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ENDOCARE INC
Form DEFR14A
October 01, 2003

SCHEDULE 14A
(RULE 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934

Filed by the Registrant |X|
Filed by a Party other than the Registrant |_ |

Check the appropriate box:

<input type="checkbox"/> _ Preliminary Proxy Statement	<input type="checkbox"/> _ Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
<input type="checkbox"/> _ Definitive Proxy Statement	
<input type="checkbox"/> _ Definitive Additional Materials	
<input checked="" type="checkbox"/> X Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12	

ENDOCARE, INC.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

|X| No fee required.
 |_ | Fee computed on table below per Exchange Act Rules 14a-6(i)(1)
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- (1) Title of each class of securities to which transaction applies:
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- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
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|_ | Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

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 - 2) Form, Schedule or Registration Statement no.:
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[ENDOCARE LETTERHEAD]

EXPLANATORY NOTE: THE OPEN LETTER TO ENDOCARE STOCKHOLDERS INCLUDED BELOW IS A REVISED VERSION OF THE OPEN LETTER TO ENDOCARE STOCKHOLDERS THAT ENDOCARE ORIGINALLY FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON JUNE 13, 2003 AND AMENDED ON JULY 18, 2003. IN THE REVISED VERSION OF THE OPEN LETTER INCLUDED BELOW, ENDOCARE HAS (i) MODIFIED THE LANGUAGE REGARDING DR. CHINN SEEKING ENDOCARE SHARES OR STOCK OPTIONS, (ii) UPDATED THE DISCLOSURE TO REFLECT INFORMATION SUBSEQUENTLY DISCLOSED BY THE INSURGENTS, AND (iii) INCLUDED THE NEW ANNUAL MEETING DATE. OTHER THAN THESE REVISIONS, THIS REVISED VERSION SPEAKS AS OF THE DATE ORIGINALLY FILED.

FOR RELEASE JUNE 13, 2003 at 7:30 AM EDT

Investor Contact:

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OPEN LETTER TO ENDOCARE STOCKHOLDERS

IRVINE, CA (June 13, 2003)... Endocare, Inc. (ENDO.PK), an innovative medical device company focused on the development of minimally invasive technologies for tissue and cancer tumor ablation, today published the following letter to its stockholders.

To the Stockholders of Endocare, Inc.:

Endocare, Inc. is writing this letter to its stockholders to inform them of several facts regarding a group of insurgents who currently are waging a proxy contest seeking to replace the Board of Directors of Endocare. This group, which refers to itself as the "Committee to Revitalize Endocare," includes the following persons: Douglas O. Chinn, M.D., Solana Capital Partners, Inc., David Eller, William A. Barry, Joseph L. D'Angelo, Robert P. Fry, M.D., J.D., Kurt Landgraf and John R. Queen. The proxy contest is being funded by Solana Capital Partners, Inc.

We urge our stockholders to consider the following facts regarding the insurgents. These facts were disclosed in depositions taken of Dr. Chinn and Luke D. D'Angelo, the managing director and secretary of Solana Capital Partners, Inc., in connection with litigation in Delaware Chancery Court relating to Dr. Chinn's request to inspect our books and records:

- o In what we believe to be a violation of federal securities laws, none of the agreements described below between Dr. Chinn and Solana Capital Partners, Inc. were disclosed in the insurgent's original preliminary proxy materials filed on May 8, 2003 with the Securities and Exchange Commission. To the contrary, the

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insurgent's original preliminary proxy materials filed on May 8, 2003 stated expressly that no such arrangements or understandings among the insurgents exist. In addition, the insurgents' preliminary proxy materials filed on May 8, 2003 did not disclose the amendments to the consulting arrangements between Solana Capital Partners, Inc. and Messrs. Barry and Eller discussed below. After Endocare filed the original version of this letter with the Securities and Exchange Commission on June 13, 2003, the insurgents amended their preliminary proxy materials to disclose each of the agreements and amendments described below.

