

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 8-K

### CURRENT REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

September 12, 2012

Date of report (Date of earliest event reported)

## SUNSHINE HEART, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State of Incorporation)

001-35312

(Commission File Number)

68-0533453

(I.R.S. Employer Identification No.)

12988 Valley View Road

Eden Prairie, Minnesota

(Address of Principal Executive Offices)

55344

(Zip Code)

(952) 345-4200

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(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 (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities 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.**

**Election of Director**

On September 12, 2012, Jon Erb was elected to our board of directors. Mr. Erb, age 63, is currently chief executive officer of Cardia Access, Inc., a medical device company involved in developing new devices for the treatment of heart disease, a position he has held since February 2007. During 2007, Mr. Erb served as executive chairman of the board of CHF Solutions, Inc., a medical device company involved in the development, manufacturing and distribution of devices to treat congestive heart failure. From 2001 through 2006, Mr. Erb was chief executive officer of CHF Solutions, Inc. Mr. Erb was president and chief executive officer of IntraTherapeutics, Inc., a medical device company involved in the development, manufacturing and distribution of peripheral vascular stents from 1997 through 2001. Previously, Mr. Erb was vice president of worldwide operations for Schneider Worldwide, a division of Pfizer, Inc. Mr. Erb served as a director of SenoRx, Inc., a publicly-traded company, from December 2001 until July 2010, and also served as a director of CryoCath Technologies Inc., a publicly-traded Canadian company, from October 2000 through December 2008. Mr. Erb currently serves as a director of several private companies, as well as Osprey Medical, Inc., which is listed on the Australian Securities Exchange, and Vascular Solutions, Inc., a Nasdaq listed company, for which he has served on the board since 2002. Mr. Erb serves as a director of VivoMetrics, Inc., a privately held company, which filed a petition under Chapter 11 of the bankruptcy code in 2010. With over 30 years of experience in the medical device industry, including 14 years of experience serving as chief executive officer of medical device companies, Mr. Erb brings to our board valuable business, management and leadership experience and a deep understanding of the challenges presented in growing a medical device company. In addition, his role on the boards of Vascular Solutions, SenoRx and CryoCath Technologies has provided him with other public company board experience. Through his position managing significant operations of a multi-national medical device company, Mr. Erb also brings to the board valuable private company operational experience.

Mr. Erb's term will expire at our 2013 annual meeting of stockholders. For his service as a director, Mr. Erb will be compensated in accordance with our non-employee director compensation plan, which provides that he will receive an annual retainer of AUD\$50,000. Mr. Erb will become chairman of the board on October 1, 2012 and at such time, in accordance with our non-employee director compensation plan Mr. Erb will receive an annual retainer of AUD\$100,000.

The board also granted Mr. Erb an option to purchase 54,000 shares of our common stock at an exercise price of \$8.27 per share. The option has a ten-year term and subject to stockholder approval and certain other conditions, will vest and become exercisable as to one-forty-eighth (1/48th) of the shares

of our common stock covered by the option on the 12th day of each month commencing October 12, 2012 until the option is fully exercisable. We entered into an option agreement setting forth the terms of the option, a form of which is filed hereto as Exhibit 10.1 and is incorporated herein by reference.

Effective October 1, 2012, Mr. Erb will also serve as a member of the audit committee, compensation committee, and governance and nominating committee of our board of directors. Mr. Erb has not been a participant in, or is to be a participant in, any related-person transaction or proposed related-person transaction required to be disclosed by Item 404(a) of Regulation S-K under the Securities Exchange Act of 1934.

#### **Director Resignation**

Nicholas Callinan has resigned from our board of directors effective as of December 31, 2012. Mr. Callinan currently serves on the audit committee, compensation committee and governance and nominating committee of our board of directors and will remain on those committees until October 1, 2012. Mr. Callinan's resignation is not based on any disagreement with our company.

#### **N. Callinan Consulting Agreement**

On September 12, 2012, we also entered into a consulting agreement, effective as of January 1, 2013, with Mr. Callinan, pursuant to which Mr. Callinan will provide business advisory services to our company and receive: (a) from January 1, 2013 through March 31, 2013, cash compensation of AUD\$2,083.33 per month and (b) effective April 1, 2013, hourly compensation at an hourly rate to be determined by our Chief Executive Officer. The agreement expires March 31, 2015.

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#### **Item 9.01. Financial Statements and Exhibits**

(d) Exhibits.

<u>Exhibit</u>	<u>Description</u>
10.1	Form of Stock Option Grant Notice and Form of Option Agreement (Director).

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#### **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 hereunto duly authorized.

SUNSHINE HEART, INC.

