company whose primary focus is on acquiring controlling interests in companies in the medical products and health care industries, and to a lesser extent in the financial services and real estate industries. The Board believes that BDC regulation would be inappropriate for such activities.
- § Issuance of Common Stock. By virtue of its BDC election, the Company may not issue new shares of Common Stock at a per share price less than the then net asset value per share of outstanding Common Stock without prior stockholder approval. Historically, the market prices for BDC stocks have been lower than net asset value, making it much more difficult for BDC's to raise equity capital. While this restriction provides stockholders of an investment company with appropriate and meaningful protection against dilution of their indirect investment interest in portfolio securities, the Board believes that this would essentially be irrelevant to the interests of investors in an operating company, who look to its consolidated earnings stream and cash flow from operations for investment value.
- § Issuance of Securities other than Common Stock. BDC's are limited or restricted as to the type of securities other than common stock they issue. The issuance of convertible securities and rights to acquire shares of common stock (e.g., warrants and options) is restricted primarily because of the statutory interest in facilitating computation of the Company's net asset value per share. In addition, issuances of senior debt and senior equity securities require that certain "asset coverage" tests and other criteria be satisfied on a continuing basis. This significantly affects the use of these types of securities because asset coverage continuously changes by variations in market prices of the Company's investment securities. Operating companies, including holding companies operating through subsidiaries, benefit from having maximum flexibility to raise capital through various financing structures and means.
- § Related Party Transactions. The 1940 Act significantly restricts, among other things, (a) transactions involving transfers of property between the Company and certain affiliated persons of the Company (or the affiliated persons of such affiliated persons), and (b) transactions in which the Company and such affiliated persons (or the affiliated persons of such affiliated persons) participate jointly vis-à-vis third parties on the other. To overcome these investment company restrictions, approval of the United States Securities and Exchange Commission ("**SEC**") is required, which is often a time-consuming and expensive procedure, regardless of the intrinsic fairness of such transactions or the approval thereof by the independent directors of the Company. The Board also believes that situations may arise in which a company's best interests are served by such transactions. The Board believes that even with the protections afforded under the 1940 Act, stockholders are adequately protected by the fiduciary obligations imposed on directors under state corporate law, which generally requires that the independent directors determine fairness to the Company of an interested-party transaction (provided full disclosure of all material facts regarding the transaction and the interested party's relationship with the Company is made), and SEC disclosure rules, which require the Company to include specified disclosure regarding transactions with related parties in its SEC filings.
- § Compensation of Executives. The 1940 Act limits the extent to which, and the circumstances under which executives of a BDC may be paid compensation other than in the form of salary payable in cash. For example, the issuance of equity compensation in the form of restricted stock is generally prohibited. However, the Board believes that by achieving greater flexibility in the structuring of employee compensation packages, the Company will be able to attract and retain additional talented and qualified personnel and to more fairly reward and more effectively motivate its personnel in accordance with industry practice.
- § Eligible Investments. As a BDC, the Company may not acquire any asset other than "Qualifying Assets" unless, at the time the acquisition is made, Qualifying Assets represent at least 70% of the value of the total assets (the "**70%**

test”). Because of the limitations on the type of investments the Company may make, as well as the Company’s total asset composition, the Company may be foreclosed from participating in prudent investment opportunities.

Moreover, the Company incurs significant costs in order to comply with the regulations imposed by the 1940 Act. Management devotes considerable time to issues relating to compliance with the 1940 Act and the Company incurs substantial legal and accounting fees with respect to such matters. While these protections are for the benefit of the Company's stockholders, the costs of this regulation are none the less borne by the stockholders of the Company. The Board believes that resources now being expended on 1940 Act compliance matters could be utilized more productively if devoted to the operation of the Company's business. The Board has determined that the costs of compliance with the 1940 Act are substantial, especially when compared to the Company's relative size and net income, and that it would therefore be in the financial interests of the stockholders for the Company to cease to be regulated under the 1940 Act altogether.

The Board believes that the above reasons, among others, confirm that the restrictions of the 1940 Act would have the effect of hindering the Company's financial growth in the future. The Board has determined that the most efficacious way to reduce these costs, improve profitability, and eliminate the competitive disadvantages the Company experiences due to compliance with the many requirements and restrictions associated with operating under the 1940 Act would be to withdraw the Company's election to be treated as a BDC.

Effect of Election to Withdrawal as a BDC

In the event that the Board withdraws the Company's election to be treated as a BDC and the Company becomes an operating company, the fundamental nature of the Company's business will change from that of investing in a portfolio of securities, with the goal of achieving gains on appreciation and dividend income, to that of being actively engaged in the ownership and management of operating businesses, with the goal of generating income from the operations of those businesses.

The election to withdraw the Company as a BDC under the 1940 Act will result in a significant change in the Company's method of accounting. BDC financial statement presentation and accounting utilizes the value method of accounting used by investment companies, which allows BDC's to recognize income and value their investments at market value as opposed to historical cost. As an operating company, the required financial statement presentation and accounting for securities held will be either fair value or historical cost methods of accounting, depending on the classification of the investment and the Company's intent with respect to the period of time it intends to hold the investment. Change in the Company's method of accounting could reduce the market value of its investments in privately held companies by eliminating the Company's ability to report an increase in value of its holdings as they occur. Also, as an operating company, the Company would have to consolidate its financial statements with subsidiaries, thus eliminating the portfolio company reporting benefits available to BDC's.

The pro forma unaudited balance sheet presented below gives effect to the withdrawal of the Company's election to be regulated as a business development company. The pro forma unaudited balance sheet assumes the withdrawal had occurred as of January 1, 2003. The pro forma unaudited balance sheet includes the historical amounts of the Company adjusted to reflect the effects of the Company's withdrawal of its election to be regulated as a business development company. The pro forma information should be read in conjunction with the historical financial statements of the Company.

**FRANKLIN CAPITAL CORPORATION AND SUBSIDIARIES PRO FORMA
UNAUDITED PRO FORMA BALANCE SHEET**

December 31,	2004	2003
ASSETS		
Cash and cash equivalents	\$ 846,404	\$ 224,225
Trading assets	4,020,154	1,955,169
Other current assets	255,510	58,432
TOTAL CURRENT ASSETS	5,122,068	2,237,826
Property, plant and equipment, net	23,657	20,206