NUPATHE INC.
Form S-1/A
July 09, 2010

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As filed with the Securities and Exchange Commission on July 9, 2010
Registration No. 333-166825

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

Amendment No. 2
to
Form S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

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

Delaware	**2834**	**20-2218246**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification Number)*

227 Washington Street, Suite 200
Conshohocken, Pennsylvania 19428
(484) 567-0130
(Address, including zip code and telephone number, including area code, of registrant s principal executive offices)

Jane H. Hollingsworth
Chief Executive Officer
NuPathe Inc.
227 Washington Street, Suite 200
Conshohocken, Pennsylvania 19428

(484) 567-0130

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

Copies to:

Michael N. Peterson, Esq. **James W. McKenzie, Jr., Esq.** **Morgan, Lewis & Bockius LLP** **1701 Market Street** **Philadelphia, Pennsylvania 19103** **(215) 963-5000**	**Suzanne M. Hanlon, Esq.** **V.P. Administration, General Counsel, Secretary** **NuPathe Inc.** **227 Washington Street, Suite 200** **Conshohocken, Pennsylvania 19428** **(484) 567-0130**	**David E. Redlick, Esq.** **Brian A. Johnson, Esq.** **Wilmer Cutler Pickering Hale and Dorr LLP** **399 Park Avenue** **New York, New York 10022** **(212) 230-8800**

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

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, 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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer o	Non-accelerated filer þ (Do not check if a smaller reporting company)	Smaller reporting company 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 declared 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 jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED July 9, 2010

PROSPECTUS

Shares

Common Stock

NuPathe Inc. is offering shares of common stock. This is our initial public offering, and no public market currently exists for our common stock. We anticipate that the initial public offering price will be between $ and $ per share.

We have applied to have our common stock listed on The NASDAQ Global Market under the symbol PATH.

Investing in our common stock involves risks. See Risk Factors beginning on page 8.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts and commissions	$	$
Proceeds, before expenses, to us	$	$

We have granted the underwriters an option for 30 days from the date of this prospectus to purchase up to additional shares of our common stock at the initial public offering price, less underwriting discounts and commissions, to cover over-allotments.

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.

The underwriters expect to deliver the shares of common stock on or about , 2010.

Leerink Swann **Lazard Capital Markets**

Thomas Weisel Partners LLC **Needham & Company, LLC**

The date of this prospectus is , 2010.

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

Until , 2010, 25 days after the date of this prospectus, all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealer s obligation to deliver a prospectus when acting as an underwriter and with respect to unsold allotments or subscriptions.

For investors outside the United States: Neither we nor any of the underwriters have taken any action to permit a public offering of the shares of our common stock or the possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

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PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. Before you decide to invest in our common stock, you should read the entire prospectus carefully, including the Risk Factors section and the financial statements and related notes appearing at the end of this prospectus.

Our Company

We are a specialty pharmaceutical company focused on the development and commercialization of branded therapeutics for diseases of the central nervous system, including neurological and psychiatric disorders. Our most advanced product candidate, Zelrix, is a single-use patch applied to the arm or thigh for the treatment of migraine. Zelrix actively delivers sumatriptan through the skin in a controlled manner using our proprietary SmartRelief technology. Sumatriptan, currently available in oral, nasal and injectable formulations, is the most widely prescribed migraine medication. We designed Zelrix for patients who suffer from nausea or vomiting with migraines and for those who experience inconsistent relief or adverse events from their current treatment.

We successfully completed a pivotal Phase III clinical trial for Zelrix in July 2009 and expect to submit a New Drug Application, or NDA, to the United States Food and Drug Administration, or FDA, in the fourth quarter of 2010. Subject to FDA approval of our NDA, we plan to build our own specialty sales force in the U.S. to launch Zelrix in the first half of 2012.

We have two other proprietary product candidates in preclinical development that address large market opportunities: NP201 for the continuous symptomatic treatment of Parkinson s disease, and NP202 for the long-term treatment of schizophrenia and bipolar disorder. We expect to submit an Investigational New Drug Application, or IND, to the FDA in the first half of 2011 for NP201 and in 2012 for NP202 in order to initiate human clinical trials of these product candidates.

Our Product Candidates

Zelrix for the treatment of acute migraine

Migraine is a debilitating neurological disease that affects approximately 28 million people in the U.S. Symptoms of migraine include moderate to severe headache pain, nausea and vomiting, photophobia, or abnormal sensitivity to light, and phonophobia, or abnormal sensitivity to sound. Most migraines last between four and 24 hours. Symptoms other than headache pain contribute significantly to the disability caused by acute migraine. In particular, nausea and vomiting during a migraine can be severe and incapacitating and prevent or discourage migraine patients, or migraineurs, from taking their migraine medication.