Date: September 18, 2012

By: /s/ Jeffrey Mathiesen  
Jeffrey Mathiesen  
Chief Financial Officer

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#### **EXHIBIT INDEX**

<u>Exhibit</u>	<u>Description</u>	<u>Manner of Filing</u>
10.1	Form of Stock Option Grant Notice and Form of Option Agreement (Director).	Electronically

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**SUNSHINE HEART, INC.  
STOCK OPTION GRANT NOTICE**

Sunshine Heart, Inc. (the “**Company**”) hereby grants to Optionholder an option to purchase the number of shares of the Company’s Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder:

Date of Grant:

Vesting Commencement Date:

Number of Shares Subject to Option: **shares**

Exercise Price (Per Share): **\$**

Total Exercise Price: **\$**

Expiration Date:

Type of Grant: **x Nonstatutory Stock Option**

Exercise Schedule:

Vesting Schedule:

Payment: By one or a combination of the following items (described in the Option Agreement):

- o By cash or check
- o By bank draft or money order payable to the Company
- o Pursuant to a Regulation T Program if the Shares are publicly traded
- o By delivery of already-owned shares if the Shares are publicly traded
- o If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company’s consent at the time of exercise, by a “net exercise” arrangement

**Additional Terms/Acknowledgements:** The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice and the Option Agreement and has received a copy of the Company’s 2011 Equity Incentive Plan, as may be amended and restated from time to time (the “**Plan**”). Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan (to the extent incorporated by reference into the Option Agreement) set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder by the Company, and (ii) the following agreements only:

Other Agreements:

**SUNSHINE HEART, INC.**

**OPTIONHOLDER:**

By: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENTS:** Option Agreement, 2011 Equity Incentive Plan and Notice of Exercise

**OPTION AGREEMENT  
(DIRECTOR)**

Pursuant to your Stock Option Grant Notice (“**Grant Notice**”) and this Option Agreement, Sunshine Heart, Inc. (the “**Company**”) has granted you a NonStatutory Stock Option to purchase the number of shares of the Company’s Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice, subject to stockholder approval. While your option has not been granted pursuant to the Company’s 2011 Equity Incentive Plan, as may be amended and restated from time to time (the “**Plan**”), the terms of such Plan are incorporated herein by reference. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. **VESTING.** Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.
2. **NUMBER OF SHARES AND EXERCISE PRICE.** The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. **METHOD OF PAYMENT.** Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any one or more of the following manners unless otherwise provided in your Grant Notice:

- (a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.
- (b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, shall include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of the Listing Rules, any law, regulation or agreement restricting the redemption of the Company's stock.
- (c) Subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (i) shares are used to pay the exercise price pursuant to the "net exercise," (ii) shares are delivered to you as a result of such exercise, and (iii) shares are withheld to satisfy tax withholding obligations.

4. **WHOLE SHARES.** You may exercise your option only for whole shares of Common Stock.

5. **SECURITIES LAW COMPLIANCE.** Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your

option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

6. **TERM.** You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

- (a) immediately upon the termination of your Continuous Service for Cause;
- (b) three months after the termination of your Continuous Service for any reason other than Cause, Disability or death; provided however, that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in Section 6 above relating to "Securities Law Compliance," your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three months after the termination of your Continuous Service; and if (i) your Continuous Service terminates within six months after the Date of Grant specified in your Grant Notice and (ii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option shall not expire until the earlier of (x) the later of (A) the date that is seven months after the Date of Grant specified in your Grant Notice or (B) the date that is three months after the termination of your Continuous Service, or (y) the Expiration Date;
- (c) 12 months after the termination of your Continuous Service due to your Disability;
- (d) 18 months after your death if you die either during your Continuous Service or within three months after your Continuous Service terminates for any reason other than Cause;
- (e) the Expiration Date indicated in your Grant Notice; or
- (f) the day before the tenth anniversary of the Date of Grant.

7. **EXERCISE.**

(a) You may exercise the vested portion of your option during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require. **Notwithstanding the foregoing, you shall not be permitted to exercise your option until: (i) the Company obtains stockholder approval of your option, which must occur before December 31, 2013 or this option shall be cancelled and may never be exercised, and (ii) the lock-up period relating to the Company's initial public offering expires, as specified in that certain Underwriting Agreement, dated August 9, 2012, by and between the Company and Canaccord Genuity Inc., as representative to the several underwriters named in Schedule I therein.**

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

**8. TRANSFERABILITY.** Your option is not transferable, except (i) by will or by the laws of descent and distribution, (ii) pursuant to a domestic relations order, (iii) with the prior written approval of the Company, by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in which the option is to be passed to beneficiaries upon the death of the trustor (settlor) and (iv) with the prior written approval of the Company, by gift, in a form accepted by the Company, to a permitted transferee under Rule 701 of the Securities Act.

**9. OPTION NOT A SERVICE CONTRACT.** Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue your service as a Director of the Company or an Affiliate, or of the Company or an Affiliate to continue your service. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

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**10. WITHHOLDING OBLIGATIONS.**

**(a)** At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your option.

**(b)** Upon your request and subject to approval by the Company, in its sole discretion, and in compliance with any applicable conditions or restrictions of law, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

**(c)** You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock unless such obligations are satisfied.

**11. TAX CONSEQUENCES.** You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the “fair market value” per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

**12. NOTICES.** Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**13. GOVERNING PLAN DOCUMENT.** Even though it was not granted pursuant to the Plan, your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

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