- o According to Luke D'Angelo, Messrs. Barry and Eller have been paid \$50,000 to date for the use of their names and assistance with the proxy contest, and renewed consulting agreements with Solana Capital Partners, Inc. that provide a \$20,000 per month payment. If successful in the proxy contest, Messrs. Barry and Eller will be entitled to a "success fee" of 100% of the amounts paid to them pursuant to their consulting agreements. Thus, if they are successful at the November 12, 2003 annual meeting, and they are paid \$20,000 per month pursuant to their existing consulting agreements, Messrs. Barry and Eller collectively will receive more than \$500,000 for agreeing to serve as nominees on the insurgents' slate.
- o If the proxy contest is successful, Solana Capital Partners, Inc. or Solana Venture Group, L.P., a fund managed by Solana Capital Partners, Inc., will seek to be awarded Endocare shares or stock options, in addition to Solana Capital Partners, Inc. being reimbursed for costs and expenses relating to the proxy contest.
- o On March 27, 2003, Dr. Chinn and Solana Capital Partners, Inc. executed an agreement in which Solana Capital Partners, Inc. granted to Dr. Chinn a "first right of refusal" for 16.5% of the Endocare shares or stock options that the insurgents might award to Solana Venture Group, L.P. if the proxy contest is successful.
- o To date, Dr. Chinn has advanced to Solana Capital Partners, Inc. \$200,000 to cover costs and expenses relating to the proxy contest. An agreement executed by Dr. Chinn and Solana Capital Partners, Inc. provides that Solana Capital Partners, Inc. will repay to Dr. Chinn all amounts that Dr. Chinn has advanced relating to the proxy contest. This repayment will consist of (i) cash, or (ii) the assignment to Dr. Chinn of limited partnership units in Solana Venture Group, L.P.
- o In addition to the agreement between Dr. Chinn and Solana Capital Partners, Inc. that is described above, on March 5, 2003 Dr. Chinn and Solana Capital Partners, Inc. executed two earlier agreements outlining their strategy with respect to Endocare. These agreements indicate that, if a proxy contest were unsuccessful, Dr. Chinn and Solana Capital Partners, Inc. intended to "move to Plan C, which will either be an offer to buy out Endocare with a Tender offer from a Shell Co. or outside financing." IN THEIR DEPOSITIONS, DR. CHINN AND LUKE D'ANGELO STATED THAT THEY SUBSEQUENTLY RESCINDED THE MARCH 5 AGREEMENTS, ON THE ADVICE OF LEGAL COUNSEL.
- o As of December 31, 2002, Endocare and Dr. Chinn agreed to terminate their ongoing consulting relationship and Endocare paid Dr. Chinn a lump sum of \$175,000.

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- o Based on the deposition testimony of Luke D'Angelo, we believe that, if successful in the proxy contest, Dr. Chinn plans to be appointed Chief Medical Officer of Endocare, Inc. with the hope that his compensation would be at a rate comparable to what he was making in private practice.
- o If these insurgents are successful, the directorial slate of the Committee to Revitalize Endocare will include five out of seven members with significant direct or indirect economic interests or expectations arising out of that success. Substantial cash payments will be due to Messrs. Barry and Eller. Dr. Chinn and Solana Capital Partners, Inc. expect to be reimbursed for their \$200,000 advance and other costs and expenses incurred relating to the proxy contest. Solana Capital Partners, Inc. will seek to be issued Endocare shares or stock options as a success fee, and Dr. Chinn will have the right to receive a portion of such shares or stock options. As disclosed in the insurgents' prior proxy filings, one of the slate of seven is the father of a principal of Solana Capital Partners, Inc. and another of the slate of seven is the father of an employee of Solana Capital Partners, Inc.

We urge our stockholders to consider the foregoing facts carefully before granting any proxy in connection with our Annual Meeting of Stockholders scheduled for November 12, 2003. We appreciate your time and attention to these matters, which are very important to the future of Endocare, Inc.

Very truly yours,

ENDOCARE, INC.

By: /s/ William J. Nydam

William J. Nydam
President and Chief Operating Officer

WE ADVISE YOU TO READ OUR PROXY STATEMENT WHEN IT IS AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION. THE PROXY STATEMENT WILL BE AVAILABLE AT NO CHARGE ON THE SEC'S WEB SITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). IN ADDITION, WE WILL PROVIDE COPIES OF THE PROXY STATEMENT WITHOUT CHARGE UPON REQUEST. REQUESTS FOR COPIES SHOULD BE DIRECTED TO OUR PROXY SOLICITOR AT ITS TOLL-FREE NUMBER: 1-888-750-5884.