According to IMS Health Inc., or IMS, a leading provider of pharmaceutical industry market data, over 13 million prescriptions for the treatment of acute migraine were filled in the U.S. in 2009, with more than 90% of these prescriptions for triptans. Triptan sales in the U.S. in 2009 exceeded $2.0 billion, with approximately 123 million individual units sold. Currently, triptans constitute the most prescribed class of medication for the treatment of acute migraine, and sumatriptan is the most widely prescribed triptan.

We believe that most marketed migraine therapies have significant limitations. Zelrix is a transdermal patch designed to provide migraineurs fast onset and sustained relief through a tolerable, non-oral route of administration. We believe

Zelrix offers a better alternative to migraineurs by providing the following benefits:

Circumventing nausea and vomiting. According to a survey of over 500 respondents conducted by the National Headache Foundation in 2008, 90% of migraineurs have experienced nausea with a migraine and 59% of migraineurs have experienced vomiting with a migraine. In this survey, 48% of respondents who ever experienced nausea or vomiting with a migraine reported that the nausea or vomiting had a moderate to major impact on when or how they take migraine medications. The American Academy of Neurology guidelines recommend non-oral therapies for migraineurs who experience nausea or vomiting as significant migraine symptoms. Because Zelrix is administered transdermally, we believe

that it will be attractive to migraineurs suffering from nausea or vomiting who might otherwise delay or avoid taking medication.

Increasing consistency of response. According to a 2001 article by Dr. Michel Ferrari published in *The Lancet*, a peer-reviewed medical journal, clinical trials have demonstrated that at least 40% of migraineurs fail to respond consistently to oral triptans. We believe this results from a variety of causes, including low and inconsistent absorption of oral medication because of a compromised ability to digest, or decreased gastric motility. Because Zelrix does not depend on gastrointestinal absorption, we believe that it will provide more consistent relief than oral triptans.

Minimizing triptan adverse events. According to a 2003 article by Dr. R. Michael Gallagher published in *Headache*, a peer-reviewed medical journal, 67% of migraineurs who use prescription migraine medication reported that they had delayed or avoided taking a prescription migraine medication due to concerns about adverse events. In our clinical trials, treatment with Zelrix resulted in a low incidence of triptan adverse events while effectively treating migraine.

We plan to develop marketing, sales and distribution capabilities for the commercial launch of Zelrix in the U.S., including the hiring of a specialty sales force of approximately 100 people after marketing approval. We expect to direct our marketing efforts to high potential prescribers of Zelrix, including neurologists, headache specialists and select primary care physicians. We may seek to further penetrate the U.S. market in the future by expanding our sales force or through collaborations with other pharmaceutical and biotechnology companies. We may also seek to commercialize Zelrix outside the U.S., although we currently plan to do so only with a partner.

NP201 for the continuous symptomatic treatment of Parkinson s disease

According to the Parkinson s Disease Foundation, Parkinson s disease affects about one million people in the U.S. and more than four million people worldwide. Symptoms of Parkinson s disease can appear at any age, but the average age of onset is 60. According to IMS, 2009 sales of Parkinson s disease therapies in the U.S., European Union and Japan totaled approximately $3.6 billion.

We designed NP201 to provide continuous delivery of Parkinson s disease medication in an easy to administer and tolerable dose formulation. After administration, NP201 is designed to slowly release ropinirole, an FDA approved medication. Based on data from our preclinical studies, we believe that NP201 has the potential to provide continuous symptomatic relief for up to two months per dose and to significantly decrease the incidence of adverse events associated with current treatments. We plan to submit an IND to the FDA in the first half of 2011.

NP202 for the long-term treatment of schizophrenia and bipolar disorder

According to the National Alliance on Mental Illness, in the U.S., schizophrenia affects over two million adults and bipolar disorder affects over ten million adults. In an attempt to improve patient compliance, physicians currently administer antipsychotic drugs through depot injections, which release medication over a longer period than conventional injections or oral medications.

We designed NP202 to provide continuous delivery of an FDA approved atypical antipsychotic medication in an easy to administer and tolerable dose formulation. We believe that NP202 will provide a significant improvement over existing treatment options because we are designing and developing it to deliver up to three months of continuous medication with a single dose and be an easy to administer, pre-loaded, injectable product that can be stored at room temperature. We have developed NP202 prototype products, initiated pre-IND activities and plan to submit an IND to the FDA in 2012.

Our Proprietary Delivery Technologies

We hold exclusive worldwide rights to two proprietary drug delivery technologies: SmartRelief and LAD. Zelrix uses SmartRelief, while NP201 and NP202 both use our long-acting delivery, or LAD, technology.

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SmartRelief is our proprietary transdermal delivery technology based on iontophoresis, a non-invasive method of transporting a molecule through the skin by applying a mild electrical current. Unlike passive transdermal technologies, which rely on diffusion for medication delivery, SmartRelief controls the amount and rate of medication delivery. The SmartRelief technology facilitates active transdermal delivery, which is important for molecules, such as sumatriptan, that are not able to be delivered passively through the skin.

LAD is comprised of a biodegradable polymer matrix using commonly available medical polymers and an active drug. It is formed into a small implant for injection just below the skin. We designed LAD to improve the control, consistency and convenience of medication delivery.

Risks Associated with Our Business

Our business is subject to a number of risks of which you should be aware before making an investment decision. These risks are described in more detail in the Risk Factors section of this prospectus immediately following this prospectus summary. These risks include the following:

- We have not received, and we may not receive, marketing approval for, or commercial revenues from, Zelrix or any other product candidate;
- The commercial success of Zelrix and any other product candidate that we develop, if approved, will depend upon significant market acceptance among physicians and patients and the availability of adequate reimbursement from third party payors;
- If we are unable to establish effective marketing and sales capabilities or enter into agreements with third parties to perform these functions, we will not be able to commercialize Zelrix or any other product candidate that we develop, if approved;
- We have incurred significant operating losses since inception, which has raised substantial doubt regarding our ability to continue as a going concern; and
- We use third parties to manufacture all of our product candidates, including Zelrix, and the machinery to produce the commercial supply of Zelrix must be designed, built and validated.

Our Corporate Information

We were incorporated under the laws of the State of Delaware in January 2005. Our principal executive offices are located at 227 Washington Street, Suite 200, Conshohocken, Pennsylvania 19428 and our telephone number is (484) 567-0130. Our website address is www.nupathe.com. The information contained on, or that can be accessed through, our website is not part of this prospectus. We have included our website address in this prospectus solely as an inactive textual reference.

In this prospectus, unless otherwise stated or the context otherwise indicates, references to NuPathe, we, us, our and similar references refer to NuPathe Inc. The name NuPathe® is our registered trademark. Zelrix™, SmartRelief™ and LAD™ are our trademarks. All other trademarks, trade names and service marks appearing in this prospectus are the property of their respective owners.

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THE OFFERING

Common stock offered by us	shares
Common stock to be outstanding after this offering	shares
Over-allotment option	We have granted the underwriters an option for 30 days from the date of this prospectus to purchase up to additional shares of common stock to cover over-allotments.
Use of proceeds	We intend to use the net proceeds from this offering to complete the clinical development of, seek marketing approval for and, if approved, commercially launch Zelrix in the U.S., to continue preclinical and clinical development of NP201 and NP202 and for working capital and other general corporate purposes. See Use of Proceeds on page 34.
Proposed NASDAQ Global Market symbol	PATH
Risk factors	You should read the Risk Factors section of this prospectus for a discussion of factors to consider carefully before deciding to invest in shares of our common stock.

The number of shares of common stock to be outstanding after this offering is based on 3,143,905 shares of common stock outstanding as of June 30, 2010 and also includes:

- 62,532,068 shares of common stock issuable upon the automatic conversion of all outstanding shares of our preferred stock, including accrued dividends, upon the closing of this offering, assuming that the closing occurred on June 30, 2010; and

- shares of common stock issuable upon the automatic conversion of all principal and accrued interest outstanding under secured subordinated promissory notes that we issued and sold to investors in April 2010, or the April 2010 Convertible Notes, upon the closing of this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and that the closing occurred on June 30, 2010.

The number of shares of common stock to be outstanding after this offering excludes:

- 7,520,075 shares of common stock issuable upon the exercise of options outstanding as of June 30, 2010 at a weighted average exercise price of $0.23 per share;

- 2,768,000 shares of common stock issuable upon the exercise of options, to be granted effective upon the effective date of the registration statement for this offering, at an exercise price equal to the initial public offering price of $ per share;

1,126,298 shares of common stock issuable upon the exercise of warrants outstanding as of June 30, 2010 at a weighted average exercise price of $0.93 per share; and

shares of common stock reserved for future issuance under our 2010 Omnibus Incentive Compensation Plan, or our 2010 Plan, which will become effective upon the effective date of the registration statement for this offering, including 846,020 shares of common stock reserved for issuance as of June 30, 2010, under our 2005 Equity Compensation Plan, or our 2005 Plan, which shares will be added to the shares reserved for future issuance under our 2010 Plan upon effectiveness of our 2010 Plan.

Unless otherwise indicated, all information in this prospectus assumes:

No exercise of the outstanding options or warrants described above;

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No exercise by the underwriters of their option to purchase up to shares of common stock to cover over-allotments;

The automatic conversion of all outstanding shares of our preferred stock, including accrued dividends, into an aggregate of 62,532,068 shares of common stock upon the closing of this offering, assuming that the closing occurred on June 30, 2010;

The automatic conversion of all principal and accrued interest outstanding under the April 2010 Convertible Notes into an aggregate of shares of common stock upon the closing of this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and that the closing occurred on June 30, 2010;

The warrants outstanding as of June 30, 2010 to purchase an aggregate of 1,126,298 shares of preferred stock have become, in accordance with their terms, warrants to purchase 1,126,298 shares of common stock at an exercise price of $0.93 per share of common stock upon the closing of this offering; and

The restatement of our amended and restated certificate of incorporation and our bylaws upon the closing of this offering.