Endocare, Inc. and its directors and executive officers may be deemed to be participants in the solicitation of proxies from Endocare, Inc. stockholders with respect to the Annual Meeting of Stockholders scheduled for November 12, 2003. The following table sets forth information regarding our directors' and executive officers' beneficial ownership of our Common Stock as of May 15, 2003. Additional information regarding our directors and executive officers will be included in the proxy statement that we will file with the SEC.

NAME	POSITION	NUMBER OF SHARES BENEFICIALLY OWNED (1)	PERCENTAGE OF TOTAL (1)
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Paul W. Mikus	Chairman of the Board	790,000 (2)	3.3%
Peter F. Bernardoni	Director	628,707 (3)	2.6%
Robert F. Byrnes	Director	296,613 (4)	1.2%
Benjamin Gerson, M.D.	Director	40,000 (5)	*
Ronald A. Matricaria	Director	10,000 (6)	*
Michael J. Strauss, M.D.	Director	60,000 (7)	*
Thomas R. Testman	Director	-- (8)	--
William J. Nydam	President and Chief Operating Officer	-- (9)	--
John V. Cracchiolo	President, Interventional Radiology and Secretary	161,542 (10)	*
Jay J. Eum	Chief Technology Officer	203,751 (11)	*
Katherine Greenberg	Senior Vice President and Chief Financial Officer	-- (12)	*
Kevin M. Quilty	Senior Vice President, Sales and Marketing	126,666 (13)	*
TOTAL		2,317,279 (14)	9.5%

* Represents beneficial ownership of less than 1% of the outstanding shares of our Common Stock.

- (1) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and generally includes voting or investment power with respect to securities. Shares of Common Stock relating to options or convertible securities currently exercisable, or exercisable within 60 days of May 15, 2003, are deemed outstanding for computing the percentage of the person holding such securities but are not deemed outstanding for computing the percentage of any other person. As of May 15, 2003, there were 24,302,454 shares of Common Stock outstanding.
- (2) Includes 615,000 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (3) Includes 588,707 shares held by Technology Funding Partners III, L.P., Technology Funding Venture Partners IV, an Aggressive Growth Fund, L.P. and Technology Funding Venture Partners V, an Aggressive Growth Fund, L.P. (collectively, the "Funds") and 30,000 shares subject to options that are exercisable within 60 days after May 15, 2003. Mr. Bernardoni is an officer of Technology Funding, Inc. and a partner of Technology Funding, Ltd., each a general partner of the Funds. Mr. Bernardoni has sole voting and shared investment power with respect to all shares owned by the Funds, and therefore may be deemed to be beneficial owner of such shares.
- (4) Includes 10,000 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (5) Includes 30,000 shares subject to options that are exercisable within 60 days after May 15, 2003.

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- (6) Represents 10,000 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (7) Includes 45,000 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (8) Mr. Testman has served as a director since May 2003. Mr. Testman received an option to purchase 20,000 shares of Common Stock granted on April 26, 2003, of which no shares are exercisable within 60 days after May 15, 2003.
- (9) Mr. Nydam joined us as President and Chief Operating Officer in March 2003. Mr. Nydam received options to purchase 750,000 shares of Common Stock on March 3, 2003, of which no shares are exercisable within 60 days after May 15, 2003.
- (10) Includes 161,542 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (11) Represents 203,751 shares subject to options that are exercisable within 60 days after May 15, 2003.

- (12) Ms. Greenberg joined us as Chief Financial Officer in March 2003. Ms. Greenberg received an option to purchase 250,000 shares of Common Stock on March 3, 2003, of which no shares are exercisable within 60 days after May 15, 2003.
- (13) Represents 126,666 shares subject to options that are exercisable within 60 days after May 15, 2003.
- (14) Includes 1,231,959 shares subject to options that are exercisable within 60 days after May 15, 2003.

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