In addition, unless otherwise indicated, all information in this prospectus gives effect to the one-for- reverse stock split of common stock that will be completed prior to the closing of this offering.

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SUMMARY FINANCIAL DATA

You should read the following summary financial data together with the Capitalization, Selected Financial Data and Management s Discussion and Analysis of Financial Condition and Results of Operations sections of this prospectus and our financial statements and the related notes appearing at the end of this prospectus. We have derived the statement of operations data for the years ended December 31, 2007, 2008 and 2009 from our audited financial statements appearing at the end of this prospectus. We have derived the statement of operations data for the three months ended March 31, 2009 and 2010 and for the period from January 7, 2005 (inception) through March 31, 2010 and the balance sheet data as of March 31, 2010 from our unaudited financial statements appearing at the end of this prospectus. Our historical results for any prior period are not necessarily indicative of results to be expected in any future period and our interim period results are not necessarily indicative of results for a full year.

See note 3(j) to our financial statements appearing at the end of this prospectus for information regarding computation of basic and diluted net loss per common share, unaudited pro forma basic and diluted net loss per common share and the unaudited pro forma weighted average basic and diluted common shares outstanding used in computing pro forma basic and diluted net loss per common share.

The unaudited pro forma balance sheet data set forth below give effect to:

- The automatic conversion of all outstanding shares of our preferred stock, including accrued dividends, into an aggregate of 62,532,068 shares of common stock upon the closing of this offering, assuming that the closing occurred on June 30, 2010;

- The receipt in April 2010 of gross proceeds of $10,062,500 upon the issuance of the April 2010 Convertible Notes and the automatic conversion of all principal and accrued interest outstanding under the April 2010 Convertible Notes into an aggregate of shares of common stock upon the closing of this offering, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and that the closing occurred on June 30, 2010;

- The receipt in May 2010 of gross proceeds of $5,000,000 upon entering into a secured term loan facility, or the May 2010 Loan Facility, the issuance of warrants to purchase 255,376 shares of Series B preferred stock, with an estimated fair value of $203,255, to the lenders under such facility and the repayment in full of the $555,208 outstanding as of March 31, 2010 under a term loan that we entered into in 2007; and

- The warrants outstanding as of June 30, 2010 to purchase an aggregate of 1,126,298 shares of our preferred stock becoming, in accordance with their terms, warrants to purchase 1,126,298 shares of common stock at an exercise price of $0.93 per share of common stock upon the closing of this offering and the reclassification of the warrant liability with respect to warrants outstanding as of March 31, 2010 to additional paid-in capital.

The pro forma as adjusted balance sheet data set forth below give further effect to the issuance and sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

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	Year Ended December 31,			Three Months Ended March 31,		January 7, 2005 (inception) through March 31,
	2007	2008	2009	2009	2010	2010
				(Unaudited)		(Unaudited)
	(In thousands, except share and per share data)					
Statement of Operations Data:						
Operating expenses:						
Research and development	$ 7,761	$ 8,815	$ 11,310	$ 2,996	$ 3,390	$ 35,178
Acquired in-process research and development		5,500				5,500
General and administrative	1,884	3,075	3,142	796	873	10,700
Total operating expenses	(9,645)	(17,390)	(14,452)	(3,792)	(4,263)	(51,378)
Interest income (expense), net	(30)	(121)	(1,289)	(37)	(10)	(2,106)
Loss before tax benefit	(9,675)	(17,511)	(15,741)	(3,829)	(4,273)	(53,484)
Income tax benefit			151	151	320	471
Net loss	(9,675)	(17,511)	(15,590)	(3,678)	(3,953)	$ (53,013)
Accretion of redeemable convertible preferred stock	(1,126)	(2,330)	(3,617)	(830)	(1,033)	
Net loss applicable to common stockholders	$ (10,801)	$ (19,841)	$ (19,207)	$ (4,508)	$ (4,986)	
Basic and diluted net loss per common share	$ (3.67)	$ (6.49)	$ (6.28)	$ (1.47)	$ (1.63)	
Weighted average basic and diluted common shares outstanding	2,947,005	3,059,137	3,060,000	3,060,000	3,060,422	
Unaudited pro forma net loss			$ (15,590)		$ (3,953)	

Unaudited pro forma basic and diluted net loss per common share	$	$
Unaudited pro forma weighted average basic and diluted common shares outstanding		